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Sexual Harassment Laws to Change in NY Under Bill Passed by Legislature

"We don't yet have the strongest laws in the nation, but we're a lot closer, and we'll continue to work until we do," advocates said.

By [Dan M. Clark](https://www.law.com/newyorklawjournal/author/profile/Dan-M.-Clark/) | June 19, 2019 at 09:10 PM

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New York Sen. Alessandra Biaggi, D-Bronx, center, celebrates after her legislation passed to change state legal standards on sexual harassment at the state Capitol in Albany on Wednesday. Photo: Hans Pennink/AP

State lawmakers in New York crossed party lines Wednesday evening to approve a sweeping new set of reforms to the state's laws on sexual harassment designed to offer new protections for victims, both in the workplace and when they report inappropriate behavior.

Legislation to do so passed unanimously in the State Senate late Wednesday, and with little opposition in the Assembly. It has support from Gov. Andrew Cuomo.

The issue was the subject of two joint legislative hearings this year, inspired by a group of former legislative staffers who have said they were victims of sexual harassment while working in state government.

The Sexual Harassment Working Group, as it's called, hailed the legislation Wednesday evening but said it'll continue to push for additional reforms. Lawmakers have said they intend to do the same.

"Together, we pushed for public hearings, and today's bill is the result of centering survivors' voices to craft meaningful legislation that will truly protect workers," the group said. "We don't yet have the strongest laws in the nation, but we're a lot closer, and we'll continue to work until we do."

The legislation was sponsored by Assemblywoman Aravella Simotas, D-Queens, and State Sen. Alessandra Biaggi, D-Westchester. Both lawmakers have, in recent weeks, worked to negotiate the final legislation as a three-way agreement with Cuomo, who plans to sign the bills when they're sent to his desk.

"With this legislation, employers across all sectors will be held accountable for addressing all forms of sexual harassment and discrimination in the workplace and survivors will be given the necessary time to report complaints and seek the justice they deserve," Biaggi said.

She and Simotas led both hearings earlier this year to hear hours of testimony from victims of sexual harassment, employment attorneys, and others on how the state's laws can be improved. The legislation passed Wednesday is the culmination of those efforts.

"These comprehensive reforms will empower workers and make it easier to hold bad actors accountable," Simotas said. "With the passage of this bill, New York will take a meaningful step forward in preventing workplace harassment and transforming the culture that enables abusers to thrive."

The measure is an omnibus bill of different changes to the state's sexual harassment laws, many of which were included in previous versions of the legislation introduced earlier this year.

It would lower the standard at which victims of sexual harassment can bring claims either in court or through an administrative agency. That behavior, to merit action, is currently required to be "severe or pervasive," a standard that advocates have said can sometimes be hard to meet.

A harasser may be let off the hook, for example, because his or her behavior isn't considered severe or pervasive enough to constitute a valid claim, regardless of how it's impacted the victim.

"This bill is a revolutionary bill for workers," said Rita Pasarell, a member of the Sexual Harassment Working Group. "Changing the severe or pervasive standard completely overhauls the power workers have, and the bill does more than that."

The legislation would also eliminate part of what's called the *Faragher-Ellerth* defense, which is commonly used by employers to dismiss claims of sexual harassment.

The defense was created from two different U.S. Supreme Court decisions. Those rulings found an employer is not liable for sexual harassment if it can show the employee didn't follow the employer's policy for addressing inappropriate behavior, take the directed steps during an investigation or comply with other standards established by that procedure.

The bill approved by lawmakers Wednesday would remove the *Faragher-Ellerth* defense as an affirmative defense for employers, meaning that it wouldn't be as powerful against claims of sexual harassment.

"It's an attack on *Faragher-Ellerth*, not an elimination on *Faragher-Ellerth*," Pasarell said. "What the text of the bill says is it's not determinative for an employer's liability if the worker doesn't report. Which means they can use it, but it's not determinative. Before, when it was an affirmative defense, it was determinative."

There are several other significant changes in the bill. Victims of sexual harassment will have three years to report claims to the state Division of Human Rights, rather than the one year that they have now. That's the same amount of time they would have to bring a claim in court.

The bill would also expand the power of the state Attorney General's Office to prosecute cases of discrimination based on all protected classes. It would also mandate that the state Department of Labor and

DHR update the state's model sexual harassment policy regularly and study how further progress could be made on the issue.

Nondisclosure agreements would be further weakened by the legislation. Those who enter into such an agreement would still be allowed to participate in an investigation into sexual harassment. The bill would also void any nondisclosure clauses related to future claims of discrimination unless a worker is notified he or she can still talk to a reporting agency.

Cuomo had pushed lawmakers in recent weeks to come to a deal on legislation that would lower the "severe or pervasive" standard but hadn't publicly taken a position on eliminating the *Faragher-Ellerth* defense. He cheered the bill in a statement Wednesday evening.

"Under the status quo, sporadic sexual harassment is permissible as long as it is not pervasive—that's unacceptable and we are changing it," Cuomo said. "With the passage of this bill, we will make it easier for claims to be brought forward and send a strong message that when it comes to sexual harassment in the workplace, time is up."

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