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### A05618 Summary:

BILL NO	A05618
SAME AS	SAME AS <a href="#">S01040</a>
SPONSOR	Weinstein (MS)
COSPNSR	Simotas, Glick, Jaffee, Fahy, Rosenthal L, Perry, Zebrowski, Miller MG, Paulin, Titus, Gottfried, Lavine, Colton, Seawright, Bichotte, Burke, Taylor, Griffin, Ramos, Buttenschon, Wallace, Reyes, Cruz

MLTSPNSR	Cahill, Englebright, Galef, Lupardo, Magnarelli, Simon, Thiele, Walczyk
Rpld & add §292 sub 34, amd §296, Exec L	
Defines "victim of domestic violence"; prohibits employers from discriminating against victims of domestic violence.	

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### A05618 Actions:

BILL NO	A05618	
02/14/2019	referred to governmental operations	
02/27/2019	reported referred to codes	
05/07/2019	reported	
05/09/2019	advanced to third reading cal.300	
05/14/2019	substituted by s1040	
	S01040 AMEND= PERSAUD	
	01/10/2019	REFERRED TO INVESTIGATIONS AND GOVERNMENT OPERATIONS
	05/13/2019	REPORTED AND COMMITTED TO RULES
	05/14/2019	ORDERED TO THIRD READING CAL.675
	05/14/2019	PASSED SENATE
	05/14/2019	DELIVERED TO ASSEMBLY
	05/14/2019	referred to codes
	05/14/2019	substituted for a5618
	05/14/2019	ordered to third reading cal.300
	05/14/2019	passed assembly
	05/14/2019	returned to senate

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## **A05618 Memo:**

NEW YORK STATE ASSEMBLY  
MEMORANDUM IN SUPPORT OF LEGISLATION  
submitted in accordance with Assembly Rule III, Sec 1(f)

**BILL NUMBER:** A5618

**SPONSOR:** Weinstein (MS)

**TITLE OF BILL:**

An act to amend the executive law, in relation to prohibiting employers from discriminating against victims of domestic violence; and to repeal certain provisions of such law relating thereto

**PURPOSE OF BILL:**

This bill would prohibit discrimination against victims of domestic violence in employment and provide a limited reason-able accommodation provision.

**SUMMARY OF PROVISIONS OF BILL:**

Section 1 of the bill would amend Executive Law § 292 by revising its subdivision 34 to define the term "victim of domestic violence" as provided in SSL § 459-a.

Section 2 makes a technical change to subdivision 1 of Section 296 of the Executive Law to confirm the prohibition of discrimination in employment against victims of domestic violence in conformity with the new definition in Section 292 of the Executive Law.

Section 3 of the bill would amend Executive Law § 296 by adding a new subdivision 20 to: (1) prohibit discrimination in employment on the basis of an employee's status as a victim of domestic violence; (2) require an employer, unless it would be an undue hardship, to provide a reasonable accommodation to a victim of domestic violence, limited solely to allowing an absence, charged to leave or unpaid, for certain activities set forth in the subdivision; and (3) require an employee who must be absent from work pursuant to this section to provide reasonable advance notice, except where such notice is not feasible.

Section 4 of the bill would provide that it will become effective 90 days after enactment,

**EXISTING LAW:**

Executive Law § 292 defines terms used in the Human Rights Law. Executive Law § 296 sets forth unlawful discriminatory practices in employment, housing, places of public accommodation, and other areas.

**JUSTIFICATION:**

This legislation was vetoed by the Governor in 2010. The Governor preferred that we use a more commonly used definition of domestic violence, such as one used in the Social Services Law (SSL). This measure addresses this concern raised in the Veto message 6759 of 2010 by cross-referencing the long standing and commonly understood definition of victim of domestic violence as provided in SSL § 459-a.

Domestic violence is a crime of enormous magnitude that affects all New Yorkers-regardless of age, race, or economic status-with long term and pervasive consequences for victims, families, communities and society. Each year, an estimated 400,000 domestic violence incidents are reported to law enforcement in New York, and approximately 300,000 calls are received by hotlines throughout the State. Over 300,000 orders of protection were issued by New York Courts in 2013 alone.

In New York and around the nation, several high profile domestic violence cases have renewed focus on the effects of domestic violence on its victims, children and our communities. In addition, some studies have indicated an increased risk of abusive conduct during difficult financial times. The stresses of an economic downturn might also make it more difficult for victims of domestic violence to take the steps they need to get and stay safe.

While New York vigorously responds to domestic violence, improvements can be made to hold offenders accountable, support victims of domestic violence and protect our children from exposure to and involvement in domestic violence situations. This bill will implement legislative changes that will strengthen New York's support for victims and their children.

Stable housing and employment are often the most important resources a domestic violence victim needs in order to stay safe. It can be difficult for victims to obtain and maintain employment due to the stresses of domestic violence, the abuser's interference with the victim's ability to perform in the workplace or the need to access services that are necessary for safety. By including victims of domestic violence as a protected class in the employment provisions of the Human Rights Law, the State will ensure that victims will not be prevented from obtaining or maintaining employment merely as a result of their status as victims of domestic violence.

The bill would allow employees a reasonable accommodation in taking time off to, for example, seek medical attention or counseling or appear in court on matters related to incidents of domestic violence, including child protective proceedings, unless time off would constitute an undue hardship for the employer. Employers would have the option of requiring that employees charge this time to accumulated leave credits or, where such leave credits are unavailable, take unpaid leave.

**LEGISLATIVE HISTORY:**

2017-18 - A.1481-A/S.5565-A - PA/S. Gov. Ops.  
2015-16 - A.272/S.2027 - PA/S. Gov. Ops.  
2013-14 - A.898/S.3385 - PA/S. Gov. Ops.  
2012 - A.2348-A/S.5526 - PA/S. Rules  
2011 - A.2348-A/S.5526 - PA/S. Gov. Ops.  
2010 - A.9018-A/S .6000-A - Veto # 6759 '10  
2009 - A.9018 - PA

FISCAL IMPLICATIONS FOR STATE AND LOCAL GOVERNMENTS:

This bill is not expected to have a material impact on State finances.

EFFECTIVE DATE:

This bill would take effect ninety days after it becomes a law.

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**A05618 Text:**

## STATE OF NEW YORK

5618

2019-2020 Regular Sessions

IN ASSEMBLY

February 14, 2019

Introduced by M. of A. WEINSTEIN, SIMOTAS, GLICK, JAFFEE, FAHY, L. ROSENTHAL, PERRY, ZEBROWSKI, M. G. MILLER, PAULIN, TITUS, GOTTFRIED, LAVINE, COLTON, SEAWRIGHT, BICHOTTE, BURKE, TAYLOR -- Multi-Sponsored by -- M. of A. CAHILL, ENGLEBRIGHT, GALEF, LUPARDO, MAGNARELLI, SIMON, THIELE -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to prohibiting employers from discriminating against victims of domestic violence; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Subdivision 34 of section 292 of the executive law is  
2 REPEALED and a new subdivision 34 is added to read as follows:  
3 34. The term "victim of domestic violence" shall have the same meaning  
4 as is ascribed to such term by section four hundred fifty-nine-a of the  
5 social services law.  
6 § 2. Paragraph (a) of subdivision 1 of section 296 of the executive  
7 law, as amended by chapter 365 of the laws of 2015, is amended to read  
8 as follows:  
9 (a) For an employer or licensing agency, because of an individual's  
10 age, race, creed, color, national origin, sexual orientation, military  
11 status, sex, disability, predisposing genetic characteristics, familial  
12 status, marital status, or status as a victim of domestic violence  
13 [~~victim status~~], to refuse to hire or employ or to bar or to discharge  
14 from employment such individual or to discriminate against such individ-  
15 ual in compensation or in terms, conditions or privileges of employment.  
16 § 3. Section 296 of the executive law is amended by adding a new

17 subdivision 22 to read as follows:

18 22. (a) It shall be an unlawful discriminatory practice for an employ-  
19 er or licensing agency, because of any individual's status as a victim  
20 of domestic violence, to refuse to hire or employ or license or to bar

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 or to discharge from employment such individual or to discriminate  
2 against such individual in compensation or in terms, conditions or priv-  
3 ileges of employment.

4 (b) It shall be an unlawful discriminatory practice for an employer or  
5 employment agency to print or circulate or cause to be printed or circu-  
6 lated any statement, advertisement or publication, or to use any form of  
7 application for employment or to make any inquiry in connection with  
8 prospective employment which expresses, directly or indirectly, any  
9 limitation, specification or discrimination as to status as a victim of  
10 domestic violence, or any intent to make any such limitation, specifica-  
11 tion or discrimination; provided, however, that no provision of this  
12 subdivision shall be construed to prohibit the employer from making any  
13 inquiry or obtaining information for the purpose of providing assistance  
14 to, or a reasonable accommodation in accordance with the provisions of  
15 this subdivision to, a victim of domestic violence.

16 (c) (1) It shall be an unlawful discriminatory practice for an employer  
17 to refuse to provide a reasonable accommodation to an employee who is  
18 known by the employer to be a victim of domestic violence, limited to  
19 those accommodations set forth in subparagraph two of this paragraph,  
20 when such employee must be absent from work for a reasonable time,  
21 unless such absence would cause an undue hardship to the employer as set  
22 forth in subparagraph three of this paragraph, provided, however that  
23 the employer may require an employee to charge any time off pursuant to  
24 this section against any leave with pay ordinarily granted, where avail-  
25 able, unless otherwise provided for in a collective bargaining agreement  
26 or existing employee handbook or policy, and any such absence that  
27 cannot be charged may be treated as leave without pay. An employee who  
28 must be absent from work in accordance with subparagraph two of this  
29 paragraph shall be entitled to the continuation of any health insurance  
30 coverage provided by the employer, to which the employee is otherwise  
31 entitled during any such absence.

32 (2) An employer is required to provide a reasonable accommodation to  
33 an employee who is a victim of domestic violence who must be absent from  
34 work for a reasonable time, in accordance with the provisions of subpar-  
35 agraph one of this paragraph, limited to the following:

36 (i) Seeking medical attention for injuries caused by domestic violence  
37 including for a child who is a victim of domestic violence, provided  
38 that the employee is not the perpetrator of the domestic violence  
39 against the child; or

40 (ii) Obtaining services from a domestic violence shelter, program, or  
41 rape crisis center as a result of domestic violence; or

42 (iii) Obtaining psychological counseling related to an incident or  
43 incidents of domestic violence, including for a child who is a victim of  
44 domestic violence, provided that the employee is not the perpetrator of  
45 the domestic violence against the child; or

46 (iv) Participating in safety planning and taking other actions to  
47 increase safety from future incidents of domestic violence, including  
48 temporary or permanent relocation; or

49 (v) Obtaining legal services, assisting in the prosecution of the  
50 offense, or appearing in court in relation to the incident or incidents  
51 of domestic violence.

52 (3) An employer is required to provide a reasonable accommodation for

53 an employee's absence in accordance with the provisions of subparagraphs  
54 one and two of this paragraph unless the employer can demonstrate that  
55 the employee's absence would constitute an undue hardship to the employ-

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1 er. A determination of whether such an absence will constitute an undue  
2 hardship shall include consideration of factors such as:

3 (i) The overall size of the business, program or enterprise with  
4 respect to the number of employees, number and type of facilities, and  
5 size of budget; and

6 (ii) The type of operation in which the business, program or enter-  
7 prise is engaged, including the composition and structure of the work-  
8 force.

9 (4) An employee who must be absent from work in accordance with the  
10 provisions of subparagraph one of this paragraph shall provide the  
11 employer with reasonable advance notice of the employee's absence,  
12 unless such advance notice is not feasible.

13 (5) An employee who must be absent from work in accordance with the  
14 provisions of subparagraph one of this paragraph and who cannot feasibly  
15 give reasonable advance notice of the absence in accordance with subpar-  
16 agraph four of this paragraph must, within a reasonable time after the  
17 absence, provide a certification to the employer when requested by the  
18 employer.

19 Such certification shall be in the form of:

20 (i) A police report indicating that the employee or his or her child  
21 was a victim of domestic violence;

22 (ii) A court order protecting or separating the employee or his or her  
23 child from the perpetrator of an act of domestic violence;

24 (iii) Other evidence from the court or prosecuting attorney that the  
25 employee appeared in court; or

26 (iv) Documentation from a medical professional, domestic violence  
27 advocate, health care provider, or counselor that the employee or his or  
28 her child was undergoing counseling or treatment for physical or mental  
29 injuries or abuse resulting in victimization from an act of domestic  
30 violence.

31 (6) Where an employee has a physical or mental disability resulting  
32 from an incident or series of incidents of domestic violence, such  
33 employee shall be treated in the same manner as an employee with any  
34 other disability, pursuant to the provisions of this section which  
35 provide that discrimination and refusal to provide reasonable accommo-  
36 dation of disability are unlawful discriminatory practices.

37 (d) To the extent allowed by law, employers shall maintain the confi-  
38 dentality of any information regarding an employee's status as a victim  
39 of domestic violence.

40 § 4. This act shall take effect on the ninetieth day after it shall  
41 have become a law.

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# HOW TO FILE A COMPLAINT

If you believe that you have been discriminated against by your employer because you are a victim of domestic violence, you can file a complaint with the New York State Division of Human Rights.

The New York State Human Rights Law covers employers with four or more employees. A complaint must be filed with the Division within one year of the alleged discriminatory act. Domestic violence victims are protected with regard to employment actions taken on or after July 7, 2009.

To file a complaint:

- Visit the Division's website, at [WWW.DHR.NY.GOV](http://WWW.DHR.NY.GOV), and download a complaint form. Completed complaints must be signed before a notary public, and returned to the Division (by mail or in person).
- Stop by a Division office in person.
- Contact one of the Division's offices, by telephone or by mail, to obtain a complaint form and/or other assistance in filing a complaint.

For more information or to find the regional office nearest to your home or place of employment, visit our website at: [WWW.DHR.NY.GOV](http://WWW.DHR.NY.GOV).

## SOME EXAMPLES:

You obtain an order of protection because you are a victim of domestic violence. You provide the order to your employer, and explain that you are afraid the perpetrator may try to harass you at the workplace. Can your employment be terminated?

**You may not be terminated because your employer learns that you are a domestic violence victim. This includes having an order of protection, or the perpetrator coming to the workplace. If the perpetrator violates the order of protection, or becomes abusive at the workplace, the police should be called as with any other person who engages in misconduct in the workplace.**

You request time off to go to court, to move, or to seek assistance because of domestic violence. Your employer typically allows employees to take time off for personal needs and family emergencies. When your employer learns that you need the time off because of domestic violence, the time off is denied. Do you have any remedies?

**It is unlawful to treat an employee differently with regard to any term, condition or privilege of employment because the employee is a victim of domestic violence.**

You need time off to receive medical or mental health services as a result of the domestic violence. What are your rights?

**Your need for time off for medical or mental health services is covered by the disability and reasonable accommodation provisions of the Human Rights Law. Unless it causes an undue hardship to the employer, you must be granted reasonable time off, and you may not be terminated. Your employer may request a note from the service provider, as long as the employer requires ALL employees to provide a note in circumstances that are similar**



Division of  
Human Rights

## Employment Rights for VICTIMS OF DOMESTIC VIOLENCE

ONE FORDHAM PLAZA  
BRONX, NEW YORK 10458  
1-888-392-3644  
TTY: 718-741-8300  
[WWW.DHR.NY.GOV](http://WWW.DHR.NY.GOV)



## **THE EMPLOYMENT RIGHTS OF DOMESTIC VIOLENCE VICTIMS**

The New York State Human Rights Law was amended, effective July 7, 2009, to provide protection from employment discrimination for victims of domestic violence.

The Human Rights Law defines a domestic violence victim as an individual who is a victim of an act which would constitute a family offense under N.Y. Family Court Act § 812.

It is unlawful to discriminate against a domestic violence victim in hiring for a job, job advancement, requests for use of leave time, or other terms, conditions or privileges of employment.

It is also unlawful for an employer to take an action in retaliation for filing a complaint of discrimination.

### **PUBLIC POLICY**

These employment rights further the public policy of New York State by protecting victims of domestic violence from discrimination in employment so they may have the ability to deal with the unique circumstances of their lives and achieve financial independence from their abuser.

## **FOR FURTHER INFORMATION**

Both domestic violence victims and employers may obtain further information from the following:

### **NEW YORK STATE OFFICE FOR THE PREVENTION OF DOMESTIC VIOLENCE**

(518) 457-5800  
[www.opdv.ny.gov](http://www.opdv.ny.gov)

### **NEW YORK STATE COALITION AGAINST DOMESTIC VIOLENCE**

(800) 942-6906  
[www.nyscadv.org](http://www.nyscadv.org)

### **NYS SPANISH DOMESTIC VIOLENCE HOTLINE**

(800) 942-6908  
[www.vipmujeres.org](http://www.vipmujeres.org)

### **EMPLOYMENT RIGHTS FOR SURVIVORS OF ABUSE (ERSA)**

A national project providing free employment-related legal services.  
(212) 925-6635  
[www.legalmomentum.org](http://www.legalmomentum.org)

To find domestic violence victim services in your area, go to:  
[www.nyscadv.org/directory.htm](http://www.nyscadv.org/directory.htm) or call one of the 800 hotline numbers listed above.

## **OTHER PROTECTIONS FOR VICTIMS**

**Time off for medical care.** Domestic violence victims who need time off from work for medical or mental health care are protected by the disability and reasonable accommodation provisions of the Human Rights Law. These rights can be enforced by the Division. Victims may also have rights under the federal Family Medical Leave Act (FMLA) and other disability laws; these laws are not enforced by the Division.

**Other time off.** It is illegal for an employer to take any adverse action against an employee who is a victim of a crime for taking time off to appear in court as a witness, to consult with a district attorney, or to obtain an order of protection, pursuant to N.Y. Penal Law § 215.14. This specific right is not enforced by the Division. However, it would be discriminatory under the Human Rights Law to treat a victim of domestic violence any differently than employees who need time off for other reasons.

**Unemployment insurance.** If you need to leave a job because of domestic violence you are not necessarily barred from receiving unemployment insurance benefits. Pursuant to N.Y. Labor Law § 593, circumstances related to domestic violence may be "good cause" for voluntarily quitting a job. Also, job performance problems related to domestic violence (such as absenteeism or tardiness) will not necessarily bar benefits.