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HOUSE BILL NO. 2094

Offered January 9, 2019
Prefiled January 7, 2019

A BILL to amend and reenact § 51.5-41 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-2903.01, relating to the Virginia Personnel Act; hiring preference for persons with disabilities.

Patrons—Guzman, Adams, D.M., Ayala, Hope, Kory and Rasoul; Senator: Ebbin

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That § 51.5-41 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-2903.01 as follows:

§ 2.2-2903.01. Preference for persons with disabilities.

In a manner consistent with federal and state law, if any person with a disability applies for employment with the Commonwealth, such person shall be given preference during the selection process, provided that such person meets all of the knowledge, skill, and ability requirements for the available position and such person's disability is unrelated to his qualifications for and ability to perform the duties of the available position. As used in this section, "person with a disability" means the same as that term is defined in § 51.5-40.1.

§ 51.5-41. Discrimination against otherwise qualified persons with disabilities by employers prohibited.

A. No employer shall discriminate in employment or promotion practices against an otherwise qualified person with a disability solely because of such disability. For the purposes of this section, an "otherwise qualified person with a disability" means a person qualified to perform the duties of a particular job or position and whose disability is unrelated to the person's ability to perform such duties or position or is unrelated to the person's qualifications for employment or promotion.

B. ~~It~~ *Except as otherwise provided by § 2.2-2903.01, it* is the policy of the Commonwealth that persons with disabilities shall be employed in the state service, the service of the political subdivisions of the Commonwealth, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as other persons unless it is shown that the particular disability prevents the performance of the work involved.

C. An employer shall make reasonable accommodation to the known physical and mental impairments of an otherwise qualified person with a disability, if necessary to assist such person in performing a particular job, unless the employer can demonstrate that the accommodation would impose an undue burden on the employer. For the purposes of this section, "mental impairment" does not include active alcoholism or current drug addiction and does not include any mental impairment, disease, or defect that has been successfully asserted by an individual as a defense to any criminal charge.

1. In determining whether an accommodation would constitute an undue burden upon the employer, the following shall be considered:

a. Hardship on the conduct of the employer's business, considering the nature of the employer's operation, including composition and structure of the employer's work force;

b. Size of the facility where employment occurs;

c. The nature and cost of the accommodations needed, taking into account alternate sources of funding or technical assistance included under § 51.5-173;

d. The possibility that the same accommodations may be used by other prospective employees;

e. Safety and health considerations of the person with a disability, other employees, and the public.

2. Notwithstanding the foregoing, any accommodation that would exceed $500 in cost shall be rebuttably presumed to impose an undue burden upon any employer with fewer than 50 employees.

3. The employer has the right to choose among equally effective accommodations.

4. Nothing in this section shall require accommodations when the authority to make such accommodations is precluded under the terms of a lease or otherwise prohibited by statute, ordinance, or other regulation.

5. Building modifications made for the purposes of such reasonable accommodation may be made without requiring the remainder of the existing building to comply with the requirements of the Uniform Statewide Building Code.

D. Nothing in this section shall prohibit an employer from refusing to hire or promote, from disciplining, transferring, or discharging or taking any other personnel action pertaining to an applicant

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or an employee who, because of his disability, is unable to adequately perform his duties, or cannot perform such duties in a manner which would not endanger his health or safety or the health or safety of others. Nothing in this section shall subject an employer to any legal liability resulting from the refusal to employ or promote or from the discharge, transfer, discipline of, or the taking of any other personnel action pertaining to a person with a disability who, because of his disability, is unable to adequately perform his duties, or cannot perform such duties in a manner that would not endanger his health or safety or the health or safety of others.

E. Nothing in this section shall be construed as altering the provisions of the Virginia Minimum Wage Act (§ 40.1-28.8 et seq.).

F. This section shall not apply to employers covered by the federal Rehabilitation Act of 1973.

G. No employer who has hired any person because of the requirements of this section shall be liable for any alleged negligence in such hiring.