

CHAPTER 363

DEPARTMENT OF HUMAN RIGHTS

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363.02 EXEMPTIONS.

Subdivision 1. **Employment.** The provisions of section 363.03, subdivision 1, shall not apply to:

- (1) the employment of any individual:
 - (a) by the individual's parent, grandparent, spouse, child, or grandchild; or
 - (b) in the domestic service of any person;
- (2) a religious or fraternal corporation, association, or society, with respect to qualifications based on religion or sexual orientation, when religion or sexual orientation shall be a bona fide occupational qualification for employment;
- (3) a nonpublic service organization whose primary function is providing occasional services to minors, such as youth sports organizations, scouting organizations, boys' or girls' clubs, programs providing friends, counselors, or role models for minors, youth theater, dance, music or artistic organizations, agricultural organizations for minors, including 4-H clubs, and other youth organizations, with respect to qualifications of employees or volunteers based on sexual orientation;
- (4) the employment of one person in place of another, standing by itself, shall not be evidence of an unfair discriminatory practice;
- (5) the operation of a bona fide seniority system which mandates differences in such things as wages, hiring priorities, layoff priorities, vacation credit, and job assignments based on seniority, so long as the operation of the system is not a subterfuge to evade the provisions of this chapter;
- (6) with respect to age discrimination, a practice by which a labor organization or employer offers or supplies varying insurance benefits or other fringe benefits to members or employees of differing ages, so long as the cost to the labor organization or employer for the benefits is reasonably equivalent for all members or employees;
- (7) a restriction imposed by state statute, home rule charter, ordinance, or civil service rule, and applied uniformly and without exception to all individuals, which establishes a maximum age for entry into employment as a peace officer or firefighter;
- (8) nothing in this chapter concerning age discrimination shall be construed to validate or permit age requirements which have a disproportionate impact on persons of any class otherwise protected by section 363.03, subdivision 1 or 5;
- (9) it is not an unfair employment practice for an employer, employment agency, or labor organization:
 - (i) to require or request a person to undergo physical examination, which may include a medical history, for the purpose of determining the person's capability to perform available employment, provided:
 - (a) that an offer of employment has been made on condition that the person meets the physical or mental requirements of the job, except that a law enforcement agency filling a peace officer position or part-time peace officer position may require or request an applicant to undergo psychological evaluation before a job offer is made provided that the psychological evaluation is for those job-related abilities set forth by the board of peace officer standards and training for psychological evaluations and is otherwise lawful;
 - (b) that the examination tests only for essential job-related abilities;
 - (c) that the examination except for examinations authorized under chapter 176 is required of all persons conditionally offered employment for the same position regardless of disability; and

(d) that the information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations; first aid safety personnel may be informed, when appropriate, if the disability might require emergency treatment; government officials investigating compliance with this chapter must be provided relevant information on request; and information may be released for purposes mandated by local, state, or federal law; provided that the results of the examination are used only in accordance with this chapter; or

(ii) with the consent of the employee, after employment has commenced, to obtain additional medical information for the purposes of assessing continuing ability to perform the job or employee health insurance eligibility; for purposes mandated by local, state, or federal law; for purposes of assessing the need to reasonably accommodate an employee or obtaining information to determine eligibility for the second injury fund under chapter 176; or pursuant to sections 181.950 to 181.957; or other legitimate business reason not otherwise prohibited by law;

(iii) to administer preemployment tests, provided that the tests (a) measure only essential job-related abilities, (b) are required of all applicants for the same position regardless of disability except for tests authorized under chapter 176, and (c) accurately measure the applicant's aptitude, achievement level, or whatever factors they purport to measure rather than reflecting the applicant's impaired sensory, manual, or speaking skills except when those skills are the factors that the tests purport to measure; or

(iv) to limit receipt of benefits payable under a fringe benefit plan for disabilities to that period of time which a licensed physician reasonably determines a person is unable to work; or

(v) to provide special safety considerations for pregnant women involved in tasks which are potentially hazardous to the health of the unborn child, as determined by medical criteria.

Information obtained under this section, regarding the medical condition or history of any employee, is subject to the requirements of subclause (i), item (d).

[For text of subs 2 to 8, see M.S.1996]

History: 1997 c 239 art 12 s 2

363.03 UNFAIR DISCRIMINATORY PRACTICES.

[For text of subs 1 to 6, see M.S.1996]

Subd. 7. Reprisals. It is an unfair discriminatory practice for any individual who participated in the alleged discrimination as a perpetrator, employer, labor organization, employment agency, public accommodation, public service, educational institution, or owner, lessor, lessee, sublessee, assignee or managing agent of any real property, or any real estate broker, real estate salesperson, or employee or agent thereof to intentionally engage in any reprisal against any person because that person:

(1) Opposed a practice forbidden under this chapter or has filed a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter; or

(2) Associated with a person or group of persons who are disabled or who are of different race, color, creed, religion, sexual orientation, or national origin.

A reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment. It is a reprisal for an employer to do any of the following with respect to an individual because that individual has engaged in the activities listed in clause (1) or (2): refuse to hire the individual; depart from any customary employment practice; transfer or assign the individual to a lesser position in terms of wages, hours, job classification, job security, or other employment status; or inform another employer that the individual has engaged in the activities listed in clause (1) or (2).

[For text of subs 8 to 11, see M.S.1996]

History: 1997 c 171 s 1

363.05 DUTIES OF COMMISSIONER.

Subdivision 1. **Formulation of policies.** The commissioner shall formulate policies to effectuate the purposes of this chapter and shall:

(1) exercise leadership under the direction of the governor in the development of human rights policies and programs, and make recommendations to the governor and the legislature for their consideration and implementation;

(2) establish and maintain a principal office in St. Paul, and any other necessary branch offices at any location within the state;

(3) meet and function at any place within the state;

(4) employ attorneys, clerks, and other employees and agents as the commissioner may deem necessary and prescribe their duties;

(5) to the extent permitted by federal law and regulation, utilize the records of the department of economic security of the state when necessary to effectuate the purposes of this chapter;

(6) obtain upon request and utilize the services of all state governmental departments and agencies;

(7) adopt suitable rules for effectuating the purposes of this chapter;

(8) issue complaints, receive and investigate charges alleging unfair discriminatory practices, and determine whether or not probable cause exists for hearing;

(9) subpoena witnesses, administer oaths, take testimony, and require the production for examination of any books or papers relative to any matter under investigation or in question;

(10) attempt, by means of education, conference, conciliation, and persuasion to eliminate unfair discriminatory practices as being contrary to the public policy of the state;

(11) develop and conduct programs of formal and informal education designed to eliminate discrimination and intergroup conflict by use of educational techniques and programs the commissioner deems necessary;

(12) make a written report of the activities of the commissioner to the governor each year;

(13) accept gifts, bequests, grants or other payments public and private to help finance the activities of the department;

(14) create such local and statewide advisory committees as will in the commissioner's judgment aid in effectuating the purposes of the department of human rights;

(15) develop such programs as will aid in determining the compliance throughout the state with the provisions of this chapter, and in the furtherance of such duties, conduct research and study discriminatory practices based upon race, color, creed, religion, national origin, sex, age, disability, marital status, status with regard to public assistance, familial status, sexual orientation, or other factors and develop accurate data on the nature and extent of discrimination and other matters as they may affect housing, employment, public accommodations, schools, and other areas of public life;

(16) develop and disseminate technical assistance to persons subject to the provisions of this chapter, and to agencies and officers of governmental and private agencies;

(17) provide staff services to such advisory committees as may be created in aid of the functions of the department of human rights;

(18) make grants in aid to the extent that appropriations are made available for that purpose in aid of carrying out duties and responsibilities; and

(19) cooperate and consult with the commissioner of labor and industry regarding the investigation of violations of, and resolution of complaints regarding section 363.03, subdivision 9.

In performing these duties, the commissioner shall give priority to those duties in clauses (8), (9), and (10) and to the duties in section 363.073.

[For text of subs 2 and 3, see M.S.1996]

History: 1997 c 7 art 2 s 52

363.06 GRIEVANCES.

[For text of subs 1 to 3a, see M.S.1996]

Subd. 3b. Alternative dispute resolution. The running of the 12-month period during which the commissioner must make a determination of probable cause to credit allegations is suspended during a period of time specified by the commissioner during which the parties are involved in mediation or other alternative dispute resolution that has been sanctioned by the commissioner.

[For text of subs 4 to 8, see M.S.1996]

History: 1997 c 182 s 1

363.061 ACCESS TO CASE FILES.

[For text of subd 1, see M.S.1996]

Subd. 2. Access to open files. (a) Except as otherwise provided in this subdivision, human rights investigative data contained in an open case file are confidential data on individuals or protected nonpublic data. The name and address of the charging party and respondent, factual basis of the allegations, and the statute under which the action is brought are private data on individuals or nonpublic data but are accessible to the charging party and the respondent.

(b) After making a finding of probable cause, the commissioner may make human rights investigative data contained in an open case file accessible to a person, government agency, or the public if access will aid the investigative and enforcement process.

Subd. 3. Access to closed files. (a) Except as otherwise provided in this subdivision, human rights investigative data contained in a closed case file are private data on individuals or nonpublic data. The name and address of the charging party and respondent, factual basis of the allegations, the statute under which the action is brought, the part of the summary of the investigation that does not contain identifying data on a person other than the complainant or respondent, and the commissioner's memorandum determining whether probable cause has been shown are public data.

(b) The commissioner may make human rights investigative data contained in a closed case file inaccessible to the charging party or the respondent in order to protect medical or other security interests of the parties or third persons.

[For text of subd 4, see M.S.1996]

History: 1997 c 172 s 1,2

363.073 CERTIFICATES OF COMPLIANCE FOR PUBLIC CONTRACTS.

Subdivision 1. Scope of application. No department or agency of the state shall accept any bid or proposal for a contract or agreement unless the firm or business has an affirmative action plan submitted to the commissioner of human rights for approval. No department or agency of the state shall execute any contract or agreement for goods or services in excess of \$100,000 with any business having more than 40 full-time employees, either within or outside this state, on a single working day during the previous 12 months, unless the firm or business has an affirmative action plan for the employment of minority persons, women, and the disabled that has been approved by the commissioner of human rights. Receipt of a certificate of compliance issued by the commissioner shall signify that a firm or business has an affirmative action plan that has been approved by the commissioner. A certificate shall be valid for a period of two years. A municipality as defined in section 466.01, subdivision 1, that receives state money for any reason is encouraged to prepare and implement an affirma-

tive action plan for the employment of minority persons, women, and the disabled and submit the plan to the commissioner of human rights.

[For text of subs 2 to 4, see M.S.1996]

History: 1997 c 202 art 2 s 47; 1997 c 239 art 12 s 3