

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DESTITO, GALEF, MARKEY, BENEDETTO -- Multi-Sponsored by -- M. of A. REILICH -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the civil rights law, in relation to employer reference immunity

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

1 Section 1. The civil rights law is amended by adding a new section  
2 79-n to read as follows:

3 S 79-N. EMPLOYER REFERENCE IMMUNITY. 1. FOR THE PURPOSES OF THIS  
4 SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

5 (A) "EMPLOYEE" MEANS AN INDIVIDUAL WHO AS A VOLUNTEER OR FOR COMPEN-  
6 SATION PROVIDES LABOR IN A NURSING HOME OR OTHER ELDER CARE FACILITY.

7 (B) "EMPLOYER" MEANS A NURSING HOME OR OTHER ELDER CARE FACILITY WHO  
8 EMPLOYS AN INDIVIDUAL FOR COMPENSATION OR WHO SUPERVISES AN INDIVIDUAL  
9 PROVIDING LABOR AS A VOLUNTEER.

10 (C) "PROSPECTIVE EMPLOYER" MEANS A NURSING HOME OR OTHER ELDER CARE  
11 FACILITY TO WHOM AN EMPLOYEE OR FORMER EMPLOYEE HAS SUBMITTED AN APPLI-  
12 CATION FOR EMPLOYMENT.

13 2. A NURSING HOME OR OTHER ELDER CARE FACILITY, MAY DISCLOSE TO AN  
14 EMPLOYEE OR THAT INDIVIDUAL'S PROSPECTIVE EMPLOYER INFORMATION RELATING  
15 TO THE INDIVIDUAL'S JOB PERFORMANCE THAT IS DOCUMENTED IN THE INDIVID-  
16 UAL'S PERSONNEL FILE UPON THE REQUEST OF THE INDIVIDUAL OR HIS OR HER  
17 PROSPECTIVE EMPLOYER. AN EMPLOYER WHO DISCLOSES INFORMATION UNDER THIS  
18 SECTION IN GOOD FAITH IS IMMUNE FROM CIVIL LIABILITY FOR THE DISCLOSURE.  
19 AN EMPLOYER IS PRESUMED TO BE ACTING IN GOOD FAITH AT THE TIME OF A  
20 DISCLOSURE UNDER THIS SECTION UNLESS A PREPONDERANCE OF THE EVIDENCE  
21 ESTABLISHES ONE OR MORE OF THE FOLLOWING:

22 (A) THAT THE EMPLOYER KNEW THE INFORMATION DISCLOSED WAS FALSE OR  
23 MISLEADING,

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

1 (B) THAT THE EMPLOYER DISCLOSED THE INFORMATION WITH A RECKLESS DISRE-  
2 GARD FOR THE TRUTH,

3 (C) THAT THE DISCLOSURE WAS SPECIFICALLY PROHIBITED BY A STATE OR  
4 FEDERAL STATUTE.

5 S 2. This act shall take effect immediately.