

S.749 (Biaggi) / A.1899 (Dinowitz)

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BILL S.749 (Biaggi) / A.1899 (Dinowitz)
SUBJECT Awards Attorney Fees and Expert Witness Fees in All Discrimination Cases
DATE January 25, 2021
OPPOSE

The Business Council opposes S.749 (Biaggi) / A.1899 (Dinowitz), which would dramatically and unfairly alter the relationship between a plaintiff and defendant in discrimination cases in New York by awarding both attorney fees and expert witness fees in all discrimination cases.

This bill is presented as a means to create uniformity and consistency within the Executive Law. We disagree. By creating a one-sided cost-recovery system, this bill creates an imbalance in an ever-shifting area of the law.

The Business Council stands firmly against discriminatory acts of any kind. However this bill could create great financial harm for employers facing accusations of discrimination, whether valid or not.

The breadth of the definition of discrimination in the workplace, once more narrowly defined, has broadened a great deal in recent years. For instance, during this year's budget process, the severe and pervasive standard under New York State Law were removed. This creates a strict liability on an employer for a single minor occurrence of bad behavior that the employer may not even be aware of prior to the complaint.

The new harassment language coupled with this bill, puts an employer in an immediate position of jeopardy and now immediately liable for attorney and expert witness fees, regardless of whether or not the employer committed any wrongful act. This falls far outside the norm where courts would occasionally grant attorney fees to a successful party upon a finding that the losing party had committed willful and egregious conduct, and that the losing party's malicious acts caused the successful party to incur such legal fees.

Further, this bill is completely one-sided in that it grants these rights only to a plaintiff. While the bill purports to grant a prevailing respondent or defendant the opportunity to make a motion to recuperate reasonable attorney's fees in cases that are deemed frivolous. Not only is the bar significantly higher for defendants, this is granting a right already held by defendants under CPLR

8303-a(a) and 22 NYCRR § 130-1.1(a) which permits a court to award legal fees to a prevailing party or attorney where the losing party had asserted frivolous claims or counterclaims.

For the reasons stated above, The Business Council of New York State, Inc. opposes this bill.