



Media Contact:

Joe Bonilla
Communications
518.813.4905
joe@relentlessaware.com

FOR IMMEDIATE RELEASE

Feb. 26, 2019

SENATOR BIAGGI, ASSEMBLYMEMBER SIMOTAS INTRODUCE LEGISLATION THAT BROADENS HARASSMENT AND DISCRIMINATION PROTECTIONS IN NEW YORK

Legislation would also extend to protecting independent contractors, domestic workers, and small business employees

NEW YORK (Feb. 26, 2019) – Senator Alessandra Biaggi (D-The Bronx) and Assemblymember Aravella Simotas (D-Queens) have introduced legislation, drafted in conjunction with the National Employment Lawyers Association of New York (“NELA/NY”), that will broaden harassment and discrimination protections for employees in New York State.

New York State working individuals who experience unlawful harassment must overcome significant and unwarranted legal barriers when they attempt to come forward and seek justice from their employers. For example, the "Faragher/Ellerth" defense enables many employers to avoid liability where supervisors harass employees, but no "tangible employment action" follows. This and other legal obstacles barring discrimination and harassment cases gives workers in the State the impression that the law, as it is currently written, exists to protect institutions and employers, not its millions of vulnerable employees. This legislation removes those barriers.

Under the proposed legislation:

- + A hostile work environment based on sex, race or another protected class, is unlawful even if the conduct is not “severe or pervasive”;
- + Employers are held responsible for the conduct of their supervisors;
- + Employers are faced with the prospect of punitive damages in order to change behavior;
- + All forms of illegal harassment are treated the same;
- + Eliminates distinctions between sex harassment and discrimination and other forms of harassment and discrimination.

The bill also expands protection to independent contractors, domestic workers, and employees of small businesses. It provides for the payment of attorney fees to victims of all forms of discrimination who prove their cases.

“My goal is to systematically look at all the laws, policies and procedures regarding sexual harassment and replace and improve them until every workplace is safe for every New Yorker. Inspired by the testimony for the



Sexual Harassment Working Group at our recent hearing and working with the National Employment Lawyers Association, Assemblymember Simotas and I have introduced a bill to address some of the current loopholes that allow harassers to escape being held responsible for their actions. One of the most effective ways to stop harassment is to ensure employers don't tolerate sexual harassment in any form. This legislation will see that employers are liable for the actions of their employees, which in turn should give business owners strong incentive to have clear and reliable internal policies so that no episode of harassment goes unreported. And it expands protections to more types of workers, including contractors, domestic workers and employees of small businesses," said Senator Biaggi.

"The hearing we held in Albany on sexual harassment in the workplace made it plain as day that last year's reforms were only the beginning of a long conversation we must have about how to tackle this pervasive problem. We still have much to learn from those who have experienced sexual harassment and from experts who regularly deal with these issues. I applaud the National Employment Lawyers Association of New York and the Sexual Harassment Working group for shining a light on the loopholes and obstacles to justice in our state Human Rights Law. This common sense legislation to update the legal standards applied to these cases is long overdue and will help vulnerable targets of sexual harassment who want to come forward, who want the abuse to stop, and who want to seek justice. Changing a culture of harassment is a challenging and complex task but only when we are willing to confront the fundamental systems that allow these abuses to permeate can we begin to build workplaces where all employees feel safe and respected," said Assemblymember Simotas.

Assemblymember Nily Rozic (D-Queens) is a co-sponsor of the legislation.

"In many significant ways, the New York State Human Rights Law shields employers from liability for maintaining hostile work environments and discourages victims from exercising their rights. Even when employers are found to be liable, awards are often so low that employers accept them as a cost of doing business. Fundamental legislative change is needed to shift the balance from protecting employers to protecting employees, and we believe that NELA/NY's legislative package is the best way this can be accomplished," said Miriam Clark, NELA/NY board president and a New York employment discrimination attorney with Ritz Clark & Ben Asher LLP.

Currently, New York State Human Rights Law is woefully insufficient to protect New York employees and in fact, protects employers and harassers.

There is currently no recourse for many forms of sexual harassment

Under the current law, making blatant and repeated sexual comments, even when combined with sexual touching, are often not enough to meet the extremely high "severe or pervasive" standard.

Employers are rarely held responsible for supervisors who sexually harass others

New York employers also escape liability because they are often held to be not responsible for hostile work environments created by their low-level and mid-level supervisors. Under current state law, the only exception is in the rare situation where the employee can prove that the employer encouraged, condoned, or expressly or impliedly approved the supervisor's conduct.

The lack of punitive damages makes for empty "victories"

Unlike federal law and New York City law, the New York State Human Rights Law does not allow punitive damages to be awarded against employers. This means that even where employees successfully prove their



cases, the amount of damages awarded is often so low that employers may choose to accept the damages as a cost of doing business, as opposed to terminating “popular” harassers or changing workplace culture.

The lack of availability of punitive damages especially affects workplaces employing low-wage workers. In many cases of sexual harassment, there is no economic loss at all – the plaintiff simply suffers and eventually quits, with or without a new job on the horizon. Or the economic loss is limited because the plaintiff is a low wage worker, so the amount of back pay damage the employer is forced to pay after terminating her is minimal, from the employer’s point of view-and just “a cost of doing business” instead of something that must be stopped in the workplace.

###

About NELA/NY: *NELA/NY is the New York affiliate of the National Employment Lawyers Association (“NELA”). NELA/NY promotes the workplace rights of individual employees through legislation, a legal referral service, and other activities, with an emphasis on the special challenges presented by New York’s employment laws.*

NELA was founded in 1985 to provide assistance and support to lawyers in protecting the rights of employees against the greater resources of their employers and the defense bar. NELA is the country’s only professional organization that is comprised exclusively of lawyers who represent individual employees in cases involving employment discrimination, wrongful termination, employee benefits, and other employment-related matters.
nelany.org

