Exhibit 1

The New York Times

OP-ED CONTRIBUTOR

#MeToo Has Done What the Law Could Not

By Catharine A. MacKinnon

Feb. 4, 2018

The #MeToo movement is accomplishing what sexual harassment law to date has not.

This mass mobilization against sexual abuse, through an unprecedented wave of speaking out in conventional and social media, is eroding the two biggest barriers to ending sexual harassment in law and in life: the disbelief and trivializing dehumanization of its victims.

Sexual harassment law — the first law to conceive sexual violation in inequality terms — created the preconditions for this moment. Yet denial by abusers and devaluing of accusers could still be reasonably counted on by perpetrators to shield their actions.

Many survivors realistically judged reporting pointless. Complaints were routinely passed off with some version of "she wasn't credible" or "she wanted it." I kept track of this in cases of campus sexual abuse over decades; it typically took three to four women testifying that they had been violated by the same man in the same way to even begin to make a dent in his denial. That made a woman, for credibility purposes, one-fourth of a person.

Even when she was believed, nothing he did to her mattered as much as what would be done to him if his actions against her were taken seriously. His value outweighed her sexualized worthlessness. His career, reputation, mental and emotional serenity

and assets counted. Hers didn't. In some ways, it was even worse to be believed and not have what he did matter. It meant she didn't matter.

These dynamics of inequality have preserved the system in which the more power a man has, the more sexual access he can get away with compelling.

It is widely thought that when something is legally prohibited, it more or less stops. This may be true for exceptional acts, but it is not true for pervasive practices like sexual harassment, including rape, that are built into structural social hierarchies. Equal pay has been the law for decades and still does not exist. Racial discrimination is nominally illegal in many forms but is still widely practiced against people of color. If the same cultural inequalities are permitted to operate in law as in the behavior the law prohibits, equalizing attempts — such as sexual harassment law — will be systemically resisted.

This logjam, which has long paralyzed effective legal recourse for sexual harassment, is finally being broken. Structural misogyny, along with sexualized racism and class inequalities, is being publicly and pervasively challenged by women's voices. The difference is, power is paying attention.

Powerful individuals and entities are taking sexual abuse seriously for once and acting against it as never before. No longer liars, no longer worthless, today's survivors are initiating consequences none of them could have gotten through any lawsuit — in part because the laws do not permit relief against individual perpetrators, but more because they are being believed and valued as the law seldom has. Women have been saying these things forever. It is the response to them that has changed.

Revulsion against harassing behavior — in this case, men with power refusing to be associated with it — could change workplaces and schools. It could restrain repeat predators as well as the occasional and casual exploiters that the law so far has not. Shunning perpetrators as sex bigots who take advantage of the vulnerabilities of inequality could transform society. It could change rape culture.

Sexual harassment law can grow with #MeToo. Taking #MeToo's changing norms into the law could — and predictably will — transform the law as well. Some practical steps could help capture this moment. Institutional or statutory changes could include prohibitions or limits on various forms of secrecy and nontransparency that hide the extent of sexual abuse and enforce survivor isolation, such as forced arbitration, silencing nondisclosure agreements even in cases of physical attacks and multiple perpetration, and confidential settlements. A realistic statute of limitations for all forms of discrimination, including sexual harassment, is essential. Being able to sue individual perpetrators and their enablers, jointly with institutions, could shift perceived incentives for this behavior. The only legal change that matches the scale of this moment is an Equal Rights Amendment, expanding the congressional power to legislate against sexual abuse and judicial interpretations of existing law, guaranteeing equality under the Constitution for all.

But it is #MeToo, this uprising of the formerly disregarded, that has made untenable the assumption that the one who reports sexual abuse is a lying slut, and that is changing everything already. Sexual harassment law prepared the ground, but it is today's movement that is shifting gender hierarchy's tectonic plates.

Catharine A. MacKinnon teaches law at the University of Michigan and Harvard. Her most recent book, on 40 years of activism, is "Butterfly Politics" (Harvard, 2017).

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A version of this article appears in print on February 5, 2018, on Page A19 of the New York edition with the headline: #MeToo And Law's Limitations

Exhibit 2

S. HRG. 102-00, PT. 4

NOMINATION OF JUDGE CLARENCE THOMAS TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SECOND CONGRESS

FIRST SESSION

ON

THE NOMINATION OF CLARENCE THOMAS TO BE ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

OCTOBER 11, 12, AND 13, 1991

Part 4 of 4 Parts

J-102-40

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE
56-273 WASHINGTON : 1993

For sale by the U.S Government Printing Office
Superintendent of Documents, Mail Stop: SSOP, Washington, DC 20402-9328
ISBN 0-16-040838-5

TESTIMONY OF ANITA F. HILL, PROFESSOR OF LAW, UNIVERSITY OF OKLAHOMA, NORMAN, OK

The CHAIRMAN. Professor Hill, please make whatever statement you would wish to make to the committee.

Ms. HILL. Mr. Chairman——

The CHAIRMAN. Excuse me. I instruct the officers not to let anyone in or out of that door while Professor Hill is making her statement.

Ms. HILL. Mr. Chairman, Senator Thurmond, members of the committee, my name is Anita F. Hill, and I am a professor of law at the University of Oklahoma.

I was born on a farm in Okmulgee County, OK, in 1956. I am the youngest of 13 children. I had my early education in Okmulgee County. My father, Albert Hill, is a farmer in that area. My mother's name is Erma Hill. She is also a farmer and a housewife.

My childhood was one of a lot of hard work and not much money, but it was one of solid family affection as represented by my parents. I was reared in a religious atmosphere in the Baptist faith, and I have been a member of the Antioch Baptist Church, in Tulsa, OK, since 1983. It is a very warm part of my life at the present time.

For my undergraduate work, I went to Oklahoma State University, and graduated from there in 1977. I am attaching to the statement a copy of my résumé for further details of my education.

The CHAIRMAN. It will be included in the record.

Ms. HILL. Thank you.

I graduated from the university with academic honors and proceeded to the Yale Law School, where I received my J.D. degree in 1980.

Upon graduation from law school, I became a practicing lawyer with the Washington, DC, firm of Wald, Harkrader & Ross. In 1981, I was introduced to now Judge Thomas by a mutual friend. Judge Thomas told me that he was anticipating a political appointment and asked if I would be interested in working with him. He was, in fact, appointed as Assistant Secretary of Education for Civil Rights. After he had taken that post, he asked if I would become his assistant, and I accepted that position.

In my early period there, I had two major projects. First was an article I wrote for Judge Thomas' signature on the education of minority students. The second was the organization of a seminar on high-risk students, which was abandoned, because Judge Thomas transferred to the EEOC, where he became the Chairman of that office.

During this period at the Department of Education, my working relationship with Judge Thomas was positive. I had a good deal of responsibility and independence. I thought he respected my work and that he trusted my judgment.

After approximately 3 months of working there, he asked me to go out socially with him. What happened next and telling the world about it are the two most difficult things, experiences of my life. It is only after a great deal of agonizing consideration and a number of sleepless nights that I am able to talk of these unpleasant matters to anyone but my close friends.

I declined the invitation to go out socially with him, and explained to him that I thought it would jeopardize what at the time I considered to be a very good working relationship. I had a normal social life with other men outside of the office. I believed then, as now, that having a social relationship with a person who was supervising my work would be ill advised. I was very uncomfortable with the idea and told him so.

I thought that by saying "no" and explaining my reasons, my employer would abandon his social suggestions. However, to my regret, in the following few weeks he continued to ask me out on several occasions. He pressed me to justify my reasons for saying "no" to him. These incidents took place in his office or mine. They were in the form of private conversations which would not have been overheard by anyone else.

My working relationship became even more strained when Judge Thomas began to use work situations to discuss sex. On these occasions, he would call me into his office for reports on education issues and projects or he might suggest that because of the time pressures of his schedule, we go to lunch to a government cafeteria. After a brief discussion of work, he would turn the conversation to a discussion of sexual matters. His conversations were very vivid.

He spoke about acts that he had seen in pornographic films involving such matters as women having sex with animals, and films showing group sex or rape scenes. He talked about pornographic materials depicting individuals with large penises, or large breasts involved in various sex acts.

On several occasions Thomas told me graphically of his own sexual prowess. Because I was extremely uncomfortable talking about sex with him at all, and particularly in such a graphic way, I told him that I did not want to talk about these subjects. I would also try to change the subject to education matters or to nonsexual personal matters, such as his background or his beliefs. My efforts to change the subject were rarely successful.

Throughout the period of these conversations, he also from time to time asked me for social engagements. My reactions to these conversations was to avoid them by limiting opportunities for us to engage in extended conversations. This was difficult because at the time, I was his only assistant at the Office of Education or Office for Civil Rights.

During the latter part of my time at the Department of Education, the social pressures and any conversation of his offensive behavior ended. I began both to believe and hope that our working relationship could be a proper, cordial, and professional one.

When Judge Thomas was made chair of the EEOC, I needed to face the question of whether to go with him. I was asked to do so and I did. The work, itself, was interesting, and at that time, it appeared that the sexual overtures, which had so troubled me, had ended.

I also faced the realistic fact that I had no alternative job. While I might have gone back to private practice, perhaps in my old firm, or at another, I was dedicated to civil rights work and my first choice was to be in that field. Moreover, at that time the Department of Education, itself, was a dubious venture. President Reagan was seeking to abolish the entire department.

For my first months at the EEOC, where I continued to be an assistant to Judge Thomas, there were no sexual conversations or overtures. However, during the fall and winter of 1982, these began again. The comments were random, and ranged from pressing me about why I didn't go out with him, to remarks about my personal appearance. I remember him saying that "some day I would have to tell him the real reason that I wouldn't go out with him."

He began to show displeasure in his tone and voice and his demeanor in his continued pressure for an explanation. He commented on what I was wearing in terms of whether it made me more or less sexually attractive. The incidents occurred in his inner office at the EEOC.

One of the oddest episodes I remember was an occasion in which Thomas was drinking a Coke in his office, he got up from the table, at which we were working, went over to his desk to get the Coke, looked at the can and asked, "Who has put pubic hair on my Coke?"

On other occasions he referred to the size of his own penis as being larger than normal and he also spoke on some occasions of the pleasures he had given to women with oral sex. At this point, late 1982, I began to feel severe stress on the job. I began to be concerned that Clarence Thomas might take out his anger with me by degrading me or not giving me important assignments. I also thought that he might find an excuse for dismissing me.

In January 1983, I began looking for another job. I was handicapped because I feared that if he found out he might make it difficult for me to find other employment, and I might be dismissed from the job I had.

Another factor that made my search more difficult was that this was during a period of a hiring freeze in the Government. In February 1983, I was hospitalized for 5 days on an emergency basis for acute stomach pain which I attributed to stress on the job. Once out of the hospital. I became more committed to find other employment and sought further to minimize my contact with Thomas.

This became easier when Allyson Duncan became office director because most of my work was then funneled through her and I had contact with Clarence Thomas mostly in staff meetings.

In the spring of 1983, an opportunity to teach at Oral Roberts University opened up. I participated in a seminar, taught an afternoon session in a seminar at Oral Roberts University. The dean of the university saw me teaching and inquired as to whether I would be interested in pursuing a career in teaching, beginning at Oral Roberts University. I agreed to take the job, in large part, because of my desire to escape the pressures I felt at the EEOC due to Judge Thomas.

When I informed him that I was leaving in July, I recall that his response was that now, I would no longer have an excuse for not going out with him. I told him that I still preferred not to do so. At some time after that meeting, he asked if he could take me to dinner at the end of the term. When I declined, he assured me that the dinner was a professional courtesy only and not a social invitation. I reluctantly agreed to accept that invitation but only if it was at the very end of a working day.

On, as I recall, the last day of my employment at the EEOC in the summer of 1983, I did have dinner with Clarence Thomas. We went directly from work to a restaurant near the office. We talked about the work that I had done both at Education and at the EEOC. He told me that he was pleased with all of it except for an article and speech that I had done for him while we were at the Office for Civil Rights. Finally he made a comment that I will vividly remember. He said, that if I ever told anyone of his behavior that it would ruin his career. This was not an apology, nor was it an explanation. That was his last remark about the possibility of our going out, or reference to his behavior.

In July 1983, I left the Washington, DC, area and have had minimal contacts with Judge Clarence Thomas since. I am, of course, aware from the press that some questions have been raised about conversations I had with Judge Clarence Thomas after I left the EEOC.

From 1983 until today I have seen Judge Thomas only twice. On one occasion I needed to get a reference from him and on another, he made a public appearance at Tulsa. On one occasion he called me at home and we had an inconsequential conversation. On one occasion he called me without reaching me and I returned the call without reaching him and nothing came of it. I have, at least on three occasions been asked to act as a conduit to him for others.

I knew his secretary, Diane Holt. We had worked together both at EEOC and Education. There were occasions on which I spoke to her and on some of these occasions, undoubtedly, I passed on some casual comment to then, Chairman Thomas. There were a series of calls in the first 3 months of 1985, occasioned by a group in Tulsa which wished to have a civil rights conference. They wanted Judge Thomas to be the speaker and enlisted my assistance for this purpose.

I did call in January and February to no effect and finally suggested to the person directly involved, Susan Cahall, that she put the matter into her own hands and call directly. She did so in March 1985.

In connection with that March invitation, Ms. Cahall wanted conference materials for the seminar, and some research was needed. I was asked to try and get the information and did attempt to do so. There was another call about another possible conference in July 1985.

In August 1987, I was in Washington, DC, and I did call Diane Holt. In the course of this conversation she asked me how long I was going to be in town and I told her. It is recorded in the messages as August 15, it was, in fact, August 20. She told me about Judge Thomas' marriage and I did say, congratulations.

It is only after a great deal of agonizing consideration that I am able to talk of these unpleasant matters to anyone, except my closest friends as I have said before. These last few days have been very trying and very hard for me, and it hasn't just been the last few days this week. It has actually been over a month now that I have been under the strain of this issue. Telling the world is the most difficult experience of my life, but it is very close to have to live through the experience that occasioned this meeting. I may have used poor judgment early on in my relationship with this

issue. I was aware, however, that telling at any point in my career could adversely affect my future career. And I did not want, early on, to build all the bridges to the EEOC.

As I said, I may have used poor judgment. Perhaps I should have taken angry or even militant steps, both when I was in the agency or after I had left it, but I must confess to the world that the course that I took seemed the better, as well as the easier approach.

I declined any comment to newspapers, but later when Senate staff asked me about these matters, I felt that I had a duty to report. I have no personal vendetta against Clarence Thomas. I seek only to provide the committee with information which it may regard as relevant.

It would have been more comfortable to remain silent. It took no initiative to inform anyone. I took no initiative to inform anyone. But when I was asked by a representative of this committee to report my experience I felt that I had to tell the truth. I could not keep silent.

[The prepared statement of Ms. Hill follows:]

Exhibit 3

(2) Special rule where expenses exceed reimbursements. Notwithstanding paragraph (1)(A), if the expenses incurred by an employee for the use of a vehicle in performing services described in paragraph (1) exceed the qualified reimbursements for such expenses, such excess shall be taken into account in computing the miscellaneous itemized deductions of the employee under section 67 [*26 USCS § 67*].

(3) Definition of qualified reimbursements. For purposes of this subsection, the term "qualified reimbursements" means the amounts paid by the United States Postal Service to employees as an equipment maintenance allowance under the 1991 collective bargaining agreement between the United States Postal Service and the National Rural Letter Carriers' Association. Amounts paid as an equipment maintenance allowance by such Postal Service under later collective bargaining agreements that supersede the 1991 agreement shall be considered qualified reimbursements if such amounts do not exceed the amounts that would have been paid under the 1991 agreement, adjusted by increasing any such amount under the 1991 agreement by an amount equal to--

(A) such amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting "calendar year 1990" for "calendar year 2016" in subparagraph (A)(ii) thereof.

(p) Treatment of expenses of members of reserve component of Armed Forces of the United States. For purposes of subsection (a)(2), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such service.

(q) Payments related to sexual harassment and sexual abuse. No deduction shall be allowed under this chapter for--

(1) any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement, or

(2) attorney's fees related to such a settlement or payment.

(r) Disallowance of FDIC premiums paid by certain large financial institutions.

(1) In general. No deduction shall be allowed for the applicable percentage of any FDIC premium paid or incurred by the taxpayer.

(2) Exception for small institutions. Paragraph (1) shall not apply to any taxpayer for any taxable year if the total consolidated assets of such taxpayer (determined as of the close of such taxable year) do not exceed $ 10,000,000,000.

(3) Applicable percentage. For purposes of this subsection, the term "applicable percentage" means, with respect to any taxpayer for any taxable year, the ratio (expressed as a percentage but not greater than 100 percent) which--

(A) the excess of--

(i) the total consolidated assets of such taxpayer (determined as of the close of such taxable year), over

(ii) $ 10,000,000,000, bears to

(B) $ 40,000,000,000.

(4) FDIC premiums. For purposes of this subsection, the term "FDIC premium" means any assessment imposed under section 7(b) of the Federal Deposit Insurance Act (*12 U.S.C. 1817(b)*).

(5) Total consolidated assets. For purposes of this subsection, the term "total consolidated assets" has the meaning given such term under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (*12 U.S.C. 5365*).

(6) Aggregation rule.

(A) In general. Members of an expanded affiliated group shall be treated as a single taxpayer for purposes of applying this subsection.

(B) Expanded affiliated group.

Exhibit 4

SECTION 214-F. EMERGENCY SITUATIONS INVOLVING PEOPLE WITH AUTISM SPECTRUM DISORDER AND OTHER DEVELOPMENTAL DISABILITIES. THE SUPERINTENDENT SHALL, FOR ALL MEMBERS OF THE STATE POLICE:

1. DEVELOP, MAINTAIN AND DISSEMINATE, IN CONSULTATION WITH THE COMMISSIONER OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES, WRITTEN POLICIES AND PROCEDURES CONSISTENT WITH SECTION 13.43 OF THE MENTAL HYGIENE LAW, REGARDING THE HANDLING OF EMERGENCY SITUATIONS INVOLVING INDIVIDUALS WITH AUTISM SPECTRUM DISORDER AND OTHER DEVELOPMENTAL DISABILITIES. SUCH POLICIES AND PROCEDURES SHALL MAKE PROVISIONS FOR THE EDUCATION AND TRAINING OF NEW AND VETERAN POLICE OFFICERS ON THE HANDLING OF EMERGENCY SITUATIONS INVOLVING INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES; AND

2. RECOMMEND TO THE GOVERNOR, RULES AND REGULATIONS WITH RESPECT TO ESTABLISHMENT AND IMPLEMENTATION ON AN ONGOING BASIS OF A TRAINING PROGRAM FOR ALL CURRENT AND NEW POLICE OFFICERS REGARDING THE POLICIES AND PROCEDURES ESTABLISHED PURSUANT TO THIS SUBDIVISION, ALONG WITH RECOMMENDATIONS FOR PERIODIC RETRAINING OF POLICE OFFICERS.

Section 6. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that the commissioner of the office for people with developmental disabilities may promulgate any rules and regulations necessary for the implementation of this act on or before such effective date.

PART KK

Section 1. This Part enacts into law major components of legislation which are necessary to combat sexual harassment in the workplace. Each component is wholly contained within a Subpart identified as Subparts A through F. The effective date for each particular provision contained within such Subpart is set forth in the last section of such Subpart. Any provision in any section contained within a Subpart, including the effective date of the Subpart, which makes a reference to a section "of this act," when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Subpart in which it is found. Section three of this Part sets forth the general effective date of the Part.

SUBPART A

Section 1. The state finance law is amended by adding a new section 139-l to read as follows:

SECTION 139-L. STATEMENT ON SEXUAL HARASSMENT, IN BIDS. 1. (A) EVERY BID HEREAFTER MADE TO THE STATE OR ANY PUBLIC DEPARTMENT OR AGENCY THEREOF, WHERE COMPETITIVE BIDDING IS REQUIRED BY STATUTE, RULE OR REGULATION, FOR WORK OR SERVICES PERFORMED OR TO BE PERFORMED OR GOODS SOLD OR TO BE SOLD, SHALL CONTAIN THE FOLLOWING STATEMENT SUBSCRIBED BY THE BIDDER AND AFFIRMED BY SUCH BIDDER AS TRUE UNDER THE PENALTY OF PERJURY: "BY SUBMISSION OF THIS BID, EACH BIDDER AND EACH PERSON SIGNING ON BEHALF OF ANY BIDDER CERTIFIES, AND IN THE CASE OF A JOINT BID EACH PARTY THERETO CERTIFIES AS TO ITS OWN ORGANIZATION, UNDER PENALTY OF PERJURY, THAT THE BIDDER HAS AND HAS IMPLEMENTED A WRITTEN POLICY ADDRESSING SEXUAL HARASSMENT PREVENTION IN THE WORKPLACE AND PROVIDES ANNUAL SEXUAL HARASSMENT PREVENTION TRAINING TO ALL OF ITS EMPLOYEES. SUCH POLICY SHALL, AT A MINIMUM, MEET THE REQUIREMENTS OF SECTION TWO HUNDRED ONE-G OF THE LABOR LAW."

(B) EVERY BID HEREAFTER MADE TO THE STATE OR ANY PUBLIC DEPARTMENT OR AGENCY THEREOF, WHERE COMPETITIVE BIDDING IS NOT REQUIRED BY STATUTE, RULE OR REGULATION, FOR WORK OR SERVICES PERFORMED OR TO BE PERFORMED OR GOODS SOLD OR TO BE SOLD, MAY CONTAIN, AT THE DISCRETION OF THE DEPARTMENT, AGENCY OR OFFICIAL, THE CERTIFICATION REQUIRED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION.

2. NOTWITHSTANDING THE FOREGOING, THE STATEMENT REQUIRED BY PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION MAY BE SUBMITTED ELECTRONICALLY IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION SEVEN OF SECTION ONE HUNDRED SIXTY-THREE OF THIS CHAPTER.

3. A BID SHALL NOT BE CONSIDERED FOR AWARD NOR SHALL ANY AWARD BE MADE TO A BIDDER WHO HAS NOT COMPLIED WITH SUBDIVISION ONE OF THIS SECTION; PROVIDED, HOWEVER, THAT IF THE BIDDER CANNOT MAKE THE FOREGOING CERTIFICATION, SUCH BIDDER SHALL SO STATE AND SHALL FURNISH WITH THE BID A SIGNED STATEMENT WHICH SETS FORTH IN DETAIL THE REASONS THEREFOR.

4. ANY BID HEREAFTER MADE TO THE STATE OR ANY PUBLIC DEPARTMENT, AGENCY OR OFFICIAL THEREOF, BY A CORPORATE BIDDER FOR WORK OR SERVICES PERFORMED OR TO BE PERFORMED OR GOODS SOLD OR TO BE SOLD, WHERE SUCH BID CONTAINS THE STATEMENT REQUIRED BY SUBDIVISION ONE OF THIS SECTION, SHALL BE DEEMED TO HAVE BEEN AUTHORIZED BY THE BOARD OF DIRECTORS OF SUCH BIDDER, AND SUCH AUTHORIZATION SHALL BE DEEMED TO INCLUDE THE SIGNING AND SUBMISSION OF SUCH BID AND THE INCLUSION THEREIN OF SUCH STATEMENT AS THE ACT AND DEED OF THE CORPORATION.

Section 2. Subdivision 7 of *section 163 of the state finance law, as amended* by section 10 of part L of chapter 55 of the laws of 2012, is amended to read as follows:

7. Method of procurement. Consistent with the requirements of subdivisions three and four of this section, state agencies shall select among permissible methods of procurement including, but not limited to, an invitation for bid, request for proposals or other means of solicitation pursuant to guidelines issued by the state procurement council. State agencies may accept bids electronically including submission of the statement of non-collusion required by section one hundred thirty-nine-d of this chapter , AND THE STATEMENT OF CERTIFICATION REQUIRED BY SECTION ONE HUNDRED THIRTY-NINE-L OF THIS CHAPTER, and, starting April first, two thousand twelve, and ending March thirty-first, two thousand fifteen, may, for commodity, service and technology contracts require electronic submission as the sole method for the submission of bids for the solicitation. State agencies shall undertake no more than eighty-five such electronic bid solicitations, none of which shall be reverse auctions, prior to April first, two thousand fifteen. In addition, state agencies may conduct up to twenty reverse auctions through electronic means, prior to April first, two thousand fifteen. Prior to requiring the electronic submission of bids, the agency shall make a determination, which shall be documented in the procurement record, that electronic submission affords a fair and equal opportunity for offerers to submit responsive offers. Within thirty days of the completion of the eighty-fifth electronic bid solicitation, or by April first, two thousand fifteen, whichever is earlier, the commissioner shall prepare a report assessing the use of electronic submissions and make recommendations regarding future use of this procurement method. In addition, within thirty days of the completion of the twentieth reverse auction through electronic means, or by April first, two thousand fifteen, whichever is earlier, the commissioner shall prepare a report assessing the use of reverse auctions through electronic means and make recommendations regarding future use of this procurement method. Such reports shall be published on the website of the office of general services. Except where otherwise provided by law, procurements shall be competitive, and state agencies shall conduct formal competitive procurements to the maximum extent practicable. State agencies shall document the determination of the method of procurement and the basis of award in the procurement record. Where the basis for award is the best value offer, the state agency shall document, in the procurement record and in advance of the initial receipt of offers, the determination of the evaluation criteria, which whenever possible, shall be quantifiable, and the process to be used in the determination of best value and the manner in which the evaluation process and selection shall be conducted.

Section 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, however, that the amendments to subdivision 7 of *section 163 of the state finance law* made by section one of this act shall not affect the repeal of such section and shall be deemed repealed therewith.

SUBPART B

Section 1. The civil practice law and rules are amended by adding a new section 7515 to read as follows:

SECTION 7515. MANDATORY ARBITRATION CLAUSES; PROHIBITED. (A) DEFINITIONS. AS USED IN THIS SECTION:

1. THE TERM "EMPLOYER" SHALL HAVE THE SAME MEANING AS PROVIDED IN SUBDIVISION FIVE OF SECTION TWO HUNDRED NINETY-TWO OF THE EXECUTIVE LAW.

2. THE TERM "PROHIBITED CLAUSE" SHALL MEAN ANY CLAUSE OR PROVISION IN ANY CONTRACT WHICH REQUIRES AS A CONDITION OF THE ENFORCEMENT OF THE CONTRACT OR OBTAINING REMEDIES UNDER THE CONTRACT THAT THE PARTIES SUBMIT TO MANDATORY ARBITRATION TO RESOLVE ANY ALLEGATION OR CLAIM OF AN UNLAWFUL DISCRIMINATORY PRACTICE OF SEXUAL HARASSMENT.

3. THE TERM "MANDATORY ARBITRATION CLAUSE" SHALL MEAN A TERM OR PROVISION CONTAINED IN A WRITTEN CONTRACT WHICH REQUIRES THE PARTIES TO SUCH CONTRACT TO SUBMIT ANY MATTER THEREAFTER ARISING UNDER SUCH CONTRACT TO ARBITRATION PRIOR TO THE COMMENCEMENT OF ANY LEGAL ACTION TO ENFORCE THE PROVISIONS OF SUCH CONTRACT AND WHICH ALSO FURTHER PROVIDES LANGUAGE TO THE EFFECT THAT THE FACTS FOUND OR DETERMINATION MADE BY THE ARBITRATOR OR PANEL OF ARBITRATORS IN ITS APPLICATION TO A PARTY ALLEGING AN UNLAWFUL DISCRIMINATORY PRACTICE BASED ON SEXUAL HARASSMENT SHALL BE FINAL AND NOT SUBJECT TO INDEPENDENT COURT REVIEW.

4. THE TERM "ARBITRATION" SHALL MEAN THE USE OF A DECISION MAKING FORUM CONDUCTED BY AN ARBITRATOR OR PANEL OF ARBITRATORS WITHIN THE MEANING AND SUBJECT TO THE PROVISIONS OF ARTICLE SEVENTY-FIVE OF THE CIVIL PRACTICE LAW AND RULES.

(B)

(I) PROHIBITION. EXCEPT WHERE INCONSISTENT WITH FEDERAL LAW, NO WRITTEN CONTRACT, ENTERED INTO ON OR AFTER THE EFFECTIVE DATE OF THIS SECTION SHALL CONTAIN A PROHIBITED CLAUSE AS DEFINED IN PARAGRAPH TWO OF SUBDIVISION (A) OF THIS SECTION.

(II) EXCEPTIONS. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO IMPAIR OR PROHIBIT AN EMPLOYER FROM INCORPORATING A NON-PROHIBITED CLAUSE OR OTHER MANDATORY ARBITRATION PROVISION WITHIN SUCH CONTRACT, THAT THE PARTIES AGREE UPON.

(III) MANDATORY ARBITRATION CLAUSE NULL AND VOID. EXCEPT WHERE INCONSISTENT WITH FEDERAL LAW, THE PROVISIONS OF SUCH PROHIBITED CLAUSE AS DEFINED IN PARAGRAPH TWO OF SUBDIVISION (A) OF THIS SECTION SHALL BE NULL AND VOID. THE INCLUSION OF SUCH CLAUSE IN A WRITTEN CONTRACT SHALL NOT SERVE TO IMPAIR THE ENFORCEABILITY OF ANY OTHER PROVISION OF SUCH CONTRACT.

(C) WHERE THERE IS A CONFLICT BETWEEN ANY COLLECTIVE BARGAINING AGREEMENT AND THIS SECTION, SUCH AGREEMENT SHALL BE CONTROLLING.

Section 2. This act shall take effect on the ninetieth day after it shall have become a law.

SUBPART C

Section 1. The public officers law is amended by adding a new section 17-a to read as follows:

SECTION 17-A. REIMBURSEMENT OF FUNDS PAID BY STATE AGENCIES AND STATE ENTITIES FOR THE PAYMENT OF AWARDS ADJUDICATED IN SEXUAL HARASSMENT CLAIMS.

1. AS USED IN THIS SECTION, THE TERM "EMPLOYEE" SHALL MEAN ANY PERSON HOLDING A POSITION BY ELECTION, APPOINTMENT, OR EMPLOYMENT IN THE SERVICE OF THE STATE

OF NEW YORK, WHETHER OR NOT COMPENSATED. THE TERM "EMPLOYEE" SHALL INCLUDE A FORMER EMPLOYEE OR JUDICIALLY APPOINTED PERSONAL REPRESENTATIVE.

2. NOTWITHSTANDING ANY LAW TO THE CONTRARY, ANY EMPLOYEE WHO HAS BEEN SUBJECT TO A FINAL JUDGMENT OF PERSONAL LIABILITY FOR INTENTIONAL WRONGDOING RELATED TO A CLAIM OF SEXUAL HARASSMENT, SHALL REIMBURSE ANY STATE AGENCY OR ENTITY THAT MAKES A PAYMENT TO A PLAINTIFF FOR AN ADJUDICATED AWARD BASED ON A CLAIM OF SEXUAL HARASSMENT RESULTING IN A JUDGMENT, FOR HIS OR HER PROPORTIONATE SHARE OF SUCH JUDGMENT. SUCH EMPLOYEE SHALL PERSONALLY REIMBURSE SUCH STATE AGENCY OR ENTITY WITHIN NINETY DAYS OF THE STATE AGENCY OR ENTITY'S PAYMENT OF SUCH AWARD.

3. IF SUCH EMPLOYEE FAILS TO REIMBURSE SUCH STATE AGENCY OR ENTITY PURSUANT TO SUBDIVISION TWO OF THIS SECTION WITHIN NINETY DAYS FROM THE DATE SUCH STATE AGENCY OR ENTITY MAKES A PAYMENT FOR THE FINANCIAL AWARD, THE COMPTROLLER SHALL, UPON OBTAINING A MONEY JUDGMENT, WITHHOLD FROM SUCH EMPLOYEE'S COMPENSATION THE AMOUNTS ALLOWABLE PURSUANT TO SECTION FIFTY-TWO HUNDRED THIRTY-ONE OF THE CIVIL PRACTICE LAW AND RULES.

4. IF SUCH EMPLOYEE IS NO LONGER EMPLOYED BY SUCH STATE AGENCY OR ENTITY SUCH STATE AGENCY OR ENTITY SHALL HAVE THE RIGHT TO RECEIVE REIMBURSEMENT THROUGH THE ENFORCEMENT OF A MONEY JUDGMENT PURSUANT TO ARTICLE FIFTY-TWO OF THE CIVIL PRACTICE LAW AND RULES.

Section 2. The public officers law is amended by adding a new section 18-a to read as follows:

SECTION 18-A. REIMBURSEMENT OF FUNDS PAID BY A PUBLIC ENTITY FOR THE PAYMENT OF AWARDS ADJUDICATED IN SEXUAL HARASSMENT CLAIMS. 1. AS USED IN THIS SECTION:

(A) THE TERM "PUBLIC ENTITY" SHALL MEAN (I) A COUNTY, CITY, TOWN, VILLAGE OR ANY OTHER POLITICAL SUBDIVISION OR CIVIL DIVISION OF THE STATE; (II) A SCHOOL DISTRICT, BOARD OF COOPERATIVE EDUCATIONAL SERVICES, OR ANY OTHER GOVERNMENTAL ENTITY OR COMBINATION OR ASSOCIATION OF GOVERNMENTAL ENTITIES OPERATING A PUBLIC SCHOOL, COLLEGE, COMMUNITY COLLEGE OR UNIVERSITY; (III) A PUBLIC IMPROVEMENT OR SPECIAL DISTRICT; (IV) A PUBLIC AUTHORITY, COMMISSION, AGENCY OR PUBLIC BENEFIT CORPORATION; OR (V) ANY OTHER SEPARATE CORPORATE INSTRUMENTALITY OR UNIT OF GOVERNMENT; BUT SHALL NOT INCLUDE THE STATE OF NEW YORK OR ANY OTHER PUBLIC ENTITY THE EMPLOYEES OF WHICH ARE COVERED BY SECTION SEVENTEEN-A OF THIS ARTICLE.

(B) THE TERM "EMPLOYEE" SHALL MEAN ANY COMMISSIONER, MEMBER OF A PUBLIC BOARD OR COMMISSION, TRUSTEE, DIRECTOR, OFFICER, EMPLOYEE, OR ANY OTHER PERSON HOLDING A POSITION BY ELECTION, APPOINTMENT OR EMPLOYMENT IN THE SERVICE OF A PUBLIC ENTITY, WHETHER OR NOT COMPENSATED. THE TERM "EMPLOYEE" SHALL INCLUDE A FORMER EMPLOYEE OR JUDICIALLY APPOINTED PERSONAL REPRESENTATIVE.

2. NOTWITHSTANDING ANY LAW TO THE CONTRARY, ANY EMPLOYEE WHO HAS BEEN SUBJECT TO A FINAL JUDGMENT OF PERSONAL LIABILITY FOR INTENTIONAL WRONGDOING RELATED TO A CLAIM OF SEXUAL HARASSMENT, SHALL REIMBURSE ANY PUBLIC ENTITY THAT MAKES A PAYMENT TO A PLAINTIFF FOR AN ADJUDICATED AWARD BASED ON A CLAIM OF SEXUAL HARASSMENT RESULTING IN A JUDGMENT, FOR HIS OR HER PROPORTIONATE SHARE OF SUCH JUDGMENT. SUCH EMPLOYEE SHALL PERSONALLY REIMBURSE SUCH PUBLIC ENTITY WITHIN NINETY DAYS OF THE PUBLIC ENTITY'S PAYMENT OF SUCH AWARD.

3. IF SUCH EMPLOYEE FAILS TO REIMBURSE SUCH PUBLIC ENTITY PURSUANT TO SUBDIVISION TWO OF THIS SECTION WITHIN NINETY DAYS FROM THE DATE SUCH PUBLIC ENTITY MAKES A PAYMENT FOR THE FINANCIAL AWARD, THE CHIEF FISCAL

OFFICER OF SUCH PUBLIC ENTITY SHALL, UPON OBTAINING A MONEY JUDGMENT, WITHHOLD FROM SUCH EMPLOYEE'S COMPENSATION THE AMOUNTS ALLOWABLE PURSUANT TO SECTION FIFTY-TWO HUNDRED THIRTY-ONE OF THE CIVIL PRACTICE LAW AND RULES.

4. IF SUCH EMPLOYEE IS NO LONGER EMPLOYED BY SUCH PUBLIC ENTITY, SUCH PUBLIC ENTITY SHALL HAVE THE RIGHT TO RECEIVE REIMBURSEMENT THROUGH THE ENFORCEMENT OF A MONEY JUDGMENT PURSUANT TO ARTICLE FIFTY-TWO OF THE CIVIL PRACTICE LAW AND RULES.

Section 3. This act shall take effect immediately.

SUBPART D

Section 1. The general obligations law is amended by adding a new section 5-336 to read as follows:

SECTION 5-336. NONDISCLOSURE AGREEMENTS. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, NO EMPLOYER, ITS OFFICERS OR EMPLOYEES SHALL HAVE THE AUTHORITY TO INCLUDE OR AGREE TO INCLUDE IN ANY SETTLEMENT, AGREEMENT OR OTHER RESOLUTION OF ANY CLAIM, THE FACTUAL FOUNDATION FOR WHICH INVOLVES SEXUAL HARASSMENT, ANY TERM OR CONDITION THAT WOULD PREVENT THE DISCLOSURE OF THE UNDERLYING FACTS AND CIRCUMSTANCES TO THE CLAIM OR ACTION UNLESS THE CONDITION OF CONFIDENTIALITY IS THE COMPLAINANT'S PREFERENCE. ANY SUCH TERM OR CONDITION MUST BE PROVIDED TO ALL PARTIES, AND THE COMPLAINANT SHALL HAVE TWENTY-ONE DAYS TO CONSIDER SUCH TERM OR CONDITION. IF AFTER TWENTY-ONE DAYS SUCH TERM OR CONDITION IS THE COMPLAINANT'S PREFERENCE, SUCH PREFERENCE SHALL BE MEMORIALIZED IN AN AGREEMENT SIGNED BY ALL PARTIES. FOR A PERIOD OF AT LEAST SEVEN DAYS FOLLOWING THE EXECUTION OF SUCH AGREEMENT, THE COMPLAINANT MAY REVOKE THE AGREEMENT, AND THE AGREEMENT SHALL NOT BECOME EFFECTIVE OR BE ENFORCEABLE UNTIL SUCH REVOCATION PERIOD HAS EXPIRED.

Section 2. The civil practice law and rules is amended by adding a new section 5003-b to read as follows:

SECTION 5003-B. NONDISCLOSURE AGREEMENTS. NOTWITHSTANDING ANY OTHER LAW TO THE CONTRARY, FOR ANY CLAIM OR CAUSE OF ACTION, WHETHER ARISING UNDER COMMON LAW, EQUITY, OR ANY PROVISION OF LAW, THE FACTUAL FOUNDATION FOR WHICH INVOLVES SEXUAL HARASSMENT, IN RESOLVING, BY AGREED JUDGMENT, STIPULATION, DECREE, AGREEMENT TO SETTLE, ASSURANCE OF DISCONTINUANCE OR OTHERWISE, NO EMPLOYER, ITS OFFICER OR EMPLOYEE SHALL HAVE THE AUTHORITY TO INCLUDE OR AGREE TO INCLUDE IN SUCH RESOLUTION ANY TERM OR CONDITION THAT WOULD PREVENT THE DISCLOSURE OF THE UNDERLYING FACTS AND CIRCUMSTANCES TO THE CLAIM OR ACTION UNLESS THE CONDITION OF CONFIDENTIALITY IS THE PLAINTIFF'S PREFERENCE. ANY SUCH TERM OR CONDITION MUST BE PROVIDED TO ALL PARTIES, AND THE PLAINTIFF SHALL HAVE TWENTY-ONE DAYS TO CONSIDER SUCH TERM OR CONDITION. IF AFTER TWENTY-ONE DAYS SUCH TERM OR CONDITION IS THE PLAINTIFF'S PREFERENCE, SUCH PREFERENCE SHALL BE MEMORIALIZED IN AN AGREEMENT SIGNED BY ALL PARTIES. FOR A PERIOD OF AT LEAST SEVEN DAYS FOLLOWING THE EXECUTION OF SUCH AGREEMENT, THE PLAINTIFF MAY REVOKE THE AGREEMENT, AND THE AGREEMENT SHALL NOT BECOME EFFECTIVE OR BE ENFORCEABLE UNTIL SUCH REVOCATION PERIOD HAS EXPIRED.

Section 3. This act shall take effect on the ninetieth day after it shall have become a law.

SUBPART E

Section 1. The labor law is amended by adding a new section 201-g to read as follows:

SECTION 201-G. PREVENTION OF SEXUAL HARASSMENT. 1. THE DEPARTMENT SHALL CONSULT WITH THE DIVISION OF HUMAN RIGHTS TO CREATE AND PUBLISH A MODEL SEXUAL HARASSMENT PREVENTION GUIDANCE DOCUMENT AND SEXUAL HARASSMENT PREVENTION

POLICY THAT EMPLOYERS MAY UTILIZE IN THEIR ADOPTION OF A SEXUAL HARASSMENT PREVENTION POLICY REQUIRED BY THIS SECTION.

A. SUCH MODEL SEXUAL HARASSMENT PREVENTION POLICY SHALL: (I) PROHIBIT SEXUAL HARASSMENT CONSISTENT WITH GUIDANCE ISSUED BY THE DEPARTMENT IN CONSULTATION WITH THE DIVISION OF HUMAN RIGHTS AND PROVIDE EXAMPLES OF PROHIBITED CONDUCT THAT WOULD CONSTITUTE UNLAWFUL SEXUAL HARASSMENT; (II) INCLUDE BUT NOT BE LIMITED TO INFORMATION CONCERNING THE FEDERAL AND STATE STATUTORY PROVISIONS CONCERNING SEXUAL HARASSMENT AND REMEDIES AVAILABLE TO VICTIMS OF SEXUAL HARASSMENT AND A STATEMENT THAT THERE MAY BE APPLICABLE LOCAL LAWS; (III) INCLUDE A STANDARD COMPLAINT FORM; (IV) INCLUDE A PROCEDURE FOR THE TIMELY AND CONFIDENTIAL INVESTIGATION OF COMPLAINTS AND ENSURE DUE PROCESS FOR ALL PARTIES; (V) INFORM EMPLOYEES OF THEIR RIGHTS OF REDRESS AND ALL AVAILABLE FORUMS FOR ADJUDICATING SEXUAL HARASSMENT COMPLAINTS ADMINISTRATIVELY AND JUDICIALLY; (VI) CLEARLY STATE THAT SEXUAL HARASSMENT IS CONSIDERED A FORM OF EMPLOYEE MISCONDUCT AND THAT SANCTIONS WILL BE ENFORCED AGAINST INDIVIDUALS ENGAGING IN SEXUAL HARASSMENT AND AGAINST SUPERVISORY AND MANAGERIAL PERSONNEL WHO KNOWINGLY ALLOW SUCH BEHAVIOR TO CONTINUE; AND (VII) CLEARLY STATE THAT RETALIATION AGAINST INDIVIDUALS WHO COMPLAIN OF SEXUAL HARASSMENT OR WHO TESTIFY OR ASSIST IN ANY PROCEEDING UNDER THE LAW IS UNLAWFUL.

B. EVERY EMPLOYER SHALL ADOPT THE MODEL SEXUAL HARASSMENT PREVENTION POLICY PROMULGATED PURSUANT TO THIS SUBDIVISION OR ESTABLISH A SEXUAL HARASSMENT PREVENTION POLICY TO PREVENT SEXUAL HARASSMENT THAT EQUALS OR EXCEEDS THE MINIMUM STANDARDS PROVIDED BY SUCH MODEL SEXUAL HARASSMENT PREVENTION POLICY. SUCH SEXUAL HARASSMENT PREVENTION POLICY SHALL BE PROVIDED TO ALL EMPLOYEES IN WRITING. SUCH MODEL SEXUAL HARASSMENT PREVENTION POLICY SHALL BE PUBLICLY AVAILABLE AND POSTED ON THE WEBSITES OF BOTH THE DEPARTMENT AND THE DIVISION OF HUMAN RIGHTS.

2. THE DEPARTMENT SHALL CONSULT WITH THE DIVISION OF HUMAN RIGHTS AND PRODUCE A MODEL SEXUAL HARASSMENT PREVENTION TRAINING PROGRAM TO PREVENT SEXUAL HARASSMENT IN THE WORKPLACE.

A. SUCH MODEL SEXUAL HARASSMENT PREVENTION TRAINING PROGRAM SHALL BE INTERACTIVE AND INCLUDE: (I) AN EXPLANATION OF SEXUAL HARASSMENT CONSISTENT WITH GUIDANCE ISSUED BY THE DEPARTMENT IN CONSULTATION WITH THE DIVISION OF HUMAN RIGHTS; (II) EXAMPLES OF CONDUCT THAT WOULD CONSTITUTE UNLAWFUL SEXUAL HARASSMENT; (III) INFORMATION CONCERNING THE FEDERAL AND STATE STATUTORY PROVISIONS CONCERNING SEXUAL HARASSMENT AND REMEDIES AVAILABLE TO VICTIMS OF SEXUAL HARASSMENT; AND (IV) INFORMATION CONCERNING EMPLOYEES' RIGHTS OF REDRESS AND ALL AVAILABLE FORUMS FOR ADJUDICATING COMPLAINTS.

B. THE DEPARTMENT SHALL INCLUDE INFORMATION IN SUCH MODEL SEXUAL HARASSMENT PREVENTION TRAINING PROGRAM ADDRESSING CONDUCT BY SUPERVISORS AND ANY ADDITIONAL RESPONSIBILITIES FOR SUCH SUPERVISORS.

C. EVERY EMPLOYER SHALL UTILIZE THE MODEL SEXUAL HARASSMENT PREVENTION TRAINING PROGRAM PURSUANT TO THIS SUBDIVISION OR ESTABLISH A TRAINING PROGRAM FOR EMPLOYEES TO PREVENT SEXUAL HARASSMENT THAT EQUALS OR EXCEEDS THE MINIMUM STANDARDS PROVIDED BY SUCH MODEL TRAINING. SUCH SEXUAL HARASSMENT PREVENTION TRAINING SHALL BE PROVIDED TO ALL EMPLOYEES ON AN ANNUAL BASIS.

3. THE COMMISSIONER MAY PROMULGATE REGULATIONS AS HE OR SHE DEEMS NECESSARY FOR THE PURPOSES OF CARRYING OUT THE PROVISIONS OF THIS SECTION.

Section 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the department of labor, in consultation with the division of human rights, is authorized to create the model sexual harassment prevention policy and the model sexual harassment prevention training program required to be created and published pursuant to section 201-g of the labor law as added by section one of this act.

SUBPART F

Section 1. The executive law is amended by adding a new section 296-d to read as follows:

SECTION 296-D. SEXUAL HARASSMENT RELATING TO NON-EMPLOYEES. IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR AN EMPLOYER TO PERMIT SEXUAL HARASSMENT OF NON-EMPLOYEES IN ITS WORKPLACE. AN EMPLOYER MAY BE HELD LIABLE TO A NON-EMPLOYEE WHO IS A CONTRACTOR, SUBCONTRACTOR, VENDOR, CONSULTANT OR OTHER PERSON PROVIDING SERVICES PURSUANT TO A CONTRACT IN THE WORKPLACE OR WHO IS AN EMPLOYEE OF SUCH CONTRACTOR, SUBCONTRACTOR, VENDOR, CONSULTANT OR OTHER PERSON PROVIDING SERVICES PURSUANT TO A CONTRACT IN THE WORKPLACE, WITH RESPECT TO SEXUAL HARASSMENT, WHEN THE EMPLOYER, ITS AGENTS OR SUPERVISORS KNEW OR SHOULD HAVE KNOWN THAT SUCH NON-EMPLOYEE WAS SUBJECTED TO SEXUAL HARASSMENT IN THE EMPLOYER'S WORKPLACE, AND THE EMPLOYER FAILED TO TAKE IMMEDIATE AND APPROPRIATE CORRECTIVE ACTION. IN REVIEWING SUCH CASES INVOLVING NON-EMPLOYEES, THE EXTENT OF THE EMPLOYER'S CONTROL AND ANY OTHER LEGAL RESPONSIBILITY WHICH THE EMPLOYER MAY HAVE WITH RESPECT TO THE CONDUCT OF THE HARASSER SHALL BE CONSIDERED.

Section 2. Subdivision 4 of *section 292 of the executive law, as amended* by chapter 97 of the laws of 2014, is amended to read as follows:

4. The term "unlawful discriminatory practice" includes only those practices specified in sections two hundred ninety-six, two hundred ninety-six-a ~~and~~ , two hundred ninety-six-c AND TWO HUNDRED NINETY-SIX-D of this article.

Section 3. This act shall take effect immediately.

Section 2. Severability clause. If any clause, sentence, paragraph, subdivision, section or subpart of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or subject thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

Section 3. This act shall take effect immediately; provided, however, that the applicable effective dates of Subparts A through F of this Part shall be as specifically set forth in the last section of such Subparts.

PART LL

Section 1. The public health law is amended by adding a new section 1114-a to read as follows:

SECTION 1114-A. VOLUNTARY PUBLIC WATER SYSTEM CONSOLIDATION STUDY. 1. THERE SHALL BE ESTABLISHED IN THE DEPARTMENT, BY THE COMMISSIONER, A VOLUNTARY PUBLIC WATER SYSTEM CONSOLIDATION STUDY DESIGNED TO EVALUATE THE FEASIBILITY OF THE JOINING OF PUBLIC WATER SYSTEMS IN ORDER TO IMPROVE WATER QUALITY. SUCH STUDY SHALL INCLUDE:

(A) THE FEASIBILITY OF JOINING OF TWO OR MORE PUBLIC WATER SYSTEMS TO FORM ONE WATER SYSTEM;

(B) THE FEASIBILITY OF THE CONSOLIDATION OF ONE OR MORE PUBLIC WATER SYSTEMS INTO A LARGER PUBLIC WATER SYSTEM;

Exhibit 5

County of Erie
Policy Regarding Harassment Claims Brought Against County Employees

It is the policy of the County of Erie to provide a safe working environment for all employees, including freedom from harassment.[1] Discrimination is unlawful in New York pursuant to the New York Human Rights Law (codified as N.Y. Executive Law, Article 15), and the federal Civil Rights Act of 1964, Title VII (codified as 42 U.S.C. § 2000e et seq.). Harassment is a form of discrimination, and all forms of harassment are prohibited under the Erie County Harassment Policy.[2]

In furtherance of this policy, the Legislature has adopted Resolution Intro 2-6 holding that public funds shall not be used to settle any harassment claim brought against individuals (i.e. employees) within County employment. Accordingly, public funds shall not be used to settle such claims in the event, after thorough investigation by the County Attorney or a final determination having been reached by a court of competent jurisdiction, it is determined that the County has no responsibility under Public Officers Law Section 18 to provide indemnification to the employee because 1) the alleged act or omission from which a claim arose occurred while the employee was not acting within the scope of his or her public employment or duties, 2) where the injury or damage resulted from intentional wrongdoing or recklessness on the part of the employee, or 3) where the County is otherwise not responsible for paying the claim as a matter of law.

In establishing this policy the County acknowledges and supports the right of victims of sexual harassment to be made whole. This includes the right to financial compensation and provision of appropriate care. Nothing in this Policy shall affect the right of any victim to be compensated in accordance with the claim process of the County Charter and Code. Further, should the processing of any such claim, including a judicial proceeding, reveal a viable cause of action of the County against the responsible party, the County, acting through the County Attorney, shall seek redress through all available legal remedies.

In order to protect the privacy of any employee who may have been harassed and to comply with the New York State Civil Rights Law, the County Attorney may provide information on specific claims in redacted form, or orally in Executive Session or Attorney-Client discussions, as appropriate under New York Law.

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[1] For example In Executive Order # 008, the County Executive ordered that it is the policy of the County of Erie that sexual harassment is unacceptable and will not be tolerated, and established procedures for reporting allegations of sexual harassment, and County management responsibilities for responding to allegations.

[2] Available at http://www2.erie.gov/eeo/index.php?q=harassment-policy

Nothing in this Policy shall amend the procedure for filing, processing, approving, and paying claims against the County. Nothing in this Policy shall be seen as amending any Collective Bargaining Agreement to which the County is a party or applying to any employee covered by any such Collective Bargaining Agreement.