The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Martha S. Hess.

## DIGEST 2019 Regular Session

Hewitt

<u>Present law</u> prohibits sexual harassment in the workplace. <u>Present law</u> further provides for each agency of a governmental entity to develop and institute a policy to prevent sexual harassment, which is applicable to all public servants, public employees, and elected officials.

<u>Proposed law</u> declares the public policy of the state, in order to reduce the impact of sexual harassment judgements and settlements on the taxpayers of the state, when there has been a determination that sexual harassment has occurred and a lawsuit has been initiated by the complainant and the state is cast in judgment or settles the litigation, the state, through the attorney general, shall by civil suit seek to recover from the sexual harasser the amounts paid by the state to the complainant, the costs and reasonable attorney fees incurred by the state that while the victim of sexual harassment may be entitled to compensation by the state, the person who committed the sexual harassment should be ultimately held responsible for the amounts paid by the state to the victim, including any costs incurred by the state in connection therewith, and not the taxpayers of the state.

<u>Proposed law</u> provides for the definitions of "agency", "agency head", "complainant", "elected official", "governmental entity", "public employee", "public funds", and "public servant".

## Proposed law is limited to claims alleging:

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- (1) Sexual harassment, which shall include unwelcome sexual advances, requests for sexual favors, and other verbal, physical, or inappropriate conduct of a sexual nature which explicitly or implicitly affects an individual's employment or the holding of office, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment, by a public servant of the state.
- (2) Intimidation, reprisal, retaliation, or discrimination that is unlawful under state or federal law and is taken against a public servant of the state because of a claim of sexual harassment in violation of state or federal law.

<u>Proposed law</u> provides that in addition to the requirements of <u>present law</u> relative to the development and institution of the state's mandatory policy to prevent sexual harassment, each agency policy shall include provisions relative to:

- (1) Reporting complaints.
- (2) Investigating complaints.

- (3) Resolution of complaints.
- (4) The right of the complainant to pursue a claim under state or federal law, regardless of the outcome of the investigation.
- (5) In the event a lawsuit is filed under state or federal law, and the state is cast in judgment or enters into a settlement of the litigation, the state, through the attorney general, shall by civil suit seek restitution from the sexual harasser of the amounts paid by the state to the complainant, the costs and reasonable attorney fees incurred by the state in the litigation, and all costs and reasonable attorney fees incurred by the attorney general in the civil suit seeking restitution.

<u>Proposed law</u> provides that if, after an investigation is conducted in accordance with the agency policy and completed, it is determined that sexual harassment did occur, the agency head shall determine the discipline to be taken against the individual who was found to have committed sexual harassment. <u>Proposed law</u> further provides that for public servants in the classified civil service of the state, the discipline shall be in accordance with the rules and regulations of the Louisiana civil service system. For unclassified public employees, the discipline shall be in accordance with the policies of the employing agency. For non-legislative elected officials, the discipline shall be in accordance with the Rules of Order of the Senate, or the Rules of the House of Representatives, as applicable.

<u>Proposed law</u> provides that if, after an investigation is conducted and completed, it is determined that sexual harassment did not occur, the agency head shall determine the discipline to be taken against the complainant, if any.

<u>Proposed law</u> provides that if a lawsuit is filed against the state by the complainant, the agency head or the human resources department of the agency shall immediately notify the alleged sexual harasser of the claim, and advise the alleged sexual harasser of the possibility that such individual may be required to reimburse the state the amount of any judgement, settlement, costs of litigation, and attorneys fees paid by the state and the costs and attorney fees in connection with any litigation for recovery, and the right of that individual to intervene in any mediation, hearing, or civil action brought with respect to the claim.

<u>Proposed law</u> is not to be construed to limit the authority of the individual or individuals who are alleged to have personally committed an act of sexual harassment to retain counsel to protect the interests of the individual at any point during any of the procedures provided under <u>proposed law</u>.

<u>Proposed law</u> provides that notwithstanding any law to the contrary, in the event that litigation is filed due to a claim of sexual harassment and the state is cast in judgment or settles the litigation, the state, through the attorney general, shall by civil suit seek to recover from the sexual harasser the amounts paid by the state to the complainant, the costs and reasonable attorney fees incurred by the state in the sexual harassment litigation, and all costs and reasonable attorney fees incurred by the attorney general in the civil suit seeking recovery.

<u>Proposed law</u> provides that notwithstanding any law to the contrary, the state, the agency, and the sexual harasser shall not be deemed to be solidary obligors.

<u>Proposed law provides</u> that the commissioner of administration shall prepare a notice to be furnished to each agency head for annual dissemination to each public servant advising them of their potential liability if they are determined by an agency head or a court of competent jurisdiction to have committed sexual harassment. Requires that this notice be disseminated to any newly elected, appointed, or employed public servant.

<u>Proposed law</u> provides that any settlement executed in connection with a claim filed pursuant to <u>proposed law</u> is a public record, with the exception of the name of the victim of the sexual harassment.

<u>Proposed law</u> prohibits a state agency from entering into a nondisclosure agreement with any person to settle a claim that the person was the victim of sexual harassment by an elected official, public employee, or public servant, either prior to the filing of a lawsuit by that person or at any time after a lawsuit is filed.

Effective August 1, 2019.

(Amends R.S. 44:4.1(B)(28); adds R.S. 42:351-357)