STATE OF NEW YORK

5063

2021-2022 Regular Sessions

IN SENATE

February 23, 2021

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:

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

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

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

(a) For an employer or licensing agency, because of an individual's age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, [~~or~~] status as 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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hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

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

23. (a) It shall be an unlawful discriminatory practice for an employer or licensing agency, because of any individual's status as a caregiver, to refuse to hire or employ or license or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

(b) It shall be an unlawful discriminatory practice for an employer or employment agency to print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment which expresses, directly or indirectly, any limitation, specification or discrimination as to status as a caregiver, or any intent to make any such limitation, specification or discrimination; provided, however, that no provision of this subdivision shall be construed to prohibit the employer from making any inquiry or obtaining information for the purpose of providing assistance to, or a reasonable accommodation in accordance with the provisions of this subdivision to, a caregiver.

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

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

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

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

(ii) the type of operation in which the business, program or enterprise is engaged, including the composition and structure of the workforce.

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

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

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