

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.

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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.

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

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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.