

HOUSE FLOOR SUBSTITUTE FOR  
HOUSE BILL 196

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

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  
23 self-perception, or perception of that person by another, of  
24 the person's identity as a male or female based upon the  
25 person's appearance, behavior or physical characteristics that

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1 are in 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, pregnancy, childbirth or condition related to  
 19 pregnancy or childbirth, physical or mental handicap or serious  
 20 medical condition, or, if the employer has fifty or more  
 21 employees, spousal affiliation; provided, however, that 29  
 22 U.S.C. Section 631(c)(1) and (2) shall apply to discrimination  
 23 based on age; or, if the employer has fifteen or more  
 24 employees, to discriminate against an employee based upon the  
 25 employee's sexual orientation or gender identity;

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

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

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

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1 pregnancy or childbirth, physical or mental handicap or serious  
2 medical condition, or, if the employer has fifty or more  
3 employees, spousal affiliation, unless based on a bona fide  
4 occupational qualification;

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

23 F. any person in any public accommodation to make a  
24 distinction, directly or indirectly, in offering or refusing to  
25 offer its services, facilities, accommodations or goods to any

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1 person because of race, religion, color, national origin,  
2 ancestry, sex, sexual orientation, gender identity, pregnancy,  
3 childbirth or condition related to pregnancy or childbirth,  
4 spousal affiliation or physical or mental handicap; provided  
5 that the physical or mental handicap is unrelated to a person's  
6 ability to acquire or rent and maintain particular real  
7 property or housing accommodation;

8 G. any person to:

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

21 (2) discriminate against any person in the  
22 terms, conditions or privileges of the sale, rental,  
23 assignment, lease or sublease of any housing accommodation or  
24 real property or in the provision of facilities or services in  
25 connection therewith because of race, religion, color, national

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

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

22 H. any person to whom application is made either  
 23 for financial assistance for the acquisition, construction,  
 24 rehabilitation, repair or maintenance of any housing  
 25 accommodation or real property or for any type of consumer

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1 credit, including financial assistance for the acquisition of  
2 any consumer good as defined by Section 55-9-102 NMSA 1978, to:

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

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

20 I. any person or employer to:

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

24 (2) engage in any form of threats, reprisal or  
25 discrimination against any person who has opposed any unlawful

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1 discriminatory practice or has filed a complaint, testified or  
 2 participated in any proceeding under the Human Rights Act; or

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

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

12 K. any employer to refuse or fail to make  
 13 reasonable accommodation for an employee or job applicant with  
 14 a need arising from pregnancy, childbirth or related condition,  
 15 unless such accommodation is unreasonable or an undue hardship;  
 16 or

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

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