

Representative Tim Jimenez proposes the following substitute bill:

LABOR AND MILITARY TRAINING REQUIREMENT

LIMITATION

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Tim Jimenez

Senate Sponsor: _____

LONG TITLE

General Description:

This bill prohibits, for purposes of employment discrimination, certain training or other requirements that compel or require adherence to or belief in certain concepts.

Highlighted Provisions:

This bill:

- ▶ prohibits, for purposes of employment discrimination, training or other requirements that compel or require adherence to or belief in certain concepts;
- ▶ clarifies that the prohibition does not prohibit certain objective discussions;
- ▶ provides for severability; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

34A-5-106, as last amended by Laws of Utah 2016, Chapter 330



26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **34A-5-106** is amended to read:

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

(1) It is a discriminatory or prohibited employment practice to take an action described in Subsections (1)(a) through [~~(g)~~] (h).

(a) (i) An employer may not refuse to hire, promote, discharge, demote, or terminate a person, or to retaliate against, harass, or discriminate in matters of compensation or in terms, privileges, and conditions of employment against a 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;
- (H) disability;
- (I) sexual orientation; or
- (J) gender identity.

(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

57 the payment of differing wages or salaries to employees having substantially equal experience,
58 responsibilities, and skill for the particular job.

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

60 (I) nothing in this chapter prevents an increase in pay as a result of longevity with the
61 employer, if the salary increase is uniformly applied and available to all employees on a
62 substantially proportional basis; and

63 (II) nothing in this section prohibits an employer and employee from agreeing to a rate
64 of pay or work schedule designed to protect the employee from loss of Social Security payment
65 or benefits if the employee is eligible for those payments.

66 (b) An employment agency may not:

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

70 (A) race;

71 (B) color;

72 (C) sex;

73 (D) pregnancy, childbirth, or pregnancy-related conditions;

74 (E) religion;

75 (F) national origin;

76 (G) age, if the individual is 40 years of age or older;

77 (H) disability;

78 (I) sexual orientation; or

79 (J) gender identity; or

80 (ii) comply with a request from an employer for referral of an applicant for
81 employment if the request indicates either directly or indirectly that the employer discriminates
82 in employment on account of:

83 (A) race;

84 (B) color;

85 (C) sex;

86 (D) pregnancy, childbirth, or pregnancy-related conditions;

87 (E) religion;

- 88 (F) national origin;
- 89 (G) age, if the individual is 40 years of age or older;
- 90 (H) disability;
- 91 (I) sexual orientation; or
- 92 (J) gender identity.
- 93 (c) (i) A labor organization may not for a reason listed in Subsection (1)(c)(ii):
- 94 (A) exclude an individual otherwise qualified from full membership rights in the labor
- 95 organization;
- 96 (B) expel the individual from membership in the labor organization; or
- 97 (C) otherwise discriminate against or harass a member of the labor organization in full
- 98 employment of work opportunity, or representation.
- 99 (ii) A labor organization may not take an action listed in this Subsection (1)(c) because
- 100 of:
- 101 (A) race;
- 102 (B) sex;
- 103 (C) pregnancy, childbirth, or pregnancy-related conditions;
- 104 (D) religion;
- 105 (E) national origin;
- 106 (F) age, if the individual is 40 years of age or older;
- 107 (G) disability;
- 108 (H) sexual orientation; or
- 109 (I) gender identity.
- 110 (d) (i) Unless based upon a bona fide occupational qualification, or required by and
- 111 given to an agency of government for a security reason, an employer, employment agency, or
- 112 labor organization may not do the following if the statement, advertisement, publication, form,
- 113 or inquiry violates Subsection (1)(d)(ii):
- 114 (A) print, circulate, or cause to be printed or circulated a statement, advertisement, or
- 115 publication;
- 116 (B) use a form of application for employment or membership; or
- 117 (C) make any inquiry in connection with prospective employment or membership.
- 118 (ii) This Subsection (1)(d) applies to a statement, advertisement, publication, form, or

119 inquiry that directly expresses a limitation, specification, or discrimination as to:

- 120 (A) race;
- 121 (B) color;
- 122 (C) religion;
- 123 (D) sex;
- 124 (E) pregnancy, childbirth, or pregnancy-related conditions;
- 125 (F) national origin;
- 126 (G) age, if the individual is 40 years of age or older;
- 127 (H) disability;
- 128 (I) sexual orientation; or
- 129 (J) gender identity.

130 (e) A person, whether or not an employer, an employment agency, a labor organization,
131 or an employee or member of an employer, employment agency, or labor organization, may
132 not:

133 (i) aid, incite, compel, or coerce the doing of an act defined in this section to be a
134 discriminatory or prohibited employment practice;

135 (ii) obstruct or prevent a person from complying with this chapter, or any order issued
136 under this chapter; or

137 (iii) attempt, either directly or indirectly, to commit an act prohibited in this section.

138 (f) (i) An employer, labor organization, joint apprenticeship committee, or vocational
139 school providing, coordinating, or controlling an apprenticeship program or providing,
140 coordinating, or controlling an on-the-job-training program, instruction, training, or retraining
141 program may not:

142 (A) deny to, or withhold from, any qualified person the right to be admitted to or
143 participate in an apprenticeship training program, on-the-job-training program, or other
144 occupational instruction, training, or retraining program because of:

- 145 (I) race;
- 146 (II) color;
- 147 (III) sex;
- 148 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 149 (V) religion;

- 150 (VI) national origin;
- 151 (VII) age, if the individual is 40 years of age or older;
- 152 (VIII) disability;
- 153 (IX) sexual orientation; or
- 154 (X) gender identity;
- 155 (B) discriminate against or harass a qualified person in that person's pursuit of a
- 156 program described in Subsection (1)(f)(i)(A) because of:
 - 157 (I) race;
 - 158 (II) color;
 - 159 (III) sex;
 - 160 (IV) pregnancy, childbirth, or pregnancy-related conditions;
 - 161 (V) religion;
 - 162 (VI) national origin;
 - 163 (VII) age, if the individual is 40 years of age or older;
 - 164 (VIII) disability;
 - 165 (IX) sexual orientation; or
 - 166 (X) gender identity;
- 167 (C) discriminate against a qualified person in the terms, conditions, or privileges of a
- 168 program described in Subsection (1)(f)(i)(A), because of:
 - 169 (I) race;
 - 170 (II) color;
 - 171 (III) sex;
 - 172 (IV) pregnancy, childbirth, or pregnancy-related conditions;
 - 173 (V) religion;
 - 174 (VI) national origin;
 - 175 (VII) age, if the individual is 40 years of age or older;
 - 176 (VIII) disability;
 - 177 (IX) sexual orientation; or
 - 178 (X) gender identity; or
- 179 (D) except as provided in Subsection (1)(f)(ii), print, publish, or cause to be printed or
- 180 published, a notice or advertisement relating to employment by the employer, or membership in

181 or a classification or referral for employment by a labor organization, or relating to a
182 classification or referral for employment by an employment agency, indicating a preference,
183 limitation, specification, or discrimination based on:

- 184 (I) race;
- 185 (II) color;
- 186 (III) sex;
- 187 (IV) pregnancy, childbirth, or pregnancy-related conditions;
- 188 (V) religion;
- 189 (VI) national origin;
- 190 (VII) age, if the individual is 40 years of age or older;
- 191 (VIII) disability;
- 192 (IX) sexual orientation; or
- 193 (X) gender identity.

194 (ii) Notwithstanding Subsection (1)(f)(i)(D), if the following is a bona fide
195 occupational qualification for employment, a notice or advertisement described in Subsection
196 (1)(f)(i)(D) may indicate a preference, limitation, specification, or discrimination based on:

- 197 (A) race;
- 198 (B) color;
- 199 (C) religion;
- 200 (D) sex;
- 201 (E) pregnancy, childbirth, or pregnancy-related conditions;
- 202 (F) age;
- 203 (G) national origin;
- 204 (H) disability;
- 205 (I) sexual orientation; or
- 206 (J) gender identity.

207 (g) Subject to Subsection (7), an employer may not:

208 (i) refuse to provide reasonable accommodations for an employee related to pregnancy,
209 childbirth, breastfeeding, or related conditions:

- 210 (A) if the employee requests a reasonable accommodation; and
- 211 (B) unless the employer demonstrates that the accommodation would create an undue

212 hardship on the operations of the employer;

213 (ii) require an employee to terminate employment if another reasonable
214 accommodation can be provided for the employee's pregnancy, childbirth, breastfeeding, or
215 related conditions unless the employer demonstrates that the accommodation would create an
216 undue hardship on the operations of the employer; or

217 (iii) deny employment opportunities to an employee, if the denial is based on the need
218 of the employer to make reasonable accommodations related to the pregnancy, childbirth,
219 breastfeeding, or related conditions of an employee unless the employer demonstrates that the
220 accommodation would create an undue hardship on the operations of the employer.

221 (h) (i) It is unlawful to subject an individual, as a condition of employment,
222 membership, certification, licensing, credentialing, or passing an examination, to training,
223 instruction, or any other required activity that espouses, promotes, advances, or compels the
224 individual to believe or profess a belief in any of the following concepts and constitutes
225 discrimination based on race, color, sex, or national origin:

226 (A) that members of one race, color, sex, or national origin are morally superior to
227 members of another race, color, sex, or national origin;

228 (B) that an individual, by virtue of the individual's race, color, sex, or national origin, is
229 inherently racist, sexist, or oppressive, whether consciously or unconsciously;

230 (C) that an individual's moral character or status as either privileged or oppressed is
231 necessarily determined by the individual's race, color, sex, or national origin;

232 (D) that members of one race, color, sex, or national origin cannot or should not
233 attempt to treat others without respect to race, color, sex, or national origin;

234 (E) that an individual, by virtue of the individual's race, color, sex, or national origin,
235 bears responsibility for, or should be subject to discrimination or adverse treatment because of
236 actions that other members of the same race, color, sex, or national origin committed in the
237 past;

238 (F) that an individual, by virtue of the individual's race, color, sex, or national origin,
239 should be subject to discrimination or adverse treatment to achieve diversity, equity, or
240 inclusion;

241 (G) that an individual should feel discomfort, guilt, anguish, or any other form of
242 psychological distress on account of the individual's race, color, sex, or national origin;

243 (H) that virtues including merit, excellence, hard work, fairness, neutrality, objectivity,
244 and racial colorblindness are racist or sexist, or the creation of members of a particular race,
245 color, sex, or national origin to oppress members of another race, color, sex, or national origin.

246 (ii) Nothing in this Subsection (1)(h) prohibits an objective discussion of the concepts
247 described in Subsection (1)(h)(i) as part of a course of training or instruction that does not
248 include an endorsement of the concepts or a requirement of adherence to or belief in the
249 concepts.

250 (iii) (A) The provisions of this Subsection (1)(h) are severable.

251 (B) If a court holds invalid any provision of this Subsection (1)(h) or the application of
252 this Subsection (1)(h) to any individual or circumstance, the invalidity does not affect other
253 provisions or applications of this Subsection (1)(h) that can be given effect without the
254 invalidated provision or application.

255 (2) Subsections (1)(a) through [~~(1)(g) may not be construed to~~] (1)(h) do not prevent:

256 (a) the termination of employment of an individual who, with or without reasonable
257 accommodation, is physically, mentally, or emotionally unable to perform the duties required
258 by that individual's employment;

259 (b) the variance of insurance premiums or coverage on account of age; or

260 (c) a restriction on the activities of a person licensed in accordance with Title 32B,
261 Alcoholic Beverage Control Act, with respect to an individual who is under 21 years of age.

262 (3) (a) It is not a discriminatory or prohibited employment practice:

263 (i) for an employer to hire and employ an employee, for an employment agency to
264 classify or refer for employment an individual, for a labor organization to classify its
265 membership or to classify or refer for employment an individual, or for an employer, labor
266 organization, or joint labor-management committee controlling an apprenticeship or other
267 training or retraining program to admit or employ an individual in the program on the basis of
268 religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin,
269 disability, sexual orientation, or gender identity in those certain instances when religion, sex,
270 pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age
271 or older, national origin, disability, sexual orientation, or gender identity is a bona fide
272 occupational qualification reasonably necessary to the normal operation of that particular
273 business or enterprise;

274 (ii) for a school, college, university, or other educational institution to hire and employ
275 an employee of a particular religion if:

276 (A) the school, college, university, or other educational institution is, in whole or in
277 substantial part, owned, supported, controlled, or managed by a particular religious corporation,
278 association, or society; or

279 (B) the curriculum of the school, college, university, or other educational institution is
280 directed toward the propagation of a particular religion;

281 (iii) for an employer to give preference in employment to:

282 (A) the employer's:

283 (I) spouse;

284 (II) child; or

285 (III) son-in-law or daughter-in-law;

286 (B) a person for whom the employer is or would be liable to furnish financial support if
287 the person were unemployed;

288 (C) a person to whom the employer during the preceding six months furnishes more
289 than one-half of total financial support regardless of whether or not the employer was or is
290 legally obligated to furnish support; or

291 (D) a person whose education or training is substantially financed by the employer for
292 a period of two years or more.

293 (b) Nothing in this chapter applies to a business or enterprise on or near an Indian
294 reservation with respect to a publicly announced employment practice of the business or
295 enterprise under which preferential treatment is given to an individual because that individual
296 is a native American Indian living on or near an Indian reservation.

297 (c) Nothing in this chapter may be interpreted to require an employer, employment
298 agency, labor organization, vocational school, joint labor-management committee, or
299 apprenticeship program subject to this chapter to grant preferential treatment to an individual or
300 to a group because of the race, color, religion, sex, age, national origin, disability, sexual
301 orientation, or gender identity of the individual or group on account of an imbalance that may
302 exist with respect to the total number or percentage of persons of a race, color, religion, sex,
303 age, national origin, disability, sexual orientation, or gender identity employed by an employer,
304 referred or classified for employment by an employment agency or labor organization, admitted

305 to membership or classified by a labor organization, or admitted to or employed in, any
306 apprenticeship or other training program, in comparison with the total number or percentage of
307 persons of that race, color, religion, sex, age, national origin, disability, sexual orientation, or
308 gender identity in any community or county or in the available work force in any community or
309 county.

310 (4) It is not a discriminatory or prohibited practice with respect to age to observe the
311 terms of a bona fide seniority system or any bona fide employment benefit plan such as a
312 retirement, pension, or insurance plan that is not a subterfuge to evade the purposes of this
313 chapter, except that an employee benefit plan may not excuse the failure to hire an individual.

314 (5) Notwithstanding Subsection (4), or another statute to the contrary, a person may not
315 be subject to involuntary termination or retirement from employment on the basis of age alone,
316 if the individual is 40 years of age or older, except:

317 (a) under Subsection (6); and

318 (b) when age is a bona fide occupational qualification.

319 (6) Nothing in this section prohibits compulsory retirement of an employee who has
320 attained at least 65 years of age, and who, for the two-year period immediately before
321 retirement, is employed in a bona fide executive or a high policymaking position, if:

322 (a) that employee is entitled to an immediate nonforfeitable annual retirement benefit
323 from the employee's employer's pension, profit-sharing, savings, or deferred compensation
324 plan, or any combination of those plans; and

325 (b) the benefit described in Subsection (6)(a) equals, in the aggregate, at least \$44,000.

326 (7) (a) For purposes of Subsection (1)(g), an employer may require an employee to
327 provide a certification from the employee's health care provider concerning the medical
328 advisability of a reasonable accommodation.

329 (b) A certification under Subsection (7)(a) shall include:

330 (i) the date the reasonable accommodation becomes medically advisable;

331 (ii) the probable duration of the reasonable accommodation; and

332 (iii) an explanatory statement as to the medical advisability of the reasonable
333 accommodation.

334 (c) Notwithstanding Subsections (1)(g) and (7)(a), an employer may not require an
335 employee to obtain a certification from the employee's health care provider for more frequent

336 restroom, food, or water breaks.

337 (d) An employer is not required under Subsection (1)(g) or this Subsection (7) to
338 permit an employee to have the employee's child at the workplace for purposes of
339 accommodating pregnancy, childbirth, breastfeeding, or related conditions.

340 (e) An employer shall include in an employee handbook, or post in a conspicuous place
341 in the employer's place of business, written notice concerning an employee's rights to
342 reasonable accommodations for pregnancy, childbirth, breastfeeding, or related conditions.

343 **Section 2. Effective date.**

344 This bill takes effect on July 1, 2023.