

HOUSE BILL 207

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

Kristina Ortez and Andrea Romero and Carrie Hamblen
and Peter Wirth and Linda Serrato

AN ACT

RELATING TO HUMAN RIGHTS; EXTENDING THE SCOPE OF THE HUMAN RIGHTS ACT TO APPLY TO CERTAIN ACTIONS OF THE STATE AND ITS POLITICAL SUBDIVISIONS AND PUBLIC CONTRACTORS; EXPANDING THE LIST OF PROTECTED CLASSES TO INCLUDE GENDER; MAKING TECHNICAL CORRECTIONS.

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 by Laws 2021, Chapter 19, Section 3 and by Laws 2021, Chapter 37, Section 3) 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

.223681.2

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 state and all of its political subdivisions;

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

4 C. "commission" means the human rights commission;

5 D. "director" or "bureau" means the human rights
6 bureau of the labor relations division of the workforce
7 solutions department;

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

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

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

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

24 I. "public contractor" means a person who receives
25 public funds as a result of contracting with a governmental

.223681.2

underscored material = new
[bracketed material] = delete

1 entity;

2 J. "political subdivision" means any:

3 (1) county;

4 (2) incorporated city, town or village;

5 (3) drainage, conservancy, irrigation, water
6 and sanitation or other district;

7 (4) mutual domestic association;

8 (5) public water cooperative association; or

9 (6) community ditch association;

10 [~~F.~~] K. "housing accommodation" means any building
11 or portion of a building that is constructed or to be
12 constructed, which is used or intended for use as the residence
13 or sleeping place of any individual;

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

18 [~~K.~~] M. "secretary" means the secretary of
19 workforce solutions;

20 [~~L.~~] N. "unlawful discriminatory practices" means
21 those unlawful practices and acts specified in Section 28-1-7
22 NMSA 1978;

23 [~~M.~~] O. "physical or mental [~~handicap~~] disability"
24 means a physical or mental impairment that substantially limits
25 one or more of a person's major life activities. A person is

.223681.2

1 also considered to ~~[be physically or mentally handicapped]~~ have
2 a mental or physical disability if the person has a record of a
3 physical or mental ~~[handicap]~~ disability or is regarded as
4 having a physical or mental ~~[handicap]~~ disability;

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

9 [O.] Q. "applicant for employment" means a person
10 applying for a position as an employee;

11 ~~[P. "sexual orientation" means heterosexuality,~~
12 ~~homosexuality or bisexuality, whether actual or perceived;~~

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

19 R. "sex" means a person's categorization as male,
20 female or intersex based on biology, physiology and physical
21 characteristics;

22 S. "sexual orientation" means a person's physical,
23 romantic or emotional attraction to persons of the same or a
24 different gender or the absence of any such attraction;

25 T. "gender identity" means a person's

1 self-perception, based on the person's appearance, behavior or
2 physical characteristics, that the person exhibits more
3 masculinity or femininity or the absence of masculinity or
4 femininity whether or not it matches the person's gender or sex
5 assigned at birth;

6 U. "gender" means an individual or societal
7 expectation or perception of a person as masculine or feminine
8 based on appearance, behavior or physical characteristics;

9 ~~[R-]~~ V. "reasonable accommodation" means
10 modification or adaptation of the work environment, work
11 schedule, work rules or job responsibilities, and reached
12 through good faith efforts to explore less restrictive or less
13 expensive alternatives to enable an employee to perform the
14 essential functions of the job and that does not impose an
15 undue hardship on the employer;

16 ~~[S-]~~ W. "undue hardship" means an accommodation
17 requiring significant difficulty or expense when considered in
18 light of the following factors:

- 19 (1) the nature and cost of the accommodation;
20 (2) the financial resources of the employer
21 involved in the provision of the reasonable accommodation;
22 (3) the number of persons the employer
23 employs;
24 (4) the effect of the accommodation on
25 expenses and resources;

.223681.2

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

3 (6) the overall financial resources of the
4 employer;

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

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

11 (9) the geographic separateness or
12 administrative or fiscal relationship to the employer of the
13 employer's facilities;

14 [~~F.~~] X. "cultural or religious headdresses"
15 includes hijabs, head wraps or other headdresses used as part
16 of an individual's personal cultural or religious beliefs;

17 [~~U.~~] Y. "protective hairstyles" includes such
18 hairstyles as braids, locs, twists, tight coils or curls,
19 cornrows, bantu knots, afros, weaves, wigs or head wraps; [~~and~~]

20 [~~V.~~] Z. "race" includes traits historically
21 associated with race, including hair texture, length of hair,
22 protective hairstyles or cultural or religious headdresses;

23 AA. "state" means the state of New Mexico or any of
24 its agencies, departments, boards, instrumentalities or
25 institutions;

underscoring material = new
~~[bracketed material] = delete~~

1 BB. "governmental entity" means the state or any
2 local public body;

3 CC. "public body" means a state or local
4 government, an advisory board, a commission, an agency or an
5 entity created by the constitution of New Mexico or any branch
6 of government that receives public funding, including political
7 subdivisions, special tax districts, school districts and
8 institutions of higher education; and

9 DD. "services" means any function, program,
10 activity or benefit."

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

13 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an
14 unlawful discriminatory practice for:

15 A. an employer, unless based on a bona fide
16 occupational qualification or other statutory prohibition, to
17 refuse to hire, to discharge, to promote or demote or to
18 discriminate in matters of compensation, terms, conditions or
19 privileges of employment against any person otherwise qualified
20 because of race, age, religion, color, national origin,
21 ancestry, sex, sexual orientation, gender, gender identity,
22 pregnancy, childbirth or condition related to pregnancy or
23 childbirth, physical or mental [~~handicap~~] disability or serious
24 medical condition, or, if the employer has fifty or more
25 employees, spousal affiliation; provided, however, that 29

.223681.2

underscoring material = new
~~[bracketed material]~~ = delete

1 U.S.C. Section 631(c)(1) and (2) shall apply to discrimination
2 based on age;

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

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

20 D. any person, employer, employment agency or labor
21 organization to print or circulate or cause to be printed or
22 circulated any statement, advertisement or publication, to use
23 any form of application for employment or membership or to make
24 any inquiry regarding prospective membership or employment that
25 expresses, directly or indirectly, any limitation,

.223681.2

underscoring material = new
~~[bracketed material] = delete~~

1 specification or discrimination as to race, color, religion,
2 national origin, ancestry, sex, sexual orientation, gender,
3 gender identity, pregnancy, childbirth or condition related to
4 pregnancy or childbirth, physical or mental [~~handicap~~]
5 disability or serious medical condition, or, if the employer
6 has fifty or more employees, spousal affiliation, unless based
7 on a bona fide occupational qualification;

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

.223681.2

underscored material = new
[bracketed material] = delete

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

12 G. any person to:

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

.223681.2

underscoring material = new
~~[bracketed material] = delete~~

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

13 (3) print, circulate, display or mail or cause
14 to be printed, circulated, displayed or mailed any statement,
15 advertisement, publication or sign or use any form of
16 application for the purchase, rental, lease, assignment or
17 sublease of any housing accommodation or real property or to
18 make any record or inquiry regarding the prospective purchase,
19 rental, lease, assignment or sublease of any housing
20 accommodation or real property that expresses any preference,
21 limitation or discrimination as to race, religion, color,
22 national origin, ancestry, sex, sexual orientation, gender,
23 gender identity, pregnancy, childbirth or condition related to
24 pregnancy or childbirth, spousal affiliation or physical or
25 mental [~~handicap~~] disability; provided that the physical or

.223681.2

underscored material = new
[bracketed material] = delete

1 mental [~~handicap~~] disability is unrelated to a person's ability
2 to acquire or rent and maintain particular real property or
3 housing accommodation;

4 H. any person to whom application is made either
5 for financial assistance for the acquisition, construction,
6 rehabilitation, repair or maintenance of any housing
7 accommodation or real property or for any type of consumer
8 credit, including financial assistance for the acquisition of
9 any consumer good as defined by Section 55-9-102 NMSA 1978, to:

10 (1) consider the race, religion, color,
11 national origin, ancestry, sex, sexual orientation, gender,
12 gender identity, pregnancy, childbirth or condition related to
13 pregnancy or childbirth, spousal affiliation or physical or
14 mental [~~handicap~~] disability of any individual in the granting,
15 withholding, extending, modifying or renewing or in the fixing
16 of the rates, terms, conditions or provisions of any financial
17 assistance or in the extension of services in connection with
18 the request for financial assistance; or

19 (2) use any form of application for financial
20 assistance or to make any record or inquiry in connection with
21 applications for financial assistance that expresses, directly
22 or indirectly, any limitation, specification or discrimination
23 as to race, religion, color, national origin, ancestry, sex,
24 sexual orientation, gender, gender identity, pregnancy,
25 childbirth or condition related to pregnancy or childbirth,

.223681.2

1 spousal affiliation or physical or mental [~~handicap~~]
2 disability;

3 I. any person or employer to:

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

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

11 (3) willfully obstruct or prevent any person
12 from complying with the provisions of the Human Rights Act or
13 to resist, prevent, impede or interfere with the commission or
14 any of its members, staff or representatives in the performance
15 of their duties under the Human Rights Act;

16 J. any employer to refuse or fail to accommodate a
17 person's physical or mental [~~handicap~~] disability or serious
18 medical condition, unless such accommodation is unreasonable or
19 an undue hardship;

20 K. any employer to refuse or fail to make
21 reasonable accommodation for an employee or job applicant with
22 a need arising from pregnancy, childbirth or condition related
23 to pregnancy or childbirth; [~~or~~]

24 L. any employer to require an employee with a need
25 arising from pregnancy, childbirth or condition related to

.223681.2

underscoring material = new
~~[bracketed material] = delete~~

1 pregnancy or childbirth to take paid or unpaid leave if another
2 reasonable accommodation can be provided unless the employee
3 voluntarily requests to be placed on leave or the employee is
4 placed on leave pursuant to federal law; or

5 M. a governmental entity or a public contractor to
6 refuse or otherwise limit or put conditions on services to a
7 person because of race, age, religion, color, national origin,
8 ancestry, sex, sexual orientation, gender, gender identity,
9 pregnancy, childbirth or condition related to pregnancy or
10 childbirth, physical or mental disability, serious medical
11 condition or spousal affiliation; provided that nothing in this
12 subsection shall be construed to require a governmental entity
13 or a public contractor to provide services or programs beyond
14 services or programs to the specific populations that the
15 governmental entity or public contractor is tasked with
16 serving."