

# STATE OF NEW YORK

5465

2023-2024 Regular Sessions

## IN SENATE

March 6, 2023

Introduced by Sens. JACKSON, FERNANDEZ, MAY -- 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 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:

Section 1. Section 292 of the executive law is amended by adding a new subdivision 42 to read as follows:

42. The term "caregiver" shall include the family member or other natural person who normally provides the daily care or supervision of a care recipient, or any family member or other natural person who contributes to and is involved in the caretaking responsibilities for such care recipient. Such caregiver may, but need not, reside in the same household as the care recipient. "Care recipient" shall mean any person who is unable to attend to his or her daily needs without the assistance or regular supervision of a caregiver due to mental or physical impairment. Such definition shall include persons under eighteen years of age who suffer from mental or physical impairment. Such definition shall not include persons performing caretaking services in the capacity of employment as a domestic worker as defined by subdivision sixteen of section two of the labor law.

§ 2. Paragraph (a) of subdivision 1 of section 296 of the executive law, as separately amended by chapters 202 and 748 of the laws of 2022, is amended to read as follows:

(a) For an employer or licensing agency, because of an individual's age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, ~~or~~ status as a victim of domestic violence, or

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

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1 status as a caregiver, to refuse to hire or employ or to bar or to  
2 discharge from employment such individual or to discriminate against  
3 such individual in compensation or in terms, conditions or privileges of  
4 employment.

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

7 23. (a) It shall be an unlawful discriminatory practice for an employ-  
8 er or licensing agency, because of any individual's status as a caregiv-  
9 er, to refuse to hire or employ or license or to bar or to discharge  
10 from employment such individual or to discriminate against such individ-  
11 ual in compensation or in terms, conditions or privileges of employment.

12 (b) It shall be an unlawful discriminatory practice for an employer or  
13 employment agency to print or circulate or cause to be printed or circu-  
14 lated any statement, advertisement or publication, or to use any form of  
15 application for employment or to make any inquiry in connection with  
16 prospective employment which expresses, directly or indirectly, any  
17 limitation, specification or discrimination as to status as a caregiver,  
18 or any intent to make any such limitation, specification or discrimi-  
19 nation; provided, however, that no provision of this subdivision shall  
20 be construed to prohibit the employer from making any inquiry or obtain-  
21 ing information for the purpose of providing assistance to, or a reason-  
22 able accommodation in accordance with the provisions of this subdivision  
23 to, a caregiver.

24 (c)(1) It shall be an unlawful discriminatory practice for an employer  
25 to refuse to provide a reasonable accommodation to an employee who is  
26 known by the employer to be a caregiver, limited to those accommodations  
27 set forth in subparagraph two of this paragraph, when such employee must  
28 be absent from work for a reasonable time, unless such absence would  
29 cause an undue hardship to the employer as set forth in subparagraph  
30 three of this paragraph, provided, however that the employer may require  
31 an employee to charge any time off pursuant to this section against any  
32 leave with pay ordinarily granted, where available, unless otherwise  
33 provided for in a collective bargaining agreement or existing employee  
34 handbook or policy, and any such absence that cannot be charged may be  
35 treated as leave without pay. An employee who must be absent from work  
36 in accordance with subparagraph two of this paragraph shall be entitled  
37 to the continuation of any health insurance coverage provided by the  
38 employer, to which the employee is otherwise entitled during any such  
39 absence.

40 (2) An employer is required to provide a reasonable accommodation to  
41 an employee who is a caregiver who must be absent from work for a  
42 reasonable time, in accordance with the provisions of subparagraph one  
43 of this paragraph, in order to administer or supervise the diagnosis,  
44 care, or treatment of a mental or physical illness, injury, or health  
45 condition of the care recipient.

46 (3) An employer is required to provide a reasonable accommodation for  
47 an employee's absence in accordance with the provisions of subparagraphs  
48 one and two of this paragraph unless the employer can demonstrate that  
49 the employee's absence would constitute an undue hardship to the employ-  
50 er. A determination of whether such an absence will constitute an undue  
51 hardship shall include consideration of factors such as:

52 (i) the overall size of the business, program or enterprise with  
53 respect to the number of employees, number and type of facilities, and  
54 size of budget; and

1     (ii) the type of operation in which the business, program or enter-  
2     prise is engaged, including the composition and structure of the work-  
3     force.

4     (4) An employee who must be absent from work in accordance with the  
5     provisions of subparagraph one of this paragraph shall provide the  
6     employer with reasonable advance notice of the employee's absence,  
7     unless such advance notice is not feasible.

8     (5) An employee who must be absent from work in accordance with the  
9     provisions of subparagraph one of this paragraph and who cannot feasibly  
10    give reasonable advance notice of the absence in accordance with subpar-  
11    agraph four of this paragraph, may be required to provide documentation  
12    from a medical professional or health care provider upon request from  
13    the employer within a reasonable time after such absence.

14    § 4. This act shall take effect on the ninetieth day after it shall  
15    have become a law.