The Vermont Statutes Online

Title 21: Labor

Chapter 5: EMPLOYMENT PRACTICES

Sub-Chapter 6: Fair Employment Practices

§ 495. Unlawful employment practice

(a) It shall be unlawful employment practice, except where a bona fide occupational qualification requires persons of a particular race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, or physical or mental condition:

(1) For any employer, employment agency, or labor organization to discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified disabled individual;

(2) For any person seeking employees or for any employment agency or labor organization to cause to be printed, published, or circulated any notice or advertisement relating to employment or membership indicating any preference, limitation, specification, or discrimination based upon race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, age, or disability;

(3) For any employment agency to fail or refuse to classify properly or refer for employment or to otherwise discriminate against any individual because of race, color, religion, ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age or against a qualified disabled individual;

(4) For any labor organization, because of race, color, religion ancestry, national origin, sex, sexual orientation, gender identity, place of birth, or age to discriminate against any individual or against a qualified disabled individual or to limit, segregate or qualify its membership;

(5) For any employer, employment agency, labor organization, or person seeking employees to discriminate against, indicate a preference or limitation, refuse properly to classify or refer, or to limit or segregate membership on the basis of a person's having a positive test result from an HIV-related blood test;

(6) For any employer, employment agency, labor organization, or person seeking employees to request or require an applicant, prospective employee, employee, prospective member, or member to have an HIV-related blood test as a condition of employment or membership, classification, placement, or referral;

(7) For any employer, employment agency, labor organization, or person seeking employees to discriminate between employees on the basis of sex by paying wages to employees of one sex at a rate less than the rate paid to employees of the other sex for equal work that requires equal skill, effort, and responsibility and is performed under similar working conditions. An employer who is paying wages in violation of this section shall not reduce the wage rate of any other employee in order to comply with this subsection.

(A) An employer may pay different wage rates under this subsection when the differential wages are made pursuant to:

(i) A seniority system.

(ii) A merit system.

(iii) A system in which earnings are based on quantity or quality of production.

(iv) A bona fide factor other than sex. An employer asserting that differential wages are paid pursuant to this subdivision shall demonstrate that the factor does not perpetuate a sex-based differential in compensation, is job-related with respect to the position in question, and is based upon a legitimate business consideration.

(B)(i) No employer may do any of the following:

(I) Require, as a condition of employment, that an employee refrain from disclosing the amount of his or her wages or from inquiring about or discussing the wages of other employees.

(II) Require an employee to sign a waiver or other document that purports to deny the employee the right to disclose the amount of his or her wages or to inquire about or discuss the wages of other employees.

(ii) Unless otherwise required by law, an employer may prohibit a human resources manager from disclosing the wages of other employees.

(8) Retaliation prohibited. An employer, employment agency, or labor organization shall not discharge or in any other manner discriminate against any employee because the employee:

(A) has opposed any act or practice that is prohibited under this chapter;

(B) has lodged a complaint or has testified, assisted, or participated in any manner with the Attorney General, a state's attorney, the Department of Labor, or the Human Rights Commission in an investigation of prohibited acts or practices;

(C) is known by the employer to be about to lodge a complaint, testify, assist, or participate in any manner in an investigation of prohibited acts or practices;

(D) has disclosed his or her wages or has inquired about or discussed the wages of other employees; or

(E) is believed by the employer to have acted as described in subdivisions (A) through (D) of this subdivision.

(b) The provisions of this section shall not be construed to limit the rights of employers to discharge employees for good cause shown.

(c) The provisions of this section prohibiting discrimination on the basis of age shall apply for the benefit of persons 18 years of age or older.

(d)(1) An employee shall not have a cause of action in negligence for any injury occurring to the employee on the account of an employer complying with subdivisions (a)(6) and (7) of this section.

(2) A person shall not have a cause of action in negligence for any injury occurring to the person on the account of an employer complying with subdivisions (a)(6) and (7) of this section.

(e) The provisions of this section prohibiting discrimination on the basis of sexual orientation and gender identity shall not be construed to prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to persons of the same religion or denomination or from taking any action with respect to matters of employment which is calculated by the organization to promote the religious principles for which it is established or maintained.

(f) Repealed.]

(g) Notwithstanding any provision of this subchapter, an employer shall not be prohibited from establishing and enforcing reasonable workplace policies to address matters related to employees' gender identity, including permitting an employer to establish a reasonable dress code for the workplace.

(h) Nothing in this section shall require an employer to disclose the wages of an employee in response to an inquiry by another employee, unless the failure to do so would otherwise constitute unlawful employment discrimination. Unless otherwise required by law, nothing in this section shall require an employee to disclose his or her wages in response to an inquiry by another employee. (Added 1963, No. 196, § 1; amended 1971, No. 9, eff. Feb. 25, 1971; 1975, No. 198 (Adj. Sess.), § 1; 1981, No. 65, § 1; 1987, No. 176 (Adj. Sess.), §§ 1, 2; 1987, No. 176 (Adj. Sess.), §§ 1, 2; 1991, No. 135 (Adj. Sess.), § 15; 1999, No. 19, § 4; 1999, No. 103 (Adj. Sess.), § 1; 2001, No. 81 (Adj. Sess.), § 1, eff. April 25, 2002; 2005, No. 10, § 1; 2007, No. 41, § 18; 2013, No. 31, § 2; 2013, No. 35, § 2.)

§ 495a. Persons entering into contracts with this state

The state of Vermont and all of its contracting agencies shall include in all contracts hereafter negotiated a provision obligating the contractor to comply with this subchapter in connection with any work to be performed in this state and requiring the contractor to include a similar provision in all subcontracts for work to be performed in this state. (1963, No. 196, § 2.)

§ 495b. Penalties and enforcement

(a) The attorney general or a state's attorney may enforce the provisions of this subchapter by restraining prohibited acts, seeking civil penalties, obtaining assurances of discontinuance and conducting civil investigations in accordance with the procedures established in sections 2458-2461 of Title 9 as though an unlawful employment practice were an unfair act in commerce. Any employer, employment agency or labor organization complained against shall have the same rights and remedies as specified therein. The superior courts are authorized to impose the same civil penalties and investigation costs and to order other relief to the state of Vermont or an aggrieved employee for violations of this subchapter as they are authorized to impose or order under the provisions of sections 2458 and 2461 of Title 9 in an unfair act in commerce. In addition, the superior courts may order restitution of wages or other benefits on behalf of an employee and may order reinstatement and other appropriate relief on behalf of an employee.

(b) Any person aggrieved by a violation of the provisions of this subchapter may bring an action in superior court seeking compensatory and punitive damages or equitable relief, including restraint of prohibited acts, restitution of wages or other benefits, reinstatement, costs, reasonable attorney's fees and other appropriate relief.

(c) Any employer who violates the provisions of subdivision 495(a)(8) of this title shall be liable to any affected employee in the amount of the underpaid wages and an equal amount as liquidated damages, in addition to any other remedies available under this section. (Added 1963, No. 196, § 3; amended 1975, No. 198 (Adj. Sess.), § 2; 1981, No. 65, § 2; 1999, No. 19, § 5; 2001, No. 81 (Adj. Sess.), § 2, eff. April 25, 2002.)

§ 495c. Application

This subchapter shall not be construed as limiting the rights of employers to hire and fire and of labor organizations to determine the membership as long as such rights are not exercised in violation of this subchapter. (1963, No. 196, § 4.)

§ 495d. Definitions

For the purposes of this subchapter:

(1) "Employer" means any individual, organization, or governmental body including any partnership, association, trustee, estate, corporation, joint stock company, insurance company, or legal representative, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, and any common carrier by mail, motor, water, air or express company doing business in or operating within this state, and any agent of such employer, which has one or more individuals performing services for it within this state.

(2) "Employee" means every person who may be permitted, required or directed by any employer, in consideration of direct or indirect gain or profit, to perform services.

(3) "Employment agency" means every person, corporation, association or governmental body representative thereof engaged in the business of advertising for advising, classifying, training or referral of persons for employment within this state, or which at the direction of any employer advertises, locates, advises, classifies, trains, refers or selects persons to engage in any employment.

(4) "Labor organization" means any organization or association which represents not less than five employees and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, promotions, or other terms and conditions of employment.

(5) "Individual with a disability" means any natural person who:

(A) has a physical or mental impairment which substantially limits one or more major life activities;

(B) has a history or record of such an impairment; or

(C) is regarded as having such an impairment.

(6) "Qualified individual with a disability" means:

(A) An individual with a disability who is capable of performing the essential functions of the job or jobs for which the individual is being considered with reasonable accommodation to the disability.

(B) Does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(7) "Physical or mental impairment" means:

(A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or endocrine;

(B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities;

(C) the term "physical or mental impairment" includes but is not limited to such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy,

epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(8) "Substantially limits" means the degree that the impairment affects an individual's employability. An individual with a disability who is likely to experience difficulty in securing, retaining, or advancing in employment would be considered substantially limited.

(9) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and receiving education or vocational training.

(10) "Has a history or record of such an impairment" means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more life activity.

(11) "Is regarded as having such an impairment" means that the individual

(A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by an employer as constituting such a limitation;

(B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(C) has none of the impairments defined in subdivision (7)(A) of this section but is treated by an employer as having such an impairment.

(12) "Reasonable accommodation" means the changes and modifications which can be made in the structure of a job or in the manner in which a job is performed unless it would impose an undue hardship on the employer. Reasonable accommodation may include:

(A) making the facilities used by the employees, including common areas used by all employees such as hallways, restrooms, cafeterias and lounges, readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices and other similar actions;

(C) factors to be considered in determining whether an undue hardship is imposed by the requirement that reasonable accommodation be made for an individual with a disability include:

(i) the overall size of the employer's operation with respect to the number of employees, number and type of facilities, and size of budget; and

(ii) the cost for the accommodation needed.

(13) "Sexual harassment" is a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(A) submission to that conduct is made either explicitly or implicitly a term or condition of employment; or

(B) submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or

(C) the conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment. (Added 1975, No. 198 (Adj. Sess.), § 3; amended 1981, No. 65, § 3; 1993, No. 39, §§ 2, 3, eff. Oct. 1, 1993; 1999, No. 103 (Adj. Sess.), § 2.)

§ 495e. Restitution

The superior courts may order restitution of wages or other benefits on behalf of a class of employees similarly situated, and may order reinstatement and other appropriate relief on behalf of a class of employees. (Added 1975, No. 198 (Adj. Sess.), § 4, eff. July 1, 1977.)

§ 495f. Exemptions

Notwithstanding any other provision of this subchapter, it is not unlawful discrimination on the basis of age or disability for any employer, employment agency or labor organization to observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension or life or health insurance plan, any of which is not a subterfuge to evade the purposes of this subchapter. No employee benefit plan, however, excuses the failure to hire any individual. No seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual because of age. Mandatory retirement on account of age, necessitated under a police or firefighter retirement system, is specifically authorized. (Added 1981, No. 65, § 4; amended 1999, No. 103 (Adj. Sess.), § 3.)

§ 495g. Provision applicable to college professors

Nothing in this act shall be construed to prohibit any institution of higher education as defined by section 1201(a) of the federal Higher Education Act of 1965 from retiring any employee who is serving under a contract of unlimited tenure, who attains 65 years of age prior to July 1, 1982, or 70 years of age thereafter. Any employee whose tenure contract is terminated may, in the discretion of the institution, be allowed to continue in the employ of the institution on a nontenured basis. (Added 1981, No. 65, § 5.)

§ 495h. Sexual harassment

(a) All employers, employment agencies and labor organizations have an obligation to ensure a workplace free of sexual harassment.

(b) Every employer shall:

(1) Adopt a policy against sexual harassment which shall include:

(A) a statement that sexual harassment in the workplace is unlawful;

(B) a statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of sexual harassment;

(C) a description and examples of sexual harassment;

(D) a statement of the range of consequences for employees who commit sexual harassment;

(E) if the employer has more than five employees, a description of the process for filing internal complaints about sexual harassment and the names, addresses, and telephone numbers of the person or persons to whom complaints should be made; and

(F) the complaint process of the appropriate state and federal employment discrimination enforcement agencies, and directions as to how to contact such agencies.

(2) Post in a prominent and accessible location in the workplace, a poster providing, at a minimum, the elements of the employer's sexual harassment policy required by subdivision (1) of this subsection.

(3) Provide to all employees an individual written copy of the employer's policy against sexual harassment.

(c) Employers shall provide individual copies of their written policies to current employees no later than November 1, 1993, and to new employees upon their being hired. Employers who have provided individual written notice to all employees within the 12 months prior to October 1, 1993, shall be exempt from having to provide an additional notice during the 1993 calendar year.

(d) The commissioner of labor shall prepare and provide to employers subject to this section a model policy and a model poster, which may be used by employers for the purposes of this section.

(e) A claim that an individual did not receive the information required to be provided by this section shall not, in and of itself, result in the automatic liability of any employer to any current or former employee or applicant in any action alleging sexual harassment. An employer's compliance with the notice requirements of this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(f) Employers and labor organizations are encouraged to conduct an education and training program within one year after September 30, 1993 for all current employees and members, and for all new employees and members thereafter within one year of commencement of

employment, that includes at a minimum all the information outlined in this section. Employers are encouraged to conduct additional training for current supervisory and managerial employees and members within one year of September 30, 1993, and for new supervisory and managerial employees and members within one year of commencement of employment or membership, which should include at a minimum the information outlined in subsection (b) of this section and the specific responsibilities of supervisory and managerial employees and the methods that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints. Employers, labor organizations and appropriate state agencies are encouraged to cooperate in making this training available. (Added 1993, No. 39, § 4, eff. Oct. 1, 1993; amended 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006.)

§ 495i. Employment based on credit information; prohibitions

(a) As used in this section:

(1) "Confidential financial information" means sensitive financial information of commercial value that a customer or client of the employer gives explicit authorization for the employer to obtain, process, and store and that the employer entrusts only to managers or employees as a necessary function of their job duties.

(2) "Credit history" means information obtained from a third party, whether or not contained in a credit report, that reflects or pertains to an individual's prior or current:

(A) borrowing or repaying behavior, including the accumulation, payment, or discharge of financial obligations; or

(B) financial condition or ability to meet financial obligations, including debts owed, payment history, savings or checking account balances, or savings or checking account numbers.

(3) "Credit report" has the same meaning as in 9 V.S.A. § 2480(a).

(b) An employer shall not:

(1) Fail or refuse to hire or recruit; discharge; or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's credit report or credit history.

(2) Inquire about an applicant or employee's credit report or credit history.

(c)(1) An employer is exempt from the provisions of subsection (b) of this section if one or more of the following conditions are met:

(A) The information is required by State or federal law or regulation.

(B) The position of employment involves access to confidential financial information.

(C) The employer is a financial institution as defined in 8 V.S.A. § 11101(32) or a credit union as defined in 8 V.S.A. § 30101(5).

(D) The position of employment is that of a law enforcement officer as defined in 20 V.S.A. § 2358, emergency medical personnel as defined in 24 V.S.A. § 2651(6), or a firefighter as defined in 20 V.S.A. § 3151(3).

(E) The position of employment requires a financial fiduciary responsibility to the employer or a client of the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts.

(F) The employer can demonstrate that the information is a valid and reliable predictor of employee performance in the specific position of employment.

(G) The position of employment involves access to an employer's payroll information.

(2) An employer that is exempt from the provisions of subsection (b) of this section may not use an employee's or applicant's credit report or history as the sole factor in decisions regarding employment, compensation, or a term, condition, or privilege of employment.

(d) If an employer seeks to obtain or act upon an employee's or applicant's credit report or credit history pursuant to subsection (c) of this section that contains information about the employee's or applicant's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers, the employer shall:

(1) Obtain the employee's or applicant's written consent each time the employer seeks to obtain the employee's or applicant's credit report.

(2) Disclose in writing to the employee or applicant the employer's reasons for accessing the credit report, and if an adverse employment action is taken based upon the credit report, disclose the reasons for the action in writing. The employee or applicant has the right to contest the accuracy of the credit report or credit history.

(3) Ensure that none of the costs associated with obtaining an employee's or an applicant's credit report or credit history are passed on to the employee or applicant.

(4) Ensure that the information in the employee's or applicant's credit report or credit history is kept confidential and, if the employment is terminated or the applicant is not hired by the employer, provide the employee or applicant with the credit report or have the credit report destroyed in a secure manner which ensures the confidentiality of the information in the report.

(e) An employer shall not discharge or in any other manner discriminate against an employee or applicant who has filed a complaint of unlawful employment practices in violation of this section or who has cooperated with the Attorney General or a state's attorney in an investigation of such practices or who is about to lodge a complaint or cooperate in an investigation or because

the employer believes that the employee or applicant may lodge a complaint or cooperate in an investigation.

(f) Notwithstanding subsection (c) of this section, an employer shall not seek or act upon credit reports or credit histories in a manner that results in adverse employment discrimination prohibited by federal or State law, including section 495 of this title and Title VII of the Civil Rights Act of 1964.

(g) This section shall apply only to employers, employees, and applicants for employment and only to employment-related decisions based on a person's credit history or credit report. It shall not affect the rights of any person, including financial lenders or investors, to obtain credit reports pursuant to other law. (Added 2011, No. 154 (Adj. Sess.), § 2.)

§ 496. Legislative leave

(a) Any person who, in order to serve as a member of the general assembly, must leave a full-time position in the employ of any employer, shall be entitled to a temporary or partial leave of absence for the purpose of allowing such employee to perform any official duty in connection with his or her elected office. Such leave of absence shall not cause loss of job status, seniority, or the right to participate in insurance and other employee benefits during the leave of absence.

(b) An employee who intends to seek election to the general assembly and to invoke, if elected, his or her right to a leave of absence pursuant to subsection (a) of this section, shall notify his or her employer of those intentions in writing within 10 days after filing the primary election nominating petition required by section 2353 of Title 17 or of taking any other action required by chapter 49 of Title 17, to place his or her name on a primary or general election ballot. An employee who fails to give notice to his or her employer as required by this section shall be deemed to have waived his or her right to a leave of absence under subsection (a) of this section.

(c) An employer who contends that granting the leave of absence required by subsection (a) of this section will cause unreasonable hardship for his or her business may appeal for relief by letter to the chairman of the state labor relations board created by section 921 of Title 3. The right to such appeal shall be waived unless it is filed within 14 days of receipt of the notice required by subsection (b) of this section. The appeal shall state the name of the employee and the reasons for the alleged unreasonable hardship. The remedy created by this subsection shall be the exclusive remedy for an employer who claims unreasonable hardship as a result of the application to him or her of subsection (a) of this section.

(d) The chair of the state labor relations board, or any member of the board designated by the chairman, shall serve as an arbitrator in any case appealed pursuant to subsection (c) of this section. The proceedings shall include an opportunity for the employee to respond, orally or in writing, to the allegations of unreasonable hardship raised by the employer, and shall be conducted in accord with the rules of practice of the state labor relations board. Within 30 days of receipt of a notice of appeal, the arbitrator shall issue an order, which shall be binding on both parties, either granting or denying the employer's claim of unreasonable hardship. If the

employer's claim is granted, the employee shall not be entitled to the protection of subsection (a) of this section. In reaching his or her decision, the arbitrator shall consider, but is not limited to, the following factors:

(1) The length of time the employee has been employed by the employer.

(2) The number of employees in the employer's business.

(3) The nature of the employer's business.

(4) The nature of the position held by the employee and the ease or difficulty and cost of temporarily filling the position during the leave of absence.

(5) Any agreement entered into between the employee and employer as a condition of employment.

(e) This section is not applicable if the employer employs five or fewer persons immediately prior to the first day of the leave of absence.

(f) Any attorney, party, witness or juror who, while a member of and during sessions of the general assembly, is assigned or scheduled to appear in any court of the state of Vermont shall be entitled to a leave of absence or postponement from such judicial duties when his or her duties in the legislature are more compelling, for the purpose of allowing the member to perform any official duties in connection with his or her elected office. The leave of absence or postponement shall not prejudice the member or the cause involved. (Added 1979, No. 162 (Adj. Sess.); amended 1981, No. 230 (Adj. Sess.).)

§ 496a. State funds; union organizing

An employer that is the recipient of a grant of State funds in a single grant of more than $1,000.00 shall certify to the state that none of the funds will be used to interfere with or restrain the exercise of an employee's rights with respect to unionization and upon request shall provide records to the Secretary of Administration which attest to such certification. (Added 2011, No. 154 (Adj. Sess.), § 4; amended 2013, No. 1, § 94, eff. March 7, 2013.)