

STATE OF NEW YORK

1955

2021-2022 Regular Sessions

IN ASSEMBLY

January 13, 2021

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

AN ACT to amend the executive law, in relation to requiring certain employers to provide workforce demographics and equity measurements to the division of human rights annually

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

1 Section 1. The executive law is amended by adding a new section 296-e
2 to read as follows:

3 § 296-e. Workforce demographics and equity measurements. 1. Any
4 employer with greater than one hundred persons in employ per calendar
5 year or who bids, applies, is awarded or receives any combination of
6 state or municipal contracts or grant funds directly or indirectly in
7 excess of fifty thousand dollars per calendar year shall file an annual
8 report documenting employee demographics and equity measurements with
9 the division. Such demographic data shall include each employee's race,
10 ethnicity, age, and sex or gender identity or expression. The equity
11 measurements shall include each employee's job category, date of hire,
12 salary or wages, training received, raises, promotions, disciplinary
13 actions, terminations and benefits, including but not limited to unpaid
14 benefits or privileges such as flexible scheduling, the ability to work
15 from home, or the ability to bring children to work.

16 2. The division shall develop electronic reporting forms to be filed
17 for each employee's data and for the employer's general data.

18 3. The division shall aggregate the electronic forms into a report
19 that lists equity measurements for each employer including but not
20 limited to job category, mean and median earnings, benefits, hiring
21 selection, training, raises, promotions, disciplinary actions, and
22 terminations listed in the form of percentages from highest to lowest by
23 the demographic factors listed above.

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

LBD06210-01-1

1 4. The division shall provide the aggregated report to each employer
2 along with a simplified report in plain language. The employer shall
3 provide such simplified report in plain language to each current employ-
4 ee and any former employee employed during the reporting year. The
5 report shall be accompanied by a summary in plain language of employees'
6 rights under Title VII Civil Rights Act Title of 1964, this article, and
7 any applicable local statutes for which the employer falls under juris-
8 isdiction including instructions and deadlines for filing a complaint to
9 the equal employment opportunity commission, the division, and any other
10 fair employment protection agency or similarly tasked authority with
11 jurisdiction over the employer. The employer shall make the aggregated
12 report available to the public upon request.

13 5. The division shall aggregate all data on a statewide level and
14 provide an annual report to the governor and the legislature that shall
15 be made public on the division's website.

16 6. Failure to comply with the reporting provisions of this section or
17 providing false information may be offered as proof of employment
18 discrimination in a complaint and offered as proof in probation, suspen-
19 sion, and debarment rulings pursuant to subdivision eighteen of section
20 two hundred ninety-five of this article.

21 7. Failure to comply with the reporting provisions of this section or
22 providing false information shall require an employer to file an amended
23 disaggregated report with the division and provide an amended aggregated
24 report to all current and former employees employed during the reporting
25 year. The statutory period for filing personal claims with the division
26 and any other New York fair employment protection agency shall begin to
27 run on the day after the amended aggregated report has been provided to
28 all current and former employees who were employed during the reporting
29 year.

30 8. Any board member or officer of the employer who knowingly provides
31 false information, including by encouraging or instructing subordinates
32 to do so, or who knowingly manipulates their corporate structure for the
33 purpose of producing favorable aggregate report outcomes shall be
34 subject to the penalties under section two hundred ninety-nine of this
35 article.

36 § 2. Section 295 of the executive law is amended by adding two new
37 subdivisions 17 and 18 to read as follows:

38 17. To require of any employer reports pursuant to section two hundred
39 ninety-six-e of this article and to carry out the duties set forth in
40 such section.

41 18. To set forth rules and regulations that include standards for
42 probation, suspension and debarment of employers from all state and
43 municipal contracts and grants as direct or indirect awardees and recip-
44 ients on the basis of excessive discrimination claims, selection proce-
45 dures found to have adverse impact, failure to file workforce demograph-
46 ics and equity measurements reports as required in section two hundred
47 ninety-six-e of this article, apparent and probable discriminatory
48 employment and promotion practices discovered through review of work-
49 force demographics and equity measurements reports required in section
50 two hundred ninety-six-e of this article, or by other investigative
51 methods. Employer probationary periods included in the standards
52 promulgated pursuant to this subdivision shall last no less than one
53 year, during which time the employer may demonstrate to the division
54 that he or she has complied with rules and regulations regarding employ-
55 ee selection procedure and employment and promotion practices promulgat-
56 ed pursuant to this article. If after this period the division finds

1 that the employer still exhibits discriminatory practices in employee
2 selection procedure or employment and promotion practices, suspension
3 periods of six to eighteen months or debarment periods of eighteen
4 months to three years from state and municipal contracts and grants as
5 direct or indirect recipients may be issued. Consecutive probations,
6 suspensions, and debarments may be issued based on continued failure to
7 comply.

8 § 3. Subdivision 5 of section 297 of the executive law, as amended by
9 chapter 160 of the laws of 2019, is amended to read as follows:

10 5. Any complaint filed pursuant to this section must be so filed with-
11 in one year after the alleged unlawful discriminatory practice or one
12 year after an employer makes reasonable attempts to provide a workforce
13 demographics and equity measurements report pursuant to section two
14 hundred ninety-six-e of this article, whichever occurs later. In cases
15 of sexual harassment in employment, any complaint filed pursuant to this
16 section must be so filed within three years after the alleged unlawful
17 discriminatory practices.

18 § 4. Subdivision 5 of section 292 of the executive law, as amended by
19 chapter 161 of the laws of 2019, is amended to read as follows:

20 5. The term "employer" shall include all employers within the state.
21 As set forth in section two hundred ninety-six-e of this article, parent
22 companies and subsidiaries shall be combined to meet criteria for
23 required reporting.

24 § 5. This act shall take effect one year after it shall have become a
25 law.