STATE OF NEW YORK

6086--A

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

Introduced by Sen. RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Labor -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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, such employer shall select and administer such test or other selection procedure in a manner which best ensures that, when administered to applicants, such test is not designed, intended, or used to discriminate, and does not have a discriminatory effect, on the basis of an applicant's race, ethnic group, or sex. In selecting or administering such test or selection procedure, such 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, any 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 such protected class:

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

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

LBD11804-02-9

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

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

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

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

(d) such employer ceases to use any version of such 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 such employer, was the subject of validity study conducted by such employer that conforms to the requirements for validity studies set forth in 29 CFR 1607.5; and

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

(b) An "adverse impact" shall exist where the selection rate for any race, color, national origin, or sex constituting two percent or more of the total applicant population is less than eighty percent of the rate for the group with the highest selection rate and where the difference between those rates is statistically significant.

(c) "Pre-implementation workforce composition" shall mean 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 any class of persons based on race, ethnic group, or sex.

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

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

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

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

(iv) such 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 such position.

(f) The term "employer" shall not include (i) any employer with fewer than one hundred persons in his or her employ or (ii) the state of New York, municipal corporations, or other governmental entities.

§ 2. This act shall take effect on the thirtieth day after it shall have become a law.