

Key provisions of Workplace Harassment* Package for 2019
(Working Draft from Senator Sara Gelser)

ALL EMPLOYERS

- Extend statute of limitations for workplace harassment to SEVEN YEARS in all workplaces for civil, criminal and BOLI complaint pathways

PUBLIC EMPLOYERS (Including Legislature)

- Provide written statement upon any disclosure of workplace harassment that provides the following in plain language:
 - Description of every avenue available for complaint and relevant timelines including
 - Employer process
 - Criminal
 - Civil
 - BOLI
 - Information about how to access Employee Assistance Services for counseling or legal consultation as appropriate
 - Statement of right to be protected from retaliation and how to report retaliation
 - Explanation of confidentiality policies prohibiting employer from releasing information about the survivor/accuser
 - Proactive statement that the survivor/accuser has the right to talk about his or her story to any person or entity
- Proactively follow up with the survivor/accuser at 1,3, 6 and 12 months to directly ask if harassing behavior has ended and to proactively ask if the individual has experienced retaliation. At these check ins, the written document described above must be offered again
- Public employers must ensure that a complaint process exists that allows for investigation of complaints for up to 7 years from the date of the violation
- No public funds may be used for a nondisclosure agreement regarding workplace harassment

ELECTED OFFICIALS (local, county and state)

- Amendment to constitution to allow a Court to order administrative leave for an elected official during an investigation process if there is a risk that the elected official's presence will threaten the safe working environment of others in the workplace
- Statutory language to create process for Court to establish this administrative leave
 - Absent a criminal charge, threat to the physical, mental or emotional safety of an employee or employees in the workplace must be demonstrated to the court by a preponderance of the evidence

- A stalking order, restraining order, felony indictment or misdemeanor charge for a person crime constitutes grounds for the Court to order administrative leave until the workplace process or criminal process is complete
- Elected official continues to be paid and to retain title during this administrative leave process
- Administrative leave can last only as long as the criminal or workplace process unfolds. Should the body complete its process and choose not to discipline the member, the elected official shall be permitted to return to the workplace.
- The petition to the court may be made by a fellow elected official, a human resources officer, an individual making a criminal or workplace complaint, or an individual who can demonstrate by a preponderance of the evidence that the elected official's continued presence in the workplace during the disciplinary process constitutes a threat to their safety and well being
- If a survivor/accuser successfully petitions the court for this administrative leave, the public body must reimburse the survivor/accuser for filing and attorney fees
- No campaign funds may be used to fund a non-disclosure agreement regarding harassment, assault or discrimination based on a protected class
- Third parties are prohibited from funding a non-disclosure agreement regarding harassment, assault or discrimination based on a protected class of an elected official or candidate for public office

*Workplace harassment includes all forms of harassment, not simply sexual harassment. Harassment would be defined to encompass the statutory definition as well as any specific workplace/employer policy