

ACT NO. 6829

BILL NO. 26-0061

TWENTY-SIXTH LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2006

An Act amending 10 V.I.C., chapter 5, and 24 V.I.C., § 451 to prohibit sexual harassment in the workplace, amending 24 V.I.C., chapter 17 relating to sexual harassment and the prohibition of retaliation against employees and making appropriations to the Civil Rights Commission and the Department of Labor

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Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 10 Virgin Islands Code, chapter 5, section 64 is amended by adding subsection (14) to read:

“(14) For purposes of this chapter, discrimination “because of sex” includes discrimination because of sexual harassment.”

SECTION 2. Title 10 Virgin Islands Code, chapter 5 is amended by adding section 64a to read as follows:

“§ 64a. Sexual harassment prohibited

(a) The Legislature declares as the public policy of the Government of the Virgin Islands that sexual harassment in employment is a type of sexual discrimination and, as such, constitutes an illegal and undesirable practice that goes against the established constitutional principle that the dignity of a human being is inviolable. Therefore, sexual harassment in employment is prohibited, and the Legislature imposes the responsibilities for its prevention and the penalties for violation as prescribed in this section.

(b) As used in this chapter:

(1) "Employee" means any person who works for an employer and receives compensation therefor, or any job applicant. For the purposes of the protection conferred by this section the term employee must be interpreted in the broadest sense possible.

(2) "Employer" means any natural or juridical person of any kind, the Government of the Virgin Islands, including each of its three branches and its instrumentalities and public corporations, and any of its instrumentalities and corporations that employ persons for any kind of compensation, for profit or non-profit purposes, and the employer's agents and supervisors. The term also includes labor unions and other organizations, groups or associations in which employees participate for the purpose of negotiating the terms and conditions of their employment with the employers, as well as employment agencies.

(3) "Supervisor" means any person that exercises some kind of control or whose recommendation is taken into consideration for the contracting, classifying, discharging, promoting, transfer, fixing compensation or working hours, places or conditions or the tasks or duties that an employee or group of employees perform or may perform, or on any other terms or conditions of employment, or any person that performs day-to-day supervisory tasks.

(4) "Sexual harassment" means any unwelcome sexual advances or requests for sexual favors or any other verbal or physical conduct of a sexual nature when:

(A) Submission to that conduct or those advances or requests is made either explicitly or implicitly a term or condition of an individual's employment; or

(B) Submission to or rejection of the conduct or advances or requests by an individual is used as the basis for employment decisions affecting the individual; or

(C) The conduct or advances or requests have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(c) Adoption of workplace policy and statement:

(1) All employers and employment agencies shall promote a workplace free of sexual harassment.

(2) The Personnel Director on behalf of the Government of the Virgin Islands and all other employers shall:

(A) Adopt a policy against sexual harassment that at a minimum must include:

(i) A statement that sexual harassment in the workplace is unlawful;

(ii) A statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of a complaint for sexual harassment;

(iii) A description and examples of sexual harassment;

(iv) A statement of the range of consequences for employees who are found to have committed sexual harassment;

(v) A description of the process for filing internal complaints about sexual harassment and the work addresses and telephone numbers of the person or persons to whom complaints should be made; and

(vi) The identity of the appropriate territorial and federal employment discrimination enforcement agencies, and directions as to how to contact these agencies.

(B) Provide to all employees a written copy of the employer's policy against sexual harassment; except that, a new employee must be provided such a copy at the time of the new employee's employment. If an employer violates the requirements of this subparagraph and subparagraph (B), the commission shall issue an order requiring the employer to comply with these requirements.

(i) All employers are encouraged, but the Government of the Virgin Islands and employers that employ five or more employees or that receive the services of five or more persons under an employment contract for each working day in each of the twenty or more calendar weeks per year shall conduct an education and training program for new employees, within one year of commencement of employment which includes at a minimum the information set forth in paragraph (2) of this subsection.

(ii) All employers are encouraged, but the Government of the Virgin Islands and employers that employ five or more employees or that receive the services of five or more persons under an employment contract for each working day in each of the twenty or more calendar weeks per year shall conduct additional training for new supervisory and managerial employees within one year of commencement of employment which must include at a minimum the information set forth in paragraph (2) of this subsection, the specific responsibilities of supervisory and

managerial employees and the methods that these employees should take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

(iii) The training and education mandated in this subparagraph constitutes the minimum requirement and is not intended to discourage or relieve an employer from providing additional or more frequent training and educational programs in prevention of sexual harassment in the workplace as needed.

(iv) Employers and appropriate governmental agencies shall cooperate in making this training available.

(v) Employers shall provide copies of their written policies on sexual harassment to all employees upon their request.

(d) Employers shall maintain copies of their written policies on sexual harassment at their business premises, and copies of such policies must be made available to any territorial or federal employment discrimination enforcement agency upon request.

(e) The remedies established in this section are in addition to those established under other sections of this title and title 24, chapter 17 of the Virgin Islands Code.

(f) **Sanctions.** Any person responsible for sexual harassment in employment as defined in subsection (b) of this section shall incur civil liability:

(1) For a sum equal to double the amount of the damages that the action has caused the employee or job applicant, or

(2) For a sum of not less than \$5,000 at the discretion of the court, in those cases in which pecuniary damages cannot be determined.

(g) In addition to the remedies in sections 73 and 74 of this chapter, in the judgment in civil actions filed under this section, the court shall order the employer to hire, promote or reinstate the employee in his job and to cease the act in question."

SECTION 3. Title 24 V.I.C., chapter 17, section 451, subsection (b) is amended in the following instances:

(a) by inserting paragraph (1) after the phrase, "not limited to" to read as follows :

"(1) because of sexual harassment and"; and

(b) by designating the remainder of the subsection as paragraph (2).

SECTION 4. Title 24 V.I.C., chapter 17 is amended by adding section 451a to read as follows:

“§451a. Retaliation against employees prohibited

a) An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of this chapter, regulation or rule promulgated pursuant to law of this territory or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing or inquiry held by that public body, or a court action.

(b) In addition to the remedies provided in subsections 453 through 455 of this chapter, a person who alleges a violation of this section may bring a civil action for appropriate injunctive relief, or actual damages, or both, within ninety days after the occurrence of the alleged violation of the provisions of this section.

(c) An action commenced pursuant to subsection (b) of this section may be brought in the Superior Court division where the alleged violation occurred, the Superior Court division where the complainant resides, or the division where the person against whom the civil complaint is filed resides or has his principal place of business.

(d) As used in subsection (b) of this section, "damages" means damages for injury or loss caused by each individual violation of the provisions of this section, including reasonable attorney fees.

(e) An employee shall show by a preponderance of the evidence that he or a person acting on his behalf was about to report or did report, verbally or in writing, a violation or a suspected violation of this chapter, or the law of the United States, to a public body.”

SECTION 5. (a) Notwithstanding 33 V.I.C. §3066 (b), there is appropriated in the fiscal year ending September 30, 2006, from the Union Arbitration Award and Government Employee Increment Fund or other appropriate fund the sum of \$ 50, 000 to the Virgin Islands Civil Rights Commission to conduct public awareness programs on sexual harassment, to create or authorize the creation of a poster to display in businesses indicating the businesses' compliance with the sexual harassment laws of the Virgin Islands and to carry out the purposes of title 10, chapter 5, section 64a.

(b) Notwithstanding 33 V.I.C. §3066 (b), there is appropriated in the fiscal year ending September 30, 2006, and each fiscal year thereafter, the sum of \$50,000 from the Union Arbitration Award and Government Employee Increment Fund for training of persons working in the areas of intake, investigation, conciliation, mediation and adjudication of discrimination cases and to cover the costs related to the conduct of formal hearings in such cases by the Virgin Islands Department of Labor.

(c) The sums appropriated in subsections (a) and (b) remain available until expended.

SECTION 6. Pursuant to 1 V.I.C. §45 (a), the descriptive, section headings or catchlines used in this Act are not part of the law."

Thus passed by the Legislature of the Virgin Islands on March 9, 2006.

9th Witness our Hands and the Seal of the Legislature of the Virgin Islands this Day of March, A.D., 2006.



Lorraine L. Berry
Lorraine L. Berry
President

Juan Figueroa-Serville
Juan Figueroa-Serville
Legislative Secretary

The above bill is hereby approved.

Witness my hand and the Seal of the Government of the United States Virgin Islands at Charlotte Amalie, St. Thomas, this 7th day of April, A.D., 2006.



Charles W. Turnbull
Charles W. Turnbull
Governor