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

8201

2013-2014 Regular Sessions

I N A S S E M B L Y

October 24, 2013

Introduced by M. of A. O'DONNELL, SEPULVEDA -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to providing certain civil rights protections for interns

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

Section 1. The executive law is amended by adding a new section 296-c to read as follows:

S 296-C. UNLAWFUL DISCRIMINATORY PRACTICES RELATING TO INTERNS. 1. AS USED IN THIS SECTION:

A. "INTERN" MEANS A PERSON WHO PERFORMS WORK FOR AN EMPLOYER FOR THE PURPOSE OF TRAINING UNDER THE FOLLOWING CIRCUMSTANCES:

(1) THE EMPLOYER IS NOT COMMITTED TO HIRE THE PERSON PERFORMING THE WORK AT THE CONCLUSION OF THE TRAINING PERIOD;

(2) THE EMPLOYER AND THE PERSON PERFORMING THE WORK AGREE IN WRITING THAT THE PERSON PERFORMING THE WORK IS NOT ENTITLED TO WAGES FOR THE WORK PERFORMED; AND

(3) THE WORK PERFORMED:

(A) SUPPLEMENTS TRAINING GIVEN IN AN EDUCATIONAL ENVIRONMENT THAT MAY ENHANCE THE EMPLOYABILITY OF THE INTERN;

(B) PROVIDES EXPERIENCE FOR THE BENEFIT OF THE PERSON PERFORMING THE WORK;

(C) DOES NOT DISPLACE REGULAR EMPLOYEES;

(D) IS PERFORMED UNDER THE CLOSE SUPERVISION OF EXISTING STAFF; AND

(E) PROVIDES NO IMMEDIATE ADVANTAGE TO THE EMPLOYER PROVIDING THE TRAINING AND MAY OCCASIONALLY IMPEDE THE OPERATIONS OF THE EMPLOYER.

B. "EMPLOYER" MEANS ANY PERSON WHO, IN THIS STATE, PROVIDES AN INTERNSHIP POSITION OR IS IN AN EMPLOYMENT RELATIONSHIP WITH AN INTERN AS DESCRIBED IN PARAGRAPH A OF THIS SUBDIVISION.

2. IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR AN EMPLOYER TO:

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

LBD11709-02-3

A. REFUSE TO HIRE OR EMPLOY OR TO BAR OR TO DISCHARGE FROM EMPLOYMENT AN INTERN OR TO DISCRIMINATE AGAINST SUCH INDIVIDUAL IN TERMS, CONDITIONS OR PRIVILEGES OF EMPLOYMENT BECAUSE OF THE INTERN'S AGE, RACE, CREED, COLOR, NATIONAL ORIGIN, SEXUAL ORIENTATION, MILITARY STATUS, SEX, DISABILITY, RELIGION, PREDISPOSING GENETIC CHARACTERISTICS, MARITAL STATUS, OR DOMESTIC VIOLENCE VICTIM STATUS;

B. DISCRIMINATE AGAINST AN INTERN IN RECEIVING, CLASSIFYING, DISPOSING OR OTHERWISE ACTING UPON APPLICATIONS FOR INTERNSHIPS BECAUSE OF THE INDIVIDUAL'S AGE, RACE, CREED, COLOR, NATIONAL ORIGIN, SEXUAL ORIENTATION, MILITARY STATUS, SEX, DISABILITY, RELIGION, PREDISPOSING GENETIC CHARACTERISTICS, MARITAL STATUS, OR DOMESTIC VIOLENCE VICTIM STATUS;

C. PRINT OR CIRCULATE OR CAUSE TO BE PRINTED OR CIRCULATED ANY STATEMENT, ADVERTISEMENT OR PUBLICATION, OR TO USE ANY FORM OF APPLICATION FOR EMPLOYMENT AS AN INTERN OR TO MAKE ANY INQUIRY IN CONNECTION WITH PROSPECTIVE EMPLOYMENT, WHICH EXPRESSES DIRECTLY OR INDIRECTLY, ANY LIMITATION, SPECIFICATION OR DISCRIMINATION AS TO AGE, RACE, CREED, COLOR, NATIONAL ORIGIN, SEXUAL ORIENTATION, MILITARY STATUS, SEX, DISABILITY, RELIGION, PREDISPOSING GENETIC CHARACTERISTICS, MARITAL STATUS OR DOMESTIC VIOLENCE VICTIM STATUS, OR ANY INTENT TO MAKE ANY SUCH LIMITATION, SPECIFICATION OR DISCRIMINATION, UNLESS BASED UPON A BONA FIDE OCCUPATIONAL QUALIFICATION; PROVIDED, HOWEVER, THAT NEITHER THIS PARAGRAPH NOR ANY PROVISION OF THIS CHAPTER OR OTHER LAW SHALL BE CONSTRUED TO PROHIBIT THE DEPARTMENT OF CIVIL SERVICE OR THE DEPARTMENT OF PERSONNEL OF ANY CITY CONTAINING MORE THAN ONE COUNTY FROM REQUESTING INFORMATION FROM APPLICANTS FOR CIVIL SERVICE INTERNSHIPS OR EXAMINATIONS CONCERNING ANY OF THE AFOREMENTIONED CHARACTERISTICS, OTHER THAN SEXUAL ORIENTATION, FOR THE PURPOSE OF CONDUCTING STUDIES TO IDENTIFY AND RESOLVE POSSIBLE PROBLEMS IN RECRUITMENT AND TESTING OF MEMBERS OF MINORITY GROUPS TO INSURE THE FAIREST POSSIBLE AND EQUAL OPPORTUNITIES FOR EMPLOYMENT IN THE CIVIL SERVICE FOR ALL PERSONS, REGARDLESS OF AGE, RACE, CREED, COLOR, NATIONAL ORIGIN, SEXUAL ORIENTATION, MILITARY STATUS, SEX, DISABILITY, RELIGION, PREDISPOSING GENETIC CHARACTERISTICS, MARITAL STATUS OR DOMESTIC VIOLENCE VICTIM STATUS;

D. TO DISCHARGE, EXPEL OR OTHERWISE DISCRIMINATE AGAINST ANY PERSON BECAUSE HE OR SHE HAS OPPOSED ANY PRACTICES FORBIDDEN UNDER THIS ARTICLE OR BECAUSE HE OR SHE HAS FILED A COMPLAINT, TESTIFIED OR ASSISTED IN ANY PROCEEDING UNDER THIS ARTICLE; OR

E. TO COMPEL AN INTERN WHO IS PREGNANT TO TAKE A LEAVE OF ABSENCE, UNLESS THE INTERN IS PREVENTED BY SUCH PREGNANCY FROM PERFORMING THE ACTIVITIES INVOLVED IN THE JOB OR OCCUPATION IN A REASONABLE MANNER.

3. IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE FOR AN EMPLOYER TO:

A. ENGAGE IN UNWELCOME SEXUAL ADVANCES, REQUESTS FOR SEXUAL FAVORS, OR OTHER VERBAL OR PHYSICAL CONDUCT OF A SEXUAL NATURE TO AN INTERN WHEN:

(1) SUBMISSION TO SUCH CONDUCT IS MADE EITHER EXPLICITLY OR IMPLICITLY A TERM OR CONDITION OF THE INTERN'S EMPLOYMENT;

(2) SUBMISSION TO OR REJECTION OF SUCH CONDUCT BY THE INTERN IS USED AS THE BASIS FOR EMPLOYMENT DECISIONS AFFECTING SUCH INDIVIDUAL; OR

(3) SUCH CONDUCT HAS THE PURPOSE OR EFFECT OF UNREASONABLY INTERFERING WITH THE INTERN'S WORK PERFORMANCE BY CREATING AN INTIMIDATING, HOSTILE, OR OFFENSIVE WORKING ENVIRONMENT; OR

B. SUBJECT AN INTERN TO UNWELCOME HARASSMENT BASED ON AGE, SEX, RACE, CREED, COLOR, SEXUAL ORIENTATION, MILITARY STATUS, DISABILITY, PREDISPOSING GENETIC CHARACTERISTICS, MARITAL STATUS, DOMESTIC VIOLENCE VICTIM STATUS, RELIGION OR NATIONAL ORIGIN, WHERE SUCH HARASSMENT HAS THE PURPOSE OR EFFECT OF UNREASONABLY INTERFERING WITH THE INTERN'S WORK

PERFORMANCE BY CREATING AN INTIMIDATING, HOSTILE, OR OFFENSIVE WORKING ENVIRONMENT.

4. NOTHING IN THIS SECTION SHALL AFFECT ANY RESTRICTIONS UPON THE ACTIVITIES OF PERSONS LICENSED BY THE STATE LIQUOR AUTHORITY WITH RESPECT TO PERSONS UNDER TWENTY-ONE YEARS OF AGE.

5. NOTHING IN SUBDIVISION ONE OF THIS SECTION SHALL CREATE AN EMPLOYMENT RELATIONSHIP BETWEEN AN EMPLOYER AND AN INTERN FOR THE PURPOSES OF ARTICLES SIX, SEVEN, EIGHTEEN OR NINETEEN OF THE LABOR LAW.

S 2. This act shall take effect immediately.