

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 152

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

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.

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 state and all of its political subdivisions;

B. "employer" means any person employing four or

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1 more persons and any person acting for an employer;

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

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

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

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

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

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

23 I. "political subdivision" means a local government
24 in the state, including any of the local government's advisory
25 boards, commissions, committees, agencies or institutions;

1 ~~[F.]~~ J. "housing accommodation" means any building
2 or portion of a building that is constructed or to be
3 constructed, which is used or intended for use as the residence
4 or sleeping place of any individual;

5 ~~[J.]~~ K. "real property" means lands, leaseholds or
6 commercial or industrial buildings, whether constructed or to
7 be constructed, offered for sale or rent, and any land rented
8 or leased for the use, parking or storage of house trailers;

9 ~~[K.]~~ L. "secretary" means the secretary of
10 workforce solutions;

11 ~~[L.]~~ M. "unlawful discriminatory practices" means
12 those unlawful practices and acts specified in Section 28-1-7
13 NMSA 1978;

14 ~~[M.]~~ N. "physical or mental ~~[handicap]~~ disability"
15 means a physical or mental impairment that substantially limits
16 one or more of a person's major life activities. A person is
17 also considered to ~~[be physically or mentally handicapped]~~ have
18 a mental or physical disability if the person has a record of a
19 physical or mental ~~[handicap]~~ disability or is regarded as
20 having a physical or mental ~~[handicap]~~ disability;

21 ~~[N.]~~ O. "major life activities" means functions
22 such as caring for one's self, performing manual tasks,
23 walking, seeing, hearing, speaking, breathing, learning and
24 working;

25 ~~[O.]~~ P. "applicant for employment" means a person

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1 applying for a position as an employee;

2 [P-] Q. "sexual orientation" means heterosexuality,
3 homosexuality or bisexuality, whether actual or perceived;

4 [Q-] R. "gender identity" means a person's self-
5 perception, or perception of that person by another, of the
6 person's identity as a male or female based upon the person's
7 appearance, behavior or physical characteristics that are in
8 accord with or opposed to the person's physical anatomy,
9 chromosomal sex or sex at birth, whether actual or perceived;

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

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

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

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1 expenses and resources;

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

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

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

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

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

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

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

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

24 X. "state" means the state of New Mexico or any of
25 its agencies, departments, boards, instrumentalities or

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1 institutions; and

2 Y. "services" means any function, program, activity
3 or benefit."

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

6 "28-1-7. UNLAWFUL DISCRIMINATORY PRACTICE.--It is an
7 unlawful discriminatory practice for:

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

21 B. a labor organization to exclude a person or to
22 expel or otherwise discriminate against any of its members or
23 against any employer or employee because of race, religion,
24 color, national origin, ancestry, sex, sexual orientation,
25 gender identity, pregnancy, childbirth or condition related to

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1 pregnancy or childbirth, spousal affiliation, physical or
2 mental [~~handicap~~] disability or serious medical condition;

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

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

25 E. an employment agency to refuse to list and

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

18 F. any person in any public accommodation to make a
19 distinction, directly or indirectly, in offering or refusing to
20 offer its services, facilities, accommodations or goods to any
21 person because of race, religion, color, national origin,
22 ancestry, sex, sexual orientation, gender identity, pregnancy,
23 childbirth or condition related to pregnancy or childbirth,
24 spousal affiliation or physical or mental [~~handicap~~]
25 disability; provided that the physical or mental [~~handicap~~]

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

4 G. any person to:

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

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

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1 [handicap] disability; provided that the physical or mental
2 [handicap] disability is unrelated to a person's ability to
3 acquire or rent and maintain particular real property or
4 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] disability; provided that the physical or
18 mental [handicap] disability is unrelated to a person's ability
19 to acquire or rent and maintain particular real property or
20 housing accommodation;

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

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1 any consumer good as defined by Section 55-9-102 NMSA 1978, to:

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

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

19 I. any person or employer to:

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

23 (2) engage in any form of threats, reprisal or
24 discrimination against any person who has opposed any unlawful
25 discriminatory practice or has filed a complaint, testified or

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1 participated in any proceeding under the Human Rights Act; or

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

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

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

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

21 M. the state or any political subdivision to refuse
22 or otherwise limit or put conditions on services to a person
23 because of race, age, religion, color, national origin,
24 ancestry, sex, sexual orientation, gender identity, pregnancy,
25 childbirth or condition related to pregnancy or childbirth,

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1 physical or mental disability, serious medical condition or
2 spousal affiliation; provided that nothing in this subsection
3 shall be construed to require the state or any political
4 subdivision to provide services or programs beyond services or
5 programs to the specific populations that they are tasked with
6 serving."

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