

STATE OF NEW YORK

6086--A

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the labor law, in relation to discrimination in the use of employment tests and selection procedures

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The labor law is amended by adding a new section 215-d to
2 read as follows:

3 § 215-d. Employment tests and selection procedures. 1. If an employer
4 utilizes a test or other selection procedure for purposes of hiring or
5 promotion, such employer shall select and administer such test or other
6 selection procedure in a manner which best ensures that, when adminis-
7 tered to applicants, such test is not designed, intended, or used to
8 discriminate, and does not have a discriminatory effect, on the basis of
9 an applicant's race, ethnic group, or sex. In selecting or administering
10 such test or selection procedure, such employer shall investigate alter-
11 native tests and selection procedures and shall select the alternative
12 that poses the lowest risk of discriminatory impact.

13 2. For purposes of subdivision one of this section and paragraph (a)
14 of subdivision one of section two hundred ninety-six of the executive
15 law, any test or other selection procedure used by an employer for
16 purposes of hiring or promotion shall be deemed not to discriminate on
17 the basis of a finding of adverse impact against a specific protected
18 class if, for such protected class:

19 (a) such test or selection procedure utilizes a pre-audited assessment
20 technology that, upon use, resulted in an increase in the hiring or
21 promotion of such protected class by five percent or greater as compared
22 to the pre-implementation workforce composition of such protected class;

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

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1 (b) such employer conducts an annual examination of such pre-audited
2 assessment technology to determine and document whether such technology
3 had an adverse impact on such protected class during the audited year;

4 (c) such annual examination demonstrates that such pre-audited assess-
5 ment technology:

6 (i) resulted in an increase in the hiring or promotion of such
7 protected class by five percent or greater during the examined year as
8 compared to the pre-implementation workforce composition of such
9 protected class; or

10 (ii) resulted in no adverse impact on such protected class; and

11 (d) such employer ceases to use any version of such pre-audited
12 assessment technology that does not meet the requirements of paragraph
13 (c) of this subdivision.

14 3. Subdivision two of this section shall not impact any other defense
15 an employer may have to claims of employment discrimination under any
16 other provision of law.

17 4. For purposes of this section:

18 (a) "Pre-audited assessment technology" shall mean a test or other
19 selection procedure used by an employer for purposes of hiring or
20 promotion that:

21 (i) prior to use by such employer, was the subject of validity study
22 conducted by such employer that conforms to the requirements for validi-
23 ty studies set forth in 29 CFR 1607.5; and

24 (ii) prior to use by such employer, was examined, and demonstrated no
25 probability for adverse impact based on race, color, national origin, or
26 sex.

27 (b) An "adverse impact" shall exist where the selection rate for any
28 race, color, national origin, or sex constituting two percent or more of
29 the total applicant population is less than eighty percent of the rate
30 for the group with the highest selection rate and where the difference
31 between those rates is statistically significant.

32 (c) "Pre-implementation workforce composition" shall mean the demo-
33 graphic composition of a protected class as a percentage of the employ-
34 er's overall workforce that existed immediately prior to implementation
35 of a pre-audited assessment technology.

36 (d) "Protected class" shall mean any class of persons based on race,
37 ethnic group, or sex.

38 (e) "Applicant" shall mean any individual as to whom the following
39 four criteria are satisfied:

40 (i) such individual submits an expression of interest in employment or
41 promotion;

42 (ii) the employer considers such individual for employment in or
43 promotion to a particular position;

44 (iii) such individual's expression of interest indicates that such
45 individual possesses the basic qualifications for such position; and

46 (iv) such individual at no point in the selection process, prior to
47 receiving an offer or promotion, removes himself or herself from further
48 consideration or otherwise indicates that he or she is no longer inter-
49 ested in such position.

50 (f) The term "employer" shall not include (i) any employer with fewer
51 than one hundred persons in his or her employ or (ii) the state of New
52 York, municipal corporations, or other governmental entities.

53 § 2. This act shall take effect on the thirtieth day after it shall
54 have become a law.