

# STATE OF NEW YORK

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5063

2021-2022 Regular Sessions

## IN SENATE

February 23, 2021

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Introduced by Sen. JACKSON -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

AN ACT to amend the executive law, in relation to prohibiting employers from discriminating against individuals based on such individual's status as a caregiver

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

1 Section 1. Section 292 of the executive law is amended by adding a new  
2 subdivision 39 to read as follows:

3 39. The term "caregiver" shall include the family member or other  
4 natural person who normally provides the daily care or supervision of a  
5 care recipient, or any family member or other natural person who  
6 contributes to and is involved in the caretaking responsibilities for  
7 such care recipient. Such caregiver may, but need not, reside in the  
8 same household as the care recipient. "Care recipient" shall mean any  
9 person who is unable to attend to his or her daily needs without the  
10 assistance or regular supervision of a caregiver due to mental or phys-  
11 ical impairment. Such definition shall include persons under eighteen  
12 years of age who suffer from mental or physical impairment. Such defi-  
13 nition shall not include persons performing caretaking services in the  
14 capacity of employment as a domestic worker as defined by subdivision  
15 sixteen of section two of the labor law.

16 § 2. Paragraph (a) of subdivision 1 of section 296 of the executive  
17 law, as separately amended by chapters 8 and 176 of the laws of 2019, is  
18 amended to read as follows:

19 (a) For an employer or licensing agency, because of an individual's  
20 age, race, creed, color, national origin, sexual orientation, gender  
21 identity or expression, military status, sex, disability, predisposing  
22 genetic characteristics, familial status, marital status, [~~ex~~] status as  
23 a victim of domestic violence, or status as a caregiver, to refuse to

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

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1 hire or employ or to bar or to discharge from employment such individual  
2 or to discriminate against such individual in compensation or in terms,  
3 conditions or privileges of employment.

4 § 3. Section 296 of the executive law is amended by adding a new  
5 subdivision 23 to read as follows:

6 23. (a) It shall be an unlawful discriminatory practice for an employ-  
7 er or licensing agency, because of any individual's status as a caregiv-  
8 er, to refuse to hire or employ or license or to bar or to discharge  
9 from employment such individual or to discriminate against such individ-  
10 ual in compensation or in terms, conditions or privileges of employment.

11 (b) It shall be an unlawful discriminatory practice for an employer or  
12 employment agency to print or circulate or cause to be printed or circu-  
13 lated any statement, advertisement or publication, or to use any form of  
14 application for employment or to make any inquiry in connection with  
15 prospective employment which expresses, directly or indirectly, any  
16 limitation, specification or discrimination as to status as a caregiver,  
17 or any intent to make any such limitation, specification or discrimi-  
18 nation; provided, however, that no provision of this subdivision shall  
19 be construed to prohibit the employer from making any inquiry or obtain-  
20 ing information for the purpose of providing assistance to, or a reason-  
21 able accommodation in accordance with the provisions of this subdivision  
22 to, a caregiver.

23 (c)(1) It shall be an unlawful discriminatory practice for an employer  
24 to refuse to provide a reasonable accommodation to an employee who is  
25 known by the employer to be a caregiver, limited to those accommodations  
26 set forth in subparagraph two of this paragraph, when such employee must  
27 be absent from work for a reasonable time, unless such absence would  
28 cause an undue hardship to the employer as set forth in subparagraph  
29 three of this paragraph, provided, however that the employer may require  
30 an employee to charge any time off pursuant to this section against any  
31 leave with pay ordinarily granted, where available, unless otherwise  
32 provided for in a collective bargaining agreement or existing employee  
33 handbook or policy, and any such absence that cannot be charged may be  
34 treated as leave without pay. An employee who must be absent from work  
35 in accordance with subparagraph two of this paragraph shall be entitled  
36 to the continuation of any health insurance coverage provided by the  
37 employer, to which the employee is otherwise entitled during any such  
38 absence.

39 (2) An employer is required to provide a reasonable accommodation to  
40 an employee who is a caregiver who must be absent from work for a  
41 reasonable time, in accordance with the provisions of subparagraph one  
42 of this paragraph, in order to administer or supervise the diagnosis,  
43 care, or treatment of a mental or physical illness, injury, or health  
44 condition of the care recipient.

45 (3) An employer is required to provide a reasonable accommodation for  
46 an employee's absence in accordance with the provisions of subparagraphs  
47 one and two of this paragraph unless the employer can demonstrate that  
48 the employee's absence would constitute an undue hardship to the employ-  
49 er. A determination of whether such an absence will constitute an undue  
50 hardship shall include consideration of factors such as:

51 (i) the overall size of the business, program or enterprise with  
52 respect to the number of employees, number and type of facilities, and  
53 size of budget; and

54 (ii) the type of operation in which the business, program or enter-  
55 prise is engaged, including the composition and structure of the work-  
56 force.

1     (4) An employee who must be absent from work in accordance with the  
2 provisions of subparagraph one of this paragraph shall provide the  
3 employer with reasonable advance notice of the employee's absence,  
4 unless such advance notice is not feasible.

5     (5) An employee who must be absent from work in accordance with the  
6 provisions of subparagraph one of this paragraph and who cannot feasibly  
7 give reasonable advance notice of the absence in accordance with subpar-  
8 agraph four of this paragraph, may be required to provide documentation  
9 from a medical professional or health care provider upon request from  
10 the employer within a reasonable time after such absence.

11     § 4. This act shall take effect on the ninetieth day after it shall  
12 have become a law.