

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 371, 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 relative to definitions; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 23:302(7) and (8) are hereby amended and reenacted and R.S.
12 23:302(9) through (11) and Part VIII of Chapter 3-A of Title 23 of the Louisiana Revised
13 Statutes of 1950, comprised of R.S. 23:370 through 371, are hereby enacted to read as
14 follows:

15 §302. Definitions

16 For purposes of this Chapter and unless the content clearly indicates
17 otherwise, the following terms shall have the following meanings ascribed to them:

* * *

1
2 **(7) "Medically necessary" means those healthcare services that are in**
3 **accordance with generally accepted evidence-based medical standards or that**
4 **are considered by most physicians or independent licensed practitioners within**
5 **the community of their respective professional organizations to be the standard**
6 **of care. In order to be considered medically necessary, services must be:**

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

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

16 ~~(7)~~**(8)** "Labor organization" means any organization which exists for the
17 purpose, in whole or in part, of collective bargaining or of dealing with employers
18 concerning grievances, terms, or conditions of employment, or for other mutual aid
19 or protection in relation to employment or any agent acting for such an organization.

20 ~~(8)~~**(9)** "Protected genetic information" means information about an
21 individual's genetic tests, the genetic tests of an individual's family members, or the
22 occurrence of a disease, or medical condition or disorder in family members of the
23 individual.

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

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

1 * * *

2 PART VIII. GENETIC TESTING AND CANCER SCREENING

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

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

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

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

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

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

28 C. It is unlawful for an employer, an employment agency, or a labor
29 organization to engage in any of the following practices:

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

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

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

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

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

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

26 D. It is unlawful for an employer to discriminate against any of his
27 employees or applicants for employment, for an employment agency to
28 discriminate against any individual, or for a labor organization to discriminate
29 against any member thereof or applicant for membership because the

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

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

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

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

22 §371. Notice to be posted

23 Every employer, employment agency, and labor organization shall post
24 and keep posted in conspicuous places upon its premises a notice, to be
25 prepared by the Louisiana Workforce Commission, setting forth information
26 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 Engrossed

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).

Effective August 1, 2023.

(Amends R.S. 23:302(7) and (8); adds R.S. 23:302(9)-(11) and 370-371)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Labor and Industrial Relations to the engrossed bill

1. Remove civil remedies.
2. Make technical changes.