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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1040 Session of  
2019

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INTRODUCED BY RABB, DERMODY, HILL-EVANS, DONATUCCI, FRANKEL,  
SCHLOSSBERG, FREEMAN, KINSEY, MURT, A. DAVIS, NEILSON,  
WARREN, DALEY, WEBSTER, McCLINTON, T. DAVIS, DEASY, DAWKINS,  
ROZZI AND SOLOMON, APRIL 29, 2019

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 29, 2019

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AN ACT

1 Amending the act of October 27, 1955 (P.L.744, No.222), entitled  
2 "An act prohibiting certain practices of discrimination  
3 because of race, color, religious creed, ancestry, age or  
4 national origin by employers, employment agencies, labor  
5 organizations and others as herein defined; creating the  
6 Pennsylvania Human Relations Commission in the Governor's  
7 Office; defining its functions, powers and duties; providing  
8 for procedure and enforcement; providing for formulation of  
9 an educational program to prevent prejudice; providing for  
10 judicial review and enforcement and imposing penalties,"  
11 further providing for definitions and for powers and duties  
12 of the Pennsylvania Human Relations Commission; providing for  
13 training; and establishing the Human Relations Training Fund.

14 The General Assembly of the Commonwealth of Pennsylvania  
15 hereby enacts as follows:

16 Section 1. Sections 4(c) and 7(f) of the act of October 27,  
17 1955 (P.L.744, No.222), known as the Pennsylvania Human  
18 Relations Act, are amended to read:

19 Section 4. Definitions.--As used in this act unless a  
20 different meaning clearly appears from the context:

21 \* \* \*

22 (c) The term "employe" [does not include (1) [any individual

1 employed in agriculture or in the domestic service of any  
2 person, (2)] any individuals who, as a part of their employment,  
3 reside in the personal residence of the employer, [(3)] (2) any  
4 individual employed by said individual's parents, spouse or  
5 child.] means an individual subject to an employer's power to  
6 control the nature and parameters of the individual's  
7 activities, including but not limited to, hiring, firing,  
8 training, scheduling, directing work and proscribing the manner  
9 in which the work should be completed. The term does not  
10 include:

11 (1) an individual who is employed by, and who is working  
12 on a casual basis in a home or personal residence of, another  
13 individual; or

14 (2) an individual employed by the individual's parent,  
15 spouse or child.

16 \* \* \*

17 Section 7. Powers and Duties of the Commission.--The  
18 Commission shall have the following powers and duties:

19 \* \* \*

20 (f) To initiate, receive, investigate and pass upon  
21 complaints charging unlawful discriminatory practices and  
22 violations of section 7.1.

23 \* \* \*

24 Section 2. The act is amended by adding a section to read:

25 Section 7.1. Training.--(a) An employer shall provide  
26 interactive training regarding discrimination, harassment and  
27 retaliation to all current employes of the employer within sixty  
28 days of the effective date of this section and every two years  
29 thereafter. An employer shall provide interactive training to  
30 all new employes hired after the effective date of this section

1 within thirty days following the commencement of work by the  
2 employee and on the two-year training schedule for all employees  
3 thereafter. The interactive training shall include, at a  
4 minimum, the following:

5 (1) An explanation of discrimination, harassment and  
6 retaliation as unlawful acts under Federal and State law.

7 (2) An explanation of sexual harassment as a form of  
8 unlawful discrimination under Federal and State law.

9 (3) Examples of different acts and behavior that could be  
10 considered unlawful discrimination, harassment and retaliation.

11 (4) Examples of different acts and behavior that could be  
12 considered sexual harassment.

13 (5) Bystander intervention and other strategies that are  
14 found to be effective in the prevention of harassment.

15 (6) The effects of discrimination and harassment on victims  
16 and the workplace.

17 (7) The consequences of being found to be in violation of  
18 Federal or State law prohibiting discrimination, harassment and  
19 retaliation.

20 (8) An explanation and examples of implicit bias and the  
21 effects of the implicit bias on the workplace.

22 (9) A description of the employer's internal complaint  
23 policies and procedures available to employees to report and  
24 address discrimination, harassment and retaliation claims.

25 (10) The process available to file a complaint with the  
26 Commission and the United States Equal Employment Opportunity  
27 Commission, along with contact information.

28 (b) Employers shall provide additional interactive training  
29 relating to discrimination, harassment and retaliation to all  
30 current supervisors employed by the employer within sixty days

1 of the effective date of this section and every two years  
2 thereafter. An employer shall provide interactive training to  
3 all new supervisors hired or promoted after the effective date  
4 of this section within thirty days of the commencement of a  
5 supervisory position. The training shall include, at a minimum,  
6 the following:

7 (1) The specific responsibilities of supervisors in the  
8 identification and prevention of discrimination, harassment and  
9 retaliation.

10 (2) A description of the employer's internal complaint  
11 policies and procedures available to employes to report and  
12 address discrimination, harassment and retaliation claims.

13 (3) Measures that supervisors should take to appropriately  
14 address complaints of discrimination, harassment and  
15 retaliation.

16 (4) The consequences of failing to address complaints of  
17 discrimination, harassment and retaliation.

18 (c) Employers shall keep a record of all interactive  
19 trainings provided by the employer as required under clauses (a)  
20 and (b), including the following:

21 (1) The title and content of the interactive training.

22 (2) The date, time and duration of the interactive training.

23 (3) A certification documenting the completion of training  
24 by each employe and supervisor of the employer.

25 Employers shall maintain the training records for at least three  
26 years and the records shall be made available for inspection by  
27 the Commission upon request.

28 (d) The Commission shall develop online interactive training  
29 modules that may be used by employers to satisfy the  
30 requirements of clauses (a) and (b). The modules shall be made

1 available at no cost on the Commission's publicly accessible  
2 Internet website. The modules shall allow for the electronic  
3 provision of a certification documenting that an employe or  
4 supervisor completed training through the Commission's modules.  
5 If an employer uses the Commission's interactive training  
6 modules to satisfy the requirements of clauses (a) and (b), the  
7 employer shall supplement such training by providing a  
8 description of the employer's internal complaint policies and  
9 procedures available to employes to report and address  
10 discrimination, harassmt and retaliation claims.

11 (e) The interactive training required by this section is  
12 intended to establish a minimum threshold. An employer may offer  
13 more frequent and additional training.

14 (f) A person claiming a violation of this section may make a  
15 complaint with the Commission, which shall state the name and  
16 address of the employer alleged to have violated this section.  
17 If after investigation by the Commission, the Commission  
18 determines that the employer violated this section, the  
19 Commission shall endeavor to cause compliance with this section  
20 and may issue a citation and impose a fine as provided in  
21 subsection (g).

22 (g) The Commission has the power to issue citations and  
23 impose fines on an employer for a violation of this section as  
24 follows:

25 (1) A fine of not less than five hundred dollars (\$500) and  
26 not more than one thousand dollars (\$1000) for the first  
27 violation.

28 (2) A fine of not less than one thousand dollars (\$1000) and  
29 not more than five thousand dollars (\$5000) for the second or  
30 each subsequent violation.

1     (3) The Commission may waive the fine for a first-time  
2 violation of this section if the employer proves to the  
3 satisfaction of the Commission, within sixty days of the  
4 issuance of the citation, that the violation has been cured.

5     (h) The Human Relations Training Fund is established within  
6 the State Treasury. A fine imposed and collected by the  
7 Commission under subsection (g) shall be deposited in the fund.  
8 The money in the fund shall be used by the Commission for  
9 training, education and outreach.

10     (i) As used in this section, the following words and phrases  
11 shall have the meanings given to them in this subsection unless  
12 the context clearly indicates otherwise:

13     (1) The term "interactive training" means participatory  
14 instruction, whether in person or Internet-based, provided to an  
15 employee in a manner that allows the employee to interact with the  
16 instructor through the use of traditional learning techniques or  
17 computer-based learning or a combination of both.

18     (2) The term "supervisor" means one of the following:

19     (i) an individual authorized to undertake or recommend  
20 tangible employment decisions affecting the employee including  
21 hiring, firing, promoting, demoting and reassigning the employee;  
22 or

23     (ii) an individual authorized to direct the employee's daily  
24 work activities.

25     Section 3. This act shall take effect in 90 days.