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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

1 mutual aid or protection in connection with employment;

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

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

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

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

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

21 L. "unlawful discriminatory practices" means those
22 unlawful practices and acts specified in Section 28-1-7 NMSA
23 1978;

24 M. "physical or mental handicap" means a physical
25 or mental impairment that substantially limits one or more of

1 a person's major life activities. A person is also
2 considered to be physically or mentally handicapped if the
3 person has a record of a physical or mental handicap or is
4 regarded as having a physical or mental handicap;

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

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

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

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

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

25 S. "undue hardship" means an accommodation

1 requiring significant difficulty or expense when considered
2 in light of the following factors:

3 (1) the nature and cost of the
4 accommodation;

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

7 (3) the number of persons the employer
8 employs;

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

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

13 (6) the overall financial resources of the
14 employer;

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

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

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

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

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

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

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

23 C. any employer, labor organization or joint
24 apprenticeship committee to refuse to admit or employ any
25 person in any program established to provide an

1 apprenticeship or other training or retraining because of
2 race, religion, color, national origin, ancestry, sex, sexual
3 orientation, gender identity, pregnancy, childbirth or
4 condition related to pregnancy or childbirth, physical or
5 mental handicap or serious medical condition, or, if the
6 employer has fifty or more employees, spousal affiliation;

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

20 E. an employment agency to refuse to list and
21 properly classify for employment or refer a person for
22 employment in a known available job, for which the person is
23 otherwise qualified, because of race, religion, color,
24 national origin, ancestry, sex, sexual orientation, gender
25 identity, pregnancy, childbirth or condition related to

1 pregnancy or childbirth, spousal affiliation, physical or
2 mental handicap or serious medical condition, unless based on
3 a bona fide occupational qualification, or to comply with a
4 request from an employer for referral of applicants for
5 employment if the request indicates, either directly or
6 indirectly, that the employer discriminates in employment on
7 the basis of race, religion, color, national origin,
8 ancestry, sex, sexual orientation, gender identity,
9 pregnancy, childbirth or condition related to pregnancy or
10 childbirth, spousal affiliation, physical or mental handicap
11 or serious medical condition, unless based on a bona fide
12 occupational qualification;

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

24 G. any person to:

25 (1) refuse to sell, rent, assign, lease or

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

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

25 (3) print, circulate, display or mail or

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

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

23 (1) consider the race, religion, color,
24 national origin, ancestry, sex, sexual orientation, gender
25 identity, pregnancy, childbirth or condition related to

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

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

16 I. any person or employer to:

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

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

25 (3) willfully obstruct or prevent any person

1 from complying with the provisions of the Human Rights Act or
2 to resist, prevent, impede or interfere with the commission
3 or any of its members, staff or representatives in the
4 performance of their duties under the Human Rights Act;

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

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

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

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