

ALASKA STATE COMMISSION FOR HUMAN RIGHTS U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION GENERAL TIPS FOR EMPLOYERS

JOB ADVERTISEMENTS

- ▶ It is illegal for an employer to publish a job advertisement that shows a preference for or discourages someone from applying for a job because of his or her race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older under Federal Law), parenthood, marital status, changes in marital status, disability or genetic information.
- **EXAMPLE?** A help-wanted ad that seeks “females” or “recent college graduates” may discourage men and people over 40 from applying and may violate the law. However, age may be a bon-e-fide occupational qualification in certain circumstances such as requiring an employee to meet the age requirement to sell alcohol.

RECRUITMENT

- ▶ It is illegal for an employer to recruit new employees in a way that discriminates against them because of their race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older under Federal Law), parenthood, marital status, changes in marital status, disability or genetic information.
- **EXAMPLE?** An employer’s reliance on word-of-mouth recruitment by its mostly Hispanic work force may violate the law if the result is that almost all new hires are Hispanic.

APPLICATION & HIRING

- ▶ It is illegal for an employer to discriminate against a job applicant because of his or her race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older under Federal Law), parenthood, marital status, changes in marital status, disability or genetic information.
- **EXAMPLE?** An employer may not refuse to give employment applications to people of a certain race.
- ▶ An employer may not base hiring decisions on stereotypes and assumptions about a person’s because of his or her race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older under Federal Law), parenthood, marital status, changes in marital status, disability or genetic information.
- ▶ If an employer requires job applicants to take a test, the test must be necessary and related to the job and the employer may not exclude people of a particular race, color, religion, sex (including gender identity, sexual orientation, and pregnancy),

national origin, parenthood, marital status, changes in marital status or individuals with disabilities. In addition, the employer may not use a test that excludes applicants age 40 or older if the test is not based on a reasonable factor other than age.

- ▶ If a job applicant with a disability needs an accommodation (such as a sign language interpreter) to apply for a job, the employer is required to provide the accommodation, so long as the accommodation does not cause the employer significant difficulty or expense.

JOB REFERRALS

- ▶ It is illegal for an employer, employment agency or union to take into account a person’s race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, parenthood, marital status, changes in marital status or individuals with disabilities. In addition, the employer may not use a test that excludes applicants age 40 or older when making decisions about job referrals.

JOB ASSIGNMENTS & PROMOTIONS

- ▶ It is illegal for an employer to make decisions about job assignments and promotions based on an employee’s race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older under Federal Law), disability, parenthood, marital status, changes in marital status, or genetic information.
- **EXAMPLE?** An employer may not give preference to employees of a certain race when making shift assignments and may not segregate employees of a particular national origin from other employees or from customers.
- ▶ An employer may not base assignment and promotion decisions on stereotypes and assumptions about a person’s race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older under Federal law), parenthood, marital status, changes in marital status, disability or genetic information.
- ▶ If an employer requires employees to take a test before making decisions about assignments or promotions, the test may not exclude people of a particular race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, parenthood, marital status, changes in marital status, or individuals with disabilities, unless the employer can show that the test is necessary and related to the job. In addition, the employer may not use a test that excludes employees age (40 or older under Federal Law) if the test is not based on a reasonable factor other than age.

PAY & BENEFITS

- ▶ It is illegal for an employer to discriminate against an employee in the payment of wages or employee benefits on the bases of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older under Federal law), parenthood, marital status, changes in marital status, disability or genetic information. Employee benefits include sick and vacation leave, insurance, access to overtime as well as overtime pay, and retirement programs.
 - **EXAMPLE?** An employer may not pay Hispanic workers less than African-American workers because of their national origin; men and women in the same workplace must be given equal pay for equal work.
- ▶ In some situations, an employer may be allowed to reduce some employee benefits for older workers, but only if the cost of providing the reduced benefits is the same as the cost of providing benefits to younger workers.

DISCIPLINE & DISCHARGE

- ▶ An employer may not take into account a person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older under Federal law), parenthood, marital status, changes in marital status, disability or genetic information when making decisions about discipline or discharge.
 - **EXAMPLE?** If two employees commit a similar offense, an employer may not discipline them differently because of their race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older under Federal law), parenthood, marital status, changes in marital status, disability or genetic information.
- ▶ When deciding which employees will be laid off, an employer may not choose the oldest workers because of their age.
- ▶ Employers also may not discriminate when deciding which workers to recall after a layoff.

EMPLOYMENT REFERENCES

- ▶ It is illegal for an employer to give a negative or false employment reference (or refuse to give a reference) because of a person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older under federal law), parenthood, marital status, changes in marital status disability or genetic information.

REASONABLE ACCOMMODATION & DISABILITY

- ▶ The law requires that an employer provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer.

- ▶ A reasonable accommodation is any change in the workplace (or in the ways things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.
 - **EXAMPLE?** Providing a ramp for a wheelchair user or providing a reader or interpreter for a blind or deaf employee or applicant.

REASONABLE ACCOMMODATION & RELIGION

- ▶ The law requires an employer to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause difficulty or expense for the employer. This means an employer may have to make reasonable adjustments at work that will allow the employee to practice his or her religion.
 - **EXAMPLE?** Allowing an employee to voluntarily swap shifts with a co-worker so that he or she can attend religious services.

TRAINING & APPRENTICESHIP PROGRAMS

- ▶ It is illegal for a training or apprenticeship program to discriminate on the bases of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older under Federal law), parenthood, marital status, changes in marital status, disability or genetic information.
 - **EXAMPLE?** An employer may not deny training opportunities to African-American employees because of their race.
- ▶ In some situations, an employer may be allowed to set age limits for participation in an apprenticeship program.

HARASSMENT

- ▶ It is illegal to harass an employee because of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older under Federal law), parenthood, marital status, changes in marital status, disability or genetic information.
- ▶ It is also illegal to harass someone because they have complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.
- ▶ Harassment can take the form of slurs, graffiti, offensive or derogatory comments, or other verbal or physical conduct. Sexual harassment (including unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature) is also unlawful. Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal if it is so frequent or objectively and subjectively severe that it creates a hostile

or offensive work environment or if it results in an adverse employment decision (such as the victim being fired or demoted).

- ▶ The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.
- ▶ Harassment outside of the workplace may also be illegal if there is a link with the workplace. For example, if a supervisor harasses an employee while driving the employee to a meeting.

TERMS & CONDITIONS OF EMPLOYMENT

- ▶ The law makes it illegal for an employer to make any employment decision because of a person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older under Federal Law), disability or genetic information. That means an employer may not discriminate when it comes to such things as hiring, firing, promotions, and pay. It also means an employer may not discriminate, for example, when granting breaks, approving leave, assigning work stations, or setting any other term or condition of employment - however small.

PRE-EMPLOYMENT INQUIRIES (GENERAL)

- ▶ As a general rule, the information obtained and requested through the pre-employment process should be limited to those essential for determining if a person is qualified for the job; whereas, information regarding race, sex, national origin, age, and religion are irrelevant in such determinations.
- ▶ Employers are explicitly prohibited from making pre-offer inquiries about disability.
- ▶ Although state and federal equal opportunity laws do not clearly forbid employers from making pre-employment inquiries that relate to, or disproportionately screen out members based on race, color, sex, national origin, religion, or age, such inquiries may be used as evidence of an employer's intent to discriminate unless the questions asked can be justified by some business purpose. Therefore, inquiries about organizations, clubs, societies, and lodges of which an applicant may be a member or any other questions, which may indicate the applicant's race, sex, national origin, disability status, age, religion, color or ancestry if answered, should generally be avoided.
- ▶ Similarly, employers should not ask for a photograph of an applicant. If needed for identification purposes, a photograph may be obtained after an offer of employment is made and accepted.

DRESS CODE

- ▶ In general, an employer may establish a dress code which applies to all employees or employees within certain job categories. However, there are a few possible exceptions.
- ▶ While an employer may require all workers to follow a uniform dress code even if the dress code conflicts with some workers' ethnic beliefs or practices, a dress code must not treat some employees less favorably because of their national origin. For example, a dress code that prohibits certain kinds of ethnic dress, such as traditional African or East Indian attire, but otherwise permits casual dress would treat some employees less favorably because of their national origin.
- ▶ Moreover, if the dress code conflicts with an employee's religious practices and the employee requests an accommodation, the employer must modify the dress code or permit an exception to the dress code unless doing so would result in undue hardship.
- ▶ Similarly, if an employee requests an accommodation to the dress code because of his disability, the employer must modify the dress code or permit an exception to the dress code, unless doing so would result in undue hardship.

CONSTRUCTIVE DISCHARGE/FORCED TO RESIGN

- ▶ Discriminatory practices also include constructive discharge or forcing an employee to resign by making the work environment so intolerable a reasonable person would not be able to stay.



Were you the victim of discrimination? Need to file a complaint? Looking for guidance on a discrimination issue? Contact the Alaska State Commission for Human Rights: (907) 274-4692, or (800) 478-4692, or hrc@alaska.gov, or humanrights.alaska.gov; or the U.S. Equal Employment Opportunity Commission at (800) 669-4000 or www.eeoc.gov.