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2009-2010 Regular Sessions

I N   S E N A T E

June 19, 2009

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Introduced by Sen. HASSELL-THOMPSON -- (at request of the Governor) --  
read twice and ordered printed, and when printed to be committed to  
the Committee on Rules

AN ACT to amend the executive law, in relation to prohibiting employers  
from discriminating against victims of domestic violence

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 292 of the executive law is amended by adding a new  
2     subdivision 34 to read as follows:  
3     34. THE TERM "VICTIM OF DOMESTIC VIOLENCE" MEANS ANY PERSON WHO IS A  
4     VICTIM OF AN ACT WHICH WOULD CONSTITUTE A VIOLENT FELONY OFFENSE AS  
5     ENUMERATED IN SECTION 70.02 OF THE PENAL LAW OR A FAMILY OFFENSE AS  
6     ENUMERATED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE  
7     FAMILY COURT ACT, WHERE SUCH ACT OR ACTS ARE OR ARE ALLEGED TO HAVE BEEN  
8     COMMITTED BY A MEMBER OF THE SAME FAMILY OR HOUSEHOLD AS DEFINED IN  
9     SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT.  
10    S 2. Subdivision 20 of section 296 of the executive law, as renumbered  
11    by chapter 204 of the laws of 1996, is renumbered subdivision 21 and a  
12    new subdivision 20 is added to read as follows:  
13    20. (A) IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR AN EMPLOY-  
14    ER OR LICENSING AGENCY, BECAUSE OF ANY INDIVIDUAL'S STATUS AS A VICTIM  
15    OF DOMESTIC VIOLENCE, TO REFUSE TO HIRE OR EMPLOY OR LICENSE OR TO BAR  
16    OR TO DISCHARGE FROM EMPLOYMENT SUCH INDIVIDUAL OR TO DISCRIMINATE  
17    AGAINST SUCH INDIVIDUAL IN COMPENSATION OR IN TERMS, CONDITIONS OR PRIV-  
18    ILEGES OF EMPLOYMENT.  
19    (B) IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR AN EMPLOYER OR  
20    EMPLOYMENT AGENCY TO PRINT OR CIRCULATE OR CAUSE TO BE PRINTED OR CIRCU-  
21    LATED ANY STATEMENT, ADVERTISEMENT OR PUBLICATION, OR TO USE ANY FORM OF  
22    APPLICATION FOR EMPLOYMENT OR TO MAKE ANY INQUIRY IN CONNECTION WITH  
23    PROSPECTIVE EMPLOYMENT WHICH EXPRESSES, DIRECTLY OR INDIRECTLY, ANY  
24    LIMITATION, SPECIFICATION OR DISCRIMINATION AS TO STATUS AS A VICTIM OF

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 DOMESTIC VIOLENCE, OR ANY INTENT TO MAKE ANY SUCH LIMITATION, SPECIFICA-  
2 TION OR DISCRIMINATION; PROVIDED, HOWEVER, THAT NO PROVISION OF THIS  
3 SUBDIVISION SHALL BE CONSTRUED TO PROHIBIT THE EMPLOYER FROM MAKING ANY  
4 INQUIRY OR OBTAINING INFORMATION FOR THE PURPOSE OF PROVIDING ASSISTANCE  
5 TO, OR A REASONABLE ACCOMMODATION IN ACCORDANCE WITH THE PROVISIONS OF  
6 THIS SUBDIVISION TO, A VICTIM OF DOMESTIC VIOLENCE.

7 (C)(1) IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR AN EMPLOYER  
8 TO REFUSE TO PROVIDE A REASONABLE ACCOMMODATION TO AN EMPLOYEE WHO IS  
9 KNOWN BY THE EMPLOYER TO BE A VICTIM OF DOMESTIC VIOLENCE, LIMITED TO  
10 THOSE ACCOMMODATIONS SET FORTH IN SUBPARAGRAPH TWO OF THIS PARAGRAPH,  
11 WHEN SUCH EMPLOYEE MUST BE ABSENT FROM WORK FOR A REASONABLE TIME,  
12 UNLESS SUCH ABSENCE WOULD CAUSE AN UNDUE HARDSHIP TO THE EMPLOYER AS SET  
13 FORTH IN SUBPARAGRAPH THREE OF THIS PARAGRAPH, PROVIDED, HOWEVER THAT  
14 THE EMPLOYER MAY REQUIRE AN EMPLOYEE TO CHARGE ANY TIME OFF PURSUANT TO  
15 THIS SECTION AGAINST ANY LEAVE WITH PAY ORDINARILY GRANTED, WHERE AVAIL-  
16 ABLE, UNLESS OTHERWISE PROVIDED FOR IN A COLLECTIVE BARGAINING AGREEMENT  
17 OR EXISTING EMPLOYEE HANDBOOK OR POLICY, AND ANY SUCH ABSENCE THAT  
18 CANNOT BE CHARGED MAY BE TREATED AS LEAVE WITHOUT PAY. AN EMPLOYEE WHO  
19 MUST BE ABSENT FROM WORK IN ACCORDANCE WITH SUBPARAGRAPH TWO OF THIS  
20 PARAGRAPH SHALL BE ENTITLED TO THE CONTINUATION OF ANY HEALTH INSURANCE  
21 COVERAGE PROVIDED BY THE EMPLOYER, TO WHICH THE EMPLOYEE IS OTHERWISE  
22 ENTITLED DURING ANY SUCH ABSENCE.

23 (2) AN EMPLOYER IS REQUIRED TO PROVIDE A REASONABLE ACCOMMODATION TO  
24 AN EMPLOYEE WHO IS A VICTIM OF DOMESTIC VIOLENCE WHO MUST BE ABSENT FROM  
25 WORK FOR A REASONABLE TIME, IN ACCORDANCE WITH THE PROVISIONS OF SUBPAR-  
26 AGRAPH ONE OF THIS PARAGRAPH, LIMITED TO THE FOLLOWING:

27 (I) SEEKING MEDICAL ATTENTION FOR INJURIES CAUSED BY DOMESTIC VIOLENCE  
28 INCLUDING FOR A CHILD WHO IS A VICTIM OF DOMESTIC VIOLENCE, PROVIDED  
29 THAT THE EMPLOYEE IS NOT THE PERPETRATOR OF THE DOMESTIC VIOLENCE  
30 AGAINST THE CHILD; OR

31 (II) OBTAINING SERVICES FROM A DOMESTIC VIOLENCE SHELTER, PROGRAM, OR  
32 RAPE CRISIS CENTER AS A RESULT OF DOMESTIC VIOLENCE; OR

33 (III) OBTAINING PSYCHOLOGICAL COUNSELING RELATED TO AN INCIDENT OR  
34 INCIDENTS OF DOMESTIC VIOLENCE, INCLUDING FOR A CHILD WHO IS A VICTIM OF  
35 DOMESTIC VIOLENCE, PROVIDED THAT THE EMPLOYEE IS NOT THE PERPETRATOR OF  
36 THE DOMESTIC VIOLENCE AGAINST THE CHILD; OR

37 (IV) PARTICIPATING IN SAFETY PLANNING AND TAKING OTHER ACTIONS TO  
38 INCREASE SAFETY FROM FUTURE INCIDENTS OF DOMESTIC VIOLENCE, INCLUDING  
39 TEMPORARY OR PERMANENT RELOCATION; OR

40 (V) OBTAINING LEGAL SERVICES, ASSISTING IN THE PROSECUTION OF THE  
41 OFFENSE, OR APPEARING IN COURT IN RELATION TO THE INCIDENT OR INCIDENTS  
42 OF DOMESTIC VIOLENCE.

43 (3) AN EMPLOYER IS REQUIRED TO PROVIDE A REASONABLE ACCOMMODATION FOR  
44 AN EMPLOYEE'S ABSENCE IN ACCORDANCE WITH THE PROVISIONS OF SUBPARAGRAPHS  
45 ONE AND TWO OF THIS PARAGRAPH UNLESS THE EMPLOYER CAN DEMONSTRATE THAT  
46 THE EMPLOYEE'S ABSENCE WOULD CONSTITUTE AN UNDUE HARDSHIP TO THE EMPLOY-  
47 ER. A DETERMINATION OF WHETHER SUCH AN ABSENCE WILL CONSTITUTE AN UNDUE  
48 HARDSHIP SHALL INCLUDE CONSIDERATION OF FACTORS SUCH AS:

49 (I) THE OVERALL SIZE OF THE BUSINESS, PROGRAM OR ENTERPRISE WITH  
50 RESPECT TO THE NUMBER OF EMPLOYEES, NUMBER AND TYPE OF FACILITIES, AND  
51 SIZE OF BUDGET; AND

52 (II) THE TYPE OF OPERATION IN WHICH THE BUSINESS, PROGRAM OR ENTER-  
53 PRISE IS ENGAGED, INCLUDING THE COMPOSITION AND STRUCTURE OF THE WORK-  
54 FORCE.

55 (4) AN EMPLOYEE WHO MUST BE ABSENT FROM WORK IN ACCORDANCE WITH THE  
56 PROVISIONS OF SUBPARAGRAPH ONE OF THIS PARAGRAPH SHALL PROVIDE THE

1 EMPLOYER WITH REASONABLE ADVANCE NOTICE OF THE EMPLOYEE'S ABSENCE,  
2 UNLESS SUCH ADVANCE NOTICE IS NOT FEASIBLE.

3 (5) AN EMPLOYEE WHO MUST BE ABSENT FROM WORK IN ACCORDANCE WITH THE  
4 PROVISIONS OF SUBPARAGRAPH ONE OF THIS PARAGRAPH AND WHO CANNOT FEASIBLY  
5 GIVE REASONABLE ADVANCE NOTICE OF THE ABSENCE IN ACCORDANCE WITH SUBPAR-  
6 AGRAPH FOUR OF THIS PARAGRAPH MUST, WITHIN A REASONABLE TIME AFTER THE  
7 ABSENCE, PROVIDE A CERTIFICATION TO THE EMPLOYER WHEN REQUESTED BY THE  
8 EMPLOYER.

9 SUCH CERTIFICATION SHALL BE IN THE FORM OF:

10 (I) A POLICE REPORT INDICATING THAT THE EMPLOYEE WAS A VICTIM OF  
11 DOMESTIC VIOLENCE;

12 (II) A COURT ORDER PROTECTING OR SEPARATING THE EMPLOYEE FROM THE  
13 PERPETRATOR OF AN ACT OF DOMESTIC VIOLENCE;

14 (III) OTHER EVIDENCE FROM THE COURT OR PROSECUTING ATTORNEY THAT THE  
15 EMPLOYEE APPEARED IN COURT; OR

16 (IV) DOCUMENTATION FROM A MEDICAL PROFESSIONAL, DOMESTIC VIOLENCE  
17 ADVOCATE, HEALTH CARE PROVIDER, OR COUNSELOR THAT THE EMPLOYEE WAS  
18 UNDERGOING COUNSELING OR TREATMENT FOR PHYSICAL OR MENTAL INJURIES OR  
19 ABUSE RESULTING IN VICTIMIZATION FROM AN ACT OF DOMESTIC VIOLENCE.

20 (6) WHERE AN EMPLOYEE HAS A PHYSICAL OR MENTAL DISABILITY RESULTING  
21 FROM AN INCIDENT OR SERIES OF INCIDENTS OF DOMESTIC VIOLENCE, SUCH  
22 EMPLOYEE SHALL BE TREATED IN THE SAME MANNER AS AN EMPLOYEE WITH ANY  
23 OTHER DISABILITY, PURSUANT TO THE PROVISIONS OF THIS SECTION WHICH  
24 PROVIDE THAT DISCRIMINATION AND REFUSAL TO PROVIDE REASONABLE ACCOMMO-  
25 DATION OF DISABILITY ARE UNLAWFUL DISCRIMINATORY PRACTICES.

26 (D) TO THE EXTENT ALLOWED BY LAW, EMPLOYERS SHALL MAINTAIN THE CONFI-  
27 DENTIALITY OF ANY INFORMATION REGARDING AN EMPLOYEE'S STATUS AS A VICTIM  
28 OF DOMESTIC VIOLENCE.

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