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HOUSE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

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;

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1 D. "director" or "bureau" means the human rights
2 bureau of the labor relations division of the workforce
3 solutions department;

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

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

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

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

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

24 J. "real property" means lands, leaseholds or
25 commercial or industrial buildings, whether constructed or to

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1 be constructed, offered for sale or rent, and any land rented
2 or leased for the use, parking or storage of house trailers;

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

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

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

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

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

19 P. "sexual orientation" means heterosexuality,
20 homosexuality or bisexuality, whether actual or perceived;
21 [~~and~~]

22 Q. "gender identity" means a person's self-
23 perception, or perception of that person by another, of the
24 person's identity as a male or female based upon the person's
25 appearance, behavior or physical characteristics that are in

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1 accord with or opposed to the person's physical anatomy,
2 chromosomal sex or sex at birth;

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

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

13 (1) the nature and cost of the accommodation;

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

16 (3) the number of persons the employer
17 employs;

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

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

22 (6) the overall financial resources of the
23 employer;

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

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1 facilities;

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

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

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

10 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an
11 unlawful discriminatory practice for:

12 A. an employer, unless based on a bona fide
13 occupational qualification or other statutory prohibition, to
14 refuse to hire, to discharge, to promote or demote or to
15 discriminate in matters of compensation, terms, conditions or
16 privileges of employment against any person otherwise qualified
17 because of race, age, religion, color, national origin,
18 ancestry, sex, sexual orientation, gender identity, pregnancy,
19 childbirth or condition related to pregnancy or childbirth,
20 physical or mental handicap or serious medical condition, or,
21 if the employer has fifty or more employees, spousal
22 affiliation; provided, however, that 29 U.S.C. Section
23 631(c)(1) and (2) shall apply to discrimination based on age;

24 B. a labor organization to exclude a person or to
25 expel or otherwise discriminate against any of its members or

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1 against any employer or employee because of race, religion,
2 color, national origin, ancestry, sex, sexual orientation,
3 gender identity, pregnancy, childbirth or condition related to
4 pregnancy or childbirth, spousal affiliation, physical or
5 mental handicap or serious medical condition;

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

15 D. any person, employer, employment agency or labor
16 organization to print or circulate or cause to be printed or
17 circulated any statement, advertisement or publication, to use
18 any form of application for employment or membership or to make
19 any inquiry regarding prospective membership or employment that
20 expresses, directly or indirectly, any limitation,
21 specification or discrimination as to race, color, religion,
22 national origin, ancestry, sex, sexual orientation, gender
23 identity, pregnancy, childbirth or condition related to
24 pregnancy or childbirth, physical or mental handicap or serious
25 medical condition, or, if the employer has fifty or more

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1 employees, spousal affiliation, unless based on a bona fide
2 occupational qualification;

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

21 F. any person in any public accommodation to make a
22 distinction, directly or indirectly, in offering or refusing to
23 offer its services, facilities, accommodations or goods to any
24 person because of race, religion, color, national origin,
25 ancestry, sex, sexual orientation, gender identity, pregnancy,

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1 childbirth or condition related to pregnancy or childbirth,
2 spousal affiliation or physical or mental handicap; provided
3 that the physical or mental handicap is unrelated to a person's
4 ability to acquire or rent and maintain particular real
5 property or housing accommodation;

6 G. any person to:

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

19 (2) discriminate against any person in the
20 terms, conditions or privileges of the sale, rental,
21 assignment, lease or sublease of any housing accommodation or
22 real property or in the provision of facilities or services in
23 connection therewith because of race, religion, color, national
24 origin, ancestry, sex, sexual orientation, gender identity,
25 pregnancy, childbirth or condition related to pregnancy or

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1 childbirth, spousal affiliation or physical or mental handicap;
2 provided that the physical or mental handicap is unrelated to a
3 person's ability to acquire or rent and maintain particular
4 real property or housing accommodation; or

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

20 H. any person to whom application is made either
21 for financial assistance for the acquisition, construction,
22 rehabilitation, repair or maintenance of any housing
23 accommodation or real property or for any type of consumer
24 credit, including financial assistance for the acquisition of
25 any consumer good as defined by Section 55-9-102 NMSA 1978, to:

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1 (1) consider the race, religion, color,
2 national origin, ancestry, sex, sexual orientation, gender
3 identity, pregnancy, childbirth or condition related to
4 pregnancy or childbirth, spousal affiliation or physical or
5 mental handicap of any individual in the granting, withholding,
6 extending, modifying or renewing or in the fixing of the rates,
7 terms, conditions or provisions of any financial assistance or
8 in the extension of services in connection with the request for
9 financial assistance; or

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

18 I. any person or employer to:

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

22 (2) engage in any form of threats, reprisal or
23 discrimination against any person who has opposed any unlawful
24 discriminatory practice or has filed a complaint, testified or
25 participated in any proceeding under the Human Rights Act; or

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1 (3) willfully obstruct or prevent any person
2 from complying with the provisions of the Human Rights Act or
3 to resist, prevent, impede or interfere with the commission or
4 any of its members, staff or representatives in the performance
5 of their duties under the Human Rights Act; [~~or~~]

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

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

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