STATE OF NEW YORK

5784

2021-2022 Regular Sessions

IN ASSEMBLY

February 25, 2021

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

AN ACT to amend the executive law, in relation to certain discriminatory practices; and to amend the education law, in relation to the qualification of professionals in education

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

Section 1. Section 296 of the executive law is amended by adding two new subdivisions 23 and 24 to read as follows:

23. It shall be an unlawful discriminatory practice for an employer or licensing agency to bar any member of a protected class from employment opportunity by violating an established law or policy that would have provided such member of the protected class with equal employment opportunity.

24. The only legitimate business or occupational necessity exemption for excluding a protected class from equal employment opportunity shall be a real occupational qualification.

§ 2. Section 292 of the executive law is amended by adding a new subdivision 31 to read as follows:

31. The term "real occupational qualification", when used in this article, means the possession of a governmentally or privately issued certification, license, diploma, or degree, or a scored examination or assessment of knowledge or skills necessary for the vacant position of employment.

§ 3. The education law is amended by adding a new section 3009-a to read as follows:

§ 3009-a. Hiring outstanding professionals in education. 1. No person shall be appointed to a certificated position in a public school unless the position was publicly advertised for a minimum of fourteen consecutive days within the period of ninety days prior to the date of appointment. The fourteen consecutive days may only be reduced to seven

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

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consecutive days to appoint a classroom teacher within the fourteen days prior to the first day of student attendance in August or September.

2. No person shall be appointed to a certificated position in a public school without having applied for the certificated position in response to a public advertisement of the certificated position on or before the published deadline.

3. No person shall be appointed to a certificated position prior to a school-conducted examination or scored assessment of fitness of at least two different persons for the specific certificated position. Such examinations or scored assessments of fitness may be, but are not limited to, one-to-one interviews, panel interviews, content area examinations, writing samples, demonstration lessons, and sample lesson plans with records of such examinations or scored assessments physically filed for a minimum of seven years and electronically filed permanently.

4. No person shall be appointed to a certificated position without possessing the requisite certificate for the certificated position according to commissioner regulations.

5. No person shall be appointed to a certificated position in a public school because of affinity for or animus against a race, creed, color, national origin, sex, marital status, sexual orientation, gender identity or expression, or disability, as such term is defined in section two hundred ninety-two of the executive law.

6. The notice of employment opportunity for a certificated position located in subdivision one of this section shall be deemed a civil right for persons who hold the requisite certification, according to commissioner regulations, for the certificated position.

7. Persons appointed to certificated positions outside of the requirements set forth in this section shall be unqualified for the appointed certificated position for all purposes of this chapter.

§ 4. Section 3009 of the education law is amended by adding a new subdivision 3 to read as follows:

3. As used in this section, "teacher" refers to any person employed in a position requiring a certificate from the office of teaching.

§ 5. The education law is amended by adding a new section 3039 to read as follows:

§ 3039. Discrimination based on affinity for or animus against a protected class is prohibited. Notwithstanding any provision of law to the contrary, no board of education in any city, union free, common or central school district in this state shall hereafter prohibit, prevent, disqualify or discriminate against any person who is physically and mentally qualified from competing, participating, or registering for an examination for or from qualifying for, a position licensed or certificated by the department, or be excluded from and denied equal employment opportunity, or penalized in a final rating by reason of his or her membership in a protected class or retaliation after he or she formally alleged discrimination. Any such rule, requirement, resolution, regulation, penalization, exclusion, denial, discrimination or retaliation of such board or its employees shall be void. Nothing contained in this section shall prevent such board from adopting reasonable requirements for positions, except where such requirements for such positions are already limited and prescribed by law.

§ 6. This act shall take effect immediately.