STATE OF NEW YORK

3137

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

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:

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

ARTICLE 17-C

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

Section 369-aa. Definitions.
369-bb. Participation by individuals with disabilities with respect to state employment.
369-cc. Participation by individuals with disabilities with respect to state contracts.
369-dd. Invitation to self-identify.
369-ee. Report.

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

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

2. "disability" shall mean:

(a) with respect to an individual:

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

(ii) a record of such an impairment; or

(iii) being regarded as having such an impairment;

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

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(b) 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 shall not demand extensive analysis;

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

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

3. "major life activities" shall mean:

(a) 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

(b) 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;

4. "physical or mental impairment" shall mean:

(a) 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

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

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

(b) employs fifty or more employees;

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

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

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

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

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

9. "state subcontractor" shall mean any person, corporation, partnership or joint venture, unincorporated association holding a state subcontract in excess of ten thousand dollars and employs fifty or more employees.

§ 369-bb. Participation by individuals with disabilities with respect to state employment. 1. All state agencies 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 within each state agency.

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

(b) State agencies not meeting the goal of seven percent employment shall take steps to determine whether and where impediments to equal employment opportunity exist. When making this determination, each state agency 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.

3. Each state agency shall develop and execute action-oriented programs designed to correct any areas identified in subdivision two 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.

4. A state agency's determination that it has not attained the employment goal established in subdivision one of this section does not constitute either a finding or admission of discrimination in violation of this section.

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

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

§ 369-cc. Participation by individuals with disabilities with respect to state contracts. 1. All state contracts and all documents soliciting bids or proposals for state contracts shall contain or make reference to the following: all state contractors and state subcontractors 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 within each state contractor and state subcontractor's workforce.

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

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

4. The commissioner of general services shall promulgate rules and regulations to ensure that state contractors and state subcontractors undertake programs of affirmative action and equal employment opportunity as required by this section including:

(a) each state contractor and state subcontractor shall annually evaluate its employment of individuals with disabilities;

(b) state contractors and state subcontractors not meeting the goal of seven percent employment shall take steps to determine whether and where impediments to equal employment opportunity exist. When making this determination, each state contractor and state subcontractor 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; and

(c) each state contractor and state subcontractor shall develop and execute action-oriented programs designed to correct any areas identified in paragraph (b) of this subdivision. 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. A state contractor or state subcontractor's determination that it has not attained the employment goal established in subdivision one of this section does not constitute either a finding or admission of discrimination in violation of this section.

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

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

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

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

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

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

3. A covered employer shall invite each of its employees to voluntarily inform the employer whether the employee believes that he or she is an individual with a disability as defined in section three hundred sixty-nine-aa of this article. This invitation shall be extended the first year the employer becomes subject to the requirements of this section and at five year intervals, thereafter, using the language and manner prescribed by the department of labor, in consultation with the division of human rights, and published on the department of labor's website. At least once during the intervening years between these invitations, the covered employer shall remind its employees that they may voluntarily update their disability status.

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

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

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

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

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

§ 9-a. Participation by individuals with disabilities with respect to legislative 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) "joint legislative employer" shall mean any legislative entity with fifty or more employees including but not limited to legislative commissions, committees, task forces (irrespective of intended or actual duration), joint legislative commissions, councils or similar bodies whose membership is comprised of both senators and assembly members, or which consist of commissioners, or the majority of whose membership is appointed by one or more of the following: the temporary president of the senate, the speaker of the assembly, the minority leader of the

senate and/or the minority leader of the assembly, and officers and employees of the legislative library, legislative health service, legislative messenger service;

(c) "legislative employee" shall mean:

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

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

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

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

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

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

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

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

11. The legislature may not compel or coerce an individual to self-identify as an individual with a disability.

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

13. Nothing in this section shall relieve the legislature of its obligation to take affirmative action with respect to those applicants or employees of whose disability the legislature has knowledge.

14. One year from the effective date of this section, the legislature shall report to the department of labor on the representation of individuals with disabilities within its workforce and the results of 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 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 chief administrator 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 chief administrator's determination that the unified court system has not attained the employment goal established in subdivision two of this section does not constitute either a finding or admission of discrimination in violation of this section.

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

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

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

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

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

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

10. The unified court system shall invite each of its employees to voluntarily inform the unified court system whether the employee believes that he or she is an individual with a disability as defined in subdivision one of this section. This invitation shall be extended the first year the unified court system becomes subject to the requirements of this section and at five year intervals, thereafter, using the language and manner prescribed by the department of labor, in consulta-

tion with the division of human rights, and published on the department of labor's website. At least once during the intervening years between these invitations, the unified court system shall remind its employees that they may voluntarily update their disability status.

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

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

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

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

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