

2348--A

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 -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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2 REPEALED and a new subdivision 34 is added to read as follows: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" SHALL HAVE THE SAME MEANING
4 AS IS ASCRIBED TO SUCH TERM BY SECTION FOUR HUNDRED FIFTY-NINE-A OF THE
5 SOCIAL SERVICES LAW.

6 S 2. Paragraph (a) of subdivision 1 of section 296 of the executive
7 law, as amended by chapter 80 of the laws of 2009, is amended to read as
8 follows:

9 (a) For an employer or licensing agency, because of an individual's
10 age, race, creed, color, national origin, sexual orientation, military
11 status, sex, disability, predisposing genetic characteristics, marital
12 status, or STATUS AS A VICTIM OF domestic violence [victim status], to
13 refuse to hire or employ or to bar or to discharge from employment such
14 individual or to discriminate against such individual in compensation or
15 in terms, conditions or privileges of employment.

16 S 3. Section 296 of the executive law is amended by adding a new
17 subdivision 20 to read as follows:

18 20. (A) IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR AN EMPLOY-
19 ER OR LICENSING AGENCY, BECAUSE OF ANY INDIVIDUAL'S STATUS AS A VICTIM
20 OF DOMESTIC VIOLENCE, TO REFUSE TO HIRE OR EMPLOY OR LICENSE OR TO BAR

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

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1 OR TO DISCHARGE FROM EMPLOYMENT SUCH INDIVIDUAL OR TO DISCRIMINATE
2 AGAINST SUCH INDIVIDUAL IN COMPENSATION OR IN TERMS, CONDITIONS OR PRIV-
3 ILEGES OF EMPLOYMENT.

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

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

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

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

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

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

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

49 (V) OBTAINING LEGAL SERVICES, ASSISTING IN THE PROSECUTION OF THE
50 OFFENSE, OR APPEARING IN COURT IN RELATION TO THE INCIDENT OR INCIDENTS
51 OF DOMESTIC VIOLENCE.

52 (3) AN EMPLOYER IS REQUIRED TO PROVIDE A REASONABLE ACCOMMODATION FOR
53 AN EMPLOYEE'S ABSENCE IN ACCORDANCE WITH THE PROVISIONS OF SUBPARAGRAPHS
54 ONE AND TWO OF THIS PARAGRAPH UNLESS THE EMPLOYER CAN DEMONSTRATE THAT
55 THE EMPLOYEE'S ABSENCE WOULD CONSTITUTE AN UNDUE HARDSHIP TO THE EMPLOY-

1 ER. A DETERMINATION OF WHETHER SUCH AN ABSENCE WILL CONSTITUTE AN UNDUE
2 HARDSHIP SHALL INCLUDE CONSIDERATION OF FACTORS SUCH AS:

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

6 (II) THE TYPE OF OPERATION IN WHICH THE BUSINESS, PROGRAM OR ENTER-
7 PRISE IS ENGAGED, INCLUDING THE COMPOSITION AND STRUCTURE OF THE WORK-
8 FORCE.

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

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

19 SUCH CERTIFICATION SHALL BE IN THE FORM OF:

20 (I) A POLICE REPORT INDICATING THAT THE EMPLOYEE OR HIS OR HER CHILD
21 WAS A VICTIM OF DOMESTIC VIOLENCE;

22 (II) A COURT ORDER PROTECTING OR SEPARATING THE EMPLOYEE OR HIS OR HER
23 CHILD FROM THE PERPETRATOR OF AN ACT OF DOMESTIC VIOLENCE;

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

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

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

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

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