



Legislation Text

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Int. No. 866

Introduced by the Speaker (Council Member Vallone) and Council Members DiBrienza, Clarke, Freed, Marshall, Moskowitz, Warden, and Stabile (in conjunction with the Mayor); also Council Members Dear, Fisher, Foster, Koslowitz, Leffler, Linares, McCaffrey, Perkins, Povman, Quinn, Robinson, Sabini, Wooten and Oddo - read and referred to the Committee on General Welfare.

A Local Law to amend the administrative code of the city of New York, in relation to protecting from employment discrimination individuals who are the victims of violent crime, and to repeal and reenact section 8-107.1 of the administrative code of the city of New York, in relation to providing leave from employment for individuals who are the victims of violent crime.

Be it enacted by the Council as follows:

Section 1. Section 8-102 of the administrative code of the city of New York is amended by adding a new subdivision 23 to read as follows:

§8-102. Definitions

When used in this chapter:

23. The term "victim of a crime of violence" means any person who has been subjected to an act or series of acts that would constitute a misdemeanor or felony against the person as defined in state or federal law or that would constitute a misdemeanor or felony against property as defined in state or federal law, where such conduct has resulted in actual physical or emotional injury or has created a substantial risk of physical or emotional harm to such person whether or not such conduct has actually resulted in criminal charges prosecution or conviction.

§2. Subdivision I of section 8-107 of the administrative code of the city of New York is amended to read as follows:

§8-107 Unlawful discriminatory practices

1. Employment. It shall be an unlawful discriminatory practice:

(a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation, [or] alienage or citizenship status, or status as a victim of a crime of violence of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment.

(b) For an employment agency or an employee or agent thereof to discriminate against any person because of such person's actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation, [or] alienage or citizenship status, or status as a victim of a crime of violence in receiving, classifying, disposing or otherwise acting upon applications for its services or in referring an applicant or applicants for its services to an employer or employers.

(c) For a labor organization or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation, [or] alienage or citizenship status, or status as a victim of a crime of violence of any person, to exclude or to expel from its membership such person or to discriminate in any way against any of its members or against any employer or any person employed by an employer.

(d) For any employer, labor organization or employment agency or an employee or agent thereof to declare, print or circulate or cause to be declared, printed, or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national gender, disability, marital status, sexual orientation, [or] alienage or citizenship status, or status as a victim of a crime of violence, or any intent to make any such limitation, specification or discrimination.

(e) The provisions of this subdivision and subdivision two of this section: (i) as they apply to employee benefit plans, shall not be construed to preclude an employer from observing the provisions of any plan covered by the federal employment retirement income security act of nineteen hundred seventy-four that is in compliance with applicable federal discrimination laws where the application of the provisions of such subdivisions to such plan would be preempted by such act; (ii) shall not preclude the varying of insurance coverages according to an employee's age; (iii) shall not be construed to affect any retirement policy or system that is permitted pursuant to paragraph (e) and (f) of subdivision three-a of section two hundred ninety-six of the executive law; (iv) shall not be construed to affect the retirement policy or system of an employer where such policy or system is not a subterfuge to evade the purposes of this chapter.

(f) The provisions of this subdivision shall not govern the employment by an employer of his or her parents, spouse, domestic partner, or children; provided, however, that such family members shall be counted as persons employed by an employer for the purposes of subdivision five of section 8-102 of this chapter.

(g) An individual claiming to be a victim of a crime of violence shall be entitled to the protections of this subdivision only if the individual has provided evidence of his or her status as such to the employer, labor organization or employment agency in the manner required by subdivisions two and three of section 8-107.1 of this chapter.

§3. Section 8-107.1 of the administrative code of the city of New York is hereby REPEALED, and a new section 8-107.1 is added, to read as follows:

§8-107.1 Employment leave permitted

1. Subject to the provisions of this section, no employer shall discharge or in any manner discriminate or retaliate against an employee who is a victim of a crime of violence for taking time off from work to attend any of the following:

- a) To seek medical attention for injuries caused by a crime of violence,
- b) To obtain services from a shelter, program, or crisis center as a result of a crime of violence,

- c) To obtain psychological counseling, related to an experience of a crime of violence, and/or
- d) To participate in safety planning and take other actions to increase safety from future crimes of violence, including temporary or permanent relocation.

2. As a condition for taking time off for a purpose set forth in subdivision (1) of this section, the employee shall provide the employer with evidence that the employee is a victim of a crime of violence. Such evidence shall include court, law enforcement, or social services records that establish that the individual has been a victim of a crime of violence:

3. As a further condition for taking time off for a purpose set forth in subdivision (1) of this section, the employee shall give the employer reasonable advance notice of the employee's intention to take time off, unless the advance notice is not feasible. Within a reasonable time after the absence, the employee must provide certification to the employer concerning the employee's activities or whereabouts during the absence. Certification shall be sufficient in the form of any of the following:

- a) A police report indicating that the employee was a victim of a crime of violence,
- b) A court order protecting or separating the employee from the perpetrator of an act of violence or other evidence from the court or prosecuting attorney that the employee has appeared in court, or
- c) Documentation from a medical professional, domestic violence advocate, health care provider, or counselor that the employee was undergoing treatment for physical or mental injuries or abuse resulting from a crime of violence.

When an unscheduled absence occurs, the employer shall not take any action against the employee if the employee within a reasonable time after the absence, provides such certification to the employer.

4. To the extent allowed by law, employers shall maintain the confidentiality of any employee requesting leave under subdivision (1) of this section.

5. Any employee who is discharged or in any manner discriminated or retaliated against by his or her employer because the employee has exercised his or her rights as set forth in subdivision (1) of this section

may bring an action before the commission pursuant to section 8-109 et seq. of this title.

6. An employee must use all vacation, sick leave, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment, unless otherwise provided by a collective bargaining agreement, for time taken off for a purpose specified in subdivision (1) of this section. The entitlement of any employee under this section shall not be diminished by any collective bargaining agreement term or condition.

7. Leave taken by employees for the purposes specified in subdivision (1) of this section may not exceed a total of 12 workweeks during any 12-month period, exclusive of vacation, sick leave, personal leave, or compensatory time off that is otherwise available to the employee under the applicable terms of employment. An employee whose condition or circumstances entitle him or her to leave pursuant to the federal Family and Medical Leave Act of 1993 (29 U.S.C. & 2601 et seq.) may not take leave for the same condition or circumstances under this section.

§4. This local law shall take effect immediately after its enactment into law.