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I N   A S S E M B L Y

January 15, 2014

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Introduced by M. of A. STECK -- read once and referred to the Committee  
on Governmental Operations

AN ACT to amend the executive law, in relation to unpaid leave of  
absence as a reasonable accommodation under the state's human rights  
law

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

1     Section 1. Subdivision 21-e of section 292 of the executive law, as  
2     added by chapter 269 of the laws of 1997, is amended to read as follows:  
3     21-e. (A) The term "reasonable accommodation" means actions taken  
4     which permit an employee, prospective employee or member with a disabil-  
5     ity to perform in a reasonable manner the activities involved in the job  
6     or occupation sought or held and include, but are not limited to,  
7     provision of an accessible worksite, acquisition or modification of  
8     equipment, support services for persons with impaired hearing or vision,  
9     job restructuring and modified work schedules; provided, however, that  
10    such actions do not impose an undue hardship on the business, program or  
11    enterprise of the entity from which action is requested.  
12    (B) THE TERM "REASONABLE ACCOMMODATION" SHALL ALSO MEAN AN UNPAID  
13    LEAVE OF ABSENCE TO ALLOW AN EMPLOYEE TO RECOVER FROM AN EPISODIC  
14    MANIFESTATION OF A DISABILITY, PROVIDED THAT THE EMPLOYEE PROVIDES THE  
15    EMPLOYER WITH MEDICAL CERTIFICATION THAT SUCH LEAVE OF ABSENCE IS  
16    MEDICALLY NECESSARY FOR THAT PURPOSE AND ADVISES THE EMPLOYER OF THE  
17    APPROXIMATE DATE THE EMPLOYEE WILL BE ABLE TO RETURN TO WORK. AN INDEFI-  
18    NITE LEAVE OF ABSENCE IS NOT PERMISSIBLE UNDER THIS SUBDIVISION.  
19    (C) TO DETERMINE THE APPROPRIATE REASONABLE ACCOMMODATION, IT MAY BE  
20    NECESSARY FOR THE COVERED ENTITY TO INITIATE AN INFORMAL, INTERACTIVE  
21    PROCESS WITH THE INDIVIDUAL WITH A DISABILITY IN NEED OF ACCOMMODATION  
22    AIMED AT DEFINING THE EMPLOYEE'S PRECISE NEEDS AND MINIMIZING ANY IMPACT  
23    OF THE ACCOMMODATION ON THE EMPLOYEE'S WORK. THIS PROCESS SHOULD IDENTI-  
24    FY THE PRECISE LIMITATIONS RESULTING FROM THE DISABILITY AND POTENTIAL  
25    REASONABLE ACCOMMODATIONS THAT COULD OVERCOME THOSE LIMITATIONS, INCLUD-  
26    ING THE LENGTH OF ANY LEAVE OF ABSENCE PROVIDED FOR IN PARAGRAPH (B) OF  
27    THIS SUBDIVISION. AS PART OF THE INTERACTIVE PROCESS, CONSISTENT WITH

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

1 THE PURPOSE OF THE INTERACTIVE PROCESS, AND TO FACILITATE AGREEMENT  
2 BETWEEN THE EMPLOYER AND THE EMPLOYEE AS TO THE REASONABLE ACCOMMO-  
3 DATION, THE EMPLOYER MAY REQUEST (1) TO HAVE THE EMPLOYEE'S PHYSICIAN  
4 RESPOND IN A REASONABLE TIME TO A REASONABLE NUMBER OF NON-BURDENSOME  
5 QUESTIONS CONCERNING THE EMPLOYEE'S MEDICAL CONDITION OR (2) BE EXAMINED  
6 BY A MEDICAL DOCTOR OF THE EMPLOYER'S CHOOSING.

7 S 2. This act shall take effect immediately.