

STATE OF NEW YORK

9045

IN ASSEMBLY

January 31, 2022

Introduced by M. of A. L. ROSENTHAL -- read once and referred to the Committee on Judiciary

AN ACT to amend the civil practice law and rules, in relation to permitting certain testimony and evidence by a person alleging discrimination

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

1 Section 1. The civil practice law and rules is amended by adding a
2 new rule 4514-a to read as follows:

3 Rule 4514-a. Admissibility of allegations of discrimination. (a) When
4 used in this rule, "discrimination" shall mean any unlawful discrimina-
5 tory practice pursuant to article fifteen of the executive law, includ-
6 ing unlawful discriminatory practices based on race, creed, color,
7 national origin, sexual orientation, gender identity or expression,
8 military status, age, sex, marital status, childbearing potential, disa-
9 bility, or familial status.

10 (b) In a civil action, at any trial or hearing, evidence that a party
11 alleging discrimination, including but not limited to sexual harassment
12 and/or misconduct, reported such discrimination or facts giving rise to
13 an inference of such discrimination to another person, including
14 evidence concerning the contents of such report or statement of facts,
15 may be admitted to rehabilitate the testimony of the party claiming
16 discrimination to prove the truth thereof whenever the adverse party
17 argues or implies that the testimony of the party claiming discrimi-
18 nation is untrue, incredible, or unreliable.

19 (c) For evidence of a report or statement of facts to be admissible
20 under this rule, such report or statement must be made before the last
21 adverse action complained of is taken, or promptly after such action is
22 taken. Promptness shall be determined by all facts and circumstances,
23 giving due regard to the sensitivity of the subject matter, the mental
24 state of the party alleging discrimination, or any other relevant infor-
25 mation.

26 § 2. The civil practice law and rules is amended by adding a new rule
27 4549 to read as follows:

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

LBD13236-05-1

1 Rule 4549. Admissibility of allegations of discrimination; hearsay
2 exception. (a) When used in this rule, "discrimination" shall mean any
3 unlawful discriminatory practice pursuant to article fifteen of the
4 executive law, including unlawful discriminatory practices based on
5 race, creed, color, national origin, sexual orientation, gender identity
6 or expression, military status, age, sex, marital status, childbearing
7 potential, disability, or familial status.

8 (b) In a civil action, at the trial or upon the hearing of a motion or
9 an interlocutory proceeding, evidence that a party alleging discrimi-
10 nation, including but not limited to sexual harassment and/or miscon-
11 duct, reported such discrimination or facts giving rise to an inference
12 of such discrimination to another person, including evidence concerning
13 the contents of such report or statement of facts, may be admitted as an
14 exception to the inadmissibility of hearsay to support the allegation
15 that discrimination occurred.

16 (c) For evidence of a report or statement to be admissible under this
17 rule, such report or statement must have been made before the last
18 adverse action complained of is taken, or promptly after such action is
19 taken. Promptness shall be determined by all facts and circumstances,
20 giving due regard to the sensitivity of the subject matter, the mental
21 state of the party alleging discrimination, or any other relevant infor-
22 mation.

23 (d) The proponent of such evidence has the burden of demonstrating
24 that the reporting was made under circumstances which render it reason-
25 ably reliable.

26 (e) This rule is only applicable in civil matters and shall not apply
27 in criminal proceedings.

28 § 3. This act shall take effect immediately.