HOUSE BILL 25

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Gail Chasey and Elizabeth "Liz" Stefanics

FOR THE LEGISLATIVE HEALTH AND HUMAN SERVICES COMMITTEE

AN ACT

RELATING TO EMPLOYMENT; AMENDING THE HUMAN RIGHTS ACT; ADDING DEFINITIONS; ADDING PROTECTION FOR PREGNANCY, CHILDBIRTH OR RELATED CONDITION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 28-1-2 NMSA 1978 (being Laws 1969, Chapter 196, Section 2, as amended) is amended to read:

"28-1-2. DEFINITIONS.--As used in the Human Rights Act:

A. "person" means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers or the state and all of its political subdivisions;

B. "employer" means any person employing four or more persons and any person acting for an employer;

C. "commission" means the human rights commission;
D. "director" or "bureau" means the human rights bureau of the labor relations division of the workforce solutions department;

E. "employee" means any person in the employ of an employer or an applicant for employment;

F. "labor organization" means any organization that exists for the purpose in whole or in part of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employment;

G. "employment agency" means any person regularly undertaking with or without compensation to procure opportunities to work or to procure, recruit or refer employees;

H. "public accommodation" means any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place or establishment that is by its nature and use distinctly private;

I. "housing accommodation" means any building or portion of a building that is constructed or to be constructed, which is used or intended for use as the residence or sleeping place of any individual;

J. "real property" means lands, leaseholds or commercial or industrial buildings, whether constructed or to
be constructed, offered for sale or rent, and any land rented
or leased for the use, parking or storage of house trailers;

K. "secretary" means the secretary of workforce
solutions;

L. "unlawful discriminatory practices" means those
unlawful practices and acts specified in Section 28-1-7 NMSA
1978;

M. "physical or mental handicap" means a physical
or mental impairment that substantially limits one or more of a
person's major life activities. A person is also considered to
be physically or mentally handicapped if the person has a
record of a physical or mental handicap or is regarded as
having a physical or mental handicap;

N. "major life activities" means functions such as
caring for one's self, performing manual tasks, walking,
seeing, hearing, speaking, breathing, learning and working;

O. "applicant for employment" means a person
applying for a position as an employee;

P. "sexual orientation" means heterosexuality,
homosexuality or bisexuality, whether actual or perceived;

Q. "gender identity" means a person's self-
perception, or perception of that person by another, of the
person's identity as a male or female based upon the person's
appearance, behavior or physical characteristics that are in
accord with or opposed to the person's physical anatomy,
chromosomal sex or sex at birth;

R. "reasonable accommodation" means modification or
adaptation of the work environment, work schedule, work rules
or job responsibilities for as long as necessary, and reached
through good faith efforts to explore less restrictive or less
expensive alternatives to enable an employee to perform the
essential functions of the job and that does not impose an
undue hardship on the employer; and

S. "undue hardship" means an accommodation
requiring significant difficulty or expense when considered in
light of the following factors:

(1) the nature and cost of the accommodation;

(2) the financial resources of the employer
involved in the provision of the reasonable accommodation;

(3) the number of persons the employer
employs;

(4) the effect of the accommodation on
expenses and resources;

(5) the impact of the accommodation otherwise
upon the employer's business;

(6) the overall financial resources of the
employer;

(7) the overall size of the business of an
employer with respect to the number, type and location of its
facilities;

(8) the type of operation of the employer, including the composition, structure and functions of the workforce of the employer; or

(9) the geographic separateness or administrative or fiscal relationship to the employer of the employer's facilities."

SECTION 2. Section 28-1-7 NMSA 1978 (being Laws 1969, Chapter 196, Section 7, as amended) is amended to read:

"28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an unlawful discriminatory practice for:

A. an employer, unless based on a bona fide occupational qualification or other statutory prohibition, to refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, physical or mental handicap or serious medical condition, or, if the employer has fifty or more employees, spousal affiliation; provided, however, that 29 U.S.C. Section 631(c)(1) and (2) shall apply to discrimination based on age;

B. a labor organization to exclude a person or to expel or otherwise discriminate against any of its members or
against any employer or employee because of race, religion,  
color, national origin, ancestry, sex, sexual orientation,  
gender identity, pregnancy, childbirth or condition related to  
pregnancy or childbirth, spousal affiliation, physical or  
mental handicap or serious medical condition;

C. any employer, labor organization or joint  
apprenticeship committee to refuse to admit or employ any  
person in any program established to provide an apprenticeship  
or other training or retraining because of race, religion,  
color, national origin, ancestry, sex, sexual orientation,  
gender identity, pregnancy, childbirth or condition related to  
pregnancy or childbirth, physical or mental handicap or serious  
medical condition, or, if the employer has fifty or more  
employees, spousal affiliation;

D. any person, employer, employment agency or labor  
organization to print or circulate or cause to be printed or  
circulated any statement, advertisement or publication, to use  
y any form of application for employment or membership or to make  
y any inquiry regarding prospective membership or employment that  
expresses, directly or indirectly, any limitation,  
specification or discrimination as to race, color, religion,  
national origin, ancestry, sex, sexual orientation, gender  
identity, pregnancy, childbirth or condition related to  
pregnancy or childbirth, physical or mental handicap or serious  
medical condition, or, if the employer has fifty or more
employees, spousal affiliation, unless based on a bona fide occupational qualification;

E. an employment agency to refuse to list and properly classify for employment or refer a person for employment in a known available job, for which the person is otherwise qualified, because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, physical or mental handicap or serious medical condition, unless based on a bona fide occupational qualification, or to comply with a request from an employer for referral of applicants for employment if the request indicates, either directly or indirectly, that the employer discriminates in employment on the basis of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation, physical or mental handicap or serious medical condition, unless based on a bona fide occupational qualification;

F. any person in any public accommodation to make a distinction, directly or indirectly, in offering or refusing to offer its services, facilities, accommodations or goods to any person because of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy,
childbirth or condition related to pregnancy or childbirth,
spousal affiliation or physical or mental handicap; provided
that the physical or mental handicap is unrelated to a person's
ability to acquire or rent and maintain particular real
property or housing accommodation;

G. any person to:

(1) refuse to sell, rent, assign, lease or
sublease or offer for sale, rental, lease, assignment or
sublease any housing accommodation or real property to any
person or to refuse to negotiate for the sale, rental, lease,
assignment or sublease of any housing accommodation or real
property to any person because of race, religion, color,
national origin, ancestry, sex, sexual orientation, gender
identity, pregnancy, childbirth or condition related to
pregnancy or childbirth, spousal affiliation or physical or
mental handicap; provided that the physical or mental handicap
is unrelated to a person's ability to acquire or rent and
maintain particular real property or housing accommodation;

(2) discriminate against any person in the
terms, conditions or privileges of the sale, rental,
assignment, lease or sublease of any housing accommodation or
real property or in the provision of facilities or services in
connection therewith because of race, religion, color, national
origin, ancestry, sex, sexual orientation, gender identity,
pregnancy, childbirth or condition related to pregnancy or
childbirth, spousal affiliation or physical or mental handicap;
provided that the physical or mental handicap is unrelated to a
person's ability to acquire or rent and maintain particular
real property or housing accommodation; or

(3) print, circulate, display or mail or cause
to be printed, circulated, displayed or mailed any statement,
advertisement, publication or sign or use any form of
application for the purchase, rental, lease, assignment or
sublease of any housing accommodation or real property or to
make any record or inquiry regarding the prospective purchase,
rental, lease, assignment or sublease of any housing
accommodation or real property that expresses any preference,
limitation or discrimination as to race, religion, color,
national origin, ancestry, sex, sexual orientation, gender
identity, pregnancy, childbirth or condition related to
pregnancy or childbirth, spousal affiliation or physical or
mental handicap; provided that the physical or mental handicap
is unrelated to a person's ability to acquire or rent and
maintain particular real property or housing accommodation;

H. any person to whom application is made either
for financial assistance for the acquisition, construction,
rehabilitation, repair or maintenance of any housing
accommodation or real property or for any type of consumer
credit, including financial assistance for the acquisition of
any consumer good as defined by Section 55-9-102 NMSA 1978, to:
(1) consider the race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation or physical or mental handicap of any individual in the granting, withholding, extending, modifying or renewing or in the fixing of the rates, terms, conditions or provisions of any financial assistance or in the extension of services in connection with the request for financial assistance; or

(2) use any form of application for financial assistance or to make any record or inquiry in connection with applications for financial assistance that expresses, directly or indirectly, any limitation, specification or discrimination as to race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, pregnancy, childbirth or condition related to pregnancy or childbirth, spousal affiliation or physical or mental handicap;

I. any person or employer to:

(1) aid, abet, incite, compel or coerce the doing of any unlawful discriminatory practice or to attempt to do so;

(2) engage in any form of threats, reprisal or discrimination against any person who has opposed any unlawful discriminatory practice or has filed a complaint, testified or participated in any proceeding under the Human Rights Act; or
(3) willfully obstruct or prevent any person from complying with the provisions of the Human Rights Act or to resist, prevent, impede or interfere with the commission or any of its members, staff or representatives in the performance of their duties under the Human Rights Act; [ef]

J. any employer to refuse or fail to accommodate a person's physical or mental handicap or serious medical condition, unless such accommodation is unreasonable or an undue hardship;

K. any employer to refuse or fail to make reasonable accommodation for an employee or job applicant with a need arising from pregnancy, childbirth or condition related to pregnancy or childbirth; or

L. any employer to require an employee with a need arising from pregnancy, childbirth or condition related to pregnancy or childbirth to take paid or unpaid leave if another reasonable accommodation can be provided unless the employee voluntarily requests to be placed on leave or the employee is placed on leave pursuant to federal law."