

2023 Regular Session

SENATE BILL NO. 200

BY SENATOR DUPLESSIS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EMPLOYMENT. Provides that retaliation against an employee for an absence from work due to genetic testing or a medically necessary cancer screening shall be an unlawful employment practice. (8/1/23)

1 AN ACT

2 To amend and reenact R.S. 23:302(7) and (8), and to enact R.S. 23:302(9) through (11) and
3 Part VIII of Chapter 3-A of Title 23 of the Louisiana Revised Statutes of 1950, to be
4 comprised of R.S. 23:370 through 372, relative to prohibited discrimination in
5 employment; to prohibit discrimination and retaliation in employment relative to
6 genetic testing and medically necessary screening for cancer; to prohibit
7 discrimination and retaliation by employers, employment agencies, and labor
8 organizations against certain employees; to provide certain employee protections; to
9 provide for civil suits and the award of damages, fees, and court costs; to provide
10 relative to definitions; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 23:302(7) and (8) are hereby amended and reenacted and R.S.
13 23:302(9) through (11) and Part VIII of Chapter 3-A of Title 23 of the Louisiana Revised
14 Statutes of 1950, comprised of R.S. 23:370 through 372, are hereby enacted to read as
15 follows:

16 §302. Definitions

17 For purposes of this Chapter and unless the content clearly indicates

1 otherwise, the following terms shall have the following meanings ascribed to them:

2 * * *

3 (7) "Medically necessary" means those healthcare services that are in
4 accordance with generally accepted evidence-based medical standards or that
5 are considered by most physicians or independent licensed practitioners within
6 the community of their respective professional organizations to be the standard
7 of care. In order to be considered medically necessary, services must be:

8 (a) Deemed reasonably necessary to diagnose, correct, cure, alleviate or
9 prevent the worsening of a condition or conditions that endanger life, cause
10 suffering or pain, or have resulted or will result in a handicap, physical
11 deformity, or malfunction, and those for which no equally effective and less
12 costly course of treatment is available or suitable for the recipient.

13 (b) Services that are experimental, non-FDA approved, investigational,
14 or cosmetic are not deemed medically necessary and are specifically excluded
15 from coverage unless coverage for early screening and detection is provided for
16 in Part III of Chapter 4 of Title 22 of the Louisiana Revised Statutes of 1950.

17 ~~(7)~~(8) "Labor organization" means any organization which exists for the
18 purpose, in whole or in part, of collective bargaining or of dealing with employers
19 concerning grievances, terms, or conditions of employment, or for other mutual aid
20 or protection in relation to employment or any agent acting for such an organization.

21 ~~(8)~~(9) "Protected genetic information" means information about an
22 individual's genetic tests, the genetic tests of an individual's family members, or the
23 occurrence of a disease, or medical condition or disorder in family members of the
24 individual.

25 (10) "Preventive cancer screening" means healthcare services necessary
26 for the detection of cancer in an individual, including but not limited to
27 magnetic resonance imaging, ultrasound, or some combination of tests.

28 (11) "Reprisal" means the firing, laying off, loss of benefits, or any other
29 type of adverse action taken by an employer against an employee for engaging

1 in protected activity.

2 * * *

3 PART VIII. GENETIC TESTING AND CANCER SCREENING

4 §370. Prohibition of genetic testing and cancer screening discrimination in the
5 workplace; exceptions

6 A. The legislature hereby finds that cancer is a leading cause of death in
7 this state. Medical advances in genetic testing and cancer screening services for
8 various types of cancer, including breast, ovarian, colon, thyroid, prostate,
9 pancreatic, lung, melanoma, sarcoma, kidney, and stomach cancers, greatly
10 assist in estimating the chance of developing cancer in an individual's lifetime.
11 Genetic testing and cancer screening services can help predict the risk of a
12 particular cancer and assist in determining if a patient has genes that may pass
13 increased cancer risks to their children.

14 B. It is unlawful for an employer to engage in any of the following
15 practices:

16 (1) Failing or refusing to hire, or disciplining, subjecting to reprisal or
17 threatening to subject to reprisal, any employee who is absent from work due
18 to genetic testing or a medically necessary cancer screening performed in
19 accordance with the most recently published recommendations established by
20 the American Cancer Society for the ages, family histories, and frequencies
21 referenced in those recommendations.

22 (2) Discharging, demoting, suspending, threatening, harassing, or
23 discriminating against an employee for being absent from work due to genetic
24 testing or a medically necessary cancer screening.

25 (3) Failing or refusing to promote any employee or otherwise
26 discriminating against any employee with respect to his compensation, terms,
27 conditions, or privileges of employment, because the employee is absent from
28 work due to genetic testing or a medically necessary cancer screening.

29 C. It is unlawful for an employer, an employment agency, or a labor

1 organization to engage in any of the following practices:

2 (1) Limiting, segregating, or classifying employees in any way which
3 would deprive or tend to deprive any individual of employment opportunities,
4 or otherwise adversely affect his status as an employee, because the individual
5 is absent from work due to genetic testing or a medically necessary cancer
6 screening.

7 (2) Reducing the wage rate of any employee who is absent from work
8 due to genetic testing or a medically necessary cancer screening.

9 (3) Failing to refer or refusing to refer for employment, or otherwise
10 discriminating against, any individual because the individual is absent from
11 work due to genetic testing or a medically necessary cancer screening, or to
12 classify or refer for employment any individual on the basis that the individual
13 is absent from work due to genetic testing or a medically necessary cancer
14 screening.

15 (4) Excluding or expelling from its membership, or otherwise
16 discriminating against, any individual who is absent from work due to genetic
17 testing or a medically necessary cancer screening.

18 (5) Limiting, segregating, or classifying its membership, or classifying
19 or failing to refer or refusing to refer for employment any individual in any way
20 which would deprive or tend to deprive the individual of employment
21 opportunities, or limit employment opportunities, or otherwise adversely affect
22 his status as an employee or as an applicant for employment, solely because the
23 individual is absent from work due to genetic testing or a medically necessary
24 cancer screening.

25 (6) Causing or attempting to cause an employer to discriminate against
26 an individual in violation of this Section.

27 D. It is unlawful for an employer to discriminate against any of his
28 employees or applicants for employment, for an employment agency to
29 discriminate against any individual, or for a labor organization to discriminate

1 against any member thereof or applicant for membership because the
2 individual, member, or applicant for membership has opposed any practice
3 made unlawful by this Section, or because the individual, member, or applicant
4 for membership has made a charge, testified, assisted, or participated in any
5 manner in an investigation, proceeding, or litigation under this Part.

6 E. It is unlawful for an employer, labor organization, or employment
7 agency to print or publish, or cause to be printed or published, any notice or
8 advertisement relating to employment by the employer or membership in or
9 any classification or referral for employment by the a labor organization, or
10 relating to any classification or referral for employment by the employment
11 agency indicating any preference, limitation, specification, or discrimination
12 towards an employee who is absent from work due to genetic testing or a
13 medically necessary cancer screening.

14 F. Notwithstanding any other provision of law to the contrary, an
15 employer, employment agency, or labor organization shall not be required to
16 provide paid time off to any employee who is absent from work due to genetic
17 testing or a medically necessary cancer screening.

18 G. Notwithstanding any other provision of law to the contrary, an
19 employer shall not require an employee to disclose any results of genetic tests
20 or a cancer screening that are otherwise protected under the Genetic
21 Information and Nondiscrimination Act (GINA) and the Health Information
22 Portability and Accountability Act (HIPAA).

23 §371. Civil suit authorized

24 A. A plaintiff who has a cause of action against an employer,
25 employment agency, or labor organization for a violation of this Part may file
26 a suit in the district court for the parish in which the alleged violation occurred
27 seeking back pay, benefits, reinstatement, reasonable attorney fees, and court
28 costs.

29 B. Any plaintiff found by the court to have brought a frivolous claim

1 under this Part shall be responsible for reasonable damages incurred as a result
2 of the claim, including reasonable attorney fees and court costs.

3 C. A plaintiff who alleges that his employer, employment agency, or
4 labor organization has committed an act of discrimination or reprisal against
5 him for seeking genetic testing or a medically necessary cancer screening shall
6 give that employer, employment agency, or labor organization written notice
7 that details the alleged discrimination or reprisal at least thirty days before
8 initiating court action, and both parties shall make a good faith effort to resolve
9 the dispute before court action.

10 §372. Notice to be posted

11 Every employer, employment agency, and labor organization shall post
12 and keep posted in conspicuous places upon its premises a notice, to be
13 prepared by the Louisiana Workforce Commission, setting forth information
14 the commission deems appropriate to effectuate the purposes of this Part.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Yoursheka D. Butler.

DIGEST

SB 200 Original

2023 Regular Session

Duplessis

Present law provides definitions relative to prohibited employment discrimination.

Proposed law retains present law and defines the terms "medically necessary", "preventive cancer screening", and "reprisal".

Present law protects qualified persons from employment discrimination on the basis of protected genetic information and prohibits employers, labor organizations, and employment agencies from engaging in certain discriminatory practices in the workplace.

Proposed law retains present law and further forbids discrimination or retaliation against employees who are absent from work due to genetic testing or a medically necessary cancer screening.

Proposed law makes it unlawful for an employer to fail or refuse to hire, promote, or to discharge, demote, suspend, threaten, harass, discipline, discriminate, or retaliate against an employee who is absent from work due to genetic testing or a medically necessary cancer screening.

Proposed law makes it unlawful for employers, employment agencies, or labor unions to do any of the following to adversely affect employees who are absent from work due to genetic testing or a medically necessary cancer screening:

- (1) Limit, segregate, or classify employees in any way which would deprive any

individual of employment opportunities, or otherwise adversely affect his status as an employee, because the individual is absent from work due to genetic testing or a medically necessary cancer screening.

- (2) Reduce the employee's wage rate.
- (3) Fail or refuse to refer the employee for employment.
- (4) Exclude or expel the employee from membership.

Proposed law provides that employers, employment agencies, or labor organizations are not required to provide paid time off to employees who are absent from work due to genetic testing or a medically necessary cancer screening.

Proposed law provides that the disclosure of an employee's genetic test or cancer screening results are optional. Proposed law further provides that an employee's decision not to disclose the results of his genetic test or cancer screening is protected by the Health Information Portability and Accountability Act (HIPAA) and the Genetic Information and Nondiscrimination Act (GINA).

Proposed law provides civil remedies.

Effective August 1, 2023.

(Amends R.S. 23:302(7) and (8); adds R.S. 23:302(9)-(11) and 370-372)