STATE OF NEW YORK

8223

IN SENATE

April 24, 2020

Introduced by Sen. SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the executive law, in relation to requiring certain employers to provide workforce demographics and equity measurements to the division of human rights annually

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-e to read as follows:

§ 296-e. Workforce demographics and equity measurements. 1. Any employer with greater than one hundred persons in employ per calendar year or who bids, applies, is awarded or receives any combination of state or municipal contracts or grant funds directly or indirectly in excess of fifty thousand dollars per calendar year shall file an annual report documenting employee demographics and equity measurements with the division. Such demographic data shall include each employee's race, ethnicity, age, and sex or gender identity or expression. The equity measurements shall include each employee's job category, date of hire, salary or wages, training received, raises, promotions, disciplinary actions, terminations and benefits, including but not limited to unpaid benefits or privileges such as flexible scheduling, the ability to work from home, or the ability to bring children to work.

2. The division shall develop electronic reporting forms to be filed for each employee's data and for the employer's general data.

3. The division shall aggregate the electronic forms into a report that lists equity measurements for each employer including but not limited to job category, mean and median earnings, benefits, hiring selection, training, raises, promotions, disciplinary actions, and terminations listed in the form of percentages from highest to lowest by the demographic factors listed above.

4. The division shall provide the aggregated report to each employer along with a simplified report in plain language. The employer shall provide such simplified report in plain language to each current employ-

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

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ee and any former employee employed during the reporting year. The report shall be accompanied by a summary in plain language of employees' rights under Title VII Civil Rights Act Title of 1964, this article, and any applicable local statutes for which the employer falls under jurisdiction including instructions and deadlines for filing a complaint to the equal employment opportunity commission, the division, and any other fair employment protection agency or similarly tasked authority with jurisdiction over the employer. The employer shall make the aggregated report available to the public upon request.

5. The division shall aggregate all data on a statewide level and provide an annual report to the governor and the legislature that shall be made public on the division's website.

6. Failure to comply with the reporting provisions of this section or providing false information may be offered as proof of employment discrimination in a complaint and offered as proof in probation, suspension, and debarment rulings pursuant to subdivision eighteen of section two hundred ninety-five of this article.

7. Failure to comply with the reporting provisions of this section or providing false information shall require an employer to file an amended disaggregated report with the division and provide an amended aggregated report to all current and former employees employed during the reporting year. The statutory period for filing personal claims with the division and any other New York fair employment protection agency shall begin to run on the day after the amended aggregated report has been provided to all current and former employees who were employed during the reporting year.

8. Any board member or officer of the employer who knowingly provides false information, including by encouraging or instructing subordinates to do so, or who knowingly manipulates their corporate structure for the purpose of producing favorable aggregate report outcomes shall be subject to the penalties under section two hundred ninety-nine of this article.

§ 2. Section 295 of the executive law is amended by adding two new subdivisions 17 and 18 to read as follows:

17. To require of any employer reports pursuant to section two hundred ninety-six-e of this article and to carry out the duties set forth in such section.

18. To set forth rules and regulations that include standards for probation, suspension and debarment of employers from all state and municipal contracts and grants as direct or indirect awardees and recipients on the basis of excessive discrimination claims, selection procedures found to have adverse impact, failure to file workforce demographics and equity measurements reports as required in section two hundred ninety-six-e of this article, apparent and probable discriminatory employment and promotion practices discovered through review of workforce demographics and equity measurements reports required in section two hundred ninety-six-e of this article, or by other investigative methods. Employer probationary periods included in the standards promulgated pursuant to this subdivision shall last no less than one year, during which time the employer may demonstrate to the division that he or she has complied with rules and regulations regarding employee selection procedure and employment and promotion practices promulgated pursuant to this article. If after this period the division finds that the employer still exhibits discriminatory practices in employee selection procedure or employment and promotion practices, suspension periods of six to eighteen months or debarment periods of eighteen

months to three years from state and municipal contracts and grants as direct or indirect recipients may be issued. Consecutive probations, suspensions, and debarments may be issued based on continued failure to comply.

§ 3. Subdivision 5 of section 297 of the executive law, as amended by chapter 160 of the laws of 2019, is amended to read as follows:

5. Any complaint filed pursuant to this section must be so filed within one year after the alleged unlawful discriminatory practice **or one year after an employer makes reasonable attempts to provide a workforce demographics and equity measurements report pursuant to section two hundred ninety-six-e of this article, whichever occurs later**. In cases of sexual harassment in employment, any complaint filed pursuant to this section must be so filed within three years after the alleged unlawful discriminatory practices.

§ 4. Subdivision 5 of section 292 of the executive law, as amended by chapter 161 of the laws of 2019, is amended to read as follows:

5. The term "employer" shall include all employers within the state. **As set forth in section two hundred ninety-six-e of this article, parent companies and subsidiaries shall be combined to meet criteria for required reporting.**

§ 5. This act shall take effect one year after it shall have become a law; provided, however, that if section 13 of chapter 160 of the laws of 2019 shall not have taken effect on or before such date then section three of this act shall take effect on the same date and in the same manner as such chapter of the laws of 2019 takes effect.