

2348

2011-2012 Regular Sessions

I N A S S E M B L Y

January 18, 2011

Introduced by M. of A. WEINSTEIN -- Multi-Sponsored by -- M. of A. ABBATE, DESTITO, GALEF, GLICK, JAFFEE, McENENY, MILLMAN, PAULIN, PHEFFER, TITONE, WEPRIN -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to prohibiting employers from discriminating against victims of domestic violence; and to repeal certain provisions of such law relating thereto

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

1 Section 1. Subdivision 34 of section 292 of the executive law is
2 REPEALED and a new subdivision 34 is added to read as follows:
3 34. THE TERM "VICTIM OF DOMESTIC VIOLENCE" MEANS A PERSON WHO IS A
4 VICTIM OF AN ACT WHICH WOULD CONSTITUTE A VIOLATION OF THE PENAL LAW,
5 INCLUDING, BUT NOT LIMITED TO, AN ACT DEFINED IN SUBDIVISION ONE OF
6 SECTION EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT, WHERE SUCH ACT IS
7 OR HAS ALLEGED TO HAVE BEEN COMMITTED BY A FAMILY OR HOUSEHOLD MEMBER AS
8 DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY
9 COURT ACT.
10 S 2. Paragraph (a) of subdivision 1 of section 296 of the executive
11 law, as amended by chapter 80 of the laws of 2009, is amended to read as
12 follows:
13 (a) For an employer or licensing agency, because of an individual's
14 age, race, creed, color, national origin, sexual orientation, military
15 status, sex, disability, predisposing genetic characteristics, marital
16 status, or STATUS AS A VICTIM OF domestic violence [victim status], to
17 refuse to hire or employ or to bar or to discharge from employment such
18 individual or to discriminate against such individual in compensation or
19 in terms, conditions or privileges of employment.
20 S 3. Section 296 of the executive law is amended by adding a new
21 subdivision 20 to read as follows:

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

LBD06921-01-1

1 20. (A) IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR AN EMPLOY-
2 ER OR LICENSING AGENCY, BECAUSE OF ANY INDIVIDUAL'S STATUS AS A VICTIM
3 OF DOMESTIC VIOLENCE, TO REFUSE TO HIRE OR EMPLOY OR LICENSE OR TO BAR
4 OR TO DISCHARGE FROM EMPLOYMENT SUCH INDIVIDUAL OR TO DISCRIMINATE
5 AGAINST SUCH INDIVIDUAL IN COMPENSATION OR IN TERMS, CONDITIONS OR PRIV-
6 ILEGES OF EMPLOYMENT.

7 (B) IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR AN EMPLOYER OR
8 EMPLOYMENT AGENCY TO PRINT OR CIRCULATE OR CAUSE TO BE PRINTED OR CIRCU-
9 LATED ANY STATEMENT, ADVERTISEMENT OR PUBLICATION, OR TO USE ANY FORM OF
10 APPLICATION FOR EMPLOYMENT OR TO MAKE ANY INQUIRY IN CONNECTION WITH
11 PROSPECTIVE EMPLOYMENT WHICH EXPRESSES, DIRECTLY OR INDIRECTLY, ANY
12 LIMITATION, SPECIFICATION OR DISCRIMINATION AS TO STATUS AS A VICTIM OF
13 DOMESTIC VIOLENCE, OR ANY INTENT TO MAKE ANY SUCH LIMITATION, SPECIFICA-
14 TION OR DISCRIMINATION; PROVIDED, HOWEVER, THAT NO PROVISION OF THIS
15 SUBDIVISION SHALL BE CONSTRUED TO PROHIBIT THE EMPLOYER FROM MAKING ANY
16 INQUIRY OR OBTAINING INFORMATION FOR THE PURPOSE OF PROVIDING ASSISTANCE
17 TO, OR A REASONABLE ACCOMMODATION IN ACCORDANCE WITH THE PROVISIONS OF
18 THIS SUBDIVISION TO, A VICTIM OF DOMESTIC VIOLENCE.

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

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

39 (I) SEEKING MEDICAL ATTENTION FOR INJURIES CAUSED BY DOMESTIC VIOLENCE
40 INCLUDING FOR A CHILD WHO IS A VICTIM OF DOMESTIC VIOLENCE, PROVIDED
41 THAT THE EMPLOYEE IS NOT THE PERPETRATOR OF THE DOMESTIC VIOLENCE
42 AGAINST THE CHILD; OR

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

45 (III) OBTAINING PSYCHOLOGICAL COUNSELING RELATED TO AN INCIDENT OR
46 INCIDENTS OF DOMESTIC VIOLENCE, INCLUDING FOR A CHILD WHO IS A VICTIM OF
47 DOMESTIC VIOLENCE, PROVIDED THAT THE EMPLOYEE IS NOT THE PERPETRATOR OF
48 THE DOMESTIC VIOLENCE AGAINST THE CHILD; OR

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

52 (V) OBTAINING LEGAL SERVICES, ASSISTING IN THE PROSECUTION OF THE
53 OFFENSE, OR APPEARING IN COURT IN RELATION TO THE INCIDENT OR INCIDENTS
54 OF DOMESTIC VIOLENCE.

55 (3) AN EMPLOYER IS REQUIRED TO PROVIDE A REASONABLE ACCOMMODATION FOR
56 AN EMPLOYEE'S ABSENCE IN ACCORDANCE WITH THE PROVISIONS OF SUBPARAGRAPHS

ONE AND TWO OF THIS PARAGRAPH UNLESS THE EMPLOYER CAN DEMONSTRATE THAT THE EMPLOYEE'S ABSENCE WOULD CONSTITUTE AN UNDUE HARDSHIP TO THE EMPLOYER. A DETERMINATION OF WHETHER SUCH AN ABSENCE WILL CONSTITUTE AN UNDUE HARDSHIP SHALL INCLUDE CONSIDERATION OF FACTORS SUCH AS:

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

(II) THE TYPE OF OPERATION IN WHICH THE BUSINESS, PROGRAM OR ENTERPRISE IS ENGAGED, INCLUDING THE COMPOSITION AND STRUCTURE OF THE WORKFORCE.

(4) AN EMPLOYEE WHO MUST BE ABSENT FROM WORK IN ACCORDANCE WITH THE PROVISIONS OF SUBPARAGRAPH ONE OF THIS PARAGRAPH SHALL PROVIDE THE EMPLOYER WITH REASONABLE ADVANCE NOTICE OF THE EMPLOYEE'S ABSENCE, UNLESS SUCH ADVANCE NOTICE IS NOT FEASIBLE.

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

SUCH CERTIFICATION SHALL BE IN THE FORM OF:

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

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

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

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

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

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

S 4. This act shall take effect on the ninetieth day after it shall have become a law.