S T A T E O F N E W Y O R K

438--B

Cal. No. 296

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. JOHN, COLTON, PAULIN, N. RIVERA -- Multi-Sponsored by -- M. of A. HEASTIE, PEOPLES, PHEFFER -- read once and referred to the Committee on Labor -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the labor law, in relation to the entitlement to unpaid leave of absence from employment for victims of domestic violence

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

Section 1. The labor law is amended by adding a new article 19-C to read as follows:

ARTICLE 19-C

UNPAID LEAVE OF ABSENCE FOR

VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE

SECTION 695. DEFINITIONS.

695-A. ENTITLEMENT TO LEAVE.

695-B. LEAVE TAKEN INTERMITTENTLY OR ON REDUCED LEAVE SCHEDULE.

695-C. NOTICE OF INTENTION TO TAKE LEAVE.

695-D. CERTIFICATION.

695-E. CONFIDENTIALITY.

695-F. RESTORATION TO POSITION.

695-G. PROHIBITED ACTS.

695-H. CIVIL ACTION.

695-I. SAVINGS CLAUSE.

S 695. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "VICTIM OF DOMESTIC OR SEXUAL ABUSE" SHALL MEAN A VICTIM OF DOMESTIC VIOLENCE, A SEX OFFENSE, OR STALKING.

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

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2. "VICTIM OF DOMESTIC VIOLENCE" SHALL MEAN AN INDIVIDUAL WHO IS A VICTIM OF AN ACT WHICH WOULD CONSTITUTE A FAMILY OFFENSE PURSUANT TO SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT.

3. "VICTIM OF A SEX OFFENSE" SHALL MEAN A VICTIM OF AN ACT OR ACTS THAT WOULD CONSTITUTE A VIOLATION OF ARTICLE ONE HUNDRED THIRTY OF THE PENAL LAW.

4. "VICTIM OF STALKING" SHALL MEAN A VICTIM OF AN ACT OR ACTS THAT WOULD CONSTITUTE A VIOLATION OF SECTION 120.45, 120.50, 120.55 OR 120.60 OF THE PENAL LAW.

S 695-A. ENTITLEMENT TO LEAVE. ANY EMPLOYEE WHO IS A VICTIM OF DOMESTIC OR SEXUAL VIOLENCE SHALL BE ELIGIBLE FOR NINETY DAYS OF UNPAID LEAVE FROM THEIR EMPLOYMENT DURING ANY TWELVE MONTH PERIOD IN ORDER TO ADDRESS DOMESTIC OR SEXUAL VIOLENCE OR ONGOING EFFECTS OF SUCH DOMESTIC OR SEXUAL VIOLENCE, INCLUDING BUT NOT LIMITED TO:

1. SEEKING MEDICAL ATTENTION FOR, OR RECOVERING OR TAKING CARE OF THE VICTIM'S CHILD WHILE THE CHILD RECOVERS FROM, ANY PHYSICAL OR PSYCHOLOGICAL INJURIES CAUSED BY THE DOMESTIC OR SEXUAL VIOLENCE; OR

2. ATTENDING COUNSELING SESSIONS FOR THE VICTIM OF DOMESTIC OR SEXUAL VIOLENCE OR FOR SUCH VICTIM'S CHILD IN ORDER TO DEAL WITH THE EFFECTS OF THE DOMESTIC OR SEXUAL VIOLENCE; OR

3. SEEKING LEGAL ASSISTANCE INCLUDING ATTENDING COURT PROCEEDINGS OR MEETING OR COMMUNICATING WITH AN ATTORNEY OR A MEMBER OF LAW ENFORCEMENT; OR

4. SEEKING SERVICES FOR THE VICTIM OF DOMESTIC OR SEXUAL VIOLENCE OR FOR SUCH VICTIM'S CHILD FROM A RESIDENTIAL OR NON-RESIDENTIAL PROGRAM FOR VICTIMS OF DOMESTIC OR SEXUAL VIOLENCE; OR

5. ENGAGING IN SAFETY PLANNING, INCLUDING ARRANGING TO RELOCATE AND RELOCATING TO A TEMPORARY OR PERMANENT NEW RESIDENCE, IN ORDER TO DECREASE THE RISK OF FUTURE DOMESTIC OR SEXUAL VIOLENCE.

S 695-B. LEAVE TAKEN INTERMITTENTLY OR ON REDUCED LEAVE SCHEDULE. THE LEAVE PURSUANT TO SECTION SIX HUNDRED NINETY-FIVE-A OF THIS ARTICLE MAY BE TAKEN ON A REDUCED LEAVE SCHEDULE OR INTERMITTENTLY IF THE EMPLOYEE AND EMPLOYER AGREE ON THE SCHEDULE. TAKING LEAVE ON A REDUCED LEAVE OR INTERMITTENT SCHEDULE SHALL NOT RESULT IN A REDUCTION IN THE AMOUNT OF TOTAL LEAVE A VICTIM OF DOMESTIC OR SEXUAL VIOLENCE IS ENTITLED TO IN THE TWELVE MONTH PERIOD.

S 695-C. NOTICE OF INTENTION TO TAKE LEAVE. AN EMPLOYEE SHALL PROVIDE AN EMPLOYER WITH REASONABLE NOTICE OF THE EMPLOYEE'S INTENTION TO TAKE LEAVE PURSUANT TO SECTION SIX HUNDRED NINETY-FIVE-A OF THIS ARTICLE UNLESS PROVIDING SUCH NOTICE IS NOT PRACTICABLE. WHEN AN UNSCHEDULED ABSENCE OCCURS, THE EMPLOYER MAY NOT TAKE ANY ACTION AGAINST THE EMPLOYEE IF THE EMPLOYEE, WITHIN A REASONABLE PERIOD OF TIME AFTER THE ABSENCE, PROVIDES CERTIFICATION AS SET FORTH IN SECTION SIX HUNDRED NINETY-FIVE-D OF THIS ARTICLE.

S 695-D. CERTIFICATION. IN ORDER TO DETERMINE WHETHER THE EMPLOYEE IS A VICTIM OF DOMESTIC OR SEXUAL VIOLENCE, THE EMPLOYER MAY REQUIRE THAT THE REQUEST FOR LEAVE BE SUPPORTED BY ONE OF THE FOLLOWING:

1. A SWORN STATEMENT SUBMITTED BY THE VICTIM OF DOMESTIC OR SEXUAL VIOLENCE DESCRIBING SUCH VICTIM'S NEED FOR LEAVE TO ADDRESS THE ONGOING EFFECTS OF DOMESTIC OR SEXUAL VIOLENCE; OR

2. ANY DOCUMENTATION OF THE DOMESTIC OR SEXUAL VIOLENCE, INCLUDING POLICE REPORTS, COURT RECORDS, STATEMENTS FROM A SHELTER WORKER, LAW ENFORCEMENT OFFICER, MEDICAL WORKER, COUNSELOR, CLERGY MEMBER, ATTORNEY OR ANY OTHER PROFESSIONAL FROM WHOM THE EMPLOYEE HAS SOUGHT ASSISTANCE TO ADDRESS THE DOMESTIC OR SEXUAL VIOLENCE AND ITS EFFECTS; OR

3. ANY OTHER CORROBORATING EVIDENCE INCLUDING PHYSICAL EVIDENCE, PHOTOGRAPHS, OR STATEMENTS FROM OTHER INDIVIDUALS WHO ARE AWARE OF THE DOMESTIC OR SEXUAL VIOLENCE AND ITS EFFECTS.

S 695-E. CONFIDENTIALITY. ANY INFORMATION PROVIDED TO THE EMPLOYER, INCLUDING BUT NOT LIMITED TO INFORMATION UNDER SECTION SIX HUNDRED NINETY-FIVE-D OF THIS ARTICLE, DESCRIBING THE DOMESTIC OR SEXUAL VIOLENCE IN THE EMPLOYEE'S LIFE AND THE REQUEST TO TAKE A LEAVE TO ADDRESS THE EFFECTS OF DOMESTIC OR SEXUAL VIOLENCE, SHALL BE KEPT CONFIDENTIAL BY THE EMPLOYER. DISCLOSURE SHALL ONLY BE ALLOWED IF THE EMPLOYEE, IN WRITING, CONSENTS TO OR REQUESTS DISCLOSURE.

S 695-F. RESTORATION TO POSITION. 1. ANY EMPLOYEE WHO TAKES LEAVE UNDER SECTION SIX HUNDRED NINETY-FIVE-A OF THIS ARTICLE, SHALL BE ENTITLED TO RETURN FROM SUCH LEAVE AND BE RESTORED TO THE SAME POSITION HELD BY SUCH EMPLOYEE WHEN THE LEAVE BEGAN OR BE RESTORED TO AN EQUIVALENT POSITION WITH EQUIVALENT BENEFITS, PAY AND OTHER TERMS AND CONDITIONS OF EMPLOYMENT.

2. THE TAKING OF LEAVE UNDER SECTION SIX HUNDRED NINETY-FIVE-A OF THIS ARTICLE SHALL NOT RESULT IN THE LOSS OF ANY EMPLOYMENT BENEFITS ACCRUED PRIOR TO THE DATE ON WHICH THE LEAVE BEGAN.

3. (A) EXCEPT AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, ANY EMPLOYEE WHO TAKES LEAVE UNDER SECTION SIX HUNDRED NINETY-FIVE-A OF THIS ARTICLE SHALL BE ENTITLED TO CONTINUED COVERAGE UNDER ANY HEALTH CARE BENEFITS PLAN PROVIDED BY SUCH PERSON'S EMPLOYER FOR THE DURATION OF THE LEAVE.

(B) THE EMPLOYER MAY RECOVER THE PREMIUM THAT THE EMPLOYER PAID FOR MAINTAINING COVERAGE UNDER A HEALTH BENEFITS PLAN FOR THE EMPLOYEE ENTITLED TO LEAVE UNDER SECTION SIX HUNDRED NINETY-FIVE-A OF THIS ARTICLE, IF:

(I) THE EMPLOYEE FAILS TO RETURN TO SUCH PERSON'S EMPLOYMENT ONCE THE LEAVE HAS EXPIRED; AND

(II) THE EMPLOYEE FAILS TO RETURN TO WORK FOR A REASON OTHER THAN:

(A) THE CONTINUATION, RECURRENCE, OR ONSET OF DOMESTIC OR SEXUAL VIOLENCE THAT ENTITLES THE EMPLOYEE TO LEAVE PURSUANT TO THIS SECTION; OR

(B) OTHER CIRCUMSTANCES BEYOND THE CONTROL OF THE EMPLOYEE.

S 695-G. PROHIBITED ACTS. 1. INTERFERENCE WITH RIGHTS.

(A) EXERCISE OF RIGHTS. IT SHALL BE UNLAWFUL FOR ANY EMPLOYER TO INTERFERE WITH, RESTRAIN, OR DENY THE EXERCISE OF OR THE ATTEMPT TO EXERCISE ANY RIGHT PROVIDED UNDER THIS ARTICLE.

(B) EMPLOYER DISCRIMINATION. IT SHALL BE UNLAWFUL FOR ANY EMPLOYER TO DISCHARGE OR HARASS ANY INDIVIDUAL, OR OTHERWISE DISCRIMINATE AGAINST ANY INDIVIDUAL WITH RESPECT TO COMPENSATION, TERMS, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT OF THE INDIVIDUAL (INCLUDING RETALIATION IN ANY FORM OR MANNER) BECAUSE THE INDIVIDUAL EXERCISED ANY RIGHT PROVIDED UNDER THIS ARTICLE OR OPPOSED ANY PRACTICE MADE UNLAWFUL BY THIS ARTICLE.

2. INTERFERENCE WITH PROCEEDINGS OR INQUIRIES. IT SHALL BE UNLAWFUL FOR ANY PERSON TO DISCHARGE OR IN ANY OTHER MANNER DISCRIMINATE (AS DESCRIBED IN PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION) AGAINST ANY INDIVIDUAL BECAUSE SUCH INDIVIDUAL:

(A) HAS FILED ANY CHARGE, OR HAS INSTITUTED OR CAUSED TO BE INSTITUTED ANY PROCEEDING, UNDER OR RELATED TO THIS ARTICLE;

(B) HAS GIVEN, OR IS ABOUT TO GIVE, ANY INFORMATION IN CONNECTION WITH ANY INQUIRY OR PROCEEDING RELATING TO ANY RIGHT PROVIDED UNDER THIS ARTICLE; OR

(C) HAS TESTIFIED, OR IS ABOUT TO TESTIFY, IN ANY INQUIRY OR PROCEEDING RELATING TO ANY RIGHT PROVIDED UNDER THIS ARTICLE.

S 695-H. CIVIL ACTION. 1. BY EMPLOYEE. ANY PERSON DENIED LEAVE OR BENEFITS DUE UNDER THIS ARTICLE OR AGGRIEVED BY AN ACTION MADE UNLAWFUL BY THIS ARTICLE SHALL HAVE A CAUSE OF ACTION IN ANY COURT OF APPROPRIATE JURISDICTION FOR DAMAGES, INCLUDING ANY WAGES, SALARY, EMPLOYMENT BENEFITS OR OTHER COMPENSATION DENIED OR LOST TO SUCH INDIVIDUAL BY REASONS OF THE VIOLATION AND/OR ANY ACTUAL MONETARY LOSSES SUSTAINED BY THE INDIVIDUAL AS A DIRECT RESULT OF THE VIOLATION, AS WELL AS INTEREST ON SUCH AMOUNT CALCULATED AT THE PREVAILING RATE, AND SUCH EQUITABLE RELIEF AS MAY BE APPROPRIATE, INCLUDING EMPLOYMENT, REINSTATEMENT, AND PROMOTION, TOGETHER WITH COSTS AND SUCH REASONABLE ATTORNEYS' FEES AS MAY BE ALLOWED BY THE COURT, AND IF THE VIOLATION WAS WILLFUL, AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES EQUAL TO TWENTY-FIVE PERCENT OF THE TOTAL OF SUCH DAMAGES FOUND TO BE DUE.

2. BY COMMISSIONER. ON BEHALF OF ANY EMPLOYEE DENIED LEAVE OR BENEFITS DUE UNDER THIS ARTICLE OR AGGRIEVED BY AN ACTION MADE UNLAWFUL BY THIS ARTICLE, THE INDUSTRIAL COMMISSIONER MAY BRING A LEGAL ACTION NECESSARY TO COLLECT DAMAGES DUE TO THE VIOLATION, AND THE EMPLOYER SHALL BE REQUIRED TO PAY SUCH DAMAGES AND IF SUCH VIOLATION WAS WILLFUL, AN ADDITIONAL AMOUNT AS LIQUIDATED DAMAGES EQUAL TO TWENTY-FIVE PERCENT OF THE TOTAL OF SUCH DAMAGES FOUND TO BE DUE.

3. LIMITATION OF TIME. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, AN ACTION TO RECOVER UPON LIABILITY IMPOSED BY THIS ARTICLE MUST BE COMMENCED WITHIN TWO YEARS.

S 695-I. SAVINGS CLAUSE. IF ANY PROVISION OF THIS ARTICLE OR THE APPLICATION THEREOF TO ANY PERSON, EMPLOYER, OCCUPATION OR CIRCUMSTANCE IS HELD INVALID, THE REMAINDER OF THE ARTICLE AND THE APPLICATION OF SUCH PROVISION TO OTHER PERSONS, EMPLOYEES, OCCUPATIONS, OR CIRCUMSTANCES SHALL NOT BE AFFECTED THEREBY.

S 2. This act shall take effect on the ninetieth day after it shall have become a law.