STATE OF NEW YORK

5465--A

Cal. No. 766

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 -- recommitted to the Committee on Investigations and Government Operations in accordance with Senate Rule 6, sec. 8 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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

21-e. The term "reasonable accommodation" means actions taken which permit an employee, prospective employee or member with a disability, or a pregnancy-related condition, **or who is a caregiver,** to perform in a reasonable manner the activities involved in the job or occupation sought or held and include, but are not limited to, provision of an accessible worksite, acquisition or modification of equipment, support services for persons with impaired hearing or vision, **modifications to existing facilities to make them more accessible, modification or relocation of a workstation, modifications to workplace policies regarding food and drink, modifications to a uniform or dress code, temporary transfer to a less physically demanding or hazardous position, assistance with lifting or other manual labor, additional or more flexible break time,** job restructuring [~~and~~]**,** modified **or part-time** work schedules**, alternative working arrangements such as part-year employment or job sharing, flexible scheduling or variable hours, alternative work locations or reassignment to another location, remote work or telework,**

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

LBD07398-03-4

consistent or predictable scheduling, time off work such as to attend meetings or appointments, temporary or permanent transfer to another position, or leave of absence; provided, however, that such actions do not impose an undue hardship on the business, program or enterprise of the entity from which action is requested.

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

42. The term "caregiver" means a person who provides the daily care or supervision of a minor child or a care recipient, or any person who contributes to and is involved in the caretaking responsibilities of such minor child or care recipient. Such minor child or care recipient may, but need not, reside in the household of the caregiver. The definition of "caregiver" 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.

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

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

45. The term "covered family member" means:

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

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

(c) a spouse or domestic partner;

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

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

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

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

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

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

§ 3. 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:

1. It shall be an unlawful discriminatory practice:

(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 status as a caregiver, to refuse to hire or employ 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) For an employment agency to discriminate against any individual because of 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, status as a caregiver, or status as a

victim of domestic violence, in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants to an employer or employers.

(c) For a labor organization, because of the 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, **status as a caregiver,** or status as a victim of domestic violence, of any individual, to exclude or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer.

(d) For any 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 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, **status as a caregiver,** or status as a victim of domestic violence, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification; provided, however, that neither this paragraph nor any provision of this chapter or other law shall be construed to prohibit the department of civil service or the department of personnel of any city containing more than one county from requesting information from applicants for civil service examinations concerning any of the aforementioned characteristics, other than sexual orientation, for the purpose of conducting studies to identify and resolve possible problems in recruitment and testing of members of minority groups to ensure the fairest possible and equal opportunities for employment in the civil service for all persons, regardless of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation or gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, [~~or~~] marital status**, or status as a caregiver**.

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

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

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

(h) For an employer, licensing agency, employment agency or labor organization to subject any individual to harassment 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, **status as a caregiver,** status as a victim of domestic violence, or because the individual has opposed any practices forbidden under this article or because the individual has

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

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

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

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

(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;

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

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

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

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

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

b. discriminate against an intern in receiving, classifying, disposing or otherwise acting upon applications for internships because of the intern's age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, mili-

tary status, sex, disability, predisposing genetic characteristics, marital status, [~~or~~] status as a victim of domestic violence**, or status as a caregiver**;

c. print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment as an intern or to make any inquiry in connection with prospective employment, which expresses directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, marital status [~~or~~], status as a victim of domestic violence**, or status as a caregiver**, or any intent to make any such limitation, specification or discrimination, unless based upon a bona fide occupational qualification; provided, however, that neither this paragraph nor any provision of this chapter or other law shall be construed to prohibit the department of civil service or the department of personnel of any city containing more than one county from requesting information from applicants for civil service internships or examinations concerning any of the aforementioned characteristics, other than sexual orientation, for the purpose of conducting studies to identify and resolve possible problems in recruitment and testing of members of minority groups to ensure the fairest possible and equal opportunities for employment in the civil service for all persons, regardless of age, race, creed, color, national origin, citizenship or immigration status, sexual orientation, military status, sex, disability, predisposing genetic characteristics, marital status [~~or~~], status as a victim of domestic violence**, or status as a caregiver**;

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

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

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

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

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

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

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

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

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