

CHAPTER 363

DEPARTMENT OF HUMAN RIGHTS

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363.01 DEFINITIONS.

[For text of subs 1 to 19a, see M.S.2000]

Subd. 20. [Repealed, 2001 c 186 s 5]

[For text of subs 20a to 40, see M.S.2000]

Subd. 41. **Sexual harassment.** "Sexual harassment" includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when:

(1) submission to that conduct or communication is made a term or condition, either explicitly or implicitly, of obtaining employment, public accommodations or public services, education, or housing;

(2) submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment, public accommodations or public services, education, or housing; or

(3) that conduct or communication has the purpose or effect of substantially interfering with an individual's employment, public accommodations or public services, education, or housing; or creating an intimidating, hostile, or offensive employment, public accommodations, public services, educational, or housing environment:

[For text of subs 41a to 44, see M.S.2000]

History: 2001 c 194 s 1

363.03 UNFAIR DISCRIMINATORY PRACTICES.

[For text of subs 1 to 7, see M.S.2000]

Subd. 8. **Credit; discrimination.** It is an unfair discriminatory practice:

(1) to discriminate in the extension of personal or commercial credit to a person, or in the requirements for obtaining credit, because of race, color, creed, religion, disability, national origin, sex, sexual orientation, or marital status, or due to the receipt of federal, state, or local public assistance including medical assistance; or

(2) to discriminate in the extension of personal or commercial credit against any person who is a tenant receiving federal, state, or local housing subsidies, including rental assistance or rent supplements because the person is a recipient of those subsidies or assistance; or

(3) for a credit card issuer to refuse to issue a credit card to a woman under her current or former surname unless there is an intent to defraud or mislead, except that a credit card issuer may require that a woman requesting a card under a former surname open a separate account in that name. A credit card issuer may also require disclosure of any other names under which the credit card applicant may have a credit history.

Subd. 8a. **Business discrimination.** It is an unfair discriminatory practice for a person engaged in a trade or business or in the provision of a service:

(a) to refuse to do business with or provide a service to a woman based on her use of her current or former surname; or

(b) to impose, as a condition of doing business with or providing a service to a woman, that a woman use her current surname rather than a former surname; or

(c) to intentionally refuse to do business with, to refuse to contract with, or to discriminate in the basic terms, conditions, or performance of the contract because of a person's race, national origin, color, sex, sexual orientation, or disability, unless the alleged refusal or discrimination is because of a legitimate business purpose.

Nothing in this subdivision shall prohibit positive action plans.

Subd. 8b. [Repealed, 2001 c 186 s 5]

[For text of subds 9 to 11, see M.S.2000]

History: 2001 c 186 s 1; 2001 c 194 s 2

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 as the commissioner deems appropriate to carry out the purposes of this chapter;

(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.2000]

History: 2001 c 186 s 2

363.06 GRIEVANCES.

[For text of subs 1 to 3b, see M.S.2000]

Subd. 4. **Inquiry into charge.** (1) Consistent with clause (7), the commissioner shall promptly inquire into the truth of the allegations of the charge. The commissioner shall make an immediate inquiry when a charge alleges actual or threatened physical violence. The commissioner shall also make an immediate inquiry when it appears that a charge is frivolous or without merit and shall dismiss those charges.

The commissioner shall give priority to investigating and processing those charges, in the order below, which the commissioner determines have the following characteristics:

- (a) there is evidence of irreparable harm if immediate action is not taken;
- (b) there is evidence that the respondent has intentionally engaged in a reprisal;
- (c) a significant number of recent charges have been filed against the respondent;
- (d) the respondent is a government entity;
- (e) there is potential for broadly promoting the policies of this chapter; or
- (f) the charge is supported by substantial and credible documentation, witnesses, or other evidence.

The commissioner shall inform charging parties of these priorities and shall tell each party if their charge is a priority case or not.

On other charges the commissioner shall make a determination within 12 months after the charge was filed as to whether or not there is probable cause to credit the allegation of unfair discriminatory practices, and

(2) If the commissioner determines after investigation that no probable cause exists to credit the allegations of the unfair discriminatory practice, the commissioner shall, within ten days of the determination, serve upon the charging party and respondent written notice of the determination. Within ten days after receipt of notice, the charging party may request in writing, on forms prepared by the department, that the commissioner reconsider the determination. The request shall contain a brief statement of the reasons for and new evidence in support of the request for reconsideration. At the time of submission of the request to the commissioner, the charging party shall deliver or mail to the respondent a copy of the request for reconsideration. The commissioner shall reaffirm, reverse, or vacate and remand for further consideration the determination of no probable cause within 20 days after receipt of the request for reconsideration, and shall within ten days notify in writing the charging party and respondent of the decision to reaffirm, reverse, or vacate and remand for further consideration.

A decision by the commissioner that no probable cause exists to credit the allegations of an unfair discriminatory practice shall not be appealed to the court of appeals pursuant to section 363.072 or sections 14.63 to 14.68.

(3) If the commissioner determines after investigation that probable cause exists to credit the allegations of unfair discriminatory practices, the commissioner shall serve on the respondent and the respondent's attorney if the respondent is represented by counsel, by first class mail, a notice setting forth a short plain written statement of the alleged facts which support the finding of probable cause and an enumeration of the provisions of law allegedly violated. If the commissioner determines that attempts to eliminate the alleged unfair practices through conciliation pursuant to subdivision 5 have been or would be unsuccessful or unproductive, the commissioner shall issue a complaint and serve on the respondent, by registered or certified mail, a written notice of hearing together with a copy of the complaint, requiring the respondent to answer the allegations of the complaint at a hearing before an administrative law judge at a time and place specified in the notice, not less than ten days after service of said complaint. A copy of the notice shall be furnished to the charging party and the attorney general.

(4) If, at any time after the filing of a charge, the commissioner has reason to believe that a respondent has engaged in any unfair discriminatory practice, the commissioner may file a petition in the district court in a county in which the subject of the complaint occurs, or in a county in which a respondent resides or transacts business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this chapter, including an order or decree restraining the respondent from doing or procuring an act tending to render ineffectual an order the commissioner may enter with respect to the complaint. The court shall have power to grant temporary relief or a restraining order as it deems just and proper, but no relief or order extending beyond ten days shall be granted except by consent of the respondent or after hearing upon notice to the respondent and a finding by the court that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice. Except as modified by this section, the Minnesota rules of civil procedure shall apply to an application, and the district court shall have authority to grant or deny the relief sought on conditions as it deems just and equitable. All hearings under this section shall be given precedence as nearly as practicable over all other pending civil actions.

(5) If a lessor, after engaging in a discriminatory practice defined in section 363.03, subdivision 2, clause (1)(a), leases or rents a dwelling unit to a person who has no knowledge of the practice or of the existence of a charge with respect to the practice, the lessor shall be liable for actual damages sustained by a person by reason of a final order as provided in this section requiring the person to be evicted from the dwelling unit.

(6) In any complaint issued under this section, the commissioner may seek relief for a class of individuals affected by an unfair discriminatory practice occurring on or after a date one year prior to the filing of the charge from which the complaint originates.

(7) The commissioner may adopt policies to determine which charges are processed and the order in which charges are processed based on their particular social or legal significance, administrative convenience, difficulty of resolution, or other standard consistent with the provisions of this chapter.

(8) The chief administrative law judge shall adopt policies to provide sanctions for intentional and frivolous delay caused by any charging party or respondent in an investigation, hearing, or any other aspect of proceedings before the department under this chapter.

[For text of subds 4a to 8, see M.S.2000]

History: 2001 c 194 s 3

363.061 ACCESS TO CASE FILES.

[For text of subd 1, see M.S.2000]

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 a charge has been filed, the commissioner may disclose information to persons as the commissioner deems necessary (1) to facilitate investigation or disposition of the charge, or (2) to promote public health or safety. The commissioner may also disclose data about an open case file to another governmental entity to assist that entity or the department in processing a complaint or to eliminate duplication of efforts in the investigation of the same or similar facts as alleged in the charge. To the extent that data are disclosed to other governmental entities, it must be stipulated that section 13.03, subdivision 4, applies to the classification of the data.

(c) 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.

[For text of subds 3 and 4, see M.S.2000]

History: 2001 c 194 s 4

363.073 CERTIFICATES OF COMPLIANCE FOR PUBLIC CONTRACTS.

Subdivision 1. **Scope of application.** (a) For all contracts for goods and services in excess of \$100,000, no department or agency of the state shall accept any bid or proposal for a contract or agreement from any business having more than 40 full-time employees within this state on a single working day during the previous 12 months, unless the commissioner is in receipt of the business' affirmative action plan for the employment of minority persons, women, and qualified disabled individuals. No department or agency of the state shall execute any such contract or agreement until the affirmative action plan has been approved by the commissioner. 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 affirmative action plan for the employment of minority persons, women, and the qualified disabled and submit the plan to the commissioner.

(b) This paragraph applies to a contract for goods or services in excess of \$100,000 to be entered into between a department or agency of the state and a business that is not subject to paragraph (a), but that has more than 40 full-time employees on a single working day during the previous 12 months in the state where the business has its primary place of business. A department or agency of the state may not execute a contract or agreement with a business covered by this paragraph unless the business has a certificate of compliance issued by the commissioner under paragraph (a) or the business certifies that it is in compliance with federal affirmative action requirements.

(c) This section does not apply to contracts entered into by the state board of investment for investment options under section 352.96.

[For text of subds 2 to 4, see M.S.2000]

History: 2001 c 186 s 3

363.074 RULES FOR CERTIFICATES OF COMPLIANCE.

The commissioner shall adopt rules to implement section 363.073 specifying the criteria used to review affirmative action plans and the standards used to review implementation of affirmative action plans. A firm or business certified to be in compliance with affirmative action requirements of a local human rights agency or the federal government shall be deemed to be in compliance with section 363.073 upon receipt by the commissioner of an affirmative action plan approved by a local human rights agency or the federal government and amendments to the plan which are necessary to address the employment of disabled persons protected by section 363.03, subdivision 1.

History: 2001 c 186 s 4