

2023 -- S 0342 AS AMENDED

LC001065

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- FAIR EMPLOYMENT PRACTICES

Introduced By: Senators DiMario, Euer, Murray, Gu, Valverde, Lauria, Ujifusa,  
LaMountain, and Lawson

Date Introduced: February 16, 2023

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-5-6 and 28-5-7 of the General Laws in Chapter 28-5 entitled  
2 "Fair Employment Practices" are hereby amended to read as follows:

3 **28-5-6. Definitions.**

4 When used in this chapter:

5 (1) "Age" means anyone who is at least forty (40) years of age.

6 (2) "Because of sex" or "on the basis of sex" includes, but is not limited to, because of or  
7 on the basis of pregnancy, childbirth, or related medical conditions, and women affected by  
8 pregnancy, childbirth, or related medical conditions shall be treated the same for all employment  
9 related purposes, including receipt of benefits under fringe benefit programs, as other persons not  
10 so affected but similar in their ability or inability to work, and nothing in this chapter shall be  
11 interpreted to permit otherwise.

12 (3) "Commission" means the Rhode Island commission against discrimination created by  
13 this chapter.

14 (4) "Confidential" means to remain secret and not to be disclosed to another person or  
15 entity.

16 ~~(4)~~(5) "Conviction" means, for the purposes of this chapter only, any verdict or finding of  
17 guilt after a criminal trial or any plea of guilty or nolo contendere to a criminal charge.

18 ~~(5)~~(6) "Disability" means a disability as defined in § 42-87-1.

19 ~~(6)~~(7) "Discriminate" includes segregate or separate.

1           ~~(7)~~(8) “Employee” does not include any individual employed by his or her parents, spouse,  
2 or child, or in the domestic service of any person.

3           ~~(8)~~(9)(i) “Employer” includes the state and all political subdivisions of the state and any  
4 person in this state employing four (4) or more individuals, and any person acting in the interest of  
5 an employer directly or indirectly.

6           (ii) Nothing in this subdivision shall be construed to apply to a religious corporation,  
7 association, educational institution, or society with respect to the employment of individuals of its  
8 religion to perform work connected with the carrying on of its activities.

9           ~~(9)~~(10) “Employment agency” includes any person undertaking, with or without  
10 compensation, to procure opportunities to work, or to procure, recruit, refer, or place employees.

11           ~~(10)~~(11) “Firefighter” means an employee the duties of whose position include work  
12 connected with the control and extinguishment of fires or the maintenance and use of firefighting  
13 apparatus and equipment, including an employee engaged in this activity who is transferred or  
14 promoted to a supervisory or administrative position.

15           ~~(11)~~(12) “Gender identity or expression” includes a person’s actual or perceived gender,  
16 as well as a person’s gender identity, gender-related self image, gender-related appearance, or  
17 gender-related expression; whether or not that gender identity, gender-related self image, gender-  
18 related appearance, or gender-related expression is different from that traditionally associated with  
19 the person’s sex at birth.

20           ~~(12)~~(13) “Labor organization” includes any organization that exists for the purpose, in  
21 whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms  
22 or conditions of employment, or of other mutual aid or protection in relation to employment.

23           ~~(13)~~(14) “Law enforcement officer” means an employee the duties of whose position  
24 include investigation, apprehension, or detention of individuals suspected or convicted of offenses  
25 against the criminal laws of the state, including an employee engaged in such activity who is  
26 transferred or promoted to a supervisory or administrative position. For the purpose of this  
27 subdivision, “detention” includes the duties of employees assigned to guard individuals  
28 incarcerated in any penal institution.

29           (15) “Non-disparagement agreement” means an agreement which restricts an individual  
30 from taking any action to include, but not be limited to, speaking or publicizing information that  
31 negatively impacts the other party to the agreement to include the reputation, products, services,  
32 employees and management of the protected party.

33           ~~(14)~~(16) “Person” includes one or more individuals, partnerships, associations,  
34 organizations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

1           ~~(15)~~(17) “Religion” includes all aspects of religious observance and practice, as well as  
2 belief, unless an employer, union, or employment agency demonstrates that it is unable to  
3 reasonably accommodate to an employee’s or prospective employee’s or union member’s religious  
4 observance or practice without undue hardship on the conduct of its business.

5           ~~(16)~~(18) “Sexual orientation” means having or being perceived as having an orientation for  
6 heterosexuality, bisexuality, or homosexuality.

7           ~~(17)~~(19) The terms, as used regarding persons with disabilities:

8           (i) “Auxiliary aids and services” and “reasonable accommodation” shall have the same  
9 meaning as those items are defined in § 42-87-1.1; and

10          (ii) “Hardship” means an “undue hardship” as defined in § 42-87-1.1.

11          **28-5-7. Unlawful employment practices.**

12          It shall be an unlawful employment practice:

13          (1) For any employer:

14           (i) To refuse to hire any applicant for employment because of his or her race or color,  
15 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of  
16 ancestral origin;

17           (ii) Because of those reasons, to discharge an employee or discriminate against him or her  
18 with respect to hire, tenure, compensation, terms, conditions or privileges of employment, or any  
19 other matter directly or indirectly related to employment. However, if an insurer or employer  
20 extends insurance-related benefits to persons other than or in addition to the named employee,  
21 nothing in this subdivision shall require those benefits to be offered to unmarried partners of named  
22 employees;

23           (iii) In the recruiting of individuals for employment or in hiring them, to utilize any  
24 employment agency, placement service, training school or center, labor organization, or any other  
25 employee referring source that the employer knows, or has reasonable cause to know, discriminates  
26 against individuals because of their race or color, religion, sex, sexual orientation, gender identity  
27 or expression, disability, age, or country of ancestral origin;

28           (iv) To refuse to reasonably accommodate an employee’s or prospective employee’s  
29 disability unless the employer can demonstrate that the accommodation would pose a hardship on  
30 the employer’s program, enterprise, or business; or

31           (v) When an employee has presented to the employer an internal complaint alleging  
32 harassment in the workplace on the basis of race or color, religion, sex, disability, age, sexual  
33 orientation, gender identity or expression, or country of ancestral origin, to refuse to disclose in a  
34 timely manner in writing to that employee the disposition of the complaint, including a description

1 of any action taken in resolution of the complaint; provided, however, no other personnel  
2 information shall be disclosed to the complainant; or

3 (vi) To require an employee as a condition of employment, to execute a nondisclosure  
4 agreement that requires alleged violations of civil rights remain confidential, or a non-  
5 disparagement agreement concerning alleged violations of civil rights or alleged unlawful conduct,  
6 or an agreement with a clause. Any contract provision in violation of this subsection shall be void  
7 as a violation of public policy.

8 (2)(i) For any employment agency to fail or refuse to properly classify or refer for  
9 employment or otherwise discriminate against any individual because of his or her race or color,  
10 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of  
11 ancestral origin; or

12 (ii) For any employment agency, placement service, training school or center, labor  
13 organization, or any other employee referring source to comply with an employer's request for the  
14 referral of job applicants if the request indicates, either directly or indirectly, that the employer will  
15 not afford full and equal employment opportunities to individuals regardless of their race or color,  
16 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of  
17 ancestral origin;

18 (3) For any labor organization:

19 (i) To deny full and equal membership rights to any applicant for membership because of  
20 his or her race or color, religion, sex, sexual orientation, gender identity or expression, disability,  
21 age, or country of ancestral origin;

22 (ii) Because of those reasons, to deny a member full and equal membership rights, expel  
23 him or her from membership, or otherwise discriminate in any manner against him or her with  
24 respect to his or her hire, tenure, compensation, terms, conditions or privileges of employment, or  
25 any other matter directly or indirectly related to membership or employment, whether or not  
26 authorized or required by the constitution or bylaws of the labor organization or by a collective  
27 labor agreement or other contract;

28 (iii) To fail or refuse to classify properly or refer for employment, or otherwise to  
29 discriminate against any member because of his or her race or color, religion, sex, sexual  
30 orientation, gender identity or expression, disability, age, or country of ancestral origin; or

31 (iv) To refuse to reasonably accommodate a member's or prospective member's disability  
32 unless the labor organization can demonstrate that the accommodation would pose a hardship on  
33 the labor organization's program, enterprise, or business;

34 (4) Except where based on a bona fide occupational qualification certified by the

1 commission or where necessary to comply with any federal mandated affirmative action programs,  
2 for any employer or employment agency, labor organization, placement service, training school or  
3 center, or any other employee referring source, prior to employment or admission to membership  
4 of any individual, to:

5 (i) Elicit, or attempt to elicit, any information directly or indirectly pertaining to his or her  
6 race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or  
7 country of ancestral origin;

8 (ii) Make or keep a record of his or her race or color, religion, sex, sexual orientation,  
9 gender identity or expression, disability, age, or country of ancestral origin;

10 (iii) Use any form of application for employment, or personnel or membership blank  
11 containing questions or entries directly or indirectly pertaining to race or color, religion, sex, sexual  
12 orientation, gender identity or expression, disability, age, or country of ancestral origin;

13 (iv) Print or publish, or cause to be printed or published, any notice or advertisement  
14 relating to employment or membership indicating any preference, limitation, specification, or  
15 discrimination based upon race or color, religion, sex, sexual orientation, gender identity or  
16 expression, disability, age, or country of ancestral origin; or

17 (v) Establish, announce, or follow a policy of denying or limiting, through a quota system  
18 or otherwise, employment or membership opportunities of any group because of the race or color,  
19 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of  
20 ancestral origin of that group;

21 (5) For any employer or employment agency, labor organization, placement service,  
22 training school or center, or any other employee referring source to discriminate in any manner  
23 against any individual because he or she has opposed any practice forbidden by this chapter, or  
24 because he or she has made a charge, testified, or assisted in any manner in any investigation,  
25 proceeding, or hearing under this chapter;

26 (6) For any person, whether or not an employer, employment agency, labor organization,  
27 or employee, to aid, abet, incite, compel, or coerce the doing of any act declared by this section to  
28 be an unlawful employment practice, or to obstruct or prevent any person from complying with the  
29 provisions of this chapter or any order issued pursuant to this chapter, or to attempt directly or  
30 indirectly to commit any act declared by this section to be an unlawful employment practice;

31 (7) For any employer to include on any application for employment, except applications  
32 for law enforcement agency positions or positions related to law enforcement agencies, a question  
33 inquiring or to otherwise inquire either orally or in writing whether the applicant has ever been  
34 arrested, charged with or convicted of any crime; provided, that:

1 (i) If a federal or state law or regulation creates a mandatory or presumptive disqualification  
2 from employment based on a person's conviction of one or more specified criminal offenses, an  
3 employer may include a question or otherwise inquire whether the applicant has ever been  
4 convicted of any of those offenses; or

5 (ii) If a standard fidelity bond or an equivalent bond is required for the position for which  
6 the applicant is seeking employment and his or her conviction of one or more specified criminal  
7 offenses would disqualify the applicant from obtaining such a bond, an employer may include a  
8 question or otherwise inquire whether the applicant has ever been convicted of any of those  
9 offenses; and

10 (iii) Notwithstanding, any employer may ask an applicant for information about his or her  
11 criminal convictions at the first interview or thereafter, in accordance with all applicable state and  
12 federal laws;

13 (8)(i) For any person who or that, on June 7, 1988, is providing either by direct payment  
14 or by making contributions to a fringe benefit fund or insurance program, benefits in violation with  
15 §§ 28-5-6, 28-5-7 and 28-5-38, until the expiration of a period of one year from June 7, 1988, or if  
16 there is an applicable collective bargaining agreement in effect on June 7, 1988, until the  
17 termination of that agreement, in order to come into compliance with §§ 28-5-6, 28-5-7 and 28-5-  
18 38, to reduce the benefits or the compensation provided any employee on June 7, 1988, either  
19 directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance  
20 program.

21 (ii) Where the costs of these benefits on June 7, 1988, are apportioned between employers  
22 and employees, the payments or contributions required to comply with §§ 28-5-6, 28-5-7 and 28-  
23 5-38 may be made by employers and employees in the same proportion.

24 (iii) Nothing in this section shall prevent the readjustment of benefits or compensation for  
25 reasons unrelated to compliance with §§ 28-5-6, 28-5-7 and 28-5-38.

26 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO LABOR AND LABOR RELATIONS -- FAIR EMPLOYMENT PRACTICES

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1           This act would prohibit an employer from requiring an employee to execute a  
2 nondisclosure agreement or non-disparagement agreement, regarding alleged violations of civil  
3 rights or criminal conduct, as a condition of employment. It would also add the definition of  
4 "confidential" to the fair employment practices statute.

5           This act would take effect upon passage.

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