STATE OF NEW YORK

5293

2023-2024 Regular Sessions

IN SENATE

March 1, 2023

Introduced by Sen. FERNANDEZ -- 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 employee or prospective employee testing for the presence of tetrahydrocannabinols or marihuana as a condition of employment

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

Section 1. Section 296 of the executive law is amended by adding a new subdivision 23 to read as follows:

23. (a) Except as otherwise provided by law, it shall be an unlawful discriminatory practice for an employer, labor organization, employment agency, or agent thereof to require an employee or a prospective employee to submit to testing for the presence of any tetrahydrocannabinols or marihuana in such employee's or prospective employee's system as a condition of employment.

(b) The provisions of this subdivision shall not apply to persons working or applying to work:

(i) as police officers or peace officers, as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law, respectively, or in a position with a law enforcement or investigative function at the department of investigation;

(ii) in any position requiring compliance with section two hundred twenty-h of the labor law;

(iii) in any position requiring a commercial driver's license;

(iv) in any position requiring the supervision or care of children, medical patients or vulnerable persons as defined in subdivision fifteen of section four hundred eighty-eight of the social services law; or

(v) in any position with the potential to significantly impact the health or safety of employees or members of the public.

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

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(c) The provisions of this subdivision shall not apply to drug testing required pursuant to:

(i) any regulation promulgated by the federal department of transportation that requires testing of an employee or a prospective employee in accordance with 49 CFR 40 or any rule promulgated by the department of transportation of this state adopting such regulation for purposes of enforcing the requirements of that regulation with respect to intrastate commerce;

(ii) any contract entered into between the federal government and an employer or any grant of financial assistance from the federal government to an employer that requires drug testing of employees or prospective employees as a condition of receiving the contract or grant;

(iii) any federal or state statute, regulation, or order that requires drug testing of employees or prospective employees for purposes of safety or security; or

(iv) any person whose employer or prospective employer is a party to a valid collective bargaining agreement that specifically addresses the drug testing of such person.

(d) The division shall promulgate rules for the implementation of this subdivision.

§ 2. This act shall take effect immediately.