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

8401

I N A S S E M B L Y

January 15, 2014

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Subdivision 21-e of section 292 of the executive law, as added by chapter 269 of the laws of 1997, is amended to read as follows:

21-e. (A) The term "reasonable accommodation" means actions taken which permit an employee, prospective employee or member with a disability to perform in a reasonable manner the activities involved in the job or occupation sought or held and include, but are not limited to, provision of an accessible worksite, acquisition or modification of equipment, support services for persons with impaired hearing or vision, job restructuring and modified work schedules; provided, however, that such actions do not impose an undue hardship on the business, program or enterprise of the entity from which action is requested.

(B) THE TERM "REASONABLE ACCOMMODATION" SHALL ALSO MEAN AN UNPAID LEAVE OF ABSENCE TO ALLOW AN EMPLOYEE TO RECOVER FROM AN EPISODIC MANIFESTATION OF A DISABILITY, PROVIDED THAT THE EMPLOYEE PROVIDES THE EMPLOYER WITH MEDICAL CERTIFICATION THAT SUCH LEAVE OF ABSENCE IS MEDICALLY NECESSARY FOR THAT PURPOSE AND ADVISES THE EMPLOYER OF THE APPROXIMATE DATE THE EMPLOYEE WILL BE ABLE TO RETURN TO WORK. AN INDEFINITE LEAVE OF ABSENCE IS NOT PERMISSIBLE UNDER THIS SUBDIVISION.

(C) TO DETERMINE THE APPROPRIATE REASONABLE ACCOMMODATION, IT MAY BE NECESSARY FOR THE COVERED ENTITY TO INITIATE AN INFORMAL, INTERACTIVE PROCESS WITH THE INDIVIDUAL WITH A DISABILITY IN NEED OF ACCOMMODATION AIMED AT DEFINING THE EMPLOYEE'S PRECISE NEEDS AND MINIMIZING ANY IMPACT OF THE ACCOMMODATION ON THE EMPLOYEE'S WORK. THIS PROCESS SHOULD IDENTIFY THE PRECISE LIMITATIONS RESULTING FROM THE DISABILITY AND POTENTIAL REASONABLE ACCOMMODATIONS THAT COULD OVERCOME THOSE LIMITATIONS, INCLUDING THE LENGTH OF ANY LEAVE OF ABSENCE PROVIDED FOR IN PARAGRAPH (B) OF 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.

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

S 2. This act shall take effect immediately.