

STATE OF NEW YORK

9118

IN ASSEMBLY

January 21, 2020

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, the legislative law and the judiciary law, in relation to establishing goals for participation by individuals with disabilities with respect to state employment, state contracts, legislative employment and judicial employment

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

1 Section 1. The executive law is amended by adding a new article 17-c
2 to read as follows:

ARTICLE 17-C

PARTICIPATION BY INDIVIDUALS WITH DISABILITIES WITH RESPECT TO STATE EMPLOYMENT AND STATE CONTRACTS

Section 369-aa. Definitions.

7 369-bb. Participation by individuals with disabilities with
8 respect to state employment.

9 369-cc. Participation by individuals with disabilities with
10 respect to state contracts.

11 369-dd. Invitation to self-identify.

12 369-ee. Report.

13 § 369-aa. Definitions. As used in this article, the following terms
14 shall have the following meanings:

15 1. "covered employer" shall mean a state agency, state contractor or
16 state subcontractor;

17 2. "disability" shall mean:

18 (a) with respect to an individual:

19 (i) a physical or mental impairment that substantially limits one or
20 more major life activities of such individual;

21 (ii) a record of such an impairment; or

22 (iii) being regarded as having such an impairment;

23 (b) as used in this article, the definition of "disability" shall be
24 construed in favor of broad coverage of individuals, to the maximum
25 extent permitted by law. The question of whether an individual meets the
26 definition under this article shall not demand extensive analysis;

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

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1 (c) an impairment that substantially limits one major life activity
2 need not limit other major life activities in order to be considered a
3 disability;

4 (d) an impairment that is episodic or in remission is a disability if
5 it would substantially limit a major life activity when active;

6 3. "major life activities" shall mean:

7 (a) caring for oneself, performing manual tasks, seeing, hearing,
8 eating, sleeping, walking, standing, sitting, reaching, lifting, bend-
9 ing, speaking, breathing, learning, reading, concentrating, thinking,
10 communicating, interacting with others, and working; and

11 (b) the operation of a major bodily function, including, but not
12 limited to, functions of the immune system, special sense organs and
13 skin, normal cell growth, digestive, genitourinary, bowel, bladder,
14 neurological, brain, respiratory, circulatory, cardiovascular, endoc-
15 rine, hemic, lymphatic, musculoskeletal, and reproductive functions. The
16 operation of a major bodily function includes the operation of an indi-
17 vidual organ within a body system;

18 4. "physical or mental impairment" shall mean:

19 (a) any physiological disorder, or condition, cosmetic disfigurement,
20 or anatomical loss affecting one or more body systems such as neurologi-
21 cal, musculoskeletal, special sense organs, respiratory (including
22 speech organs), cardiovascular, reproductive, digestive, genitourinary,
23 immune, circulatory, hemic, lymphatic, skin, and endocrine; or

24 (b) any mental or psychological disorder, such as an intellectual
25 disability, organic brain syndrome, emotional or mental illness, and
26 specific learning disabilities;

27 5. "state agency" shall mean: (a)(i) any state department; or (ii) any
28 division, board, commission or bureau of any state department; or (iii)
29 the state university of New York and the city university of New York; or
30 (iv) any public authority or public benefit corporation established
31 pursuant to statute; and

32 (b) employs fifty or more employees;

33 6. "state contract" shall mean a written agreement or purchase order
34 instrument, providing for a total expenditure in excess of ten thousand
35 dollars, whereby a contracting agency is committed to expend or does
36 expend funds in return for labor, services including but not limited to
37 legal, financial and other professional services, supplies, equipment,
38 materials, the acquisition, construction, demolition, replacement, major
39 repair or renovation of real property and improvements thereon or any
40 combination of the foregoing, to be performed for, or rendered or
41 furnished to the contracting agency;

42 7. "state contractor" shall mean any person, corporation, partnership
43 or joint venture, unincorporated association holding a state contract in
44 excess of ten thousand dollars and employs fifty or more employees;

45 8. "state subcontract" shall mean a written agreement between a
46 contractor and a subcontractor:

47 (a) for the purchase, sale or use of personal property or nonpersonal
48 services (including construction) which, in whole or in part, is neces-
49 sary to the performance of any one or more state contracts; or

50 (b) under which any portion of the state contractor's obligation under
51 any one or more state contracts is performed, undertaken, or assumed;
52 and

53 9. "state subcontractor" shall mean any person, corporation, partner-
54 ship or joint venture, unincorporated association holding a state
55 subcontract in excess of ten thousand dollars and employs fifty or more
56 employees.

1 § 369-bb. Participation by individuals with disabilities with respect
2 to state employment. 1. All state agencies shall not discriminate
3 because of physical or mental disability and shall take affirmative
4 action to employ and advance in employment qualified individuals with
5 disabilities at all levels of employment, including taking affirmative
6 action to achieve seven percent employment of individuals with disabili-
7 ties within each state agency.

8 2. (a) Each state agency shall annually evaluate its employment of
9 individuals with disabilities.

10 (b) State agencies not meeting the goal of seven percent employment
11 shall take steps to determine whether and where impediments to equal
12 employment opportunity exist. When making this determination, each state
13 agency shall assess its personnel processes, the effectiveness of its
14 outreach and recruitment efforts, the results of its affirmative action
15 evaluation, and any other areas that might affect its success in employ-
16 ment.

17 3. Each state agency shall develop and execute action-oriented
18 programs designed to correct any areas identified in subdivision two of
19 this section. These action-oriented programs may include the modifica-
20 tion of personnel processes to ensure equal employment opportunity for
21 individuals with disabilities, alternative or additional outreach and
22 recruitment efforts, and/or other actions designed to correct the iden-
23 tified problem areas and attain the established goal.

24 4. A state agency's determination that it has not attained the employ-
25 ment goal established in subdivision one of this section does not
26 constitute either a finding or admission of discrimination in violation
27 of this section.

28 5. The employment goal established in subdivision one of this section
29 shall not be used as a quota or ceiling that limits or restricts the
30 employment of individuals with disabilities.

31 6. The commissioner of labor, in consultation with the division of
32 human rights, shall periodically review and update, as appropriate, the
33 employment goal established in subdivision one of this section.

34 § 369-cc. Participation by individuals with disabilities with respect
35 to state contracts. 1. All state contracts and all documents soliciting
36 bids or proposals for state contracts shall contain or make reference to
37 the following: all state contractors and state subcontractors shall not
38 discriminate because of physical or mental disability and shall take
39 affirmative action to employ and advance in employment qualified indi-
40 viduals with disabilities at all levels of employment, including taking
41 affirmative action to achieve seven percent employment of individuals
42 with disabilities within each state contractor and state subcontractor's
43 workforce.

44 2. State contractors shall include the provisions of subdivision one
45 of this section in every subcontract in such a manner that the
46 provisions will be binding upon each state subcontractor as to work in
47 connection with the state contract.

48 3. The provisions of this section shall not be binding upon state
49 contractors or state subcontractors in the performance of work or the
50 provision of services or any other activity that are unrelated, separate
51 or distinct from the state contract as expressed by its terms.

52 4. The commissioner of general services shall promulgate rules and
53 regulations to ensure that state contractors and state subcontractors
54 undertake programs of affirmative action and equal employment opportu-
55 nity as required by this section including:

1 (a) each state contractor and state subcontractor shall annually eval-
2 uate its employment of individuals with disabilities;

3 (b) state contractors and state subcontractors not meeting the goal of
4 seven percent employment shall take steps to determine whether and where
5 impediments to equal employment opportunity exist. When making this
6 determination, each state contractor and state subcontractor shall
7 assess its personnel processes, the effectiveness of its outreach and
8 recruitment efforts, the results of its affirmative action evaluation,
9 and any other areas that might affect its success in employment; and

10 (c) each state contractor and state subcontractor shall develop and
11 execute action-oriented programs designed to correct any areas identi-
12 fied in paragraph (b) of this subdivision. These action-oriented
13 programs may include the modification of personnel processes to ensure
14 equal employment opportunity for individuals with disabilities, alterna-
15 tive or additional outreach and recruitment efforts, and/or other
16 actions designed to correct the identified problem areas and attain the
17 established goal.

18 5. A state contractor or state subcontractor's determination that it
19 has not attained the employment goal established in subdivision one of
20 this section does not constitute either a finding or admission of
21 discrimination in violation of this section.

22 6. The employment goal established in subdivision one of this section
23 shall not be used as a quota or ceiling that limits or restricts the
24 employment of individuals with disabilities.

25 7. The commissioner of labor, in consultation with the division of
26 human rights and commissioner of general services, shall periodically
27 review and update, as appropriate, the employment goal established in
28 subdivision one of this section.

29 § 369-dd. Invitation to self-identify. 1. (a) As part of the covered
30 employer's affirmative action policy, a covered employer shall invite
31 applicants to inform the employer whether the applicant believes that he
32 or she is an individual with a disability as defined in section three
33 hundred sixty-nine-aa of this article. This invitation shall be provided
34 to each applicant when the applicant applies or is considered for
35 employment. The invitation may be included with the application materi-
36 als for a position, but shall be separate from the application.

37 (b) A covered employer shall invite an applicant to self-identify as
38 required in paragraph (a) of this subdivision using the language and
39 manner prescribed by the department of labor, in consultation with the
40 division of human rights, and published on the department of labor's
41 website.

42 2. (a) At any time after the offer of employment, but before the
43 applicant begins his or her job duties, a covered employer shall invite
44 the applicant to inform the employer whether the applicant believes that
45 he or she is an individual with a disability as defined in section three
46 hundred sixty-nine-aa of this article.

47 (b) A covered employer shall invite an applicant to self-identify as
48 required in paragraph (a) of this subdivision using the language and
49 manner prescribed by the department of labor, in consultation with the
50 division of human rights, and published on the department of labor's
51 website.

52 3. A covered employer shall invite each of its employees to voluntar-
53 ily inform the employer whether the employee believes that he or she is
54 an individual with a disability as defined in section three hundred
55 sixty-nine-aa of this article. This invitation shall be extended the
56 first year the employer becomes subject to the requirements of this

1 section and at five year intervals, thereafter, using the language and
2 manner prescribed by the department of labor, in consultation with the
3 division of human rights, and published on the department of labor's
4 website. At least once during the intervening years between these invi-
5 tations, the covered employer shall remind its employees that they may
6 voluntarily update their disability status.

7 4. A covered employer may not compel or coerce an individual to self-
8 identify as an individual with a disability.

9 5. A covered employer shall keep all information on self-identifica-
10 tion confidential, and shall maintain it in a data analysis file (rather
11 than in the medical files of individual employees). The covered employer
12 shall provide self-identification information to the department of labor
13 upon request. Self-identification information may be used only in
14 accordance with this article.

15 6. Nothing in this section shall relieve the covered employer of its
16 obligation to take affirmative action with respect to those applicants
17 or employees of whose disability the covered employer has knowledge.

18 § 369-ee. Report. The commissioner of labor shall promulgate rules and
19 regulations requiring every covered employer to report, one year after
20 the effective date of this article and annually thereafter, to the
21 department of labor and the legislature on the representation of indi-
22 viduals with disabilities within its workforce and the results of
23 action-oriented plans to improve such representation.

24 § 2. The legislative law is amended by adding a new section 9-a to
25 read as follows:

26 § 9-a. Participation by individuals with disabilities with respect to
27 legislative employment. 1. For the purposes of this section, the follow-
28 ing terms shall have the following meanings:

29 (a) "disability" shall mean:

30 (i) with respect to an individual:

31 (1) a physical or mental impairment that substantially limits one or
32 more major life activities of such individual;

33 (2) a record of such an impairment; or

34 (3) being regarded as having such an impairment;

35 (ii) as used in this article, the definition of "disability" shall be
36 construed in favor of broad coverage of individuals, to the maximum
37 extent permitted by law. The question of whether an individual meets the
38 definition under this article should not demand extensive analysis;

39 (iii) an impairment that substantially limits one major life activity
40 need not limit other major life activities in order to be considered a
41 disability;

42 (iv) an impairment that is episodic or in remission is a disability if
43 it would substantially limit a major life activity when active;

44 (b) "joint legislative employer" shall mean any legislative entity
45 with fifty or more employees including but not limited to legislative
46 commissions, committees, task forces (irrespective of intended or actual
47 duration), joint legislative commissions, councils or similar bodies
48 whose membership is comprised of both senators and assembly members, or
49 which consist of commissioners, or the majority of whose membership is
50 appointed by one or more of the following: the temporary president of
51 the senate, the speaker of the assembly, the minority leader of the
52 senate and/or the minority leader of the assembly, and officers and
53 employees of the legislative library, legislative health service, legis-
54 lative messenger service;

55 (c) "legislative employee" shall mean:

56 (i) an officer or employee of the senate;

- (ii) an officer or employee of the assembly; or
- (iii) an officer or employee of a joint legislative employer;
- (d) "major life activities" shall mean:

(i) caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and

(ii) the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system;

- (e) "physical or mental impairment" shall mean:

(i) any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

(ii) any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities; and

(f) "state legislature" or "legislature" means the legislature of the state of New York, including any committee, subcommittee, joint committee, select committee, or commission thereof with fifty or more employees.

2. The state legislature shall not discriminate because of physical or mental disability and shall take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including taking affirmative action to achieve seven percent employment of individuals with disabilities as legislative employees.

3. (a) The speaker of the assembly and the temporary president of the senate shall annually evaluate the legislature's employment of individuals with disabilities.

(b) Upon a finding that the legislature is not meeting the goal of seven percent employment, the speaker of the assembly and the temporary president of the senate shall take steps to determine whether and where impediments to equal employment opportunity exist. When making this determination, the speaker of the assembly and the temporary president of the senate shall assess its personnel processes, the effectiveness of its outreach and recruitment efforts, the results of its affirmative action evaluation, and any other areas that might affect its success in employment.

4. The speaker of the assembly and the temporary president of the senate shall develop and execute action-oriented programs designed to correct any areas identified in subdivision three of this section. These action-oriented programs may include the modification of personnel processes to ensure equal employment opportunity for individuals with disabilities, alternative or additional outreach and recruitment efforts, and/or other actions designed to correct the identified problem areas and attain the established goal.

5. The speaker of the assembly and the temporary president of the senate's determination that the legislature has not attained the employment goal established in subdivision two of this section does not

1 constitute either a finding or admission of discrimination in violation
2 of this section.

3 6. The employment goal established in subdivision two of this section
4 shall not be used as a quota or ceiling that limits or restricts the
5 employment of individuals with disabilities.

6 7. The commissioner of labor, in consultation with the division of
7 human rights, shall periodically review and update, as appropriate, the
8 employment goal established in subdivision one of this section.

9 8. (a) As part of the legislature's affirmative action policy, it
10 shall invite applicants to inform the legislature whether the applicant
11 believes that he or she is an individual with a disability as defined in
12 subdivision one of this section. This invitation shall be provided to
13 each applicant when the applicant applies or is considered for employ-
14 ment. The invitation may be included with the application materials for
15 a position, but shall be separate from the application.

16 (b) The legislature shall invite an applicant to self-identify as
17 required in paragraph (a) of this subdivision using the language and
18 manner prescribed by the department of labor, in consultation with the
19 division of human rights, and published on the department of labor's
20 website.

21 9. (a) At any time after the offer of employment, but before the
22 applicant begins his or her job duties, the legislature shall invite the
23 applicant to inform the legislature whether the applicant believes that
24 he or she is an individual with a disability as defined in subdivision
25 one of this section.

26 (b) The legislature shall invite an applicant to self-identify as
27 required in paragraph (a) of this subdivision using the language and
28 manner prescribed by the department of labor, in consultation with the
29 division of human rights, and published on the department of labor's
30 website.

31 10. The legislature shall invite each of its employees to voluntarily
32 inform the legislature whether the employee believes that he or she is
33 an individual with a disability as defined in subdivision one of this
34 section. This invitation shall be extended the first year the legisla-
35 ture becomes subject to the requirements of this section and at five
36 year intervals, thereafter, using the language and manner prescribed by
37 the department of labor, in consultation with the division of human
38 rights, and published on the department of labor's website. At least
39 once during the intervening years between these invitations, the legis-
40 lature shall remind its employees that they may voluntarily update their
41 disability status.

42 11. The legislature may not compel or coerce an individual to self-i-
43 dentify as an individual with a disability.

44 12. The legislature shall keep all information on self-identification
45 confidential, and shall maintain it in a data analysis file (rather than
46 in the medical files of individual employees). The legislature shall
47 provide self-identification information to the department of labor upon
48 request. Self-identification information may be used only in accordance
49 with this section.

50 13. Nothing in this section shall relieve the legislature of its obli-
51 gation to take affirmative action with respect to those applicants or
52 employees of whose disability the legislature has knowledge.

53 14. One year from the effective date of this section, the legislature
54 shall report to the department of labor on the representation of indi-
55 viduals with disabilities within its workforce and the results of
56 action-oriented plans to improve such representation.

§ 3. The judiciary law is amended by adding a new section 219-e to read as follows:

§ 219-e. Participation by individuals with disabilities with respect to judicial employment. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "disability" shall mean:

(i) with respect to an individual:

(1) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(2) a record of such an impairment; or

(3) being regarded as having such an impairment;

(ii) as used in this article, the definition of "disability" shall be construed in favor of broad coverage of individuals, to the maximum extent permitted by law. The question of whether an individual meets the definition under this article should not demand extensive analysis.

(iii) an impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(iv) an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;

(b) "major life activities" shall mean:

(i) caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and

(ii) the operation of a major bodily function, including, but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system;

(c) "non-judicial employee" shall mean any officer or employee of the unified court system who is not a judge or justice; and

(d) "physical or mental impairment" shall mean:

(i) any physiological disorder, or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

(ii) any mental or psychological disorder, such as an intellectual disability, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

2. The unified court system shall not discriminate because of physical or mental disability and shall take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including taking affirmative action to achieve seven percent employment within the unified court system of individuals with disabilities as non-judicial employees.

3. (a) The chief administrator of the courts shall annually evaluate the unified court system's employment of individuals with disabilities.

(b) Upon a finding that the unified court system is not meeting the goal of seven percent employment, the chief administrator shall take steps to determine whether and where impediments to equal employment opportunity exist. When making this determination, the chief administrator shall assess the unified court system's personnel processes, the

1 effectiveness of its outreach and recruitment efforts, the results of
2 its affirmative action evaluation, and any other areas that might affect
3 its success in employment.

4 4. The chief administrator shall develop and execute action-oriented
5 programs designed to correct any areas identified in subdivision three
6 of this section. These action-oriented programs may include the modifi-
7 cation of personnel processes to ensure equal employment opportunity for
8 individuals with disabilities, alternative or additional outreach and
9 recruitment efforts, and/or other actions designed to correct the iden-
10 tified problem areas and attain the established goal.

11 5. The chief administrator's determination that the unified court
12 system has not attained the employment goal established in subdivision
13 two of this section does not constitute either a finding or admission of
14 discrimination in violation of this section.

15 6. The employment goal established in subdivision two of this section
16 shall not be used as a quota or ceiling that limits or restricts the
17 employment of individuals with disabilities.

18 7. The commissioner of labor, in consultation with the division of
19 human rights, shall periodically review and update, as appropriate, the
20 employment goal established in subdivision two of this section.

21 8. (a) As part of the unified court system's affirmative action poli-
22 cy, it shall invite applicants to inform the employer whether the appli-
23 cant believes that he or she is an individual with a disability as
24 defined in subdivision one of this section. This invitation shall be
25 provided to each applicant when the applicant applies or is considered
26 for employment. The invitation may be included with the application
27 materials for a position, but shall be separate from the application.

28 (b) The unified court system shall invite an applicant to self-identi-
29 fy as required in paragraph (a) of this subdivision using the language
30 and manner prescribed by the department of labor, in consultation with
31 the division of human rights, and published on the department of labor's
32 website.

33 9. (a) At any time after the offer of employment, but before the
34 applicant begins his or her job duties, the unified court system shall
35 invite the applicant to inform the unified court system whether the
36 applicant believes that he or she is an individual with a disability as
37 defined in subdivision one of this section.

38 (b) The unified court system shall invite an applicant to self-identi-
39 fy as required in paragraph (a) of this subdivision using the language
40 and manner prescribed by the department of labor, in consultation with
41 the division of human rights, and published on the department of labor's
42 website.

43 10. The unified court system shall invite each of its employees to
44 voluntarily inform the unified court system whether the employee
45 believes that he or she is an individual with a disability as defined in
46 subdivision one of this section. This invitation shall be extended the
47 first year the unified court system becomes subject to the requirements
48 of this section and at five year intervals, thereafter, using the
49 language and manner prescribed by the department of labor, in consulta-
50 tion with the division of human rights, and published on the department
51 of labor's website. At least once during the intervening years between
52 these invitations, the unified court system shall remind its employees
53 that they may voluntarily update their disability status.

54 11. The unified court system may not compel or coerce an individual to
55 self-identify as an individual with a disability.

1 12. The unified court system shall keep all information on self-iden-
2 tification confidential, and shall maintain it in a data analysis file
3 (rather than in the medical files of individual employees). The unified
4 court system shall provide self-identification information to the
5 department of labor upon request. Self-identification information may be
6 used only in accordance with this section.

7 13. Nothing in this section shall relieve the unified court system of
8 its obligation to take affirmative action with respect to those appli-
9 cants or employees of whose disability it has knowledge.

10 14. One year from the effective date of this section, the unified
11 court system shall report to the department of labor and the legislature
12 on the representation of individuals with disabilities within its work-
13 force and the results of action-oriented plans to improve such represen-
14 tation.

15 § 4. This act shall take effect on the one hundred eightieth day after
16 it shall have become a law. Effective immediately, the addition, amend-
17 ment and/or repeal of any rule or regulation necessary for the implemen-
18 tation of this act on its effective date are authorized to be made and
19 completed on or before such effective date.