

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2282 Session of 2018

INTRODUCED BY RABB, SCHLOSSBERG, MADDEN, SOLOMON, O'BRIEN, MURT, DEAN, STURLA, DERMODY, KINSEY, D. MILLER, HANNA, A. DAVIS, CONKLIN, CALTAGIRONE, DALEY, YOUNGBLOOD, BULLOCK, FRANKEL, J. HARRIS, WARREN, DONATUCCI, PASHINSKI, HILL-EVANS, SCHWEYER, McCLINTON AND GILLEN, APRIL 19, 2018

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, APRIL 19, 2018

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, for unlawful
 12 discriminatory practices and for powers and duties of the
 13 Pennsylvania Human Relations Commission; providing for
 14 training; and further providing for procedure.

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

17 Section 1. Section 4(c) of the act of October 27, 1955
 18 (P.L.744, No.222), known as the Pennsylvania Human Relations
 19 Act, is amended and the section is amended by adding clauses to
 20 read:

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

1 * * *

2 (c) The term "employe" means an individual who performs work
3 for an employer for wages. The term "employe" does not include
4 (1) [any individual employed in agriculture or in the domestic
5 service of any person, (2)] any individuals who, as a part of
6 their employment, reside in the personal residence of the
7 employer, [(3)] (2) any individual employed by said individual's
8 parents, spouse or child.

9 * * *

10 (bb) The term "intern" means a student or trainee who
11 performs work on a temporary basis for an employer under the
12 direct supervision of an existing employe in order to gain work
13 experience regardless of whether the employer pays a wage to the
14 student or trainee.

15 (cc) The term "volunteer" means an individual who holds an
16 unpaid position under the direct supervision of an employe.

17 Section 2. Sections 5(a) and 7(f) of the act are amended to
18 read:

19 Section 5. Unlawful Discriminatory Practices.--It shall be
20 an unlawful discriminatory practice, unless based upon a bona
21 fide occupational qualification, or in the case of a fraternal
22 corporation or association, unless based upon membership in such
23 association or corporation, or except where based upon
24 applicable security regulations established by the United States
25 or the Commonwealth of Pennsylvania:

26 (a) For any employer because of the race, color, religious
27 creed, ancestry, age, sex, national origin or non-job related
28 handicap or disability or the use of a guide or support animal
29 because of the blindness, deafness or physical handicap of any
30 individual, intern, volunteer or independent contractor, to

1 refuse to hire or employ or contract with, or to bar or to
2 discharge from employment such individual, intern, volunteer or
3 independent contractor, or to otherwise discriminate against
4 such individual, intern, volunteer or independent contractor
5 with respect to compensation, hire, tenure, terms, conditions or
6 privileges of employment or contract, if the individual, intern,
7 volunteer or independent contractor is the best able and most
8 competent to perform the services required. The provision of
9 this paragraph shall not apply, to (1) operation of the terms or
10 conditions of any bona fide retirement or pension plan which
11 have the effect of a minimum service requirement, (2) operation
12 of the terms or conditions of any bona fide group or employe
13 insurance plan, (3) age limitations placed upon entry into bona
14 fide apprenticeship programs of two years or more approved by
15 the State Apprenticeship and Training Council of the Department
16 of Labor and Industry, established by the act of July 14, 1961
17 (P.L.604, No.304), known as "The Apprenticeship and Training
18 Act." Notwithstanding any provision of this clause, it shall not
19 be an unlawful employment practice for a religious corporation
20 or association to hire or employ on the basis of sex in those
21 certain instances where sex is a bona fide occupational
22 qualification because of the religious beliefs, practices, or
23 observances of the corporation, or association.

24 * * *

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

27 * * *

28 (f) To initiate, receive, investigate and pass upon
29 complaints charging unlawful discriminatory practices and
30 violations of section 7.1.

1 * * *

2 Section 3. The act is amended by adding a section to read:

3 Section 7.1. Training.--(a) An employer shall provide
4 interactive training regarding discrimination, harassment and
5 retaliation to all current employes of the employer within sixty
6 days of the effective date of this section and every two years
7 thereafter. An employer shall provide interactive training to
8 all new employes hired after the effective date of this section
9 within thirty days following the commencement of work by the
10 employe and on the two-year training schedule for all employes
11 thereafter. The interactive training shall include, at a
12 minimum, the following:

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

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

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

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

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

23 (6) The effects of discrimination and harassment on victims
24 and the workplace.

25 (7) The consequences of being found to be in violation of
26 Federal or State law prohibiting discrimination, harassment and
27 retaliation.

28 (8) A description of the employer's internal complaint
29 policies and procedures available to employes to report and
30 address discrimination, harassment and retaliation claims.

1 (9) The process available to file a complaint with the
2 Commission and the United States Equal Employment Opportunity
3 Commission, along with contact information.

4 (b) Employers shall provide additional interactive training
5 relating to discrimination, harassment and retaliation to all
6 current supervisors employed by the employer within sixty days
7 of the effective date of this section and every two years
8 thereafter. An employer shall provide interactive training to
9 all new supervisors hired or promoted after the effective date
10 of this section within thirty days of the commencement of a
11 supervisory position. The training shall include, at a minimum,
12 the following:

13 (1) The specific responsibilities of supervisors in the
14 identification and prevention of discrimination, harassment and
15 retaliation.

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

19 (3) Measures that supervisors should take to appropriately
20 address complaints of discrimination, harassment and
21 retaliation.

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

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

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

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

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

1 Employers shall maintain the training records for at least
2 three years and the records shall be made available for
3 inspection by the Commission upon request.

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

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

20 (f) An employer who violates this section shall be liable
21 for a civil penalty of not less than five hundred dollars (\$500)
22 and not more than one thousand dollars (\$1,000) for the first
23 violation and not less than one thousand dollars (\$1,000) and
24 not more than five thousand dollars (\$5,000) for the second or
25 each subsequent violation. The Commission may waive the civil
26 penalty for a first-time violation of this section if the
27 employer proves to the satisfaction of the Commission, within
28 sixty days of the issuance of the notice of violation, that the
29 violation has been cured.

30 (g) As used in this section, the following words and phrases

1 shall have the meanings given to them in this subsection unless
2 the context clearly indicates otherwise:

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

8 (2) The term "supervisor" means an employee who has authority
9 to undertake or recommend tangible employment decisions
10 affecting other employees or direct the daily work activities of
11 other employees.

12 Section 4. Section 9(a), (c), (d), (d.1)(4) and (f)(1) and
13 (4) of the act are amended to read:

14 Section 9. Procedure.--(a) Any person claiming a violation
15 of section 7.1 or claiming to be aggrieved by an alleged
16 unlawful discriminatory practice may make, sign and file with
17 the Commission a verified complaint, in writing, which shall
18 state the name and address of the person, employer, labor
19 organization or employment agency alleged to have violated
20 section 7.1 or to have committed the unlawful discriminatory
21 practice complained of, and which shall set forth the
22 particulars thereof and contain such other information as may be
23 required by the Commission. Commission representatives shall not
24 modify the substance of the complaint. Whenever a person invokes
25 the procedures set forth in this act, the Commission shall
26 refuse to accept for filing a complaint it determines to be
27 untimely with no grounds for equitable tolling, outside its
28 jurisdiction or frivolous on its face. The Commission upon its
29 own initiative or the Attorney General may, in like manner,
30 make, sign and file such complaint. Any employer whose employes,

1 or some of them, hinder or threaten to hinder compliance with
2 the provisions of this act may file with the Commission a
3 verified complaint, asking for assistance by conciliation or
4 other remedial action and, during such period of conciliation or
5 other remedial action, no hearings, orders or other actions
6 shall be taken by the Commission against such employer.

7 * * *

8 (c) If it shall be determined after such investigation that
9 no probable cause exists for crediting the allegations of the
10 complaint, the Commission shall, within ten days from such
11 determination, cause to be issued and served upon the
12 complainant written notice of such determination, and the said
13 complainant or his attorney may, within ten days after such
14 service, file with the Commission a written request for a
15 preliminary hearing before the Commission to determine probable
16 cause for crediting the allegations of the complaint. If it
17 shall be determined after such investigation that probable cause
18 exists for crediting the allegations of the complaint, the
19 Commission shall immediately endeavor to cause compliance with
20 section 7.1 or to eliminate the unlawful discriminatory practice
21 complained of by conference, conciliation and persuasion. The
22 members of the Commission and its staff shall not disclose what
23 has transpired in the course of such endeavors: Provided, That
24 the Commission may publish the facts in the case of any
25 complaint which has been dismissed, and the terms of
26 conciliation when the complaint has been adjusted, without
27 disclosing, except as required by the Fair Housing Act, the
28 identity of the parties involved.

29 * * *

30 (d) In case of failure so to cause such compliance or

1 eliminate such practice or in advance thereof, if in the
2 judgment of the Commission circumstances so warrant, the
3 Commission shall cause to be issued and served a written notice,
4 together with a copy of such complaint as the same may have been
5 amended, requiring the person, employer, labor organization or
6 employment agency named in such complaint, hereinafter referred
7 to as respondent, to answer the charges of such complaint at a
8 hearing before the Commission at a time and place to be
9 specified in such notice. The place of any such hearing shall be
10 in the county in which the alleged offense was committed.

11 (d.1) When notice of hearing is given as set forth in
12 subsection (d) and an election procedure is required by the Fair
13 Housing Act, either party may elect to have the claim asserted
14 in the complaint decided in a civil action brought under the
15 original jurisdiction of Commonwealth Court. The written notice
16 of the Commission shall be sent to all parties and will inform
17 them of their right to take civil action. An election must be
18 made within twenty days after receipt of the notice of hearing.
19 A party making this election shall notify the Commission and all
20 other parties. If an election for civil action is made by either
21 party, the Commission shall, within thirty days from the date of
22 election, commence and maintain a civil action on behalf of the
23 complainant provided, however, that, whenever the Attorney
24 General signs and files the complaint pursuant to subsection
25 (a), the Attorney General shall, within thirty days from the
26 date of election, commence and maintain a civil action on behalf
27 of the complainant. In those cases commenced by the Attorney
28 General, the Commission shall have the right to intervene. In
29 any action brought under this subsection:

30 * * *

1 (4) If, after a trial, the Commonwealth Court finds that a
2 respondent has not violated section 7.1 or engaged in any
3 unlawful discriminatory practice as defined in this act, the
4 court may award attorney fees and costs to the prevailing
5 respondent if the court determines that the complaint is
6 frivolous and that the Commission dealt with the party
7 complained against in a wilful, wanton and oppressive manner, in
8 which case the Commission shall be ordered to pay such costs and
9 attorney fees.

10 * * *

11 (f) (1) If, upon all the evidence at the hearing, the
12 Commission shall find that a respondent has violated section 7.1
13 or engaged in or is engaging in any unlawful discriminatory
14 practice as defined in this act, the Commission shall state its
15 findings of fact, and shall issue and cause to be served on such
16 respondent an order requiring such respondent to comply with
17 section 7.1 or to cease and desist from such unlawful
18 discriminatory practice and to take such affirmative action,
19 including, but not limited to, reimbursement of certifiable
20 travel expenses in matters involving the complaint, compensation
21 for loss of work in matters involving the complaint, hiring,
22 reinstatement or upgrading of employes, with or without back
23 pay, admission or restoration to membership in any respondent
24 labor organization, the making of reasonable accommodations, or
25 selling or leasing specified housing accommodations or
26 commercial property upon such equal terms and conditions and
27 with such equal facilities, services and privileges or lending
28 money, whether or not secured by mortgage or otherwise for the
29 acquisition, construction, rehabilitation, repair or maintenance
30 of housing accommodations or commercial property, upon such

1 equal terms and conditions to any person discriminated against
2 or all persons, and any other verifiable, reasonable out-of-
3 pocket expenses caused by such unlawful discriminatory practice,
4 provided that, in those cases alleging a violation of section
5 5(d), (e) or (h) or 5.3 where the underlying complaint is a
6 violation of section 5(h) or 5.3, the Commission may award
7 actual damages, including damages caused by humiliation and
8 embarrassment, as, in the judgment of the Commission, will
9 effectuate the purposes of this act, and including a requirement
10 for report of the manner of compliance.

11 * * *

12 (4) If, upon all the evidence, the Commission shall find
13 that a respondent has not violated section 7.1 or engaged in any
14 such unlawful discriminatory practice, the Commission shall
15 state its findings of fact, and shall issue and cause to be
16 served on the complainant an order dismissing the said complaint
17 as to such respondent.

18 * * *

19 Section 5. This act shall take effect in 90 days.