

**Superseded 5/12/2015**

**34A-5-106 Discriminatory or prohibited employment practices -- Permitted practices.**

(1) It is a discriminatory or prohibited employment practice to take any action described in Subsections (1)(a) through (f).

(a)

(i) An employer may not refuse to hire, promote, discharge, demote, or terminate any person, or to retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against any person otherwise qualified, because of:

- (A) race;
- (B) color;
- (C) sex;
- (D) pregnancy, childbirth, or pregnancy-related conditions;
- (E) age, if the individual is 40 years of age or older;
- (F) religion;
- (G) national origin; or
- (H) disability.

(ii) A person may not be considered "otherwise qualified," unless that person possesses the following required by an employer for any particular job, job classification, or position:

- (A) education;
- (B) training;
- (C) ability, with or without reasonable accommodation;
- (D) moral character;
- (E) integrity;
- (F) disposition to work;
- (G) adherence to reasonable rules and regulations; and
- (H) other job related qualifications required by an employer.

(iii)

(A) As used in this chapter, "to discriminate in matters of compensation" means the payment of differing wages or salaries to employees having substantially equal experience, responsibilities, and skill for the particular job.

(B) Notwithstanding Subsection (1)(a)(iii)(A):

- (I) nothing in this chapter prevents increases in pay as a result of longevity with the employer, if the salary increases are uniformly applied and available to all employees on a substantially proportional basis; and
- (II) nothing in this section prohibits an employer and employee from agreeing to a rate of pay or work schedule designed to protect the employee from loss of Social Security payment or benefits if the employee is eligible for those payments.

(b) An employment agency may not:

(i) refuse to list and properly classify for employment, or refuse to refer an individual for employment, in a known available job for which the individual is otherwise qualified, because of:

- (A) race;
- (B) color;
- (C) sex;
- (D) pregnancy, childbirth, or pregnancy-related conditions;
- (E) religion;
- (F) national origin;

- (G) age, if the individual is 40 years of age or older; or
- (H) disability; or
- (ii) comply with a request from an employer for referral of applicants for employment if the request indicates either directly or indirectly that the employer discriminates in employment on account of:
  - (A) race;
  - (B) color;
  - (C) sex;
  - (D) pregnancy, childbirth, or pregnancy-related conditions;
  - (E) religion;
  - (F) national origin;
  - (G) age, if the individual is 40 years of age or older; or
  - (H) disability.
- (c) A labor organization may not exclude any individual otherwise qualified from full membership rights in the labor organization, expel the individual from membership in the labor organization, or otherwise discriminate against or harass any of the labor organization's members in full employment of work opportunity, or representation, because of:
  - (i) race;
  - (ii) sex;
  - (iii) pregnancy, childbirth, or pregnancy-related conditions;
  - (iv) religion;
  - (v) national origin;
  - (vi) age, if the individual is 40 years of age or older; or
  - (vii) disability.
- (d) Unless based upon a bona fide occupational qualification, or required by and given to an agency of government for security reasons, an employer, employment agency, or labor organization may not print, or circulate, or cause to be printed or circulated, any statement, advertisement, or publication, use any form of application for employment or membership, or make any inquiry in connection with prospective employment or membership that expresses, either directly or indirectly:
  - (i) any limitation, specification, or discrimination as to:
    - (A) race;
    - (B) color;
    - (C) religion;
    - (D) sex;
    - (E) pregnancy, childbirth, or pregnancy-related conditions;
    - (F) national origin;
    - (G) age, if the individual is 40 years of age or older; or
    - (H) disability; or
  - (ii) the intent to make any limitation, specification, or discrimination described in Subsection (1) (d)(i).
- (e) A person, whether or not an employer, an employment agency, a labor organization, or the employees or members of an employer, employment agency, or labor organization, may not:
  - (i) aid, incite, compel, or coerce the doing of an act defined in this section to be a discriminatory or prohibited employment practice;
  - (ii) obstruct or prevent any person from complying with this chapter, or any order issued under this chapter; or
  - (iii) attempt, either directly or indirectly, to commit any act prohibited in this section.

- (f)
  - (i) An employer, labor organization, joint apprenticeship committee, or vocational school, providing, coordinating, or controlling apprenticeship programs, or providing, coordinating, or controlling on-the-job-training programs, instruction, training, or retraining programs may not:
    - (A) deny to, or withhold from, any qualified person, the right to be admitted to, or participate in any apprenticeship training program, on-the-job-training program, or other occupational instruction, training or retraining program because of:
      - (I) race;
      - (II) color;
      - (III) sex;
      - (IV) pregnancy, childbirth, or pregnancy-related conditions;
      - (V) religion;
      - (VI) national origin;
      - (VII) age, if the individual is 40 years of age or older; or
      - (VIII) disability;
    - (B) discriminate against or harass any qualified person in that person's pursuit of programs described in Subsection (1)(f)(i)(A), or to discriminate against such a person in the terms, conditions, or privileges of programs described in Subsection (1)(f)(i)(A), because of:
      - (I) race;
      - (II) color;
      - (III) sex;
      - (IV) pregnancy, childbirth, or pregnancy-related conditions;
      - (V) religion;
      - (VI) national origin;
      - (VII) age, if the individual is 40 years of age or older; or
      - (VIII) disability; or
    - (C) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be printed or published, any notice or advertisement relating to employment by the employer, or membership in or any classification or referral for employment by a labor organization, or relating to any classification or referral for employment by an employment agency, indicating any preference, limitation, specification, or discrimination based on:
      - (I) race;
      - (II) color;
      - (III) sex;
      - (IV) pregnancy, childbirth, or pregnancy-related conditions;
      - (V) religion;
      - (VI) national origin;
      - (VII) age, if the individual is 40 years of age or older; or
      - (VIII) disability.
  - (ii) Notwithstanding Subsection (1)(f)(i)(C), if the following is a bona fide occupational qualification for employment, a notice or advertisement described in Subsection (1)(f)(i)(C) may indicate a preference, limitation, specification, or discrimination based on:
    - (A) race;
    - (B) color;
    - (C) religion;
    - (D) sex;
    - (E) pregnancy, childbirth, or pregnancy-related conditions;

- (F) age;
  - (G) national origin; or
  - (H) disability.
- (2) Nothing contained in Subsections (1)(a) through (1)(f) shall be construed to prevent:
- (a) the termination of employment of an individual who, with or without reasonable accommodation, is physically, mentally, or emotionally unable to perform the duties required by that individual's employment;
  - (b) the variance of insurance premiums or coverage on account of age; or
  - (c) a restriction on the activities of individuals licensed by the liquor authority with respect to persons under 21 years of age.
- (3)
- (a) It is not a discriminatory or prohibited employment practice:
    - (i) for an employer to hire and employ employees, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin, or disability in those certain instances where religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, national origin, or disability is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise;
    - (ii) for a school, college, university, or other educational institution to hire and employ employees of a particular religion if:
      - (A) the school, college, university, or other educational institution is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religious corporation, association, or society; or
      - (B) the curriculum of the school, college, university, or other educational institution is directed toward the propagation of a particular religion;
    - (iii) for an employer to give preference in employment to:
      - (A) the employer's:
        - (I) spouse;
        - (II) child; or
        - (III) son-in-law or daughter-in-law;
      - (B) any person for whom the employer is or would be liable to furnish financial support if those persons were unemployed;
      - (C) any person to whom the employer during the preceding six months has furnished more than one-half of total financial support regardless of whether or not the employer was or is legally obligated to furnish support; or
      - (D) any person whose education or training was substantially financed by the employer for a period of two years or more.
  - (b) Nothing in this chapter applies to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of the business or enterprise under which preferential treatment is given to any individual because that individual is a native American Indian living on or near an Indian reservation.
  - (c) Nothing in this chapter shall be interpreted to require any employer, employment agency, labor organization, vocational school, joint labor-management committee, or apprenticeship program subject to this chapter to grant preferential treatment to any individual or to any

group because of the race, color, religion, sex, age, national origin, or disability of the individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, age, national origin, or disability employed by any employer, referred or classified for employment by an employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of that race, color, religion, sex, age, national origin, or disability in any community or county or in the available work force in any community or county.

- (4) It is not a discriminatory or prohibited practice with respect to age to observe the terms of a bona fide seniority system or any bona fide employment benefit plan such as a retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire an individual.
- (5) Notwithstanding Subsection (4), or any other statutory provision to the contrary, a person may not be subject to involuntary termination or retirement from employment on the basis of age alone, if the individual is 40 years of age or older, except:
  - (a) under Subsection (6); and
  - (b) when age is a bona fide occupational qualification.
- (6) Nothing in this section prohibits compulsory retirement of an employee who has attained at least 65 years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if:
  - (a) that employee is entitled to an immediate nonforfeitable annual retirement benefit from the employee's employer's pension, profit-sharing, savings, or deferred compensation plan, or any combination of those plans; and
  - (b) the benefit described in Subsection (6)(a) equals, in the aggregate, at least \$44,000.