

Chapter 11.20 FAIR EMPLOYMENT AND HOUSING PRACTICES

11.20.010 Purpose of chapter.

This chapter is enacted in order to secure for all individuals within the area of the metropolitan government freedom from discrimination because of race, color, religion, national origin, disability or sex in connection with employment and thereby protect their interest and personal dignity. (Amdt. 1 with Ord. 2003-1312 § 1, 2003; prior code § 14A-1-2)

11.20.020 Definitions.

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

"Disability" means, with respect to a person: (a) A physical or mental impairment which substantially limits one or more of such person's major life activities; (b) A record of having such impairment; or (c) Being regarded as having an impairment. "Disability" does not include the current illegal use of, or the addiction to, a controlled substance, or the current abuse of alcohol.

"Employee" means an individual employed by an employer.

"Employer" means a person who has twelve or more employees in each of twenty or more calendar weeks in the current or preceding calendar year and an agent of such a person.

"Employment agency" means a 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 person.

"Labor organization" means a labor organization and an agent of such an organization, including an organization of any kind, an agency or employee representation committee, group, association or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment, and a conference, general committee, joint or system board or joint council so engaged which is subordinate as a national or international labor organization.

"Review panel" means a group of five members of the metropolitan human relations commission, to be appointed by the chairman of the commission. (Amdt. 1 with Ord. 2003-1312 §§ 1, 2, 2003; prior code § 14A-1-1)

11.20.030 Discrimination prohibited--By employers.

It is an unlawful practice for an employer:

A. To fail or refuse to hire, or to discharge, any individual, or otherwise to discriminate against an individual with respect to compensation, terms or conditions or privileges of employment, because of such individual's race, color, religion, national origin, disability or sex;

B. To limit, segregate or classify his employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, national origin or sex.

(Amdt. 1 with Ord. 2003-1312 § 1, 2003; prior code § 14A-1-3)

11.20.040 Discrimination prohibited--By employment agencies.

It is an unlawful practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, an individual because of his race, color, religion, national origin, disability or sex, or to classify or refer for employment an individual on the basis of his race, color, religion, national origin, disability or sex. (Amdt. 1 with Ord. 2003-1312 § 1, 2003; prior code § 14A-1-4)

11.20.050 Discrimination prohibited--By labor organizations.

It is an unlawful practice for a labor organization:

A. To exclude or to expel from its membership, or otherwise to discriminate against, a member or applicant for membership because of his race, color, religion, national origin, disability or sex;

B. To limit, segregate or classify its membership, or classify or fail or refuse to refer for employment an individual, in any way which would deprive or tend to deprive an individual of employment opportunities or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, national origin, disability or sex;

C. To cause or attempt to cause an employer to discriminate against an individual in violation of this section. (Amdt. 1 with Ord. 2003-1312 § 1, 2003; prior code § 14A-1-5)

11.20.060 Discrimination prohibited--Recruitment for training programs.

It is an unlawful practice for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against an individual because of his race, color, religion, national origin, disability or sex in recruitment, or admission to, or employment in, any program established to provide apprenticeship or other training. (Amdt. 1 with Ord. 2003-1312 § 1, 2003; prior code § 14A-1-6)

11.20.070 Discrimination prohibited--Employment advertisements.

It is an unlawful practice for an employer, labor organization or employment agency to print or publish or cause to be printed or published a notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by the employment agency, indicating any preference, limitation, specification or discrimination, based on race, color, religion, national origin, disability or sex; except, that such a notice or advertisement may indicate a preference, limitation or specification based on religion, national origin, disability or sex when religion, national origin, disability or sex is a bona fide occupational qualification for employment. (Amdt. 1 with Ord. 2003-1312 § 1, 2003; prior code § 14A-1-7)

11.20.080 Certain practices not considered discriminatory.

Notwithstanding any other provisions of this chapter, it is not an unlawful practice for:

A. An employer to hire and employ employees, an employment agency to classify or refer for employment an individual, for a labor organization to classify its membership or to classify or refer for employment an individual, or for an employer, labor organization or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ an individual in any such program, on the basis of his religion, national origin or sex in those certain instances where religion or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that business or enterprise;

B. A religious corporation, association or society to employ an individual on the basis of his religion to perform work connected with the carrying on by such corporation, association or society of its religious activity;

C. A school, college, university or other educational institution to hire and employ employees of a particular religion if the school, college, university or other educational institution is in whole or substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society, or if the curriculum of the school, college, university or other educational institution is directed toward the propagation of a particular religion and the choice of employees is calculated by such organization to promote the religious principles for which it is established or maintained. (Prior code § 14A-1-8)

11.20.090 Seniority or merit privileges not considered discriminatory.

Notwithstanding any other provision of this chapter, it is not an unlawful practice for an employer to apply different standards of compensation, of different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations; provided, that such differences shall not be the result of intentional discrimination because of race, color, religion, national origin, disability or sex. (Amdt 1 with Ord. 2003-1312 § 1, 2003; prior code § 14A-1-9)

11.20.100 Human relations commission--Powers and duties.

In the enforcement of this chapter, the metropolitan human relations commission has the following powers and duties:

A. To meet and exercise its powers at any place within the metropolitan government area;

B. To have the services of attorneys, hearing examiners, clerks and other employees and agents who are metropolitan government employees, except in those cases in which the metropolitan government is a party, and in which case the human relations commission may seek the metropolitan council's approval to engage appropriate counsel;

C. After a complaint has been filed against an employer, to give written notice to the employer and other persons to appear as witnesses with pertinent records. Upon the failure to respond, the conciliation procedure herein may be continued, nevertheless, and, upon sufficient evidence and a finding of a violation of this chapter, the procedure described in Section 11.20.120 may be followed;

D. To file in a court of competent jurisdiction such cases as cannot be resolved by conference, conciliation or persuasion. (Prior code § 14A-1-10)

11.20.110 Complaints--Filing--Investigation--Hearing.

- A. An individual claiming to be aggrieved by an unlawful practice or a member of the metropolitan human relations commission may file with the commission a written and sworn complaint stating that an unlawful practice has been committed, setting forth the facts upon which the complaint is based, and setting forth facts sufficient to enable the commission to identify the persons charged (hereinafter the "respondent"). The complaint must be filed within six months after the alleged unlawful practice occurs.
- B. The commission shall make a prompt and full investigation of each complaint.
- C. If it is determined that there is no probable cause to believe that the respondent has engaged in an unlawful practice, the commission shall issue an order dismissing the complaint.
- D. If it is determined, after investigation, that there is probable cause to believe that the respondent has engaged in unlawful practice, the commission shall endeavor to eliminate the alleged unlawful practice by conference, conciliation and persuasion. The terms of a conciliation agreement reached with a respondent may require him to refrain from the commission of unlawful discriminatory practices in the future and make such further provisions as may be agreed upon between the commission or its staff and the respondent. Except for the terms of the conciliation agreement, neither the commission nor any officer, employee, agent or representative thereof shall make public, without the written consent of the complainant and the respondent, information concerning efforts in a particular case to eliminate an unlawful practice by conference, conciliation or persuasion, whether or not there is a determination of probable cause or a conciliation agreement.
- E. In any case of failure to eliminate the alleged unlawful practice by means of conference, conciliation or persuasion, the commission shall direct the review panel to hold a private hearing to determine whether or not an unlawful practice has been committed. The review panel shall furnish to the respondent a statement of the charges made in the complaint and a notice of the time and the place of the hearing. The hearing shall be held not less than ten days after furnishing of the statement of charges. The respondent may file an answer, may appeal at the hearing in person or may be represented by an attorney, and shall have the right to examine or to cross-examine witnesses.
- F. If the review panel determines that the respondent has not engaged in an unlawful practice, the panel shall report its findings to the metropolitan human relations commission, and the commission shall rule that the complaint is dismissed.
- G. If the review panel determines that the respondent has engaged in an unlawful practice, the review panel shall report its findings to the metropolitan human relations commission and the commission, with a quorum present and by a majority vote of those present, may seek relief for the aggrieved person or persons under Section 11.20.120.
- H. Testimony taken at the hearing shall be under oath and may be transcribed. The rules of evidence prevailing in courts shall be substantially observed. After the hearing, in its discretion, the commission, upon notice to all parties with the opportunity to be present, may take further evidence or hear argument. (Prior code § 14A-1-11)

11.20.120 Hearing--Issuance of citations and warrants.

- A. In the event the respondent fails to make available to the metropolitan human relations commission or its staff or to the review panel, records, documents or testimony relevant to the complaint, and/or in the event the review panel and the metropolitan human relations commission cannot eliminate the alleged, unlawful practice by conference, conciliation and persuasion, the commission shall cause to be issued a citation requiring the defendant to appear in the metropolitan court on a date set for a hearing.
- B. The citation will be sent by certified mail to the principal place of business of the employer alleged to be violating any provision of this chapter, and such notice will be

sufficient for the purposes hereof. The form of citation, with sufficient copies, shall be approved by the metropolitan legal department, and shall contain a warrant on one side of the citation form. If the defendant fails to appear on the date as cited, the metropolitan judge may sign and issue a warrant to be served upon the defendant, requiring him to appear before the judge of the metropolitan court for a hearing upon the warrant and for disposition thereof. (Prior code § 14A-1-12)