STATE OF NEW YORK

10842

IN ASSEMBLY

July 24, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Steck, Fahy, Gottfried, Dinowitz) -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to requiring employers to provide a reasonable accommodation to employees who have children who are unable to return to a childcare provider as a result of a pandemic

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. Reasonable accommodation for employees during a pandemic. 1. (a) An employer shall make reasonable accommodations for an employee (i) whose child was enrolled in a day care program, a before or after-care program, or a school that shut down or closed, changed its schedule or reduced the hours of on-location operation because of a pandemic such as COVID-19 when such employee, with reasonable efforts, has not been able to obtain replacement services, or (ii) when such services were provided by a caregiver or childcare provider who has an underlying condition that puts them at-risk for severe illness due to COVID-19 including, but not limited to chronic pulmonary, lung, liver, or kidney disease, moderate-to-severe asthma, diabetes, hemoglobin disorders, serious heart conditions, severe obesity, the individual is immunocompromised or other condition certified as substantially similar by a physician and as a result is no longer willing to provide such services, or (iii) who has an underlying condition as described in subparagraph (ii) of this paragraph.

(b) Accommodations under this section shall include, in addition to any set forth in subdivision twenty-one-e of section two hundred ninety-two of this article; flexible work hours, part-time or modified work schedules; altering the times when certain work functions are performed; telecommuting; working from home; changing policies; the provision of childcare as a substitute for day, before or after-care programs at school or other childcare facility which shall comply with guidelines issued by the centers for disease control and prevention and be a

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

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program approved by the county health department, provided, however, that no employer shall be required to make an accommodation that represents an undue hardship on such employer.

(c) The employer and employee shall engage in an interactive process to determine the appropriate reasonable accommodation due the employee.

(d) Enforcement of this section shall be pursuant to provisions of this chapter. A prevailing plaintiff shall recover all attorneys' fees, expert witness fees, costs, and disbursements incurred in prosecuting a proceeding or case under this section, whether enforcement is before the division of human rights or in a court of competent jurisdiction.

2. If any clause, sentence, paragraph or part of this section or the application thereof to any person or circumstances, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section.

§ 2. This act shall take effect immediately.