

# STATE OF NEW YORK

3188--A

2023-2024 Regular Sessions

## IN ASSEMBLY

February 2, 2023

Introduced by M. of A. O'DONNELL, REYES, HEVESI -- read once and referred to the Committee on Governmental Operations -- recommitted to the Committee on Governmental Operations in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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. Subdivision 21-e of section 292 of the executive law, as  
2 amended by chapter 369 of the laws of 2015, is amended to read as  
3 follows:

4 21-e. The term "reasonable accommodation" means actions taken which  
5 permit an employee, prospective employee or member with a disability, or  
6 a pregnancy-related condition, or who is a caregiver, to perform in a  
7 reasonable manner the activities involved in the job or occupation  
8 sought or held and include, but are not limited to, provision of an  
9 accessible worksite, acquisition or modification of equipment, support  
10 services for persons with impaired hearing or vision, modifications to  
11 existing facilities to make them more accessible, modification or relo-  
12 cation of a workstation, modifications to workplace policies regarding  
13 food and drink, modifications to a uniform or dress code, temporary  
14 transfer to a less physically demanding or hazardous position, assist-  
15 ance with lifting or other manual labor, additional or more flexible  
16 break time, job restructuring [~~and~~], modified or part-time work sched-  
17 ules, alternative working arrangements such as part-year employment or  
18 job sharing, flexible scheduling or variable hours, alternative work  
19 locations or reassignment to another location, remote work or telework,  
20 consistent or predictable scheduling, time off work such as to attend  
21 meetings or appointments, temporary or permanent transfer to another

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

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1 position, or leave of absence; provided, however, that such actions do  
2 not impose an undue hardship on the business, program or enterprise of  
3 the entity from which action is requested.

4 § 2. Section 292 of the executive law is amended by adding 4 new  
5 subdivisions 42, 43, 44 and 45 to read as follows:

6 42. The term "caregiver" means a person who provides the daily care or  
7 supervision of a minor child or a care recipient, or any person who  
8 contributes to and is involved in the caretaking responsibilities of  
9 such minor child or care recipient. Such minor child or care recipient  
10 may, but need not, reside in the household of the caregiver. The defi-  
11 inition of "caregiver" shall not include persons performing caretaking  
12 services in the capacity of employment as a domestic worker as defined  
13 by subdivision sixteen of section two of the labor law.

14 43. The term "minor child" means a child under the age of eighteen.

15 44. The term "care recipient" means a covered family member who has a  
16 disability, including a temporary disability, or is aged sixty-five or  
17 older, and who relies on the caregiver for medical care or to meet the  
18 needs of daily living.

19 45. The term "covered family member" means:

20 (a) a child, meaning the biological, adoptive, or foster child, legal  
21 ward, a child to whom the caregiver stands in loco parentis, or child to  
22 whom the caregiver stood in loco parentis when the care recipient was a  
23 minor child;

24 (b) a parent, meaning the biological, foster, step- or adoptive  
25 parent, or a legal guardian of the caregiver, or a person who stood in  
26 loco parentis when the caregiver was a minor child;

27 (c) a spouse or domestic partner;

28 (d) a child of the caregiver's spouse or domestic partner;

29 (e) a parent of the caregiver's spouse or domestic partner;

30 (f) a grandchild, meaning a child of the caregiver's child;

31 (g) a grandparent, meaning a parent of the caregiver's parent;

32 (h) a sibling, including half-siblings, step-siblings, foster-si-  
33 blings, and siblings related through adoption; and

34 (i) any other individual related by blood to the caregiver or whose  
35 close association with the caregiver is the equivalent of a family  
36 relationship.

37 § 3. Subdivision 1 of section 296 of the executive law, as separately  
38 amended by chapters 202 and 748 of the laws of 2022, is amended to read  
39 as follows:

40 1. It shall be an unlawful discriminatory practice:

41 (a) For an employer or licensing agency, because of an individual's  
42 age, race, creed, color, national origin, citizenship or immigration  
43 status, sexual orientation, gender identity or expression, military  
44 status, sex, disability, predisposing genetic characteristics, familial  
45 status, marital status, ~~or~~ status as a victim of domestic violence, or  
46 status as a caregiver, to refuse to hire or employ or to bar or to  
47 discharge from employment such individual or to discriminate against  
48 such individual in compensation or in terms, conditions or privileges of  
49 employment.

50 (b) For an employment agency to discriminate against any individual  
51 because of age, race, creed, color, national origin, citizenship or  
52 immigration status, sexual orientation, gender identity or expression,  
53 military status, sex, disability, predisposing genetic characteristics,  
54 familial status, marital status, status as a caregiver, or status as a  
55 victim of domestic violence, in receiving, classifying, disposing or

1 otherwise acting upon applications for its services or in referring an  
2 applicant or applicants to an employer or employers.

3 (c) For a labor organization, because of the age, race, creed, color,  
4 national origin, citizenship or immigration status, sexual orientation,  
5 gender identity or expression, military status, sex, disability, predis-  
6 posing genetic characteristics, familial status, marital status, status  
7 as a caregiver, or status as a victim of domestic violence, of any indi-  
8 vidual, to exclude or to expel from its membership such individual or to  
9 discriminate in any way against any of its members or against any  
10 employer or any individual employed by an employer.

11 (d) For any employer or employment agency to print or circulate or  
12 cause to be printed or circulated any statement, advertisement or publi-  
13 cation, or to use any form of application for employment or to make any  
14 inquiry in connection with prospective employment, which expresses  
15 directly or indirectly, any limitation, specification or discrimination  
16 as to age, race, creed, color, national origin, citizenship or immi-  
17 gration status, sexual orientation, gender identity or expression, mili-  
18 tary status, sex, disability, predisposing genetic characteristics,  
19 familial status, marital status, status as a caregiver, or status as a  
20 victim of domestic violence, or any intent to make any such limitation,  
21 specification or discrimination, unless based upon a bona fide occupa-  
22 tional qualification; provided, however, that neither this paragraph nor  
23 any provision of this chapter or other law shall be construed to prohib-  
24 it the department of civil service or the department of personnel of any  
25 city containing more than one county from requesting information from  
26 applicants for civil service examinations concerning any of the afore-  
27 mentioned characteristics, other than sexual orientation, for the  
28 purpose of conducting studies to identify and resolve possible problems  
29 in recruitment and testing of members of minority groups to ensure the  
30 fairest possible and equal opportunities for employment in the civil  
31 service for all persons, regardless of age, race, creed, color, national  
32 origin, citizenship or immigration status, sexual orientation or gender  
33 identity or expression, military status, sex, disability, predisposing  
34 genetic characteristics, familial status, ~~[or]~~ marital status, or status  
35 as a caregiver.

36 (e) For any employer, labor organization or employment agency to  
37 discharge, expel or otherwise discriminate against any person because  
38 ~~[he or she]~~ such person has opposed any practices forbidden under this  
39 article or because ~~[he or she]~~ such person has filed a complaint, testi-  
40 fied or assisted in any proceeding under this article.

41 (f) Nothing in this subdivision shall affect any restrictions upon the  
42 activities of persons licensed by the state liquor authority with  
43 respect to persons under twenty-one years of age.

44 (g) For an employer to compel an employee who is pregnant to take a  
45 leave of absence, unless the employee is prevented by such pregnancy  
46 from performing the activities involved in the job or occupation in a  
47 reasonable manner.

48 (h) For an employer, licensing agency, employment agency or labor  
49 organization to subject any individual to harassment because of an indi-  
50 vidual's age, race, creed, color, national origin, citizenship or immi-  
51 gration status, sexual orientation, gender identity or expression, mili-  
52 tary status, sex, disability, predisposing genetic characteristics,  
53 familial status, marital status, status as a caregiver, status as a  
54 victim of domestic violence, or because the individual has opposed any  
55 practices forbidden under this article or because the individual has  
56 filed a complaint, testified or assisted in any proceeding under this

1 article, regardless of whether such harassment would be considered  
2 severe or pervasive under precedent applied to harassment claims. Such  
3 harassment is an unlawful discriminatory practice when it subjects an  
4 individual to inferior terms, conditions or privileges of employment  
5 because of the individual's membership in one or more of these protected  
6 categories. The fact that such individual did not make a complaint  
7 about the harassment to such employer, licensing agency, employment  
8 agency or labor organization shall not be determinative of whether such  
9 employer, licensing agency, employment agency or labor organization  
10 shall be liable. Nothing in this section shall imply that an employee  
11 must demonstrate the existence of an individual to whom the employee's  
12 treatment must be compared. It shall be an affirmative defense to  
13 liability under this subdivision that the harassing conduct does not  
14 rise above the level of what a reasonable victim of discrimination with  
15 the same protected characteristic or characteristics would consider  
16 petty slights or trivial inconveniences.

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

19 23. (a) It shall be an unlawful discriminatory practice for an employ-  
20 er, licensing agency, employment agency, or labor organization to refuse  
21 to provide a reasonable accommodation to an individual who is known to  
22 be a caregiver to enable them to meet the needs of their minor child or  
23 care recipient related to the minor child's or care recipient's health,  
24 safety, education, or other needs of daily living.

25 (b) Nothing contained in this subdivision shall be construed to  
26 require provision of accommodations which can be demonstrated to impose  
27 an undue hardship on the operation of an employer's, licensing agency's,  
28 employment agency's, or labor organization's business, program or enter-  
29 prise. In making such a determination with regard to undue hardship the  
30 facts to be considered include:

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

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

37 (iii) the nature and cost of the accommodation needed.

38 § 5. Subdivisions 2 and 3 of section 296-c of the executive law,  
39 subdivision 2 as separately amended by chapters 202 and 748 of the laws  
40 of 2022, paragraphs a, b and c of subdivision 2 and paragraph b of  
41 subdivision 3 as amended by chapter 305 of the laws of 2023, and subdi-  
42 vision 3 as added by chapter 97 of the laws of 2014, are amended to read  
43 as follows:

44 2. It shall be an unlawful discriminatory practice for an employer to:

45 a. refuse to hire or employ or to bar or to discharge from internship  
46 an intern or to discriminate against such intern in terms, conditions or  
47 privileges of employment as an intern because of the intern's age, race,  
48 creed, color, national origin, citizenship or immigration status, sexual  
49 orientation, gender identity or expression, military status, sex, disa-  
50 bility, predisposing genetic characteristics, marital status, ~~[or]~~  
51 status as a victim of domestic violence, or status as a caregiver;

52 b. discriminate against an intern in receiving, classifying, disposing  
53 or otherwise acting upon applications for internships because of the  
54 intern's age, race, creed, color, national origin, citizenship or immi-  
55 gration status, sexual orientation, gender identity or expression, mili-  
56 tary status, sex, disability, predisposing genetic characteristics,

1 marital status, [~~or~~] status as a victim of domestic violence, or status  
2 as a caregiver;

3 c. print or circulate or cause to be printed or circulated any state-  
4 ment, advertisement or publication, or to use any form of application  
5 for employment as an intern or to make any inquiry in connection with  
6 prospective employment, which expresses directly or indirectly, any  
7 limitation, specification or discrimination as to age, race, creed,  
8 color, national origin, citizenship or immigration status, sexual orien-  
9 tation, gender identity or expression, military status, sex, disability,  
10 predisposing genetic characteristics, marital status [~~or~~], status as a  
11 victim of domestic violence, or status as a caregiver, or any intent to  
12 make any such limitation, specification or discrimination, unless based  
13 upon a bona fide occupational qualification; provided, however, that  
14 neither this paragraph nor any provision of this chapter or other law  
15 shall be construed to prohibit the department of civil service or the  
16 department of personnel of any city containing more than one county from  
17 requesting information from applicants for civil service internships or  
18 examinations concerning any of the aforementioned characteristics, other  
19 than sexual orientation, for the purpose of conducting studies to iden-  
20 tify and resolve possible problems in recruitment and testing of members  
21 of minority groups to ensure the fairest possible and equal opportu-  
22 nities for employment in the civil service for all persons, regardless  
23 of age, race, creed, color, national origin, citizenship or immigration  
24 status, sexual orientation, military status, sex, disability, predispos-  
25 ing genetic characteristics, marital status [~~or~~], status as a victim of  
26 domestic violence, or status as a caregiver;

27 d. to discharge, expel or otherwise discriminate against any person  
28 because [~~he or she~~] such person has opposed any practices forbidden  
29 under this article or because [~~he or she~~] such person has filed a  
30 complaint, testified or assisted in any proceeding under this article;  
31 or

32 e. to compel an intern who is pregnant to take a leave of absence,  
33 unless the intern is prevented by such pregnancy from performing the  
34 activities involved in the job or occupation in a reasonable manner.

35 3. It shall be an unlawful discriminatory practice for an employer to:

36 a. engage in unwelcome sexual advances, requests for sexual favors, or  
37 other verbal or physical conduct of a sexual nature to an intern when:

38 (1) submission to such conduct is made either explicitly or implicitly  
39 a term or condition of the intern's employment;

40 (2) submission to or rejection of such conduct by the intern is used  
41 as the basis for employment decisions affecting such intern; or

42 (3) such conduct has the purpose or effect of unreasonably interfering  
43 with the intern's work performance by creating an intimidating, hostile,  
44 or offensive working environment; or

45 b. subject an intern to unwelcome harassment based on age, sex, race,  
46 creed, color, sexual orientation, gender identity or expression, mili-  
47 tary status, disability, predisposing genetic characteristics, marital  
48 status, status as a victim of domestic violence, national origin, [~~or~~]  
49 citizenship or immigration status, or status as a caregiver, or where  
50 such harassment has the purpose or effect of unreasonably interfering  
51 with the intern's work performance by creating an intimidating, hostile,  
52 or offensive working environment.

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