STATE OF NEW YORK

4992--A

2025-2026 Regular Sessions

IN ASSEMBLY

February 10, 2025

Introduced by M. of A. BICHOTTE HERMELYN, GONZALEZ-ROJAS, SHIMSKY, BURDICK, DAVILA, REYES, SIMON -- read once and referred to the Committee on Governmental Operations -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

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

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

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

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

(ii) A legally sufficient justification shall be supported by evidence and may not be hypothetical or speculative. The burdens of proof for

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

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establishing each of the two elements of a legally sufficient justification are set forth in paragraph (d) of this subdivision.

(d) (i) The complainant shall have the burden of proving that a challenged practice caused or predictably will cause a discriminatory effect.

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

(iii) If the respondent satisfies the burden of proof set forth in subparagraph two of this paragraph, the complainant may still prevail upon proving that the substantial, legitimate, nondiscriminatory interests supporting the challenged practice could be served by another practice that has a less discriminatory effect.

(e) A demonstration that a practice is supported by a legally sufficient justification, as defined in paragraph (c) of this subdivision, may not be used as a defense against a claim of intentional discrimination.

(f) Nothing in this subdivision shall be construed or interpreted as limiting, restricting, overriding, or supplanting any broader interpretation of the discriminatory practices described in this article or the availability of liability under this article.

§ 2. This act shall take effect immediately and shall apply to all cases alleging unlawful discriminatory practices constituting employment discrimination occurring on and after such effective date. 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.