

STATE OF NEW YORK

8699

2025-2026 Regular Sessions

IN ASSEMBLY

May 30, 2025

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

AN ACT to amend the executive law, in relation to clarifying the standard for when a practice has a discriminatory effect

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

1 Section 1. Section 296 of the executive law is amended by adding a new
2 subdivision 5-a to read as follows:

3 5-a. (a) For any case alleging employment discrimination under this
4 article, an unlawful discriminatory practice may be established by a
5 practice's discriminatory effect, even if such practice was not moti-
6 vated by a discriminatory intent. The practice may still be lawful if
7 supported by a legally sufficient justification, as defined in paragraph
8 (c) of this subdivision.

9 (b) For the purposes of this subdivision, a practice has a discrimina-
10 tory effect where it actually or predictably results in a disparate
11 impact on a group of persons, because of race, creed, color, national
12 origin, citizenship or immigration status, sexual orientation, gender
13 identity or expression, military status, sex, age, disability, marital
14 status, status as a victim of domestic violence, lawful source of income
15 or familial.

16 (c) (i) A legally sufficient justification exists where the challenged
17 practice:

18 (A) is necessary to achieve one or more substantial, legitimate,
19 nondiscriminatory interests of the respondent; and

20 (B) those interests could not be served by another practice that has a
21 less discriminatory effect.

22 (ii) A legally sufficient justification shall be supported by evidence
23 and may not be hypothetical or speculative. The burdens of proof for
24 establishing each of the two elements of a legally sufficient justifica-
25 tion are set forth in paragraph (d) of this subdivision.

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

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1 (d) (i) The complainant shall have the burden of proving that a chal-
2 lenged practice caused or predictably will cause a discriminatory
3 effect.

4 (ii) Once the complainant satisfies the burden of proof set forth in
5 subparagraph one of this paragraph, the respondent shall have the burden
6 of proving that the challenged practice is necessary to achieve one or
7 more substantial, legitimate, nondiscriminatory interests of the
8 respondent.

9 (iii) If the respondent satisfies the burden of proof set forth in
10 subparagraph two of this paragraph, the complainant may still prevail
11 upon proving that the substantial, legitimate, nondiscriminatory inter-
12 ests supporting the challenged practice could be served by another prac-
13 tice that has a less discriminatory effect.

14 (e) A demonstration that a practice is supported by a legally suffi-
15 cient justification, as defined in paragraph (c) of this subdivision,
16 may not be used as a defense against a claim of intentional discrimi-
17 nation.

18 (f) Nothing in this subdivision shall be construed or interpreted as
19 limiting, restricting, overriding, or supplanting any broader interpre-
20 tation of the discriminatory practices described in this article or the
21 availability of liability under this article.

22 § 2. This act shall take effect immediately and shall apply to all
23 cases alleging unlawful discriminatory practices constituting employment
24 discrimination occurring on and after such effective date. Effective
25 immediately, the addition, amendment and/or repeal of any rule or regu-
26 lation necessary for the implementation of this act on its effective
27 date are authorized to be made and completed on or before such effective
28 date.