

STATE OF NEW YORK

6671

2019-2020 Regular Sessions

IN SENATE

August 26, 2019

Introduced by Sen. KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the executive law and the workers' compensation law, in relation to clarifying that workers shall not be punished or subjected to discipline by employers for lawful absences

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

1 Section 1. Subdivision 1 of section 296 of the executive law is
2 amended by adding a new paragraph (i) to read as follows:

3 (i) For an employer, labor organization, or employment agency to
4 assess points, occurrences, or otherwise discipline employees, includ-
5 ing, but not limited to, through a time and attendance policy, for
6 absences related to a known disability, pregnancy-related condition, or
7 otherwise protected by law, without first engaging in a good faith,
8 interactive process to consider whether an employee is entitled to a
9 reasonable accommodation.

10 § 2. Paragraph (c) of subdivision 3 of section 296 of the executive
11 law, as added by chapter 369 of the laws of 2015, is amended to read as
12 follows:

13 [~~e~~] (c-1) The employee must cooperate in providing medical or other
14 information that is necessary to verify the existence of the disability
15 or pregnancy-related condition, or that is necessary for consideration
16 of the accommodation. The employee has a right to have such medical
17 information kept confidential. As part of the good faith, interactive
18 process, the employer must afford the employee a reasonable opportunity
19 to provide medical or other information which may preclude the assess-
20 ment of points, occurrences, or other forms of discipline, including but
21 not limited to pursuant to a time and attendance policy.

22 § 3. Subdivision 3 of section 296 of the executive law is amended by
23 adding a new paragraph (d) to read as follows:

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

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1 (d)(1) Every employer shall provide all of its employees, within thirty
2 days of their first day of employment, a written notice containing
3 employees' rights to reasonable accommodations for known disabilities or
4 pregnancy-related conditions under this article. Such notice shall
5 specify that reasonable accommodations may include, but are not limited
6 to, job restructuring; reassignment or transfer; modified or adjusted
7 work schedules; or time off during pregnancy or for childbirth recovery.

8 (2) If any employee is not provided a notice as required by subpara-
9 graph one of this paragraph, his or her employer shall be liable for a
10 penalty of fifty dollars for each workday that the violation occurred or
11 continues to occur, but not to exceed a total of five thousand dollars,
12 together with costs and reasonable attorneys' fees. The attorney general
13 may bring any legal action necessary, including administrative action,
14 to collect such claim. Notwithstanding any other provision of law, an
15 action to recover upon a liability imposed by this subdivision must be
16 commenced within six years.

17 § 4. Section 203-a of the workers' compensation law is amended by
18 adding a new subdivision 3 to read as follows:

19 3. It shall be unlawful for any employer to retaliate by discharging,
20 firing, suspending, expelling, disciplining, including through the
21 assessment of points or occurrences, under a time and attendance policy
22 or otherwise, threatening or in any other manner discriminating against
23 an employee for exercising any right to which such employee is entitled
24 under this article or with the purpose of interfering with the exercise
25 of any right to which such employee is entitled under this chapter.

26 § 5. The workers' compensation law is amended by adding a new section
27 203-d to read as follows:

28 § 203-d. Notice of rights. 1. Every covered employer, as described in
29 section two hundred two of this article, shall provide all of its
30 employees, within thirty days of their first day of employment, a writ-
31 ten notice informing employees of their rights to disability and family
32 leave under section two hundred four of this article, their right not to
33 be retaliated against for exercising such rights under section two
34 hundred three-a of this article, and their right to reinstatement
35 following the use of family leave under section two hundred three-b of
36 this article.

37 2. If any employee is not provided a notice as required by subdivision
38 one of this section, his or her employer shall be liable for a penalty
39 of fifty dollars for each workday that the violation occurred or contin-
40 ues to occur, but not to exceed a total of five thousand dollars,
41 together with costs and reasonable attorneys' fees. The attorney general
42 may bring any legal action necessary, including administrative action,
43 to collect such claim.

44 3. Notwithstanding any other provision of law, an action to recover
45 upon a liability imposed by this section must be commenced within six
46 years.

47 § 6. This act shall take effect on the ninetieth day after it shall
48 have become a law. Effective immediately, the addition, amendment and/or
49 repeal of any rule or regulation necessary for the implementation of
50 this act on its effective date are authorized to be made and completed
51 on or before such date.