

STATE OF NEW YORK

2617

2023-2024 Regular Sessions

IN ASSEMBLY

January 26, 2023

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

AN ACT to amend the executive law, in relation to defining retaliatory acts in the workplace and establishing an affirmative defense

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

1 Section 1. Subdivision 7 of section 296 of the executive law, as
2 amended by chapter 140 of the laws of 2022, is amended to read as
3 follows:

4 7. It shall be an unlawful discriminatory practice for any person
5 engaged in any activity to which this section applies to retaliate or
6 discriminate against any person because he or she has opposed any prac-
7 tices forbidden under this article or because he or she has filed a
8 complaint, testified or assisted in any proceeding under this article.
9 Retaliation may include, but is not limited to~~[7]~~: (a) disclosing an
10 employee's personnel files because he or she has opposed any practices
11 forbidden under this article or because he or she has filed a complaint,
12 testified or assisted in any proceeding under this article, ~~[except~~
13 where] provided that an employer may raise an affirmative defense that
14 such disclosure is made in the course of commencing or responding to a
15 complaint in any proceeding under this article or any other civil or
16 criminal action or other judicial or administrative proceeding as
17 permitted by applicable law; or (b) treating an employee less favorably
18 than any other employee, provided that an employer may raise an affirma-
19 tive defense that: (i) the employer planned to demote, discharge, or
20 penalize the employee prior to learning that the employee had opposed a
21 practice forbidden under this article or the employee had filed a
22 complaint, testified or assisted in a proceeding under this article, or
23 (ii) the employer proves that its treatment of the aggrieved employee
24 occurred without any consideration to the employee's opposition to a
25 practice forbidden under this article or the employee's filing of a
26 complaint, testifying or assisting in a proceeding under this article.

27 § 2. This act shall take effect immediately.

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

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