

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:

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

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

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

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

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

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

20 § 3009-a. Hiring outstanding professionals in education. 1. No person
21 shall be appointed to a certificated position in a public school unless
22 the position was publicly advertised for a minimum of fourteen consec-
23 utive days within the period of ninety days prior to the date of
24 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.

LBD09386-01-1

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

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

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

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

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

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

27 7. Persons appointed to certificated positions outside of the require-
28 ments set forth in this section shall be unqualified for the appointed
29 certificated position for all purposes of this chapter.

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

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

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

36 § 3039. Discrimination based on affinity for or animus against a
37 protected class is prohibited. Notwithstanding any provision of law to
38 the contrary, no board of education in any city, union free, common or
39 central school district in this state shall hereafter prohibit, prevent,
40 disqualify or discriminate against any person who is physically and
41 mentally qualified from competing, participating, or registering for an
42 examination for or from qualifying for, a position licensed or certif-
43 icated by the department, or be excluded from and denied equal employ-
44 ment opportunity, or penalized in a final rating by reason of his or her
45 membership in a protected class or retaliation after he or she formally
46 alleged discrimination. Any such rule, requirement, resolution, regu-
47 lation, penalization, exclusion, denial, discrimination or retaliation
48 of such board or its employees shall be void. Nothing contained in this
49 section shall prevent such board from adopting reasonable requirements
50 for positions, except where such requirements for such positions are
51 already limited and prescribed by law.

52 § 6. This act shall take effect immediately.