

3814

2011-2012 Regular Sessions

I N S E N A T E

March 4, 2011

Introduced by Sen. HASSELL-THOMPSON -- read twice and ordered printed,  
and when printed to be committed to the Committee on Investigations  
and Government 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 ASSEM-  
BLY, 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2 REPEALED and a new subdivision 34 is added to read as follows: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:

22 20. (A) IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR AN EMPLOY-  
23 ER OR LICENSING AGENCY, BECAUSE OF ANY INDIVIDUAL'S STATUS AS A VICTIM

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

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1 OF DOMESTIC VIOLENCE, TO REFUSE TO HIRE OR EMPLOY OR LICENSE OR TO BAR  
2 OR TO DISCHARGE FROM EMPLOYMENT SUCH INDIVIDUAL OR TO DISCRIMINATE  
3 AGAINST SUCH INDIVIDUAL IN COMPENSATION OR IN TERMS, CONDITIONS OR PRIV-  
4 ILEGES OF EMPLOYMENT.

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

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

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

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

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

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

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

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

53 (3) AN EMPLOYER IS REQUIRED TO PROVIDE A REASONABLE ACCOMMODATION FOR  
54 AN EMPLOYEE'S ABSENCE IN ACCORDANCE WITH THE PROVISIONS OF SUBPARAGRAPHS  
55 ONE AND TWO OF THIS PARAGRAPH UNLESS THE EMPLOYER CAN DEMONSTRATE THAT  
56 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 WAS A VICTIM OF  
21 DOMESTIC VIOLENCE;

22 (II) A COURT ORDER PROTECTING OR SEPARATING THE EMPLOYEE FROM THE  
23 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 WAS  
28 UNDERGOING COUNSELING OR TREATMENT FOR PHYSICAL OR MENTAL INJURIES OR  
29 ABUSE RESULTING IN VICTIMIZATION FROM AN ACT OF DOMESTIC VIOLENCE.

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

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

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