

1 SENATE BILL 405

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Linda M. Lopez

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10 AN ACT

11 RELATING TO HUMAN RIGHTS; EXPANDING THE DEFINITION OF
12 "EMPLOYER" TO INCLUDE JOINT EMPLOYERS.

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

17 "28-1-2. DEFINITIONS.--As used in the Human Rights Act:

18 A. "person" means one or more individuals, a
19 partnership, association, organization, corporation, joint
20 venture, legal representative, trustees, receivers or the state
21 and all of its political subdivisions;

22 B. "employer" means any person employing four or
23 more persons and any person acting for an employer and includes
24 a joint employer that:

25 (1) shares control of an employee with another

1 employer and the employee acts directly or indirectly in the
2 interest of both employers; or

3 (2) acts directly or indirectly in the
4 interest of another employer in relation to the employee;

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

6 D. "director" or "bureau" means the human rights
7 bureau of the labor relations division of the workforce
8 solutions department;

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

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

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

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

25 I. "housing accommodation" means any building or

1 portion of a building that is constructed or to be constructed,
2 which is used or intended for use as the residence or sleeping
3 place of any individual;

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

8 K. "secretary" means the secretary of workforce
9 solutions;

10 L. "unlawful discriminatory practices" means those
11 unlawful practices and acts specified in Section 28-1-7 NMSA
12 1978;

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

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

22 O. "applicant for employment" means a person
23 applying for a position as an employee;

24 P. "sexual orientation" means heterosexuality,
25 homosexuality or bisexuality, whether actual or perceived;

1 Q. "gender identity" means a person's self-
2 perception, or perception of that person by another, of the
3 person's identity as a male or female based upon the person's
4 appearance, behavior or physical characteristics that are in
5 accord with or opposed to the person's physical anatomy,
6 chromosomal sex or sex at birth;

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

14 S. "undue hardship" means an accommodation
15 requiring significant difficulty or expense when considered in
16 light of the following factors:

- 17 (1) the nature and cost of the accommodation;
18 (2) the financial resources of the employer
19 involved in the provision of the reasonable accommodation;
20 (3) the number of persons the employer
21 employs;
22 (4) the effect of the accommodation on
23 expenses and resources;
24 (5) the impact of the accommodation otherwise
25 upon the employer's business;

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underscoring material = new
~~[bracketed material] = delete~~

1 (6) the overall financial resources of the
2 employer;

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

6 (8) the type of operation of the employer,
7 including the composition, structure and functions of the
8 workforce of the employer; or

9 (9) the geographic separateness or
10 administrative or fiscal relationship to the employer of the
11 employer's facilities."

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