

Nebraska Age Discrimination in Employment Act

Law Relating to Unjust Discrimination in Employment Because of Age

LB 1357, 1972. Amended by LB 265, 1973; LB 162, 1977; LB 424, 1983; LB 626, 1983; LB 121, 1993; LB 265, 2007

Section - Explanation

48-1001 - Age Discrimination in Employment Act; policy of act; declaration of purpose.

48-1002 - Terms defined.

48-1003 - Limitation on prohibition; practices not prevented or precluded.

48-1004 - Unlawful employment practices; enumerated.

48-1005 - Violations of act; penalty.

48-1006 - Repealed.

48-1007 - Equal Opportunity Commission; enforcement; powers.

48-1008 - Alleged violation; aggrieved person; complaint; investigation; civil action, when; filing, effect.

48-1009 - Court; jurisdiction; relief.

48-1010 - Suits against governmental bodies; authorized.

Section 48-1001. Age Discrimination in Employment Act; policy of act; declaration of purpose.

(1) Sections 48-1001 to 48-1010 shall be known and may be cited as the Age Discrimination in Employment Act.

(2)(a) The Legislature hereby finds that the practice of discriminating in employment against properly qualified persons because of their age is contrary to American principles of liberty and equality of opportunity, is incompatible with the Constitution, deprives the state of the fullest utilization of its capacities for production, and endangers the general welfare.

(b) Hiring bias against workers forty years or more of age deprives the state of its most important resource of experienced employees, adds to the number of persons receiving public assistance, and deprives older people of the dignity and status of self-support.

(c) The right to employment otherwise lawful without discrimination because of age, where the reasonable demands of the position do not require such an age distinction, is hereby recognized, as and declared to be a right of all the people of the state which shall be protected as provided in the act.

(d) It is hereby declared to be the policy of the state to protect the right recognized and declared in subdivision (2) (c) of this section and to eliminate all such discrimination to the fullest extent permitted. The Age Discrimination in Employment Act shall be construed to effectuate such policy.

Section 48-1002. Terms defined.

For purposes of the Age Discrimination in Employment Act:

(1) Person includes one or more individuals, partnerships, limited liability companies, associations, labor organizations, corporations, business trusts, legal representatives, or any organized group of persons;

(2) Employer means any person having in his or her employ twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year and includes the State of Nebraska, governmental agencies, and political subdivisions, regardless of the number of employees, any person acting for or in the interest of an employer, directly or indirectly, and any party whose business is financed in whole or in part under the Nebraska Investment Finance Authority Act, but such term does not include (a) the United States, (b) a corporation wholly owned by the government of the United States, or (c) an Indian tribe;

(3) Labor organization means any organization of employees which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment, or for other mutual aid or protection in connection with employment;

(4) Employee means an individual employed by any employer; and

(5) Employment agency means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person, but does not include an agency of the United States, except that such term does include the United States Employment Service and the system of state and local employment services receiving federal assistance.

Section 48-1003. Limitation on prohibitions; practices not prevented or precluded.

(1) The prohibitions of the Age Discrimination in Employment Act shall be limited to the employment of individuals who are forty years or more of age.

(2) Nothing contained in the act shall be construed as making it unlawful for an employer, employment agency, or labor organization (a) to take action otherwise prohibited under the act when age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or when the differentiation is based on reasonable factors other than age, such as physical conditions; or (b) to discharge or otherwise discipline an employee for good cause.

Section 48-1004. Unlawful employment practices; enumerated.

(1) It shall be an unlawful employment practice for an employer: (a) To refuse to hire, to discharge, or otherwise to discriminate against any individual with respect to the employee's terms, conditions, or privileges of employment, otherwise lawful, because of such individual's age, when the reasonable demands of the position do not require such an age distinction; or (b) To willfully utilize in the hiring or recruitment of individuals for employment otherwise lawful, any employment agency, placement service, training school or center, labor organization, or any other source which so discriminates against individuals because of their age.

(2) It shall be an unlawful employment practice for any labor organization to so discriminate against any individual or to limit, segregate, or classify its membership in any way which would deprive or tend to deprive an individual of otherwise lawful employment opportunities, or would limit such employment opportunities or otherwise adversely affect his or her status as an employee or would affect adversely his or her wages, hours, or employment.

(3) It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against any individual because of such individual's age or to classify or refer for employment any individual on the basis of his or her age.

(4) It shall be an unlawful employment practice for any employer, employment agency, or labor organization to discharge, expel, or otherwise discriminate against any person because he or she opposed any unlawful employment practice specified in the Age Discrimination in Employment Act or has filed a charge or suit, testified, participated, or assisted in any proceeding under the act.

Section 48-1005. Violations of act; penalty.

Any person who violates any provision of the Age Discrimination in Employment Act or who forcibly resists, opposes, impedes, intimidates, or interferes with the Equal Opportunity Commission or any of its duly authorized representatives while engaged in its, his, or her duties under the act shall be guilty of a Class III misdemeanor. No person shall be imprisoned under this section except for a second or subsequent conviction.

Section 48-1006. Repealed.

Section 48-1007. Equal Opportunity Commission; act; enforcement; powers.

The Age Discrimination in Employment Act shall be administered by the Equal Opportunity Commission as established by section 48-1116. The commission shall have the power

(1) to make delegations, to appoint such agents and employees and to pay for technical assistance, including legal assistance, on a fee-for-service basis, as it deems necessary to assist it in the performance of its functions under the act;

(2) to cooperate with other federal, state, and local agencies, and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of the act;

(3) to make investigations, to issue or cause to be served interrogatories, and to require keeping of records necessary or appropriate for the administration of the act; and

(4) to bring civil action in its name in any court of competent jurisdiction against any person deemed to be violating the act to compel compliance with the act or to enjoin any such person from continuing any practice that is deemed to be in violation of the act. The commission may seek judicial enforcement through the office of the Attorney General to require the answering of interrogatories and to gain access to evidence or records relevant to the charge under investigation.

Section 48-1008. Alleged violation; aggrieved person; complaint; investigation; civil action, when; filing, effect.

(1) Any person aggrieved by a suspected violation of the Age Discrimination in Employment Act shall file with the Equal Opportunity Commission a formal complaint in such manner and form prescribed by the commission. The commission shall make an investigation and may initiate an action to enforce the rights of such employee under the provisions of the act. If the commission does not initiate an action within sixty days after receipt of a complaint, the person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of the act. Filing of an action by either the commission or the person aggrieved shall be a bar to the filing of the action by the other.

(2) A written charge alleging violation of the Age Discrimination in Employment Act shall be filed within three hundred days after the occurrence of the alleged unlawful employment practice, and notice of the charge, including a statement of the date, place, and circumstances of the alleged unlawful employment practice, shall be served upon the person against whom such charge is made within ten days thereafter.

(3) A respondent shall file with the commission a written response to the written charge of violation within thirty days after service upon the respondent. Failure to file a written response within thirty days, except for good cause shown, shall result in a mandatory reasonable cause finding against the respondent by the commission. Failure by any complainant to cooperate with the commission, its investigators, or its staff, except for good cause shown, shall result in dismissal of the complaint by the commission.

(4) In connection with any investigation of a charge filed under this section, the commission or its authorized agents may, at any time after a charge is filed, issue or cause to be served interrogatories and shall have at all reasonable times access to for the purposes of examination, and the right to copy any evidence or records of any person being investigated or proceeded against that relate to unlawful employment practices covered by the act and are relevant to the charge under investigation. The commission may seek preparation of and judicial enforcement of any legal process or interrogatories through the office of the Attorney General.

Section 48-1009. Court; jurisdiction; relief.

In any action brought to enforce the Age Discrimination in Employment Act, the court shall have jurisdiction to grant such legal or equitable relief as the court deems appropriate to effectuate the purposes of the act, including judgments compelling employment, reinstatement, or promotion, or enforcing liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation.

Section 48.1010. Suits against governmental bodies; authorized.

The state, governmental agencies, and political subdivisions may be sued upon claims arising under the Age Discrimination in Employment Act in the same manner as provided by such act for suits against other employers.