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

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 34 of section 292 of the executive law is REPEALED and a new subdivision 34 is added to read as follows:

34. THE TERM "VICTIM OF DOMESTIC VIOLENCE" MEANS A PERSON WHO IS A VICTIM OF AN ACT WHICH WOULD CONSTITUTE A VIOLATION OF THE PENAL LAW, INCLUDING, BUT NOT LIMITED TO, AN ACT DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT, WHERE SUCH ACT IS OR HAS ALLEGED TO HAVE BEEN COMMITTED BY A FAMILY OR HOUSEHOLD MEMBER AS DEFINED IN SUBDIVISION ONE OF SECTION EIGHT HUNDRED TWELVE OF THE FAMILY COURT ACT.

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

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

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

20. (A) IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR AN EMPLOYER 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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OF DOMESTIC VIOLENCE, TO REFUSE TO HIRE OR EMPLOY OR LICENSE OR TO BAR OR TO DISCHARGE FROM EMPLOYMENT SUCH INDIVIDUAL OR TO DISCRIMINATE AGAINST SUCH INDIVIDUAL IN COMPENSATION OR IN TERMS, CONDITIONS OR PRIVILEGES OF EMPLOYMENT.

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

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

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

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

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

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

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

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

(3) AN EMPLOYER IS REQUIRED TO PROVIDE A REASONABLE ACCOMMODATION FOR 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 EMPLOY-

ER. 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.