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HOUSE BILL 494

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Al Park

AN ACT

RELATING TO HUMAN RIGHTS; PROHIBITING ADVERSE ACTION AGAINST AN
EMPLOYEE FOR DISCUSSING SALARY OR OTHER PAY.

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

Section 1. 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, physical or mental handicap or serious medical

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1 condition, or, if the employer has fifty or more employees,
2 spousal affiliation; provided, however, that 29 U.S.C. Section
3 631(c)(1) and (2) shall apply to discrimination based on age;
4 or, if the employer has fifteen or more employees, to
5 discriminate against an employee based upon the employee's
6 sexual orientation or gender identity;

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

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

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

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1 expresses, directly or indirectly, any limitation,
2 specification or discrimination as to race, color, religion,
3 national origin, ancestry, sex, sexual orientation, gender
4 identity, physical or mental handicap or serious medical
5 condition, or, if the employer has fifty or more employees,
6 spousal affiliation, unless based on a bona fide occupational
7 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 identity,
13 spousal affiliation, physical or mental handicap or serious
14 medical condition, unless based on a bona fide occupational
15 qualification, or to comply with a request from an employer for
16 referral of applicants for employment if the request indicates
17 either directly or indirectly that the employer discriminates
18 in employment on the basis of race, religion, color, national
19 origin, ancestry, sex, sexual orientation, gender identity,
20 spousal affiliation, physical or mental handicap or serious
21 medical 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, spousal
3 affiliation or physical or mental handicap, provided that the
4 physical or mental handicap is unrelated to a person's ability
5 to acquire or rent and maintain particular real property or
6 housing accommodation;

7 G. any person to:

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

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

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

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

24 (1) consider the race, religion, color,
25 national origin, ancestry, sex, sexual orientation, gender

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1 identity, spousal affiliation or physical or mental handicap of
2 any individual in the granting, withholding, extending,
3 modifying or renewing or in the fixing of the rates, terms,
4 conditions or provisions of any financial assistance or in the
5 extension of services in connection with the request for
6 financial assistance; or

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

14 I. any person or employer to:

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

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

22 (3) willfully obstruct or prevent any person
23 from complying with the provisions of the Human Rights Act or
24 to resist, prevent, impede or interfere with the commission or
25 any of its members, staff or representatives in the performance

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1 of their duties under the Human Rights Act; [~~or~~]

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

6 K. any employer to discharge, suspend, demote,
7 discipline or otherwise take an adverse employment action
8 against an employee in the terms or conditions of employment
9 for discussing salary, wages or benefits remitted by an
10 employer to an employee."

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