STATE OF NEW YORK

7989

2019-2020 Regular Sessions

IN ASSEMBLY

May 30, 2019

Introduced by M. of A. JOYNER -- read once and referred to the Committee on Labor

AN ACT to amend the labor law, in relation to discrimination in the use of employment tests and selection procedures

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The labor law is amended by adding a new section 215-d to read as follows:

§ 215-d. Employment tests and selection procedures. 1. If an employer utilizes a test or other selection procedure for purposes of hiring or promotion, the employer shall select and administer the test or other selection procedure so as best to ensure that, when administered to applicants, the test or selection procedure is not designed, intended or used to discriminate, and does not have the effect of discriminating, because of an individual's race, ethnic group, or sex. In selecting or administering such test or selection procedure, the employer shall investigate alternative tests and selection procedures and shall select the alternative that poses the lowest risk of discriminatory impact.

2. For purposes of subdivision one of this section and paragraph (a) of subdivision one of section two hundred ninety-six of the executive law, a test or other selection procedure used by an employer for purposes of hiring or promotion shall be deemed not to discriminate on the basis of a finding of adverse impact against a specific protected class if, for the specific protected class:

(a) the test or selection procedure utilizes pre-audited assessment technology that, upon use, resulted in an increase in the hiring or promotion of that protected class by five percent or greater as compared to the pre-implementation workforce composition of the protected class;

(b) the employer conducts an annual examination of the pre-audited assessment technology to determine and document whether the technology had an adverse impact for the protected class during the audited year;

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

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(c) the annual examination demonstrates that the pre-audited assessment technology:

(i) resulted in an increase in the hiring or promotion of the protected class by five percent or greater during the examined year as compared to the pre-implementation workforce composition of the protected class; or

(ii) resulted in no adverse impact on the protected class; and

(d) the employer ceases to use any version of the pre-audited assessment technology that does not meet the requirements of paragraph (c) of this subdivision.

3. Subdivision two of this section shall not impact any other defense an employer may have to claims of employment discrimination under any other provision of law.

4. For purposes of this section:

(a) "Pre-audited assessment technology" shall mean a test or other selection procedure used by an employer for purposes of hiring or promotion that:

(i) prior to use by the employer, was the subject of a validity study conducted by the employer that conforms to the requirements for validity studies set forth in 29 C.F.R. section 1607.5; and

(ii) prior to use by the employer, was examined and demonstrated no probability for adverse impact based on race, color, national origin, or sex.

(b) "Adverse impact" shall be indicated where a selection rate for any race, color, national origin, or sex constituting two percent or more of the total applicant population is less than four-fifths or eighty percent of the rate for the group with the highest selection rate and where such difference in selection rates between such groups is statistically significant.

(c) "Pre-implementation workforce composition" means the demographic composition of a protected class as a percentage of the employer's overall workforce that existed immediately prior to implementation of a pre-audited assessment technology.

(d) "Protected class" shall mean race, ethnic group, or sex.

(e) "Applicant" shall mean any individual as to whom the following four criteria are satisfied:

(i) the individual submits an expression of interest in employment or promotion;

(ii) the employer considers the individual for employment in or promotion to a particular position;

(iii) the individual's expression of interest indicates the individual possesses the basic qualifications for the position; and

(iv) the individual at no point in the selection process, prior to receiving an offer or promotion, removes himself or herself from further consideration or otherwise indicates that he or she is no longer interested in the position.

§ 2. This act shall take effect immediately.