ASSEMBLY, No. 4557

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED AUGUST 24, 2020

Sponsored by:
Assemblyman THOMAS P. GIBLIN
District 34 (Essex and Passaic)
Assemblywoman VALERIE VAINIERI HUTTLE
District 37 (Bergen)

SYNOPSIS

Requires employers to allow certain employees to work remotely or receive alternative accommodations during coronavirus disease 2019 pandemic.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 8/24/2020)

AN ACT concerning workplace accommodations due to the coronavirus disease 2019 pandemic and supplementing Title 34 of the Revised Statutes.

BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey:*

1. a. Except as otherwise provided by subsection c. of this act, it shall be an unlawful employment practice for any employer to require an employee who is a member of the same household as an individual who is medically required to be in isolation or quarantine to be physically present for work, when that work can be performed remotely, during the public health emergency and state of emergency declared by the Governor pursuant to P.L.2005, c.222 (C.26:13-1 et seq.) and state of emergency declared by the governor pursuant to P.L.1942, c.251 (C.App.A:9-33 et seq.) concerning the coronavirus disease 2019 pandemic, any subsequent extensions of that public health emergency and state of emergency, unless the employer can demonstrate that allowing the employee to work remotely would be an undue hardship on the business operations of the employer.

The employer shall not in any way penalize the employee in terms, conditions or privileges of employment for requesting to work remotely or working remotely in accordance with this act.

b. An employee who seeks a remote work accommodation in accordance with subsection a. of this act shall:

(1) provide documentation that the household member is medically required to be in isolation or quarantine to the employer; and

(2) certify that the individual who is medically required to be in isolation or quarantine is a member of the employee's household.

c. If an employee's essential duties cannot be performed remotely, an employer shall make accommodations for an employee who lives with an individual who is medically required to be in isolation or quarantine to work onsite, to the extent the accommodations are feasible based on the duties of the employee and the worksite environment, and in accordance with guidelines issued by the United States Equal Employment Opportunity Commission with respect to the coronavirus disease 2019 pandemic. Such accommodations may include, but are not limited to:

(1) designating one-way aisles;

(2) using plexiglass, tables, or other barriers to ensure minimum distances between customers and coworkers;

(3) temporary restructuring of marginal job duties;

(4) temporary transfer to a different position;

(5) modifying schedules to reduce potential exposure; and

(6) rearranging workspaces or changing the location where work is performed.

The employer is not required to make an accommodation under this section if the employer can demonstrate that the accommodation would create an undue hardship on the business operations of the employer. The employer shall not in any way penalize the employee in terms, conditions or privileges of employment for requesting or receiving an accommodation in accordance with this act.

d. There is a rebuttable presumption that an employee can perform work remotely if that employee has already performed work remotely for two consecutive pay periods, or two weeks, whichever is less time. The presumption may be rebutted by a preponderance of the evidence showing that the employee cannot perform essential duties remotely.

e. Any employer who violates this act shall be liable for a civil penalty in an amount not to exceed $1,000 for the first violation, $5,000 for the second violation, and $10,000 for each subsequent violation collectible by the Commissioner of Labor and Workforce Development in a summary proceeding pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

f. As used in this act:

“Medically required to be in isolation or quarantine” includes, but is not limited to, being directed by a medical professional to isolate or quarantine due to a high-risk medical condition, having tested positive for coronavirus disease 2019, or having been in direct contact with a person who tested positive for coronavirus disease 2019.

g. The Commissioner of Labor and Workforce Development shall promulgate rules and regulations necessary to effectuate the purposes of this act.

2. This act shall take effect immediately.

STATEMENT

This bill requires employers to accommodate employees who have a member of their household who is medically required to be in isolation or quarantine due to the coronavirus disease 2019 pandemic by allowing the employee to work remotely, or if remote work is not possible, to make reasonable accommodations at the worksite for the employee.

The bill defines “medically required to be in isolation or quarantine” to include, but not be limited to, being directed by a medical professional to isolate or quarantine due to a high-risk medical condition, having tested positive for coronavirus disease 2019, or having been in direct contact with a person who tested positive for coronavirus disease 2019.

An employee who requests to work remotely is required to provide the employer with documentation of the household member's medical requirement for isolation or quarantine and certify that the person with the medical requirement is a member of the employee's household.

There is a rebuttable presumption that the employee can work remotely if that employee has already performed work remotely for two consecutive pay periods, or two weeks, whichever is less time.

If the employee's essential duties cannot be performed remotely, the employer is required to make an accommodation onsite for the employee. The accommodations shall be in accordance with guidelines issued by the United States Equal Employment Opportunity Commission with respect to the coronavirus disease 2019 pandemic.

An employer that violates this bill will be liable for a civil penalty.