

CHAPTER 5-3. - DISCRIMINATION IN EMPLOYMENT GENERALLY.

§ 5-3-1 - DECLARATION OF POLICY.

- (A) It is the policy of the City to bring about through fair, orderly and lawful procedures, the opportunity for each person to obtain employment without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.
- (B) This policy is established upon the recognition of the inalienable rights of each individual to work to earn wages and obtain a share of the wealth of this City through gainful employment; and further that the denial of such rights through considerations based upon race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability is detrimental to the health, safety and welfare of the inhabitants of the City and constitutes an unjust denial or deprivation of such inalienable rights which is within the power and the proper responsibility of government to prevent.

Source: 1992 Code Section 7-3-1; Ord. 031106-12; Ord. 031211-11; Ord. 040610-7.

§ 5-3-2 - DEFINITIONS.

In this chapter:

- (1) ADMINISTRATOR means the Equal Employment/Fair Housing Office administrator appointed by the director.
- (2) AGE means a person at least 40 years old.
- (3) CHARGE means a complaint filed by a charging party alleging discrimination under Section 5-3-4 (*Unlawful Employment Practices*), Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, or Chapter 21 (*Employment Discrimination*) of the Texas Labor Code.
- (4) CHARGING PARTY means the person alleging discrimination in a charge.
- (5) COMMISSION means the Austin Human Rights Commission.
- (6) DIRECTOR means the Director of Human Resources Department.
- (7) DISABILITY, with respect to an individual, means:
- (a) a physical or mental impairment that substantially limits one or more of the major life activities of the individual;
 - (b) a record of the impairment; or
 - (c) being regarded as having an impairment.

- (8) EEOC means the Equal Employment Opportunity Commission.
- (9) EMPLOYEE means an individual employed by an employer, including a City employee. The term does not include an elected official of the City.
- (10) EMPLOYER means a person who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and the person's agent. The term does not include the United States, or a corporation wholly owned by the government of the United States; a bona fide private membership club (other than a labor organization) which is exempt from taxation under Section 501(c) of the Internal Revenue Code of 1954; or the state, a state agency, or political subdivision.
- (11) EMPLOYMENT AGENCY means a person who regularly attempts, with or without compensation, to procure employees for an employer or to procure employment opportunities for employees, including the person's agent.
- (12) EQUAL EMPLOYMENT/FAIR HOUSING OFFICE means the office in the Human Resources Department responsible for receiving, investigating, conciliating, making determinations, and taking other action related to charges received under this chapter.
- (13) GENDER IDENTITY means a person's various individual attributes, actual or perceived, that may be in accord with or sometimes opposed to, one's physical anatomy, chromosomal sex, genitalia, or sex assigned at birth.
- (14) INVESTIGATOR means the person investigating a charge.
- (15) LABOR ORGANIZATION means a labor organization and its agent, including an organization, agency, or employee representation committee, group, association, or plan 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 any conference, general committee, joint or system board, or joint council which is subordinate to a national or international labor organization.
- (16) RELIGION means all aspects of religious observance and practice, as well as belief, unless an employer demonstrates the inability to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.
- (17) RESPONDENT means the person against whom a charging party alleges discrimination in a charge.
- (18) SEX DISCRIMINATION means discrimination on the basis of gender, or any associated condition, including pregnancy, childbirth or related medical conditions. A woman affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all

employment related purposes, including receipt of benefits under fringe benefit programs, as a person not so affected, but similar in their ability or inability to work.

Source: 1992 Code Section 7-3-2; Ord. 031106-12; Ord. 031211-11; Ord. 040610-7; Ord. 20051215-010.

§ 5-3-3 - INTERPRETATION AND DESIGNATION.

- (A) In construing this chapter, it is the intent of the city council that the courts shall be guided by the rules and regulations of the EEOC and Federal Court interpretations of Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act of 1967, and Chapter 21 (*Employment Discrimination*) of the Texas Labor Code.
- (B) The city council designates the Equal Employment/Fair Housing Office a local commission under Chapter 21 (*Employment Discrimination*) of the Texas Labor Code, to exercise the powers and duties provided in that chapter.

Source: 1992 Code Section 7-3-3; Ord. 031106-12; Ord. 031211-11; Ord. 040610-7.

§ 5-3-4 - UNLAWFUL EMPLOYMENT PRACTICES.

- (A) An employer may not:
 - (1) fail or refuse to hire or to discharge any individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, based on the individual's race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; or
 - (2) limit, segregate, or classify an employee or applicant for employment in a way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect the individual's status as an employee, based on the individual's race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.
- (B) An It shall be an unlawful employment practice for an employment agency may not:
 - (1) fail or refuse to refer for employment, or otherwise discriminate against, an individual based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; or
 - (2) classify or refer for employment an individual based on race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability.
- (C) A labor organization may not:
 - (1) exclude or to expel from its membership, or otherwise discriminate against, an individual based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability.
 - (2)

limit, segregate, or classify its membership, or applicants for membership, or classify or fail or refuse to refer for employment an individual in a way which would deprive or tend to deprive the individual of employment opportunities, limit employment opportunities, or otherwise adversely affect the individual's status as an employee or as an applicant for employment, based on the individual's race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability; or

- (3) cause or attempt to cause an employer to discriminate against an individual in violation of this section.
- (D) An employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, may not discriminate against an individual based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability in admission to or employment in a program established to provide apprenticeship or other training.
- (E) Unless it is a bona fide occupational qualification for employment, an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, may not print, publish, or cause to be printed or published a notice or advertisement that indicates a preference, limitation, specification, or discrimination based on race, color, religion, sex, sexual orientation, gender identity, national origin, age, or disability related to:
- (1) employment by the employer;
 - (2) membership in or classification or referral for employment by an employment agency; or
 - (3) admission to, or employment in, a program established to provide apprenticeship or other training by a joint labor-management committee.
- (F) Based on an individual's opposition to an unlawful employment practice or the individual's filing a charge, or testimony, assistance, or participation in an investigation, proceeding or hearing under this chapter:
- (1) an employer may not discriminate against an employee or applicant for employment;
 - (2) an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, may not discriminate against an individual; and
 - (3) a labor organization may not discriminate against a member or applicant for membership.

Source: 1992 Code Section 7-3-4; Ord. 031106-12; Ord. 031211-11; Ord. 040610-7.

A person may not violate this chapter, or knowingly obstruct or prevent compliance with this chapter.

Source: 1992 Code Section 7-3-5; Ord. 031106-12; Ord. 031211-11; Ord. 040610-7.

§ 5-3-6 - CHARGES.

- (A) A person must file a charge with the Equal Employment/Fair Housing Office not later than the 180th day after the date the violation occurred.
- (B) A charge under this section must be:
 - (1) made in writing on the form prescribed by the Equal Employment/Fair Housing Office;
 - (2) be sworn to by the charging party; and
 - (3) contain the information required by the Equal Employment/Fair Housing Office.

Source: Ord. 040610-7.

§ 5-3-7 - PRELIMINARY REVIEW; REFUSAL.

- (A) Before the Equal Employment/Fair Housing Office accepts a charge, an investigator shall review the charge with the charging party and make a determination that the charge describes a violation of Section 5-3-4 (Unlawful Employment Practices), Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act or the Americans with Disabilities Act of 1990, or Chapter 21 (*Employment Discrimination*) of the Texas Labor Code.
- (B) If, after a preliminary review, an investigator determines that a charge does not describe a violation of Section 5-3-4 (Unlawful Employment Practices) or of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, or Chapter 21 (*Employment Discrimination*) of the Texas Labor Code the Equal Employment/Fair Housing Office shall notify the charging party that the charge will not be accepted and describe the reason for the refusal, not later than the 10th day after the determination. The Equal Employment/Fair Housing Office shall maintain a record documenting the reason a charge was not accepted.

Source: Ord. 040610-7.

§ 5-3-8 - ACCEPTANCE; NOTICE; INVESTIGATION.

If the Equal Employment/Fair Housing Office accepts a charge, it shall notify the respondent not later than the 10th day after acceptance of the charge. If the charge alleges a violation of Section 5-3-4 (Unlawful Employment Practices), the Equal Employment/Fair Housing Office shall initiate an investigation.

Source: Ord. 040610-7.

§ 5-3-9 - NO REASONABLE CAUSE DETERMINATION.

If, after an investigation, an investigator determines that there is no reasonable cause to believe that a charge is true, the Equal Employment/Fair Housing Office shall issue a determination explaining why there was no reasonable cause to believe a violation had occurred and shall immediately notify the charging party and the respondent of the determination.

Source: Ord. 040610-7.

§ 5-3-10 - REVIEW OF NO REASONABLE CAUSE DETERMINATION BY COMMISSION.

- (A) A charging party may file with the director a request for review by the Commission of a no reasonable cause determination issued under a charge filed alleging a violation of Section 5-3-4 (*Unlawful Employment Practices*). This request must be filed not later than the 10th day after receipt of the notice of the issuance of a no reasonable cause determination under Section 5-3-9 (*No Reasonable Cause Determination*).
- (B) For charges filed exclusively under Section 5-3-6 (*Charges*) and not deferred by the EEOC pursuant to Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act, or Chapter 21 (*Employment Discrimination*) of the Texas Labor Code, if the charging party files a request for review, the Commission, after review, may conduct a hearing and consider evidence presented by the charging party, the respondent, and the Equal Employment/Fair Housing Office. The Commission shall conduct a hearing as prescribed by the Chapter 2001 (*Administrative Procedure Act*) of the Texas Government Code. At the conclusion of the hearing, the Commission may, by majority vote, affirm, reverse, or modify the determination of the Equal Employment/Fair Housing Office.

Source: Ord. 040610-7.

§ 5-3-11 - REVIEW OF NO REASONABLE CAUSE DETERMINATION BY EEOC.

A charging party may file with the EEOC an appeal of a no reasonable cause determination issued under a charge filed alleging a violation of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, or the Americans with Disabilities Act of 1990.

Source: Ord. 040610-7.

§ 5-3-12 - CONCILIATION AGREEMENT.

- (A) If, after investigation of the charge or review by the Commission, it is determined that there is reasonable cause to believe a violation of Section 5-3-4 (*Unlawful Employment Practices*) or a violation of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Americans with Disabilities Act of 1990, or Chapter 21 (*Employment Discrimination*) of the Texas Labor Code has occurred, the Equal Employment/Fair Housing Office shall attempt to resolve the alleged violation through a conciliation agreement.
- (B) A respondent may enter into a settlement at any time before a determination is made by the Equal Employment/Fair Housing Office, if the Equal Employment/Fair Housing Office agrees that the settlement is acceptable and complies with the objectives of this chapter.
- (C) The Equal Employment/Fair Housing Office, investigator, charging party, and respondent shall treat as confidential any written or oral communications or documentation prepared during the course of attempting to reach a conciliation agreement or predetermination settlement, unless disclosure is required by law, and may not use this information as evidence in a subsequent proceeding without the written consent of all parties.
- (D) If the Equal Employment/Fair Housing Office is unable to obtain a conciliation agreement acceptable to the Equal Employment/Fair Housing Office and the charging party, the Equal Employment/Fair Housing Office may refer a case involving a violation of Section 5-3-4 (*Unlawful Employment Practices*) to the city attorney for prosecution in municipal court or for other civil prosecution as authorized by Chapter 21 (*Employment Discrimination*) of the Texas Labor Code. Prosecution in municipal court or by other civil action does not bar the charging party from seeking relief from the EEOC or other civil proceeding.
- (E) If no conciliation agreement acceptable to the charging party and the Equal Employment/Fair Housing Office is reached in a case involving a violation of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, or the Americans with Disabilities Act of 1990, the Equal Employment/Fair Housing Office shall send a failure to conciliate letter to the charging party and the respondent and forward the charge to the EEOC for their review.
- (F) The confidentiality rules in 29 CFR § 1601.22 apply in all cases deferred to the City by the EEOC.

Source: Ord. 040610-7.

§ 5-3-13 - INVESTIGATIVE ACCESS TO RECORDS AND EVIDENCE.

In investigating a charge filed under this chapter, the Equal Employment/Fair Housing Office shall have access to, and may examine and copy, records or other evidence maintained by a respondent that the office believes is relevant to a charge under investigation.

Source: Ord. 040610-7.

§ 5-3-14 - LEGAL ASSISTANCE.

The city attorney shall advise the Equal Employment/Fair Housing Office or the Commission relating to the administration and enforcement of this chapter.

Source: Ord. 040610-7.

§ 5-3-15 - EXEMPTIONS.

- (A) If an individual's religion, sex, sexual orientation, gender identity, national origin, age, or disability are a bona fide occupational qualification reasonably necessary for the normal operation of a particular business or enterprise, it is not an unlawful employment practice for:
- (1) an employer to hire and employ employees;
 - (2) an employment agency to classify, or refer for employment an individual;
 - (3) a labor organization to classify its membership or to classify or refer for employment an individual; or
 - (4) an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ an individual in a program.
- (B) It is not an unlawful employment practice for a school, college, university or other educational institution or institution of learning to hire and employ employees of a particular religion if:
- (1) the school, college or university or other educational institution or institution of learning is wholly or substantially owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society; or
 - (2) the curriculum of the school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.
- (C) It is not an unlawful employment practice for a religious corporation, association, educational institution, or society to hire and employ individuals of a particular religion to perform work connected with the activities of the corporation, association, educational institution, or society.
- (D) If it is not caused by an employer's intentional discrimination based on an employee's race, color, sex, sexual orientation, gender identity, religion, national origin, age, or disability, it is not an unlawful practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment based on:
- (1) a bona fide seniority or merit system;
 - (2) a system which measures earnings by quantity or quality of production; or
 - (3) to employees who work in different locations.

Source: 1992 Code Section 7-3-10; Ord. 031106-12; Ord. 031211-11; Ord. 040610-7.