STATE OF NEW YORK

8971

IN ASSEMBLY

January 31, 2024

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

AN ACT to amend the executive law and the labor law, in relation to prohibiting discrimination against any individual with an actual or perceived status as a victim of domestic violence, a sex offense, or stalking

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

Section 1. Subdivision 22 of section 296 of the executive law, as added by chapter 176 of the laws of 2019, is amended to read as follows:

22. (a) It shall be an unlawful discriminatory practice for an employer or licensing agency, because of any individual's **actual or perceived** status as a victim of domestic violence, **a sex offense, or stalking** 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 **an actual or perceived** status as a victim of domestic violence**, a sex offense, or stalking**, 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 victim of domestic violence**, a sex offense, or stalking**.

(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 victim of domestic violence, [~~limited to those accommodations set forth in subparagraph two of this paragraph, when such employee must be absent from work for a reasonable time,~~] **a**

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

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sex offense, or stalking, where such accommodations would enable such employee to satisfy the essential requisites of a job unless such [~~absence~~] requested accommodations 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 victim of domestic violence [~~who must be absent from work for a reasonable time~~], a sex offense, or stalking in accordance with the provisions of subparagraph one of this paragraph, such reasonable accommodation may include, but shall not be limited to, absence from work for a reasonable time for reasons including, but not limited to, the following:

(i) Seeking medical attention for injuries caused by domestic violence including for a child who is a victim of domestic violence, a sex offense, or stalking, provided that the employee is not the perpetrator [~~of the domestic violence~~] against the child; or

(ii) Obtaining services from a domestic violence shelter, program, or rape crisis center as a result of domestic violence; or

(iii) Obtaining psychological counseling related to an incident or incidents of domestic violence, a sex offense, or stalking, including for a child who is a victim [~~of domestic violence~~], provided that the employee is not the perpetrator [~~of the domestic violence~~] against the child; or

(iv) Participating in safety planning and taking other actions to increase safety from future incidents of domestic violence, a sex offense, or stalking, including temporary or permanent relocation; or

(v) Obtaining legal services, assisting in the prosecution of the offense, or appearing in court in relation to the incident or incidents of domestic violence, a sex offense, or stalking.

(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) It shall be an unlawful discriminatory practice for an employer to refuse to or otherwise fail to engage in cooperative dialogue within a reasonable time with an employee who has requested a reasonable accommodation under this section.

(5) 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)~~] (6) 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 must, within a reasonable time after the absence, provide a certification to the employer when requested by the employer. **Any person required by subparagraph one of this paragraph to make reasonable accommodation may require a person requesting reasonable accommodation pursuant to this paragraph to provide certification that the person is a victim of domestic violence, a sex offense, or stalking.** Such certification shall be in the form of:

(i) A police [~~report~~] **or court record** indicating that the employee or his or her child was a victim of domestic violence**, a sex offense, or stalking**;

(ii) [~~A court order protecting or separating the employee or his or her child from the perpetrator of an act of domestic violence;~~

~~(iii)~~] Other **corroborating evidence, including** evidence from the court or prosecuting attorney [~~that the employee appeared in court~~]; [~~or~~]

[~~(iv)~~] **(iii)** Documentation from a medical professional, [~~domestic violence~~] **victim services provider or** advocate, health care provider, **cultural or religious provider,** or counselor that the employee or his or her child was [~~undergoing counseling or treatment for physical or mental injuries or abuse resulting in victimization from~~] **obtaining assistance for** an act of domestic violence**, a sex offense, or stalking; or**

(iv) Documentation from an attorney or any other professional service provider from whom the individual seeking a reasonable accommodation or child has sought assistance in addressing domestic violence, a sex offense, or stalking.

[~~(6)~~] **(7)** Where an employee has a physical or mental disability resulting from an incident or series of incidents of domestic violence**, a sex offense, or stalking**, such employee shall be treated in the same manner as an employee with any other disability, pursuant to the provisions of this section which provide that discrimination and refusal to provide reasonable accommodation of disability are unlawful discriminatory practices.

(d) To the extent allowed by law, employers shall maintain the confidentiality of any information **and documentation** regarding an employee's status as a victim of domestic violence**, a sex offense, or stalking**.

§ 2. The section heading, paragraph b of subdivision 1 and paragraph c of subdivision 2 of section 201-g of the labor law, the section heading and paragraph c of subdivision 2 as added by section 1 of subpart E of part KK of chapter 57 of the laws of 2018 and paragraph b of subdivision 1 as amended by chapter 160 of the laws of 2019, are amended and two new subdivisions 5 and 6 are added to read as follows:

Prevention of sexual harassment **and responding to domestic violence, sex offenses, and stalking**.

b. Every employer shall adopt the model sexual harassment prevention policy promulgated pursuant to this subdivision or establish a sexual harassment prevention policy to prevent sexual harassment that equals or exceeds the minimum standards provided by such model sexual harassment prevention policy**, which, on and after January first, two thousand twenty-five, shall include guidance on workplace protractions for victims of domestic violence, sex offenses, and stalking**. Such [~~sexual harassment prevention~~] policy shall be provided to all employees in writing as required by subdivision two-a of this section. Such model [~~sexual~~

~~harassment prevention~~] policy shall be publicly available and posted on the websites of both the department and the division of human rights.

c. Every employer shall utilize the model sexual harassment prevention training program pursuant to this subdivision or establish a training program for employees to prevent sexual harassment that equals or exceeds the minimum standards provided by such model training. Such sexual harassment prevention training shall be provided to all employees on an annual basis. **On and after January first, two thousand twenty-five, any such training program shall include guidance on workplace protections for victims of domestic violence, sex offenses, and stalking.**

5. On and after January first, two thousand twenty-five, the department, in consultation with the division of human rights and the office for the prevention of domestic violence, shall ensure that the model sexual harassment prevention guidance document and sexual harassment prevention policy includes guidance on workplace protections for victims of domestic violence, sex offenses, and stalking, including language that: (i) prohibits discrimination by an employer or employment agency because of an employee or prospective employees status as a victim of domestic violence, a sex offense or stalking in accordance with subdivision twenty-two of section two hundred ninety-six of the executive law; and (ii) prohibits the refusal of an employer to provide a reasonable accommodation to an employee known to the employer to be a victim of domestic violence, a sex offense or stalking in accordance with subdivision twenty-two of section two hundred ninety-six of the executive law.

6. On and after January first, two thousand twenty-five, the annual model sexual harassment training program, mandated by subdivision two of this section, shall include: (i) an explanation of discrimination on the basis of one's status as a victim of domestic violence, a sex offense or stalking consistent with guidance issued by the department in consultation with the division of human rights and office for the prevention of domestic violence; (ii) examples of conduct that would constitute unlawful discrimination because of one's status as a victim of domestic violence, a sex offense or stalking; (iii) information concerning the state statutory provisions concerning discrimination because of one's status as a victim of domestic violence, a sex offense or stalking and remedies available to victims of such discrimination; and (iv) information concerning employees' rights of redress and all available forums for adjudicating complaints.

§ 3. This act shall take effect January 1, 2025. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.