RESOLUTION OF THE MIDLAND INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES AMENDING FIRST TEE LEASE AGREEMENT

At a lawfully called meeting on April 21, 2026, the Midland Independent School District Board of Trustees ("Board") does hereby make the following Resolution regarding the use of certain Midland Independent School District ("District") property:

WHEREAS, the District entered into a lease agreement with Youth Development, Inc., d/b/a First Tee West Texas ("First Tee") in August of 2020 for an initial 5-year term and amended the agreement in April of 2022 to extend the initial term from 5 to 15 years; and

WHEREAS, First Tee is an international organization whose mission is to develop youth by introducing the game of golf and its inherent values to kids and teens; and

WHEREAS, the District and the First Tee have a history of working together for the benefit of District students interested in the game of golf; and

WHEREAS, it is in the best interest of the District and its students to continue working with First Tee to provide youth development opportunities through golf; and

WHEREAS, the District acknowledges First Tee has made significant improvements to the leased property to improve upon the program and continue to provide development and golf opportunities to District students and these improvements were made at no cost to the District; and

WHEREAS, the predominant reason for the use of the leased property by First Tee is to serve a District purpose to benefit District students through character and athletic development, and is not for the benefit of private parties; and

WHEREAS, by permitting First Tee to continue to use and add improvements to the leased property, the District will receive the return benefit of District students having access to development and athletic opportunities that will help students be successful in education, extracurricular activities and life both during and after junior high and high school; and

WHEREAS, the District and First Tee will execute the amended agreement ("Agreement") in Attachment "A" setting forth agreeable terms for the use of the leased property, which will supersede any prior agreements; and

WHEREAS, the Agreement between the District and First Tee shall allow the District to retain sufficient control over the use of and potential updates to the leased property; and

WHEREAS, this Board determines that it is a legitimate use of public funds to permit First Tee to use the leased property, according to the terms set forth in the Agreement between the District and First Tee.

NOW, THEREFORE, BE IT RESOLVED BY THE MIDLAND INDEPENDENT SCHOOL DISTRICT BOARD OF TRUSTEES that the recitals contained herein are adopted by the Board as findings of facts and operative provisions hereof, and the Superintendent or designee is authorized to execute the Amended Lease Agreement attached as Attachment "A," which is consistent with this Resolution.

Adopted this 21st day of April 2026, by the Midland Independent School District Board of Trustees.

Board President

Board Secretary

ATTACHMENT "A"

SECOND AMENDED LEASE AGREEMENT AND MEMORANDUM OF UNDERSTANDING

This Second Amended AGREEMENT AND MEMORANDUM OF UNDERSTANDING ("Agreement") is made and executed by and between **Midland Independent School District** ("Lessor") and **West Texas Youth Development, Inc. d/b/a First Tee West Texas** ("Lessee") on this the 21 **day of** April, **2026** ("Effective Date"). This agreement fully amends, restates, and supersedes in its entirety all previous agreements and amendments.

RECITALS

Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, for the term of this Agreement, the semi-developed and undeveloped acreage commonly referred to as the former Masters driving range and practice facility and the adjoining undeveloped acreage, surface only, said acreage being more particularly shown and outlined on the Defined Area map attached hereto as Exhibit "A" ("Defined Area"). The parties agree that the description of the Defined Area adequately describes the Defined Area for all purposes. Lessee agrees to accept the Defined Area in its "as is, where is" condition, subject to all existing oil, gas, mineral leases or easements or other restrictions, reservations, covenants or conditions, whether recorded or not.

The Defined Area shall be used and occupied by Lessee solely for purposes consistent with providing programs and curriculum training to registered/certified participants in the First Tee Life Skills Experience and similar and related activities (the "Intended Use"). In connection with the Intended Use of the Defined Area, Lessee desires to construct a golf course, driving range, short game facility, putting greens, office, clubhouse, maintenance barn, and other related improvements in connection therewith and consistent with the Intended Use (collectively, the "Improvements"). No other use is permitted unless expressly authorized by Lessor.

NOW, THEREFORE, for and in consideration of the premises, mutual covenants, agreements and obligations hereinafter set forth in this Agreement, and to be paid, kept and performed, and in further consideration of the above recitals, which are agreed to be contractual in nature, the receipt and sufficiency of which is hereby acknowledged, Lessor does hereby lease, demise and let unto Lessee the Defined Area, TO HAVE AND TO HOLD unto Lessee for the Term, at the Rent, for the Intended Use and purposes, and subject to the covenants, conditions and stipulations hereinafter set forth, and Lessor and Lessee hereby covenant and agree between themselves as follows:

1. TERM:

a) Primary Term. Lessor hereby grants, leases, demises and lets unto Lessee, its successors and assigns, the Defined Area for the Intended Use for an initial period of fifteen (15) years from the first amended lease agreement executed in April 2022 (the "Primary Term"). The primary term will end on or before April 18, 2037.

b) Optional Secondary Term. If, at the expiration of the Primary Term, as defined hereinabove, Lessee continues to operate and use the Defined Area for purposes consistent with the Intended Use, the Parties may extend the term of this Agreement, with or without modification to the Agreement terms ("Secondary Term"). A Secondary Term shall be effective only upon written mutual agreement by the Parties.

c) Termination by Lessor. Notwithstanding anything contained herein to the contrary, Lessor shall have the right to terminate this Agreement at any time in the event of Lessee's failure to perform as required by this Agreement or failure to act in good faith with the program goals and terms of this Agreement, if such failure continues for a period of fifteen (15) days after written notice thereof has been provided by Lessor to Lessee; *but*, if Lessee begins to cure

the failure of performance within said 15 day period and prosecutes the same diligently, Lessee shall have such additional period of time as is necessary to complete the cure, not to exceed sixty (60) days. Upon any termination of this Agreement, Lessee shall deliver possession of the Defined Area to Lessor.

2. **RENT:** Lessee shall pay as rental $1.00 per calendar year for the lease of the Defined Area, with the rental due on or before the 1st day of each subsequent year.

3. **Right to Audit:** Lessor, or its designated representative, shall have the right at any reasonable time and upon reasonable notice to examine and audit the books, records, and tax returns of Lessee.

4. **UTILITIES:** Lessor shall remain the account holder and pay all utility invoices for the entire property to the respective service providers. However, Lessee shall be responsible for the full cost of all utility expenses related to the Defined Area. Lessor shall bill Lessee on a quarterly basis for reimbursement of these costs. Lessee shall have fifteen (15) business days to pay the invoice upon receipt.

5. **USE OF PREMISES:** Lessee, subject to the terms and provisions of this Agreement, on observing, keeping, and performing all of the terms and provisions of this Agreement on its part to be observed, kept and performed, shall lawfully, peaceably and quietly have, hold, occupy and enjoy the Defined Area during the Term hereof. Lessee shall conduct its operations on the Defined Area as a prudent Lessee. Lessee shall comply with any and all laws, ordinances, rules and orders of any and all governmental or quasi-governmental authorities affecting the use, occupancy and operation of the Defined Area. This includes, but is not limited to, Midland ISD Board Policies GKA(LOCAL), GKA(LEGAL), CJA(LEGAL), CJA(LOCAL), DIA(LEGAL), DIA(LOCAL), FFH(LEGAL) and FFH(LOCAL). See Exhibit "B." Among the requirements found in District policy are prohibitions regarding the use of alcohol or tobacco on the Defined Area, anti-discrimination or harassment requirements, requirements for completed criminal history checks on Lessee's employees, and limited firearm possession and rights and responsibilities. Access shall be provided and prioritized, at agreed-upon times and dates by the Parties, to all participants enrolled in Midland ISD golf programs, including the student golf teams, other golf athletic students, and/or golf coaches. Lessee will use the facility primarily for the Intended Use, and shall, as a material condition of this Agreement, provide priority to the Intended Use over other uses, and shall conduct its operation consistent with the purpose of a non-profit entity. Lessee shall have the option to offer limited public access at times and dates not specifically reserved for Midland ISD student golf participants or First Tee West Texas chapter use. All Midland ISD students and First Tee West Texas chapter participants will abide by The First Tee Code of Conduct and dress code policies, which shall be in accordance with District policy, non-discriminatory, and in compliance with any applicable laws, rules or ordinances.
    a) Lessee will allow access to the driving range with range balls, all practice facilities, including but not limited to putting greens, chipping area, short range, and all holes located on the facility at all times without assessing any fees to the district.
    b) Times of Access:
        - During the school year, access will be Monday through Friday from 3:30 PM – 6:00 PM and Saturday mornings, so long as our teams are not competing in a tournament elsewhere.
        - During the summer break, access will be Monday through Friday from 8:00 AM – 10:00 AM.
        - The time of access is not exclusive to only Midland ISD; however, the district will have priority to practice within the outlined days and times.

6. **ACCESSORIES, EQUIPMENT AND STRUCTURES:** Lessee will have access to all equipment, accessories and structures on the Defined Area. No current employees of Lessor will be removed from the facilities or premises. Lessee shall also have the right to use any existing water wells located on the Defined Area, as well as Lessee may drill one or more additional water wells if necessary, upon written approval of Lessor. New wells shall be drilled and maintained in good working order at Lessee's expense and after the permits as required as applicable. Ownership of any and all wells on the Defined Area shall lie with the Lessor.

After execution of this Agreement, Lessee shall have the right to place and install personal property, trade fixtures, equipment, and other temporary installations in and upon the Defined Area consistent with the Intended Use. All personal property placed in or upon the Defined Area, or in any storage rooms, shall be at the risk of Lessee, or the parties owning same, and Lessor shall in no event be liable for the loss or damage of any such property. Lessee shall obtain insurance for the Defined Area and its contents, and shall provide proof of insurance to Lessor upon request. Lessor shall be named an additional insured for the coverages and amounts required by Lessor. All personal property, trade fixtures, equipment and other temporary installations owned by Lessee which are not attached and/or permanently installed in the Defined Area shall remain the property of Lessee and shall be removable at any time, including the termination of this Agreement. Lessor agrees that Lessee shall remove any and all Improvements, fixtures, personal property and equipment of whatsoever nature or character, owned or placed by Lessee upon the Defined Area, within ninety (90) days after the final termination of this Agreement (including any extension, renewal or early termination), or such will be forfeited.

Lessee will designate an area located on the property where the Lessor can place two storage sheds to house larger training equipment.

7. **IMPROVEMENTS:** Upon written approval by Lessor, Lessee may renovate, remodel, expand, alter, improve, or modify the Defined Area and the improvements during the Term of this Agreement consistent and in connection with the Intended Use. Lessee shall have the right to remodel and use all buildings currently located on the Defined Area. Upon written approval by Lessor, Lessee shall also have the right to install security fencing around the perimeter of the Defined Area, and controlled and secure access gating may also be installed as necessary. Lessor and its designated employees shall be supplied with the necessary keys or codes to access the Defined Area freely and unrestricted no later than one (1) hour after any change is made. Lessee may also remove old existing signage and install new signage within the Defined Area and near the driveway entrance to the Defined Area.

   Lessor's consent to an Improvement does not waive Lessee's obligation to obtain all necessary municipal permits, and any work done without a required permit shall be deemed an Unauthorized Improvement under this section. Any unauthorized Improvements shall, at Lessor's option, become the property of the Lessor upon the termination of the Lease without compensation to the Lessee.

8. **MAINTENANCE AND LANDSCAPING:** The Defined Area shall be reasonably maintained in accordance with Lessor's requests. Lessee shall be responsible for all maintenance, landscaping, mowing, edging and other upkeep of the property within the Defined Area including costs. Lessor shall remain responsible for maintaining, landscaping and mowing its property outside of the Defined Area. Lessor will not be responsible for fixing or maintaining any equipment located within the Defined Area, except where shared equipment also services space outside of the Defined Area. Should such shared equipment require repair, maintenance, or replacement, Lessor and Lessee will share such expense equally. All existing permanent structures within the Defined Area will be maintained solely by Lessee, unless otherwise agreed by the parties. Lessor agrees that it will not build any new improvements or structures or store any additional equipment or property within the Defined Area unless Lessee agrees to the new improvements.

9. **SALE OF PROPERTY BY LESSOR:** In consideration of the significant expense and effort that has been and will be invested and spent by Lessee in connection with the Improvements it is making to the Defined Area, including the construction of a new golf course and an office/clubhouse/learning center, Lessor hereby agrees to provide sixty (60) days' notices to Lessee in the event Lessor desires to sell the real property comprising the Defined Area during the term of this Agreement.

10. **INDEMNIFICATION: LESSEE SHALL AND DOES HEREBY INDEMNIFY AND HOLD HARMLESS LESSOR, ITS AFFILIATES AND EACH OF THEIR OFFICERS, TRUSTEES,**

ADMINISTRATORS, DIRECTORS, EMPLOYEES, AGENTS, AND REPRESENTATIVES, FROM AND AGAINST ANY AND ALL CLAIMS AND DEMANDS OF EVERY KIND AND NATURE ASSERTED BY A THIRD PARTY, WHETHER GROUNDLESS OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL ACTIONS, CAUSES OF ACTION, SUITS, JUDGMENTS, CONTROVERSIES, LOSSES, INJURIES, DAMAGES, COSTS, LIENS, CHARGES, COURT COSTS, REASONABLE ATTORNEY'S FEES, PAYMENTS, PENALTIES, LIABILITIES AND EXPENSES, OCCASIONED BY, RESULTING FROM, ARISING OUT OF, RELATED TO, OR IN CONNECTION WITH ANY ACT OR OMISSION OF LESSEE, ITS EMPLOYEES, OFFICERS, DIRECTORS, TRUSTEES, ADMINISTRATORS, AGENTS OR REPRESENTATIVES, OR ANY OF THEM, IN PERFORMANCE OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, FAILURE OF LESSEE TO COMPLY WITH THE TERMS OF THIS AGREEMENT.

INSURANCE: Lessee shall maintain and, upon request, provide proof to Lessor of such insurance policies as are reasonable to insure itself, Lessee's property, and Lessor from any and all claims resulting from any action taken or failure to act by the insured party or its employees or agents, pursuant to this Agreement. Lessee's insurance shall name Lessor as an additional insured. Lessee shall maintain workers' compensation insurance.

NON-DISCRIMINATION: Lessee acknowledges and agrees that there shall be no discrimination against, or segregation of, any person, group of persons, or entity on the basis of race, color, creed, religion, age, sex, marital status, national origin, ancestry or any other basis prohibited by law, in the use or enjoyment of the Defined Area.

COMPLIANCE WITH EASEMENT: Attached at Exhibit "C" is the easement with Gulf Refining Company ("Easement") relating to the Defined Area (formerly owned by William B. Neely). Lessee acknowledges receipt of and its agreement to comply with the Easement, and understands and acknowledges that failure to comply could result in immediate termination of this Agreement, without penalty, by Lessor. Lessee acknowledges and understands the grave danger, including substantial property damage and death, could result in failure to comply with Easement. In the event Lessee intends to do any construction on the Defined Area that would or may potentially interfere with the pipelines in the ground (as set forth in the Easement), Lessee agrees to first notify Lessor of such intent, and shall seek and receive written permission from the Gulf Refining Company prior to initiation of said construction.

LESSEE TO REMAIN NON-PROFIT: By April 1 of each year of this Agreement, Lessee shall provide Lessor with proof of Lessee's current non-profit status, and annually shall provide a copy of its annual audited financial statement. Lessor may immediately terminate this Agreement, in writing, upon Lessee's failure to provide proof of 501(c)(3) non-profit status or Lessee's failure to remain in good standing as a 501(c)(3) non-profit status.

11. MISCELLANEOUS:

a) Governing Law: This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Texas, and venue for any action shall lie exclusively in the Courts of Midland County, Texas.
b) Assignment: Neither Lessor nor Lessee may assign all or any part of this Agreement without the prior, express and written consent of the other party hereto. In the event Lessor sells the Defined Area to a third party, Lessor must disclose this Agreement and this Agreement shall remain in full force and effect in accordance with its terms as to the purchaser.
c) Waiver: Waiver by Lessor of any breach of any covenant or duty of Lessee under this Agreement is not a waiver of any subsequent or other breach of any covenant or duty of Lessee. Time is of the essence in this Agreement.
d) Severability: If any term or provision of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be determined by judicial order or decision to be

invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid, shall be enforced to the fullest extent permitted by law.

e) Modifications: No prior or present agreements or representations shall be binding upon any of the parties hereto unless incorporated into this Agreement. The parties hereby agree that this document contains the entire agreement between the parties, and no amendment, modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the parties to be bound hereto.

f) Binding Effect: This Agreement is the entire agreement between the parties. This Agreement and all provisions thereof shall apply to and bind the parties hereto, their agents, personal representatives, successors and assigns.

g) Notices: Any notice to be given pursuant to the terms of this Agreement, including notice of breach, shall be in writing and shall be deemed delivered upon personal delivery against written receipt or when mailed by certified mail with return receipt requested and postage prepaid to the receiving party at such party's address set forth below, which address for notice may be changed by either party by written notice under this Agreement.

For Lessor:	For Lessee:
Midland Independent School District	West Texas Youth Development, Inc.
Attn: Chief Financial Officer	d/b/a First Tee West Texas
615 W. Missouri Ave	Attn: Executive Director
Suite 624D	5017 Belle Grove Ct.
Midland, Texas 79701	Midland, Texas 79705
Office: (432) 240-1007	Office: (432) 242-2510

The above-named persons shall also serve as contacts in the event of an emergency.

h) Breach: In the event of alleged breach of this Agreement by either party, written notice shall be given to the other party at the address provided in "Notices" above. The failure of either party to exercise any right, power or remedy provided under this Agreement or otherwise available in respect hereof at law or in equity, or to insist upon compliance by any other party hereto with its obligations hereunder, and any custom or practice of the parties at variance with the terms hereof, shall not constitute a waiver by such party of its right to exercise any such or other right, power or remedy or to demand such compliance.

i) Mediation: As a condition precedent, the parties agree that, before bringing a lawsuit for any dispute arising out of this Agreement, they will first make a good faith effort to resolve the dispute through the use of non-binding mediation. The mediation will be held in Midland, Texas, or at another location mutually agreed upon by the parties. The mediator shall be selected by agreement of the parties. Each party will pay its own expenses for participating in the mediation, including one-half of the mediator's fees and expenses.

j) No Waiver of Defenses or Immunities: Nothing in this Agreement shall be construed as a waiver of the Lessor's defenses or immunities available under Federal or State law, including but not limited to those set forth in the Texas Education Code, the Texas Government Code, or the Texas Civil Practices and Remedies Code.

k) Compliance with Law: Lessee agrees to comply with applicable federal, state and local laws, as well as the District's applicable policies and regulations, in providing the services contemplated herein. This includes, but is not limited to: (1) Lessee agrees to complete any requirements set forth in Texas Education Code Chapter 22 (relating to criminal history records and certifications) and/or complete related forms/certifications required by the Lessor; (2) to the extent applicable or required by law, if Lessee is a "Company" as defined by Texas Government Code §808.001, and if Chapter 2270 applies to this contract, by signing this agreement, Lessee certifies neither it nor any affiliate, subsidiary, or party company, if any, boycotts Israel and will not boycott Israel during the term of this Agreement; (3) in accordance with Texas Government Code, Chapter 2252, Subchapter F, Lessor is prohibited from entering into a contract with a company that is identified on a list prepared

and maintained by the Texas Comptroller under said law. By execution of this Agreement, Lessee certifies that it is not a company on said list (companies known to have scrutinized business operations or contracts with, or provides supplies and services to, the Government of Iran, the Government of Sudan, or a foreign organization designated as a Foreign Terrorist Organization by the U.S. Secretary of State), and further hereby voluntarily and knowingly acknowledges and agrees that this Agreement shall be null and void should facts arise leading Lessor to believe that the Lessee was a listed company at the time of this agreement.

a. Lessor shall be provided a list of Lessee's employees prior to finalizing employment with Lessee. Due to Lessee's employees having direct contact with Lessor's students, Lessor shall have the right to reasonably reject the employment of proposed or current personnel, in writing. Upon receipt of request by Lessor, Lessee agrees to ensure that the employee(s) shall not enter onto the grounds of the Defined Area, for any time or purpose.

l) Independent Relationship: No provision of this Agreement is intended to create nor shall be deemed or construed to create any relationship between Lessor and Lessee other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. The parties hereto are not and shall not be deemed for any purpose to be agents, joint venturers or partners. Neither party is authorized to act as agent for the other, to take any action or make any representation in the name of the other, or to represent that it has the power or authority to do so. Neither of the parties to this Agreement nor any of their respective officers, directors, or employees shall hold themselves out as the employee, partner, officer, director or agent of the other party and shall not be deemed or construed to be an employee, partner, officer, director or agent of the other party. Neither party is authorized to represent the other for any purpose whatsoever without the prior written agreement of that party.

m) Counterparts: This Agreement may be executed in separate identical counterparts, each of which when taken together shall constitute one and the same instrument.

Agreed to in form and substance, to be effective as of the Effective Date:

Midland Independent School District

By: Dr. Stephanie Howard, *Superintendent*

West Texas Youth Development Inc.
d/b/a First Tee West Texas

By: Liz Mccormick, *Executive Director*

EXHIBIT “A”

First Tee Lease

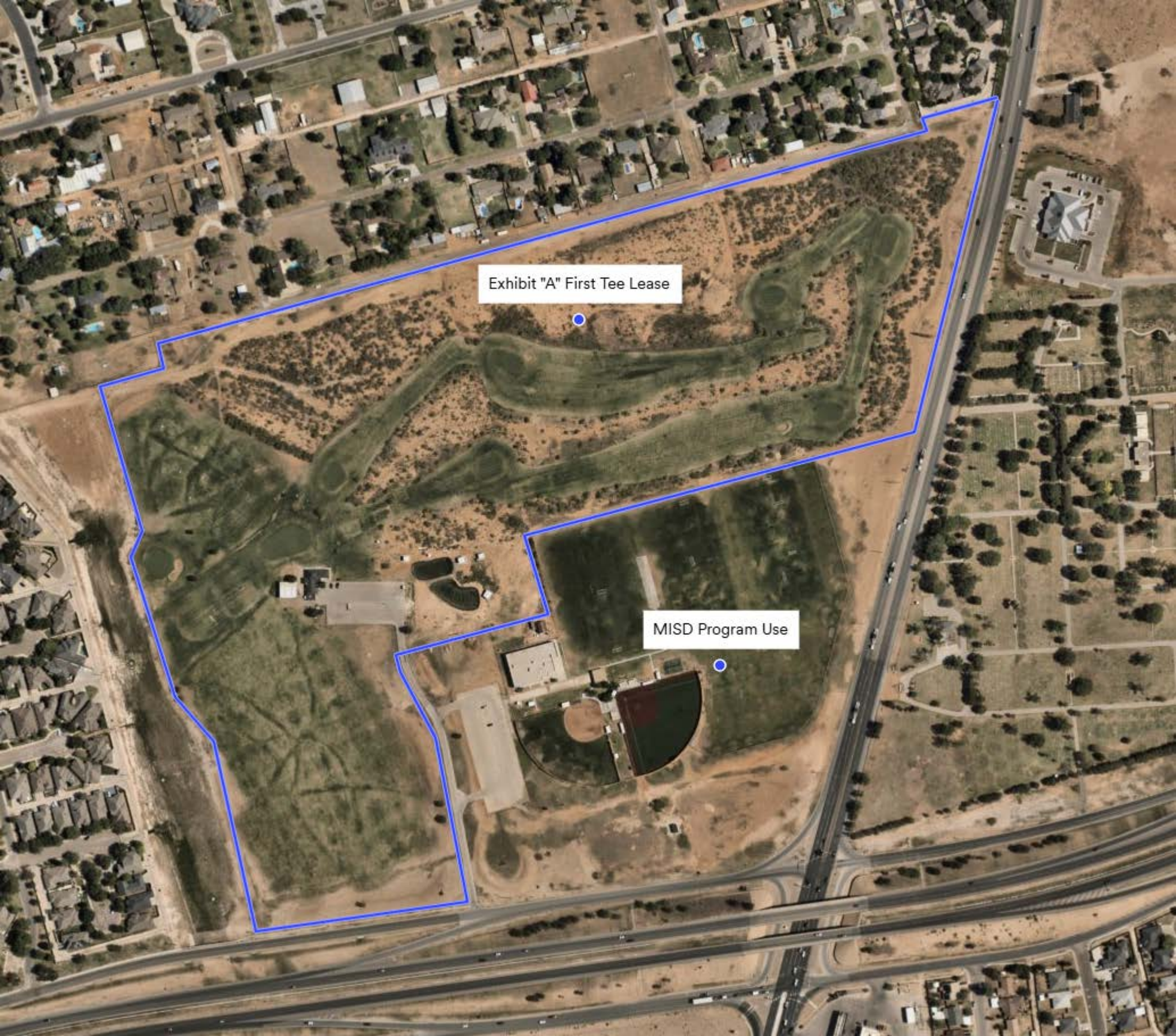

Exhibit "A" First Tee Lease
MISD Program Use

EXHIBIT “B”

DISTRICT POLICIES

For the most up-to-date version of MISD policies, visit the district's website under the school board’s page - Board Policy.

https://www.midlandisd.net/school-board

Community Relations: Conduct On School Premises

Texas Education Code § 37.101. APPLICABILITY OF CRIMINAL LAWS.

The criminal laws of the state apply in the areas under the control and jurisdiction of the board of trustees of any school district in this state.

Texas Education Code § 37.107. TRESPASS ON SCHOOL GROUNDS.

An unauthorized person who trespasses on the grounds of any school district of this state commits an offense. An offense under this section is a Class C misdemeanor.

Texas Education Code § 37.105. UNAUTHORIZED PERSONS: REFUSAL OF ENTRY, EJECTION, IDENTIFICATION.

(a) A school administrator, school resource officer, or school district peace officer of a school district may refuse to allow a person to enter on or may eject a person from property under the district's control if the person refuses to leave peaceably on request and:

(1) the person poses a substantial risk of harm to any person; or

(2) the person behaves in a manner that is inappropriate for a school setting and:

(A) the administrator, resource officer, or peace officer issues a verbal warning to the person that the person's behavior is inappropriate and may result in the person's refusal of entry or ejection; and

(B) the person persists in that behavior.

(a-1) A verbal warning and persisting in inappropriate behavior are not required under Subsections (a)(2)(A) and (B) for a person serving as a referee, judge, or other official of an extracurricular athletic activity or competition sponsored or sanctioned by the school district or the University Interscholastic League to eject a spectator from the extracurricular athletic activity or competition.

(b) Identification may be required of any person on the property.

(c) Each school district shall maintain a record of each verbal warning issued under Subsection (a)(2)(A), including the name of the person to whom the warning was issued and the date of issuance.

(d) At the time a person is refused entry to or ejected from a school district's property under this section, the district shall provide to the person written information explaining the appeal process established under Subsection (h).

(e) If a parent or guardian of a child enrolled in a school district is refused entry to the district's property under this section, the district shall accommodate the parent or guardian to ensure that the parent or guardian may participate in the child's admission, review, and dismissal committee or in the child's team established under Section 504, Rehabilitation Act of 1973 (29 U.S.C. Section 794), in accordance with federal law.

(f) The term of a person's refusal of entry to or ejection from a school district's property under this section may not exceed two years.

(g) A school district shall post on the district's Internet website and each district campus shall post on any Internet website of the campus a notice regarding the provisions of this section, including the appeal process established under Subsection (h).

(h) The commissioner shall adopt rules to implement this section, including rules establishing a process for a person to appeal to the board of trustees of the school district the decision under Subsection (a) to refuse the person's entry to or eject the person from the district's property.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 924 (S.B. 1553), Sec. 5, eff. June 15, 2017.

Acts 2025, 89th Leg., R.S., Ch. 201 (S.B. 2929), Sec. 1, eff. May 27, 2025.

19 Texas Administrative Code § 103.1207. UNAUTHORIZED PERSONS: REFUSAL OF ENTRY, EJECTION, IDENTIFICATION, AND APPEAL.

(a) A school administrator, school resource officer, or school district peace officer of a school district may refuse to allow a person to enter on or may eject a person from property under the district's control if the person refuses to leave peaceably on request and:

(1) the person poses a substantial risk of harm to any person; or

(2) the person behaves in a manner that is inappropriate for a school setting; and

(A) the administrator, resource officer, or peace officer issues a verbal warning to the person that the person's behavior is inappropriate and may result in the person's refusal of entry or ejection; and

(B) the person persists in that behavior.

(b) Identification may be required of any person on property under a district's control.

(c) Each school district shall maintain a record of each verbal warning issued under subsection (a)(2)(A) of this section, including the name of the person to whom the warning was issued and the date of issuance.

(d) At the time a person is refused entry to or ejected from a school district's property under this section, the district shall provide to the person written information explaining the appeal process set forth in subsection (h) of this section.

(e) If a parent or guardian of a child enrolled in a school district is refused entry to the district's property under this section, the district shall accommodate the parent or guardian to ensure that the parent or guardian may participate in the child's admission, review, and dismissal committee or in the child's team established under the Rehabilitation Act of 1973, Section 504, (29 United States Code, §794), in accordance with federal law.

(f) The term of a person's refusal of entry to or ejection from a school district's property under this section may not exceed two years.

(g) A school district shall post on the district's Internet website and each district campus shall post on any Internet website of the campus a notice regarding the provisions of this section, including the appeal process set forth in subsection (h) of this section.

(h) A school district's board of trustees shall adopt a policy that uses the school district's existing grievance process to permit a person refused entry to or ejected from property controlled by the school district under this section to appeal such refusal of entry or ejection. The policy must permit a person appealing under this section to address the school district's board of trustees in person within 90 days of the commencement of the appeal, unless the appeal is granted before the school district's board of trustees considers the appeal.

(i) A decision of the board of trustees to grant or deny an appeal under this section is final and may only be further appealed under the applicable provisions of Texas Education Code, §7.057.

Texas Education Code § 37.106. VEHICLE IDENTIFICATION INSIGNIA.

The board of trustees of a school district may provide for the issuance and use of suitable vehicle identification insignia. The board may bar or suspend a person from driving or parking a vehicle on any school property as a result of the person's violation of any rule adopted by the board or of this subchapter. Reinstatement of the privileges may be permitted and a reasonable fee assessed.

Texas Education Code § 37.123. DISRUPTIVE ACTIVITIES.

(a) A person commits an offense if the person, alone or in concert with others, intentionally engages in disruptive activity on the campus or property of any private or public school.

(b) For purposes of this section, disruptive activity is:

(1) obstructing or restraining the passage of persons in an exit, entrance, or hallway of a building without the authorization of the administration of the school;

(2) seizing control of a building or portion of a building to interfere with an administrative, educational, research, or other authorized activity;

(3) preventing or attempting to prevent by force or violence or the threat of force or violence a lawful assembly authorized by the school administration so that a person attempting to participate in the assembly is unable to participate due to the use of force or violence or due to a reasonable fear that force or violence is likely to occur;

(4) disrupting by force or violence or the threat of force or violence a lawful assembly in progress; or

(5) obstructing or restraining the passage of a person at an exit or entrance to the campus or property or preventing or attempting to prevent by force or violence or by threats of force or violence the ingress or egress of a person to or from the property or campus without the authorization of the administration of the school.

(c) An offense under this section is a Class B misdemeanor.

(d) Any person who is convicted the third time of violating this section is ineligible to attend any institution of higher education receiving funds from this state before the second anniversary of the third conviction.

(e) This section may not be construed to infringe on any right of free speech or expression guaranteed by the constitution of the United States or of this state.

Texas Education Code § 37.124. DISRUPTION OF CLASSES.

(a) A person other than a primary or secondary grade student enrolled in the school commits an offense if the person, on school property or on public property within 500 feet of school property, alone or in concert with others, intentionally disrupts the conduct of classes or other school activities.

(b) An offense under this section is a Class C misdemeanor.

(c) In this section:

(1) "Disrupting the conduct of classes or other school activities" includes:

(A) emitting noise of an intensity that prevents or hinders classroom instruction;

(B) enticing or attempting to entice a student away from a class or other school activity that the student is required to attend;

(C) preventing or attempting to prevent a student from attending a class or other school activity that the student is required to attend; and

(D) entering a classroom without the consent of either the principal or the teacher and, through either acts of misconduct or the use of loud or profane language, disrupting class activities.

(2) "Public property" includes a street, highway, alley, public park, or sidewalk.

(3) "School property" includes a public school campus or school grounds on which a public school is located and any grounds or buildings used by a school for an assembly or other school-sponsored activity.

(d) It is an exception to the application of Subsection (a) that, at the time the person engaged in conduct prohibited under that subsection, the person was younger than 12 years of age.

Texas Education Code § 37.126. DISRUPTION OF TRANSPORTATION.

(a) Except as provided by Section 37.125, a person other than a primary or secondary grade student commits an offense if the person intentionally disrupts, prevents, or interferes with the lawful transportation of children:

(1) to or from school on a vehicle owned or operated by a county or independent school district; or

(2) to or from an activity sponsored by a school on a vehicle owned or operated by a county or independent school district.

(b) An offense under this section is a Class C misdemeanor.

(c) It is an exception to the application of Subsection (a)(1) that, at the time the person engaged in conduct prohibited under that subdivision, the person was younger than 12 years of age.

Texas Education Code § 38.006. E-CIGARETTES AND TOBACCO PRODUCTS ON SCHOOL PROPERTY.

(a) In this section, "e-cigarette" has the meaning assigned by Section 161.081, Health and Safety Code.

(b) The board of trustees of a school district shall:

(1) prohibit smoking or using e-cigarettes or tobacco products at a school-related or school-sanctioned activity on or off school property;

(2) prohibit students from possessing e-cigarettes or tobacco products at a school-related or school-sanctioned activity on or off school property; and

(3) ensure that school personnel enforce the policies on school property.

20 U.S.C. § 6083. NONSMOKING POLICY FOR CHILDREN'S SERVICES

(a) Prohibition. After March 31, 1994, no person shall permit smoking within any indoor facility owned or leased or contracted for and utilized by such person for provision of routine or regular kindergarten, elementary, or secondary education or library services to children.

(b) Additional prohibition. After March 31, 1994, no person shall permit smoking within any indoor facility (or portion thereof) owned or leased or contracted for by such person for the provision by such person of regular or routine health care or day care or early childhood development (Head Start) services to children or for the use of the employees of such person who provides such services, except that this subsection shall not apply to—

(1) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(2) any private residence.

(c) Federal agencies

(1) Kindergarten, elementary, or secondary education or library services. After March 31, 1994, no Federal agency shall permit smoking within any indoor facility in the United States operated by such agency, directly or by contract, to provide routine or regular kindergarten, elementary, or secondary education or library services to children.

(2) Health or day care or early childhood development services. After March 31, 1994, no Federal agency shall permit smoking within any indoor facility (or portion thereof) operated by such agency, directly or by contract, to provide routine or regular health or day care or early childhood development (Head Start) services to children, except that this paragraph shall not apply to—

(A) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(B) any private residence.

(3) Application of provisions. The provisions of paragraph (2) shall also apply to the provision of such routine or regular kindergarten, elementary or secondary education or library services in the facilities described in paragraph (2) not subject to paragraph (1).

(d) Notice. The prohibitions in subsections (a) through (c) of this section shall be incorporated by publication of a notice in the Federal Register by the Secretary (in consultation with the heads of other affected agencies) and by such agency heads in funding arrangements involving the provision of children's services administered by such heads. Such prohibitions shall be effective 90 days after such notice is published, or 270 days after March 31, 1994, whichever occurs first.

(e) Special waiver

(1) In general. On receipt of an application, the head of the Federal agency may grant a special waiver to a person described in subsection (a) of this section who employs individuals who are members of a labor organization and provide children's services pursuant to a collective bargaining agreement that—

(A) took effect before March 31, 1994; and

(B) includes provisions relating to smoking privileges that are in violation of the requirements of this section.

(2) Termination of waiver. A special waiver granted under this subsection shall terminate on the earlier of—

(A) the first expiration date (after March 31, 1994) of the collective bargaining agreement containing the provisions relating to smoking privileges; or

(B) the date that is 1 year after March 31, 1994.

(f) Civil penalties

(1) In general. Any failure to comply with a prohibition in this section shall be a violation of this section and any person subject to such prohibition who commits such violation may be liable to the United States for a civil penalty in an amount not to exceed $1,000 for each violation, or may be subject to an administrative compliance order, or both, as determined by the Secretary. Each day a violation continues shall constitute a separate violation. In the case of any civil penalty under this section, the total amount shall not exceed the amount of Federal funds received by such person for the fiscal year in which the continuing violations occurred. For the purpose of the prohibition in subsection (c) of this section, the term “person” shall mean the head of the applicable Federal agency or the contractor of such agency providing the services to children.

(2) Administrative proceeding. A civil penalty may be assessed in a written notice, or an administrative compliance order may be issued, by the Secretary only after an opportunity for a hearing in accordance with section 554 of title 5. Before making such assessment or issuing such order, or both, the Secretary shall give written notice thereof to such person by certified mail with return receipt and provide therein an opportunity to request in writing not later than 30 days after the date of receipt of such notice such hearing. The notice shall reasonably describe the violation and be accompanied with the procedures for such hearing and a simple form to request such hearing if such person desires to use such form. If a hearing is requested, the Secretary shall establish by such certified notice the time and place for such hearing which should be located, to the greatest extent possible, at a location convenient to such person. The Secretary (or the Secretary's designee) and such person may consult to arrange a suitable date and location where appropriate.

(3) Circumstances affecting penalty or order. In determining the amount of the civil penalty or the nature of the administrative compliance order, the Secretary shall take into account, as appropriate—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, any good faith efforts to comply, the importance of achieving early and permanent compliance, the ability to pay or comply, the effect of the penalty or order on the ability to continue operation, any prior history of the same kind of violation, the degree of culpability, and any

demonstration of willingness to comply with the prohibitions of this section in a timely manner; and

(C) such other matters as justice may require.

(4) Modification. The Secretary may, as appropriate, compromise, modify, or remit, with or without conditions, any civil penalty or administrative compliance order. In the case of a civil penalty, the amount, as finally determined by the Secretary or agreed upon in compromise, may be deducted from any sums that the United States or its agencies or instrumentalities owes to the person against whom the penalty is assessed.

(5) Petition for review. Any person aggrieved by a penalty assessed or an order issued, or both, by the Secretary under this section may file a petition for judicial review thereof with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which the person resides or transacts business. Such person shall provide a copy thereof to the Secretary or the Secretary's designee. The petition shall be filed within 30 days after the Secretary's assessment or order, or both, are final and have been provided to such person by certified mail. The Secretary shall promptly provide to the court a certified copy of the transcript of any hearing held under this section and a copy of the notice or order.

(6) Failure to comply. If a person fails to pay an assessment of a civil penalty or comply with an order, after either or both are final under this section, or after a court under paragraph (5) has entered a final judgment in favor of the Secretary, the Attorney General, at the request of the Secretary, shall recover the amount of the civil penalty (plus interest at then currently prevailing rates from the day either or both are final) or enforce the order in an action brought in the appropriate district court of the United States. In such action, the validity and appropriateness of the penalty or order or the amount of the penalty shall not be subject to review.

20 U.S.C. § 7183. NONSMOKING POLICIES FOR CHILDREN’S SERVICES.

(a) Prohibition. After January 8, 2002, no person shall permit smoking within any indoor facility owned or leased or contracted for, and utilized, by such person for provision of routine or regular kindergarten, elementary, or secondary education or library services to children.

(b) Additional prohibition

(1) In general. After January 8, 2002, no person shall permit smoking within any indoor facility (or portion of such a facility) owned or leased or contracted for, and utilized by, such person for the provision of regular or routine health care or day care or early childhood development (Head Start) services.

(2) Exception

Paragraph (1) shall not apply to—

(A) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(B) any private residence.

(c) Federal agencies

(1) Kindergarten, elementary, or secondary education or library services

After January 8, 2002, no Federal agency shall permit smoking within any indoor facility in the United States operated by such agency, directly or by contract, to provide routine or regular kindergarten, elementary, or secondary education or library services to children.

(2) Health or day care or early childhood development services

(A) In general. After January 8, 2002, no Federal agency shall permit smoking within any indoor facility (or portion of such facility) operated by such agency, directly or by contract, to provide routine or regular health or day care or early childhood development (Head Start) services to children.

(B) Exception. Subparagraph (A) shall not apply to—

(i) any portion of such facility that is used for inpatient hospital treatment of individuals dependent on, or addicted to, drugs or alcohol; and

(ii) any private residence.

(3) Application of provisions. The provisions of paragraph (2) shall also apply to the provision of such routine or regular kindergarten, elementary or secondary education or library services in the facilities described in paragraph (2) not subject to paragraph (1).

(d) Notice. The prohibitions in subsections (a) through (c) of this section shall be published in a notice in the Federal Register by the Secretary (in consultation with the heads of other affected agencies) and by such agency heads in funding arrangements involving the provision of children's services administered by such heads. Such prohibitions shall be effective 90 days after such notice is published, or 270 days after January 8, 2002, whichever occurs first.

(e) Civil penalties

(1) In general. Any failure to comply with a prohibition in this section shall be considered to be a violation of this section and any person subject to such prohibition who commits such violation may be liable to the United States for a civil penalty in an amount not to exceed ,000 for each violation, or may be subject to an administrative compliance order, or both, as determined by the Secretary. Each day a violation continues shall constitute a separate violation. In the case of any civil penalty assessed under this section, the total amount shall not exceed 50 percent of the amount of Federal funds received under any subchapter of this chapter by such person for the fiscal year in which the continuing violation occurred. For the purpose of the prohibition in subsection (c) of this section, the term “person”, as used in this paragraph, shall mean the head of the applicable Federal agency or the contractor of such agency providing the services to children.

(2) Administrative proceeding. A civil penalty may be assessed in a written notice, or an administrative compliance order may be issued under paragraph (1), by the Secretary only after an opportunity for a hearing in accordance with section 554 of title 5. Before making such assessment or issuing such order, or both, the Secretary shall give written notice of the assessment or order to such person by certified mail with return receipt and provide information in the notice of an opportunity to request in writing, not later than 30 days after the date of receipt of such notice, such hearing. The notice shall reasonably describe the violation and be accompanied with the procedures for such hearing and a simple form that may be used to request such hearing if such person desires to use such form. If a hearing is requested, the Secretary shall establish by such certified notice the time and place for such hearing, which shall be located, to the greatest extent possible, at a location convenient to such person. The Secretary (or the Secretary's designee) and such person may consult to arrange a suitable date and location where appropriate.

(3) Circumstances affecting penalty or order. In determining the amount of the civil penalty or the nature of the administrative compliance order, the Secretary shall take into account, as appropriate—

(A) the nature, circumstances, extent, and gravity of the violation;

(B) with respect to the violator, any good faith efforts to comply, the importance of achieving early and permanent compliance, the ability to pay or comply, the effect of the penalty or order on the ability to continue operation, any prior history of the same kind of violation, the degree of culpability, and any demonstration of willingness to comply with the prohibitions of this section in a timely manner; and

(C) 1 such other matters as justice may require.

(4) Modification. The Secretary may, as appropriate, compromise, modify, or remit, with or without conditions, any civil penalty or administrative compliance order. In the case of a civil penalty, the amount, as finally determined by the Secretary or agreed upon in compromise, may be deducted from any sums that the United States or the agencies or instrumentalities of the United States owe to the person against whom the penalty is assessed.

(5) Petition for review. Any person aggrieved by a penalty assessed or an order issued, or both, by the Secretary under this section may file a petition for judicial review of the order with the United States Court of Appeals for the District of Columbia Circuit or for any other circuit in which the person resides or transacts business. Such person shall provide a copy of the petition to the Secretary or the Secretary's designee. The petition shall be filed within 30 days after the Secretary's assessment or order, or both, are final and have been provided to such person by certified mail. The Secretary shall promptly provide to the court a certified copy of the transcript of any hearing held under this section and a copy of the notice or order.

(6) Failure to comply. If a person fails to pay an assessment of a civil penalty or comply with an order, after the assessment or order, or both, are final under this section, or after a court has entered a final judgment under paragraph (5) in favor of the Secretary, the Attorney General, at the request of the Secretary, shall recover the amount of the civil penalty (plus interest at prevailing rates from the day the assessment or order, or both, are final) or enforce the order in an action brought in the appropriate district court of the United States. In such action, the validity and appropriateness of the penalty or order or the amount of the penalty shall not be subject to review.

Texas Penal Code § 48.01. SMOKING TOBACCO.

(a) In this section, "e-cigarette" has the meaning assigned by Section 161.081, Health and Safety Code.

(a-1) A person commits an offense if the person is in possession of a burning tobacco product, smokes tobacco, or operates an e-cigarette in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, intrastate bus, plane, or train which is a public place.

(b) It is a defense to prosecution under this section that the conveyance or public place in which the offense takes place does not have prominently displayed a reasonably sized notice that smoking is prohibited by state law in such conveyance or public place and that an offense is punishable by a fine not to exceed $500.

(c) All conveyances and public places set out in Subsection (a-1) shall be equipped with facilities for extinguishment of smoking materials and it shall be a defense to prosecution under this section if the conveyance or public place within which the offense takes place is not so equipped.

(d) It is an exception to the application of Subsection (a-1) if the person is in possession of the burning tobacco product, smokes tobacco, or operates the e-cigarette exclusively within an area designated for smoking tobacco or operating an e-cigarette or as a participant in an authorized theatrical performance.

(e) An area designated for smoking tobacco or operating an e-cigarette on a transit system bus or intrastate plane or train must also include the area occupied by the operator of the transit system bus, plane, or train.

(f) An offense under this section is punishable as a Class C misdemeanor.

Texas Education Code § 37.122. POSSESSION OF INTOXICANTS ON PUBLIC SCHOOL GROUNDS.

(a) A person commits an offense if the person possesses an intoxicating beverage for consumption, sale, or distribution while:

(1) on the grounds or in a building of a public school; or

(2) entering or inside any enclosure, field, or stadium where an athletic event sponsored or participated in by a public school of this state is being held.

(a-1) It is a defense to prosecution under this section that the person possessed the intoxicating beverage:

(1) at a performing arts facility; and

(2) during an event held outside of regular school hours and not sponsored or sanctioned by a school district.

(b) An officer of this state who sees a person violating this section shall immediately seize the intoxicating beverage and, within a reasonable time, deliver it to the county or district attorney to be held as evidence until the trial of the accused possessor.

(c) An offense under this section is a Class C misdemeanor.

Texas Occupations Code § 2154.251. PROHIBITED USE OF FIREWORKS.

(a) A person may not:

(1) explode or ignite fireworks within 600 feet of any church, a hospital other than a veterinary hospital, an asylum, a licensed child care center, or a public or private primary or secondary school or institution of higher education unless the person receives authorization in writing from that organization;

(2) sell at retail, explode, or ignite fireworks within 100 feet of a place where flammable liquids or flammable compressed gasses are stored and dispensed;

(3) explode or ignite fireworks within 100 feet of a place where fireworks are stored or sold;

(4) ignite or discharge fireworks in or from a motor vehicle;

(5) place ignited fireworks in, or throw ignited fireworks at, a motor vehicle;

(6) conduct a public fireworks display that includes Fireworks 1.3G unless the person is a licensed pyrotechnic operator;

(7) conduct a proximate display of fireworks that includes Fireworks 1.3G or Fireworks 1.4G as defined in NFPA 1126 Standards for the Use of Pyrotechnics Before a Proximate Audience unless the person is a licensed pyrotechnic special effects operator and has the approval of the local fire prevention officer; or

(8) sell, store, manufacture, distribute, or display fireworks except as provided by this chapter or rules adopted by the commissioner under this chapter.

(b) A person may not manufacture, distribute, sell, or use fireworks in a public fireworks display without an appropriate license or permit. Fireworks manufactured, distributed, sold, or used without an appropriate license or permit are illegal fireworks.

18 U.S.C. § 921(a). DEFINITIONS.

(a) As used in this chapter—

(1) The term “person” and the term “whoever” include any individual, corporation, company, association, firm, partnership, society, or joint stock company.

(2) The term “interstate or foreign commerce” includes commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, but such term does not include commerce between places within the same State but through any place outside of that State. The term “State” includes the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

(3) The term “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

(4) The term “destructive device” means—

(A) any explosive, incendiary, or poison gas—

(i) bomb,

(ii) grenade,

(iii) rocket having a propellant charge of more than four ounces,

(iv) missile having an explosive or incendiary charge of more than one-quarter ounce,

(v) mine, or

(vi) device similar to any of the devices described in the preceding clauses;

18 U.S.C. § 922(q). UNLAWFUL ACTS.

(q)

(1) The Congress finds and declares that—

(A) crime, particularly crime involving drugs and guns, is a pervasive, nationwide problem;

(B) crime at the local level is exacerbated by the interstate movement of drugs, guns, and criminal gangs;

(C) firearms and ammunition move easily in interstate commerce and have been found in increasing numbers in and around schools, as documented in numerous hearings in both the Committee on the Judiciary 3 the House of Representatives and the Committee on the Judiciary of the Senate;

(D) in fact, even before the sale of a firearm, the gun, its component parts, ammunition, and the raw materials from which they are made have considerably moved in interstate commerce;

(E) while criminals freely move from State to State, ordinary citizens and foreign visitors may fear to travel to or through certain parts of the country due to concern about violent crime and gun violence, and parents may decline to send their children to school for the same reason;

(F) the occurrence of violent crime in school zones has resulted in a decline in the quality of education in our country;

(G) this decline in the quality of education has an adverse impact on interstate commerce and the foreign commerce of the United States;

(H) States, localities, and school systems find it almost impossible to handle gun-related crime by themselves—even States, localities, and school systems that have made strong efforts to prevent, detect, and punish gun-related crime find their efforts unavailing due in part to the failure or inability of other States or localities to take strong measures; and

(I) the Congress has the power, under the interstate commerce clause and other provisions of the Constitution, to enact measures to ensure the integrity and safety of the Nation's schools by enactment of this subsection.

(2)

(A) It shall be unlawful for any individual knowingly to possess a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the individual knows, or has reasonable cause to believe, is a school zone.

(B) Subparagraph (A) does not apply to the possession of a firearm—

(i) on private property not part of school grounds;

(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtains such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;

(iii) that is—

(I) not loaded; and

(II) in a locked container, or a locked firearms rack that is on a motor vehicle;

(iv) by an individual for use in a program approved by a school in the school zone;

(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;

(vi) by a law enforcement officer acting in his or her official capacity; or

(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

(3)

(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm that has moved in or that otherwise affects interstate or foreign commerce at a place that the person knows is a school zone.

(B) Subparagraph (A) does not apply to the discharge of a firearm—

(i) on private property not part of school grounds;

(ii) as part of a program approved by a school in the school zone, by an individual who is participating in the program;

(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or

(iv) by a law enforcement officer acting in his or her official capacity.

(4) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun free school zones as provided in this subsection.

Texas Penal Code § 46.03. PLACES WEAPONS PROHIBITED.

(a) A person commits an offense if the person intentionally, knowingly, or recklessly possesses or goes with a firearm, location-restricted knife, club, or prohibited weapon listed in Section 46.05(a):

(1) on the premises of a school or postsecondary educational institution, on any grounds or building owned by and under the control of a school or postsecondary educational institution and on which an activity sponsored by the school or institution is being

conducted, or in a passenger transportation vehicle of a school or postsecondary educational institution, whether the school or postsecondary educational institution is public or private, unless:

(A) pursuant to written regulations or written authorization of the school or institution; or

(B) the person possesses or goes with a concealed handgun that the person is licensed to carry under Subchapter H, Chapter 411, Government Code, and no other weapon to which this section applies, on the premises of a postsecondary educational institution, on any grounds or building owned by and under the control of the institution and on which an activity sponsored by the institution is being conducted, or in a passenger transportation vehicle of the institution;

(2) on the premises of a polling place on the day of an election or while early voting is in progress;

(3) on the premises of any government court or offices utilized by the court, unless pursuant to written regulations or written authorization of the court;

(4) on the premises of a racetrack;

(5) in or into a secured area of an airport;

(6) within 1,000 feet of premises the location of which is designated by the Texas Department of Criminal Justice as a place of execution under Article 43.19, Code of Criminal Procedure, on a day that a sentence of death is set to be imposed on the designated premises and the person received notice that:

(A) going within 1,000 feet of the premises with a weapon listed under this subsection was prohibited; or

(B) possessing a weapon listed under this subsection within 1,000 feet of the premises was prohibited;

(7) on the premises of a business that has a permit or license issued under Chapter 25, 28, 32, 69, or 74, Alcoholic Beverage Code, if the business derives 51 percent or more of its income from the sale or service of alcoholic beverages for on-premises consumption, as determined by the Texas Alcoholic Beverage Commission under Section 104.06, Alcoholic Beverage Code;

(8) on the premises where a high school, collegiate, or professional sporting event or interscholastic event is taking place, unless the person is a participant in the event and a firearm, location-restricted knife, club, or prohibited weapon listed in Section 46.05(a) is used in the event;

(9) on the premises of a correctional facility;

(10) on the premises of a civil commitment facility;

(11) on the premises of a hospital licensed under Chapter 241, Health and Safety Code, or on the premises of a nursing facility licensed under Chapter 242, Health and Safety Code, unless the person has written authorization of the hospital or nursing facility administration, as appropriate;

(12) on the premises of a mental hospital, as defined by Section 571.003, Health and Safety Code, unless the person has written authorization of the mental hospital administration;

(13) in an amusement park; or

(14) in the room or rooms where a meeting of a governmental entity is held, if the meeting is an open meeting subject to Chapter 551, Government Code, and if the entity provided notice as required by that chapter.

(a-1) Repealed by Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 26(9), eff. September 1, 2021.

(a-2) Notwithstanding Section 46.02(a-5), a license holder commits an offense if the license holder carries a partially or wholly visible handgun, regardless of whether the handgun is holstered, on or about the license holder's person under the authority of Subchapter H, Chapter 411, Government Code, and intentionally or knowingly displays the handgun in plain view of another person:

(1) on the premises of an institution of higher education or private or independent institution of higher education; or

(2) on any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area of an institution of higher education or private or independent institution of higher education.

(a-3) Notwithstanding Subsection (a) or Section 46.02(a-5), a license holder commits an offense if the license holder carries a handgun on the campus of a private or independent institution of higher education in this state that has established rules, regulations, or other provisions prohibiting license holders from carrying handguns pursuant to Section 411.2031(e), Government Code, or on the grounds or building on which an activity sponsored by such an institution is being conducted, or in a passenger transportation vehicle of such an institution, regardless of whether the handgun is concealed, provided the institution gives effective notice under Section 30.06.

(a-4) Notwithstanding Subsection (a) or Section 46.02(a-5), a license holder commits an offense if the license holder intentionally carries a concealed handgun on a portion of a premises located on the campus of an institution of higher education in this state on which the carrying of a concealed handgun is prohibited by rules, regulations, or other provisions established under Section 411.2031(d-1), Government Code, provided the institution gives effective notice under Section 30.06 with respect to that portion.

(b) It is a defense to prosecution under Subsections (a)(1)-(4) that the actor possessed a firearm while in the actual discharge of his official duties as a member of the armed forces or national guard or a guard employed by a penal institution, or an officer of the court.

(c) In this section:

(1) "Amusement park" means a permanent indoor or outdoor facility or park where amusement rides are available for use by the public that is located in a county with a population of more than one million, encompasses at least 75 acres in surface area, is enclosed with access only through controlled entries, is open for operation more than 120 days in each calendar year, and has security guards on the premises at all times. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

(2) "Institution of higher education" and "private or independent institution of higher education" have the meanings assigned by Section 61.003, Education Code.

(3) "License holder" means a person licensed to carry a handgun under Subchapter H, Chapter 411, Government Code.

(3-a) “Postsecondary educational institution" means an institution of higher education or a private or independent institution of higher education.

(4) "Premises" means a building or a portion of a building. The term does not include any public or private driveway, street, sidewalk or walkway, parking lot, parking garage, or other parking area.

(4-a) “School" means an accredited primary or secondary school.

(5) "Secured area" means an area of an airport terminal building to which access is controlled by the inspection of persons and property under federal law, or an aircraft parking area that is used by common carriers in air transportation but not by general aviation and to which access is controlled under federal law. The term does not include a baggage claim area, a motor vehicle parking area used by passengers, employees, or persons awaiting an arrival, or an area used by the public to pick up or drop off passengers or employees.

(d) It is a defense to prosecution under Subsection (a)(5) that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as:

(1) a member of the armed forces or national guard;

(2) a guard employed by a penal institution; or

(3) a security officer commissioned by the Texas Private Security Board if:

(A) the actor is wearing a distinctive uniform; and

(B) the firearm or club is in plain view; or

(4) a security officer who holds a personal protection authorization under Chapter 1702, Occupations Code, provided that the officer is either:

(A) wearing the uniform of a security officer, including any uniform or apparel described by Section 1702.323(d), Occupations Code, and carrying the officer's firearm in plain view; or

(B) not wearing the uniform of a security officer and carrying the officer's firearm in a concealed manner.

(e) It is a defense to prosecution under Subsection (a)(5) that the actor:

(1) checked all firearms as baggage in accordance with federal or state law or regulations before entering a secured area; or

(2) was authorized by a federal agency or the airport operator to possess a firearm in a secured area.

(e-1) It is a defense to prosecution under Subsection (a)(5) that the actor:

(1) possessed, at the screening checkpoint for the secured area, a handgun that the actor was licensed to carry under Subchapter H, Chapter 411, Government Code; and

(2) exited the screening checkpoint for the secured area immediately upon completion of the required screening processes and notification that the actor possessed the handgun.

(e-2) A peace officer investigating conduct that may constitute an offense under Subsection (a)(5) and that consists only of an actor's possession of a handgun that the actor is licensed to carry under Subchapter H, Chapter 411, Government Code, may not arrest the actor for the offense unless:

(1) the officer advises the actor of the defense available under Subsection (e-1) and gives the actor an opportunity to exit the screening checkpoint for the secured area; and

(2) the actor does not immediately exit the checkpoint upon completion of the required screening processes.

(f) Except as provided by Subsection (e-1), it is not a defense to prosecution under this section that the actor possessed a handgun and was licensed to carry a handgun under Subchapter H, Chapter 411, Government Code.

(g) Except as provided by Subsections (g-1) and (g-2), an offense under this section is a felony of the third degree.

(g-1) If the weapon that is the subject of the offense is a location-restricted knife, an offense under this section is a Class C misdemeanor, except that the offense is a felony of the third degree if the offense is committed under Subsection (a)(1).

(g-2) An offense committed under Subsection (a)(8), (a)(10), (a)(11), (a)(13), (a-2), (a-3), or (a-4) is a Class A misdemeanor.

(h) It is a defense to prosecution under Subsection (a)(4) that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as a security officer commissioned by the Texas Board of Private Investigators and Private Security Agencies, if:

(1) the actor is wearing a distinctive uniform; and

(2) the firearm or club is in plain view.

(i) It is an exception to the application of Subsection (a)(6) that the actor possessed a firearm or club:

(1) while in a vehicle being driven on a public road; or

(2) at the actor's residence or place of employment.

Texas Penal Code § 46.15. NONAPPLICABILITY.

Text of subsection effective until January 01, 2025

(a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers or special investigators under Article 2.122, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code;

(4) an active or retired judicial officer as defined by Section 411.201, Government Code, who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(5) an honorably retired peace officer or other qualified retired law enforcement officer, as defined by 18 U.S.C. Section 926C, who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that is issued by a federal, state, or local law enforcement agency, as applicable, and that verifies that the officer is an honorably retired peace officer or other qualified retired law enforcement officer;

(6) the attorney general or a United States attorney, district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(7) an assistant United States attorney, assistant attorney general, assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(8) a bailiff designated by an active judicial officer as defined by Section 411.201, Government Code, who is:

(A) licensed to carry a handgun under Subchapter H, Chapter 411, Government Code; and

(B) engaged in escorting the judicial officer;

(9) a juvenile probation officer who is authorized to carry a firearm under Section 142.006, Human Resources Code;

(10) a person who is volunteer emergency services personnel if the person is:

(A) carrying a handgun under the authority of Subchapter H, Chapter 411, Government Code; and

(B) engaged in providing emergency services; or

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 501 (H.B. 2291), Sec. 1

(11) a person who:

(A) retired after serving as a judge or justice described by Section 411.201(a)(1), Government Code; and

(B) is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 1077 (S.B. 599), Sec. 4

(11) a district or county clerk who is carrying a handgun the clerk is licensed to carry under Subchapter H, Chapter 411, Government Code.

Text of subsection effective on January 01, 2025

(a) Sections 46.02 and 46.03 do not apply to:

(1) peace officers or special investigators under Article 2A.002, Code of Criminal Procedure, and neither section prohibits a peace officer or special investigator from carrying a weapon in this state, including in an establishment in this state serving the public, regardless of whether the peace officer or special investigator is engaged in the actual discharge of the officer's or investigator's duties while carrying the weapon;

(2) parole officers, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) in compliance with policies and procedures adopted by the Texas Department of Criminal Justice regarding the possession of a weapon by an officer while on duty;

(3) community supervision and corrections department officers appointed or employed under Section 76.004, Government Code, and neither section prohibits an officer from carrying a weapon in this state if the officer is:

(A) engaged in the actual discharge of the officer's duties while carrying the weapon; and

(B) authorized to carry a weapon under Section 76.0051, Government Code;

(4) an active or retired judicial officer as defined by Section 411.201, Government Code, who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(5) an honorably retired peace officer or other qualified retired law enforcement officer, as defined by 18 U.S.C. Section 926C, who holds a certificate of proficiency issued under Section 1701.357, Occupations Code, and is carrying a photo identification that is issued by a federal, state, or local law enforcement agency, as applicable, and that verifies that the officer is an honorably retired peace officer or other qualified retired law enforcement officer;

(6) the attorney general or a United States attorney, district attorney, criminal district attorney, county attorney, or municipal attorney who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(7) an assistant United States attorney, assistant attorney general, assistant district attorney, assistant criminal district attorney, or assistant county attorney who is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code;

(8) a bailiff designated by an active judicial officer as defined by Section 411.201, Government Code, who is:

(A) licensed to carry a handgun under Subchapter H, Chapter 411, Government Code; and

(B) engaged in escorting the judicial officer;

(9) a juvenile probation officer who is authorized to carry a firearm under Section 142.006, Human Resources Code;

(10) a person who is volunteer emergency services personnel if the person is:

(A) carrying a handgun under the authority of Subchapter H, Chapter 411, Government Code; and

(B) engaged in providing emergency services; or

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 501 (H.B. 2291), Sec. 1

(11) a person who:

(A) retired after serving as a judge or justice described by Section 411.201(a)(1), Government Code; and

(B) is licensed to carry a handgun under Subchapter H, Chapter 411, Government Code

Text of subdivision as added by Acts 2023, 88th Leg., R.S., Ch. 1077 (S.B. 599), Sec. 4

(11) a district or county clerk who is carrying a handgun the clerk is licensed to carry under Subchapter H, Chapter 411, Government Code.

(b) Sections 46.02, 46.03(a)(14), and 46.04(a-1) do not apply to a person who:

(1) is in the actual discharge of official duties as a member of the armed forces or state military forces as defined by Section 437.001, Government Code, or as a guard employed by a penal institution;

(2) is traveling;

(3) is engaging in lawful hunting, fishing, or other sporting activity on the immediate premises where the activity is conducted, or is en route between the premises and the actor's residence, motor vehicle, or watercraft, if the weapon is a type commonly used in the activity;

(4) holds a security officer commission issued by the Texas Private Security Board, if the person is engaged in the performance of the person's duties as an officer commissioned under Chapter 1702, Occupations Code, or is traveling to or from the person's place of assignment and is wearing the officer's uniform and carrying the officer's weapon in plain view;

(5) acts as a personal protection officer and carries the person's security officer commission and personal protection officer authorization, if the person:

(A) is engaged in the performance of the person's duties as a personal protection officer under Chapter 1702, Occupations Code, or is traveling to or from the person's place of assignment; and

(B) is either:

(i) wearing the uniform of a security officer, including any uniform or apparel described by Section 1702.323(d), Occupations Code, and carrying the officer's weapon in plain view; or

(ii) not wearing the uniform of a security officer and carrying the officer's weapon in a concealed manner;

(6) is carrying:

(A) a license issued under Subchapter H, Chapter 411, Government Code, to carry a handgun; and

(B) a handgun:

(i) in a concealed manner; or

(ii) in a holster;

(7) holds an alcoholic beverage permit or license or is an employee of a holder of an alcoholic beverage permit or license if the person is supervising the operation of the permitted or licensed premises; or

(8) is a student in a law enforcement class engaging in an activity required as part of the class, if the weapon is a type commonly used in the activity and the person is:

(A) on the immediate premises where the activity is conducted; or

(B) en route between those premises and the person's residence and is carrying the weapon unloaded.

(c) Repealed by Acts 2019, 86th Leg., R.S., Ch. 216 (H.B. 446), Sec. 4, eff. September 1, 2019.

(d) The provisions of Section 46.02 prohibiting the carrying of a firearm do not apply to a public security officer employed by the adjutant general under Section 437.053, Government Code, in performance of official duties or while traveling to or from a place of duty.

(e) Section 46.02(a-4) does not apply to an individual carrying a location-restricted knife used in a historical demonstration or in a ceremony in which the knife is significant to the performance of the ceremony.

(f) Section 46.03(a)(6) does not apply to a person who possesses a firearm or club while in the actual discharge of official duties as:

(1) a member of the armed forces or state military forces, as defined by Section 437.001, Government Code; or

(2) an employee of a penal institution.

(g) The provisions of Section 46.03 prohibiting the possession or carrying of a club do not apply to an animal control officer who holds a certificate issued under Section 829.006, Health and Safety Code, and who possesses or carries an instrument used specifically for deterring the bite of an animal while the officer is in the performance of official duties under the Health and Safety Code or is traveling to or from a place of duty.

(h) The provisions of Section 46.03 prohibiting the possession or carrying of a club do not apply to a code enforcement officer who:

(1) holds a certificate of registration issued under Chapter 1952, Occupations Code; and

(2) possesses or carries an instrument used specifically for deterring an animal bite while the officer is:

(A) performing official duties; or

(B) traveling to or from a place of duty.

(i) Repealed by Acts 2007, 80th Leg., R.S., Ch. 693, Sec. 3(2), eff. September 1, 2007.

(j) The provisions of Sections 46.02 and 46.03(a)(7), (a-2), (a-3), and (a-4) do not apply to an individual who carries a handgun as a participant in a historical reenactment performed in accordance with the rules of the Texas Alcoholic Beverage Commission.

(k) Section 46.02 does not apply to a person who carries a handgun if:

(1) the person carries the handgun while:

(A) evacuating from an area following the declaration of a state of disaster under Section 418.014, Government Code, or a local state of disaster under Section 418.108, Government Code, with respect to that area; or

(B) reentering that area following the person's evacuation;

(2) not more than 168 hours have elapsed since the state of disaster or local state of disaster was declared, or more than 168 hours have elapsed since the time the declaration was made and the governor has extended the period during which a person may carry a handgun under this subsection; and

(3) the person is not prohibited by state or federal law from possessing a firearm.

(l) Sections 46.02 and 46.03(a)(1), (a)(2), (a)(3), and (a)(4) do not apply to a person who carries a handgun if:

(1) the person carries the handgun on the premises, as defined by the statute providing the applicable offense, of a location operating as an emergency shelter during a state of disaster declared under Section 418.014, Government Code, or a local state of disaster declared under Section 418.108, Government Code;

(2) the owner, controller, or operator of the premises or a person acting with the apparent authority of the owner, controller, or operator, authorized the carrying of the handgun;

(3) the person carrying the handgun complies with any rules and regulations of the owner, controller, or operator of the premises that govern the carrying of a handgun on the premises; and

(4) the person is not prohibited by state or federal law from possessing a firearm.

(m) It is a defense to prosecution under Section 46.03 that the actor:

(1) carries a handgun on a premises or other property on which the carrying of a weapon is prohibited under that section;

(2) personally received from the owner of the property, or from another person with apparent authority to act for the owner, notice that carrying a firearm or other weapon on the premises or other property, as applicable, was prohibited; and

(3) promptly departed from the premises or other property.

(n) The defense provided by Subsection (m) does not apply if:

(1) a sign described by Subsection (o) was posted prominently at each entrance to the premises or other property, as applicable; or

(2) at the time of the offense, the actor knew that carrying a firearm or other weapon on the premises or other property was prohibited.

(o) A person may provide notice that firearms and other weapons are prohibited under Section 46.03 on the premises or other property, as applicable, by posting a sign at each entrance to the premises or other property that:

(1) includes language that is identical to or substantially similar to the following: "Pursuant to Section 46.03, Penal Code (places weapons prohibited), a person may not carry a firearm or other weapon on this property";

(2) includes the language described by Subdivision (1) in both English and Spanish;

(3) appears in contrasting colors with block letters at least one inch in height; and

(4) is displayed in a conspicuous manner clearly visible to the public.

(p) Sections 46.03(a)(7), (11), and (13) do not apply if the actor:

(1) carries a handgun on the premises or other property, as applicable;

(2) holds a license to carry a handgun issued under Subchapter H, Chapter 411, Government Code; and

(3) was not given effective notice under Section 30.06 or 30.07 of this code or Section 411.204, Government Code, as applicable.

(q) Section 46.03(a)(8) does not apply if the actor:

(1) carries a handgun on a premises where a collegiate sporting event is taking place;

(2) holds a license to carry a handgun issued under Subchapter H, Chapter 411, Government Code; and

(3) was not given effective notice under Section 30.06 or 30.07 of this code, as applicable.

(r) Sections 46.02 and 46.03 do not apply to a first responder who:

(1) was carrying a handgun in a concealed manner or in a shoulder or belt holster;

(2) holds an unexpired certificate of completion under Section 411.1883, Government Code, at the time of engaging in the applicable conduct;

(3) was engaged in the actual discharge of the first responder's duties while carrying the handgun; and

(4) was employed or supervised by a municipality or county to which Chapter 179, Local Government Code, applies.

Texas Education Code § 37.0815. TRANSPORTATION OR STORAGE OF FIREARM AND AMMUNITION BY LICENSE HOLDER IN SCHOOL PARKING AREA.

(a) A school district or open-enrollment charter school may not prohibit a person, including a school employee, who holds a license to carry a handgun under Subchapter H, Chapter 411, Government Code, from transporting or storing a handgun or other firearm or ammunition in a locked, privately owned or leased motor vehicle in a parking lot, parking garage, or other parking area provided by the district or charter school and may not regulate the manner in which the

handgun, firearm, or ammunition is stored in the vehicle, provided that the handgun, firearm, or ammunition is not in plain view.

(b) This section does not authorize a person to possess, transport, or store a handgun, a firearm, or ammunition in violation of Section 37.125 of this code, Section 46.03, Penal Code, or other law.

Texas Civil Practice & Remedies Code § 112.001. CERTAIN ACTIONS OF FIRST RESPONDERS AND VOLUNTEER EMERGENCY SERVICES PERSONNEL.

(a) In this section:

(1) "First responder" and "volunteer emergency services personnel" have the meanings assigned by Section 46.01, Penal Code.

(2) "Governmental unit" has the meaning assigned by Section 101.001.

(b) A governmental unit is not liable in a civil action arising from the discharge of a handgun by an individual who is a first responder or volunteer emergency services personnel and licensed to carry the handgun under Subchapter H, Chapter 411, Government Code.

(c) The discharge of a handgun by an individual who is a first responder or volunteer emergency services personnel and licensed to carry the handgun under Subchapter H, Chapter 411, Government Code, is outside the course and scope of the individual's duties as a first responder or volunteer emergency services personnel, as applicable.

(d) This section may not be construed to waive the immunity from suit or liability of a governmental unit under Chapter 101 or any other law.

Texas Penal Code § 46.01. DEFINITIONS.

(1) "Club" means an instrument that is specially designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with the instrument, and includes but is

not limited to the following:

(A) blackjack;

(B) nightstick;

(C) mace;

(D) tomahawk.

(2) "Explosive weapon" means any explosive or incendiary bomb, grenade, rocket, or mine, that is designed, made, or adapted for the purpose of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and includes a device designed, made, or adapted for delivery or shooting an explosive weapon.

(3) "Firearm" means any device designed, made, or adapted to expel a projectile through a barrel by using the energy generated by an explosion or burning substance or any device readily convertible to that use. Firearm does not include a firearm that may have, as an integral part, a folding knife blade or other characteristics of weapons made illegal by this chapter and that is:

(A) an antique or curio firearm manufactured before 1899; or

(B) a replica of an antique or curio firearm manufactured before 1899, but only if the replica does not use rim fire or center fire ammunition.

(4) Repealed by Acts 2021, 87th Leg., R.S., Ch. 642 (H.B. 957), Sec. 3, eff. September 1, 2021.

(5) "Handgun" means any firearm that is designed, made, or adapted to be fired with one hand.

(6) "Location-restricted knife" means a knife with a blade over five and one-half inches.

(7) "Knife" means any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument.

(8) Repealed by Acts 2019, 86th Leg., R.S., Ch. 216 (H.B. 446), Sec. 4, eff. September 1, 2019.

(9) "Machine gun" means any firearm that is capable of shooting more than two shots automatically, without manual reloading, by a single function of the trigger.

(10) "Short-barrel firearm" means a rifle with a barrel length of less than 16 inches or a shotgun with a barrel length of less than 18 inches, or any weapon made from a shotgun or rifle if, as altered, it has an overall length of less than 26 inches.

(11) Repealed by Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 15.002, eff. September 1, 2017.

(12) "Armor-piercing ammunition" means handgun ammunition that is designed primarily for the purpose of penetrating metal or body armor and to be used principally in pistols and revolvers.

(13) "Hoax bomb" means a device that:

(A) reasonably appears to be an explosive or incendiary device; or

(B) by its design causes alarm or reaction of any type by an official of a public safety agency or a volunteer agency organized to deal with emergencies.

(14) "Chemical dispensing device" means a device, other than a small chemical dispenser sold commercially for personal protection, that is designed, made, or adapted for the purpose of dispensing a substance capable of causing an adverse psychological or physiological effect on a human being.

(15) "Racetrack" has the meaning assigned that term by Section 2021.003(41), Occupations Code.

(16) "Zip gun" means a device or combination of devices that was not originally a firearm and is adapted to expel a projectile through a smooth-bore or rifled-bore barrel by using the energy

generated by an explosion or burning substance.

(17) "Tire deflation device" means a device, including a caltrop or spike strip, that, when driven over, impedes or stops the movement of a wheeled vehicle by puncturing one or more of the vehicle's tires. The term does not include a traffic control device that:

(A) is designed to puncture one or more of a vehicle's tires when driven over in a specific direction; and

(B) has a clearly visible sign posted in close proximity to the traffic control device that prohibits entry or warns motor vehicle operators of the traffic control device.

(18) "Volunteer emergency services personnel" includes a volunteer firefighter, an emergency medical services volunteer as defined by Section 773.003, Health and Safety Code, and any individual who, as a volunteer, provides services for the benefit of the general public during emergency situations. The term does not include a peace officer or reserve law enforcement officer, as those terms are defined by Section 1701.001, Occupations Code, who is performing law enforcement duties.

(19) "Improvised explosive device" means a completed and operational bomb designed to cause serious bodily injury, death, or substantial property damage that is fabricated in an improvised manner using nonmilitary components. The term does not include:

(A) unassembled components that can be legally purchased and possessed without a license, permit, or other governmental approval; or

(B) an exploding target that is used for firearms practice, sold in kit form, and contains the components of a binary explosive.

(20) "First responder" means a public safety employee whose duties include responding rapidly to an emergency. The term includes fire protection personnel as defined by Section 419.021, Government Code, and emergency medical services personnel as defined by Section 773.003, Health and Safety Code. The term does not include:

(A) volunteer emergency services personnel;

(B) an emergency medical services volunteer, as defined by Section 773.003, Health and Safety Code; or

(C) a peace officer or reserve law enforcement officer, as those terms are defined by Section 1701.001, Occupations Code, who is performing law enforcement duties.

Texas Education Code § 37.125. EXHIBITION, USE, OR THREAT OF EXHIBITION OR USE OF FIREARMS.

(a) A person commits an offense if, in a manner intended to cause alarm or personal injury to another person or to damage school property, the person intentionally:

(1) exhibits or uses a firearm:

(A) in or on any property, including a parking lot, parking garage, or other parking area, that is owned by a private or public school; or

(B) on a school bus being used to transport children to or from school-sponsored activities of a private or public school;

(2) threatens to exhibit or use a firearm in or on property described by Subdivision (1)(A) or on a bus described by Subdivision (1)(B) and was in possession of or had immediate access to the firearm; or

(3) threatens to exhibit or use a firearm in or on property described by Subdivision (1)(A) or on a bus described by Subdivision (1)(B).

(b) An offense under Subsection (a)(1) or (2) is a third degree felony.

(c) An offense under Subsection (a)(3) is a Class A misdemeanor.

Texas Penal Code § 30.06. TRESPASS BY LICENSE HOLDER WITH A CONCEALED HANDGUN.

30.06. TRESPASS BY LICENSE HOLDER WITH A CONCEALED HANDGUN.

(a) A license holder commits an offense if the license holder:

(1) carries a concealed handgun under the authority of Subchapter H, Chapter 411, Government Code, on property of another without effective consent; and

(2) received notice that entry on the property by a license holder with a concealed handgun was forbidden.

(b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

(c) In this section:

(1) "Entry" has the meaning assigned by Section 30.05(b).

(2) "License holder" has the meaning assigned by Section 46.03.

(3) "Written communication" means:

(A) a card or other document on which is written language identical to the following: "Pursuant to Section 30.06, Penal Code (trespass by license holder with a concealed handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a concealed handgun"; or

(B) a sign posted on the property that:

(i) includes the language described by Paragraph (A) in both English and Spanish;

(ii) appears in contrasting colors with block letters at least one inch in height; and

(iii) is displayed in a conspicuous manner clearly visible to the public.

(d) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed $200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the license holder was personally given the notice by oral communication described by Subsection (b) and subsequently failed to depart.

(e) It is an exception to the application of this section that the property on which the license holder carries a handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section 46.03.

(e-1) It is a defense to prosecution under this section that:

(1) the license holder is:

(A) an owner of an apartment in a condominium regime governed by Chapter 81, Property Code;

(B) an owner of a condominium unit governed by Chapter 82, Property Code;

(C) a tenant or guest of an owner described by Paragraph (A) or (B); or

(D) a guest of a tenant of an owner described by Paragraph (A) or (B); and

(2) the license holder:

(A) carries or stores a handgun in the condominium apartment or unit owner's apartment or unit;

(B) carries a handgun directly en route to or from the condominium apartment or unit owner's apartment or unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for residents or guests of the condominium property; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for residents or guests of the condominium property.

(e-2) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a leased premises governed by Chapter 92, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's rental unit;

(B) carries a handgun directly en route to or from the tenant's rental unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises.

(e-3) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a manufactured home lot governed by Chapter 94, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's manufactured home;

(B) carries a handgun directly en route to or from the tenant's manufactured home;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises.

(e-4) It is a defense to prosecution under this section that the license holder is a guest of a hotel, as defined by Section 2155.101, Occupations Code, and the license holder:

(1) carries or stores a handgun in the license holder's hotel room;

(2) carries a handgun directly en route to or from the hotel or the license holder's hotel room;

(3) carries a handgun directly en route to or from the license holder's vehicle located on the hotel property, including a vehicle in a parking area provided for hotel guests; or

(4) carries or stores a handgun in the license holder's vehicle located on the hotel property, including a vehicle in a parking area provided for hotel guests.

(f) It is a defense to prosecution under this section that the license holder is volunteer emergency services personnel, as defined by Section 46.01.

(f-1) It is a defense to prosecution under this section that the license holder is a first responder, as defined by Section 46.01, who:

(1) holds an unexpired certificate of completion under Section 411.1883, Government Code, at the time of engaging in the applicable conduct;

(2) was engaged in the actual discharge of the first responder's duties while carrying the handgun; and

(3) was employed or supervised by a municipality or county to which Chapter 179, Local Government Code, applies.

(g) It is a defense to prosecution under this section that the license holder was personally given notice by oral communication described by Subsection (b) and promptly departed from the property.

Texas Government Code § 411.209. WRONGFUL EXCLUSION OF HANDGUN LICENSE HOLDER.

(a) Except as provided by Subsection (i), a state agency or a political subdivision of the state may not take any action, including an action consisting of the provision of notice by a communication described by Section 30.06 or 30.07, Penal Code, that states or implies that a license holder who is carrying a handgun under the authority of this subchapter is prohibited from entering or remaining on a premises or other place owned or leased by the governmental entity unless license holders are prohibited from carrying a handgun on the premises or other place by Section 46.03, Penal Code, or other law.

(b) A state agency or a political subdivision of the state that violates Subsection (a) is liable for a civil penalty of:

(1) not less than $1,000 and not more than $1,500 for the first violation; and

(2) not less than $10,000 and not more than $10,500 for the second or a subsequent violation.

(c) Each day of a continuing violation of Subsection (a) constitutes a separate violation.

(d) A resident of this state or a person licensed to carry a handgun under this subchapter may file a complaint with the attorney general that a state agency or political subdivision is in violation of Subsection (a) if the resident or license holder provides the agency or subdivision a written notice that describes the location and general facts of the violation and the agency or subdivision does not cure the violation before the end of the third business day after the date of receiving the written notice. A complaint filed with the attorney general under this subsection must include evidence of the violation and a copy of the written notice provided to the agency or subdivision.

(e) A civil penalty collected by the attorney general under this section shall be deposited to the credit of the compensation to victims of crime fund established under Subchapter J, Chapter 56B, Code of Criminal Procedure.

(f) Before a suit may be brought against a state agency or a political subdivision of the state for a violation of Subsection (a), the attorney general must investigate the complaint to determine whether legal action is warranted. If legal action is warranted, the attorney general must give the chief administrative officer of the agency or political subdivision charged with the violation a written notice that:

(1) describes the violation;

(2) states the amount of the proposed penalty for the violation; and

(3) gives the agency or political subdivision 15 days from receipt of the notice to cure the violation to avoid the penalty, unless the agency or political subdivision was found liable by a court for previously violating Subsection (a).

(g) If the attorney general determines that legal action is warranted and that the state agency or political subdivision has not cured the violation within the 15-day period provided by Subsection (f)(3), the attorney general or the appropriate county or district attorney may sue to collect the civil penalty provided by Subsection (b). The attorney general may also file a petition for a writ of mandamus or apply for other appropriate equitable relief. A suit or petition under this subsection may be filed in a district court in Travis County or in a county in which the principal office of the state agency or political subdivision is located. The attorney general may recover reasonable expenses incurred in obtaining relief under this subsection, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

(h) Sovereign immunity to suit is waived and abolished to the extent of liability created by this section.

(i) Subsection (a) does not apply to a written notice provided by a state hospital under Section 552.002, Health and Safety Code.

(j) In this section, "premises" has the meaning assigned by Section 46.03, Penal Code.

Texas Penal Code § 30.07. TRESPASS BY LICENSE HOLDER WITH AN OPENLY CARRIED HANDGUN.

(a) A license holder commits an offense if the license holder:

(1) openly carries a handgun under the authority of Subchapter H, Chapter 411, Government Code, on property of another without effective consent; and

(2) received notice that entry on the property by a license holder openly carrying a handgun was forbidden.

(b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.

(c) In this section:

(1) "Entry" has the meaning assigned by Section 30.05(b).

(2) "License holder" has the meaning assigned by Section 46.03.

(3) "Written communication" means:

(A) a card or other document on which is written language identical to the following: "Pursuant to Section 30.07, Penal Code (trespass by license holder with an openly carried handgun), a person licensed under Subchapter H, Chapter 411, Government Code (handgun licensing law), may not enter this property with a handgun that is carried openly"; or

(B) a sign posted on the property that:

(i) includes the language described by Paragraph (A) in both English and Spanish;

(ii) appears in contrasting colors with block letters at least one inch in height; and

(iii) is displayed in a conspicuous manner clearly visible to the public at each entrance to the property.

(d) An offense under this section is a Class C misdemeanor punishable by a fine not to exceed $200, except that the offense is a Class A misdemeanor if it is shown on the trial of the offense that, after entering the property, the license holder was personally given the notice by oral communication described by Subsection (b) and subsequently failed to depart.

(e) It is an exception to the application of this section that the property on which the license holder openly carries the handgun is owned or leased by a governmental entity and is not a premises or other place on which the license holder is prohibited from carrying the handgun under Section 46.03.

(e-1) It is a defense to prosecution under this section that:

(1) the license holder is:

(A) an owner of an apartment in a condominium regime governed by Chapter 81, Property Code;

(B) an owner of a condominium unit governed by Chapter 82, Property Code;

(C) a tenant or guest of an owner described by Paragraph (A) or (B); or

(D) a guest of a tenant of an owner described by Paragraph (A) or (B); and

(2) the license holder:

(A) carries or stores a handgun in the condominium apartment or unit owner's apartment or unit;

(B) carries a handgun directly en route to or from the condominium apartment or unit owner's apartment or unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for residents or guests of the condominium property; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for residents or guests of the condominium property.

(e-2) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a leased premises governed by Chapter 92, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's rental unit;

(B) carries a handgun directly en route to or from the tenant's rental unit;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for tenants or guests by the landlord of the leased premises.

(e-3) It is a defense to prosecution under this section that:

(1) the license holder is a tenant of a manufactured home lot governed by Chapter 94, Property Code, or the tenant's guest; and

(2) the license holder:

(A) carries or stores a handgun in the tenant's manufactured home;

(B) carries a handgun directly en route to or from the tenant's manufactured home;

(C) carries a handgun directly en route to or from the license holder's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises; or

(D) carries or stores a handgun in the license holder's vehicle located in a parking area provided for tenants or tenants' guests by the landlord of the leased premises.

(e-4) It is a defense to prosecution under this section that the license holder is a guest of a hotel, as defined by Section 2155.101, Occupations Code, and the license holder:

(1) carries or stores a handgun in the license holder's hotel room;

(2) carries a handgun directly en route to or from the hotel or the license holder's hotel room;

(3) carries a handgun directly en route to or from the license holder's vehicle located on the hotel property, including a vehicle in a parking area provided for hotel guests; or

(4) carries or stores a handgun in the license holder's vehicle located on the hotel property, including a vehicle in a parking area provided for hotel guests.

(f) It is not a defense to prosecution under this section that the handgun was carried in a holster.

(g) It is a defense to prosecution under this section that the license holder is volunteer emergency services personnel, as defined by Section 46.01.

(g-1) It is a defense to prosecution under this section that the license holder is a first responder, as defined by Section 46.01, who:

(1) holds an unexpired certificate of completion under Section 411.1883, Government Code, at the time of engaging in the applicable conduct;

(2) was engaged in the actual discharge of the first responder's duties while carrying the handgun; and

(3) was employed or supervised by a municipality or county to which Chapter 179, Local Government Code, applies.

(h) It is a defense to prosecution under this section that the license holder was personally given notice by oral communication described by Subsection (b) and promptly departed from the property.

49 U.S.C. § 40103. SOVEREIGNTY AND USE OF AIRSPACE.

(a)Sovereignty and Public Right of Transit.—

(1) The United States Government has exclusive sovereignty of airspace of the United States.

(2) A citizen of the United States has a public right of transit through the navigable airspace. To further that right, the Secretary of Transportation shall consult with the Architectural and Transportation Barriers Compliance Board established under section 502 of the Rehabilitation Act of 1973 (29 U.S.C. 792) before prescribing a regulation or issuing an order or procedure that will have a significant impact on the accessibility of commercial airports or commercial air transportation for individuals with disabilities.

(b) Use of Airspace.—

(1) The Administrator of the Federal Aviation Administration shall develop plans and policy for the use of the navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. The Administrator may modify or revoke an assignment when required in the public interest.

(2) The Administrator shall prescribe air traffic regulations on the flight of aircraft (including regulations on safe altitudes) for—

(A) navigating, protecting, and identifying aircraft;

(B) protecting individuals and property on the ground;

(C) using the navigable airspace efficiently; and

(D) preventing collision between aircraft, between aircraft and land or water vehicles, and between aircraft and airborne objects.

(3) To establish security provisions that will encourage and allow maximum use of the navigable airspace by civil aircraft consistent with national security, the Administrator, in consultation with the Secretary of Defense, shall—

(A) establish areas in the airspace the Administrator decides are necessary in the interest of national defense; and

(B) by regulation or order, restrict or prohibit flight of civil aircraft that the Administrator cannot identify, locate, and control with available facilities in those areas.

(4) Notwithstanding the military exception in section 553(a)(1) of title 5, subchapter II of chapter 5 of title 5 applies to a regulation prescribed under this subsection.

(c) Foreign Aircraft.— A foreign aircraft, not part of the armed forces of a foreign country, may be navigated in the United States as provided in section 41703 of this title.

(d) Aircraft of Armed Forces of Foreign Countries.—Aircraft of the armed forces of a foreign country may be navigated in the United States only when authorized by the Secretary of State.

(e) No Exclusive Rights at Certain Facilities.—A person does not have an exclusive right to use an air navigation facility on which Government money has been expended. However, providing services at an airport by only one fixed-based operator is not an exclusive right if—

(1)it is unreasonably costly, burdensome, or impractical for more than one fixed-based operator to provide the services; and

(2)allowing more than one fixed-based operator to provide the services requires a reduction in space leased under an agreement existing on September 3, 1982, between the operator and the airport.

14 C.F.R. § 1.1. GENERAL DEFINITIONS.

* * *

As used in Subchapters A through K of this chapter, unless the context requires otherwise:

Small aircraft means aircraft of 12,500 pounds or less, maximum certificated takeoff weight.

Small unmanned aircraft means an un- manned aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft.

Small unmanned aircraft system (small UAS) means a small unmanned aircraft and its associated elements (including communication links and the components that control the small unmanned aircraft) that are required for the safe and efficient operation of the small unmanned aircraft in the national air- space system.

* * *

14 C.F.R. § 107.3 DEFINITIONS.

The following definitions apply to this part. If there is a conflict between the definitions of this part and definitions specified in § 1.1 of this chapter, the definitions in this part control for purposes of this part:

Control station means an interface used by the remote pilot to control the flight path of the small unmanned aircraft.

Corrective lenses means spectacles or contact lenses.

Declaration of compliance means a record submitted to the FAA that certifies the small unmanned aircraft conforms to the Category 2 or Category 3 requirements under subpart D of this part.

Small unmanned aircraft means an unmanned aircraft weighing less than 55 pounds on takeoff, including everything that is on board or otherwise attached to the aircraft.

Small unmanned aircraft system (small UAS) means a small unmanned aircraft and its associated elements (including communication links and the components that control the small unmanned aircraft) that are required for the safe and efficient operation of the small unmanned aircraft in the national airspace system.

Unmanned aircraft means an aircraft operated without the possibility of direct human intervention from within or on the aircraft.

Visual observer means a person who is designated by the remote pilot in command to assist the remote pilot in command and the person manipulating the flight controls of the small UAS to see and avoid other air traffic or objects aloft or on the ground.

14 C.F.R. § 107.1. APPLICABILITY.

(a) Except as provided in paragraph (b) of this section, this part applies to the registration, airman certification, and operation of civil small unmanned aircraft systems within the United States. This part also applies to the eligibility of civil small unmanned aircraft systems to operate over human beings in the United States.

(b) This part does not apply to the following:

(1) Air carrier operations;

(2) Any aircraft subject to the provisions of 49 U.S.C. 44809;

(3) Any operation that the holder of an exemption under section 333 of Public Law 112-95 or 49 U.S.C. 44807 elects to conduct pursuant to the exemption, unless otherwise specified in the exemption; or

(4) Any operation that a person elects to conduct under part 91 of this chapter with a small unmanned aircraft system that has been issued an airworthiness certificate.

49 U.S.C. § 44809. EXCEPTION FOR LIMITED RECREATIONAL OPERATIONS OF UNMANNED AIRCRAFT.

(a) In General.-Except as provided in subsection (e), and notwithstanding chapter 447 of title 49, United States Code, a person may operate a small unmanned aircraft without specific certification or operating authority from the Federal Aviation Administration if the operation adheres to all of the following limitations:

(1) The aircraft is flown strictly for recreational purposes.

(2) The aircraft is operated in accordance with or within the programming of a community-based organization's set of safety guidelines that are developed in coordination with the Federal Aviation Administration.

(3) The aircraft is flown within the visual line of sight of the person operating the aircraft or a visual observer co-located and in direct communication with the operator.

(4) The aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft.

(5) In Class B, Class C, or Class D airspace or within the lateral boundaries of the surface area of Class E airspace designated for an airport, the operator obtains prior authorization from the Administrator or designee before operating and complies with all airspace restrictions and prohibitions.

(6) Except for circumstances when the Administrator establishes alternative altitude ceilings or as otherwise authorized in section (c), in Class G airspace, the aircraft is flown from the surface to not more than 400 feet above ground level and complies with all airspace and flight restrictions and prohibitions established under this subtitle, such as special use airspace designations and temporary flight restrictions.

(7) The operator has passed an aeronautical knowledge and safety test described in subsection (g) and maintains proof of test passage to be made available to the Administrator or law enforcement upon request.

(8) The aircraft is registered and marked in accordance with chapter 441 of this title and proof of registration is made available to the Administrator or a designee of the Administrator or law enforcement upon request.

Texas Government Code § 423.009. REGULATION OF UNMANNED AIRCRAFT BY POLITICAL SUBDIVISION.

(a) In this section:

(1) "Political subdivision" includes a county, a joint board created under Section 22.074, Transportation Code, and a municipality.

(2) "Special event" means a festival, celebration, or other gathering that:

(A) involves:

(i) the reservation and temporary use of all or a portion of a public park, road, or other property of a political subdivision; and

(ii) entertainment, the sale of merchandise, food, or beverages, or mass participation in a sports event; and

(B) requires a significant use or coordination of a political subdivision's services.

(b) Except as provided by Subsection (c), a political subdivision may not adopt or enforce any ordinance, order, or other similar measure regarding the operation of an unmanned aircraft.

(c) A political subdivision may adopt and enforce an ordinance, order, or other similar measure regarding:

(1) the use of an unmanned aircraft during a special event;

(2) the political subdivision's use of an unmanned aircraft; or

(3) the use of an unmanned aircraft near a facility or infrastructure owned by the political subdivision, if the political subdivision:

(A) applies for and receives authorization from the Federal Aviation Administration to adopt the regulation; and

(B) after providing reasonable notice, holds a public hearing on the political subdivision's intent to apply for the authorization.

(d) An ordinance, order, or other similar measure that violates Subsection (b) is void and unenforceable.

Texas Government Code § 423.002. NONAPPLICABILITY.

(a) It is lawful to capture an image using an unmanned aircraft in this state:

(1) for the purpose of professional or scholarly research and development or for another academic purpose by a person acting on behalf of an institution of higher education or a private or independent institution of higher education, as those terms are defined by Section 61.003, Education Code, including a person who:

(A) is a professor, employee, or student of the institution; or

(B) is under contract with or otherwise acting under the direction or on behalf of the institution;

(2) in airspace designated as a test site or range authorized by the Federal Aviation Administration for the purpose of integrating unmanned aircraft systems into the national airspace;

(3) as part of an operation, exercise, or mission of any branch of:

(A) the United States military; or

(B) the Texas military forces as defined by Section 437.001;

(4) if the image is captured by a satellite for the purposes of mapping;

(5) if the image is captured by or for an electric or natural gas utility or a telecommunications provider:

(A) for operations and maintenance of utility or telecommunications facilities for the purpose of maintaining utility or telecommunications system reliability and integrity;

(B) for inspecting utility or telecommunications facilities to determine repair, maintenance, or replacement needs during and after construction of such facilities;

(C) for assessing vegetation growth for the purpose of maintaining clearances on utility or telecommunications easements; and

(D) for utility or telecommunications facility routing and siting for the purpose of providing utility or telecommunications service;

(6) with the consent of the individual who owns or lawfully occupies the real property captured in the image;

(7) pursuant to a valid search or arrest warrant;

(8) if the image is captured by a law enforcement authority or a person who is under contract with or otherwise acting under the direction or on behalf of a law enforcement authority:

(A) in immediate pursuit of a person law enforcement officers have reasonable suspicion or probable cause to suspect has committed an offense, not including misdemeanors or offenses punishable by a fine only;

(B) for the purpose of documenting a crime scene where an offense, not including misdemeanors or offenses punishable by a fine only, has been committed;

(C) for the purpose of investigating the scene of:

(i) a human fatality;

(ii) a motor vehicle collision causing death or serious bodily injury to a person; or

(iii) any motor vehicle collision on a state highway or federal interstate or highway;

(D) in connection with the search for a missing person;

(E) for the purpose of conducting a high-risk tactical operation that poses a threat to human life;

(F) of private property that is generally open to the public where the property owner consents to law enforcement public safety responsibilities; or

(G) of real property or a person on real property that is within 25 miles of the United States border for the sole purpose of ensuring border security;

(9) if the image is captured by state or local law enforcement authorities, or a person who is under contract with or otherwise acting under the direction or on behalf of state authorities, for the purpose of:

(A) surveying the scene of a catastrophe or other damage to determine whether a state of emergency should be declared;

(B) preserving public safety, protecting property, or surveying damage or contamination during a lawfully declared state of emergency; or

(C) conducting routine air quality sampling and monitoring, as provided by state or local law;

(10) at the scene of a spill, or a suspected spill, of hazardous materials;

(11) for the purpose of fire suppression;

(12) for the purpose of rescuing a person whose life or well-being is in imminent danger;

(13) if the image is captured by a Texas licensed real estate broker in connection with the marketing, sale, or financing of real property, provided that no individual is identifiable in the image;

(14) from a height no more than eight feet above ground level in a public place, if the image was captured without using any electronic, mechanical, or other means to amplify the image beyond normal human perception;

(15) of public real property or a person on that property;

(16) if the image is captured by the owner or operator of an oil, gas, water, or other pipeline for the purpose of inspecting, maintaining, or repairing pipelines or other related facilities, and is captured without the intent to conduct surveillance on an individual or real property located in this state;

(17) in connection with oil pipeline safety and rig protection;

(18) in connection with port authority surveillance and security;

(19) if the image is captured by a registered professional land surveyor in connection with the practice of professional surveying, as those terms are defined by Section 1071.002, Occupations Code, provided that no individual is identifiable in the image;

(20) if the image is captured by a professional engineer licensed under Subchapter G, Chapter 1001, Occupations Code, in connection with the practice of engineering, as defined by Section 1001.003, Occupations Code, provided that no individual is identifiable in the image; or

(21) if:

(A) the image is captured by an employee of an insurance company or of an affiliate of the company in connection with the underwriting of an insurance policy, or the rating or adjusting of an insurance claim, regarding real property or a structure on real property; and

(B) the operator of the unmanned aircraft is authorized by the Federal Aviation Administration to conduct operations within the airspace from which the image is captured.

(b) This chapter does not apply to the manufacture, assembly, distribution, or sale of an unmanned aircraft.

Community Relations: Conduct on School Premises

Access To District Property

Authorized District officials, including school resource officers and District police officers if applicable, may refuse to allow a person access to property under the District's control in accordance with law.

District officials may request assistance from law enforcement in an emergency or when a person is engaging in behavior rising to the level of criminal conduct.

Ejection Or Exclusion Under Education Code 37.105

In accordance with Education Code 37.105, a District official shall provide a person refused entry to or ejected from property under the District's control written information explaining the right to appeal such refusal of entry or ejection under the District's grievance process.

A person appealing under the District's grievance process shall be permitted to address the Board in person within 90 calendar days of filing the initial complaint, unless the complaint is resolved before the Board considers it. [See FNG and GF]

Off-Campus Activities

Employees shall be designated to ensure appropriate conduct of participants and others attending a school-related activity at non-District or out-of-District facilities. Those so designated shall coordinate their efforts with persons in charge of the facilities.

Prohibitions

Tobacco And E-Cigarettes

The District prohibits smoking and the use of tobacco products, e-cigarettes, and electronic vaporizing devices on District property, in District vehicles, or at school-related activities.

Weapons

The District prohibits the unlawful use, possession, or display of any firearm, location-restricted knife, club, or prohibited weapon, as defined at FNCG, on all District property at all times.

Exception

No violation of this policy occurs when the use, possession, or display of an otherwise prohibited weapon takes place as part of a District-approved activity supervised by proper authorities. [See FOD]

Contracted Services: Criminal History

Education Code § 44.034. NOTIFICATION OF CRIMINAL HISTORY OF CONTRACTOR.

(a) A person or business entity that enters into a contract with a school district must give advance notice to the district if the person or an owner or operator of the business entity has been convicted of a felony. The notice must include a general description of the conduct resulting in the conviction of a felony.

(b) A school district may terminate a contract with a person or business entity if the district determines that the person or business entity failed to give notice as required by Subsection (a) or misrepresented the conduct resulting in the conviction. The district must compensate the person or business entity for services performed before the termination of the contract.

(c) This section does not apply to a publicly held corporation.

Added by Acts 1995, 74th Leg., ch. 260, Sec. 1, eff. May 30, 1995.

Education Code § 22.0834. CRIMINAL HISTORY RECORD INFORMATION REVIEW OF CERTAIN CONTRACT EMPLOYEES.

(a) Except as provided by Subsection (a-1), this subsection applies to a person who is not an applicant for or holder of a certificate under Subchapter B, Chapter 21, and who is offered employment by an entity or a subcontractor of an entity that contracts with a school district, open-enrollment charter school, or shared services arrangement to provide services, if:

(1) the employee or applicant has or will have continuing duties related to the contracted services; and

(2) the employee or applicant has or will have direct contact with students.

(a-1) This section does not apply to an employee or applicant of a public works contractor if:

(1) the public work does not involve the construction, alteration, or repair of an instructional facility as defined by Section 46.001;

(2) for public work that involves construction of a new instructional facility, the person's duties related to the contracted services will be completed not later than the seventh day before the first date the facility will be used for instructional purposes; or

(3) for a public work that involves an existing instructional facility:

(A) the public work area contains sanitary facilities and is separated from all areas used by students by a secure barrier fence that is not less than six feet in height; and

(B) the contracting entity adopts a policy prohibiting employees, including subcontracting entity employees, from interacting with students or entering areas used by students, informs employees of the policy, and enforces the policy at the public work area.

(b) If the contracting entity is a qualified school contractor, a person to whom Subsection (a) applies must submit to a national criminal history record information review by the qualified school contractor before being employed or serving in a capacity described by that subsection.

(b-1) If the contracting entity or subcontracting entity is not a qualified school contractor, a person to whom Subsection (a) applies must submit to a national criminal history record information review by the school district, charter school, regional education service center, commercial transportation company, or education shared services arrangement.

(c) Before or immediately after employing or securing the services of a person to whom Subsection (a) applies, the qualified school contractor or school district, open-enrollment charter school, or shared services arrangement shall send or ensure that the person sends to the department information that is required by the department for obtaining national criminal history record information, which may include fingerprints and photographs. The department shall obtain the person's national criminal history record information and report the results through the criminal history clearinghouse as provided by Section 411.0845, Government Code.

(d) A qualified school contractor or a school district, open-enrollment charter school, or shared services arrangement shall obtain all criminal history record information that relates to a person to whom Subsection (a) applies through the criminal history clearinghouse as provided by Section 411.0845, Government Code.

(d-1) A qualified school contractor acting as a contracting entity shall require that any of its subcontracting entities obtain all criminal history record information that relates to an employee to whom Subsection (a) applies if the subcontracting entity is also a qualified school contractor.

(d-2) A qualified school contractor shall require that any of its subcontracting entities that are not qualified school contractors comply with Subsection (b-1) as it relates to an employee to whom Subsection (a) applies.

(e) The requirements of Subsections (b), (d-1), and (d-2) do not apply to a qualified school contractor if a school district, open-enrollment charter school, or shared services arrangement obtains the criminal history record information of a person to whom this section applies through the criminal history clearinghouse as provided by Section 411.0845, Government Code.

(f) In the event of an emergency, a school district may allow a person to whom Subsection (a) applies to enter school district property if the person is accompanied by a district employee. A school district may adopt rules regarding an emergency situation under this subsection.

(g) Repealed by Acts 2023, 88th Leg., R.S., Ch. 871 (H.B. 4123), Sec. 71(1), eff. June 13, 2023.

(h) A school district, open-enrollment charter school, shared services arrangement, or qualified school contractor may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person to whom this section applies.

(i) Repealed by Acts 2023, 88th Leg., R.S., Ch. 871 (H.B. 4123), Sec. 71(1), eff. June 13, 2023.

(j) The commissioner may adopt rules as necessary to implement this section.

(k) Repealed by Acts 2023, 88th Leg., R.S., Ch. 871 (H.B. 4123), Sec. 71(1), eff. June 13, 2023.

(l) If a contracting or subcontracting entity determines that Subsection (a) does not apply to an employee, the contracting or subcontracting entity shall make a reasonable effort to ensure that the conditions or precautions that resulted in the determination that Subsection (a) did not apply to the employee continue to exist throughout the time that the contracted services are provided.

(m) Repealed by Acts 2023, 88th Leg., R.S., Ch. 871 (H.B. 4123), Sec. 71(1), eff. June 13, 2023.

(n) Repealed by Acts 2023, 88th Leg., R.S., Ch. 871 (H.B. 4123), Sec. 71(1), eff. June 13, 2023.

(o) A school district, charter school, regional education service center, commercial transportation company, education shared services arrangement, or qualified school contractor, contracting entity, or subcontracting entity may not permit an employee to whom Subsection (a) applies to provide services at a school if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being employed under Section 22A.157(a) .

(p) In this section:

(1) "Contracting entity" means an entity that contracts directly with a school district, open-enrollment charter school, or shared services arrangement to provide services to the school district, open-enrollment charter school, or shared services arrangement.

(2) "Public works contractor" means an entity that contracts directly or subcontracts with an entity that contracts with a school district, open-enrollment charter school, or shared services arrangement to provide services to the school district, open-enrollment charter school, or shared services arrangement.

(3) "Qualified school contractor" has the meaning assigned by Section 411.12505, Government Code.

(4) "Subcontracting entity" means an entity that contracts with another entity that is not a school district, open-enrollment charter school, or shared services arrangement to provide services to a school district, open-enrollment charter school, or shared services arrangement.

(q) A qualified school contractor shall certify to the school district, open-enrollment charter school, or shared services arrangement that the entity has received all criminal history record information relating to a person who is employed by or under a current offer of employment by the qualified school contractor.

Government Code § 411.12505. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: QUALIFIED SCHOOL CONTRACTORS.

(a) In this section, "qualified school contractor" means an entity that:

(1) contracts or subcontracts to provide services to a school district, charter school, or shared services arrangement; and

(2) is determined eligible by the department to obtain criminal history record information under the National Child Protection Act of 1993 (34 U.S.C. Section 40101 et seq.) for an employee, applicant for employment, or volunteer of the qualified school contractor.

(b) A qualified school contractor is entitled to obtain from the department or any other criminal justice agency in this state criminal history record information maintained by the department or that criminal justice agency that relates to a person described by Subsection (a)(2).

(c) Criminal history record information obtained by a qualified school contractor under Subsection (b) in the original form or any subsequent form:

(1) may not be released to any person except:

(A) to the person who is the subject of the information;

(B) with the consent of the person who is the subject of the information;

(C) by court order; or

(D) except as provided by Subsection (d); and

(2) is not subject to disclosure as provided by Chapter 552.

(d) A qualified school contractor may provide a fitness determination based on criminal history record information obtained under this section to a school district, charter school, or shared services arrangement.

(e) A qualified school contractor shall destroy criminal history record information that is obtained under this section after the information is used for its authorized purpose.

(f) The department in coordination with the commissioner of education may adopt rules necessary to implement this section.

Added by Acts 2023, 88th Leg., R.S., Ch. 871 (H.B. 4123), Sec. 44, eff. June 13, 2023.

19 Texas Administrative Code § 153.1101. DEFINITIONS.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Clearinghouse--The criminal history clearinghouse established by the Texas Department of Public Safety (DPS) pursuant to the Texas Government Code, §411.0845.

(2) Continuing duties related to contracted services--Work duties that are performed pursuant to a contract to provide services to a school entity on a regular, repeated basis rather than infrequently or one-time only.

(3) Covered contract employee--An individual who:

(A) is employed or offered employment by a service contractor or a subcontractor of a service contractor, is an individual independent contractor of the school entity, or is an individual subcontractor of a service contractor;

(B) has or will have continuing duties related to the contracted services;

(C) has or will have direct contact with students; and

(D) is not a student of (or enrolled in) the school entity for which the services are performed.

(4) Criminal history record information--In accordance with the Texas Government Code, §411.082(2), information collected about a person by the DPS, a law enforcement or a criminal justice agency, or a private entity governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.

(5) Date of employment--For purposes of the Texas Education Code (TEC), §22.0834, the date of employment by an entity that contracts with a school entity shall be deemed to be:

(A) with respect to an individual independent contractor, the date of the contract or agreement to provide services to the school entity;

(B) with respect to a covered contract employee of a service contractor, the date the employee began providing services to the contractor for compensation; and

(C) with respect to an employee or independent contractor of a subcontractor of a service contractor, the later of the date the service contractor secures the services of the subcontractor and the date the subcontractor secures the services of the employee or independent contractor.

(6) Date of securing services--For purposes of the TEC, §22.0834, the date of securing the services of a covered contract employee or a subcontractor by an entity that contracts with a school entity shall be deemed to be the date the employee or subcontractor accepts an offer from the service contractor for a specific job position or for the performance of a specific project that is to begin on a date that is certain or reasonably ascertainable.

(7) Direct contact with students--The contact that results from activities that provide substantial opportunity for verbal or physical interaction with students that is not supervised by a certified educator or other professional district employee. Contact with students that results from services that do not provide substantial opportunity for unsupervised interaction with a student or students, such as addressing an assembly, officiating a sports contest, or judging an extracurricular event, is not, by itself, direct contact with students. However, direct contact with students does result from any activity that provides substantial opportunity for unsupervised contact with students, which might include, without limitation, the provision of coaching, tutoring, or other services to students.

(8) National criminal history record information--In accordance with the TEC, §22.081, criminal history record information obtained from both the DPS and the Federal Bureau of Investigation based on fingerprint identification information.

(9) School entity--A Texas school district, an open-enrollment charter school, or a shared services arrangement.

(10) Service contractor--An entity, including a government entity and an individual independent contractor, that contracts or agrees with a school entity by written agreement or verbal understanding to provide services through individuals who receive compensation. However, when

conducting an investigation or intervention regarding an alleged crime or act of child abuse on a school campus, a law enforcement agency or the Department of Family and Protective Services is not a service contractor, and the investigator or intervener is not a covered contract employee.

(11) Substitute teacher--A teacher who is on call or on a list of approved substitutes to replace a regular teacher and has no regular or guaranteed hours. A substitute teacher may be certified or noncertified.

Education Code § 22.085. ACCESS TO CRIMINAL HISTORY RECORDS OF STUDENT TEACHERS AND VOLUNTEERS BY LOCAL AND REGIONAL EDUCATION AUTHORITIES.

(a) A school district, open-enrollment charter school, or shared services arrangement shall obtain from the department and may obtain from any other law enforcement or criminal justice agency or a private entity that is a consumer reporting agency governed by the Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), all criminal history record information that relates to:

(1) a person participating in an internship consisting of student teaching to receive a teaching certificate; or

(2) a volunteer or person who has indicated, in writing, an intention to serve as a volunteer with the district, school, or shared services arrangement.

(b) A private school or regional education service center may obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a person who volunteers or has indicated, in writing, an intention to serve as a volunteer with the school or service center.

(c) A person to whom Subsection (a) or (b) applies must provide to the school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement a driver's license or another form of identification containing the person's photograph issued by an entity of the United States government.

(d) A person to whom Subsection (a) applies may not perform any student teaching or volunteer duties until all requirements under Subsections (a) and (c) have been satisfied.

(e) Subsections (a) and (c) do not apply to a person who volunteers or is applying to volunteer with a school district, open-enrollment charter school, or shared services arrangement if the person:

(1) is the parent, guardian, or grandparent of a child who is enrolled in the district or school for which the person volunteers or is applying to volunteer;

(2) will be accompanied by a school district employee while on a school campus; or

(3) is volunteering for a single event on the school campus.

(f) A school district, open-enrollment charter school, or shared services arrangement may obtain from the department or any law enforcement or criminal justice agency all criminal history record information that relates to a person to whom Subsection (e) applies.

(g) A school district, open-enrollment charter school, private school, regional education service center, or shared services arrangement may require a student teacher, volunteer, or volunteer applicant to pay any costs related to obtaining criminal history record information under this section.

Added by Acts 2007, 80th Leg., R.S., Ch. 1372 (S.B. 9), Sec. 9, eff. June 15, 2007.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 871 (H.B. 4123), Sec. 2, eff. June 13, 2023.

Government Code § 411.097. FIREARM SAFETY.

The department shall develop and post on the department's Internet website a course on firearm safety and handling. The course must be accessible to the public free of charge.

Added by Acts 2021, 87th Leg., R.S., Ch. 809 (H.B. 1927), Sec. 7, eff. September 1, 2021.

Texas Education Code § 22A.052 . REQUIREMENT TO REPORT EMPLOYEE OR SERVICE PROVIDER MISCONDUCT TO AGENCY.

(a) This section applies to:
(1) a person who is employed by an educational entity and who does not hold a certification or permit issued under Subchapter B, Chapter 21; or
(2) a service provider for an educational entity who has or will have direct contact with students.

(b) In addition to the reporting requirement under Section 261.101, Family Code, the superintendent or director of an educational entity shall notify the commissioner if the superintendent or director:
(1) becomes aware of evidence that a person described by Subsection (a) engaged in misconduct described by Section 22A.051(a)(2)(A), (B), (C), or (D); or
(2) obtains criminal history record information relating to misconduct described by Subdivision (1) for a person described by Subsection (a).

(c) A superintendent or director of an educational entity shall complete an investigation of a person described by Subsection (a) that involves evidence that the person may have engaged in misconduct described by Subsection (b)(1), despite the person's termination of or resignation from employment or cessation of services for the entity before completion of the investigation.

(d) The principal of a school district, district of innovation, open-enrollment charter school, or other charter entity campus must notify the superintendent or director of the district, school, or entity not

later than 48 hours after the principal becomes aware of evidence of an alleged incident of misconduct described by Subsection (b)(1).

(e) The superintendent or director of an educational entity must notify the commissioner by filing a report with the commissioner not later than 48 hours after the superintendent or director:
(1) receives notice from a principal under Subsection (d);
(2) knew about the termination of or resignation from employment or cessation of services of a person described by Subsection (a) for the entity following an alleged incident of misconduct described by Subsection (b)(1); or
(3) becomes aware of evidence of misconduct described by Subsection (b)(1).

(f) The report under Subsection (e) must be:
(1) in writing;
(2) in a form prescribed by the commissioner; and
(3) filed through the Internet portal developed and maintained by the agency under Section 22A.155.

(g) The superintendent or director shall notify the board of trustees or governing body of the educational entity and the person who is the subject of the report required under Subsection (e) of the filing of the report required by that subsection.

(h) A superintendent or director who in good faith and while acting in an official capacity files a report with the commissioner under Subsection (e) or a principal who in good faith and while acting in an official capacity notifies a superintendent or director under Subsection (d) is immune from civil or criminal liability that might otherwise be incurred or imposed.

(i) The commissioner shall refer an educator who fails to file a report in violation of Subsection (e) to the board, and the board shall determine whether to impose sanctions against the educator.

(j) The name of a student or minor who is the victim of abuse or unlawful conduct must be included in a report filed under this section, but the name of the student or minor is not public information under Chapter 552, Government Code.

(k) A superintendent or director required to file a report under Subsection (e) commits an offense if the superintendent or director fails to file the report by the date required by that subsection with intent to conceal a person's criminal record or alleged incident of misconduct described by Section 22A.051(a)(2)(A) or (B). A principal required to notify a superintendent or director about a person's alleged incident of misconduct under Subsection (d) commits an offense if the principal fails to provide the notice by the date required by that subsection with intent to conceal a person's alleged incident of misconduct described by Section 22A.051(a)(2)(A) or (B). An offense under this subsection is a state jail felony.

(l) The commissioner may review the records of an educational entity to ensure compliance with the requirement to report misconduct under this section.

(m) The commissioner shall adopt rules as necessary to implement this section.

Contracted Services: Criminal History

Emergencies

In an emergency due to a health or safety concern, a reasonably unforeseeable situation, or other exigent circumstance, the District employee who is in charge of the facility shall be authorized to determine whether an employee of a contracting or subcontracting entity who does not have the required criminal history record information (CHRI) review or who has a disqualifying conviction will be permitted to enter a District facility.

If allowed to enter the facility, the employee of the contracting or subcontracting entity shall be accompanied by a District employee at all times.

Service Providers

Prior to the commencement of any services, service providers shall be required to review the registry of persons who are not eligible to be employed by or act as a service provider for an educational entity. This verification shall include, but is not limited to, the service provider itself, its representatives, employees, subcontractors, or any other individuals acting on its behalf or under its direction in the performance of services for the District.

Any individual whose name appears on the registry shall not be permitted to perform services, directly or indirectly, for or on behalf of the District. Service providers shall be solely responsible for ensuring full compliance with this requirement and applicable law.

For the purposes of this policy, “service provider” has the meaning assigned at Texas Education Code § 22A.001(8).

Employee Welfare: Freedom From Discrimination, Harassment, And Retaliation

42 United States Code § 1981. EQUAL RIGHTS UNDER THE LAW.

(a) Statement of equal rights

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

(b) "Make and enforce contracts" defined

For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.

(c) Protection against impairment

The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law.

(R.S. §1977; Pub. L. 102–166, title I, §101, Nov. 21, 1991, 105 Stat. 1071.)

Editorial Notes

Codification

R.S. §1977 derived from act May 31, 1870, ch. 114, §16, 16 Stat. 144.

Section was formerly classified to section 41 of Title 8, Aliens and Nationality.

Amendments

1991—Pub. L. 102–166 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

Statutory Notes and Related Subsidiaries

Effective Date of 1991 Amendment

Pub. L. 102–166, title IV, §402, Nov. 21, 1991, 105 Stat. 1099, provided that:

"(a) In General.—Except as otherwise specifically provided, this Act [see Short Title of 1991 Amendment note below] and the amendments made by this Act shall take effect upon enactment [Nov. 21, 1991].

"(b) Certain Disparate Impact Cases.—Notwithstanding any other provision of this Act, nothing in this Act shall apply to any disparate impact case for which a complaint was filed before March 1, 1975, and for which an initial decision was rendered after October 30, 1983."

Short Title of 1991 Amendment

Pub. L. 102–166, §1, Nov. 21, 1991, 105 Stat. 1071, provided that: "This Act [enacting section 1981a of this title and sections 60l and 1201 to 1224 of Title 2, The Congress, amending this section and sections 1988, 2000e, 2000e–1, 2000e–2, 2000e–4, 2000e–5, 2000e–16, 12111, 12112, and 12209 of this title, and section 626 of Title 29, Labor, and enacting provisions set out as notes under this section and sections 2000e and 2000e–4 of this title, and section 1a–5 of Title 16, Conservation] may be cited as the 'Civil Rights Act of 1991'."

Short Title of 1976 Amendment

Pub. L. 94–559, which amended section 1988 of this title, is known as "The Civil Rights Attorney's Fees Awards Act of 1976", see note set out under section 1988 of this title.

Severability

Pub. L. 102–166, title IV, §401, Nov. 21, 1991, 105 Stat. 1099, provided that: "If any provision of this Act [see Short Title of 1991 Amendment note above], or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected."

Congressional Findings

Pub. L. 102–166, §2, Nov. 21, 1991, 105 Stat. 1071, provided that: "The Congress finds that—

"(1) additional remedies under Federal law are needed to deter unlawful harassment and intentional discrimination in the workplace;

"(2) the decision of the Supreme Court in Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989) has weakened the scope and effectiveness of Federal civil rights protections; and

"(3) legislation is necessary to provide additional protections against unlawful discrimination in employment."

Purposes of 1991 Amendment

Pub. L. 102–166, §3, Nov. 21, 1991, 105 Stat. 1071, provided that: "The purposes of this Act [see Short Title of 1991 Amendment note above] are—

"(1) to provide appropriate remedies for intentional discrimination and unlawful harassment in the workplace;

"(2) to codify the concepts of 'business necessity' and 'job related' enunciated by the Supreme Court in Griggs v. Duke Power Co., 401 U.S. 424 (1971), and in the other Supreme Court decisions prior to Wards Cove Packing Co. v. Atonio, 490 U.S. 642 (1989);

"(3) to confirm statutory authority and provide statutory guidelines for the adjudication of disparate impact suits under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e et seq.); and

"(4) to respond to recent decisions of the Supreme Court by expanding the scope of relevant civil rights statutes in order to provide adequate protection to victims of discrimination."

Legislative History for 1991 Amendment

Pub. L. 102–166, title I, §105(b), Nov. 21, 1991, 105 Stat. 1075, provided that: "No statements other than the interpretive memorandum appearing at Vol. 137 Congressional Record S 15276 (daily ed. Oct. 25, 1991) [Cong. Rec., vol. 137, pt. 19, p. 28680, Oct. 25, 1991] shall be considered legislative history of, or relied upon in any way as legislative history in construing or applying, any provision of this Act [see Short Title of 1991 Amendment note above] that relates to Wards Cove—Business necessity/cumulation/alternative business practice."

Construction of 1991 Amendment

Pub. L. 102–166, title I, §116, Nov. 21, 1991, 105 Stat. 1079, provided that: "Nothing in the amendments made by this title [enacting section 1981a of this title and amending this section, sections 1988, 2000e, 2000e–1, 2000e–2, 2000e–4, 2000e–5, 2000e–16, 12111, and 12112 of this title, and section 626 of Title 29, Labor] shall be construed to affect court-ordered remedies, affirmative action, or conciliation agreements, that are in accordance with the law."

Alternative Means of Dispute Resolution

Pub. L. 102–166, title I, §118, Nov. 21, 1991, 105 Stat. 1081, provided that: "Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under the Acts or provisions of Federal law amended by this title [enacting section 1981a of this title and amending this section, sections 1988, 2000e, 2000e–1, 2000e–2, 2000e–4, 2000e–5, 2000e–16, 12111, and 12112 of this title, and section 626 of Title 29, Labor]."

Executive Documents

Executive Order No. 13050

Ex. Ord. No. 13050, June 13, 1997, 62 F.R. 32987, which established the President's Advisory Board on Race, was revoked by Ex. Ord. No. 13138, §3(e), Sept. 30, 1999, 64 F.R. 53880, formerly set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

42 United States Code § 2000.

SUBCHAPTER II—PUBLIC ACCOMMODATIONS

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 2000h, 12187 of this title.

§2000a. Prohibition against discrimination or segregation in places of public accommodation

(a) Equal access

All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

(b) Establishments affecting interstate commerce or supported in their activities by State action as places of public accommodation; lodgings; facilities principally engaged in selling food for consumption on the premises; gasoline stations; places of exhibition or entertainment; other covered establishments

Each of the following establishments which serves the public is a place of public accommodation within the meaning of this subchapter if its operations affect commerce, or if discrimination or

segregation by it is supported by State action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or any gasoline station;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this subsection, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

(c) Operations affecting commerce; criteria; "commerce" defined

The operations of an establishment affect commerce within the meaning of this subchapter if (1) it is one of the establishments described in paragraph (1) of subsection (b) of this section; (2) in the case of an establishment described in paragraph (2) of subsection (b) of this section, it serves or offers to serve interstate travelers of a substantial portion of the food which it serves, or gasoline or other products which it sells, has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b) of this section, it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b) of this section, it is physically located within the premises of, or there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, "commerce" means travel, trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia and any State, or between any foreign country or any territory or possession and any State or the District of Columbia, or between points in the same State but through any other State or the District of Columbia or a foreign country.

(d) Support by State action

Discrimination or segregation by an establishment is supported by State action within the meaning of this subchapter if such discrimination or segregation (1) is carried on under color of any law, statute, ordinance, or regulation; or (2) is carried on under color of any custom or usage required or enforced by officials of the State or political subdivision thereof; or (3) is required by action of the State or political subdivision thereof.

(e) Private establishments

The provisions of this subchapter shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b) of this section.

(Pub. L. 88–352, title II, §201, July 2, 1964, 78 Stat. 243.)

Short Title of 1992 Amendment

Pub. L. 102–411, §1, Oct. 14, 1992, 106 Stat. 2102, provided that: "This Act [amending section 2000e–4 of this title] may be cited as the 'EEOC Education, Technical Assistance, and Training Revolving Fund Act of 1992'."

Short Title of 1972 Amendment

Pub. L. 92–261, §1, Mar. 24, 1972, 86 Stat. 103, provided: "That this Act [enacting sections 2000e–16 and 2000e–17 of this title, amending sections 5108 and 5314 to 5316 of Title 5, Government Organization and Employees, and sections 2000e to 2000e–6, 2000e–8, 2000e–9, 2000e–13, and 2000e–14 of this title, and enacting provisions set out as a note under section 2000e–5 of this title] may be cited as the 'Equal Employment Opportunity Act of 1972'."

Short Title

Section 1 of Pub. L. 88–352 provided: "That this Act [enacting subchapters II to IX of this chapter, amending sections 2204 and 2205 of former Title 5, Executive Departments and Government Officers and Employees, section 1447(d) of Title 28, Judiciary and Judicial Procedure, and sections 1971 and 1975a to 1975d of this title, and enacting provisions set out as a note under section 2000e of this title] may be cited as the 'Civil Rights Act of 1964'."

Act Referred to in Other Sections

The Civil Rights Act of 1964 [subchapters II to IX of this chapter] is referred to in sections 1490m, 5304, 5306, 5307, 5318a, 6727, 11111 of this title; title 31 section 6711; title 43 section 1626.

Section Referred to in Other Sections

This section is referred to in section 2000a–2 of this title.

§2000a–1. Prohibition against discrimination or segregation required by any law, statute, ordinance, regulation, rule or order of a State or State agency

All persons shall be entitled to be free, at any establishment or place, from discrimination or segregation of any kind on the ground of race, color, religion, or national origin, if such discrimination or segregation is or purports to be required by any law, statute, ordinance, regulation, rule, or order of a State or any agency or political subdivision thereof.

(Pub. L. 88–352, title II, §202, July 2, 1964, 78 Stat. 244.)

Section Referred to in Other Sections

This section is referred to in section 2000a–2 of this title.

§2000a–2. Prohibition against deprivation of, interference with, and punishment for exercising rights and privileges secured by section 2000a or 2000a–1 of this title

No person shall (a) withhold, deny, or attempt to withhold or deny, or deprive or attempt to deprive any person of any right or privilege secured by section 2000a or 2000a–1 of this title, or (b) intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person with the purpose of interfering with any right or privilege secured by section 2000a or 2000a–1 of this title, or (c) punish or attempt to punish any person for exercising or attempting to exercise any right or privilege secured by section 2000a or 2000a–1 of this title.

(Pub. L. 88–352, title II, §203, July 2, 1964, 78 Stat. 244.)

Section Referred to in Other Sections

This section is referred to in section 2000a–3 of this title.

§2000a–3. Civil actions for injunctive relief

(a) Persons aggrieved; intervention by Attorney General; legal representation; commencement of action without payment of fees, costs, or security

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice prohibited by section 2000a–2 of this title, a civil action for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, may be instituted by the person aggrieved and, upon timely application, the court may, in its discretion, permit the Attorney General to intervene in such civil action if he certifies that the case is of general public importance. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such

complainant and may authorize the commencement of the civil action without the payment of fees, costs, or security.

(b) Attorney's fees; liability of United States for costs

In any action commenced pursuant to this subchapter, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

(c) State or local enforcement proceedings; notification of State or local authority; stay of Federal proceedings

In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such act or practice and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no civil action may be brought under subsection (a) of this section before the expiration of thirty days after written notice of such alleged act or practice has been given to the appropriate State or local authority by registered mail or in person, provided that the court may stay proceedings in such civil action pending the termination of State or local enforcement proceedings.

(d) References to Community Relations Service to obtain voluntary compliance; duration of reference; extension of period

In the case of an alleged act or practice prohibited by this subchapter which occurs in a State, or political subdivision of a State, which has no State or local law prohibiting such act or practice, a civil action may be brought under subsection (a) of this section: Provided, That the court may refer the matter to the Community Relations Service established by subchapter VIII of this chapter for as long as the court believes there is a reasonable possibility of obtaining voluntary compliance, but for not more than sixty days: Provided further, That upon expiration of such sixty-day period, the court may extend such period for an additional period, not to exceed a cumulative total of one hundred and twenty days, if it believes there then exists a reasonable possibility of securing voluntary compliance.

(Pub. L. 88–352, title II, §204, July 2, 1964, 78 Stat. 244.)

Section Referred to in Other Sections

This section is referred to in sections 2000a–4, 12188 of this title.

§2000a–4. Community Relations Service; investigations and hearings; executive session; release of testimony; duty to bring about voluntary settlements

The Service is authorized to make a full investigation of any complaint referred to it by the court under section 2000a–3(d) of this title and may hold such hearings with respect thereto as may be necessary. The Service shall conduct any hearings with respect to any such complaint in executive session, and shall not release any testimony given therein except by agreement of all parties involved in the complaint with the permission of the court, and the Service shall endeavor to bring about a voluntary settlement between the parties.

(Pub. L. 88–352, title II, §205, July 2, 1964, 78 Stat. 244.)

Section Referred to in Other Sections

This section is referred to in section 2000g–3 of this title.

§2000a–5. Civil actions by the Attorney General

(a) Complaint

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) Three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action

In any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of the copy of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(Pub. L. 88–352, title II, §206, July 2, 1964, 78 Stat. 245.)

§2000a–6. Jurisdiction; exhaustion of other remedies; exclusiveness of remedies; assertion of rights based on other Federal or State laws and pursuit of remedies for enforcement of such rights

(a) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this subchapter and shall exercise the same without regard to whether the aggrieved party shall have exhausted any administrative or other remedies that may be provided by law.

(b) The remedies provided in this subchapter shall be the exclusive means of enforcing the rights based on this subchapter, but nothing in this subchapter shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this subchapter, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

(Pub. L. 88–352, title II, §207, July 2, 1964, 78 Stat. 245.)

SUBCHAPTER III—PUBLIC FACILITIES

Subchapter Referred to in Other Sections

This subchapter is referred to in section 2000h of this title.

§2000b. Civil actions by the Attorney General

(a) Complaint; certification; institution of civil action; relief requested; jurisdiction; impleading additional parties as defendants

Whenever the Attorney General receives a complaint in writing signed by an individual to the effect that he is being deprived of or threatened with the loss of his right to the equal protection of the laws, on account of his race, color, religion, or national origin, by being denied equal utilization of any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, other than a public school or public college as defined in section 2000c of this title, and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly progress of desegregation in public facilities, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) Persons unable to initiate and maintain legal proceedings

The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(Pub. L. 88–352, title III, §301, July 2, 1964, 78 Stat. 246.)

§2000b–1. Liability of United States for costs and attorney's fee

In any action or proceeding under this subchapter the United States shall be liable for costs, including a reasonable attorney's fee, the same as a private person.

(Pub. L. 88–352, title III, §302, July 2, 1964, 78 Stat. 246.)

§2000b–2. Personal suits for relief against discrimination in public facilities

Nothing in this subchapter shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in any facility covered by this subchapter.

(Pub. L. 88–352, title III, §303, July 2, 1964, 78 Stat. 246.)

§2000b–3. "Complaint" defined

A complaint as used in this subchapter is a writing or document within the meaning of section 1001, title 18.

(Pub. L. 88–352, title III, §304, July 2, 1964, 78 Stat. 246.)

SUBCHAPTER IV—PUBLIC EDUCATION

Subchapter Referred to in Other Sections

This subchapter is referred to in section 2000h of this title; title 20 sections 1656, 1754, 3489.

§2000c. Definitions

As used in this subchapter—

(a) "Secretary" means the Secretary of Education.

(b) "Desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, sex or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.

(c) "Public school" means any elementary or secondary educational institution, and "public college" means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within a State, or operated wholly or predominantly from or through the use of governmental funds or property, or funds or property derived from a governmental source.

(d) "School board" means any agency or agencies which administer a system of one or more public schools and any other agency which is responsible for the assignment of students to or within such system.

(Pub. L. 88–352, title IV, §401, July 2, 1964, 78 Stat. 246; Pub. L. 92–318, title IX, §906(a), June 23, 1972, 86 Stat. 375; Pub. L. 96–88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692.)

Amendments

1972—Subsec. (b). Pub. L. 92–318 inserted "sex" after "religion,".

Transfer of Functions

"Secretary means the Secretary of Education" substituted for "Commissioner means the Commissioner of Education" in subsec. (a) pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education of Department of Health, Education, and Welfare to Secretary of Education.

Section Referred to in Other Sections

This section is referred to in section 2000b of this title; title 20 section 1720.

§2000c–1. Omitted

Codification

Section, Pub. L. 88–352, title IV, §402, July 2, 1964, 78 Stat. 247, authorized the Commissioner to conduct a survey and make a report to the President and the Congress within two years of July, 1964 concerning the availability of educational opportunities for minority group members.

§2000c–2. Technical assistance in preparation, adoption, and implementation of plans for desegregation of public schools

The Secretary is authorized, upon the application of any school board, State, municipality, school district, or other governmental unit legally responsible for operating a public school or schools, to render technical assistance to such applicant in the preparation, adoption, and implementation of plans for the desegregation of public schools. Such technical assistance may, among other activities, include making available to such agencies information regarding effective methods of coping with special educational problems occasioned by desegregation, and making available to such agencies personnel of the Department of Education or other persons specially equipped to advise and assist them in coping with such problems.

(Pub. L. 88–352, title IV, §403, July 2, 1964, 78 Stat. 247; Pub. L. 96–88, title III, §301(a)(1), (b)(2), title V, §507, Oct. 17, 1979, 93 Stat. 677, 678, 692.)

Transfer of Functions

"Secretary", meaning the Secretary of Education, and "Department of Education" substituted in text for "Commissioner" and "Office of Education", respectively, pursuant to sections 301(a)(1), (b)(2) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1), (b)(2) and 3507 of Title 20,

Education, and which transferred all functions of Commissioner of Education to Secretary of Education and transferred Office of Education to the Department of Education.

§2000c–3. Training institutes; stipends; travel allowances

The Secretary is authorized to arrange, through grants or contracts, with institutions of higher education for the operation of short-term or regular session institutes for special training designed to improve the ability of teachers, supervisors, counselors, and other elementary or secondary school personnel to deal effectively with special educational problems occasioned by desegregation. Individuals who attend such an institute on a full-time basis may be paid stipends for the period of their attendance at such institute in amounts specified by the Secretary in regulations, including allowances for travel to attend such institute.

(Pub. L. 88–352, title IV, §404, July 2, 1964, 78 Stat. 247; Pub. L. 96–88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692.)

Transfer of Functions

"Secretary", meaning the Secretary of Education, substituted in text for "Commissioner" pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

§2000c–4. Grants for inservice training in dealing with and for employment of specialists to advise in problems incident to desegregation; factors for consideration in making grants and fixing amounts, terms, and conditions

(a) The Secretary is authorized, upon application of a school board, to make grants to such board to pay, in whole or in part, the cost of—

(1) giving to teachers and other school personnel inservice training in dealing with problems incident to desegregation, and

(2) employing specialists to advise in problems incident to desegregation.

(b) In determining whether to make a grant, and in fixing the amount thereof and the terms and conditions on which it will be made, the Secretary shall take into consideration the amount available for grants under this section and the other applications which are pending before him; the financial condition of the applicant and the other resources available to it; the nature, extent, and gravity of its problems incident to desegregation; and such other factors as he finds relevant.

(Pub. L. 88–352, title IV, §405, July 2, 1964, 78 Stat. 247; Pub. L. 96–88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692.)

Transfer of Functions

"Secretary", meaning the Secretary of Education, substituted in text for "Commissioner" pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

Section Referred to in Other Sections

This section is referred to in title 20 section 1231e.

§2000c–5. Payments; adjustments; advances or reimbursement; installments

Payments pursuant to a grant or contract under this subchapter may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

(Pub. L. 88–352, title IV, §406, July 2, 1964, 78 Stat. 248; Pub. L. 96–88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692.)

Transfer of Functions

"Secretary", meaning the Secretary of Education, substituted in text for "Commissioner" pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education to Secretary of Education.

§2000c–6. Civil actions by the Attorney General

(a) Complaint; certification; notice to school board or college authority; institution of civil action; relief requested; jurisdiction; transportation of pupils to achieve racial balance; judicial power to insure compliance with constitutional standards; impleading additional parties as defendants

Whenever the Attorney General receives a complaint in writing—

(1) signed by a parent or group of parents to the effect that his or their minor children, as members of a class of persons similarly situated, are being deprived by a school board of the equal protection

of the laws, or

(2) signed by an individual, or his parent, to the effect that he has been denied admission to or not permitted to continue in attendance at a public college by reason of race, color, religion, sex or national origin,

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

(b) Persons unable to initiate and maintain legal proceedings

The Attorney General may deem a person or persons unable to initiate and maintain appropriate legal proceedings within the meaning of subsection (a) of this section when such person or persons are unable, either directly or through other interested persons or organizations, to bear the expense of the litigation or to obtain effective legal representation; or whenever he is satisfied that the institution of such litigation would jeopardize the personal safety, employment, or economic standing of such person or persons, their families, or their property.

(c) "Parent" and "complaint" defined

The term "parent" as used in this section includes any person standing in loco parentis. A "complaint" as used in this section is a writing or document within the meaning of section 1001, title 18.

(Pub. L. 88–352, title IV, §407, July 2, 1964, 78 Stat. 248; Pub. L. 92–318, title IX, §906(a), June 23, 1972, 86 Stat. 375.)

Amendments

1972—Subsec. (a)(2). Pub. L. 92–318 inserted "sex" after "religion,".

Section Referred to in Other Sections

This section is referred to in title 20 sections 1656, 1754.

§2000c–7. Liability of United States for costs

In any action or proceeding under this subchapter the United States shall be liable for costs the same as a private person.

(Pub. L. 88–352, title IV, §408, July 2, 1964, 78 Stat. 249.)

§2000c–8. Personal suits for relief against discrimination in public education

Nothing in this subchapter shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education.

(Pub. L. 88–352, title IV, §409, July 2, 1964, 78 Stat. 249.)

§2000c–9. Classification and assignment

Nothing in this subchapter shall prohibit classification and assignment for reasons other than race, color, religion, sex or national origin.

(Pub. L. 88–352, title IV, §410, July 2, 1964, 78 Stat. 249; Pub. L. 92–318, title IX, §906(a), June 23, 1972, 86 Stat. 375.)

Amendments

1972—Pub. L. 92–318 inserted "sex" after "religion,".

SUBCHAPTER V—FEDERALLY ASSISTED PROGRAMS

Cross References

Age discrimination in employment, see section 621 et seq. of Title 29, Labor.

Age discrimination in federally assisted programs, see section 6101 et seq. of this title.

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 290cc–33, 300w–7, 300x–57, 608, 708, 1437c–1, 1437d, 1437aaa–1, 1437aaa–2, 1760, 1988, 1996b, 2000d–6, 2000d–7, 2000h, 3608, 3608a, 4621, 5057, 5309, 5891, 6709, 6870, 8013, 8625, 9918, 10406, 11386, 11394, 12635, 12754, 12872, 12873, 12892, 12893, 12899b, 12899c of this title; title 12 section 1701q; title 15 sections 719o, 775, 3151; title 20 sections 1221, 1231e, 1232i, 1717, 7205, 7402, 7426, 7602, 8066; title 23 sections 108, 182, 324; title 25 section 4131; title 29 sections 794a, 1577, 2618, 2938; title 40 section 476; title 43 section 1863; title 49 sections 306, 5332, 47123, 70304.

§2000d. Prohibition against exclusion from participation in, denial of benefits of, and discrimination under federally assisted programs on ground of race, color, or national origin

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(Pub. L. 88–352, title VI, §601, July 2, 1964, 78 Stat. 252.)

Coordination of Implementation and Enforcement of Provisions

For provisions relating to the coordination of implementation and enforcement of the provisions of this subchapter by the Attorney General, see section 1–201 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d–1 of this title.

Section Referred to in Other Sections

This section is referred to in section 2000d–1 of this title; title 39 section 410.

§2000d–1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to Congressional committees; effective date of administrative action

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement

adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program, or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a requirement imposed pursuant to this section, the head of the Federal department or agency shall file with the committees of the House and Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action. No such action shall become effective until thirty days have elapsed after the filing of such report.

(Pub. L. 88–352, title VI, §602, July 2, 1964, 78 Stat. 252.)

Delegation of Functions

Function of the President relating to approval of rules, regulations, and orders of general applicability under this section, delegated to the Attorney General, see section 1–101 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out below.

Equal Opportunity in Federal Employment

Nondiscrimination in government employment and in employment by government contractors and subcontractors, see Ex. Ord. No. 11246, eff. Sept. 24, 1965, 30 F.R. 12319, and Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985, set out as notes under section 2000e of this title.

Executive Order No. 11247

Ex. Ord. No. 11247, eff. Sept. 24, 1965, 30 F.R. 12327, which related to enforcement of coordination of nondiscrimination in federally assisted programs, was superseded by Ex. Ord. No. 11764, eff. Jan. 21, 1974, 39 F.R. 2575, formerly set out below.

Executive Order No. 11764

Ex. Ord. No. 11764, Jan. 21, 1974, 39 F.R. 2575, which related to coordination of enforcement of provisions of this subchapter, was revoked by section 1–501 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72996, set out below.

Ex. Ord. No. 12250. Leadership and Coordination of Implementation and Enforcement of Nondiscrimination Laws

Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), and Section 301 of Title 3 of the United States Code, and in order to provide, under the leadership of the Attorney General, for the consistent and effective implementation of various laws prohibiting discriminatory practices in Federal programs and programs receiving Federal financial assistance, it is hereby ordered as follows:

1–1. Delegation of Function

1–101. The function vested in the President by Section 602 of the Civil Rights Act of 1964 (42 U.S.C. 2000d–1), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–102. The function vested in the President by Section 902 of the Education Amendments of 1972 (20 U.S.C. 1682), relating to the approval of rules, regulations, and orders of general applicability, is hereby delegated to the Attorney General.

1–2. Coordination of Nondiscrimination Provisions

1–201. The Attorney General shall coordinate the implementation and enforcement by Executive agencies of various nondiscrimination provisions of the following laws:

(a) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).

(b) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).

(c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).

(d) Any other provision of Federal statutory law which provides, in whole or in part, that no person in the United States shall, on the ground of race, color, national origin, handicap, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

1–202. In furtherance of the Attorney General's responsibility for the coordination of the implementation and enforcement of the nondiscrimination provisions of laws covered by this Order, the Attorney General shall review the existing and proposed rules, regulations, and orders of general applicability of the Executive agencies in order to identify those which are inadequate, unclear or unnecessarily inconsistent.

1–203. The Attorney General shall develop standards and procedures for taking enforcement actions and for conducting investigations and compliance reviews.

1–204. The Attorney General shall issue guidelines for establishing reasonable time limits on efforts to secure voluntary compliance, on the initiation of sanctions, and for referral to the Department of Justice for enforcement where there is noncompliance.

1–205. The Attorney General shall establish and implement a schedule for the review of the agencies' regulations which implement the various nondiscrimination laws covered by this Order.

1–206. The Attorney General shall establish guidelines and standards for the development of consistent and effective recordkeeping and reporting requirements by Executive agencies; for the sharing and exchange by agencies of compliance records, findings, and supporting documentation; for the development of comprehensive employee training programs; for the development of effective information programs; and for the development of cooperative programs with State and local agencies, including sharing of information, deferring of enforcement activities, and providing technical assistance.

1–207. The Attorney General shall initiate cooperative programs between and among agencies, including the development of sample memoranda of understanding, designed to improve the coordination of the laws covered by this Order.

1–3. Implementation by the Attorney General

1–301. In consultation with the affected agencies, the Attorney General shall promptly prepare a plan for the implementation of this Order. This plan shall be submitted to the Director of the Office of Management and Budget.

1–302. The Attorney General shall periodically evaluate the implementation of the nondiscrimination provisions of the laws covered by this Order, and advise the heads of the agencies concerned on the results of such evaluations as to recommendations for needed improvement in implementation or enforcement.

1–303. The Attorney General shall carry out his functions under this Order, including the issuance of such regulations as he deems necessary, in consultation with affected agencies.

1–304. The Attorney General shall annually report to the President through the Director of the Office of Management and Budget on the progress in achieving the purposes of this Order. This report shall include any recommendations for changes in the implementation or enforcement of the nondiscrimination provisions of the laws covered by this Order.

1–305. The Attorney General shall chair the Interagency Coordinating Council established by Section 507 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794c).

1–4. Agency Implementation

1–401. Each Executive agency shall cooperate with the Attorney General in the performance of the Attorney General's functions under this Order and shall, unless prohibited by law, furnish such reports and information as the Attorney General may request.

1–402. Each Executive agency responsible for implementing a nondiscrimination provision of a law covered by this Order shall issue appropriate implementing directives (whether in the nature of regulations or policy guidance). To the extent permitted by law, they shall be consistent with the requirements prescribed by the Attorney General pursuant to this Order and shall be subject to the approval of the Attorney General, who may require that some or all of them be submitted for approval before taking effect.

1–403. Within 60 days after a date set by the Attorney General, Executive agencies shall submit to the Attorney General their plans for implementing their responsibilities under this Order.

1–5. General Provisions

1–501. Executive Order No. 11764 is revoked. The present regulations of the Attorney General relating to the coordination of enforcement of Title VI of the Civil Rights Act of 1964 [this subchapter] shall continue in effect until revoked or modified (28 CFR 42.401 to 42.415).

1–502. Executive Order No. 11914 is revoked. The present regulations of the Secretary of Health and Human Services relating to the coordination of the implementation of Section 504 of the Rehabilitation Act of 1973, as amended [29 U.S.C. 794], shall be deemed to have been issued by the Attorney General pursuant to this Order and shall continue in effect until revoked or modified by the Attorney General.

1–503. Nothing in this Order shall vest the Attorney General with the authority to coordinate the implementation and enforcement by Executive agencies of statutory provisions relating to equal employment.

1–504. Existing agency regulations implementing the nondiscrimination provisions of laws covered by this Order shall continue in effect until revoked or modified.

Jimmy Carter.

Section Referred to in Other Sections

This section is referred to in sections 2000d–2, 2000d–5, 9821, 9849, 10406 of this title; title 39 section 410.

§2000d–2. Judicial review; administrative procedure provisions

Any department or agency action taken pursuant to section 2000d–1 of this title shall be subject to such judicial review as may otherwise be provided by law for similar action taken by such department or agency on other grounds. In the case of action, not otherwise subject to judicial review, terminating or refusing to grant or to continue financial assistance upon a finding of failure to comply with any requirement imposed pursuant to section 2000d–1 of this title, any person aggrieved (including any State or political subdivision thereof and any agency of either) may obtain judicial review of such action in accordance with chapter 7 of title 5, and such action shall not be deemed committed to unreviewable agency discretion within the meaning of that chapter.

(Pub. L. 88–352, title VI, §603, July 2, 1964, 78 Stat. 253.)

Codification

"Chapter 7 of title 5" and "that chapter" substituted in text for "section 10 of the Administrative Procedure Act" and "that section", respectively, on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 10 of the Administrative Procedure Act was classified to section 1009 of Title 5.

Section Referred to in Other Sections

This section is referred to in sections 2930c, 2971c, 2985g, 9821, 9849, 10406 of this title; title 39 section 410.

§2000d–3. Construction of provisions not to authorize administrative action with respect to employment practices except where primary objective of Federal financial assistance is to provide employment

Nothing contained in this subchapter shall be construed to authorize action under this subchapter by any department or agency with respect to any employment practice of any employer, employment agency, or labor organization except where a primary objective of the Federal financial assistance is to provide employment.

(Pub. L. 88–352, title VI, §604, July 2, 1964, 78 Stat. 253.)

Section Referred to in Other Sections

This section is referred to in title 39 section 410.

§2000d–4. Federal authority and financial assistance to programs or activities by way of contract of insurance or guaranty

Nothing in this subchapter shall add to or detract from any existing authority with respect to any program or activity under which Federal financial assistance is extended by way of a contract of insurance or guaranty.

(Pub. L. 88–352, title VI, §605, July 2, 1964, 78 Stat. 253.)

Section Referred to in Other Sections

This section is referred to in title 39 section 410.

§2000d–4a. "Program or activity" and "program" defined

For the purposes of this subchapter, the term "program or activity" and the term "program" mean all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 8801 of title 20), system of vocational education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(Pub. L. 88–352, title VI, §606, as added Pub. L. 100–259, §6, Mar. 22, 1988, 102 Stat. 31; amended Pub. L. 103–382, title III, §391(q), Oct. 20, 1994, 108 Stat. 4024.)

Amendments

1994—Par. (2)(B). Pub. L. 103–382 substituted "section 8801 of title 20" for "section 198(a)(10) of the Elementary and Secondary Education Act of 1965".

Exclusion From Coverage

This section not to be construed to extend application of Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100–259, set out as a Construction note under section 1687 of Title 20, Education.

Abortion Neutrality

This section not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100–259, set out as a note under section 1688 of Title 20, Education.

§2000d–5. Prohibited deferral of action on applications by local educational agencies seeking Federal funds for alleged noncompliance with Civil Rights Act

The Secretary of Education shall not defer action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6301 et seq.], by the Act of September 30, 1950 1 (Public Law 874, Eighty-first Congress), or by the Cooperative Research Act [20 U.S.C. 331 et seq.], on the basis of alleged noncompliance with the provisions of this subchapter for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 2000d–1 of this title, such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the Secretary, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of this subchapter: Provided, That, for the purpose of determining whether a local educational agency is in compliance with this subchapter, compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with this subchapter, insofar as the matters covered in the order or judgment are concerned.

(Pub. L. 89–750, title I, §182, Nov. 3, 1966, 80 Stat. 1209; Pub. L. 90–247, title I, §112, Jan. 2, 1968, 81 Stat. 787; Pub. L. 96–88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 103–382, title III, §392(b)(1), Oct. 20, 1994, 108 Stat. 4026.)

References in Text

This Act, referred to in text, is Pub. L. 89–750, Nov. 3, 1966, 80 Stat. 1191, as amended, known as the Elementary and Secondary Education Amendments of 1966. For complete classification of that Act to the Code, see Short Title of 1966 Amendment note set out under section 6301 of Title 20, Education, and Tables.

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 103–382, title I, §101, Oct. 20, 1994, 108 Stat.

3519, which is classified generally to chapter 70 (§6301 et seq.) of Title 20. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of Title 20 and Tables.

Act of September 30, 1950, referred to in text, is act Sept. 30, 1950, ch. 1124, 64 Stat. 1100, as amended, popularly known as the Educational Agencies Financial Aid Act, which was classified generally to chapter 13 (§236 et seq.) of Title 20 prior to repeal by Pub. L. 103–382, title III, §331(b), Oct. 20, 1994, 108 Stat. 3965. For complete classification of this Act to the Code, see Tables.

The Cooperative Research Act, referred to in text, is act July 26, 1954, ch. 576, 68 Stat. 533, which was classified generally to chapter 15 (§331 et seq.) of Title 20, and terminated on July 1, 1975, under provisions of section 402(c)(1) of Pub. L. 93–380, title IV, Aug. 21, 1974, 88 Stat. 544. See section 1851 et seq. of this title. For complete classification of this Act to the Code, see Tables.

Codification

Section was enacted as part of the Elementary and Secondary Education Amendments of 1966, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

Amendments

1994—Pub. L. 103–382, which directed amendment of this section by striking out "by the Act of September 23, 1950 (Public Law 815, 81st Congress),", was executed by striking out "by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress)" before "or by the Cooperative" to reflect the probable intent of Congress.

1968—Pub. L. 90–247 inserted proviso.

Effective Date

Section 191 of Pub. L. 89–750 provided that: "The provisions of this title [enacting this section and sections 241m, 871 to 880, and 886 of Title 20, Education, amending sections 241b, 241c, 241e, 241f, 241g, 241h, 241j, 241k, 241l, 244, 331a, 332a, 332b, 821, 822, 823, 841, 842, 843, 844, 861, 862, 863, 864, 883, and 884 of Title 20, repealing section 241d of Title 20, and enacting provisions set out as notes under sections 241a, 241b, and 241c of Title 20] shall be effective with respect to fiscal years beginning after June 30, 1966, except as specifically provided otherwise."

Transfer of Functions

"Secretary of Education" and "Secretary" substituted in text for "Commissioner of Education" and "Commissioner", respectively, pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of Title 20, Education, and which transferred all functions of Commissioner of Education of Department of Health, Education, and Welfare to Secretary of Education.

Section Referred to in Other Sections

This section is referred to in section 2000d–6 of this title.

1 See References in Text note below.

§2000d–6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies

(a) Declaration of uniform policy

It is the policy of the United States that guidelines and criteria established pursuant to title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.] and section 182 of the Elementary and Secondary Education Amendments of 1966 [42 U.S.C. 2000d–5] dealing with conditions of segregation by race, whether de jure or de facto, in the schools of the local educational agencies of any State shall be applied uniformly in all regions of the United States whatever the origin or cause of such segregation.

(b) Nature of uniformity

Such uniformity refers to one policy applied uniformly to de jure segregation wherever found and such other policy as may be provided pursuant to law applied uniformly to de facto segregation wherever found.

(c) Prohibition of construction for diminution of obligation for enforcement or compliance with nondiscrimination requirements

Nothing in this section shall be construed to diminish the obligation of responsible officials to enforce or comply with such guidelines and criteria in order to eliminate discrimination in federally assisted programs and activities as required by title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.].

(d) Additional funds

It is the sense of the Congress that the Department of Justice and the Secretary of Education should request such additional funds as may be necessary to apply the policy set forth in this section throughout the United States.

(Pub. L. 91–230, §2, Apr. 13, 1970, 84 Stat. 121; Pub. L. 96–88, title III, §301, title V, §507, Oct. 17, 1979, 93 Stat. 677, 692.)

References in Text

The Civil Rights Act of 1964, referred to in subsecs. (a) and (c), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to this subchapter (§2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Codification

Section was enacted as part of the Elementary and Secondary Education Amendments of 1969, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

Transfer of Functions

"Secretary of Education" substituted for "Department of Health, Education, and Welfare" in subsec. (d) pursuant to sections 301 and 507 of Pub. L. 96–88, which are classified to sections 3441 and 3507 of Title 20, Education, and which transferred functions and offices (relating to education) of Department and Secretary of Health, Education, and Welfare to Secretary of Education.

§2000d–7. Civil rights remedies equalization

(a) General provision

(1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.], title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d et seq.], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance.

(2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State.

(b) Effective date

The provisions of subsection (a) of this section shall take effect with respect to violations that occur in whole or in part after October 21, 1986.

(Pub. L. 99–506, title X, §1003, Oct. 21, 1986, 100 Stat. 1845.)

References in Text

The Education Amendments of 1972, referred to in subsec. (a)(1), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235, as amended. Title IX of the Education Amendments of 1972 is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title of 1972 Amendment note set out under section 1001 of Title 20 and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a)(1), is title III of Pub. L. 94–135, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to this subchapter (§2000d et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Codification

Section was enacted as part of the Rehabilitation Act Amendments of 1986, and not as part of the Civil Rights Act of 1964, title VI of which comprises this subchapter.

SUBCHAPTER VI—EQUAL EMPLOYMENT OPPORTUNITIES

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1981a, 2000h, 11111 of this title; title 2 sections 60l, 1302, 1311, 1371, 1434; title 3 sections 402, 411; title 8 section 1324b; title 21 section 848; title 43 section 1863.

§2000e. Definitions

For the purposes of this subchapter—

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of title 5), or (2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of title 26, except that during the first year after March 24, 1972, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "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.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any 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 any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972, or (B) fifteen or more thereafter, and such labor organization—

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [29 U.S.C. 151 et seq.], or the Railway Labor Act, as amended [45 U.S.C. 151 et seq.];

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.], and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women 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 other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e–2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(l) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term "demonstrates" means meets the burdens of production and persuasion.

(n) The term "respondent" means an employer, employment agency, labor organization, joint labor-management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e–16 of this title.

(Pub. L. 88–352, title VII, §701, July 2, 1964, 78 Stat. 253; Pub. L. 89–554, §8(a), Sept. 6, 1966, 80 Stat. 662; Pub. L. 92–261, §2, Mar. 24, 1972, 86 Stat. 103; Pub. L. 95–555, §1, Oct. 31, 1978, 92 Stat. 2076; Pub. L. 95–598, title III, §330, Nov. 6, 1978, 92 Stat. 2679; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102–166, title I, §§104, 109(a), Nov. 21, 1991, 105 Stat. 1074, 1077.)

References in Text

The National Labor Relations Act, as amended, referred to in subsec. (e)(1), is act July 5, 1935, ch. 372, 49 Stat. 449, as amended, which is classified generally to subchapter II (§151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

The Railway Labor Act, referred to in subsec. (e)(1), is act May 20, 1926, ch. 347, 44 Stat. 577, as amended, which is classified principally to chapter 8 (§151 et seq.) of Title 45, Railroads. For complete classification of this Act to the Code, see section 151 of Title 45 and Tables.

The Labor-Management Reporting and Disclosure Act of 1959, referred to in subsec. (h), is Pub. L. 86–257, Sept. 14, 1959, 73 Stat. 519, as amended, which is classified principally to chapter 11 (§401 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 401 of Title 29 and Tables.

For definition of Canal Zone, referred to in subsec. (i), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

The Outer Continental Shelf Lands Act, referred to in subsec. (i), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

Amendments

1991—Subsec. (f). Pub. L. 102–166, §109(a), inserted at end "With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States."

Subsecs. (l) to (n). Pub. L. 102–166, §104, added subsecs. (l) to (n).

1986—Subsec. (b). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1978—Subsec. (a). Pub. L. 95–598 substituted "trustees in cases under title 11" for "trustees in bankruptcy".

Subsec. (k). Pub. L. 95–555 added subsec. (k).

1972—Subsec. (a). Pub. L. 92–261, §2(1), included within "person" governments, governmental agencies, and political subdivisions.

Subsec. (b). Pub. L. 92–261, §2(2), substituted "fifteen or more employees" for "twenty-five or more employees", extended coverage to include State and local governments, excepted from coverage any department or agency of the District of Columbia subject by statute to procedures of the competitive service, as defined in section 2102 of title 5, and substituted provisions under which persons having fewer than twenty-five employees during the first year after March 24, 1972, were not to be considered employers, for provisions under which persons having fewer than a specified number of employees during the first year after the effective date of this section, and the second and third years after such date were not to be considered employers.

Subsec. (c). Pub. L. 92–261, §2(3), struck out from term "employment agency" exemption from coverage for agencies of the United States, States or political subdivisions of States, other than the United States Employment Service and the system of State and local employment services receiving Federal assistance.

Subsec. (e). Pub. L. 92–261, §2(4), substituted provisions which set forth the number of members for a labor organization to be deemed to be engaged in an industry affecting commerce as twenty-five or more during the first year after March 24, 1972, and fifteen or more thereafter, for provisions which set forth the number of members for a labor organization to be deemed to be engaged in an industry affecting commerce as one hundred or more during the first year after the effective date of this section, seventy-five or more during the second year after such date, fifty or more during the third year after such date, and twenty-five or more thereafter.

Subsec. (f). Pub. L. 92–261, §2(5), inserted provisions enumerating persons excepted from term "employee".

Subsec. (h). Pub. L. 92–261, §2(6), inserted ", and further includes any governmental industry, business, or activity" after "Labor-Management Reporting and Disclosure Act of 1959".

Subsec. (j). Pub. L. 92–261, §2(7), added subsec. (j).

1966—Subsec. (b). Pub. L. 89–554 struck out proviso which stated that it shall be the policy of the United States to insure equal employment opportunities for Federal employees without discrimination because of race, color, religion, sex, or national origin and directed the President to utilize his existing authority to effectuate this policy.

Effective Date of 1991 Amendment

Amendment by section 104 of Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

Section 109(c) of Pub. L. 102–166 provided that: "The amendments made by this section [amending this section and sections 2000e–1, 12111, and 12112 of this title] shall not apply with respect to conduct occurring before the date of the enactment of this Act [Nov. 21, 1991]."

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95–598, set out as Effective Date note preceding section 101 of Title 11, Bankruptcy.

Effective Date of 1978 Amendment; Exceptions to Application

Section 2 of Pub. L. 95–555 provided that:

"(a) Except as provided in subsection (b), the amendment made by this Act [amending this section] shall be effective on the date of enactment [Oct. 31, 1978].

"(b) The provisions of the amendment made by the first section of this Act [amending this section] shall not apply to any fringe benefit program or fund, or insurance program which is in effect on the date of enactment of this Act [Oct. 31, 1978] until 180 days after enactment of this Act."

Effective Date

Subsecs. (a), (b) of section 716 of Pub. L. 88–352 provided that:

"(a) This title [enacting this section and sections 2000e–1, 2000e–4, 2000e–7 to 2000e–15 of this title, and amending sections 2204 and 2205(a)(45) of former Title 5, Executive Departments and Government Officers and Employees] shall become effective one year after the date of its enactment [July 2, 1964].

"(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 [sections 2000e–2, 2000e–3, 2000e–5, and 2000e–6 of this title] shall become effective immediately [July 2, 1964]."

Glass Ceiling

Title II of Pub. L. 102–166, entitled the "Glass Ceiling Act of 1991", established a Glass Ceiling Commission which was to submit to Congress, no later than 15 months after Nov. 21, 1991, study and recommendations concerning eliminating artificial barriers to advancement of women and minorities in the workplace and increasing opportunities and developmental experiences of women and minorities to foster advancement to management and decisionmaking positions in businesses, authorized creation of a National Award for Diversity and Excellence in American Executive Management which was to be awarded annually by the Commission to a qualified business concern which promoted more diverse skilled work force at management and decisionmaking levels in business, and further provided for composition of Commission, powers, staff and consultants, confidentiality of information, appropriations, and termination of Commission and authority to make awards 4 years after Nov. 21, 1991.

Readjustment of Benefits

Section 3 of Pub. L. 95–555 provided that: "Until the expiration of a period of one year from the date of enactment of this Act [Oct. 31, 1978] or, if there is an applicable collective-bargaining agreement in effect on the date of enactment of this Act, until the termination of that agreement, no person who, on the date of enactment of this Act is providing either by direct payment or by making contributions to a fringe benefit fund or insurance program, benefits in violation with this Act [amending this section and enacting provisions set out above] shall, in order to come into compliance with this Act, reduce the benefits or the compensation provided any employee on the date of enactment of this Act, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program: Provided, That where the costs of such benefits on the date of enactment of this Act are apportioned between employers and employees, the payments or contributions required to comply with this Act may be made by employers and employees in the same proportion: And provided further, That nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with this Act."

Executive Order No. 11126

Ex. Ord. No. 11126, Nov. 1, 1963, 28 F.R. 11717, as amended by Ex. Ord. No. 11221, May 6, 1965, 30 F.R. 6427; Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, which related to the Interdepartmental Committee on the Status of Women and the Citizens' Advisory Council on the Status of Women, was revoked by Ex. Ord. No. 12050, Apr. 4, 1978, 43 F.R. 14431, formerly set out below.

Ex. Ord. No. 11246. Equal Opportunity in Federal Employment

Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, as amended by Ex. Ord. No. 11375, Oct. 13, 1967, 32 F.R. 14303; Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985; Ex. Ord. No. 12086, Oct. 5, 1978, 43 F.R. 46501, provided:

Under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Part I—Nondiscrimination in Government Employment

[Superseded. Ex. Ord. No. 11478, eff. Aug. 8, 1969, 34 F.R. 12985.]

Part II—Nondiscrimination in Employment by Government Contractors and Subcontractors

subpart a—duties of the secretary of labor

Sec. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

subpart b—contractors' agreements

Sec. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

"(5) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further

Government contracts in accordance with procedures authorized in Executive Order No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 [section 204 of this Order] so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

Sec. 203. (a) Each contractor having a contract containing the provisions prescribed in Section 202 shall file, and shall cause each of his subcontractors to file, Compliance Reports with the contracting agency or the Secretary of Labor as may be directed. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form, as the Secretary of Labor may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this Order, or any preceding similar Executive order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: Provided, That to the extent such information is within the exclusive possession of a labor union or any agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will

affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

Sec. 204. The Secretary of Labor may, when he deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including any or all of the provisions of Section 202 of this Order in any specific contract, subcontract, or purchase order. The Secretary of Labor may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (1) whenever work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (2) for standard commercial supplies or raw materials; (3) involving less than specified amounts of money or specified numbers of workers; or (4) to the extent that they involve subcontracts below a specified tier. The Secretary of Labor may also provide, by rule, regulation, or order, for the exemption of facilities of a contractor which are in all respects separate and distinct from activities of the contractor related to the performance of the contract: Provided, That such an exemption will not interfere with or impede the effectuation of the purposes of this order: And provided further, That in the absence of such an exemption all facilities shall be covered by the provisions of this Order.

subpart c—powers and duties of the secretary of labor and the contracting agencies

Sec. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

Sec. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

Sec. 207. The Secretary of Labor shall use his best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other

appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 [sections 2000d to 2000d–4 of this title and this subchapter] or other provision of Federal law.

Sec. 208. (a) The Secretary of Labor, or any agency, officer, or employee in the executive branch of the Government designated by rule, regulation, or order of the Secretary, may hold such hearings, public or private, as the Secretary may deem advisable for compliance, enforcement, or educational purposes.

(b) The Secretary of Labor may hold, or cause to be held, hearings in accordance with Subsection (a) of this Section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this Order. No order for debarment of any contractor from further Government contracts under Section 209(a)(6) shall be made without affording the contractor an opportunity for a hearing.

subpart d—sanctions and penalties

Sec. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

(1) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this Order or of the rules, regulations, and orders of the Secretary of Labor.

(2) Recommend to the Department of Justice that, in cases in which there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in Section 202 of this Order, appropriate proceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals, or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the provisions of this Order.

(3) Recommend to the Equal Employment Opportunity Commission or the Department of Justice that appropriate proceedings be instituted under Title VII of the Civil Rights Act of 1964 [this subchapter].

(4) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Secretary of Labor as the case may be.

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

(6) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor, until such contractor has satisfied the Secretary of Labor that such contractor has established and will carry out personnel and employment policies in compliance with the provisions of this Order.

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

Sec. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

Sec. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

Sec. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

subpart e—certificates of merit

Sec. 213. The Secretary of Labor may provide for issuance of a United States Government Certificate of Merit to employers or labor unions, or other agencies which are or may hereafter be engaged in work under Government contracts, if the Secretary is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading, and other practices, and policies of the labor union or other agency conform to the purposes and provisions of this Order.

Sec. 214. Any Certificate of Merit may at any time be suspended or revoked by the Secretary of Labor if the holder thereof, in the judgment of the Secretary, has failed to comply with the provisions of this Order.

Sec. 215. The Secretary of Labor may provide for the exemption of any employer, labor union, or other agency from any reporting requirements imposed under or pursuant to this Order if such employer, labor union, or other agency has been awarded a Certificate of Merit which has not been suspended or revoked.

Part III—Nondiscrimination Provisions in Federally Assisted Construction Contracts

Sec. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor; together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

Sec. 302. (a) "Construction contract," as used in this Order means any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property.

(b) The provisions of Part II of this Order shall apply to such construction contracts, and for purposes of such application the administering department or agency shall be considered the contracting agency referred to therein.

(c) The term "applicant" as used in this Order means an applicant for Federal assistance or, as determined by agency regulation, other program participant, with respect to whom an application for any grant, contract, loan, insurance, or guarantee is not finally acted upon prior to the effective date of this Part, and it includes such an applicant after he becomes a recipient of such Federal assistance.

Sec. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

Sec. 304. Any executive department or agency which imposes by rule, regulation, or order requirements of nondiscrimination in employment, other than requirements imposed pursuant to this Order, may delegate to the Secretary of Labor by agreement such responsibilities with respect to compliance standards, reports, and procedures as would tend to bring the administration of such requirements into conformity with the administration of requirements imposed under this Order: Provided, That actions to effect compliance by recipients of Federal financial assistance with requirements imposed pursuant to Title VI of the Civil Rights Act of 1964 [sections 2000d to 2000d–4 of this title] shall be taken in conformity with the procedures and limitations prescribed in Section 602 thereof [section 2000d–1 of this title] and the regulations of the administering department or agency issued thereunder.

Part IV—Miscellaneous

Sec. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

Sec. 402. The Secretary of Labor shall provide administrative support for the execution of the program known as the "Plans for Progress."

Sec. 403. (a) Executive Orders Nos. 10590 (January 19, 1955), 10722 (August 5, 1957), 10925 (March 6, 1961), 11114 (June 22, 1963), and 11162 (July 28, 1964), are hereby superseded and the President's Committee on Equal Employment Opportunity established by Executive Order No. 10925 is hereby abolished. All records and property in the custody of the Committee shall be transferred to the Civil Service Commission and the Secretary of Labor, as appropriate.

(b) Nothing in this Order shall be deemed to relieve any person of any obligation assumed or imposed under or pursuant to any Executive Order superseded by this Order. All rules, regulations, orders, instructions, designations, and other directives issued by the President's Committee on Equal Employment Opportunity and those issued by the heads of various departments or agencies under or pursuant to any of the Executive orders superseded by this Order, shall, to the extent that they are not inconsistent with this Order, remain in full force and effect unless and until revoked or superseded by appropriate authority. References in such directives to provisions of the superseded orders shall be deemed to be references to the comparable provisions of this Order.

Sec. 404. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this Order and of the rules and regulations of the Secretary of Labor.

Sec. 405. This Order shall become effective thirty days after the date of this Order.

Ex. Ord. No. 11478. Equal Employment Opportunity in Federal Government

Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985, as amended by Ex. Ord. No. 11590, Apr. 23, 1971, 36 F.R. 7831; Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053; Ex. Ord. No. 13087, May 28, 1998, 63 F.R. 30097, provided:

NOW THEREFORE, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Section 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, age, or sexual orientation, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government, to the extent permitted by law.

Sec. 2. The head of each executive department and agency shall establish and maintain an affirmative program of equal employment opportunity for all civilian employees and applicants for employment within his jurisdiction in accordance with the policy set forth in section 1. It is the responsibility of each department and agency head, to the maximum extent possible, to provide sufficient resources to administer such a program in a positive and effective manner; assure that recruitment activities reach all sources of job candidates; utilize to the fullest extent the present skills of each employee; provide the maximum feasible opportunity to employees to enhance their skills so they may perform at their highest potential and advance in accordance with their abilities; provide training and advice to managers and supervisors to assure their understanding and implementation of the policy expressed in this Order; assure participation at the local level with other employers, schools, and public or private groups in cooperative efforts to improve community conditions which affect employability; and provide for a system within the department or agency for periodically evaluating the effectiveness with which the policy of this Order is being carried out.

Sec. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

Sec. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

Sec. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order.

Sec. 6. This Order applies (a) to military departments as defined in section 102 of title 5, United States Code, and executive agencies (other than the General Accounting Office) as defined in section 105 of title 5, United States Code, and to the employees thereof (including employees paid from nonappropriated funds), and (b) to those portions of the legislative and judicial branches of the Federal Government and of the Government of the District of Columbia having positions in the competitive service and to the employees in those positions. This Order does not apply to aliens employed outside the limits of the United States.

Sec. 7. Part I of Executive Order No. 11246 of September 24, 1965, and those parts of Executive Order No. 11375 of October 13, 1967, which apply to Federal employment, are hereby superseded.

Sec. 8. This Order shall be applicable to the United States Postal Service and to the Postal Rate Commission established by the Postal Reorganization Act of 1970 [Title 39, Postal Service].

Executive Order No. 12050

Ex. Ord. No. 12050, Apr. 4, 1978, 43 F.R. 14431, as amended by Ex. Ord. No. 12057, May 8, 1978, 43 F.R. 19811; Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639; Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, which established a National Advisory Committee for Women, was omitted in view of the revocation of sections 1 to 5 and 7 and 8 by Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639 and the revocation of section 6 by Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239.

Ex. Ord. No. 12067. Coordination of Federal Equal Employment Opportunity Programs

Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out under section 2000e–4 of this title and in the Appendix to Title 5, Government Organizations and Employees], it is ordered as follows:

1–1. Implementation of Reorganization Plan

1–101. The transfer to the Equal Employment Opportunity Commission of all the functions of the Equal Employment Opportunity Coordinating Council, and the termination of that Council, as provided by Section 6 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out under section 2000e–4 of this title and in the Appendix to Title 5, Government Organization and Employees] shall be effective on July 1, 1978.

1–2. Responsibilities of Equal Employment Opportunity Commission

1–201. The Equal Employment Opportunity Commission shall provide leadership and coordination to the efforts of Federal departments and agencies to enforce all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity without regard to race, color, religion, sex, national origin, age or handicap. It shall strive to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the Federal departments and agencies having responsibility for enforcing such statutes, Executive orders, regulations and policies.

1–202. In carrying out its functions under this order the Equal Employment Opportunity Commission shall consult with and utilize the special expertise of Federal departments and agencies

with equal employment opportunity responsibilities. The Equal Employment Opportunity Commission shall cooperate with such departments and agencies in the discharge of their equal employment responsibilities.

1–203. All Federal departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this order and shall furnish the Commission such reports and information as it may request.

1–3. Specific Responsibilities

1–301. To implement its responsibilities under Section 1–2, the Equal Employment Opportunity Commission shall, where feasible:

(a) develop uniform standards, guidelines, and policies defining the nature of employment discrimination on the ground of race, color, religion, sex, national origin, age or handicap under all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity;

(b) develop uniform standards and procedures for investigations and compliance reviews to be conducted by Federal departments and agencies under any Federal statute, Executive order, regulation or policy requiring equal employment opportunity;

(c) develop procedures with the affected agencies, including the use of memoranda of understanding, to minimize duplicative investigations or compliance reviews of particular employers or classes of employers or others covered by Federal statutes, Executive orders, regulations or policies requiring equal employment opportunity;

(d) ensure that Federal departments and agencies develop their own standards and procedures for undertaking enforcement actions when compliance with equal employment opportunity requirements of any Federal statute, Executive order, regulation or policy cannot be secured by voluntary means;

(e) develop uniform record-keeping and reporting requirements concerning employment practices to be utilized by all Federal departments and agencies having equal employment enforcement responsibilities;

(f) provide for the sharing of compliance records, findings, and supporting documentation among Federal departments and agencies responsible for ensuring equal employment opportunity;

(g) develop uniform training programs for the staff of Federal departments and agencies with equal employment opportunity responsibilities;

(h) assist all Federal departments and agencies with equal employment opportunity responsibilities in developing programs to provide appropriate publications and other information for those covered and those protected by Federal equal employment opportunity statutes, Executive orders, regulations, and policies; and

(i) initiate cooperative programs, including the development of memoranda of understanding between agencies, designed to improve the coordination of equal employment opportunity compliance and enforcement.

1–302. The Equal Employment Opportunity Commission shall assist the Office of Personnel Management, or its successor, in establishing uniform job-related qualifications and requirements for job classifications and descriptions for Federal employees involved in enforcing all Federal equal employment opportunity provisions.

1–303. The Equal Employment Opportunity Commission shall issue such rules, regulations, policies, procedures or orders as it deems necessary to carry out its responsibilities under this order. It shall advise and offer to consult with the affected Federal departments and agencies during the development of any proposed rules, regulations, policies, procedures or orders and shall formally submit such proposed issuances to affected departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall use its best efforts to reach agreement with the agencies on matters in dispute. Departments and agencies shall comply with all final rules, regulations, policies, procedures or orders of the Equal Employment Opportunity Commission.

1–304. All Federal departments and agencies shall advise and offer to consult with the Equal Employment Opportunity Commission during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity. Departments and agencies shall formally submit such proposed issuances to the Equal Employment Opportunity Commission and other interested Federal departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall review such proposed rules, regulations, policies, procedures or orders to ensure consistency among the operations of the various Federal departments and agencies. Issuances related to internal management and administration are exempt from this clearance process. Case handling procedures unique to a single program also are exempt, although the Equal Employment Opportunity Commission may review such procedures in order to assure maximum consistency within the Federal equal employment opportunity program.

1–305. Before promulgating significant rules, regulations, policies, procedures or orders involving equal employment opportunity, the Commission and affected departments and agencies shall afford the public an opportunity to comment.

1–306. The Equal Employment Opportunity Commission may make recommendations concerning staff size and resource needs of the Federal departments and agencies having equal employment opportunity responsibilities to the Office of Management and Budget.

1–307. (a) It is the intent of this order that disputes between or among agencies concerning matters covered by this order shall be resolved through good faith efforts of the affected agencies to reach mutual agreement. Use of the dispute resolution mechanism contained in Subsections (b) and (c) of this Section should be resorted to only in extraordinary circumstances.

(b) Whenever a dispute which cannot be resolved through good faith efforts arises between the Equal Employment Opportunity Commission and another Federal department or agency concerning the issuance of an equal employment opportunity rule, regulation, policy, procedure, order or any matter covered by this Order, the Chairman of the Equal Employment Opportunity Commission or the head of the affected department or agency may refer the matter to the Executive Office of the President. Such reference must be in writing and may not be made later than 15 working days following receipt of the initiating agency's notice of intent publicly to announce an equal employment opportunity rule, regulation, policy, procedure or order. If no reference is made within the 15 day period, the decision of the agency which initiated the proposed issuance will become effective.

(c) Following reference of a disputed matter to the Executive Office of the President, the Assistant to the President for Domestic Affairs and Policy (or such other official as the President may designate) shall designate an official within the Executive Office of the President to meet with the affected agencies to resolve the dispute within a reasonable time.

1–4. Annual Report

1–401. The Equal Employment Opportunity Commission shall include in the annual report transmitted to the President and the Congress pursuant to Section 715 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–14), a statement of the progress that has been made in achieving the purpose of this order. The Equal Employment Opportunity Commission shall provide Federal departments and agencies an opportunity to comment on the report prior to formal submission.

1–5. General Provisions

1–501. Nothing in this order shall relieve or lessen the responsibilities or obligations imposed upon any person or entity by Federal equal employment law, Executive order, regulation or policy.

1–502. Nothing in this order shall limit the Attorney General's role as legal adviser to the Executive Branch.

Jimmy Carter.

Ex. Ord. No. 12086. Consolidation of Contract Compliance Functions for Equal Employment Opportunity

Ex. Ord. No. 12086, Oct. 5, 1978, 43 F.R. 46501, as amended by Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c) [31 U.S.C. 1531], in order to provide for the transfer to the Department of Labor of certain contract compliance functions relating to equal employment opportunity, it is hereby ordered as follows:

1–1. Transfer of Functions

1–101. The functions concerned with being primarily responsible for the enforcement of the equal employment opportunity provisions under Parts II and III of Executive Order. No. 11246, as amended [set out as a note above], are transferred or reassigned to the Secretary of Labor from the following agencies:

(a) Department of the Treasury.

(b) Department of Defense.

(c) Department of the Interior.

(d) Department of Commerce.

(e) Department of Health and Human Services.

(f) Department of Housing and Urban Development.

(g) Department of Transportation.

(h) Department of Energy.

(i) Environmental Protection Agency.

(j) General Services Administration.

(k) Small Business Administration.

1–102. The records, property, personnel and positions, and unexpended balances of appropriations or funds related to the functions transferred or reassigned by this Order, that are available and necessary to finance or discharge those functions, are transferred to the Secretary of Labor.

1–103. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

1–2. Conforming Amendments to Executive Order No. 11246

1–201(a). In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, Section 201 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.".

(b) Paragraph (7) of the contract clauses specified in Section 202 of Executive Order No. 11246, as amended, is amended to read:

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.".

1–202. In subsection (c) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency" in the proviso and substitute "Secretary of Labor" therefor.

1–203. In both the beginning and end of subsection (d) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency or the" in the phrase "contracting agency or the Secretary".

1–204. Section 205 of Executive Order No. 11246, as amended, is amended by deleting the last two sentences, which dealt with agency designation of compliance officers, and revising the rest of that Section to read:

"Sec. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.".

1–205. In order to delete references to the contracting agencies conducting investigations, Section 206 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.".

"(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.".

1–206. In Section 207 of Executive Order No. 11246, as amended, delete "contracting agencies, other" in the first sentence.

1–207. The introductory clause in Section 209(a) of Executive Order No. 11246, as amended, is amended by deleting "or the appropriate contracting agency" from "In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:".

1–208. In paragraph (5) of Section 209(a) of Executive Order No. 11246, as amended, insert at the beginning the phrase "After consulting with the contracting agency, direct the contracting agency to", and at the end of paragraph (5) delete "contracting agency" and substitute therefor "Secretary of Labor" so that paragraph (5) is amended to read:

"(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.".

1–209. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions, substitute "Secretary of Labor" for "each contracting agency" in Section 209(b) of Executive Order No. 11246, as amended, so that Section 209(b) is amended to read:

"(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.".

1–210. In order to reflect the responsibility of the contracting agencies for prompt compliance with the directions of the Secretary of Labor, Sections 210 and 211 of Executive Order No. 11246, as amended, are amended to read:

"Sec. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.".

"Sec. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.".

1–211. Section 212 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.".

1–212. In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, references to the administering department or agency are deleted in clauses (1), (2), and (3) of Section 301 of Executive Order No. 11246, as amended, and those clauses are amended to read:

"(1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order,".

1–213. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions "Secretary of Labor" shall be substituted for "administering department or agency" in Section 303 of Executive Order No. 11246, as amended, and Section 303 is amended to read:

"Sec. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.".

"(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer

the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.".

"(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.".

1–214. Section 401 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.".

1–3. General Provisions

1–301. The transfers or reassignments provided by Section 1–1 of this Order shall take effect at such time or times as the Director of the Office of Management and Budget shall determine. The Director shall ensure that all such transfers or reassignments take effect within 60 days.

1–302. The conforming amendments provided by Section 1–2 of this Order shall take effect on October 8, 1978; except that, with respect to those agencies identified in Section 1–101 of this Order, the conforming amendments shall be effective on the effective date of the transfer or reassignment of functions as specified pursuant to Section 1–301 of this Order.

Executive Order No. 12135

Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639, which established the President's Advisory Committee for Women, was revoked by Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, set out below.

Ex. Ord. No. 12336. Task Force on Legal Equity for Women

Ex. Ord. No. 12336, Dec. 21, 1981, 46 F.R. 62239, as amended by Ex. Ord. No. 12355, Apr. 1, 1982, 47 F.R. 14479, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for the systematic elimination of regulatory and procedural barriers which have unfairly precluded women from receiving equal treatment from Federal activities, it is hereby ordered as follows:

Section 1. Establishment. (a) There is established the Task Force on Legal Equity for Women.

(b) The Task Force members shall be appointed by the President from among nominees by the heads of the following Executive agencies, each of which shall have one representative on the Task Force.

(1) Department of State.

(2) Department of The Treasury.

(3) Department of Defense.

(4) Department of Justice.

(5) Department of The Interior.

(6) Department of Agriculture.

(7) Department of Commerce.

(8) Department of Labor.

(9) Department of Health and Human Services.

(10) Department of Housing and Urban Development.

(11) Department of Transportation.

(12) Department of Energy.

(13) Department of Education.

(14) Agency for International Development.

(15) Veterans Administration [now Department of Veterans Affairs].

(16) Office of Management and Budget.

(17) International Communication Agency.

(18) Office of Personnel Management.

(19) Environmental Protection Agency.

(20) ACTION [now Corporation for National and Community Service].

(21) Small Business Administration.

(c) The President shall designate one of the members to chair the Task Force. Other agencies may be invited to participate in the functions of the Task Force.

Sec. 2. Functions. (a) The members of the Task Force shall be responsible for coordinating and facilitating in their respective agencies, under the direction of the head of their agency, the implementation of changes ordered by the President in sex-discriminatory Federal regulations, policies, and practices.

(b) The Task Force shall periodically report to the President on the progress made throughout the Government in implementing the President's directives.

(c) The Attorney General shall complete the review of Federal laws, regulations, policies, and practices which contain language that unjustifiably differentiates, or which effectively discriminates, on the basis of sex. The Attorney General or his designee shall, on a quarterly basis, report his findings to the President through the Cabinet Council on Legal Policy.

Sec. 3. Administration. (a) The head of each Executive agency shall, to the extent permitted by law, provide the Task Force with such information and advice as the Task Force may identify as being useful to fulfill its functions.

(b) The agency with its representative chairing the Task Force shall, to the extent permitted by law, provide the Task Force with such administrative support as may be necessary for the effective performance of its functions.

(c) The head of each agency represented on the Task Force shall, to the extent permitted by law, furnish its representative such administrative support as is necessary and appropriate.

Sec. 4. General Provisions. (a) Section 1–101(h) of Executive Order No. 12258, as amended, is revoked.

(b) Executive Order No. 12135 is revoked.

(c) Section 6 of Executive Order No. 12050, as amended, is revoked.

Ronald Reagan.

[The International Communication Agency was redesignated the United States Information Agency, see section 303 of Pub. L. 97–241, title III, Aug. 24, 1982, 96 Stat. 291, set out as a note under section 1461 of Title 22, Foreign Relations and Intercourse. For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22.]

Section Referred to in Other Sections

This section is referred to in section 12111 of this title; title 43 section 1626.

§2000e–1. Applicability to foreign and religious employment

(a) Inapplicability of subchapter to certain aliens and employees of religious entities

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(b) Compliance with statute as violative of foreign law

It shall not be unlawful under section 2000e–2 or 2000e–3 of this title for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such agency, or such committee to violate the law of the foreign country in which such workplace is located.

(c) Control of corporation incorporated in foreign country

(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 2000e–2 or 2000e–3 of this title engaged in by such corporation shall be presumed to be engaged in by such employer.

(2) Sections 2000e–2 and 2000e–3 of this title shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on—

(A) the interrelation of operations;

(B) the common management;

(C) the centralized control of labor relations; and

(D) the common ownership or financial control,

of the employer and the corporation.

(Pub. L. 88–352, title VII, §702, July 2, 1964, 78 Stat. 255; Pub. L. 92–261, §3, Mar. 24, 1972, 86 Stat. 103; Pub. L. 102–166, title I, §109(b)(1), Nov. 21, 1991, 105 Stat. 1077.)

Amendments

1991—Pub. L. 102–166 designated existing provisions as subsec. (a) and added subsecs. (b) and (c).

1972—Pub. L. 92–261 struck out exemption for employment of individuals engaged in educational activities of nonreligious educational institutions.

Effective Date of 1991 Amendment

Amendment by Pub. L. 102–166 inapplicable to conduct occurring before Nov. 21, 1991, see section 109(c) of Pub. L. 102–166, set out as a note under section 2000e of this title.

Section Referred to in Other Sections

This section is referred to in sections 604a, 9920 of this title.

§2000e–2. Unlawful employment practices

(a) Employer practices

It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

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

(b) Employment agency practices

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 his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any 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, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be 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 such school, college, university, or other educational institution or institution of learning is, in whole or in 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 such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor-management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 [50 U.S.C. 781 et seq.].

(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if—

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or 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 are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of title 29.

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases

(1)(A) An unlawful employment practice based on disparate impact is established under this subchapter only if—

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B)(i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by

business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21 U.S.C. 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(l) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders

(1)(A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws—

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had —

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to—

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of title 28.

(Pub. L. 88–352, title VII, §703, July 2, 1964, 78 Stat. 255; Pub. L. 92–261, §8(a), (b), Mar. 24, 1972, 86 Stat. 109; Pub. L. 102–166, title I, §§105(a), 106, 107(a), 108, Nov. 21, 1991, 105 Stat. 1074–1076.)

References in Text

The Subversive Activities Control Act of 1950, referred to in subsec. (f), is title I (§§1–32) of act Sept. 23, 1950, ch. 1024, 64 Stat. 987, as amended, which is classified principally to subchapter I (§781 et seq.) of chapter 23 of Title 50, War and National Defense. For complete classification of this Act to the Code, see Tables.

The Controlled Substances Act, referred to in subsec. (k)(3), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Federal civil rights laws, referred to in subsec. (n)(1), are classified generally to chapter 21 (§1981 et seq.) of this title.

The Federal Rules of Civil Procedure, referred to in subsec. (n)(2)(A), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Amendments

1991—Subsec. (k). Pub. L. 102–166, §105(a), added subsec. (k).

Subsec. (l). Pub. L. 102–166, §106, added subsec. (l).

Subsec. (m). Pub. L. 102–166, §107(a), added subsec. (m).

Subsec. (n). Pub. L. 102–166, §108, added subsec. (n).

1972—Subsec. (a)(2). Pub. L. 92–261, §8(a), inserted "or applicants for employment" after "his employees".

Subsec. (c)(2). Pub. L. 92–261, §8(b), inserted "or applicants for membership" after "membership".

Effective Date of 1991 Amendment

Amendment by Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

Subversive Activities Control Board

Subversive Activities Control Board established by act Sept. 23, 1950, ch. 1024, §12, 64 Stat. 977, and ceased to operate on June 30, 1973.

Section Referred to in Other Sections

This section is referred to in sections 1981a, 2000e, 2000e–1, 2000e–5 of this title; title 2 section 1311; title 3 section 411; title 8 section 1324b; title 23 section 140.

§2000e–3. Other unlawful employment practices

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission

to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

(Pub. L. 88–352, title VII, §704, July 2, 1964, 78 Stat. 257; Pub. L. 92–261, §8(c), Mar. 24, 1972, 86 Stat. 109.)

Amendments

1972—Subsec. (a). Pub. L. 92–261, §8(c)(1), inserted provision making it an unlawful employment practice for a joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against the specified individuals.

Subsec. (b). Pub. L. 92–261, §8(c)(2), inserted provisions making prohibitions applicable to joint labor-management committees controlling apprenticeship or other training or retraining, including on-the-job training programs, and notices or advertisements of such joint labor-management committees relating to admission to, or employment in, any program established to provide apprenticeship or other training.

Section Referred to in Other Sections

This section is referred to in sections 1981a, 2000e–1, 2000e–5 of this title.

§2000e–4. Equal Employment Opportunity Commission

(a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of title 5 governing appointments in the competitive service, such officers, agents,

attorneys, administrative law judges, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of title 5.

(b) General Counsel; appointment; term; duties; representation by attorneys and Attorney General

(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e–5 and 2000e–6 of this title. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

(c) Exercise of powers during vacancy; quorum

A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(d) Seal; judicial notice

The Commission shall have an official seal which shall be judicially noticed.

(e) Reports to Congress and the President

The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) Principal and other offices

The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

(g) Powers of Commission

The Commission shall have power—

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e–5 of this title by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

(h) Cooperation with other departments and agencies in performance of educational or promotional activities; outreach activities

(1) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(2) In exercising its powers under this subchapter, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to—

(A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

(B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination,

concerning rights and obligations under this subchapter or such law, as the case may be.

(i) Personnel subject to political activity restrictions

All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324 1 of title 5, notwithstanding any exemption contained in such section.

(j) Technical Assistance Training Institute

(1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

(2) An employer or other entity covered under this subchapter shall not be excused from compliance with the requirements of this subchapter because of any failure to receive technical assistance under this subsection.

(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.

(k) EEOC Education, Technical Assistance, and Training Revolving Fund

(1) There is hereby established in the Treasury of the United States a revolving fund to be known as the "EEOC Education, Technical Assistance, and Training Revolving Fund" (hereinafter in this subsection referred to as the "Fund") and to pay the cost (including administrative and personnel expenses) of providing education, technical assistance, and training relating to laws administered by the Commission. Monies in the Fund shall be available without fiscal year limitation to the Commission for such purposes.

(2)(A) The Commission shall charge fees in accordance with the provisions of this paragraph to offset the costs of education, technical assistance, and training provided with monies in the Fund. Such fees for any education, technical assistance, or training—

(i) shall be imposed on a uniform basis on persons and entities receiving such education, assistance, or training,

(ii) shall not exceed the cost of providing such education, assistance, and training, and

(iii) with respect to each person or entity receiving such education, assistance, or training, shall bear a reasonable relationship to the cost of providing such education, assistance, or training to such person or entity.

(B) Fees received under subparagraph (A) shall be deposited in the Fund by the Commission.

(C) The Commission shall include in each report made under subsection (e) of this section information with respect to the operation of the Fund, including information, presented in the aggregate, relating to—

(i) the number of persons and entities to which the Commission provided education, technical assistance, or training with monies in the Fund, in the fiscal year for which such report is prepared,

(ii) the cost to the Commission to provide such education, technical assistance, or training to such persons and entities, and

(iii) the amount of any fees received by the Commission from such persons and entities for such education, technical assistance, or training.

(3) The Secretary of the Treasury shall invest the portion of the Fund not required to satisfy current expenditures from the Fund, as determined by the Commission, in obligations of the United States or obligations guaranteed as to principal by the United States. Investment proceeds shall be deposited in the Fund.

(4) There is hereby transferred to the Fund $1,000,000 from the Salaries and Expenses appropriation of the Commission.

(Pub. L. 88–352, title VII, §705, July 2, 1964, 78 Stat. 258; Pub. L. 92–261, §8(d)–(f), Mar. 24, 1972, 86 Stat. 109, 110; Pub. L. 93–608, §3(1), Jan. 2, 1975, 88 Stat. 1972; Pub. L. 95–251, §2(a)(11), Mar. 27, 1978, 92 Stat. 183; Pub. L. 102–166, title I, §§110(a), 111, Nov. 21, 1991, 105 Stat. 1078; Pub. L. 102–411, §2, Oct. 14, 1992, 106 Stat. 2102; Pub. L. 104–66, title II, §2031, Dec. 21, 1995, 109 Stat. 728.)

References in Text

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsec. (a), is set out under section 5332 of Title 5.

The effective date of this Act, referred to in subsec. (b)(1), probably means the date of enactment of Pub. L. 92–261, which was approved Mar. 24, 1972.

Section 7324 of title 5, referred to in subsec. (i), which related to Executive agency employees or District of Columbia government employees influencing elections or taking part in political campaigns, was omitted in the general revision of subchapter III of chapter 73 of Title 5 by Pub. L. 103–94, §2(a), Oct. 6, 1993, 107 Stat. 1003, which enacted a new section 7324, relating to prohibition of political activities while on duty. See section 7323 of Title 5.

Codification

In subsec. (a), reference to section "5372" of title 5 substituted for reference to section "5362" on authority of Pub. L. 95–454, §801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221, which redesignated sections 5361 through 5365 of title 5 as sections 5371 through 5375.

In subsec. (i), "section 7324 of title 5" substituted for "section 9 of the Act of August 2, 1939, as amended (the Hatch Act)" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees. Prior to the enactment of Title 5, section 9 of the Act of August 2, 1939, as amended, was classified to section 118i of Title 5.

Amendments

1995—Subsec. (k)(2)(C). Pub. L. 104–66 substituted "including information, presented in the aggregate, relating to" for "including" in introductory provisions, "the number of persons and entities" for "the identity of each person or entity" in cl. (i), "such persons and entities" for "such person or entity" in cl. (ii), and "fees" for "fee" and "such persons and entities" for "such person or entity" in cl. (iii).

1992—Subsec. (k). Pub. L. 102–411 added subsec. (k).

1991—Subsec. (h). Pub. L. 102–166, §111, designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 102–166, §110(a), added subsec. (j).

1978—Subsec. (a). Pub. L. 95–251 substituted "administrative law judges" for "hearing examiners" wherever appearing.

1975—Subsec. (e). Pub. L. 93–608 struck out reporting requirement of names, salaries, and duties of all individuals in employ of Commission.

1972—Subsec. (a). Pub. L. 92–261, §8(d), struck out provisions setting forth length of terms of original members of Commission and provisions authorizing Vice Chairman to act as Chairman in certain circumstances, inserted provisions relating to continuation in office of all members of Commission, and substituted provisions requiring appointment of officers, etc., in accordance with provisions of title 5, fixing compensation of such officers, etc., in accordance with provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates, and requiring assignment, removal, and compensation of hearing examiners in accordance with specified sections, for provisions requiring appointment of officers, etc., in accordance with civil service laws, and fixing compensation of such officers, etc., in accordance with the Classification Act of 1949, as amended.

Subsecs. (b) to (e). Pub. L. 92–261, §8(e), added subsec. (b), struck out subsec. (e) which amended sections 2204 and 2205 of former Title 5, Executive Departments and Government Officers and Employees, and redesignated existing subsecs. (b), (c), and (d) as (c), (d), and (e), respectively.

Subsec. (g)(6). Pub. L. 92–261, §8(f), substituted provisions which authorized Commission to intervene in a civil action brought under section 2000e–5 of this title where respondent is other than a government, governmental agency, or political subdivision for provisions which authorized Commission to refer matters to Attorney General with recommendations to intervene or institute civil actions.

Subsecs. (h) to (j). Pub. L. 92–261, §8(e)(2), (3), struck out subsec. (h) which provided for legal representation for Commission, and redesignated subsecs. (i) and (j) as (h) and (i), respectively.

Effective Date of 1991 Amendment

Section 110(b) of Pub. L. 102–166 provided that: "The amendment made by this section [amending this section] shall take effect on the date of the enactment of this Act [Nov. 21, 1991]."

Amendment by section 111 of Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

Reorganization Plan No. 1 of 1978 Superseded by Civil Service Reform Act of 1978

Section 905 of Pub. L. 95–454, Oct. 13, 1978, 92 Stat. 1224, provided in part that any provision in Reorganization Plan No. 1 of 1978 [set out below] inconsistent with any provision of that Act [see Tables for classification] was superseded thereby.

REORGANIZATION PLAN NO. 1 OF 1978

43 F.R. 19807, 92 Stat. 3781

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 23, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

EQUAL EMPLOYMENT OPPORTUNITY

Section 1. Transfer of Equal Pay Enforcement Functions

All functions related to enforcing or administering Section 6(d) of the Fair Labor Standards Act, as amended, (29 U.S.C. 206(d)) are hereby transferred to the Equal Employment Opportunity Commission. Such functions include, but shall not be limited to, the functions relating to equal pay administration and enforcement now vested in the Secretary of Labor, the Administrator of the Wage and Hour Division of the Department of Labor, and the Civil Service Commission pursuant to Sections 4(d)(1); 4(f); 9; 11(a), (b), and (c); 16(b) and (c) and 17 of the Fair Labor Standards Act, as amended, (29 U.S.C. 204(d)(1); 204(f); 209; 211(a), (b), and (c); 216(b) and (c) and 217) and Section 10(b)(1) of the Portal-to-Portal Act of 1947, as amended, (29 U.S.C. 259).

Sec. 2. Transfer of Age Discrimination Enforcement Functions

All functions vested in the Secretary of Labor or in the Civil Service Commission pursuant to Sections 2, 4, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 621, 623, 626, 627, 628, 629, 630, 631, 632, 633, and 633a) are hereby transferred to the Equal Employment Opportunity Commission. All functions related to age discrimination administration and enforcement pursuant to Sections 6 and 16 of the Age

Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 625 and 634) are hereby transferred to the Equal Employment Opportunity Commission.

Sec. 3. Transfer of Equal Opportunity in Federal Employment Enforcement Functions

(a) All equal opportunity in Federal employment enforcement and related functions vested in the Civil Service Commission pursuant to Section 717(b) and (c) of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e–16(b) and (c)), are hereby transferred to the Equal Employment Opportunity Commission.

(b) The Equal Employment Opportunity Commission may delegate to the Civil Service Commission or its successor the function of making a preliminary determination on the issue of discrimination whenever, as a part of a complaint or appeal before the Civil Service Commission on other grounds, a Federal employee alleges a violation of Section 717 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e–16) provided that the Equal Employment Opportunity Commission retains the function of making the final determination concerning such issue of discrimination.

Sec. 4. Transfer of Federal Employment of Handicapped Individuals Enforcement Functions

All Federal employment of handicapped individuals enforcement functions and related functions vested in the Civil Service Commission pursuant to Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) are hereby transferred to the Equal Employment Opportunity Commission. The function of being co-chairman of the Interagency Committee on Handicapped Employees now vested in the Chairman of the Civil Service Commission pursuant to Section 501 is hereby transferred to the Chairman of the Equal Employment Opportunity Commission.

Sec. 5. Transfer of Public Sector 707 Functions

Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with respect to State or local government, or political subdivisions under Section 707 of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e–6) and all necessary functions related thereto, including investigation, findings, notice and an opportunity to resolve the matter without contested litigation, are hereby transferred to the Attorney General, to be exercised by him in accordance with procedures consistent with said Title VII. The Attorney General is authorized to delegate any function under Section 707 of said Title VII to any officer or employee of the Department of Justice.

Sec. 6. Transfer of Functions and Abolition of the Equal Employment Opportunity Coordinating Council

All functions of the Equal Employment Opportunity Coordinating Council, which was established pursuant to Section 715 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e–14), are hereby transferred to the Equal Employment Opportunity Commission. The Equal Employment Opportunity Coordinating Council is hereby abolished.

Sec. 7. Savings Provision

Administrative proceedings including administrative appeals from the acts of an executive agency (as defined by Section 105 of Title 5 of the United States Code) commenced or being conducted by or against such executive agency will not abate by reason of the taking effect of this Plan. Consistent with the provisions of this Plan, all such proceedings shall continue before the Equal Employment Opportunity Commission otherwise unaffected by the transfers provided by this Plan. Consistent with the provisions of this Plan, the Equal Employment Opportunity Commission shall accept appeals from those executive agency actions which occurred prior to the effective date of this Plan in accordance with law and regulations in effect on such effective date. Nothing herein shall affect any right of any person to judicial review under applicable law.

Sec. 8. Incidental Transfers

So much of the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate department, agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of the Council abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

Sec. 9. Effective Date

This Reorganization Plan shall become effective at such time or times, on or before October 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code.

[Pursuant to Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053, the transfer to the Equal Employment Opportunity Commission of certain functions of the Civil Service Commission relating to enforcement of equal employment opportunity programs as provided by sections 1 to 4 of this Reorg. Plan is effective Jan. 1, 1979.]

[Pursuant to Ex. Ord. No. 12144, June 22, 1979, 44 F.R. 37193, sections 1 and 2 of this Reorg. Plan are effective July 1, 1979, except for transfer of functions already effective Jan. 1, 1979, under Ex. Ord. No. 12106 above.]

[Pursuant to Ex. Ord. No. 12068, June 30, 1978, 43 F.R. 28971, section 5 of this Reorg. Plan is effective July 1, 1978.]

[Pursuant to Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, section 6 of this Reorg. Plan is effective July 1, 1978.]

Message of the President

To the Congress of the United States:

I am submitting to you today Reorganization Plan No. 1 of 1978. This Plan makes the Equal Employment Opportunity Commission the principal Federal agency in fair employment enforcement. Together with actions I shall take by Executive Order, it consolidates Federal equal employment opportunity activities and lays, for the first time, the foundation of a unified, coherent Federal structure to combat job discrimination in all its forms.

In 1940 President Roosevelt issued the first Executive Order forbidding discrimination in employment by the Federal government. Since that time the Congress, the courts and the Executive Branch—spurred by the courage and sacrifice of many people and organizations—have taken historic steps to extend equal employment opportunity protection throughout the private as well as public sector. But each new prohibition against discrimination unfortunately has brought with it a further dispersal of Federal equal employment opportunity responsibility. This fragmentation of authority among a number of Federal agencies has meant confusion and ineffective enforcement for employees, regulatory duplication and needless expense for employers.

Fair employment is too vital for haphazard enforcement. My Administration will aggressively enforce our civil rights laws. Although discrimination in any area has severe consequences, limiting economic opportunity affects access to education, housing and health care. I, therefore, ask you to join with me to reorganize administration of the civil rights laws and to begin that effort by reorganizing the enforcement of those laws which ensure an equal opportunity to a job.

Eighteen government units now exercise important responsibilities under statutes, Executive Orders and regulations relating to equal employment opportunity:

The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964, [section 2000e et seq. of this title] which bans employment discrimination based on race, national origin, sex or religion. The EEOC acts on individual complaints and also initiates private sector cases involving a "pattern or practice" of discrimination.

The Department of Labor and 11 other agencies enforce Executive Order 11246 [set out as a note under section 2000e of this title]. This prohibits discrimination in employment on the basis of race, national origin, sex, or religion and requires affirmative action by government contractors. While

the Department now coordinates enforcement of this "contract compliance" program, it is actually administered by eleven other departments and agencies. The Department also administers those statutes requiring contractors to take affirmative action to employ handicapped people, disabled veterans and Vietnam veterans.

In addition, the Labor Department enforces the Equal Pay Act of 1963 [section 206(d) of Title 29, Labor], which prohibits employers from paying unequal wages based on sex, and the Age Discrimination in Employment Act of 1967 [section 621 et seq. of Title 29], which forbids age discrimination against persons between the ages of 40 and 65.

The Department of Justice litigates Title VII cases involving public sector employers—State and local governments. The Department also represents the Federal government in lawsuits against Federal contractors and grant recipients who are in violation of Federal nondiscrimination prohibitions.

The Civil Service Commission (CSC) enforces Title VII and all other nondiscrimination and affirmative action requirements for Federal employment. The CSC rules on complaints filed by individuals and monitors affirmative action plans submitted annually by other Federal agencies.

The Equal Employment Opportunity Coordinating Council includes representatives from EEOC, Labor, Justice, CSC and the Civil Rights Commission. It is charged with coordinating the Federal equal employment opportunity enforcement effort and with eliminating overlap and inconsistent standards.

In addition to these major government units, other agencies enforce various equal employment opportunity requirements which apply to specific grant programs. The Department of the Treasury, for example, administers the anti-discrimination prohibitions applicable to recipients of revenue sharing funds.

These programs have had only limited success. Some of the past deficiencies include:

—inconsistent standards of compliance;

—duplicative, inconsistent paperwork requirements and investigative efforts;

—conflicts within agencies between their program responsibilities and their responsibility to enforce the civil rights laws;

—confusion on the part of workers about how and where to seek redress;

—lack of accountability.

I am proposing today a series of steps to bring coherence to the equal employment enforcement effort. These steps, to be accomplished by the Reorganization Plan and Executive Orders, constitute an important step toward consolidation of equal employment opportunity enforcement. They will be implemented over the next two years, so that the agencies involved may continue their internal reform.

Its experience and broad scope make the EEOC suitable for the role of principal Federal agency in fair employment enforcement. Located in the Executive Branch and responsible to the President, the EEOC has developed considerable expertise in the field of employment discrimination since Congress created it by the Civil Rights Act of 1964 [section 2000e–4 of this title]. The Commission has played a pioneer role in defining both employment discrimination and its appropriate remedies.

While it has had management problems in past administrations, the EEOC's new leadership is making substantial progress in correcting them. In the last seven months the Commission has redesigned its internal structures and adopted proven management techniques. Early experience with these procedures indicates a high degree of success in reducing and expediting new cases. At my direction, the Office of Management and Budget is actively assisting the EEOC to ensure that these reforms continue.

The Reorganization Plan I am submitting will accomplish the following:

On July 1, 1978, abolish the Equal Employment Opportunity Coordinating Council (42 U.S.C. 2000e–14) and transfer its duties to the EEOC (no positions or funds shifted).

On October 1, 1978, shift enforcement of equal employment opportunity for Federal employees from the CSC to the EEOC (100 positions and $6.5 million shifted).

On July 1, 1979, shift responsibility for enforcing both the Equal Pay Act and the Age Discrimination in Employment Act from the Labor Department to the EEOC (198 positions and $5.3 million shifted for Equal Pay; 119 positions and $3.5 million for Age Discrimination).

Clarify the Attorney General's authority to initiate "pattern or practice" suits under Title VII in the public sector.

In addition, I will issue an Executive Order on October 1, 1978, to consolidate the contract compliance program—now the responsibility of Labor and eleven "compliance agencies"—into the Labor Department (1,517 positions and $33.1 million shifted).

These proposed transfers and consolidations reduce from fifteen to three the number of Federal agencies having important equal employment opportunity responsibilities under Title VII of the Civil Rights Act of 1964 and Federal contract compliance provisions.

Each element of my Plan is important to the success of the entire proposal.

By abolishing the Equal Employment Opportunity Coordinating Council and transferring its responsibilities to the EEOC, this plan places the Commission at the center of equal employment opportunity enforcement. With these new responsibilities, the EEOC can give coherence and direction to the government's efforts by developing strong uniform enforcement standards to apply throughout the government: standardized data collection procedures, joint training programs, programs to ensure the sharing of enforcement related data among agencies, and methods and priorities for complaint and compliance reviews. Such direction has been absent in the Equal Employment Opportunity Coordinating Council.

It should be stressed, however, that affected agencies will be consulted before EEOC takes any action. When the Plan has been approved, I intend to issue an Executive Order which will provide for consultation, as well as a procedure for reviewing major disputed issues within the Executive Office of the President. The Attorney General's responsibility to advise the Executive Branch on legal issues will also be preserved.

Transfer of the Civil Service Commission's equal employment opportunity responsibilities to EEOC is needed to ensure that: (1) Federal employees have the same rights and remedies as those in the private sector and in State and local government; (2) Federal agencies meet the same standards as are required of other employers; and (3) potential conflicts between an agency's equal employment opportunity and personnel management functions are minimized. The Federal government must not fall below the standard of performance it expects of private employers.

The Civil Service Commission has in the past been lethargic in enforcing fair employment requirements within the Federal government. While the Chairman and other Commissioners I have appointed have already demonstrated their personal commitment to expanding equal employment opportunity, responsibility for ensuring fair employment for Federal employees should rest ultimately with the EEOC.

We must ensure that the transfer in no way undermines the important objectives of the comprehensive civil service reorganization which will be submitted to Congress in the near future. When the two plans take effect; I will direct the EEOC and the CSC to coordinate their procedures to prevent any duplication and overlap.

The Equal Pay Act now administered by the Labor Department, prohibits employers from paying unequal wages based on sex. Title VII of the Civil Rights Act, which is enforced by EEOC, contains a broader ban on sex discrimination. The transfer of Equal Pay responsibility from the Labor Department to the EEOC will minimize overlap and centralize enforcement of statutory prohibitions against sex discrimination in employment.

The transfer will strengthen efforts to combat sex discrimination. Such efforts would be enhanced still further by passage of the legislation pending before you, which I support, that would prohibit employers from excluding women disabled by pregnancy from participating in disability programs.

There is now virtually complete overlap in the employers, labor organizations, and employment agencies covered by Title VII and by the Age Discrimination in Employment Act. This overlap is burdensome to employers and confusing to victims of discrimination. The proposed transfer of the age discrimination program from the Labor Department to the EEOC will eliminate the duplication.

The Plan I am proposing will not affect the Attorney General's responsibility to enforce Title VII against State or local governments or to represent the Federal government in suits against Federal contractors and grant recipients. In 1972, the Congress determined that the Attorney General should be involved in suits against State and local governments. This proposal reinforces that judgment and clarifies the Attorney General's authority to initiate litigation against State or local governments engaged in a "pattern or practice" of discrimination. This in no way diminishes the EEOC's existing authority to investigate complaints filed against State or local governments and, where appropriate, to refer them to the Attorney General. The Justice Department and the EEOC will cooperate so that the Department sues on valid referrals, as well as on its own "pattern or practice" cases.

A critical element of my proposals will be accomplished by Executive Order rather than by the Reorganization Plan. This involves consolidation in the Labor Department of the responsibility to ensure that Federal contractors comply with Executive Order 11246. Consolidation will achieve the following: promote consistent standards, procedures, and reporting requirements; remove contractors from the jurisdiction of multiple agencies; prevent an agency's equal employment objectives from being outweighed by its procurement and construction objectives; and produce more effective law enforcement through unification of planning, training and sanctions. By 1981, after I have had an opportunity to review the manner in which both the EEOC and the Labor Department are exercising their new responsibilities, I will determine whether further action is appropriate.

Finally, the responsibility for enforcing grant-related equal employment provisions will remain with the agencies administering the grant programs. With the EEOC acting as coordinator of Federal equal employment programs, we will be able to bring overlap and duplication to a minimum. We will be able, for example, to see that a university's employment practices are not subject to duplicative investigations under both Title IX of the Education Amendments of 1972 [section 1681 et seq. of Title 20, Education] and the contract compliance program. Because of the similarities between the Executive Order program and those statutes requiring Federal contractors to take affirmative action to employ handicapped individuals and disabled and Vietnam veterans, I have determined that enforcement of these statues should remain in the Labor Department.

Each of the changes set forth in the Reorganization Plan accompanying this message is necessary to accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. I have taken care to determine that all functions abolished by the Plan are done only under the statutory authority provided by Section 903(b) of Title 5 of the United States Code.

I do not anticipate that the reorganizations contained in this Plan will result in any significant change in expenditures. They will result in a more efficient and manageable enforcement program.

The Plan I am submitting is moderate and measured. It gives the Equal Employment Opportunity Commission—an agency dedicated solely to this purpose—the primary Federal responsibility in the area of job discrimination, but it is designed to give this agency sufficient time to absorb its new responsibilities. This reorganization will produce consistent agency standards, as well as increased accountability. Combined with the intense commitment of those charged with these responsibilities, it will become possible for us to accelerate this nation's progress in ensuring equal job opportunities for all our people.

Jimmy Carter.

The White House, February 23, 1978.

Ex. Ord. No. 12106. Transfer of Certain Equal Employment Enforcement Functions

Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053, provided:

By the authority vested in me as President of the United States of America by Section 9 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out above], in order to effectuate the transfer of certain functions relating to the enforcement of equal employment programs, and in order to make certain technical amendments in other Orders to reflect this transfer of functions, it is hereby ordered as follows:

1–101. The transfer to the Equal Employment Opportunity Commission of certain functions of the Civil Service Commission, relating to enforcement of equal employment opportunity programs as provided by Sections 1, 2, 3 and 4 of Reorganization Plan No. 1 of 1978 (43 FR 19807) shall be effective on January 1, 1979.

1–102. Executive Order No. 11478, as amended [set out as a note under section 2000e of this title], is further amended by deleting the preamble, by substituting "national origin, handicap, or age" for "or national origin" in the first sentence of Section 1, and revising Sections 3, 4, and 5 to read as follows:

"Sec. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

"Sec. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

"Sec. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order."

1–103. Executive Order No. 11022, as amended [set out as a note under section 3001 of this title], is further amended by revising Section 1(b) to read as follows:

"(b) The Council shall be composed of the Secretary of Health, Education, and Welfare [now Health and Human Services], who shall be Chairman, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of Veterans Affairs, the Director of the Office of Personnel Management, the Director of the Community Services Administration, and the Chairman of the Equal Employment Opportunity Commission."

1–104. Executive Order No. 11480 of September 9, 1969 [set out as a note under section 791 of Title 29, Labor], is amended by deleting "and the Chairman of the United States Civil Service Commission" in Section 4 and substituting therefor "Director of the Office of Personnel Management, and the Chairman of the Equal Employment Opportunity Commission".

1–105. Executive Order No. 11830 of January 9, 1975 [set out as a note under section 791 of Title 29, Labor], is amended by deleting Section 2 and revising Section 1 to read as follows:

"In accord with Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and Section 4 of Reorganization Plan No. 1 of 1978 (43 FR 19808) the Interagency Committee on Handicapped Employees is enlarged and composed of the following, or their designees whose positions are Executive level IV or higher:

"(1) Secretary of Defense.

"(2) Secretary of Labor.

"(3) Secretary of Health, Education, and Welfare [now Health and Human Services], Co-Chairman.

"(4) Director of the Office of Personnel Management.

"(5) Administrator of Veterans Affairs.

"(6) Administrator of General Services.

"(7) Chairman of the Federal Communications Commission.

"(8) Chairman of the Equal Employment Opportunity Commission, Co-Chairman.

"(9) Such other members as the President may designate."

1–106. This Order shall be effective on January 1, 1979.

Jimmy Carter.

Ex. Ord. No. 12144. Transfer of Certain Equal Pay and Age Discrimination in Employment Enforcement Functions

Ex. Ord. No. 12144, June 22, 1979, 44 F.R. 37193, provided:

By the authority vested in me as President of the United States of America by the Constitution and laws of the United States, including Section 9 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out above], in order to effectuate the transfer of certain functions relating to the enforcement of equal pay and age discrimination in employment programs from the Department of Labor to the Equal Employment Opportunity Commission, it is hereby ordered as follows:

1–101. Sections 1 and 2 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out as a note above] shall become effective on July 1, 1979, with the exception of the transfer of functions from the Civil Service Commission, already effective January 1, 1979 (Executive Order No. 12106 [set out above]).

1–102. The records, property, personnel and positions, and unexpended balances of appropriations or funds, available or to be made available, which relate to the functions transferred as provided in this Order are hereby transferred from the Department of Labor to the Equal Employment Opportunity Commission.

1–103. The Director of the Office of Management and Budget shall make such determinations, issue such Orders, and take all actions necessary or appropriate to effectuate the transfers provided in this Order, including the transfer of funds, records, property, and personnel.

1–104. This Order shall be effective July 1, 1979.

Jimmy Carter.

Cross References

Per diem and mileage of witnesses, see section 1821 et seq. of Title 28, Judiciary and Judicial Procedure.

Section Referred to in Other Sections

This section is referred to in sections 12111, 12117 of this title.

1 See References in Text note below.

§2000e–5. Enforcement provisions

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e–2 or 2000e–3 of this title.

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and

establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) 1 of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including 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, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section, is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2)(A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e–3(a) of this title.

(B) On a claim in which an individual proves a violation under section 2000e–2(m) of this title and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court—

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e–2(m) of this title; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) Provisions of chapter 6 of title 29 not applicable to civil actions for prevention of unlawful practices

The provisions of chapter 6 of title 29 shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders

In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, title 28.

(k) Attorney's fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

(Pub. L. 88–352, title VII, §706, July 2, 1964, 78 Stat. 259; Pub. L. 92–261, §4, Mar. 24, 1972, 86 Stat. 104; Pub. L. 102–166, title I, §§107(b), 112, 113(b), Nov. 21, 1991, 105 Stat. 1075, 1078, 1079.)

References in Text

This Act, referred to in subsec. (f)(2), means Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Rules 65 and 53 of the Federal Rules of Civil Procedure, referred to in subsec. (f)(2), (5), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Chapter 6 (§101 et seq.) of title 29, referred to in subsec. (h), is a reference to act Mar. 23, 1932, ch. 90, 47 Stat. 70, as amended, popularly known as the Norris-LaGuardia Act. For complete classification of this Act to the Code, see Tables.

Amendments

1991—Subsec. (e). Pub. L. 102–166, §112, designated existing provisions as par. (1) and added par. (2).

Subsec. (g). Pub. L. 102–166, §107(b), designated existing provisions as pars. (1) and (2)(A) and added par. (2)(B).

Subsec. (k). Pub. L. 102–166, §113(b), inserted "(including expert fees)" after "attorney's fee".

1972—Subsec. (a). Pub. L. 92–261, §4(a), added subsec. (a). Former subsec. (a) redesignated (b) and amended generally.

Subsec. (b). Pub. L. 92–261, §4(a), redesignated former subsec. (a) as (b), modified the procedure for the filing and consideration of charges by the Commission, subjected to coverage unlawful employment practices of joint labor-management committees controlling apprenticeship or other training or retraining, including on-the-job training programs, required the Commission to accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law in its determination of reasonable cause, and inserted provision setting forth the time period, after charges have been filed, allowed to the Commission to determine reasonable cause. Former subsec. (b) redesignated (c).

Subsecs. (c), (d). Pub. L. 92–261, §4(a), redesignated former subsecs. (b) and (c) as (c) and (d), respectively. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 92–261, §4(a), redesignated former subsec. (d) as (e), extended from ninety to one hundred and eighty days after the occurrence of the alleged unlawful employment practice the time for filing charges under this section and from two hundred and ten to three hundred days the time for filing such charges where the person aggrieved initially instituted proceedings with a State or local agency, and inserted requirement that notice of the charge be served on the respondent within ten days after filing. Former subsec. (e) redesignated (f)(1).

Subsec. (f). Pub. L. 92–261, §4(a), redesignated former subsec. (e) as par. (1), substituted provisions setting forth the procedure for civil actions where the Commission was unable to secure from the respondents a conciliation agreement to prevent further unlawful employment practices for provisions setting forth the procedure for civil actions where the Commission was unable to obtain voluntary compliance with this subchapter and inserted provisions setting forth the procedure for civil action where the respondent is a government, governmental agency, or political subdivision and the Commission could not secure a conciliation agreement, added par. (2), redesignated former subsec. (f) as par. (3), substituted "aggrieved person" for "plaintiff", and added pars. (4) and (5).

Subsec. (g). Pub. L. 92–261, §4(a), inserted provisions which authorized the court to order affirmative action not limited solely to the enumerated affirmative acts and such other equitable relief as deemed appropriate, and provisions which set forth the accrual date for back pay.

Subsecs. (i), (j). Pub. L. 92–261, §4(b)(1), (2), substituted "this section" for "subsection (e) of this section".

Effective Date of 1991 Amendment

Amendment by Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

Effective Date of 1972 Amendment

Section 14 of Pub. L. 92–261 provided that: "The amendments made by this Act to section 706 of the Civil Rights Act of 1964 [this section] shall be applicable with respect to charges pending with the Commission on the date of enactment of this Act [Mar. 24, 1972] and all charges filed thereafter."

Section Referred to in Other Sections

This section is referred to in sections 1981a, 2000e–4, 2000e–6, 2000e–8, 2000e–16, 12117 of this title; title 2 sections 1202, 1220, 1311, 1361; title 3 sections 411, 435; title 5 sections 1204, 7701; title 28 section 3905; title 29 section 794a; title 31 section 755.

1 So in original. Probably should be subsection "(b)".

§2000e–6. Civil actions by the Attorney General

(a) Complaint

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) Jurisdiction; three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action

The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

(c) Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

Effective two years after March 24, 1972, the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of title 5, inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

(d) Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

Subsequent to March 24, 1972, the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e–5 of this title.

(Pub. L. 88–352, title VII, §707, July 2, 1964, 78 Stat. 261; Pub. L. 92–261, §5, Mar. 24, 1972, 86 Stat. 107.)

Amendments

1972—Subsecs. (c) to (e). Pub. L. 92–261 added subsecs. (c) to (e).

Transfer of Functions

Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with respect to State or local government, or political subdivisions under this section, and all necessary functions related thereto, including investigation, findings, notice and an opportunity to resolve the matter without contested litigation, were transferred to the Attorney General, to be exercised by him in accordance with procedures consistent with this subchapter, and with the Attorney General authorized to delegate any function under this section to any officer or employee

of the Department of Justice, by Reorg. Plan No. 1 of 1978, §5, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e–4 of this title.

Ex. Ord. No. 12068. Transfer of Certain Functions to Attorney General

Ex. Ord. No. 12068, June 30, 1978, 43 F.R. 28971, provided:

By virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out as a note under section 2000e–4 of this title], in order to clarify the Attorney General's authority to initiate public sector litigation under Section 707 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–6), it is ordered as follows:

1–1. Section 707 Functions of the Attorney General

1–101. Section 5 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out as a note under section 2000e–4 of this title] shall become effective on July 1, 1978.

1–102. The functions transferred to the Attorney General by Section 5 of Reorganization Plan Number 1 of 1978 [set out as a note under section 2000e–4 of this title] shall, consistent with Section 707 of Title VII of the Civil Rights Act of 1964, as amended [this section], be performed in accordance with Department of Justice procedures heretofore followed under Section 707.

Jimmy Carter.

Section Referred to in Other Sections

This section is referred to in sections 2000e–4, 12117 of this title.

§2000e–7. Effect on State laws

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

(Pub. L. 88–352, title VII, §708, July 2, 1964, 78 Stat. 262.)

§2000e–8. Investigations

(a) Examination and copying of evidence related to unlawful employment practices

In connection with any investigation of a charge filed under section 2000e–5 of this title, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

(b) Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements

The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

(c) Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance

Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports therefrom as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the

United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

(d) Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability

In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) Prohibited disclosures; penalties

It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty, of a misdemeanor and upon conviction thereof, shall be fined not more than $1,000, or imprisoned not more than one year.

(Pub. L. 88–352, title VII, §709, July 2, 1964, 78 Stat. 262; Pub. L. 92–261, §6, Mar. 24, 1972, 86 Stat. 107.)

Amendments

1972—Subsec. (b). Pub. L. 92–261 inserted provisions authorizing the Commission to engage in and contribute to the cost of research and other projects undertaken by State and local agencies and provisions authorizing the Commission to make advance payments to State and local agencies and their employees for services rendered to the Commission, and struck out provisions relating to agreements between the Commission and State and local agencies prohibiting private civil actions under section 2000e–5 of this title in specified cases.

Subsec. (c). Pub. L. 92–261 struck out "Except as provided in subsection (d) of this section," before "every employer, employment agency, and labor organization subject to this subchapter shall (1)", required the party seeking an exemption to bring an action in the district court only after the Commission denied the application for the exemption, and inserted provision which authorized the Commission, or the Attorney General in a case involving a government, etc., to apply for a court order compelling compliance with the recordkeeping and reporting obligations set out in this subsection.

Subsec. (d). Pub. L. 92–261 substituted provisions requiring consultation and coordination between Federal and State agencies in prescribing recordkeeping and reporting requirements pursuant to subsec. (c) of this section, and authorizing the Commission to furnish information obtained pursuant to subsec. (c) of this section to interested State and local agencies, for provisions exempting from recordkeeping and reporting requirements employers, etc., required to keep records and make reports under State or local fair employment practice laws, except for the maintenance of notations by such employers, etc., which reflect the differences in coverage or enforcement between State or local laws and the provisions of this subchapter, and dispensing with recordkeeping and reporting requirements where the employer reports under some Executive Order prescribing fair employment practices for Government contractors or subcontractors.

Section Referred to in Other Sections

This section is referred to in sections 2000e–9, 12117 of this title.

§2000e–9. Conduct of hearings and investigations pursuant to section 161 of title 29

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of title 29 shall apply.

(Pub. L. 88–352, title VII, §710, July 2, 1964, 78 Stat. 264; Pub. L. 92–261, §7, Mar. 24, 1972, 86 Stat. 109.)

Amendments

1972—Pub. L. 92–261 substituted provisions making applicable section 161 of title 29 to all hearings and investigations conducted by the Commission or its authorized agents or agencies, for provisions enumerating the investigatory powers of the Commission and the procedure for their enforcement.

Section Referred to in Other Sections

This section is referred to in section 12117 of this title.

§2000e–10. Posting of notices; penalties

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts, from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than $100 for each separate offense.

(Pub. L. 88–352, title VII, §711, July 2, 1964, 78 Stat. 265.)

Section Referred to in Other Sections

This section is referred to in section 12115 of this title.

§2000e–11. Veterans' special rights or preference

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

(Pub. L. 88–352, title VII, §712, July 2, 1964, 78 Stat. 265.)

§2000e–12. Regulations; conformity of regulations with administrative procedure provisions; reliance on interpretations and instructions of Commission

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of title 5.

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to

the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.

(Pub. L. 88–352, title VII, §713, July 2, 1964, 78 Stat. 265.)

Codification

In subsec. (a), "subchapter II of chapter 5 of title 5" substituted for "the Administrative Procedure Act" on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Religious Liberty

Pub. L. 103–317, title VI, §610, Aug. 26, 1994, 108 Stat. 1774, provided that:

"(a) Findings.—The Congress finds that—

"(1) the liberties protected by our Constitution include religious liberty protected by the first amendment;

"(2) citizens of the United States profess the beliefs of almost every conceivable religion;

"(3) Congress has historically protected religious expression even from governmental action not intended to be hostile to religion;

"(4) the Supreme Court has written that 'the free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires';

"(5) the Supreme Court has firmly settled that under our Constitution the public expression of ideas may not be prohibited merely because the content of the ideas is offensive to some;

"(6) Congress enacted the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.] to restate and make clear again our intent and position that religious liberty is and should forever be granted protection from unwarranted and unjustified government intrusions and burdens;

"(7) the Equal Employment Opportunity Commission has written proposed guidelines to title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.], published in the Federal Register on October 1, 1993, that expand the definition of religious harassment beyond established legal standards set forth by the Supreme Court, and that may result in the infringement of religious liberty;

"(8) such guidelines do not appropriately resolve issues related to religious liberty and religious expression in the workplace;

"(9) properly drawn guidelines for the determination of religious harassment should provide appropriate guidance to employers and employees and assist in the continued preservation of religious liberty as guaranteed by the first amendment;

"(10) the Commission states in its proposed guidelines that it retains wholly separate guidelines for the determination of sexual harassment because the Commission believes that sexual harassment raises issues about human interaction that are to some extent unique; and

"(11) the subject of religious harassment also raises issues about human interaction that are to some extent unique in comparison to other harassment.

"(b) Category of Religious Harassment in Proposed Guidelines.—For purposes of issuing final regulations under title VII of the Civil Rights Act of 1964 [42 U.S.C. 2000e et seq.] in connection with the proposed guidelines published by the Equal Employment Opportunity Commission on October 1, 1993 (58 Fed. Reg. 51266), the Chairperson of the Equal Employment Opportunity Commission shall ensure that—

"(1) the category of religion shall be withdrawn from the proposed guidelines at this time;

"(2) any new guidelines for the determination of religious harassment shall be drafted so as to make explicitly clear that symbols or expressions of religious belief consistent with the first amendment and the Religious Freedom Restoration Act of 1993 [42 U.S.C. 2000bb et seq.] are not to be restricted and do not constitute proof of harassment;

"(3) the Commission shall hold public hearings on such new proposed guidelines; and

"(4) the Commission shall receive additional public comment before issuing similar new regulations."

§2000e–13. Application to personnel of Commission of sections 111 and 1114 of title 18; punishment for violation of section 1114 of title 18

The provisions of sections 111 and 1114, title 18, shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of title 18, whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

(Pub. L. 88–352, title VII, §714, July 2, 1964, 78 Stat. 265; Pub. L. 92–261, §8(g), Mar. 24, 1972, 86 Stat. 110.)

References in Text

This Act, referred to in text, means Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Amendments

1972—Pub. L. 92–261 inserted provisions which made section 1114 of title 18 applicable to officers, etc., of the Commission and set forth punishment for violation of such section 1114.

§2000e–14. Equal Employment Opportunity Coordinating Council; establishment; composition; duties; report to President and Congress

The Equal Employment Opportunity Commission shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before October 1 of each year, the Equal Employment Opportunity Commission shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

(Pub. L. 88–352, title VII, §715, July 2, 1964, 78 Stat. 265; Pub. L. 92–261, §10, Mar. 24, 1972, 86 Stat. 111; Pub. L. 94–273, §3(24), Apr. 21, 1976, 90 Stat. 377; 1978 Reorg. Plan No. 1, §6, eff. July 1, 1978, 43 F.R. 19807, 92 Stat. 3781.)

Codification

The first sentence of this section, which read "There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates" was omitted pursuant to Reorg. Plan No. 1 of 1978, §6, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e–4 of this title, which abolished the Equal Employment Opportunity Coordinating Council, effective July 1, 1978, as provided by section 1–101 of Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, set out as a note under section 2000e of this title. See Transfer of Functions note below.

Amendments

1976—Pub. L. 94–273 substituted "October" for "July".

1972—Pub. L. 92–261 substituted provisions which established the Equal Employment Opportunity Coordinating Council and set forth the composition, powers, and duties of the Council for provisions which directed the Secretary of Labor to make a report to the Congress not later than June 30, 1965 concerning discrimination in employment because of age.

Transfer of Functions

"Equal Employment Opportunity Commission" substituted in text for "Council", meaning Equal Employment Opportunity Coordinating Council, pursuant to Reorg. Plan. No. 1 of 1978, §6, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e–4 of this title, which abolished Equal Employment Opportunity Coordinating Council and transferred its functions to Equal Employment Opportunity Commission, effective July 1, 1978, as provided by section 1–101 of Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, set out as a note under section 2000e of this title.

Submission of Specific Legislative Recommendations to Congress by January 1, 1967, to Implement Report on Age Discrimination

Pub. L. 89–601, title VI, §606, Sept. 23, 1966, 80 Stat. 845, directed the Secretary of Labor to submit to the Congress not later than Jan. 1, 1967 his specific legislative recommendations for implementing the conclusions and recommendations contained in his report on age discrimination in employment made pursuant to provisions of this section prior to its amendment in 1972.

§2000e–15. Presidential conferences; acquaintance of leadership with provisions for employment rights and obligations; plans for fair administration; membership

The President shall, as soon as feasible after July 2, 1964, convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this subchapter to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this subchapter

when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this subchapter.

(Pub. L. 88–352, title VII, §716(c), July 2, 1964, 78 Stat. 266.)

Executive Order No. 11197

Ex. Ord. No. 11197, eff. Feb. 5, 1965, 30 F.R. 1721, which established the President's Council on Equal Opportunity, was revoked by Ex. Ord. No. 11247, eff. Sept. 24, 1965, 30 F.R. 12327, formerly set out as a note under section 2000d–1 of this title.

§2000e–16. Employment by Federal Government

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of title 5, in executive agencies as defined in section 105 of title 5 (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Rate Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Printing Office, the General Accounting Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Equal Employment Opportunity Commission; enforcement powers; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall—

(1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;

(2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and

(3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to—

(1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and

(2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

(c) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an

employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e–5 of this title, in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e–5(f) through (k) of this title applicable to civil actions

The provisions of section 2000e–5(f) through (k) of this title, as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties..1

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(Pub. L. 88–352, title VII, §717, as added Pub. L. 92–261, §11, Mar. 24, 1972, 86 Stat. 111; amended 1978 Reorg. Plan No. 1, §3, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub. L. 96–191, §8(g), Feb. 15, 1980, 94 Stat. 34; Pub. L. 102–166, title I, §114, Nov. 21, 1991, 105 Stat. 1079; Pub. L. 104–1, title II, §201(c)(1), Jan. 23, 1995, 109 Stat. 8; Pub. L. 105–220, title III, §341(a), Aug. 7, 1998, 112 Stat. 1092.)

References in Text

This Act, referred to in subsec. (e), means Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Executive Order 11478, as amended, referred to in subsecs. (c) and (e), is set out as a note under section 2000e of this title.

Amendments

1998—Subsec. (a). Pub. L. 105–220 inserted "in the Smithsonian Institution," before "and in the Government Printing Office,".

1995—Subsec. (a). Pub. L. 104–1 substituted "units of the judicial branch" for "units of the legislative and judicial branches" and inserted "Government Printing Office, the General Accounting Office, and the" before "Library of Congress".

1991—Subsec. (c). Pub. L. 102–166, §114(1), substituted "90 days" for "thirty days".

Subsec. (d). Pub. L. 102–166, §114(2), inserted before the period ", and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties."

1980—Subsec. (a). Pub. L. 96–191 struck out "(other than the General Accounting Office)" after "in executive agencies".

Effective Date of 1998 Amendment

Amendment by Pub. L. 105–220 effective Aug. 7, 1998, and applicable to and may be raised in any administrative or judicial claim or action brought before Aug. 7, 1998, but pending on such date, and any administrative or judicial claim or action brought after such date regardless of whether the claim or action arose prior to such date, if the claim or action was brought within the applicable statute of limitations, see section 341(d) of Pub. L. 105–220, set out as a note under section 633a of Title 29, Labor.

Effective Date of 1995 Amendment

Amendment by Pub. L. 104–1 effective 1 year after Jan. 23, 1995, see section 1311(d) of Title 2, The Congress.

Effective Date of 1991 Amendment

Amendment by Pub. L. 102–166 effective Nov. 21, 1991, except as otherwise provided, see section 402 of Pub. L. 102–166, set out as a note under section 1981 of this title.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96–191 effective Oct. 1, 1980, see section 10(a) of Pub. L. 96–191.

Transfer of Functions

"Equal Employment Opportunity Commission" substituted for "Civil Service Commission" in subsecs. (b) and (c) pursuant to Reorg. Plan No. 1 of 1978, §3, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e–4 of this title, which transferred all equal opportunity in Federal

employment enforcement and related functions vested in Civil Service Commission by subsecs. (b) and (c) of this section to Equal Employment Opportunity Commission, with certain authority delegable to Director of Office of Personnel Management, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053, set out as a note under section 2000e–4 of this title.

Ex. Ord. No. 13145. To Prohibit Discrimination in Federal Employment Based on Genetic Information

Ex. Ord. No. 13145, Feb. 8, 2000, 65 F.R. 6877, provided:

By the authority vested in me as President of the United States by the Constitution and the laws of the United States of America, it is ordered as follows:

Section 1. Nondiscrimination in Federal Employment on the Basis of Protected Genetic Information.

1–101. It is the policy of the Government of the United States to provide equal employment opportunity in Federal employment for all qualified persons and to prohibit discrimination against employees based on protected genetic information, or information about a request for or the receipt of genetic services. This policy of equal opportunity applies to every aspect of Federal employment.

1–102. The head of each Executive department and agency shall extend the policy set forth in section 1101 to all its employees covered by section 717 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16).

1–103. Executive departments and agencies shall carry out the provisions of this order to the extent permitted by law and consistent with their statutory and regulatory authorities, and their enforcement mechanisms. The Equal Employment Opportunity Commission shall be responsible for coordinating the policy of the Government of the United States to prohibit discrimination against employees in Federal employment based on protected genetic information, or information about a request for or the receipt of genetic services.

Sec. 2. Requirements Applicable to Employing Departments and Agencies.

1–201. Definitions.

(a) The term "employee" shall include an employee, applicant for employment, or former employee covered by section 717 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–16).

(b) Genetic monitoring means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, respond to the effects of, or control adverse environmental exposures in the workplace.

(c) Genetic services means health services, including genetic tests, provided to obtain, assess, or interpret genetic information for diagnostic or therapeutic purposes, or for genetic education or counseling.

(d) Genetic test means the analysis of human DNA, RNA, chromosomes, proteins, or certain metabolites in order to detect disease-related genotypes or mutations. Tests for metabolites fall within the definition of "genetic tests" when an excess or deficiency of the metabolites indicates the presence of a mutation or mutations. The conducting of metabolic tests by a department or agency that are not intended to reveal the presence of a mutation shall not be considered a violation of this order, regardless of the results of the tests. Test results revealing a mutation shall, however, be subject to the provisions of this order.

(e) Protected genetic information.

(1) In general, protected genetic information means:

(A) information about an individual's genetic tests;

(B) information about the genetic tests of an individual's family members; or

(C) information about the occurrence of a disease, or medical condition or disorder in family members of the individual.

(2) Information about an individual's current health status (including information about sex, age, physical exams, and chemical, blood, or urine analyses) is not protected genetic information unless it is described in subparagraph (1).

1–202. In discharging their responsibilities under this order, departments and agencies shall implement the following nondiscrimination requirements.

(a) The employing department or agency shall not discharge, fail or refuse to hire, or otherwise discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of that employee, because of protected genetic information with respect to the employee, or because of information about a request for or the receipt of genetic services by such employee.

(b) The employing department or agency shall not limit, segregate, or classify employees in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect that employee's status, because of protected genetic information with respect to the employee or because of information about a request for or the receipt of genetic services by such employee.

(c) The employing department or agency shall not request, require, collect, or purchase protected genetic information with respect to an employee, or information about a request for or the receipt of genetic services by such employee.

(d) The employing department or agency shall not disclose protected genetic information with respect to an employee, or information about a request for or the receipt of genetic services by an employee except:

(1) to the employee who is the subject of the information, at his or her request;

(2) to an occupational or other health researcher, if the research conducted complies with the regulations and protections provided for under part 46 of title 45, of the Code of Federal Regulations;

(3) if required by a Federal statute, congressional subpoena, or an order issued by a court of competent jurisdiction, except that if the subpoena or court order was secured without the knowledge of the individual to whom the information refers, the employer shall provide the individual with adequate notice to challenge the subpoena or court order, unless the subpoena or court order also imposes confidentiality requirements; or

(4) to executive branch officials investigating compliance with this order, if the information is relevant to the investigation.

(e) The employing department or agency shall not maintain protected genetic information or information about a request for or the receipt of genetic services in general personnel files; such information shall be treated as confidential medical records and kept separate from personnel files.

Sec. 3. Exceptions.

1–301. The following exceptions shall apply to the nondiscrimination requirements set forth in section 1202.

(a) The employing department or agency may request or require information defined in section 1–201(e)(1)(C) with respect to an applicant who has been given a conditional offer of employment or to an employee if:

(1) the request or requirement is consistent with the Rehabilitation Act [of 1973, 29 U.S.C. 701 et seq.] and other applicable law;

(2) the information obtained is to be used exclusively to assess whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1–301(b) of this order;

(3) such current disease, or medical condition or disorder could prevent the applicant or employee from performing the essential functions of the position held or desired; and

(4) the information defined in section 1–201(e)(1)(C) of this order will not be disclosed to persons other than medical personnel involved in or responsible for assessing whether further medical evaluation is needed to diagnose a current disease, or medical condition or disorder, or under the terms of section 1–301(b) of this order.

(b) The employing department or agency may request, collect, or purchase protected genetic information with respect to an employee, or any information about a request for or receipt of genetic services by such employee if:

(1) the employee uses genetic or health care services provided by the employer (other than use pursuant to section 1–301(a) of this order);

(2) the employee who uses the genetic or health care services has provided prior knowing, voluntary, and written authorization to the employer to collect protected genetic information;

(3) the person who performs the genetic or health care services does not disclose protected genetic information to anyone except to the employee who uses the services for treatment of the individual; pursuant to section 1–202(d) of this order; for program evaluation or assessment; for compiling and analyzing information in anticipation of or for use in a civil or criminal legal proceeding; or, for payment or accounting purposes, to verify that the service was performed (but in such cases the genetic information itself cannot be disclosed);

(4) such information is not used in violation of sections 1–202(a) or 1–202(b) of this order.

(c) The employing department or agency may collect protected genetic information with respect to an employee if the requirements of part 46 of title 45 of the Code of Federal Regulations are met.

(d) Genetic monitoring of biological effects of toxic substances in the workplace shall be permitted if all of the following conditions are met:

(1) the employee has provided prior, knowing, voluntary, and written authorization;

(2) the employee is notified when the results of the monitoring are available and, at that time, the employer makes any protected genetic information that may have been acquired during the monitoring available to the employee and informs the employee how to obtain such information;

(3) the monitoring conforms to any genetic monitoring regulations that may be promulgated by the Secretary of Labor; and

(4) the employer, excluding any licensed health care professionals that are involved in the genetic monitoring program, receives results of the monitoring only in aggregate terms that do not disclose the identity of specific employees.

(e) This order does not limit the statutory authority of a Federal department or agency to:

(1) promulgate or enforce workplace safety and health laws and regulations;

(2) conduct or sponsor occupational or other health research that is conducted in compliance with regulations at part 46 of title 45, of the Code of Federal Regulations; or

(3) collect protected genetic information as a part of a lawful program, the primary purpose of which is to carry out identification purposes.

Sec. 4. Miscellaneous.

1–401. The head of each department and agency shall take appropriate action to disseminate this policy and, to this end, shall designate a high level official responsible for carrying out its responsibilities under this order.

1–402. Nothing in this order shall be construed to:

(a) limit the rights or protections of an individual under the Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.), the Privacy Act of 1974 (5 U.S.C. 552a), or other applicable law; or

(b) require specific benefits for an employee or dependent under the Federal Employees Health Benefits Program or similar program.

1–403. This order clarifies and makes uniform Administration policy and does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers or employees, or any other person.

William J. Clinton.

Section Referred to in Other Sections

This section is referred to in sections 1981a, 2000e, 12209 of this title; title 2 sections 60l, 1202, 1361; title 3 sections 411, 435; title 5 sections 2302, 7201, 7702, 7703; title 22 sections 3905, 4131; title 28 section 3905; title 29 section 794a.

1 So in original.

§2000e–17. Procedure for denial, withholding, termination, or suspension of Government contract subsequent to acceptance by Government of affirmative action plan of employer; time of acceptance of plan

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of section 554 of title 5, and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

(Pub. L. 88–352, title VII, §718, as added Pub. L. 92–261, §13, Mar. 24, 1972, 86 Stat. 113.)

SUBCHAPTER VII—REGISTRATION AND VOTING STATISTICS

Subchapter Referred to in Other Sections

This subchapter is referred to in section 2000h of this title.

§2000f. Survey for compilation of registration and voting statistics; geographical areas; scope; application of census provisions; voluntary disclosure; advising of right not to furnish information

The Secretary of Commerce shall promptly conduct a survey to compile registration and voting statistics in such geographic areas as may be recommended by the Commission on Civil Rights. Such a survey and compilation shall, to the extent recommended by the Commission on Civil Rights, only include a count of persons of voting age by race, color, and national origin, and determination of the extent to which such persons are registered to vote, and have voted in any statewide primary or general election in which the Members of the United States House of Representatives are nominated or elected, since January 1, 1960. Such information shall also be collected and compiled in connection with the Nineteenth Decennial Census, and at such other times as the Congress may prescribe. The provisions of section 9 and chapter 7 of title 13 shall apply to any survey, collection, or compilation of registration and voting statistics carried out under this subchapter: Provided, however, That no person shall be compelled to disclose his race, color, national origin, or questioned about his political party affiliation, how he voted, or the reasons therefore, nor shall any penalty be imposed for his failure or refusal to make such disclosure. Every person interrogated orally, by written survey or questionnaire or by any other means with respect to such information shall be fully advised with respect to his right to fail or refuse to furnish such information.

(Pub. L. 88–352, title VIII, §801, July 2, 1964, 78 Stat. 266.)

SUBCHAPTER VIII—COMMUNITY RELATIONS SERVICE

§2000g. Establishment of Service; Director of Service: appointment, term; personnel

There is hereby established in and as a part of the Department of Commerce a Community Relations Service (hereinafter referred to as the "Service"), which shall be headed by a Director who shall be appointed by the President with the advice and consent of the Senate for a term of four years. The Director is authorized to appoint, subject to the civil service laws and regulations, such other personnel as may be necessary to enable the Service to carry out its functions and duties, and to fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(Pub. L. 88–352, title X, §1001(a), July 2, 1964, 78 Stat. 267; Pub. L. 95–624, §5, Nov. 9, 1978, 92 Stat. 3462.)

References in Text

The civil service laws, referred to in text, are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

Codification

References to "chapter 51 and subchapter III of chapter 53 of title 5" and "section 3109 of title 5" substituted in text for "the Classification Act of 1949, as amended" and "section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U.S.C. 55a)", respectively, on authority of Pub. L. 89–554, §7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Amendments

1978—Pub. L. 95–624 struck out provision authorizing the Director to procure the services of experts and consultants at rates for individuals not in excess of $75 per diem.

REORGANIZATION PLAN NO. 1 OF 1966

Eff. Apr. 22, 1966, 31 F.R. 6187, 80 Stat. 1607

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 10, 1966, pursuant to the provisions of the Reorganization Act of 1949, 63 Stat. 203, as amended [see 5 U.S.C. 901 et seq.].

COMMUNITY RELATIONS SERVICE

Section 1. Transfer of Service

Subject to the provisions of this reorganization plan, the Community Relations Service now existing in the Department of Commerce under the Civil Rights Act of 1964 (Pub. L. No. 88–352, July 2, 1964) [see Short Title note under 42 U.S.C. 2000a], including the office of Director there of, is hereby transferred to the Department of Justice.

Sec. 2. Transfer of Functions

All functions of the Community Relations Service, and all functions of the Director of the Community Relations Service, together with all functions of the Secretary of Commerce and the Department of Commerce with respect thereto, are hereby transferred to the Attorney General.

Sec. 3. Incidental Transfers

(a) Section 1 hereof shall be deemed to transfer to the Department of Justice the personnel, property, and records of the Community Relations Service and the unexpended balances of appropriations, allocations, and other funds available or to be made available to the Service.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

Message of the President

To the Congress of the United States:

I transmit herewith Reorganization Plan No. 1 of 1966, prepared in accordance with the Reorganization Act of 1949, as amended, and providing for reorganization of community relations functions in the area of civil rights.

After a careful review of the activities of the Federal agencies involved in the field of civil rights, it became clear that the elimination of duplication and undesirable overlap required the consolidation of certain functions.

As a first step, I issued Executive Orders 11246 and 11247 on September 24, 1965.

Executive Order 11246 simplified and clarified executive branch assignments of responsibility for enforcing civil rights policies and placed responsibility for the Government-wide coordination of the enforcement activities of executive agencies in the Secretary of Labor with respect to

employment by Federal contractors and in the Civil Service Commission with respect to employment by Federal agencies.

Executive Order 11247 directed the Attorney General to assist Federal agencies in coordinating their enforcement activities with respect to title VI of the Civil Rights Act of 1964, which prohibits discrimination in federally assisted programs.

As a further step for strengthening the operation and coordination of our civil rights programs, I now recommend transfer of the functions of the Community Relations Service, established in the Department of Commerce under title X of the Civil Rights Act of 1964, to the Attorney General and transfer of the Service, including the Office of Director, to the Department of Justice.

The Community Relations Service was located in the Department of Commerce by the Congress on the assumption that a primary need would be the conciliation of disputes arising out of the public accommodations title of the act. That decision was appropriate on the basis of information available at that time. The need for conciliation in this area has not been as great as anticipated because of the voluntary progress that has been made by businessmen and business organizations.

To be effective, assistance to communities in the identification and conciliation of disputes should be closely and tightly coordinated. Thus, in any particular situation that arises within a community, representatives of Federal agencies whose programs are involved should coordinate their efforts through a single agency. In recent years, the Civil Rights Division of the Justice Department has played such a coordinating role in many situations, and has done so with great effectiveness.

Placing the Community Relations Service within the Justice Department will enhance the ability of the Justice Department to mediate and conciliate and will insure that the Federal Government speaks with a unified voice in those tense situations where the good offices of the Federal Government are called upon to assist.

In this, as in other areas of Federal operations, we will move more surely and rapidly toward our objectives if we improve Federal organization and the arrangements for interagency coordination. The accompanying reorganization plan has that purpose.

The present distribution of Federal civil rights responsibilities clearly indicates that the activities of the Community Relations Service will fit most appropriately in the Department of Justice.

The Department of Justice has primary program responsibilities in civil rights matters and deep and broad experience in the conciliation of civil rights disputes. Congress has assigned it a major role in the implementation of the Civil Rights Act of 1957, 1960, and 1964, and the Voting Rights Act of

1965. The Department of Justice performs related functions under other acts of Congress. Most of these responsibilities require not only litigation, but also efforts at persuasion, negotiation, and explanation, especially with local governments and law enforcement authorities. In addition, under the Law Enforcement Assistance Act the Department will be supporting local programs in the area of police-community relations.

The test of the effectiveness of an enforcement agency is not how many legal actions are initiated and won, but whether there is compliance with the law. Thus, every such agency necessarily engages in extensive efforts to obtain compliance with the law and the avoidance of disputes. In fact, title VI of the Civil Rights Act of 1964 requires each agency concerned to attempt to obtain compliance by voluntary means before taking further action.

Among the heads of Cabinet departments the President looks principally to the Attorney General for advice and judgment on civil rights issues. The latter is expected to be familiar with civil rights problems in all parts of the Nation and to make recommendations for executive and legislative action.

The Attorney General already has responsibility with respect to a major portion of Federal conciliation efforts in the civil rights field. Under Executive Order 11247, he coordinates the Government-wide enforcement of title VI of the Civil Rights Act of 1964, which relies heavily on the achievement of compliance through persuasion and negotiation.

In the light of these facts, the accompanying reorganization plan would transfer the functions of the Community Relations Service and of its Director to the Attorney General. In so providing, the plan, of course, follows the established pattern of Federal organization by vesting all the transferred powers in the head of the department. The Attorney General will provide for the organization of the Community Relations Service as a separate unit within the Department of Justice.

The functions transferred by the reorganization plan would be carried out with full regard for the provisions of section 1003 of title X of the Civil Rights Act of 1964 relating to (1) cooperation with appropriate State or local, public, or private agencies; (2) the confidentiality of information acquired with the understanding that it would be so held; and (3) the limitation on the performance of investigative or prosecutive functions by personnel of the Service.

This transfer will benefit both the Department of Justice and the Community Relations Service in the fulfillment of their existing functions.

The Attorney General will benefit in his role as the President's adviser by obtaining an opportunity to anticipate and meet problems before the need for legal action arises.

The Community Relations Service, brought into closer relationship with the Attorney General and the Civil Rights Division of the Department of Justice, will gain by becoming a primary resource in a coordinated effort in civil rights under the leadership of the Attorney General. The Community Relations Service will have direct access to the extensive information, experience, staff, and facilities within the Department and in other Federal agencies.

Finally, the responsibility for coordinating major Government activities under the Civil Rights Act aimed at voluntary and peaceful resolution of discriminatory practices will be centered in one department. Thus, the reorganization will permit the most efficient and effective utilization of resources in this field. Together the Service and the Department will have a larger capacity for accomplishment than they do apart.

Although the reorganizations provided for in the reorganization plan will not of themselves result in immediate savings, the improvement achieved in administration will permit a fuller and more effective utilization of manpower and will in the future allow the performance of the affected functions at lower costs than would otherwise be possible.

After investigation I have found and hereby declare that each organization included in Reorganization Plan No. 1 of 1966 is necessary to accomplish one or more of the purposes set forth in section 2(a) of the Reorganization Act of 1949, as amended.

I recommend that the Congress allow the reorganization plan to become effective.

Lyndon B. Johnson.

The White House, February 10, 1966.

§2000g–1. Functions of Service

It shall be the function of the Service to provide assistance to communities and persons therein in resolving disputes, disagreements, or difficulties relating to discriminatory practices based on race, color, or national origin which impair the rights of persons in such communities under the Constitution or laws of the United States or which affect or may affect interstate commerce. The Service may offer its services in cases of such disputes, disagreements, or difficulties whenever, in its judgment, peaceful relations among the citizens of the community involved are threatened thereby, and it may offer its services either upon its own motion or upon the request of an appropriate State or local official or other interested person.

(Pub. L. 88–352, title X, §1002, July 2, 1964, 78 Stat. 267.)

§2000g–2. Cooperation with other agencies; conciliation assistance in confidence and without publicity; information as confidential; restriction on performance of investigative or prosecuting functions; violations and penalties

(a) The Service shall, whenever possible, in performing its functions, seek and utilize the cooperation of appropriate State or local, public, or private agencies.

(b) The activities of all officers and employees of the Service in providing conciliation assistance shall be conducted in confidence and without publicity, and the Service shall hold confidential any information acquired in the regular performance of its duties upon the understanding that it would be so held. No officer or employee of the Service shall engage in the performance of investigative or prosecuting functions of any department or agency in any litigation arising out of a dispute in which he acted on behalf of the Service. Any officer or other employee of the Service, who shall make public in any manner whatever any information in violation of this subsection, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned not more than one year.

(Pub. L. 88–352, title X, §1003, July 2, 1964, 78 Stat. 267.)

Section Referred to in Other Sections

This section is referred to in section 2000g–3 of this title.

§2000g–3. Reports to Congress

Subject to the provisions of sections 2000a–4 and 2000g–2(b) of this title, the Director shall, on or before January 31 of each year, submit to the Congress a report of the activities of the Service during the preceding fiscal year.

(Pub. L. 88–352, title X, §1004, July 2, 1964, 78 Stat. 267.)

SUBCHAPTER IX—MISCELLANEOUS PROVISIONS

§2000h. Criminal contempt proceedings: trial by jury, criminal practice, penalties, exceptions, intent; civil contempt proceedings

In any proceeding for criminal contempt arising under title II, III, IV, V, VI, or VII of this Act, the accused, upon demand therefor, shall be entitled to a trial by jury, which shall conform as near as may be to the practice in criminal cases. Upon conviction, the accused shall not be fined more than $1,000 or imprisoned for more than six months.

This section shall not apply to contempts committed in the presence of the court, or so near thereto as to obstruct the administration of justice, nor to the misbehavior, misconduct, or disobedience of any officer of the court in respect to writs, orders, or process of the court. No person shall be convicted of criminal contempt hereunder unless the act or omission constituting such contempt shall have been intentional, as required in other cases of criminal contempt.

Nor shall anything herein be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

(Pub. L. 88–352, title XI, §1101, July 2, 1964, 78 Stat. 268.)

References in Text

Title II, III, IV, V, VI, or VII of this Act, referred to in text, mean title II, III, IV, V, VI, or VII of Pub. L. 88–352, July 2, 1964, 78 Stat. 243, as amended. Titles II, III, and IV are classified generally to subchapters II (§2000a et seq.), III (§2000b et seq.), and IV (§2000c et seq.) of this chapter. Title V amended sections 1975a to 1975d of this title. Title VI enacted sections 2000d to 2000d–4 of this title. Title VII enacted sections 2000e to 2000e–15 of this title, amended sections 2204 and 2205 of former Title 5, Executive Departments and Government Officers and Employees, and enacted provisions set out as a note under section 2000e of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§2000h–1. Double jeopardy; specific crimes and criminal contempts

No person should be put twice in jeopardy under the laws of the United States for the same act or omission. For this reason, an acquittal or conviction in a prosecution for a specific crime under the laws of the United States shall bar a proceeding for criminal contempt, which is based upon the same act or omission and which arises under the provisions of this Act; and an acquittal or conviction in a proceeding for criminal contempt, which arises under the provisions of this Act, shall bar a prosecution for a specific crime under the laws of the United States based upon the same act or omission.

(Pub. L. 88–352, title XI, §1102, July 2, 1964, 78 Stat. 268.)

References in Text

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§2000h–2. Intervention by Attorney General; denial of equal protection on account of race, color, religion, sex or national origin

Whenever an action has been commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the fourteenth amendment to the Constitution on account of race, color, religion, sex or national origin, the Attorney General for or in the name of the United States may intervene in such action upon timely application if the Attorney General certifies that the case is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

(Pub. L. 88–352, title IX, §902, July 2, 1964, 78 Stat. 266; Pub. L. 92–318, title IX, §906(a), June 23, 1972, 86 Stat. 375.)

Amendments

1972—Pub. L. 92–318 inserted "sex" after "religion,".

§2000h–3. Construction of provisions not to affect authority of Attorney General, etc., to institute or intervene in actions or proceedings

Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General or of the United States or any agency or officer thereof under existing law to institute or intervene in any action or proceeding.

(Pub. L. 88–352, title XI, §1103, July 2, 1964, 78 Stat. 268.)

References in Text

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§2000h–4. Construction of provisions not to exclude operation of State laws and not to invalidate consistent State laws

Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.

(Pub. L. 88–352, title XI, §1104, July 2, 1964, 78 Stat. 268.)

References in Text

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§2000h–5. Authorization of appropriations

There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

(Pub. L. 88–352, title XI, §1105, July 2, 1964, 78 Stat. 268.)

References in Text

This Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

§2000h–6. Separability

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

(Pub. L. 88–352, title XI, §1106, July 2, 1964, 78 Stat. 268.)

References in Text

This Act and the Act, referred to in text, is Pub. L. 88–352, July 2, 1964, 78 Stat. 241, as amended, known as the Civil Rights Act of 1964, which is classified principally to subchapters II to IX of this chapter (§2000a et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

29 United States Code § 621. CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSE.

(a) The Congress hereby finds and declares that—

(1) in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;

(2) the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;

(3) the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;

(4) the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.

(b) It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

(Pub. L. 90–202, §2, Dec. 15, 1967, 81 Stat. 602.)

Statutory Notes and Related Subsidiaries

Effective Date; Rules and Regulations

Section 16, formerly §15, of Pub. L. 90–202, renumbered by Pub. L. 93–259, §28(b)(1), Apr. 8, 1974, 88 Stat. 74, provided that: "This Act [enacting this chapter] shall become effective one hundred and eighty days after enactment [Dec. 15, 1967], except (a) that the Secretary of Labor may extend the delay in effective date of any provision of this Act up to and additional ninety days thereafter if he finds that such time is necessary in permitting adjustments to the provisions hereof, and (b) that on or after the date of enactment [Dec. 15, 1967] the Secretary of Labor is authorized to issue such rules and regulations as may be necessary to carry out its provisions."

Short Title of 1996 Amendment

Pub. L. 104–208, div. A, title I, §101(a) [title I, §119], Sept. 30, 1996, 110 Stat. 3009, 3009-23, provided in part that: "This section [amending section 623 of this title, enacting provisions set out as notes under section 623 of this title, and repealing provisions set out as a note under section 623 of this title] may be cited as the 'Age Discrimination in Employment Amendments of 1996'."

Short Title of 1990 Amendment

Pub. L. 101–433, §1, Oct. 16, 1990, 104 Stat. 978, provided that: "This Act [amending sections 623, 626, and 630 of this title and enacting provisions set out as notes under this section and sections 623 and 626 of this title] may be cited as the 'Older Workers Benefit Protection Act'."

Short Title of 1986 Amendment

Pub. L. 99–592, §1, Oct. 31, 1986, 100 Stat. 3342, provided that: "This Act [amending sections 623, 630, and 631 of this title and enacting provisions set out as notes under sections 622 to 624 and 631 of this title] may be cited as the 'Age Discrimination in Employment Amendments of 1986'."

Short Title of 1978 Amendment

Pub. L. 95–256, §1, Apr. 6, 1978, 92 Stat. 189, provided that: "This Act [amending sections 623, 624, 626, 631, 633a, and 634 of this title and sections 8335 and 8339 of Title 5, Government Organization and Employees, repealing section 3322 of Title 5, and enacting provisions set out as notes under sections 623, 626, 631, and 633a of this title] may be cited as the 'Age Discrimination in Employment Act Amendments of 1978'."

Short Title

Pub. L. 90–202, §1, Dec. 15, 1967, 81 Stat. 602, provided: "That this Act [enacting this chapter] may be cited as the 'Age Discrimination in Employment Act of 1967'."

Severability

Pub. L. 101–433, title III, §301, Oct. 16, 1990, 104 Stat. 984, provided that: "If any provision of this Act [see Short Title of 1990 Amendment note above], or an amendment made by this Act, or the application of such provision to any person or circumstances is held to be invalid, the remainder of this Act and the amendments made by this Act, and the application of such provision to other persons and circumstances, shall not be affected thereby."

Congressional Finding

Pub. L. 101–433, title I, §101, Oct. 16, 1990, 104 Stat. 978, provided that: "The Congress finds that, as a result of the decision of the Supreme Court in Public Employees Retirement System of Ohio v. Betts, 109 S.Ct. 256 (1989), legislative action is necessary to restore the original congressional

intent in passing and amending the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), which was to prohibit discrimination against older workers in all employee benefits except when age-based reductions in employee benefit plans are justified by significant cost considerations."

Executive Documents

Transfer of Functions

Functions vested by this section in Secretary of Labor or Civil Service Commission transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, §2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

29 United States Code § 794. NONDISCRIMINATION UNDER FEDERAL GRANTS AND PROGRAMS.

(a) Promulgation of rules and regulations

No otherwise qualified individual with a disability in the United States, as defined in section 705(20) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(b) "Program or activity" defined

For the purposes of this section, the term "program or activity" means all of the operations of—

(1)(A) a department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(A) a college, university, or other postsecondary institution, or a public system of higher education; or

(B) a local educational agency (as defined in section 7801 of title 20), system of career and technical education, or other school system;

(3)(A) an entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) the entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3);

any part of which is extended Federal financial assistance.

(c) Significant structural alterations by small providers

Small providers are not required by subsection (a) to make significant structural alterations to their existing facilities for the purpose of assuring program accessibility, if alternative means of providing the services are available. The terms used in this subsection shall be construed with reference to the regulations existing on March 22, 1988.

(d) Standards used in determining violation of section

The standards used to determine whether this section has been violated in a complaint alleging employment discrimination under this section shall be the standards applied under title I of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111 et seq.) and the provisions of sections

501 through 504, and 510,1 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201–12204 and 12210), as such sections relate to employment.

(Pub. L. 93–112, title V, §504, Sept. 26, 1973, 87 Stat. 394; Pub. L. 95–602, title I, §§119, 122(d)(2), Nov. 6, 1978, 92 Stat. 2982, 2987; Pub. L. 99–506, title I, §103(d)(2)(B), title X, §1002(e)(4), Oct. 21, 1986, 100 Stat. 1810, 1844; Pub. L. 100–259, §4, Mar. 22, 1988, 102 Stat. 29; Pub. L. 100–630, title II, §206(d), Nov. 7, 1988, 102 Stat. 3312; Pub. L. 102–569, title I, §102(p)(32), title V, §506, Oct. 29, 1992, 106 Stat. 4360, 4428; Pub. L. 103–382, title III, §394(i)(2), Oct. 20, 1994, 108 Stat. 4029; Pub. L. 105–220, title IV, §408(a)(3), Aug. 7, 1998, 112 Stat. 1203; Pub. L. 107–110, title X, §1076(u)(2), Jan. 8, 2002, 115 Stat. 2093; Pub. L. 113–128, title IV, §456(c), July 22, 2014, 128 Stat. 1675; Pub. L. 114–95, title IX, §9215(mmm)(3), Dec. 10, 2015, 129 Stat. 2188.)

Editorial Notes

References in Text

The amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978, referred to in subsec. (a), mean the amendments made by Pub. L. 95–602. See 1978 Amendments note below.

The Americans with Disabilities Act of 1990, referred to in subsec. (d), is Pub. L. 101–336, July 26, 1990, 104 Stat. 327. Title I of the Act is classified generally to subchapter I (§12111 et seq.) of chapter 126 of Title 42, The Public Health and Welfare. Section 510 of the Act was renumbered section 511 by Pub. L. 110–325, §6(a)(2), Sept. 25, 2008, 122 Stat. 3558. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of Title 42 and Tables.

Amendments

2015—Subsec. (b)(2)(B). Pub. L. 114–95 made technical amendment to reference in original act which appears in text as reference to section 7801 of title 20.

2014—Subsec. (b)(2)(B). Pub. L. 113–128 substituted "career and technical education" for "vocational education".

2002—Subsec. (b)(2)(B). Pub. L. 107–110 substituted "section 7801 of title 20" for "section 8801 of title 20".

1998—Subsec. (a). Pub. L. 105–220 substituted "section 705(20)" for "section 706(8)".

1994—Subsec. (b)(2)(B). Pub. L. 103–382 substituted "section 8801 of title 20" for "section 2891(12) of title 20".

1992—Subsec. (a). Pub. L. 102–569, §102(p)(32), substituted "a disability" for "handicaps" and "disability" for "handicap" in first sentence.

Subsec. (d). Pub. L. 102–569, §506, added subsec. (d).

1988—Subsec. (a). Pub. L. 100–630, §206(d)(1), substituted "her or his handicap" for "his handicap".

Pub. L. 100–259, §4(1), designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 100–259, §4(2), added subsec. (b).

Subsec. (b)(2)(B). Pub. L. 100–630, §206(d)(2), substituted "section 2891(12) of title 20" for "section 2854(a)(10) of title 20".

Subsec. (c). Pub. L. 100–259, §4(2), added subsec. (c).

1986—Pub. L. 99–506 substituted "individual with handicaps" for "handicapped individual" and "section 706(8) of this title" for "section 706(7) of this title".

1978—Pub. L. 95–602 substituted "section 706(7) of this title" for "section 706(6) of this title" and inserted provision prohibiting discrimination under any program or activity conducted by any Executive agency or by the United States Postal Service and requiring the heads of these agencies to promulgate regulations prohibiting discrimination.

Statutory Notes and Related Subsidiaries

Effective Date of 2015 Amendment

Amendment by Pub. L. 114–95 effective Dec. 10, 2015, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 114–95, set out as a note under section 6301 of Title 20, Education.

Effective Date of 2002 Amendment

Amendment by Pub. L. 107–110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107–110, set out as an Effective Date note under section 6301 of Title 20, Education.

Exclusion From Coverage

Amendment by Pub. L. 100–259 not to be construed to extend application of this chapter to ultimate beneficiaries of Federal financial assistance excluded from coverage before Mar. 22, 1988, see section 7 of Pub. L. 100–259, set out as a Construction note under section 1687 of Title 20, Education.

Abortion Neutrality

Amendment by Pub. L. 100–259 not to be construed to force or require any individual or hospital or any other institution, program, or activity receiving Federal funds to perform or pay for an abortion, see section 8 of Pub. L. 100–259, set out as a note under section 1688 of Title 20, Education.

Construction of Prohibition Against Discrimination Under Federal Grants

Rights or protections of this section not affected by any provision of Pub. L. 98–457, see section 127 of Pub. L. 98–457, set out as a note under section 5101 of Title 42, The Public Health and Welfare.

Executive Documents

Coordination of Implementation and Enforcement of Provisions

For provisions relating to the coordination of implementation and enforcement of the provisions of this section by the Attorney General, see section 1–201 of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d–1 of Title 42, The Public Health and Welfare.

Executive Order No. 11914

Ex. Ord. No. 11914, Apr. 28, 1976, 41 F.R. 17871, which related to nondiscrimination in federally assisted programs, was revoked by Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out as a note under section 2000d–1 of Title 42, The Public Health and Welfare.

42 United States Code § 12101. FINDINGS AND PURPOSE.

(a) Findings

The Congress finds that—

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for

which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

(Pub. L. 101–336, §2, July 26, 1990, 104 Stat. 328; Pub. L. 110–325, §3, Sept. 25, 2008, 122 Stat. 3554.)

Editorial Notes

References in Text

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

Amendments

2008—Subsec. (a)(1). Pub. L. 110–325, §3(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;".

Subsec. (a)(7) to (9). Pub. L. 110–325, §3(2), (3), redesignated pars. (8) and (9) as (7) and (8), respectively, and struck out former par. (7) which read as follows: "individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;".

Statutory Notes and Related Subsidiaries

Effective Date of 2008 Amendment

Amendment by Pub. L. 110–325 effective Jan. 1, 2009, see section 8 of Pub. L. 110–325, set out as a note under section 705 of Title 29, Labor.

Short Title of 2008 Amendment

Pub. L. 110–325, §1, Sept. 25, 2008, 122 Stat. 3553, provided that: "This Act [enacting sections 12103 and 12205a of this title, amending this section, sections 12102, 12111 to 12114, 12201, and 12206 to 12213 of this title, section 705 and former section 706 of Title 29, Labor, and enacting provisions set out as notes under this section and section 705 of Title 29] may be cited as the 'ADA Amendments Act of 2008'."

Short Title

Pub. L. 101–336, §1(a), July 26, 1990, 104 Stat. 327, provided that: "This Act [enacting this chapter and section 225 of Title 47, Telecommunications, amending section 706 of Title 29, Labor, and sections 152, 221, and 611 of Title 47, and enacting provisions set out as notes under sections 12111, 12131, 12141, 12161, and 12181 of this title] may be cited as the 'Americans with Disabilities Act of 1990'."

Findings and Purposes of Pub. L. 110–325

Pub. L. 110–325, §2, Sept. 25, 2008, 122 Stat. 3553, provided that:

"(a) Findings.—Congress finds that—

"(1) in enacting the Americans with Disabilities Act of 1990 (ADA) [42 U.S.C. 12101 et seq.], Congress intended that the Act 'provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities' and provide broad coverage;

"(2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;

"(3) while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], that expectation has not been fulfilled;

"(4) the holdings of the Supreme Court in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect;

"(5) the holding of the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA;

"(6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities;

"(7) in particular, the Supreme Court, in the case of Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), interpreted the term 'substantially limits' to require a greater degree of limitation than was intended by Congress; and

"(8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term 'substantially limits' as 'significantly restricted' are inconsistent with congressional intent, by expressing too high a standard.

"(b) Purposes.—The purposes of this Act [see Short Title of 2008 Amendment note above] are—

"(1) to carry out the ADA's objectives of providing 'a clear and comprehensive national mandate for the elimination of discrimination' and 'clear, strong, consistent, enforceable standards addressing discrimination' by reinstating a broad scope of protection to be available under the ADA;

"(2) to reject the requirement enunciated by the Supreme Court in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a

major life activity is to be determined with reference to the ameliorative effects of mitigating measures;

"(3) to reject the Supreme Court's reasoning in Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in School Board of Nassau County v. Arline, 480 U.S. 273 (1987) which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973;

"(4) to reject the standards enunciated by the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), that the terms 'substantially' and 'major' in the definition of disability under the ADA 'need to be interpreted strictly to create a demanding standard for qualifying as disabled,' and that to be substantially limited in performing a major life activity under the ADA 'an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives';

"(5) to convey congressional intent that the standard created by the Supreme Court in the case of Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) for 'substantially limits', and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis; and

"(6) to express Congress' expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term 'substantially limits' as 'significantly restricted' to be consistent with this Act, including the amendments made by this Act."

Study by General Accounting Office of Existing Disability-Related Employment Incentives

Pub. L. 106–170, title III, §303(a), Dec. 17, 1999, 113 Stat. 1903, provided that, as soon as practicable after Dec. 17, 1999, the Comptroller General was to undertake a study to assess existing tax credits and other disability-related employment incentives under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) and other Federal laws, specifically addressing the extent to which such credits and other incentives would encourage employers to hire and retain individuals with disabilities; and that, not later than 3 years after Dec. 17, 1999, the Comptroller General was to transmit to the appropriate congressional committees a written report presenting the results of the study and any appropriate recommendations for legislative or administrative changes.

42 United States Code § 12111. DEFINITIONS.

As used in this subchapter:

(1) Commission

The term "Commission" means the Equal Employment Opportunity Commission established by section 2000e–4 of this title.

(2) Covered entity

The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Direct threat

The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee

The term "employee" means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) Employer

(A) In general

The term "employer" means a person engaged in an industry affecting commerce 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 any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions

The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

(6) Illegal use of drugs

(A) In general

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(7) Person, etc.

The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 2000e of this title.

(8) Qualified individual

The term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation

The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of

examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship

(A) In general

The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

(Pub. L. 101–336, title I, §101, July 26, 1990, 104 Stat. 330; Pub. L. 102–166, title I, §109(a), Nov. 21, 1991, 105 Stat. 1077; Pub. L. 110–325, §5(c)(1), Sept. 25, 2008, 122 Stat. 3557.)

Editorial Notes

References in Text

The effective date of this subchapter, referred to in par. (5)(A), is 24 months after July 26, 1990, see section 108 of Pub. L. 101–336, set out as an Effective Date note below.

The Controlled Substances Act, referred to in par. (6)(A), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

This chapter, referred to in par. (10)(B)(i), was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

Constitutionality

For the constitutionality of section 101 of Pub. L. 101–336, see note under section 12112 of this title.

Amendments

2008—Par. (8). Pub. L. 110–325 struck out "with a disability" after "individual" in heading and the first two places appearing in text.

1991—Par. (4). Pub. L. 102–166 inserted at end "With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States."

Statutory Notes and Related Subsidiaries

Effective Date of 2008 Amendment

Amendment by Pub. L. 110–325 effective Jan. 1, 2009, see section 8 of Pub. L. 110–325, set out as a note under section 705 of Title 29, Labor.

Effective Date of 1991 Amendment

Amendment by Pub. L. 102–166 inapplicable to conduct occurring before Nov. 21, 1991, see section 109(c) of Pub. L. 102–166, set out as a note under section 2000e of this title.

Effective Date

Pub. L. 101–336, title I, §108, July 26, 1990, 104 Stat. 337, provided that: "This title [enacting this subchapter] shall become effective 24 months after the date of enactment [July 26, 1990]."

Labor Code § 21.051. DISCRIMINATION BY EMPLOYER.

An employer commits an unlawful employment practice if because of race, color, disability, religion, sex, national origin, or age the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that would deprive or tend to deprive an individual of any employment opportunity or adversely affect in any other manner the status of an employee.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Labor Code § 21.402. DISCRIMINATORY USE OF GENETIC INFORMATION PROHIBITED.

(a) An employer commits an unlawful employment practice if the employer fails or refuses to hire, discharges, or otherwise discriminates against an individual with respect to compensation or the terms, conditions, or privileges of employment:

(1) on the basis of genetic information concerning the individual; or

(2) because of the refusal of the individual to submit to a genetic test.

(b) A labor organization commits an unlawful employment practice if the labor organization excludes or expels from membership or otherwise discriminates against an individual:

(1) on the basis of genetic information concerning the individual; or

(2) because of the refusal of the individual to submit to a genetic test.

(c) An employment agency commits an unlawful employment practice if the employment agency classifies or refers for employment, fails or refuses to refer for employment, or otherwise discriminates against an individual:

(1) on the basis of genetic information concerning the individual; or

(2) because of the refusal of the individual to submit to a genetic test.

(d) An employer, labor organization, or employment agency commits an unlawful employment practice if the employer, labor organization, or employment agency limits, segregates, or classifies an employee, member, or applicant for employment or membership in a way that would deprive or tend to deprive the employee, member, or applicant of employment opportunities or otherwise adversely affect the status of the employee, member, or applicant:

(1) on the basis of genetic information concerning the employee, member, or applicant; or

(2) because of the refusal of the employee, member, or applicant to submit to a genetic test.

Added by Acts 1997, 75th Leg., ch. 1215, Sec. 1, eff. Sept. 1, 1997.

40 Texas Administrative Code § 819.12. UNLAWFUL EMPLOYMENT PRACTICES.

(a) Discrimination by Employer. An employer commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that deprives or tends to deprive an individual of an employment opportunity or adversely affects in any other manner the status of an employee.

(b) Discrimination by Employment Agency. An employment agency commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:

(1) fails or refuses to refer for employment or discriminates in any other manner against an individual; or

(2) classifies or refers an individual for employment on that basis.

(c) Discrimination by Labor Organization. A labor organization commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:

(1) excludes or expels from membership or discriminates in any other manner against an individual; or

(2) limits, segregates, or classifies a member or an applicant for membership, or classifies or fails or refuses to refer for employment an individual in a manner that:

(A) deprives or tends to deprive an individual of any employment opportunity;

(B) limits an employment opportunity or adversely affects in any other manner the status of an employee or of an applicant for employment; or

(C) causes or attempts to cause an employer to violate this subchapter.

(d) Admission or Participation in Training Program. An employer, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it discriminates against an individual in admission to or participation in the program, unless a training or retraining opportunity or program is provided under an affirmative action plan approved by federal or state law, rule, or court order. The prohibition against discrimination based on age applies only to individuals who are at least 40 years of age.

(e) Retaliation. An employer, employment agency, or labor organization commits an unlawful employment practice based on race, color, disability, religion, sex, national origin, or age if the employer, employment agency, or labor organization retaliates or discriminates against an individual who:

(1) opposes a discriminatory practice;

(2) makes or files a charge;

(3) files a complaint; or

(4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

(f) Aiding or Abetting Discrimination. An employer, employment agency, or labor organization commits an unlawful employment practice if it aids, abets, incites, or coerces an individual to engage in an unlawful discriminatory practice based on race, color, disability, religion, sex, national origin, or age.

(g) Interference with the Agency or CRD. An employer, employment agency, or labor organization commits an unlawful employment practice if it willfully interferes with the performance of a duty or the exercise of a power by CRD or by the Agency in relation to CRD.

(h) Prevention of Compliance. An employer, employment agency, or labor organization commits an unlawful employment practice if it willfully obstructs or prevents an individual from complying with Texas Labor Code, Chapter 21, or a rule adopted or order issued under Texas Labor Code, Chapter 21.

(i) Discriminatory Notice or Advertisement. An employer, employment agency, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if it prints or publishes or causes to be printed or published a notice or advertisement relating to employment that:

(1) indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and

(2) concerns an employee's status, employment, or admission to or membership or participation in a labor organization or training or retraining program.

(j) Bona Fide Occupational Qualification. A bona fide occupational qualification is an affirmative defense to discrimination.

(k) Sexual Harassment. An employer commits an unlawful employment practice if sexual harassment of an employee occurs and the employer or the employer's agents or supervisors:

(1) knows or should have known that the conduct constituting sexual harassment was occurring; and

(2) fails to take immediate and appropriate corrective action.

Human Resources Code § 121.003. DISCRIMINATION PROHIBITED.

(a) Persons with disabilities have the same right as persons without disabilities to the full use and enjoyment of any public facility in the state.

(b) No common carrier, airplane, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation operating within the state may refuse to accept as a passenger a person with a disability because of the person's disability, nor may a person with a disability be required to pay an additional fare because of his or her use of a service animal, wheelchair, crutches, or other device used to assist a person with a disability in travel.

(c) No person with a disability may be denied admittance to any public facility in the state because of the person's disability. No person with a disability may be denied the use of a white cane, assistance animal, wheelchair, crutches, or other device of assistance.

(d) The discrimination prohibited by this section includes a refusal to allow a person with a disability to use or be admitted to any public facility, a ruse or subterfuge calculated to prevent or discourage a person with a disability from using or being admitted to a public facility, and a failure to:

(1) comply with Chapter 469, Government Code;

(2) make reasonable accommodations in policies, practices, and procedures; or

(3) provide auxiliary aids and services necessary to allow the full use and enjoyment of the public facility.

(e) Regulations relating to the use of public facilities by any designated class of persons from the general public may not prohibit the use of particular public facilities by persons with disabilities who, except for their disabilities or use of assistance animals or other devices for assistance in travel, would fall within the designated class.

(f) It is the policy of the state that persons with disabilities be employed by the state, by political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as persons without disabilities, unless it is shown that there is no reasonable accommodation that would enable a person with a disability to perform the essential elements of a job.

(g) Persons with disabilities shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(h) A person with a total or partial disability who has or obtains a service animal is entitled to full and equal access to all housing accommodations provided for in this section, and may not be required to pay extra compensation or make a deposit for the animal but is liable for damages done to the premises by the animal except for reasonable wear and tear.

(i) A service animal in training shall not be denied admittance to any public facility when accompanied by an approved trainer.

(j) A person may not assault, harass, interfere with, kill, or injure in any way, or attempt to assault, harass, interfere with, kill, or injure in any way, an assistance animal.

(k) Except as provided by Subsection (l), a person is not entitled to make demands or inquiries relating to the qualifications or certifications of a service animal for purposes of admittance to a public facility except to determine the basic type of assistance provided by the service animal to a person with a disability.

(l) If a person's disability is not readily apparent, for purposes of admittance to a public facility with a service animal, a staff member or manager of the facility may inquire about:

(1) whether the service animal is required because the person has a disability; and

(2) what type of work or task the service animal is trained to perform.

Acts 1979, 66th Leg., p. 2426, ch. 842, art. 1, Sec. 1, eff. Sept. 1, 1979. Amended by Acts 1981, 67th Leg., p. 3310, ch. 865, Sec. 2, eff. Aug. 31, 1981; Acts 1983, 68th Leg., 1st C.S., p. 57, ch. 7, Sec. 10.03(c), eff. Sept. 23, 1983; Acts 1985, 69th Leg., ch. 278, Sec. 2, eff. June 5, 1985; Acts 1989, 71st Leg., ch. 249, Sec. 1, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 890, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 649, Sec. 4, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 261, Sec. 1, eff. May 22, 2001; Acts 2003, 78th Leg., ch. 710, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 838 (H.B. 489), Sec. 3, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.416, eff. April 2, 2015.

29 United States Code § 623. PROHIBITION OF AGE DISCRIMINATION.

(a) Employer practices

It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

(b) Employment agency practices

It shall be unlawful 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 such individual's age.

(c) Labor organization practices

It shall be unlawful for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any 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 age;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Opposition to unlawful practices; participation in investigations, proceedings, or litigation

It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

(e) Printing or publication of notice or advertisement indicating preference, limitation, etc.

It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

(f) Lawful practices; age an occupational qualification; other reasonable factors; laws of foreign workplace; seniority system; employee benefit plans; discharge or discipline for good cause

It shall not be unlawful for an employer, employment agency, or labor organization—

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

(2) to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section—

(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this chapter, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or

(B) to observe the terms of a bona fide employee benefit plan—

(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

(ii) that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this chapter.

Notwithstanding clause (i) or (ii) of subparagraph (B), no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title, because of the age of such individual. An employer, employment agency, or labor organization acting under subparagraph (A), or under clause (i) or (ii) of subparagraph (B), shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this chapter; or

(3) to discharge or otherwise discipline an individual for good cause.

(g) Repealed. Pub. L. 101–239, title VI, §6202(b)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2233

(h) Practices of foreign corporations controlled by American employers; foreign employers not controlled by American employers; factors determining control

(1) If an employer controls a corporation whose place of incorporation is in a foreign country, any practice by such corporation prohibited under this section shall be presumed to be such practice by such employer.

(2) The prohibitions of this section shall not apply where the employer is a foreign person not controlled by an American employer.

(3) For the purpose of this subsection the determination of whether an employer controls a corporation shall be based upon the—

(A) interrelation of operations,

(B) common management,

(C) centralized control of labor relations, and

(D) common ownership or financial control,

of the employer and the corporation.

(i) Employee pension benefit plans; cessation or reduction of benefit accrual or of allocation to employee account; distribution of benefits after attainment of normal retirement age; compliance; highly compensated employees

(1) Except as otherwise provided in this subsection, it shall be unlawful for an employer, an employment agency, a labor organization, or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits—

(A) in the case of a defined benefit plan, the cessation of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age, or

(B) in the case of a defined contribution plan, the cessation of allocations to an employee's account, or the reduction of the rate at which amounts are allocated to an employee's account, because of age.

(2) Nothing in this section shall be construed to prohibit an employer, employment agency, or labor organization from observing any provision of an employee pension benefit plan to the extent that such provision imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(3) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

(A) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

(B) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 1056(a)(3) of this title and section 401(a)(14)(C) of title 26, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 1053(a)(3)(B) of this title or section 411(a)(3)(B) of title 26, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The provisions of this paragraph shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations shall provide for the application of the preceding provisions of this paragraph to all employee pension benefit plans subject to this subsection and may provide for the application of such provisions, in the case of any such employee, with respect to any period of time within a plan year.

(4) Compliance with the requirements of this subsection with respect to an employee pension benefit plan shall constitute compliance with the requirements of this section relating to benefit accrual under such plan.

(5) Paragraph (1) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of title 26.

(6) A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals or it is a plan permitted by subsection (m) of this section..1

(7) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of title 26 and subparagraphs (C) and (D) 2 of section 411(b)(2) of title 26 shall apply with respect to the requirements of this subsection in the same manner and to the same extent as such regulations apply with respect to the requirements of such sections 411(b)(1)(H) and 411(b)(2).

(8) A plan shall not be treated as failing to meet the requirements of this section solely because such plan provides a normal retirement age described in section 1002(24)(B) of this title and section 411(a)(8)(B) of title 26.

(9) For purposes of this subsection—

(A) The terms “employee pension benefit plan”, “defined benefit plan”, “defined contribution plan”, and “normal retirement age” have the meanings provided such terms in section 1002 of this title.

(B) The term “compensation” has the meaning provided by section 414(s) of title 26.

(10) Special rules relating to age.—

(A) Comparison to similarly situated younger individual.—

(i) In general.—A plan shall not be treated as failing to meet the requirements of paragraph (1) if a participant's accrued benefit, as determined as of any date under the terms of the plan, would be equal to or greater than that of any similarly situated, younger individual who is or could be a participant.

(ii) Similarly situated.—For purposes of this subparagraph, a participant is similarly situated to any other individual if such participant is identical to such other individual in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

(iii) Disregard of subsidized early retirement benefits.—In determining the accrued benefit as of any date for purposes of this clause, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.

(iv) Accrued benefit.—For purposes of this subparagraph, the accrued benefit may, under the terms of the plan, be expressed as an annuity payable at normal retirement age, the balance of a hypothetical account, or the current value of the accumulated percentage of the employee's final average compensation.

(B) Applicable defined benefit plans.—

(i) Interest credits.—

(I) In general.—An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate which is not greater than a market rate of return. A plan shall not be treated as failing to meet the requirements of this subclause merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return.

(II) Preservation of capital.—An interest credit (or an equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.

(III) Market rate of return.—The Secretary of the Treasury may provide by regulation for rules governing the calculation of a market rate of return for purposes of subclause (I) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subclause (I). In the case of a governmental plan (as defined in the first sentence of section 414(d) of title 26), a rate of return or a method of crediting interest established pursuant to any provision of Federal, State, or local law (including any administrative rule or policy adopted in accordance with any such law) shall be treated as a market rate of return for purposes of subclause (I) and a permissible method of crediting interest for purposes of meeting the requirements of subclause (I), except that this sentence shall only apply to a rate of return or method of crediting interest if such rate or method does not violate any other requirement of this chapter.

(ii) Special rule for plan conversions.—If, after June 29, 2005, an applicable plan amendment is adopted, the plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the requirements of clause (iii) are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment.

(iii) Rate of benefit accrual.—Subject to clause (iv), the requirements of this clause are met with respect to any participant if the accrued benefit of the participant under the terms of the plan as in effect after the amendment is not less than the sum of—

(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

(II) the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

(iv) Special rules for early retirement subsidies.—For purposes of clause (iii)(I), the plan shall credit the accumulation account or similar amount 3 with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

(v) Applicable plan amendment.—For purposes of this subparagraph—

(I) In general.—The term “applicable plan amendment” means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

(II) Special rule for coordinated benefits.—If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in subclause (I), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

(III) Multiple amendments.—The Secretary of the Treasury shall issue regulations to prevent the avoidance of the purposes of this subparagraph through the use of 2 or more plan amendments rather than a single amendment.

(IV) Applicable defined benefit plan.—For purposes of this subparagraph, the term “applicable defined benefit plan” has the meaning given such term by section 1053(f)(3) of this title.

(vi) Termination requirements.—An applicable defined benefit plan shall not be treated as meeting the requirements of clause (i) unless the plan provides that, upon the termination of the plan—

(I) if the interest credit rate (or an equivalent amount) under the plan is a variable rate, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date, and

(II) the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the plan for such purpose as of the termination date, except that if such interest rate is a variable rate, the interest rate shall be determined under the rules of subclause (I).

(C) Certain offsets permitted.—A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides offsets against benefits under the plan to the extent such offsets are allowable in applying the requirements of section 401(a) of title 26.

(D) Permitted disparities in plan contributions or benefits.—A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) of title 26 are met.

(E) Indexing permitted.—

(i) In general.—A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides for indexing of accrued benefits under the plan.

(ii) Protection against loss.—Except in the case of any benefit provided in the form of a variable annuity, clause (i) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

(iii) Indexing.—For purposes of this subparagraph, the term “indexing” means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.

(F) Early retirement benefit or retirement-type subsidy.—For purposes of this paragraph, the terms “early retirement benefit” and “retirement-type subsidy” have the meaning given such terms in section 1054(g)(2)(A) of this title.2

(G) Benefit accrued to date.—For purposes of this paragraph, any reference to the accrued benefit shall be a reference to such benefit accrued to date.

(j) Employment as firefighter or law enforcement officer

It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken—

(1) with respect to the employment of an individual as a firefighter or as a law enforcement officer, the employer has complied with section 3(d)(2) of the Age Discrimination in Employment Amendments of 1996 2 if the individual was discharged after the date described in such section, and the individual has attained—

(A) the age of hiring or retirement, respectively, in effect under applicable State or local law on March 3, 1983; or

(B)(i) if the individual was not hired, the age of hiring in effect on the date of such failure or refusal to hire under applicable State or local law enacted after September 30, 1996; or

(ii) if applicable State or local law was enacted after September 30, 1996, and the individual was discharged, the higher of—

(I) the age of retirement in effect on the date of such discharge under such law; and

(II) age 55; and

(2) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this chapter.

(k) Seniority system or employee benefit plan; compliance

A seniority system or employee benefit plan shall comply with this chapter regardless of the date of adoption of such system or plan.

(l) Lawful practices; minimum age as condition of eligibility for retirement benefits; deductions from severance pay; reduction of long-term disability benefits

Notwithstanding clause (i) or (ii) of subsection (f)(2)(B) of this section—

(1)(A) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because—

(i) an employee pension benefit plan (as defined in section 1002(2) of this title) provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

(ii) a defined benefit plan (as defined in section 1002(35) of this title) provides for—

(I) payments that constitute the subsidized portion of an early retirement benefit; or

(II) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

(B) A voluntary early retirement incentive plan that—

(i) is maintained by—

(I) a local educational agency (as defined in section 7801 of title 20,4 or

(II) an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c)(5) or (6) of title 26 and exempt from taxation under section 501(a) of title 26, and

(ii) makes payments or supplements described in subclauses (I) and (II) of subparagraph (A)(ii) in coordination with a defined benefit plan (as so defined) maintained by an eligible employer described in section 457(e)(1)(A) of title 26 or by an education association described in clause (i)(II),

shall be treated solely for purposes of subparagraph (A)(ii) as if it were a part of the defined benefit plan with respect to such payments or supplements. Payments or supplements under such a voluntary early retirement incentive plan shall not constitute severance pay for purposes of paragraph (2).

(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because following a contingent event unrelated to age—

(i) the value of any retiree health benefits received by an individual eligible for an immediate pension;

(ii) the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and following which the individual is eligible for not less than an immediate and unreduced pension; or

(iii) the values described in both clauses (i) and (ii);

are deducted from severance pay made available as a result of the contingent event unrelated to age.

(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of title 26) that—

(i) constitutes additional benefits of up to 52 weeks;

(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

(D) For purposes of this paragraph and solely in order to make the deduction authorized under this paragraph, the term “retiree health benefits” means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act; or

(iii) the package of benefits provided by the employer is as described in clauses (i) and (ii).

(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of $3,000 per year for benefit years before age 65, and $750 per year for benefit years beginning at age 65 and above.

(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of $48,000 for individuals below age 65, and $24,000 for individuals age 65 and above.

(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on October 16, 1990, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after October 16, 1990, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

(3) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits (other than those attributable to employee contributions)—

(A) paid to the individual that the individual voluntarily elects to receive; or

(B) for which an individual who has attained the later of age 62 or normal retirement age is eligible.

(m) Voluntary retirement incentive plans

Notwithstanding subsection (f)(2)(B) of this section, it shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because a plan of an institution of higher education (as defined in section 1001 of title 20) offers employees who are serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) supplemental benefits upon voluntary retirement that are reduced or eliminated on the basis of age, if—

(1) such institution does not implement with respect to such employees any age-based reduction or cessation of benefits that are not such supplemental benefits, except as permitted by other provisions of this chapter;

(2) such supplemental benefits are in addition to any retirement or severance benefits which have been offered generally to employees serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure), independent of any early retirement or exit-incentive plan, within the preceding 365 days; and

(3) any employee who attains the minimum age and satisfies all non-age-based conditions for receiving a benefit under the plan has an opportunity lasting not less than 180 days to elect to retire and to receive the maximum benefit that could then be elected by a younger but otherwise similarly situated employee, and the plan does not require retirement to occur sooner than 180 days after such election.

(Pub. L. 90–202, §4, Dec. 15, 1967, 81 Stat. 603; Pub. L. 95–256, §2(a), Apr. 6, 1978, 92 Stat. 189; Pub. L. 97–248, title I, §116(a), Sept. 3, 1982, 96 Stat. 353; Pub. L. 98–369, div. B, title III, §2301(b), July 18, 1984, 98 Stat. 1063; Pub. L. 98–459, title VIII, §802(b), Oct. 9, 1984, 98 Stat. 1792; Pub. L. 99–272, title IX, §9201(b)(1), (3), Apr. 7, 1986, 100 Stat. 171; Pub. L. 99–509, title IX, §9201, Oct. 21, 1986, 100 Stat. 1973; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–592, §§2(a), (b), 3(a), Oct. 31, 1986, 100 Stat. 3342; Pub. L. 101–239, title VI, §6202(b)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2233; Pub. L. 101–433, title I, §103, Oct. 16, 1990, 104 Stat. 978; Pub. L. 101–521, Nov. 5, 1990, 104 Stat. 2287; Pub. L. 104–208, div. A, title I, §101(a) [title I, §119[1(b)]], Sept. 30, 1996, 110 Stat. 3009, 3009–23; Pub. L. 105–244, title IX, §941(a), (b), Oct. 7,

1998, 112 Stat. 1834, 1835; Pub. L. 109–280, title VII, §701(c), title XI, §1104(a)(2), Aug. 17, 2006, 120 Stat. 988, 1058; Pub. L. 110–458, title I, §123(a), Dec. 23, 2008, 122 Stat. 5114.)

References in Text

Subparagraphs (C) and (D) of section 411(b)(2) of title 26, referred to in subsec. (i)(7), were redesignated subpars. (B) and (C) of section 411(b)(2) of Title 26, Internal Revenue Code, by Pub. L. 101–239, title VII, §7871(a)(1), Dec. 19, 1989, 103 Stat. 2435.

Section 1054(g)(2)(A) of this title, referred to in subsec. (i)(10)(F), was in the original "section 203(g)(2)(A) of the Employee Retirement Income Security Act of 1974", and was translated as reading section 204(g)(2)(A) of that Act to reflect the probable intent of Congress, because section 203 does not contain a subsec. (g).

Section 3(d)(2) of the Age Discrimination in Employment Amendments of 1996, referred to in subsec. (j)(1), probably means Pub. L. 104–208, div. A, title I, §101(a) [title I, §119[2(d)(2)]], Sept. 30, 1996, 110 Stat. 3009, 3009–23, 3009–25, which is set out as a note under this section.

The Social Security Act, referred to in subsec. (l)(1)(A)(ii)(II), (2)(D)(i), (ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVIII of the Act are classified generally to subchapters II (§401 et seq.) and XVIII (§1395 et seq.), respectively, of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Amendments

2008—Subsec. (i)(10)(B)(i)(III). Pub. L. 110–458 inserted at end "In the case of a governmental plan (as defined in the first sentence of section 414(d) of title 26), a rate of return or a method of crediting interest established pursuant to any provision of Federal, State, or local law (including any administrative rule or policy adopted in accordance with any such law) shall be treated as a market rate of return for purposes of subclause (I) and a permissible method of crediting interest for purposes of meeting the requirements of subclause (I), except that this sentence shall only apply to a rate of return or method of crediting interest if such rate or method does not violate any other requirement of this chapter."

2006—Subsec. (i)(10). Pub. L. 109–280, §701(c), added par. (10).

Subsec. (l)(1). Pub. L. 109–280, §1104(a)(2), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and former cls. (i) and (ii) of former subpar. (B) as subcls. (I) and (II) of cl. (ii), respectively, and added subpar. (B).

1998—Subsec. (i)(6). Pub. L. 105–244, §941(b), inserted “or it is a plan permitted by subsection (m) of this section.” after “accruals”.

Subsec. (m). Pub. L. 105–244, §941(a), added subsec. (m).

1996—Subsec. (j). Pub. L. 104–208, §101(a) [title I, §119[1(b)(1)]], reenacted subsec. (j) of this section, as in effect immediately before Dec. 31, 1993.

Subsec. (j)(1). Pub. L. 104–208, §101(a) [title I, §119[1(b)(2)]], substituted “, the employer has complied with section 3(d)(2) of the Age Discrimination in Employment Amendments of 1996 if the individual was discharged after the date described in such section, and the individual has attained—

“(A) the age of hiring or retirement, respectively, in effect under applicable State or local law on March 3, 1983; or

“(B)(i) if the individual was not hired, the age of hiring in effect on the date of such failure or refusal to hire under applicable State or local law enacted after September 30, 1996; or

“(ii) if applicable State or local law was enacted after September 30, 1996, and the individual was discharged, the higher of—

“(I) the age of retirement in effect on the date of such discharge under such law; and

“(II) age 55; and” for “and the individual has attained the age of hiring or retirement in effect under applicable State or local law on March 3, 1983, and”.

1990—Subsec. (f)(2). Pub. L. 101–433, §103(1), added par. (2) and struck out former par. (2) which read as follows: “to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or”.

Subsecs. (i), (j). Pub. L. 101–433, §103(2), redesignated subsec. (i), relating to employment as firefighter or law enforcement officer, as (j).

Subsec. (k). Pub. L. 101–433, §103(3), added subsec. (k).

Subsec. (l). Pub. L. 101–521 added cl. (iii) in par. (2)(A), and in par. (2)(D) inserted “and solely in order to make the deduction authorized under this paragraph” after “For purposes of this paragraph” and added cl. (iii).

Pub. L. 101–433, §103(3), added subsec. (l).

1989—Subsec. (g). Pub. L. 101–239 struck out subsec. (g) which read as follows:

“(1) For purposes of this section, any employer must provide that any employee aged 65 or older, and any employee's spouse aged 65 or older, shall be entitled to coverage under any group health plan offered to such employees under the same conditions as any employee, and the spouse of such employee, under age 65.

“(2) For purposes of paragraph (1), the term ‘group health plan’ has the meaning given to such term in section 162(i)(2) of title 26.”

1986—Subsec. (g)(1). Pub. L. 99–272, §9201(b)(1), and Pub. L. 99–592, §2(a), made identical amendments, substituting “or older” for “through 69” in two places.

Subsec. (g)(2). Pub. L. 99–514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Subsec. (h). Pub. L. 99–272, §9201(b)(3), and Pub. L. 99–592, §2(b), made identical amendments, redesignating subsec. (g), relating to practices of foreign corporations controlled by American employers, as (h).

Subsec. (i). Pub. L. 99–592, §3, temporarily added subsec. (i) which read as follows: “It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken—

“(1) with respect to the employment of an individual as a firefighter or as a law enforcement officer and the individual has attained the age of hiring or retirement in effect under applicable State or local law on March 3, 1983, and

“(2) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this chapter.”

See Effective and Termination Dates of 1986 Amendments note below.

Pub. L. 99–509 added subsec. (i) relating to employee pension benefit plans.

1984—Subsec. (f)(1). Pub. L. 98–459, §802(b)(1), inserted “, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located”.

Subsec. (g). Pub. L. 98–459, §802(b)(2), added subsec. (g) relating to practices of foreign corporations controlled by American employers.

Subsec. (g)(1). Pub. L. 98–369 inserted “, and any employee's spouse aged 65 through 69,” after “aged 65 through 69” and “, and the spouse of such employee,” after “as any employee”, in subsec. (g) relating to entitlement to coverage under group health plan.

1982—Subsec. (g). Pub. L. 97–248 added subsec. (g) relating to entitlement to coverage under group health plans.

1978—Subsec. (f)(2). Pub. L. 95–256 provided that no seniority system or employee benefit plan require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of the individual.

Effective Date of 2008 Amendment

Pub. L. 110–458, title I, §123(b), Dec. 23, 2008, 122 Stat. 5114, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109–280] to which such amendment relates.”

Effective Date of 2006 Amendment

Amendment by section 701(c) of Pub. L. 109–280 applicable to periods beginning on or after June 29, 2005, with provisions relating to vesting and interest credit requirements for plans in existence on June 29, 2005, special rule for collectively bargained plans, and provisions relating to conversions of plan amendments adopted after, and taking effect after, June 29, 2005, see section 701(e) of Pub. L. 109–280, set out as a note under section 411 of Title 26, Internal Revenue Code.

Effective Date of 1998 Amendment

Pub. L. 105–244, title IX, §941(d), Oct. 7, 1998, 112 Stat. 1835, provided that:

"(1) In general.—This section [amending this section and enacting provisions set out as a note below] shall take effect on the date of enactment of this Act [Oct. 7, 1998].

"(2) Effect on causes of action existing before date of enactment.—The amendment made by subsection (a) [amending this section] shall not apply with respect to any cause of action arising under the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.] prior to the date of enactment of this Act."

Effective Date of 1996 Amendment

Section 101(a) [title I, §119[3]] of Pub. L. 104–208 provided that:

"(a) General Effective Date.—Except as provided in subsection (b), this title [probably means section 101(a) [title I, §119] of Pub. L. 104–208, amending this section and enacting and repealing provisions set out as notes under this section] and the amendments made by this title shall take effect on the date of enactment of this Act [Sept. 30, 1996].

"(b) Special Effective Date.—The repeal made by section 2(a) and the reenactment made by section 2(b)(1) [probably means section 101(a) [title I, §119[1(a), (b)(1)]] of Pub. L. 104–208, amending this section and repealing provisions set out as a note under this section] shall take effect on December 31, 1993."

Effective Date of 1990 Amendment

Section 105 of title I of Pub. L. 101–433, as amended by Pub. L. 102–236, §9, Dec. 12, 1991, 105 Stat. 1816, provided that:

"(a) In General.—Except as otherwise provided in this section, this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title] and the amendments made by this title shall apply only to—

"(1) any employee benefit established or modified on or after the date of enactment of this Act [Oct. 16, 1990]; and

"(2) other conduct occurring more than 180 days after the date of enactment of this Act.

"(b) Collectively Bargained Agreements.—With respect to any employee benefits provided in accordance with a collective bargaining agreement—

"(1) that is in effect as of the date of enactment of this Act [Oct. 16, 1990]; or that is a result of pattern collective bargaining in an industry where the agreement setting the pattern was ratified after September 20, 1990, but prior to the date of enactment, and the final agreement in the industry adhering to the pattern was ratified after the date of enactment, but not later than November 20, 1990;

"(2) that terminates after such date of enactment;

"(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4))); and

"(4) that contains any provision that would be superseded (in whole or part) by this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title] and the amendments made by this title, but for the operation of this section,

this title and the amendments made by this title shall not apply until the termination of such collective bargaining agreement or June 1, 1992, whichever occurs first.

"(c) States and Political Subdivisions.—

"(1) In general.—With respect to any employee benefits provided by an employer—

“(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

“(B) that maintained an employee benefit plan at any time between June 23, 1989, and the date of enactment of this Act [Oct. 16, 1990] that would be superseded (in whole or part) by this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title] and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicable State or local law,

this title and the amendments made by this title shall not apply until the date that is 2 years after the date of enactment of this Act.

“(2) Election of disability coverage for employees hired prior to effective date.—

“(A) In general.—An employer that maintains a plan described in paragraph (1)(B) may, with regard to disability benefits provided pursuant to such a plan—

“(i) following reasonable notice to all employees, implement new disability benefits that satisfy the requirements of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.] (as amended by this title); and

“(ii) then offer to each employee covered by a plan described in paragraph (1)(B) the option to elect such new disability benefits in lieu of the existing disability benefits, if—

“(I) the offer is made and reasonable notice provided no later than the date that is 2 years after the date of enactment of this Act [Oct. 16, 1990]; and

“(II) the employee is given up to 180 days after the offer in which to make the election.

“(B) Previous disability benefits.—If the employee does not elect to be covered by the new disability benefits, the employer may continue to cover the employee under the previous disability benefits even though such previous benefits do not otherwise satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title).

“(C) Abrogation of right to receive benefits.—An election of coverage under the new disability benefits shall abrogate any right the electing employee may have had to receive existing disability benefits. The employee shall maintain any years of service accumulated for purposes of determining eligibility for the new benefits.

“(3) State assistance.—The Equal Employment Opportunity Commission, the Secretary of Labor, and the Secretary of the Treasury shall, on request, provide to States assistance in identifying and securing independent technical advice to assist in complying with this subsection.

“(4) Definitions.—For purposes of this subsection:

“(A) Employer and state.—The terms ‘employer’ and ‘State’ shall have the respective meanings provided such terms under subsections (b) and (i) of section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630).

“(B) Disability benefits.—The term ‘disability benefits’ means any program for employees of a State or political subdivision of a State that provides long-term disability benefits, whether on an insured basis in a separate employee benefit plan or as part of an employee pension benefit plan.

“(C) Reasonable notice.—The term ‘reasonable notice’ means, with respect to notice of new disability benefits described in paragraph (2)(A) that is given to each employee, notice that—

“(i) is sufficiently accurate and comprehensive to appraise the employee of the terms and conditions of the disability benefits, including whether the employee is immediately eligible for such benefits; and

“(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

“(d) Discrimination in Employee Pension Benefit Plans.—Nothing in this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title], or the amendments made by this title, shall be construed as limiting the prohibitions against discrimination that are set forth in section 4(j) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(j)] (as redesignated by section 103(2) of this Act).

“(e) Continued Benefit Payments.—Notwithstanding any other provision of this section, on and after the effective date of this title and the amendments made by this title (as determined in

accordance with subsections (a), (b), and (c)), this title and the amendments made by this title shall not apply to a series of benefit payments made to an individual or the individual's representative that began prior to the effective date and that continue after the effective date pursuant to an arrangement that was in effect on the effective date, except that no substantial modification to such arrangement may be made after the date of enactment of this Act [Oct. 16, 1990] if the intent of the modification is to evade the purposes of this Act."

Effective Date of 1989 Amendment

Amendment by Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Effective and Termination Dates of 1986 Amendments

Section 7 of Pub. L. 99–592 provided that:

"(a) In General.—Except as provided in subsection (b), this Act and the amendments made by this Act [amending this section and sections 630 and 631 of this title and enacting provisions set out as notes under this section and sections 621, 622, 624, and 631 of this title] shall take effect on January 1, 1987, except that with respect to any employee who is subject to a collective-bargaining agreement—

"(1) which is in effect on June 30, 1986,

"(2) which terminates after January 1, 1987,

"(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)), and

"(4) which contains any provision that would be superseded by such amendments, but for the operation of this section,

such amendments shall not apply until the termination of such collective bargaining agreement or January 1, 1990, whichever occurs first.

"(b) Effect on Existing Causes of Action.—The amendments made by sections 3 and 4 of this Act [amending this section and section 630 of this title and enacting provisions set out as a note below]

shall not apply with respect to any cause of action arising under the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.] as in effect before January 1, 1987."

Section 3(b) of Pub. L. 99–592 which provided that the amendment made by section 3(a) of Pub. L. 99–592, which amended this section, was repealed Dec. 31, 1993, was itself repealed, effective Dec. 31, 1993, by Pub. L. 104–208, div. A, title I, §101(a) [title I, §119[1(a)]], Sept. 30, 1996, 110 Stat. 3009, 3009–23.

Section 9204 of subtitle C (§§9201–9204) of title IX of Pub. L. 99–509 provided that:

"(a) Applicability to Employees with Service after 1988.—

"(1) In general.—The amendments made by sections 9201 and 9202 [amending this section, section 1054 of this title, and section 411 of Title 26, Internal Revenue Code] shall apply only with respect to plan years beginning on or after January 1, 1988, and only to employees who have 1 hour of service in any plan year to which such amendments apply.

"(2) Special rule for collectively bargained plans.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before March 1, 1986, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for 'January 1, 1988' the date of the commencement of the first plan year beginning on or after the earlier of—

"(A) the later of—

"(i) January 1, 1988, or

"(ii) the date on which the last of such collective bargaining agreements terminate (determined without regard to any extension thereof after February 28, 1986), or

"(B) January 1, 1990.

"(b) Applicability of Amendments Relating to Normal Retirement Age.—The amendments made by section 9203 [amending sections 1002 and 1052 of this title and sections 410 and 411 of Title 26] shall apply only with respect to plan years beginning on or after January 1, 1988, and only with respect to service performed on or after such date.

“(c) Plan Amendments.—If any amendment made by this subtitle [amending this section, sections 1002, 1052, and 1054 of this title, and sections 410 and 411 of Title 26] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

“(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

“(2) such plan amendment applies retroactively to the period after such amendment takes effect and such first plan year.

A pension plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this subsection.

“(d) Interagency Coordination.—The regulations and rulings issued by the Secretary of Labor, the regulations and rulings issued by the Secretary of the Treasury, and the regulations and rulings issued by the Equal Employment Opportunity Commission pursuant to the amendments made by this subtitle shall each be consistent with the others. The Secretary of Labor, the Secretary of the Treasury, and the Equal Employment Opportunity Commission shall each consult with the others to the extent necessary to meet the requirements of the preceding sentence.

“(e) Final Regulations.—The Secretary of Labor, the Secretary of the Treasury, and the Equal Employment Opportunity Commission shall each issue before February 1, 1988, such final regulations as may be necessary to carry out the amendments made by this subtitle.”

Amendment by Pub. L. 99–272 effective May 1, 1986, see section 9201(d)(2) of Pub. L. 99–272, set out as an Effective Date of 1986 Amendment note under section 1395p of Title 42, The Public Health and Welfare.

Effective Date of 1984 Amendments

Section 2301(c)(2) of Pub. L. 98–369 provided that: “The amendment made by subsection (b) [amending this section] shall become effective on January 1, 1985.”

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of Title 42, The Public Health and Welfare.

Effective Date of 1982 Amendment

Section 116(c) of Pub. L. 97–248 provided that: “The amendment made by subsection (a) [amending this section] shall become effective on January 1, 1983, and the amendment made by subsection (b) [enacting section 1395y(b)(3) of Title 42, The Public Health and Welfare] shall apply with respect to items and services furnished on or after such date.”

Effective Date of 1978 Amendment

Section 2(b) of Pub. L. 95–256 provided that: “The amendment made by subsection (a) of this section [amending this section] shall take effect on the date of enactment of this Act [Apr. 6, 1978], except that, in the case of employees covered by a collective bargaining agreement which is in effect on September 1, 1977, which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 [section 206(d)(4) of this title]), and which would otherwise be prohibited by the amendment made by section 3(a) of this Act [amending section 631 of this title], the amendment made by subsection (a) of this section [amending this section] shall take effect upon the termination of such agreement or on January 1, 1980, whichever occurs first.”

Regulations

Section 104 of title I of Pub. L. 101–433 provided that: “Notwithstanding section 9 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 628), the Equal Employment Opportunity Commission may issue such rules and regulations as the Commission may consider necessary or appropriate for carrying out this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title], and the amendments made by this title, only after consultation with the Secretary of the Treasury and the Secretary of Labor.”

Construction of 1998 Amendment

Pub. L. 105–244, title IX, §941(c), Oct. 7, 1998, 112 Stat. 1835, provided that: “Nothing in the amendment made by subsection (a) [amending this section] shall affect the application of section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) with respect to—

“(1) any plan described in subsection (m) of section 4 of such Act (as added by subsection (a)), for any period prior to enactment of such Act [Dec. 15, 1967];

“(2) any plan not described in subsection (m) of section 4 of such Act (as added by subsection (a)); or

"(3) any employer other than an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001])."

Construction of 1996 Amendment

Section 101(a) [title I, §119[1(c)]] of Pub. L. 104–208 provided that: "Nothing in the repeal, reenactment, and amendment made by subsections (a) and (b) [section 101(a) [title I, §119[1(a), (b)]] of Pub. L. 104–208, amending this section and repealing provisions set out as a note under this section] shall be construed to make lawful the failure or refusal to hire, or the discharge of, an individual pursuant to a law that—

"(1) was enacted after March 3, 1983 and before the date of enactment of the Age Discrimination in Employment Amendments of 1996 [Sept. 30, 1996]; and

"(2) lowered the age of hiring or retirement, respectively, for firefighters or law enforcement officers that was in effect under applicable State or local law on March 3, 1983."

Transfer of Functions

Functions vested by this section in Secretary of Labor or Civil Service Commission transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, §2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

Study and Guidelines for Performance Tests

Pub. L. 104–208, div. A, title I, §101(a) [title I, §119[2]], Sept. 30, 1996, 110 Stat. 3009, 3009–24, required the Secretary of Health and Human Services to conduct a study on tests assessing the abilities important for the completion of public safety tasks performed by law enforcement officers and firefighters no later than 3 years after Sept. 30, 1996, and to develop and issue advisory guidelines based on the results of the study no later than 4 years after Sept. 30, 1996, and authorized appropriations.

42 United States Code § 12203. PROHIBITION AGAINST RETALIATION AND COERCION.

(a) Retaliation

No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.

(b) Interference, coercion, or intimidation

It shall be unlawful to coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other individual in the exercise or enjoyment of, any right granted or protected by this chapter.

(c) Remedies and procedures

The remedies and procedures available under sections 12117, 12133, and 12188 of this title shall be available to aggrieved persons for violations of subsections (a) and (b) of this section, with respect to subchapter I, subchapter II and subchapter III, respectively.

(Pub. L. 101–336, title V, §503, July 26, 1990, 104 Stat. 370.)

References in Text

This chapter, referred to in subsecs. (a) and (b), was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

Constitutionality

For constitutionality of section 503 of Pub. L. 101–336, see Congressional Research Service, The Constitution of the United States of America: Analysis and Interpretation, Appendix 1, Acts of Congress Held Unconstitutional in Whole or in Part by the Supreme Court of the United States.

Labor Code § 21.055. RETALIATION.

An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency retaliates or discriminates against a person who, under this chapter:

(1) opposes a discriminatory practice;

(2) makes or files a charge;

(3) files a complaint; or

(4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

29 Code of Federal Regulations § 1604.11. SEXUAL HARASSMENT.

(a) Harassment on the basis of sex is a violation of section 703 of title VII.[1] Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when

(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,

(2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or

(3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(b) In determining whether alleged conduct constitutes sexual harassment, the Commission will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.

(c) [Reserved]

(d) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

(f) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under title VII, and developing methods to sensitize all concerned.

(g) Other related practices: Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

Appendix A to § 1604.11—Background Information

The Commission has rescinded § 1604.11(c) of the Guidelines on Sexual Harassment, which set forth the standard of employer liability for harassment by supervisors. That section is no longer valid, in light of the Supreme Court decisions in Burlington Industries, Inc. v. Ellerth, 524 U.S. 742 (1998), and Faragher v. City of Boca Raton, 524 U.S. 775 (1998). The Commission has issued a policy document that examines the Faragher and Ellerth decisions and provides detailed guidance on the issue of vicarious liability for harassment by supervisors. EEOC Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (6/18/99), EEOC Compliance Manual (BNA), N:4075 [Binder 3]; also available through EEOC's web site, at www.eeoc.gov., or by calling the EEOC Publications Distribution Center, at 1-800-669-3362 (voice), 1-800-800-3302 (TTY).

(Title VII, Pub. L. 88-352, 78 Stat. 253 (42 U.S.C. 2000e et seq.))

[45 FR 74677, Nov. 10, 1980, as amended at 64 FR 58334, Oct. 29, 1999]

29 Code of Federal Regulations § 1606.8. HARASSMENT.

(a) The Commission has consistently held that harassment on the basis of national origin is a violation of title VII. An employer has an affirmative duty to maintain a working environment free

of harassment on the basis of national origin.[8]

(b) Ethnic slurs and other verbal or physical conduct relating to an individual's national origin constitute harassment when this conduct:

(1) Has the purpose or effect of creating an intimidating, hostile or offensive working environment;

(2) Has the purpose or effect of unreasonably interfering with an individual's work performance; or

(3) Otherwise adversely affects an individual's employment opportunities.

(c) [Reserved]

(d) With respect to conduct between fellow employees, an employer is responsible for acts of harassment in the workplace on the basis of national origin, where the employer, its agents or supervisory employees, knows or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action.

(e) An employer may also be responsible for the acts of non-employees with respect to harassment of employees in the workplace on the basis of national origin, where the employer, its agents or supervisory employees, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

Labor Code § 21.141. DEFINITIONS.

In this subchapter:

(1) "Employer" means a person who:

(A) employs one or more employees; or

(B) acts directly in the interests of an employer in relation to an employee.

(2) "Sexual harassment" means an unwelcome sexual advance, a request for a sexual favor, or any other verbal or physical conduct of a sexual nature if:

(A) submission to the advance, request, or conduct is made a term or condition of an individual's employment, either explicitly or implicitly;

(B) submission to or rejection of the advance, request, or conduct by an individual is used as the basis for a decision affecting the individual's employment;

(C) the advance, request, or conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or

(D) the advance, request, or conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

Added by Acts 2021, 87th Leg., R.S., Ch. 172 (S.B. 45), Sec. 1, eff. September 1, 2021.

Labor Code § 21.142. UNLAWFUL EMPLOYMENT PRACTICE.

An employer commits an unlawful employment practice if sexual harassment of an employee occurs and the employer or the employer's agents or supervisors:

(1) know or should have known that the conduct constituting sexual harassment was occurring; and

(2) fail to take immediate and appropriate corrective action.

Added by Acts 2021, 87th Leg., R.S., Ch. 172 (S.B. 45), Sec. 1, eff. September 1, 2021.

Penal Code § 39.03. OFFICIAL OPPRESSION.

(a) A public servant acting under color of his office or employment commits an offense if he:

(1) intentionally subjects another to mistreatment or to arrest, detention, search, seizure, dispossession, assessment, or lien that he knows is unlawful;

(2) intentionally denies or impedes another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing his conduct is unlawful; or

(3) intentionally subjects another to sexual harassment.

(b) For purposes of this section, a public servant acts under color of his office or employment if he acts or purports to act in an official capacity or takes advantage of such actual or purported capacity.

(c) In this section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, submission to which is made a term or condition of a person's exercise or enjoyment of any right, privilege, power, or immunity, either explicitly or implicitly.

(d) An offense under this section is a Class A misdemeanor, except that an offense is a felony of the third degree if the public servant acted with the intent to impair the accuracy of data reported to the Texas Education Agency through the Public Education Information Management System (PEIMS) described by Sections 48.008 and 48.009, Education Code, under a law requiring that reporting.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1989, 71st Leg., ch. 1217, Sec. 1, eff. Sept. 1, 1989; Acts 1991, 72nd Leg., ch. 16, Sec. 19.01(34), eff. Aug. 26, 1991. Renumbered from Penal Code Sec. 39.02 by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 510 (S.B. 124), Sec. 2, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 943 (H.B. 3), Sec. 3.088, eff. September 1, 2019.

Labor Code § 21.1065. SEXUAL HARASSMENT PROTECTIONS FOR UNPAID INTERNS.

(a) In this section, "sexual harassment" means an unwelcome sexual advance, a request for a sexual favor, or any other verbal or physical conduct of a sexual nature if:

(1) submission to the advance, request, or conduct is made a term or condition of an individual's internship, either explicitly or implicitly;

(2) submission to or rejection of the advance, request, or conduct by an individual is used as the basis for a decision affecting the individual's internship;

(3) the advance, request, or conduct has the purpose or effect of unreasonably interfering with an individual's work performance at the individual's internship; or

(4) the advance, request, or conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

(b) An employer commits an unlawful employment practice if sexual harassment of an unpaid intern occurs and the employer or the employer's agents or supervisors:

(1) know or should have known that the conduct constituting sexual harassment was occurring; and

(2) fail to take immediate and appropriate corrective action.

(c) In this section, an individual is considered to be an unpaid intern of an employer if:

(1) the individual's internship, even though it includes engagement in the employer's operations or the performance of productive work for the employer, is similar to training that would be given in an educational environment;

(2) the individual's internship experience is for the individual's benefit;

(3) the individual does not displace the employer's regular employees but works under close supervision of the employer's existing staff;

(4) the employer does not derive any immediate advantage from the individual's internship activities and on occasion the employer's operations may be impeded by those activities;

(5) the individual is not entitled to a job at the conclusion of the internship; and

(6) the individual is not entitled to wages for the time spent in the internship.

Added by Acts 2015, 84th Leg., R.S., Ch. 1019 (H.B. 1151), Sec. 1, eff. September 1, 2015.

Local Government Code § 180.009. PAID QUARANTINE LEAVE FOR FIRE FIGHTERS, PEACE OFFICERS, DETENTION OFFICERS, AND EMERGENCY MEDICAL TECHNICIANS.

(a) In this section:

(1) "Detention officer" means an individual appointed or employed by a political subdivision as a county jailer or other individual responsible for the care and custody of individuals incarcerated in a county or municipal jail.

(2) "Emergency medical technician" means an individual who is:

(A) certified as an emergency medical technician under Chapter 773, Health and Safety Code; and

(B) employed by a political subdivision.

(3) "Fire fighter" means a paid employee of a municipal fire department or emergency services district who:

(A) holds a position that requires substantial knowledge of fire fighting;

(B) has met the requirements for certification by the Texas Commission on Fire Protection under Chapter 419, Government Code; and

(C) performs a function listed in Section 143.003(4)(A).

(4) "Health authority" has the meaning assigned by Section 121.021, Health and Safety Code.

Text of subdivision effective until January 01, 2025

(5) "Peace officer" means an individual described by Article 2.12, Code of Criminal Procedure, who is elected for, employed by, or appointed by a political subdivision.

Text of subdivision effective on January 01, 2025

(5) "Peace officer" means an individual described by Article 2A.001, Code of Criminal Procedure, who is elected for, employed by, or appointed by a political subdivision.

(b) The governing body of a political subdivision shall develop and implement a paid quarantine leave policy for fire fighters, peace officers, detention officers, and emergency medical technicians who are employed by, appointed by, or elected for the political subdivision and ordered to quarantine or isolate due to a possible or known exposure to a communicable disease while on duty.

(c) A paid quarantine leave policy must:

(1) provide that a fire fighter, peace officer, detention officer, or emergency medical technician on paid quarantine leave receive:

(A) all employment benefits and compensation, including leave accrual, pension benefits, and health benefit plan benefits for the duration of the leave; and

(B) reimbursement for reasonable costs related to the quarantine, including lodging, medical, and transportation; and

(2) require that the leave be ordered by the person's supervisor or the political subdivision's health authority.

(d) A political subdivision may not reduce a fire fighter's, peace officer's, detention officer's, or emergency medical technician's sick leave balance, vacation leave balance, holiday leave balance, or other paid leave balance in connection with paid quarantine leave taken in accordance with a policy adopted under this section.

Added by Acts 2021, 87th Leg., R.S., Ch. 685 (H.B. 2073), Sec. 2, eff. June 15, 2021.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 765 (H.B. 4504), Sec. 2.141, eff. January 1, 2025.

Redesignated from Local Government Code, Section 180.008 by Acts 2023, 88th Leg., R.S., Ch. 768 (H.B. 4595), Sec. 24.001(29), eff. September 1, 2023.

Labor Code § 21.1095. RACIAL DISCRIMINATION BASED ON HAIR TEXTURE OR PROTECTIVE HAIRSTYLE.

(a) In this section, "protective hairstyle" includes braids, locks, and twists.

(b) A provision in this chapter referring to discrimination because of race or on the basis of race includes discrimination because of or on the basis of an employee's hair texture or protective hairstyle commonly or historically associated with race.

(c) An employer, labor union, or employment agency commits an unlawful employment practice if the employer, labor union, or employment agency adopts or enforces a dress or grooming policy that discriminates against a hair texture or protective hairstyle commonly or historically associated with race.

Added by Acts 2023, 88th Leg., R.S., Ch. 223 (H.B. 567), Sec. 3, eff. September 1, 2023.

29 Code of Federal Regulations § 1605.2. REASONABLE ACCOMMODATION WITHOUT UNDUE HARDSHIP AS REQUIRED BY SECTION 701(J) OF TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.

(a) Purpose of this section. This section clarifies the obligation imposed by title VII of the Civil Rights Act of 1964, as amended, (sections 701(j), 703 and 717) to accommodate the religious practices of employees and prospective employees. This section does not address other obligations under title VII not to discriminate on grounds of religion, nor other provisions of title VII. This section is not intended to limit any additional obligations to accommodate religious practices which may exist pursuant to constitutional, or other statutory provisions; neither is it intended to provide guidance for statutes which require accommodation on bases other than religion such as section 503 of the Rehabilitation Act of 1973. The legal principles which have been developed with respect to discrimination prohibited by title VII on the bases of race, color, sex, and national origin also apply to religious discrimination in all circumstances other than where an accommodation is required.

(b) Duty to accommodate.

(1) Section 701(j) makes it an unlawful employment practice under section 703(a)(1) for an employer to fail to reasonably accommodate the religious practices of an employee or prospective employee, unless the employer demonstrates that accommodation would result in undue hardship on the conduct of its business.[2]

(2) Section 701(j) in conjunction with section 703(c), imposes an obligation on a labor organization to reasonably accommodate the religious practices of an employee or prospective employee, unless the labor organization demonstrates that accommodation would result in undue hardship.

(3) Section 1605.2 is primarily directed to obligations of employers or labor organizations, which are the entities covered by title VII that will most often be required to make an accommodation. However, the principles of § 1605.2 also apply when an accommodation can be required of other entities covered by title VII, such as employment agencies (section 703(b)) or joint labor-management committees controlling apprecticeship or other training or retraining (section 703(d)). (See, for example, § 1605.3(a) “Scheduling of Tests or Other Selection Procedures.”)

(c) Reasonable accommodation.

(1) After an employee or prospective employee notifies the employer or labor organization of his or her need for a religious accommodation, the employer or labor organization has an obligation to

reasonably accommodate the individual's religious practices. A refusal to accommodate is justified only when an employer or labor organization can demonstrate that an undue hardship would in fact result from each available alternative method of accommodation. A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship.

(2) When there is more than one method of accommodation available which would not cause undue hardship, the Commission will determine whether the accommodation offered is reasonable by examining:

(i) The alternatives for accommodation considered by the employer or labor organization; and

(ii) The alternatives for accommodation, if any, actually offered to the individual requiring accommodation. Some alternatives for accommodating religious practices might disadvantage the individual with respect to his or her employment opportunites, such as compensation, terms, conditions, or privileges of employment. Therefore, when there is more than one means of accommodation which would not cause undue hardship, the employer or labor organization must offer the alternative which least disadvantages the individual with respect to his or her employment opportunities.

(d) Alternatives for accommodating religious practices.

(1) Employees and prospective employees most frequently request an accommodation because their religious practices conflict with their work schedules. The following subsections are some means of accommodating the conflict between work schedules and religious practices which the Commission believes that employers and labor organizations should consider as part of the obligation to accommodate and which the Commission will consider in investigating a charge. These are not intended to be all-inclusive. There are often other alternatives which would reasonably accommodate an individual's religious practices when they conflict with a work schedule. There are also employment practices besides work scheduling which may conflict with religious practices and cause an individual to request an accommodation. See, for example, the Commission's finding number (3) from its Hearings on Religious Discrimination, in appendix A to §§ 1605.2 and 1605.3. The principles expressed in these Guidelines apply as well to such requests for accommodation.

(i) Voluntary Substitutes and “Swaps”.

Reasonable accommodation without undue hardship is generally possible where a voluntary substitute with substantially similar qualifications is available. One means of substitution is the voluntary swap. In a number of cases, the securing of a substitute has been left entirely up to the individual seeking the accommodation. The Commission believes that the obligation to accommodate requires that employers and labor organizations facilitate the securing of a voluntary

substitute with substantially similar qualifications. Some means of doing this which employers and labor organizations should consider are: to publicize policies regarding accommodation and voluntary substitution; to promote an atmosphere in which such substitutions are favorably regarded; to provide a central file, bulletin board or other means for matching voluntary substitutes with positions for which substitutes are needed.

(ii) Flexible Scheduling.

One means of providing reasonable accommodation for the religious practices of employees or prospective employees which employers and labor organizations should consider is the creation of a flexible work schedule for individuals requesting accommodation.

The following list is an example of areas in which flexibility might be introduced: flexible arrival and departure times; floating or optional holidays; flexible work breaks; use of lunch time in exchange for early departure; staggered work hours; and permitting an employee to make up time lost due to the observance of religious practices.[3]

(iii) Lateral Transfer and Change of Job Assignments.

When an employee cannot be accommodated either as to his or her entire job or an assignment within the job, employers and labor organizations should consider whether or not it is possible to change the job assignment or give the employee a lateral transfer.

(2) Payment of Dues to a Labor Organization.

Some collective bargaining agreements include a provision that each employee must join the labor organization or pay the labor organization a sum equivalent to dues. When an employee's religious practices to not permit compliance with such a provision, the labor organization should accommodate the employee by not requiring the employee to join the organization and by permitting him or her to donate a sum equivalent to dues to a charitable organization.

(e) Undue hardship.

(1) Cost. An employer may assert undue hardship to justify a refusal to accommodate an employee's need to be absent from his or her scheduled duty hours if the employer can demonstrate that the accommodation would require “more than a de minimis cost”.[4] The Commission will determine what constitutes “more than a de minimis cost” with due regard given to the identifiable cost in

relation to the size and operating cost of the employer, and the number of individuals who will in fact need a particular accommodation. In general, the Commission interprets this phrase as it was used in the Hardison decision to mean that costs similar to the regular payment of premium wages of substitutes, which was at issue in Hardison, would constitute undue hardship. However, the Commission will presume that the infrequent payment of premium wages for a substitute or the payment of premium wages while a more permanent accommodation is being sought are costs which an employer can be required to bear as a means of providing a reasonable accommodation. Further, the Commission will presume that generally, the payment of administrative costs necessary for providing the accommodation will not constitute more than a de minimis cost. Administrative costs, for example, include those costs involved in rearranging schedules and recording substitutions for payroll purposes.

(2) Seniority Rights. Undue hardship would also be shown where a variance from a bona fide seniority system is necessary in order to accommodate an employee's religious practices when doing so would deny another employee his or her job or shift preference guaranteed by that system. Hardison, supra, 432 U.S. at 80. Arrangements for voluntary substitutes and swaps (see paragraph (d)(1)(i) of this section) do not constitute an undue hardship to the extent the arrangements do not violate a bona fide seniority system. Nothing in the Statute or these Guidelines precludes an employer and a union from including arrangements for voluntary substitutes and swaps as part of a collective bargaining agreement.

Labor Code § 21.108. DISCRIMINATION BASED ON RELIGION.

A provision in this chapter referring to discrimination because of religion or on the basis of religion applies to discrimination because of or on the basis of any aspect of religious observance, practice, or belief, unless an employer demonstrates that the employer is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship to the conduct of the employer's business.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Civil Practice & Remedies Code § 110.003. RELIGIOUS FREEDOM PROTECTED.

(a) Subject to Subsection (b), a government agency may not substantially burden a person's free exercise of religion.

(b) Subsection (a) does not apply if the government agency demonstrates that the application of the burden to the person:

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that interest.

(c) A government agency that makes the demonstration required by Subsection (b) is not required to separately prove that the remedy and penalty provisions of the law, ordinance, rule, order, decision, practice, or other exercise of governmental authority that imposes the substantial burden are the least restrictive means to ensure compliance or to punish the failure to comply.

Added by Acts 1999, 76th Leg., ch. 399, Sec. 1, eff. Aug. 30, 1999.

29 Code of Federal Regulations § 1604.10. EMPLOYMENT POLICIES RELATING TO PREGNANCY AND CHILDBIRTH.

(a) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy, childbirth or related medical conditions is in prima facie violation of title VII.

(b) Disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions, under any health or disability insurance or sick leave plan available in connection with employment. Written or unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy, childbirth or related medical conditions on the same terms and conditions as they are applied to other disabilities. Health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term or where medical complications have arisen from an abortion, are not required to be paid by an employer; nothing herein, however, precludes an employer from providing abortion benefits or otherwise affects bargaining agreements in regard to abortion.

(c) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by business necessity.

(d)

(1) Any fringe benefit program, or fund, or insurance program which is in effect on October 31, 1978, which does not treat women affected by pregnancy, childbirth, or related medical conditions the same as other persons not so affected but similar in their ability or inability to work, must be in compliance with the provisions of § 1604.10(b) by April 29, 1979. In order to come into compliance with the provisions of 1604.10(b), there can be no reduction of benefits or compensation which were in effect on October 31, 1978, before October 31, 1979 or the expiration of a collective bargaining agreement in effect on October 31, 1978, whichever is later.

(2) Any fringe benefit program implemented after October 31, 1978, must comply with the provisions of § 1604.10(b) upon implementation.

[44 FR 23805, Apr. 20, 1979]

Labor Code § 21.106. SEX DISCRIMINATION.

(a) A provision in this chapter referring to discrimination because of sex or on the basis of sex includes discrimination because of or on the basis of pregnancy, childbirth, or a related medical condition.

(b) A woman affected by pregnancy, childbirth, or a related medical condition shall be treated for all purposes related to employment, including receipt of a benefit under a fringe benefit program, in the same manner as another individual not affected but similar in the individual's ability or inability to work.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

29 United States Code § 631. AGE LIMITS.

(a) Individuals at least 40 years of age

The prohibitions in this chapter shall be limited to individuals who are at least 40 years of age.

(b) Employees or applicants for employment in Federal Government

In the case of any personnel action affecting employees or applicants for employment which is subject to the provisions of section 633a of this title, the prohibitions established in section 633a of this title shall be limited to individuals who are at least 40 years of age.

(c) Bona fide executives or high policymakers

(1) Nothing in this chapter shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least $44,000.

(2) In applying the retirement benefit test of paragraph (1) of this subsection, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the Equal Employment Opportunity Commission, after consultation with the Secretary of the Treasury, so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

(Pub. L. 90–202, §12, Dec. 15, 1967, 81 Stat. 607; Pub. L. 95–256, §3(a), (b)(3), Apr. 6, 1978, 92 Stat. 189, 190; 1978 Reorg. Plan No. 1, §2, eff. Jan. 1, 1979, 43 F.R. 19807, 92 Stat. 3781; Pub. L. 98–459, title VIII, §802(c)(1), Oct. 9, 1984, 98 Stat. 1792; Pub. L. 99–272, title IX, §9201(b)(2), Apr. 7, 1986, 100 Stat. 171; Pub. L. 99–592, §§2(c), 6(a), Oct. 31, 1986, 100 Stat. 3342, 3344; Pub. L. 101–239, title VI, §6202(b)(3)(C)(ii), Dec. 19, 1989, 103 Stat. 2233.)

Amendments

1989—Subsec. (a). Pub. L. 101–239 struck out “(except the provisions of section 623(g) of this title)” after “in this chapter”.

1986—Subsec. (a). Pub. L. 99–592, §2(c)(1), which directed that “but less than seventy years of age” be struck out was executed by striking out “but less than 70 years of age” after “40 years of age” as the probable intent of Congress.

Pub. L. 99–272 inserted “(except the provisions of section 623(g) of this title)” after “this chapter”.

Subsec. (c)(1). Pub. L. 99–592, §2(c)(2), which directed that “but not seventy years of age,” be struck out was executed by striking out “but not 70 years of age,” after “65 years of age” as the probable intent of Congress.

Subsec. (d). Pub. L. 99–592, §6(a), (b), temporarily added subsec. (d) which read as follows: "Nothing in this chapter shall be construed to prohibit compulsory retirement of any employee who has attained 70 years of age, and who is serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) at an institution of higher education (as defined by section 1141(a) of title 20)." See Effective and Termination Dates of 1986 Amendments note below.

1984—Subsec. (c)(1). Pub. L. 98–459 substituted "$44,000" for "$27,000".

Pub. L. 95–256, §3(a), designated existing provisions as subsec. (a), substituted "40 years of age but less than 70 years of age" for "forty years of age but less than sixty-five years of age", added subsecs. (b) and (c), and temporarily added subsec. (d). See Effective and Termination Dates of 1978 Amendment note below.

Effective Date of 1989 Amendment

Amendment by Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Effective and Termination Dates of 1986 Amendments

Amendment by Pub. L. 99–592 effective Jan. 1, 1987, with certain exceptions, see section 7(a) of Pub. L. 99–592 set out as a note under section 623 of this title.

Section 6(b) of Pub. L. 99–592 provided that: "The amendment made by subsection (a) of this section [amending this section] is repealed December 31, 1993."

Amendment by Pub. L. 99–272 effective May 1, 1986, see section 9201(d)(2) of Pub. L. 99–272, set out as an Effective Date of 1986 Amendment note under section 1395p of Title 42, The Public Health and Welfare.

Effective Date of 1984 Amendment

Section 802(c)(2) of Pub. L. 98–459 provided that: "The amendment made by paragraph (1) of this subsection [amending this section] shall not apply with respect to any individual who retires, or is compelled to retire, before the date of the enactment of this Act [Oct. 9, 1984]."

Effective and Termination Dates of 1978 Amendment

Section 3(b) of Pub. L. 95–256 provided that:

“(1) Sections 12(a), 12(c), and 12(d) of the Age Discrimination in Employment Act of 1967, as amended by subsection (a) of this section [subsecs. (a), (c), and (d) of this section] shall take effect on January 1, 1979.

“(2) Section 12(b) of such Act, as amended by subsection (a) of this section [subsec. (b) of this section], shall take effect on September 30, 1978.

“(3) Section 12(d) of such Act, as amended by subsection (a) of this section [enacting subsec. (d) of this section], is repealed on July 1, 1982.”

Transfer of Functions

“Equal Employment Opportunity Commission” substituted for “Secretary”, meaning Secretary of Labor, in subsec. (c)(2) pursuant to Reorg. Plan No. 1 of 1978, §2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, which transferred all functions vested by this section in Secretary of Labor to Equal Employment Opportunity Commission, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

Labor Code § 21.101. AGE DISCRIMINATION LIMITED TO INDIVIDUALS OF CERTAIN AGE.

The provisions of this chapter referring to discrimination because of age or on the basis of age apply only to discrimination against an individual 40 years of age or older.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 257 (H.B. 1074), Sec. 1, eff. September 1, 2019.

29 United States Code § 623. PROHIBITION OF AGE DISCRIMINATION.

(a) Employer practices

It shall be unlawful for an employer—

(1) to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;

(2) to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or

(3) to reduce the wage rate of any employee in order to comply with this chapter.

(b) Employment agency practices

It shall be unlawful 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 such individual's age.

(c) Labor organization practices

It shall be unlawful for a labor organization—

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;

(2) to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any 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 age;

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Opposition to unlawful practices; participation in investigations, proceedings, or litigation

It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

(e) Printing or publication of notice or advertisement indicating preference, limitation, etc.

It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

(f) Lawful practices; age an occupational qualification; other reasonable factors; laws of foreign workplace; seniority system; employee benefit plans; discharge or discipline for good cause

It shall not be unlawful for an employer, employment agency, or labor organization—

(1) to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;

(2) to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section—

(A) to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this chapter, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or

(B) to observe the terms of a bona fide employee benefit plan—

(i) where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

(ii) that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this chapter.

Notwithstanding clause (i) or (ii) of subparagraph (B), no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title, because of the age of such individual. An employer, employment agency, or labor organization acting under subparagraph (A), or under clause (i) or (ii) of subparagraph (B), shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this chapter; or

(3) to discharge or otherwise discipline an individual for good cause.

(g) Repealed. Pub. L. 101–239, title VI, §6202(b)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2233

(h) Practices of foreign corporations controlled by American employers; foreign employers not controlled by American employers; factors determining control

(1) If an employer controls a corporation whose place of incorporation is in a foreign country, any practice by such corporation prohibited under this section shall be presumed to be such practice by such employer.

(2) The prohibitions of this section shall not apply where the employer is a foreign person not controlled by an American employer.

(3) For the purpose of this subsection the determination of whether an employer controls a corporation shall be based upon the—

(A) interrelation of operations,

(B) common management,

(C) centralized control of labor relations, and

(D) common ownership or financial control,

of the employer and the corporation.

(i) Employee pension benefit plans; cessation or reduction of benefit accrual or of allocation to employee account; distribution of benefits after attainment of normal retirement age; compliance; highly compensated employees

(1) Except as otherwise provided in this subsection, it shall be unlawful for an employer, an employment agency, a labor organization, or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits—

(A) in the case of a defined benefit plan, the cessation of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age, or

(B) in the case of a defined contribution plan, the cessation of allocations to an employee's account, or the reduction of the rate at which amounts are allocated to an employee's account, because of age.

(2) Nothing in this section shall be construed to prohibit an employer, employment agency, or labor organization from observing any provision of an employee pension benefit plan to the extent that such provision imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

(3) In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—

(A) if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and

(B) if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 1056(a)(3) of this title and section 401(a)(14)(C) of title 26, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 1053(a)(3)(B) of this title or section 411(a)(3)(B) of title 26, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.

The provisions of this paragraph shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations shall provide for the application of the preceding provisions of this paragraph to all employee pension benefit plans subject to this subsection and may provide for the application of such provisions, in the case of any such employee, with respect to any period of time within a plan year.

(4) Compliance with the requirements of this subsection with respect to an employee pension benefit plan shall constitute compliance with the requirements of this section relating to benefit accrual under such plan.

(5) Paragraph (1) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of title 26) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of title 26.

(6) A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals or it is a plan permitted by subsection (m) of this section..1

(7) Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of title 26 and subparagraphs (C) and (D) 2 of section 411(b)(2) of title 26 shall apply with respect to the requirements of this subsection in the same manner and to the same extent as such regulations apply with respect to the requirements of such sections 411(b)(1)(H) and 411(b)(2).

(8) A plan shall not be treated as failing to meet the requirements of this section solely because such plan provides a normal retirement age described in section 1002(24)(B) of this title and section 411(a)(8)(B) of title 26.

(9) For purposes of this subsection—

(A) The terms “employee pension benefit plan”, “defined benefit plan”, “defined contribution plan”, and “normal retirement age” have the meanings provided such terms in section 1002 of this title.

(B) The term “compensation” has the meaning provided by section 414(s) of title 26.

(10) Special rules relating to age.—

(A) Comparison to similarly situated younger individual.—

(i) In general.—A plan shall not be treated as failing to meet the requirements of paragraph (1) if a participant's accrued benefit, as determined as of any date under the terms of the plan, would be equal to or greater than that of any similarly situated, younger individual who is or could be a participant.

(ii) Similarly situated.—For purposes of this subparagraph, a participant is similarly situated to any other individual if such participant is identical to such other individual in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.

(iii) Disregard of subsidized early retirement benefits.—In determining the accrued benefit as of any date for purposes of this clause, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.

(iv) Accrued benefit.—For purposes of this subparagraph, the accrued benefit may, under the terms of the plan, be expressed as an annuity payable at normal retirement age, the balance of a hypothetical account, or the current value of the accumulated percentage of the employee's final average compensation.

(B) Applicable defined benefit plans.—

(i) Interest credits.—

(I) In general.—An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate which is not greater than a market rate of return. A plan shall not be treated as failing to meet the requirements of this subclause merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return.

(II) Preservation of capital.—An interest credit (or an equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.

(III) Market rate of return.—The Secretary of the Treasury may provide by regulation for rules governing the calculation of a market rate of return for purposes of subclause (I) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subclause (I). In the case of a governmental plan (as defined in the first sentence of section 414(d) of title 26), a rate of return or a method of crediting interest established pursuant to any provision of Federal, State, or local law (including any administrative rule or policy adopted in accordance with any such law) shall be treated as a market rate of return for purposes of subclause (I) and a permissible method of crediting interest for purposes of meeting the requirements of subclause (I), except that this sentence shall only apply to a rate of return or method of crediting interest if such rate or method does not violate any other requirement of this chapter.

(ii) Special rule for plan conversions.—If, after June 29, 2005, an applicable plan amendment is adopted, the plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the requirements of clause (iii) are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment.

(iii) Rate of benefit accrual.—Subject to clause (iv), the requirements of this clause are met with respect to any participant if the accrued benefit of the participant under the terms of the plan as in effect after the amendment is not less than the sum of—

(I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

(II) the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

(iv) Special rules for early retirement subsidies.—For purposes of clause (iii)(I), the plan shall credit the accumulation account or similar amount 3 with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

(v) Applicable plan amendment.—For purposes of this subparagraph—

(I) In general.—The term “applicable plan amendment” means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

(II) Special rule for coordinated benefits.—If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in subclause (I), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

(III) Multiple amendments.—The Secretary of the Treasury shall issue regulations to prevent the avoidance of the purposes of this subparagraph through the use of 2 or more plan amendments rather than a single amendment.

(IV) Applicable defined benefit plan.—For purposes of this subparagraph, the term “applicable defined benefit plan” has the meaning given such term by section 1053(f)(3) of this title.

(vi) Termination requirements.—An applicable defined benefit plan shall not be treated as meeting the requirements of clause (i) unless the plan provides that, upon the termination of the plan—

(I) if the interest credit rate (or an equivalent amount) under the plan is a variable rate, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date, and

(II) the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the plan for such purpose as of the termination date, except that if such interest rate is a variable rate, the interest rate shall be determined under the rules of subclause (I).

(C) Certain offsets permitted.—A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides offsets against benefits under the plan to the extent such offsets are allowable in applying the requirements of section 401(a) of title 26.

(D) Permitted disparities in plan contributions or benefits.—A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) of title 26 are met.

(E) Indexing permitted.—

(i) In general.—A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides for indexing of accrued benefits under the plan.

(ii) Protection against loss.—Except in the case of any benefit provided in the form of a variable annuity, clause (i) shall not apply with respect to any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

(iii) Indexing.—For purposes of this subparagraph, the term “indexing” means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.

(F) Early retirement benefit or retirement-type subsidy.—For purposes of this paragraph, the terms “early retirement benefit” and “retirement-type subsidy” have the meaning given such terms in section 1054(g)(2)(A) of this title.2

(G) Benefit accrued to date.—For purposes of this paragraph, any reference to the accrued benefit shall be a reference to such benefit accrued to date.

(j) Employment as firefighter or law enforcement officer

It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken—

(1) with respect to the employment of an individual as a firefighter or as a law enforcement officer, the employer has complied with section 3(d)(2) of the Age Discrimination in Employment Amendments of 1996 2 if the individual was discharged after the date described in such section, and the individual has attained—

(A) the age of hiring or retirement, respectively, in effect under applicable State or local law on March 3, 1983; or

(B)(i) if the individual was not hired, the age of hiring in effect on the date of such failure or refusal to hire under applicable State or local law enacted after September 30, 1996; or

(ii) if applicable State or local law was enacted after September 30, 1996, and the individual was discharged, the higher of—

(I) the age of retirement in effect on the date of such discharge under such law; and

(II) age 55; and

(2) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this chapter.

(k) Seniority system or employee benefit plan; compliance

A seniority system or employee benefit plan shall comply with this chapter regardless of the date of adoption of such system or plan.

(l) Lawful practices; minimum age as condition of eligibility for retirement benefits; deductions from severance pay; reduction of long-term disability benefits

Notwithstanding clause (i) or (ii) of subsection (f)(2)(B) of this section—

(1)(A) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because—

(i) an employee pension benefit plan (as defined in section 1002(2) of this title) provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

(ii) a defined benefit plan (as defined in section 1002(35) of this title) provides for—

(I) payments that constitute the subsidized portion of an early retirement benefit; or

(II) social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

(B) A voluntary early retirement incentive plan that—

(i) is maintained by—

(I) a local educational agency (as defined in section 7801 of title 20,4 or

(II) an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c)(5) or (6) of title 26 and exempt from taxation under section 501(a) of title 26, and

(ii) makes payments or supplements described in subclauses (I) and (II) of subparagraph (A)(ii) in coordination with a defined benefit plan (as so defined) maintained by an eligible employer described in section 457(e)(1)(A) of title 26 or by an education association described in clause (i)(II),

shall be treated solely for purposes of subparagraph (A)(ii) as if it were a part of the defined benefit plan with respect to such payments or supplements. Payments or supplements under such a voluntary early retirement incentive plan shall not constitute severance pay for purposes of paragraph (2).

(2)(A) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because following a contingent event unrelated to age—

(i) the value of any retiree health benefits received by an individual eligible for an immediate pension;

(ii) the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and following which the individual is eligible for not less than an immediate and unreduced pension; or

(iii) the values described in both clauses (i) and (ii);

are deducted from severance pay made available as a result of the contingent event unrelated to age.

(B) For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

(C) For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of title 26) that—

(i) constitutes additional benefits of up to 52 weeks;

(ii) has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and

(iii) is discontinued once the individual becomes eligible for an immediate and unreduced pension.

(D) For purposes of this paragraph and solely in order to make the deduction authorized under this paragraph, the term “retiree health benefits” means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

(i) the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

(ii) the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act; or

(iii) the package of benefits provided by the employer is as described in clauses (i) and (ii).

(E)(i) If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of $3,000 per year for benefit years before age 65, and $750 per year for benefit years beginning at age 65 and above.

(ii) If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of $48,000 for individuals below age 65, and $24,000 for individuals age 65 and above.

(iii) The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on October 16, 1990, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after October 16, 1990, based on the medical component of the Consumer Price Index for all-urban consumers published by the Department of Labor.

(iv) If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

(F) If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

(3) It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits (other than those attributable to employee contributions)—

(A) paid to the individual that the individual voluntarily elects to receive; or

(B) for which an individual who has attained the later of age 62 or normal retirement age is eligible.

(m) Voluntary retirement incentive plans

Notwithstanding subsection (f)(2)(B) of this section, it shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because a plan of an institution of higher education (as defined in section 1001 of title 20) offers employees who are serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) supplemental benefits upon voluntary retirement that are reduced or eliminated on the basis of age, if—

(1) such institution does not implement with respect to such employees any age-based reduction or cessation of benefits that are not such supplemental benefits, except as permitted by other provisions of this chapter;

(2) such supplemental benefits are in addition to any retirement or severance benefits which have been offered generally to employees serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure), independent of any early retirement or exit-incentive plan, within the preceding 365 days; and

(3) any employee who attains the minimum age and satisfies all non-age-based conditions for receiving a benefit under the plan has an opportunity lasting not less than 180 days to elect to retire and to receive the maximum benefit that could then be elected by a younger but otherwise similarly situated employee, and the plan does not require retirement to occur sooner than 180 days after such election.

(Pub. L. 90–202, §4, Dec. 15, 1967, 81 Stat. 603; Pub. L. 95–256, §2(a), Apr. 6, 1978, 92 Stat. 189; Pub. L. 97–248, title I, §116(a), Sept. 3, 1982, 96 Stat. 353; Pub. L. 98–369, div. B, title III, §2301(b), July 18, 1984, 98 Stat. 1063; Pub. L. 98–459, title VIII, §802(b), Oct. 9, 1984, 98 Stat. 1792; Pub. L. 99–272, title IX, §9201(b)(1), (3), Apr. 7, 1986, 100 Stat. 171; Pub. L. 99–509, title IX, §9201, Oct. 21, 1986, 100 Stat. 1973; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–592, §§2(a), (b), 3(a), Oct. 31, 1986, 100 Stat. 3342; Pub. L. 101–239, title VI, §6202(b)(3)(C)(i), Dec. 19, 1989, 103 Stat. 2233; Pub. L. 101–433, title I, §103, Oct. 16, 1990, 104 Stat. 978; Pub. L. 101–521, Nov. 5, 1990, 104 Stat. 2287; Pub. L. 104–208, div. A, title I, §101(a) [title I, §119[1(b)]], Sept. 30, 1996, 110 Stat. 3009, 3009–23; Pub. L. 105–244, title IX, §941(a), (b), Oct. 7, 1998, 112 Stat. 1834, 1835; Pub. L. 109–280, title VII, §701(c), title XI, §1104(a)(2), Aug. 17, 2006, 120 Stat. 988, 1058; Pub. L. 110–458, title I, §123(a), Dec. 23, 2008, 122 Stat. 5114.)

References in Text

Subparagraphs (C) and (D) of section 411(b)(2) of title 26, referred to in subsec. (i)(7), were redesignated subpars. (B) and (C) of section 411(b)(2) of Title 26, Internal Revenue Code, by Pub. L. 101–239, title VII, §7871(a)(1), Dec. 19, 1989, 103 Stat. 2435.

Section 1054(g)(2)(A) of this title, referred to in subsec. (i)(10)(F), was in the original “section 203(g)(2)(A) of the Employee Retirement Income Security Act of 1974”, and was translated as reading section 204(g)(2)(A) of that Act to reflect the probable intent of Congress, because section 203 does not contain a subsec. (g).

Section 3(d)(2) of the Age Discrimination in Employment Amendments of 1996, referred to in subsec. (j)(1), probably means Pub. L. 104–208, div. A, title I, §101(a) [title I, §119[2(d)(2)]], Sept. 30, 1996, 110 Stat. 3009, 3009–23, 3009–25, which is set out as a note under this section.

The Social Security Act, referred to in subsec. (l)(1)(A)(ii)(II), (2)(D)(i), (ii), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles II and XVIII of the Act are classified generally to subchapters II (§401 et seq.) and XVIII (§1395 et seq.), respectively, of chapter 7 of Title 42, The

Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Amendments

2008—Subsec. (i)(10)(B)(i)(III). Pub. L. 110–458 inserted at end “In the case of a governmental plan (as defined in the first sentence of section 414(d) of title 26), a rate of return or a method of crediting interest established pursuant to any provision of Federal, State, or local law (including any administrative rule or policy adopted in accordance with any such law) shall be treated as a market rate of return for purposes of subclause (I) and a permissible method of crediting interest for purposes of meeting the requirements of subclause (I), except that this sentence shall only apply to a rate of return or method of crediting interest if such rate or method does not violate any other requirement of this chapter.”

2006—Subsec. (i)(10). Pub. L. 109–280, §701(c), added par. (10).

Subsec. (l)(1). Pub. L. 109–280, §1104(a)(2), designated existing provisions as subpar. (A), redesignated former subpars. (A) and (B) as cls. (i) and (ii), respectively, and former cls. (i) and (ii) of former subpar. (B) as subcls. (I) and (II) of cl. (ii), respectively, and added subpar. (B).

1998—Subsec. (i)(6). Pub. L. 105–244, §941(b), inserted “or it is a plan permitted by subsection (m) of this section.” after “accruals”.

Subsec. (m). Pub. L. 105–244, §941(a), added subsec. (m).

1996—Subsec. (j). Pub. L. 104–208, §101(a) [title I, §119[1(b)(1)]], reenacted subsec. (j) of this section, as in effect immediately before Dec. 31, 1993.

Subsec. (j)(1). Pub. L. 104–208, §101(a) [title I, §119[1(b)(2)]], substituted “, the employer has complied with section 3(d)(2) of the Age Discrimination in Employment Amendments of 1996 if the individual was discharged after the date described in such section, and the individual has attained—

“(A) the age of hiring or retirement, respectively, in effect under applicable State or local law on March 3, 1983; or

“(B)(i) if the individual was not hired, the age of hiring in effect on the date of such failure or refusal to hire under applicable State or local law enacted after September 30, 1996; or

"(ii) if applicable State or local law was enacted after September 30, 1996, and the individual was discharged, the higher of—

"(I) the age of retirement in effect on the date of such discharge under such law; and

"(II) age 55; and" for "and the individual has attained the age of hiring or retirement in effect under applicable State or local law on March 3, 1983, and".

1990—Subsec. (f)(2). Pub. L. 101–433, §103(1), added par. (2) and struck out former par. (2) which read as follows: "to observe the terms of a bona fide seniority system or any bona fide employee benefit plan such as a retirement, pension, or insurance plan, which is not a subterfuge to evade the purposes of this chapter, except that no such employee benefit plan shall excuse the failure to hire any individual, and no such seniority system or employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or".

Subsecs. (i), (j). Pub. L. 101–433, §103(2), redesignated subsec. (i), relating to employment as firefighter or law enforcement officer, as (j).

Subsec. (k). Pub. L. 101–433, §103(3), added subsec. (k).

Subsec. (l). Pub. L. 101–521 added cl. (iii) in par. (2)(A), and in par. (2)(D) inserted "and solely in order to make the deduction authorized under this paragraph" after "For purposes of this paragraph" and added cl. (iii).

Pub. L. 101–433, §103(3), added subsec. (l).

1989—Subsec. (g). Pub. L. 101–239 struck out subsec. (g) which read as follows:

"(1) For purposes of this section, any employer must provide that any employee aged 65 or older, and any employee's spouse aged 65 or older, shall be entitled to coverage under any group health plan offered to such employees under the same conditions as any employee, and the spouse of such employee, under age 65.

“(2) For purposes of paragraph (1), the term ‘group health plan’ has the meaning given to such term in section 162(i)(2) of title 26.”

1986—Subsec. (g)(1). Pub. L. 99–272, §9201(b)(1), and Pub. L. 99–592, §2(a), made identical amendments, substituting “or older” for “through 69” in two places.

Subsec. (g)(2). Pub. L. 99–514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

Subsec. (h). Pub. L. 99–272, §9201(b)(3), and Pub. L. 99–592, §2(b), made identical amendments, redesignating subsec. (g), relating to practices of foreign corporations controlled by American employers, as (h).

Subsec. (i). Pub. L. 99–592, §3, temporarily added subsec. (i) which read as follows: “It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken—

“(1) with respect to the employment of an individual as a firefighter or as a law enforcement officer and the individual has attained the age of hiring or retirement in effect under applicable State or local law on March 3, 1983, and

“(2) pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this chapter.”

See Effective and Termination Dates of 1986 Amendments note below.

Pub. L. 99–509 added subsec. (i) relating to employee pension benefit plans.

1984—Subsec. (f)(1). Pub. L. 98–459, §802(b)(1), inserted “, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located”.

Subsec. (g). Pub. L. 98–459, §802(b)(2), added subsec. (g) relating to practices of foreign corporations controlled by American employers.

Subsec. (g)(1). Pub. L. 98–369 inserted “, and any employee's spouse aged 65 through 69,” after “aged 65 through 69” and “, and the spouse of such employee,” after “as any employee”, in subsec. (g) relating to entitlement to coverage under group health plan.

1982—Subsec. (g). Pub. L. 97–248 added subsec. (g) relating to entitlement to coverage under group health plans.

1978—Subsec. (f)(2). Pub. L. 95–256 provided that no seniority system or employee benefit plan require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of the individual.

Effective Date of 2008 Amendment

Pub. L. 110–458, title I, §123(b), Dec. 23, 2008, 122 Stat. 5114, provided that: “The amendment made by this section [amending this section] shall take effect as if included in the provisions of the Pension Protection Act of 2006 [Pub. L. 109–280] to which such amendment relates.”

Effective Date of 2006 Amendment

Amendment by section 701(c) of Pub. L. 109–280 applicable to periods beginning on or after June 29, 2005, with provisions relating to vesting and interest credit requirements for plans in existence on June 29, 2005, special rule for collectively bargained plans, and provisions relating to conversions of plan amendments adopted after, and taking effect after, June 29, 2005, see section 701(e) of Pub. L. 109–280, set out as a note under section 411 of Title 26, Internal Revenue Code.

Effective Date of 1998 Amendment

Pub. L. 105–244, title IX, §941(d), Oct. 7, 1998, 112 Stat. 1835, provided that:

“(1) In general.—This section [amending this section and enacting provisions set out as a note below] shall take effect on the date of enactment of this Act [Oct. 7, 1998].

“(2) Effect on causes of action existing before date of enactment.—The amendment made by subsection (a) [amending this section] shall not apply with respect to any cause of action arising under the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.] prior to the date of enactment of this Act.”

Effective Date of 1996 Amendment

Section 101(a) [title I, §119[3]] of Pub. L. 104–208 provided that:

"(a) General Effective Date.—Except as provided in subsection (b), this title [probably means section 101(a) [title I, §119] of Pub. L. 104–208, amending this section and enacting and repealing provisions set out as notes under this section] and the amendments made by this title shall take effect on the date of enactment of this Act [Sept. 30, 1996].

"(b) Special Effective Date.—The repeal made by section 2(a) and the reenactment made by section 2(b)(1) [probably means section 101(a) [title I, §119[1(a), (b)(1)]] of Pub. L. 104–208, amending this section and repealing provisions set out as a note under this section] shall take effect on December 31, 1993."

Effective Date of 1990 Amendment

Section 105 of title I of Pub. L. 101–433, as amended by Pub. L. 102–236, §9, Dec. 12, 1991, 105 Stat. 1816, provided that:

"(a) In General.—Except as otherwise provided in this section, this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title] and the amendments made by this title shall apply only to—

"(1) any employee benefit established or modified on or after the date of enactment of this Act [Oct. 16, 1990]; and

"(2) other conduct occurring more than 180 days after the date of enactment of this Act.

"(b) Collectively Bargained Agreements.—With respect to any employee benefits provided in accordance with a collective bargaining agreement—

"(1) that is in effect as of the date of enactment of this Act [Oct. 16, 1990]; or that is a result of pattern collective bargaining in an industry where the agreement setting the pattern was ratified after September 20, 1990, but prior to the date of enactment, and the final agreement in the industry adhering to the pattern was ratified after the date of enactment, but not later than November 20, 1990;

“(2) that terminates after such date of enactment;

“(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4))); and

“(4) that contains any provision that would be superseded (in whole or part) by this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title] and the amendments made by this title, but for the operation of this section,

this title and the amendments made by this title shall not apply until the termination of such collective bargaining agreement or June 1, 1992, whichever occurs first.

“(c) States and Political Subdivisions.—

“(1) In general.—With respect to any employee benefits provided by an employer—

“(A) that is a State or political subdivision of a State or any agency or instrumentality of a State or political subdivision of a State; and

“(B) that maintained an employee benefit plan at any time between June 23, 1989, and the date of enactment of this Act [Oct. 16, 1990] that would be superseded (in whole or part) by this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title] and the amendments made by this title but for the operation of this subsection, and which plan may be modified only through a change in applicable State or local law,

this title and the amendments made by this title shall not apply until the date that is 2 years after the date of enactment of this Act.

“(2) Election of disability coverage for employees hired prior to effective date.—

“(A) In general.—An employer that maintains a plan described in paragraph (1)(B) may, with regard to disability benefits provided pursuant to such a plan—

"(i) following reasonable notice to all employees, implement new disability benefits that satisfy the requirements of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.] (as amended by this title); and

"(ii) then offer to each employee covered by a plan described in paragraph (1)(B) the option to elect such new disability benefits in lieu of the existing disability benefits, if—

"(I) the offer is made and reasonable notice provided no later than the date that is 2 years after the date of enactment of this Act [Oct. 16, 1990]; and

"(II) the employee is given up to 180 days after the offer in which to make the election.

"(B) Previous disability benefits.—If the employee does not elect to be covered by the new disability benefits, the employer may continue to cover the employee under the previous disability benefits even though such previous benefits do not otherwise satisfy the requirements of the Age Discrimination in Employment Act of 1967 (as amended by this title).

"(C) Abrogation of right to receive benefits.—An election of coverage under the new disability benefits shall abrogate any right the electing employee may have had to receive existing disability benefits. The employee shall maintain any years of service accumulated for purposes of determining eligibility for the new benefits.

"(3) State assistance.—The Equal Employment Opportunity Commission, the Secretary of Labor, and the Secretary of the Treasury shall, on request, provide to States assistance in identifying and securing independent technical advice to assist in complying with this subsection.

"(4) Definitions.—For purposes of this subsection:

"(A) Employer and state.—The terms 'employer' and 'State' shall have the respective meanings provided such terms under subsections (b) and (i) of section 11 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 630).

"(B) Disability benefits.—The term 'disability benefits' means any program for employees of a State or political subdivision of a State that provides long-term disability benefits, whether on an insured basis in a separate employee benefit plan or as part of an employee pension benefit plan.

“(C) Reasonable notice.—The term ‘reasonable notice’ means, with respect to notice of new disability benefits described in paragraph (2)(A) that is given to each employee, notice that—

“(i) is sufficiently accurate and comprehensive to appraise the employee of the terms and conditions of the disability benefits, including whether the employee is immediately eligible for such benefits; and

“(ii) is written in a manner calculated to be understood by the average employee eligible to participate.

“(d) Discrimination in Employee Pension Benefit Plans.—Nothing in this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title], or the amendments made by this title, shall be construed as limiting the prohibitions against discrimination that are set forth in section 4(j) of the Age Discrimination in Employment Act of 1967 [29 U.S.C. 623(j)] (as redesignated by section 103(2) of this Act).

“(e) Continued Benefit Payments.—Notwithstanding any other provision of this section, on and after the effective date of this title and the amendments made by this title (as determined in accordance with subsections (a), (b), and (c)), this title and the amendments made by this title shall not apply to a series of benefit payments made to an individual or the individual's representative that began prior to the effective date and that continue after the effective date pursuant to an arrangement that was in effect on the effective date, except that no substantial modification to such arrangement may be made after the date of enactment of this Act [Oct. 16, 1990] if the intent of the modification is to evade the purposes of this Act.”

Effective Date of 1989 Amendment

Amendment by Pub. L. 101–239 applicable to items and services furnished after Dec. 19, 1989, see section 6202(b)(5) of Pub. L. 101–239, set out as a note under section 162 of Title 26, Internal Revenue Code.

Effective and Termination Dates of 1986 Amendments

Section 7 of Pub. L. 99–592 provided that:

“(a) In General.—Except as provided in subsection (b), this Act and the amendments made by this Act [amending this section and sections 630 and 631 of this title and enacting provisions set out as notes under this section and sections 621, 622, 624, and 631 of this title] shall take effect on January 1, 1987, except that with respect to any employee who is subject to a collective-bargaining agreement—

“(1) which is in effect on June 30, 1986,

“(2) which terminates after January 1, 1987,

“(3) any provision of which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d)(4)), and

“(4) which contains any provision that would be superseded by such amendments, but for the operation of this section,

such amendments shall not apply until the termination of such collective bargaining agreement or January 1, 1990, whichever occurs first.

“(b) Effect on Existing Causes of Action.—The amendments made by sections 3 and 4 of this Act [amending this section and section 630 of this title and enacting provisions set out as a note below] shall not apply with respect to any cause of action arising under the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.] as in effect before January 1, 1987.”

Section 3(b) of Pub. L. 99–592 which provided that the amendment made by section 3(a) of Pub. L. 99–592, which amended this section, was repealed Dec. 31, 1993, was itself repealed, effective Dec. 31, 1993, by Pub. L. 104–208, div. A, title I, §101(a) [title I, §119[1(a)]], Sept. 30, 1996, 110 Stat. 3009, 3009–23.

Section 9204 of subtitle C (§§9201–9204) of title IX of Pub. L. 99–509 provided that:

“(a) Applicability to Employees with Service after 1988.—

“(1) In general.—The amendments made by sections 9201 and 9202 [amending this section, section 1054 of this title, and section 411 of Title 26, Internal Revenue Code] shall apply only with respect to plan years beginning on or after January 1, 1988, and only to employees who have 1 hour of service in any plan year to which such amendments apply.

“(2) Special rule for collectively bargained plans.—In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers

ratified before March 1, 1986, paragraph (1) shall be applied to benefits pursuant to, and individuals covered by, any such agreement by substituting for ‘January 1, 1988’ the date of the commencement of the first plan year beginning on or after the earlier of—

“(A) the later of—

“(i) January 1, 1988, or

“(ii) the date on which the last of such collective bargaining agreements terminate (determined without regard to any extension thereof after February 28, 1986), or

“(B) January 1, 1990.

“(b) Applicability of Amendments Relating to Normal Retirement Age.—The amendments made by section 9203 [amending sections 1002 and 1052 of this title and sections 410 and 411 of Title 26] shall apply only with respect to plan years beginning on or after January 1, 1988, and only with respect to service performed on or after such date.

“(c) Plan Amendments.—If any amendment made by this subtitle [amending this section, sections 1002, 1052, and 1054 of this title, and sections 410 and 411 of Title 26] requires an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after January 1, 1989, if—

“(1) during the period after such amendment takes effect and before such first plan year, the plan is operated in accordance with the requirements of such amendment, and

“(2) such plan amendment applies retroactively to the period after such amendment takes effect and such first plan year.

A pension plan shall not be treated as failing to provide definitely determinable benefits or contributions, or to be operated in accordance with the provisions of the plan, merely because it operates in accordance with this subsection.

“(d) Interagency Coordination.—The regulations and rulings issued by the Secretary of Labor, the regulations and rulings issued by the Secretary of the Treasury, and the regulations and rulings issued by the Equal Employment Opportunity Commission pursuant to the amendments made by

this subtitle shall each be consistent with the others. The Secretary of Labor, the Secretary of the Treasury, and the Equal Employment Opportunity Commission shall each consult with the others to the extent necessary to meet the requirements of the preceding sentence.

"(e) Final Regulations.—The Secretary of Labor, the Secretary of the Treasury, and the Equal Employment Opportunity Commission shall each issue before February 1, 1988, such final regulations as may be necessary to carry out the amendments made by this subtitle."

Amendment by Pub. L. 99–272 effective May 1, 1986, see section 9201(d)(2) of Pub. L. 99–272, set out as an Effective Date of 1986 Amendment note under section 1395p of Title 42, The Public Health and Welfare.

Effective Date of 1984 Amendments

Section 2301(c)(2) of Pub. L. 98–369 provided that: "The amendment made by subsection (b) [amending this section] shall become effective on January 1, 1985."

Amendment by Pub. L. 98–459 effective Oct. 9, 1984, see section 803(a) of Pub. L. 98–459, set out as a note under section 3001 of Title 42, The Public Health and Welfare.

Effective Date of 1982 Amendment

Section 116(c) of Pub. L. 97–248 provided that: "The amendment made by subsection (a) [amending this section] shall become effective on January 1, 1983, and the amendment made by subsection (b) [enacting section 1395y(b)(3) of Title 42, The Public Health and Welfare] shall apply with respect to items and services furnished on or after such date."

Effective Date of 1978 Amendment

Section 2(b) of Pub. L. 95–256 provided that: "The amendment made by subsection (a) of this section [amending this section] shall take effect on the date of enactment of this Act [Apr. 6, 1978], except that, in the case of employees covered by a collective bargaining agreement which is in effect on September 1, 1977, which was entered into by a labor organization (as defined by section 6(d)(4) of the Fair Labor Standards Act of 1938 [section 206(d)(4) of this title]), and which would otherwise be prohibited by the amendment made by section 3(a) of this Act [amending section 631 of this title], the amendment made by subsection (a) of this section [amending this section] shall take effect upon the termination of such agreement or on January 1, 1980, whichever occurs first."

Regulations

Section 104 of title I of Pub. L. 101–433 provided that: "Notwithstanding section 9 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 628), the Equal Employment Opportunity Commission may issue such rules and regulations as the Commission may consider necessary or appropriate for carrying out this title [amending this section and section 630 of this title and enacting provisions set out as notes under this section and section 621 of this title], and the amendments made by this title, only after consultation with the Secretary of the Treasury and the Secretary of Labor."

Construction of 1998 Amendment

Pub. L. 105–244, title IX, §941(c), Oct. 7, 1998, 112 Stat. 1835, provided that: "Nothing in the amendment made by subsection (a) [amending this section] shall affect the application of section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 623) with respect to—

"(1) any plan described in subsection (m) of section 4 of such Act (as added by subsection (a)), for any period prior to enactment of such Act [Dec. 15, 1967];

"(2) any plan not described in subsection (m) of section 4 of such Act (as added by subsection (a)); or

"(3) any employer other than an institution of higher education (as defined in section 101 of the Higher Education Act of 1965 [20 U.S.C. 1001])."

Construction of 1996 Amendment

Section 101(a) [title I, §119[1(c)]] of Pub. L. 104–208 provided that: "Nothing in the repeal, reenactment, and amendment made by subsections (a) and (b) [section 101(a) [title I, §119[1(a), (b)]] of Pub. L. 104–208, amending this section and repealing provisions set out as a note under this section] shall be construed to make lawful the failure or refusal to hire, or the discharge of, an individual pursuant to a law that—

"(1) was enacted after March 3, 1983 and before the date of enactment of the Age Discrimination in Employment Amendments of 1996 [Sept. 30, 1996]; and

"(2) lowered the age of hiring or retirement, respectively, for firefighters or law enforcement officers that was in effect under applicable State or local law on March 3, 1983."

Transfer of Functions

Functions vested by this section in Secretary of Labor or Civil Service Commission transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, §2, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

Study and Guidelines for Performance Tests

Pub. L. 104–208, div. A, title I, §101(a) [title I, §119[2]], Sept. 30, 1996, 110 Stat. 3009, 3009–24, required the Secretary of Health and Human Services to conduct a study on tests assessing the abilities important for the completion of public safety tasks performed by law enforcement officers and firefighters no later than 3 years after Sept. 30, 1996, and to develop and issue advisory guidelines based on the results of the study no later than 4 years after Sept. 30, 1996, and authorized appropriations.

Labor Code § 21.102. BONA FIDE EMPLOYEE BENEFIT PLAN; PRODUCTION MEASUREMENT SYSTEM.

(a) Except as provided by Subsections (b) and (c), an employer does not commit an unlawful employment practice by applying different standards of compensation or different terms, conditions, or privileges of employment under:

(1) a bona fide seniority system, merit system, or an employee benefit plan, such as a retirement, pension, or insurance plan, that is not a subterfuge to evade this chapter; or

(2) a system that measures earnings by quantity or quality of production.

(b) An employee benefit plan may not excuse a failure to hire on the basis of age. A seniority system or employee benefit plan may not require or permit involuntary retirement on the basis of age except as permitted by Section 21.103.

(c) This section does not apply to standards of compensation or terms, conditions, or privileges of employment that are discriminatory on the basis of race, color, disability, religion, sex, national origin, or age.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

42 United States Code § 12112. DISCRIMINATION.

(a) General rule

(b) ConstructionAs used in subsection (a), the term “discriminate against a qualified individual on the basis of disability” includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity’s qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs);

(3) utilizing standards, criteria, or methods of administration—

(A) that have the effect of discrimination on the basis of disability; or

(B) that perpetuate the discrimination of others who are subject to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)

(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries

(1) In general

(2) Control of corporation

(A) Presumption

(B) Exception

(C) DeterminationFor purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on—

(i) the interrelation of operations;

(ii) the common management;

(iii) the centralized control of labor relations; and

(iv) the common ownership or financial control,

of the employer and the corporation.

(d) Medical examinations and inquiries

(1) In general

(2) Preemployment

(A) Prohibited examination or inquiry

(B) Acceptable inquiry

(3) Employment entrance examinationA covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry

(A) Prohibited examinations and inquiries

(B) Acceptable examinations and inquiries

(C) Requirement

(Pub. L. 101–336, title I, § 102, July 26, 1990, 104 Stat. 331; Pub. L. 102–166, title I, § 109(b)(2), Nov. 21, 1991, 105 Stat. 1077; Pub. L. 110–325, § 5(a), Sept. 25, 2008,

CITE AS: 42 USC 12112

29 Code of Federal Regulations § 1630.4. DISCRIMINATION PROHIBITED.

(a) In general —

(1) It is unlawful for a covered entity to discriminate on the basis of disability against a qualified individual in regard to:

(i) Recruitment, advertising, and job application procedures;

(ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(iii) Rates of pay or any other form of compensation and changes in compensation;

Enhanced Content - Paragraph Tools

URLhttps://www.ecfr.gov/current/title-29/part-1630/section-1630.4#p-1630.4(a)(1)(iii)

Citation29 CFR 1630.4(a)(1)(iii)

(iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(v) Leaves of absence, sick leave, or any other leave;

(vi) Fringe benefits available by virtue of employment, whether or not administered by the covered entity;

(vii) Selection and financial support for training, including: apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;

(viii) Activities sponsored by a covered entity, including social and recreational programs; and

(ix) Any other term, condition, or privilege of employment.

(2) The term discrimination includes, but is not limited to, the acts described in §§ 1630.4 through 1630.13 of this part.

(b) Claims of no disability. Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination because of his lack of disability, including a claim that an individual with a disability was granted an accommodation that was denied to an individual without a disability.

[76 FR 17002, Mar. 25, 2011]

34 Code of Federal Regulations § 300.177. STATES' SOVEREIGN IMMUNITY AND POSITIVE EFFORTS TO EMPLOY AND ADVANCE QUALIFIED INDIVIDUALS WITH DISABILITIES.

(a) States' sovereign immunity.

(1) A State that accepts funds under this part waives its immunity under the 11th amendment of the Constitution of the United States from suit in Federal court for a violation of this part.

(2) In a suit against a State for a violation of this part, remedies (including remedies both at law and in equity) are available for such a violation in the suit against any public entity other than a State.

(3) Paragraphs (a)(1) and (a)(2) of this section apply with respect to violations that occur in whole or part after the date of enactment of the Education of the Handicapped Act Amendments of 1990.

(b) Positive efforts to employ and advance qualified individuals with disabilities. Each recipient of assistance under Part B of the Act must make positive efforts to employ, and advance in employment, qualified individuals with disabilities in programs assisted under Part B of the Act.

(Authority: 20 U.S.C. 1403, 1405)

[73 FR 73027, Dec. 1, 2008]

42 United States Code § 12201. CONSTRUCTION.

(a) In general

Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790 et seq.) or the regulations issued by Federal agencies pursuant to such title.

(b) Relationship to other laws

Nothing in this chapter shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this chapter. Nothing in this chapter shall be construed to preclude the prohibition of, or the imposition of restrictions on, smoking in places of employment covered by subchapter I, in transportation covered by subchapter II or III, or in places of public accommodation covered by subchapter III.

(c) Insurance

Subchapters I through III of this chapter and title IV of this Act shall not be construed to prohibit or restrict-

(1) an insurer, hospital or medical service company, health maintenance organization, or any agent, or entity that administers benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(2) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law; or

(3) a person or organization covered by this chapter from establishing, sponsoring, observing or administering the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

Paragraphs (1), (2), and (3) shall not be used as a subterfuge to evade the purposes of subchapter 1 I and III.

(d) Accommodations and services

Nothing in this chapter shall be construed to require an individual with a disability to accept an accommodation, aid, service, opportunity, or benefit which such individual chooses not to accept.

(e) Benefits under State worker's compensation laws

Nothing in this chapter alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

(f) Fundamental alteration

Nothing in this chapter alters the provision of section 12182(b)(2)(A)(ii) of this title, specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

(g) Claims of no disability

Nothing in this chapter shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability.

(h) Reasonable accommodations and modifications

A covered entity under subchapter I, a public entity under subchapter II, and any person who owns, leases (or leases to), or operates a place of public accommodation under subchapter III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 12102(1) of this title solely under subparagraph (C) of such section.

(Pub. L. 101–336, title V, §501, July 26, 1990, 104 Stat. 369 ; Pub. L. 110–325, §6(a)(1), Sept. 25, 2008, 122 Stat. 3557 .)

Editorial Notes

References in Text

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327 , which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (a), is Pub. L. 93–112, Sept. 26, 1973, 87 Stat. 355 . Title V of the Rehabilitation Act of 1973 is classified generally to subchapter V (§790 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Title IV of this Act, referred to in subsec. (c), means title IV of Pub. L. 101–336, July 26, 1990, 104 Stat. 366 , which enacted section 225 of Title 47, Telecommunications, and amended sections 152, 221, and 611 of Title 47.

Amendments

2008-Subsecs. (e) to (h). Pub. L. 110–325 added subsecs. (e) to (h).

Statutory Notes and Related Subsidiaries

Effective Date of 2008 Amendment

Amendment by Pub. L. 110–325 effective Jan. 1, 2009, see section 8 of Pub. L. 110–325, set out as a note under section 705 of Title 29, Labor.

Labor Code § 21.005. CONSTRUCTION WITH OTHER LAWS.

(a) This chapter does not relieve a government agency or official of the responsibility to ensure nondiscrimination in employment as required under another provision of the state or federal constitutions or laws.

(b) This chapter does not affect the standards for determining eligibility for benefits under Title 5 or under a state or federal disability benefit program.

(c) Nothing in this chapter may be construed as the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of a disability.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 337 (H.B. 978), Sec. 3, eff. September 1, 2009.

42 United States Code § 12102. STATE IMMUNITY.

A State shall not be immune under the eleventh amendment to the Constitution of the United States from an action in 1 Federal or State court of competent jurisdiction for a violation of this chapter. In any action against a State for a violation of the requirements of this chapter, remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in an action against any public or private entity other than a State.

(Pub. L. 101–336, title V, §502, July 26, 1990, 104 Stat. 370 .)

Editorial Notes

References in Text

This chapter, referred to in text, was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327 , which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

29 Code of Federal Regulations § 1630.2. DEFINITIONS.

(a) Commission means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-4).

(b) Covered Entity means an employer, employment agency, labor organization, or joint labor management committee.

(c) Person, labor organization, employment agency, commerce and industry affecting commerce shall have the same meaning given those terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(d) State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(e) Employer —

(1) In general. The term employer means a person engaged in an industry affecting commerce 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 any agent of such person, except that, from July 26, 1992 through July 25, 1994, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year and any agent of such person.

(2) Exceptions. The term employer does not include—

(i) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) A bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(f) Employee means an individual employed by an employer.

(g) Definition of “disability” —

(1) In general. Disability means, with respect to an individual—

(i) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(ii) A record of such an impairment; or

(iii) Being regarded as having such an impairment as described in paragraph (l) of this section. This means that the individual has been subjected to an action prohibited by the ADA as amended because of an actual or perceived impairment that is not both “transitory and minor.”

(2) An individual may establish coverage under any one or more of these three prongs of the definition of disability, i.e., paragraphs (g)(1)(i) (the “actual disability” prong), (g)(1)(ii) (the “record of” prong), and/or (g)(1)(iii) (the “regarded as” prong) of this section.

(3) Where an individual is not challenging a covered entity's failure to make reasonable accommodations and does not require a reasonable accommodation, it is generally unnecessary to proceed under the “actual disability” or “record of” prongs, which require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. In these cases, the evaluation of coverage can be made solely under the “regarded as” prong of the definition of disability, which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. An individual may choose, however, to proceed under the “actual disability” and/or “record of” prong regardless of whether the individual is challenging a covered entity's failure to make reasonable accommodations or requires a reasonable accommodation.

Note to paragraph (g):

See § 1630.3 for exceptions to this definition.

(h) Physical or mental impairment means—

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(i) Major life activities —

(1) In general. Major life activities include, but are not limited to:

(i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working; and

(ii) The operation of a major bodily function, including functions of the immune system, special sense organs and skin; normal cell growth; and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions. The operation of a major bodily function includes the operation of an individual organ within a body system.

(2) In determining other examples of major life activities, the term “major” shall not be interpreted strictly to create a demanding standard for disability. ADAAA section 2(b)(4) (Findings and Purposes). Whether an activity is a “major life activity” is not determined by reference to whether it is of “central importance to daily life.”

(j) Substantially limits —

(1) Rules of construction. The following rules of construction apply when determining whether an impairment substantially limits an individual in a major life activity:

(i) The term “substantially limits” shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. “Substantially limits” is not meant to be a demanding standard.

(ii) An impairment is a disability within the meaning of this section if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population. An impairment need not prevent, or significantly or severely restrict, the individual from performing a major life activity in order to be considered substantially limiting. Nonetheless, not every impairment will constitute a disability within the meaning of this section.

(iii) The primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations and whether discrimination has occurred, not whether

an individual's impairment substantially limits a major life activity. Accordingly, the threshold issue of whether an impairment “substantially limits” a major life activity should not demand extensive analysis.

(iv) The determination of whether an impairment substantially limits a major life activity requires an individualized assessment. However, in making this assessment, the term “substantially limits” shall be interpreted and applied to require a degree of functional limitation that is lower than the standard for “substantially limits” applied prior to the ADAAA.

(v) The comparison of an individual's performance of a major life activity to the performance of the same major life activity by most people in the general population usually will not require scientific, medical, or statistical analysis. Nothing in this paragraph is intended, however, to prohibit the presentation of scientific, medical, or statistical evidence to make such a comparison where appropriate.

(vi) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures. However, the ameliorative effects of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(vii) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(viii) An impairment that substantially limits one major life activity need not substantially limit other major life activities in order to be considered a substantially limiting impairment.

(ix) The six-month “transitory” part of the “transitory and minor” exception to “regarded as” coverage in § 1630.15(f) does not apply to the definition of “disability” under paragraphs (g)(1)(i) (the “actual disability” prong) or (g)(1)(ii) (the “record of” prong) of this section. The effects of an impairment lasting or expected to last fewer than six months can be substantially limiting within the meaning of this section.

(2) Non-applicability to the “regarded as” prong. Whether an individual's impairment “substantially limits” a major life activity is not relevant to coverage under paragraph (g)(1)(iii) (the “regarded as” prong) of this section.

(3) Predictable assessments —

(i) The principles set forth in paragraphs (j)(1)(i) through (ix) of this section are intended to provide for more generous coverage and application of the ADA's prohibition on discrimination through a framework that is predictable, consistent, and workable for all individuals and entities with rights and responsibilities under the ADA as amended.

(ii) Applying the principles set forth in paragraphs (j)(1)(i) through (ix) of this section, the individualized assessment of some types of impairments will, in virtually all cases, result in a determination of coverage under paragraphs (g)(1)(i) (the “actual disability” prong) or (g)(1)(ii) (the “record of” prong) of this section. Given their inherent nature, these types of impairments will, as a factual matter, virtually always be found to impose a substantial limitation on a major life activity. Therefore, with respect to these types of impairments, the necessary individualized assessment should be particularly simple and straightforward.

(iii) For example, applying the principles set forth in paragraphs (j)(1)(i) through (ix) of this section, it should easily be concluded that the following types of impairments will, at a minimum, substantially limit the major life activities indicated: Deafness substantially limits hearing; blindness substantially limits seeing; an intellectual disability (formerly termed mental retardation) substantially limits brain function; partially or completely missing limbs or mobility impairments requiring the use of a wheelchair substantially limit musculoskeletal function; autism substantially limits brain function; cancer substantially limits normal cell growth; cerebral palsy substantially limits brain function; diabetes substantially limits endocrine function; epilepsy substantially limits neurological function; Human Immunodeficiency Virus (HIV) infection substantially limits immune function; multiple sclerosis substantially limits neurological function; muscular dystrophy substantially limits neurological function; and major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia substantially limit brain function. The types of impairments described in this section may substantially limit additional major life activities not explicitly listed above.

(4) Condition, manner, or duration —

(i) At all times taking into account the principles in paragraphs (j)(1)(i) through (ix) of this section, in determining whether an individual is substantially limited in a major life activity, it may be useful in appropriate cases to consider, as compared to most people in the general population, the condition under which the individual performs the major life activity; the manner in which the individual performs the major life activity; and/or the duration of time it takes the individual to perform the major life activity, or for which the individual can perform the major life activity.

(ii) Consideration of facts such as condition, manner, or duration may include, among other things, consideration of the difficulty, effort, or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; and/or the way an impairment affects the operation of a major bodily function. In addition, the non-ameliorative effects of mitigating measures, such as negative side effects of medication or burdens associated with following a particular treatment regimen, may be considered when determining whether an individual's impairment substantially limits a major life activity.

(iii) In determining whether an individual has a disability under the “actual disability” or “record of” prongs of the definition of disability, the focus is on how a major life activity is substantially limited, and not on what outcomes an individual can achieve. For example, someone with a learning disability may achieve a high level of academic success, but may nevertheless be substantially limited in the major life activity of learning because of the additional time or effort he or she must spend to read, write, or learn compared to most people in the general population.

(iv) Given the rules of construction set forth in paragraphs (j)(1)(i) through (ix) of this section, it may often be unnecessary to conduct an analysis involving most or all of these types of facts. This is particularly true with respect to impairments such as those described in paragraph (j)(3)(iii) of this section, which by their inherent nature should be easily found to impose a substantial limitation on a major life activity, and for which the individualized assessment should be particularly simple and straightforward.

(5) Examples of mitigating measures —Mitigating measures include, but are not limited to:

(i) Medication, medical supplies, equipment, or appliances, low-vision devices (defined as devices that magnify, enhance, or otherwise augment a visual image, but not including ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aid(s) and cochlear implant(s) or other implantable hearing devices, mobility devices, and oxygen therapy equipment and supplies;

(ii) Use of assistive technology;

(iii) Reasonable accommodations or “auxiliary aids or services” (as defined by 42 U.S.C. 12103(1));

(iv) Learned behavioral or adaptive neurological modifications; or

(v) Psychotherapy, behavioral therapy, or physical therapy.

(6) Ordinary eyeglasses or contact lenses —defined. Ordinary eyeglasses or contact lenses are lenses that are intended to fully correct visual acuity or to eliminate refractive error.

(k) Has a record of such an impairment —

(1) In general. An individual has a record of a disability if the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(2) Broad construction. Whether an individual has a record of an impairment that substantially limited a major life activity shall be construed broadly to the maximum extent permitted by the ADA and should not demand extensive analysis. An individual will be considered to have a record of a disability if the individual has a history of an impairment that substantially limited one or more major life activities when compared to most people in the general population, or was misclassified as having had such an impairment. In determining whether an impairment substantially limited a major life activity, the principles articulated in paragraph (j) of this section apply.

(3) Reasonable accommodation. An individual with a record of a substantially limiting impairment may be entitled, absent undue hardship, to a reasonable accommodation if needed and related to the past disability. For example, an employee with an impairment that previously limited, but no longer substantially limits, a major life activity may need leave or a schedule change to permit him or her to attend follow-up or “monitoring” appointments with a health care provider.

(l) “Is regarded as having such an impairment.” The following principles apply under the “regarded as” prong of the definition of disability (paragraph (g)(1)(iii) of this section) above:

(1) Except as provided in § 1630.15(f), an individual is “regarded as having such an impairment” if the individual is subjected to a prohibited action because of an actual or perceived physical or mental impairment, whether or not that impairment substantially limits, or is perceived to substantially limit, a major life activity. Prohibited actions include but are not limited to refusal to hire, demotion, placement on involuntary leave, termination, exclusion for failure to meet a qualification standard, harassment, or denial of any other term, condition, or privilege of employment

(2) Except as provided in § 1630.15(f), an individual is “regarded as having such an impairment” any time a covered entity takes a prohibited action against the individual because of an actual or perceived impairment, even if the entity asserts, or may or does ultimately establish, a defense to such action.

(3) Establishing that an individual is “regarded as having such an impairment” does not, by itself, establish liability. Liability is established under title I of the ADA only when an individual proves that a covered entity discriminated on the basis of disability within the meaning of section 102 of the ADA, 42 U.S.C. 12112.

(m) The term “qualified,” with respect to an individual with a disability, means that the individual satisfies the requisite skill, experience, education and other job-related requirements of the

employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position. See § 1630.3 for exceptions to this definition.

(n) Essential functions —

(1) In general. The term essential functions means the fundamental job duties of the employment position the individual with a disability holds or desires. The term “essential functions” does not include the marginal functions of the position.

(2) A job function may be considered essential for any of several reasons, including but not limited to the following:

(i) The function may be essential because the reason the position exists is to perform that function;

(ii) The function may be essential because of the limited number of employees available among whom the performance of that job function can be distributed; and/or

(iii) The function may be highly specialized so that the incumbent in the position is hired for his or her expertise or ability to perform the particular function.

(3) Evidence of whether a particular function is essential includes, but is not limited to:

(i) The employer's judgment as to which functions are essential;

(ii) Written job descriptions prepared before advertising or interviewing applicants for the job;

(iii) The amount of time spent on the job performing the function;

(iv) The consequences of not requiring the incumbent to perform the function;

(v) The terms of a collective bargaining agreement;

(vi) The work experience of past incumbents in the job; and/or

(vii) The current work experience of incumbents in similar jobs.

(o) Reasonable accommodation.

(1) The term reasonable accommodation means:

(i) Modifications or adjustments to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires; or

(ii) Modifications or adjustments to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable an individual with a disability who is qualified to perform the essential functions of that position; or

(iii) Modifications or adjustments that enable a covered entity's employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by its other similarly situated employees without disabilities.

(2) Reasonable accommodation may include but is not limited to:

(i) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(ii) Job restructuring; part-time or modified work schedules; reassignment to a vacant position; acquisition or modifications of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of qualified readers or interpreters; and other similar accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation it may be necessary for the covered entity to initiate an informal, interactive process with the individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

(4) A covered entity is required, absent undue hardship, to provide a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the “actual disability” prong (paragraph (g)(1)(i) of this section), or “record of” prong (paragraph (g)(1)(ii) of this section), but is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the “regarded as” prong (paragraph (g)(1)(iii) of this section).

(p) Undue hardship —

(1) In general. Undue hardship means, with respect to the provision of an accommodation, significant difficulty or expense incurred by a covered entity, when considered in light of the factors set forth in paragraph (p)(2) of this section.

(2) Factors to be considered. In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

(i) The nature and net cost of the accommodation needed under this part, taking into consideration the availability of tax credits and deductions, and/or outside funding;

(ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at such facility, and the effect on expenses and resources;

(iii) The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees, and the number, type and location of its facilities;

(iv) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity, and the geographic separateness and administrative or fiscal relationship of the facility or facilities in question to the covered entity; and

(v) The impact of the accommodation upon the operation of the facility, including the impact on the ability of other employees to perform their duties and the impact on the facility's ability to conduct business.

(q) Qualification standards means the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by a covered

entity as requirements which an individual must meet in order to be eligible for the position held or desired.

(r) Direct Threat means a significant risk of substantial harm to the health or safety of the individual or others that cannot be eliminated or reduced by reasonable accommodation. The determination that an individual poses a “direct threat” shall be based on an individualized assessment of the individual's present ability to safely perform the essential functions of the job. This assessment shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence. In determining whether an individual would pose a direct threat, the factors to be considered include:

(1) The duration of the risk;

(2) The nature and severity of the potential harm;

(3) The likelihood that the potential harm will occur; and

(4) The imminence of the potential harm.

[56 FR 35734, July 26, 1991, as amended at 76 FR 16999, Mar. 25, 2011]

Labor Code § 21.002. DEFINITIONS.

In this chapter:

(1) "Auxiliary aids and services" includes:

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) services and actions similar to those described by Paragraphs (A)-(C).

(2) "Bona fide occupational qualification" means a qualification:

(A) reasonably related to the satisfactory performance of the duties of a job; and

(B) for which a factual basis exists for the belief that no person of an excluded group would be able to satisfactorily perform the duties of the job with safety or efficiency.

(3) Repealed by Acts 2003, 78th Leg., ch. 302, Sec. 4(2).

(4) "Complainant" means an individual who brings an action or proceeding under this chapter.

(5) "Demonstrates" means meets the burdens of production and persuasion.

(6) "Disability" means, with respect to an individual, a mental or physical impairment that substantially limits at least one major life activity of that individual, a record of such an impairment, or being regarded as having such an impairment. The term does not include:

(A) a current condition of addiction to the use of alcohol, a drug, an illegal substance, or a federally controlled substance; or

(B) a currently communicable disease or infection as defined in Section 81.003, Health and Safety Code, or required to be reported under Section 81.041, Health and Safety Code, that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of the person's employment.

(7) "Employee" means an individual employed by an employer, including an individual subject to the civil service laws of this state or a political subdivision of this state, except that the term does not include an individual elected to public office in this state or a political subdivision of this state.

(8) "Employer" means:

(A) a person who is engaged in an industry affecting commerce and 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;

(B) an agent of a person described by Paragraph (A);

(C) an individual elected to public office in this state or a political subdivision of this state; or

(D) a county, municipality, state agency, or state instrumentality, regardless of the number of individuals employed.

(9) "Employment agency" means a person or an agent of the person who regularly undertakes, with or without compensation, to procure:

(A) employees for an employer; or

(B) the opportunity for employees to work for an employer.

(10) "Labor organization" means a labor organization engaged in an industry affecting commerce. The term includes:

(A) an organization, an agency, or an employee representation committee, group, association, or plan engaged in an industry affecting commerce in which employees participate and that 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;

(B) a conference, general committee, joint or system board, or joint council that is subordinate to a national or international labor organization; and

(C) an agent of a labor organization.

(11) "Local commission" means a commission on human relations created by one or more political subdivisions.

(11-a) "Major life activity" includes, but is not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. The term also includes the operation of a major bodily function, including, but not limited to, functions of the immune system, normal cell growth, and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(12) "Political subdivision" means a county or municipality.

(12-a) "Regarded as having such an impairment" means subjected to an action prohibited under Subchapter B or C because of an actual or perceived physical or mental impairment, other than an impairment that is minor and is expected to last or actually lasts less than six months, regardless of whether the impairment limits or is perceived to limit a major life activity.

(13) "Respondent" means the person charged in a complaint filed under this chapter and may include an employer, employment agency, labor organization, or joint labor-management committee that controls an apprenticeship or other training or retraining program, including an on-the-job training program.

(14) "State agency" means:

(A) a board, commission, committee, council, department, institution, office, or agency in the executive branch of state government having statewide jurisdiction;

(B) the supreme court, the court of criminal appeals, a court of appeals, or the State Bar of Texas or another judicial agency having statewide jurisdiction; or

(C) an institution of higher education as defined by Section 61.003, Education Code.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 9.02(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 834, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 872, Sec. 10, eff. Sept. 1, 1999; Acts 2003, 78th Leg., ch. 302, Sec. 4(a).

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 337 (H.B. 978), Sec. 1, eff. September 1, 2009.

Labor Code § 21.0021. CONSTRUCTION OF CERTAIN DEFINITIONS.

(a) The term "disability":

(1) shall be construed in favor of broad coverage of individuals under Subchapters B and C, to the maximum extent allowed under those subchapters; and

(2) includes an impairment that is episodic or in remission that substantially limits a major life activity when active.

(b) The determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures, including:

(1) medication, medical supplies, medical equipment, medical appliances, prosthetic limbs and devices, hearing aids, cochlear implants and other implantable hearing devices, mobility devices, and oxygen therapy equipment;

(2) devices that magnify, enhance, or otherwise augment a visual image, other than eyeglasses and contact lenses that are intended to fully correct visual acuity or eliminate refractive error;

(3) the use of assistive technology;

(4) reasonable accommodations and auxiliary aids or services; and

(5) learned behavioral or adaptive neurological modifications.

Added by Acts 2009, 81st Leg., R.S., Ch. 337 (H.B. 978), Sec. 2, eff. September 1, 2009.

29 Code of Federal Regulations § 1630.9. NOT MAKING REASONABLE ACCOMMODATION.

(a) It is unlawful for a covered entity not to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(b) It is unlawful for a covered entity to deny employment opportunities to an otherwise qualified job applicant or employee with a disability based on the need of such covered entity to make reasonable accommodation to such individual's physical or mental impairments.

(c) A covered entity shall not be excused from the requirements of this part because of any failure to receive technical assistance authorized by section 507 of the ADA, including any failure in the development or dissemination of any technical assistance manual authorized by that Act.

(d) An individual with a disability is not required to accept an accommodation, aid, service, opportunity or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered qualified.

(e) A covered entity is required, absent undue hardship, to provide a reasonable accommodation to an otherwise qualified individual who meets the definition of disability under the “actual disability” prong (§ 1630.2(g)(1)(i)), or “record of” prong (§ 1630.2(g)(1)(ii)), but is not required to provide a reasonable accommodation to an individual who meets the definition of disability solely under the “regarded as” prong (§ 1630.2(g)(1)(iii)).

[56 FR 35734, July 26, 1991, as amended at 76 FR 17002, Mar. 25, 2011]

34 Code of Federal Regulations § 104.11. DISCRIMINATION PROHIBITED.

(a) General.

(1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity to which this part applies.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs or activities assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeships.

(b) Specific activities. The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absense, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including those that are social or recreational; and

(9) Any other term, condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68055, Nov. 13, 2000]

Labor Code § 21.128. REASONABLE ACCOMMODATION; GOOD FAITH EFFORT.

(a) It is an unlawful employment practice for a respondent covered under this chapter to fail or refuse to make a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual with a disability who is an employee or applicant for employment, unless the respondent demonstrates that the accommodation would impose an undue hardship on the operation of the business of the respondent.

(b) A showing of undue hardship by the respondent is a defense to a complaint of discrimination made by an otherwise qualified individual with a disability. In considering a complaint based on a disability, the commission shall consider the reasonableness of the cost of any necessary workplace accommodation and the availability of alternatives or other appropriate relief.

(c) In a complaint in which a discriminatory employment practice involves the provision of a reasonable workplace accommodation under this chapter, damages may not be awarded under Subchapter F if the respondent demonstrates good faith efforts, in consultation with the otherwise qualified individual with a disability who has informed the respondent that accommodation is needed, to identify and make a reasonable workplace accommodation that would provide the individual with an equally effective opportunity and would not cause an undue hardship on the operation of the business.

(d) A respondent is not obligated to make a reasonable workplace accommodation to a known physical or mental limitation of an otherwise qualified individual under Subsection (a) if the individual's disability is based solely on being regarded as having an impairment that substantially limits at least one major life activity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 9.05(a), eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 337 (H.B. 978), Sec. 5, eff. September 1, 2009.

34 Code of Federal Regulations § 104.12. REASONABLE ACCOMMODATION.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(b) Reasonable accommodation may include:

(1) Making facilities used by employees readily accessible to and usable by handicapped persons, and

(2) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:

(1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

[45 FR 30936, May 9, 2000, as amended at 65 FR 68054, Nov. 13, 2000]

29 Code of Federal Regulations § 1630.8. RELATIONSHIP OR ASSOCIATION WITH AN INDIVIDUAL WITH A DISABILITY.

It is unlawful for a covered entity to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social or other relationship or association.

42 United States Code § 12114. ILLEGAL USE OF DRUGS AND ALCOHOL.

(a) Qualified individual with a disability

For purposes of this subchapter, a qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction

Nothing in subsection (a) of this section shall be construed to exclude as a qualified individual with a disability an individual who—

(1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(2) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1) or (2) is no longer engaging in the illegal use of drugs.

(c) Authority of covered entity

A covered entity—

(1) may prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) may require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) may require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such entity holds other employees, even if any unsatisfactory performance or behavior is related to the drug use or alcoholism of such employee; and

(5) may, with respect to Federal regulations regarding alcohol and the illegal use of drugs, require that—

(A) employees comply with the standards established in such regulations of the Department of Defense, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Defense);

(B) employees comply with the standards established in such regulations of the Nuclear Regulatory Commission, if the employees of the covered entity are employed in an industry subject to such regulations, including complying with regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Nuclear Regulatory Commission); and

(C) employees comply with the standards established in such regulations of the Department of Transportation, if the employees of the covered entity are employed in a transportation industry

subject to such regulations, including complying with such regulations (if any) that apply to employment in sensitive positions in such an industry, in the case of employees of the covered entity who are employed in such positions (as defined in the regulations of the Department of Transportation).

(d) Drug testing

(1) In general

For purposes of this subchapter, a test to determine the illegal use of drugs shall not be considered a medical examination.

(2) Construction

Nothing in this subchapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on such test results.

(e) Transportation employees

Nothing in this subchapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to—

(1) test employees of such entities in, and applicants for, positions involving safety-sensitive duties for the illegal use of drugs and for on-duty impairment by alcohol; and

(2) remove such persons who test positive for illegal use of drugs and on-duty impairment by alcohol pursuant to paragraph (1) from safety-sensitive duties in implementing subsection (c) of this section.

(Pub. L. 101–336, title I, §104, July 26, 1990, 104 Stat. 334; Pub. L. 110–325, §5(c)(2), Sept. 25, 2008, 122 Stat. 3557.)

References in Text

This chapter, referred to in subsec. (b), was in the original “this Act”, meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

The Drug-Free Workplace Act of 1988, referred to in subsec. (c)(3), is subtitle D (§§5151–5160) of title V of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4304, which is classified generally to chapter 10 (§701 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 41 and Tables.

Amendments

2008—Subsec. (a). Pub. L. 110–325 substituted “a qualified individual with a disability shall” for “the term ‘qualified individual with a disability’ shall”.

Effective Date of 2008 Amendment

Amendment by Pub. L. 110–325 effective Jan. 1, 2009, see section 8 of Pub. L. 110–325, set out as a note under section 705 of Title 29, Labor.

29 United States Code § 705. DEFINITIONS.

For the purposes of this chapter:

(1) Administrative costs

The term “administrative costs” means expenditures incurred in the performance of administrative functions under the vocational rehabilitation program carried out under subchapter I of this chapter, including expenses related to program planning, development, monitoring, and evaluation, including expenses for—

(A) quality assurance;

(B) budgeting, accounting, financial management, information systems, and related data processing;

(C) providing information about the program to the public;

(D) technical assistance and support services to other State agencies, private nonprofit organizations, and businesses and industries, except for technical assistance and support services described in section 723(b)(5) of this title;

(E) the State Rehabilitation Council and other advisory committees;

(F) professional organization membership dues for designated State unit employees;

(G) the removal of architectural barriers in State vocational rehabilitation agency offices and State operated rehabilitation facilities;

(H) operating and maintaining designated State unit facilities, equipment, and grounds;

(I) supplies;

(J) administration of the comprehensive system of personnel development described in section 721(a)(7) of this title, including personnel administration, administration of affirmative action plans, and training and staff development;

(K) administrative salaries, including clerical and other support staff salaries, in support of these administrative functions;

(L) travel costs related to carrying out the program, other than travel costs related to the provision of services;

(M) costs incurred in conducting reviews of rehabilitation counselor or coordinator determinations under section 722(c) of this title; and

(N) legal expenses required in the administration of the program.

(2) Assessment for determining eligibility and vocational rehabilitation needs

The term “assessment for determining eligibility and vocational rehabilitation needs” means, as appropriate in each case—

(A)(i) a review of existing data—

(I) to determine whether an individual is eligible for vocational rehabilitation services; and

(II) to assign priority for an order of selection described in section 721(a)(5)(A) of this title in the States that use an order of selection pursuant to section 721(a)(5)(A) of this title; and

(ii) to the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make such determination and assignment;

(B) to the extent additional data is necessary to make a determination of the employment outcomes, and the nature and scope of vocational rehabilitation services, to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual, which comprehensive assessment—

(i) is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan for employment of the eligible individual;

(ii) uses, as a primary source of such information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements—

(I) existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection described in section 721(a)(5)(A) of this title for the individual; and

(II) such information as can be provided by the individual and, where appropriate, by the family of the individual;

(iii) may include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual, and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors, that affect the employment and rehabilitation needs of the individual; and

(iv) may include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills, and to develop work

attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the utilization of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment;

(C) referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(D) an exploration of the individual's abilities, capabilities, and capacity to perform in work situations, which shall be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(3) Assistive technology device

The term “assistive technology device” has the meaning given such term in section 3002 of this title, except that the reference in such section to the term “individuals with disabilities” shall be deemed to mean more than one individual with a disability as defined in paragraph (20)(A).

(4) Assistive technology service

The term “assistive technology service” has the meaning given such term in section 3002 of this title, except that the reference in such section—

(A) to the term “individual with a disability” shall be deemed to mean an individual with a disability, as defined in paragraph (20)(A); and

(B) to the term “individuals with disabilities” shall be deemed to mean more than one such individual.

(5) Community rehabilitation program

The term “community rehabilitation program” means a program that provides directly or facilitates the provision of vocational rehabilitation services to individuals with disabilities, and that provides, singly or in combination, for an individual with a disability to enable the individual to maximize opportunities for employment, including career advancement—

(A) medical, psychiatric, psychological, social, and vocational services that are provided under one management;

(B) testing, fitting, or training in the use of prosthetic and orthotic devices;

(C) recreational therapy;

(D) physical and occupational therapy;

(E) speech, language, and hearing therapy;

(F) psychiatric, psychological, and social services, including positive behavior management;

(G) assessment for determining eligibility and vocational rehabilitation needs;

(H) rehabilitation technology;

(I) job development, placement, and retention services;

(J) evaluation or control of specific disabilities;

(K) orientation and mobility services for individuals who are blind;

(L) extended employment;

(M) psychosocial rehabilitation services;

(N) supported employment services and extended services;

(O) services to family members when necessary to the vocational rehabilitation of the individual;

(P) personal assistance services; or

(Q) services similar to the services described in one of subparagraphs (A) through (P).

(6) Construction; cost of construction

(A) Construction

The term “construction” means—

(i) the construction of new buildings;

(ii) the acquisition, expansion, remodeling, alteration, and renovation of existing buildings; and

(iii) initial equipment of buildings described in clauses (i) and (ii).

(B) Cost of construction

The term “cost of construction” includes architects’ fees and the cost of acquisition of land in connection with construction but does not include the cost of offsite improvements.

(7) Repealed. Pub. L. 105–277, div. A, §101(f) [title VIII, §402(c)(1)(B)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–415

(8) Designated State agency; designated State unit

(A) Designated State agency

The term “designated State agency” means an agency designated under section 721(a)(2)(A) of this title.

(B) Designated State unit

The term “designated State unit” means—

(i) any State agency unit required under section 721(a)(2)(B)(ii) of this title; or

(ii) in cases in which no such unit is so required, the State agency described in section 721(a)(2)(B)(i) of this title.

(9) Disability

The term “disability” means—

(A) except as otherwise provided in subparagraph (B), a physical or mental impairment that constitutes or results in a substantial impediment to employment; or

(B) for purposes of sections 701, 711, and 712 of this title, and subchapters II, IV, V, and VII of this chapter, the meaning given it in section 12102 of title 42.

(10) Drug and illegal use of drugs

(A) Drug

The term “drug” means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(B) Illegal use of drugs

The term “illegal use of drugs” means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(11) Employment outcome

The term “employment outcome” means, with respect to an individual—

(A) entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market;

(B) satisfying the vocational outcome of supported employment; or

(C) satisfying any other vocational outcome the Secretary may determine to be appropriate (including satisfying the vocational outcome of self-employment, telecommuting, or business ownership),

in a manner consistent with this chapter.

(12) Establishment of a community rehabilitation program

The term “establishment of a community rehabilitation program” includes the acquisition, expansion, remodeling, or alteration of existing buildings necessary to adapt them to community rehabilitation program purposes or to increase their effectiveness for such purposes (subject, however, to such limitations as the Secretary may determine, in accordance with regulations the Secretary shall prescribe, in order to prevent impairment of the objectives of, or duplication of, other Federal laws providing Federal assistance in the construction of facilities for community rehabilitation programs), and may include such additional equipment and staffing as the Commissioner considers appropriate.

(13) Extended services

The term “extended services” means ongoing support services and other appropriate services, needed to support and maintain an individual with a most significant disability in supported employment, that—

(A) are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining supported employment;

(B) are based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; and

(C) are provided by a State agency, a nonprofit private organization, employer, or any other appropriate resource, after an individual has made the transition from support provided by the designated State unit.

(14) Federal share

(A) In general

Subject to subparagraph (B), the term “Federal share” means 78.7 percent.

(B) Exception

The term “Federal share” means the share specifically set forth in section 731(a)(3) of this title, except that with respect to payments pursuant to part B of subchapter I of this chapter to any State that are used to meet the costs of construction of those rehabilitation facilities identified in section 723(b)(2) of this title in such State, the Federal share shall be the percentages determined in accordance with the provisions of section 731(a)(3) of this title applicable with respect to the State.

(C) Relationship to expenditures by a political subdivision

For the purpose of determining the non-Federal share with respect to a State, expenditures by a political subdivision thereof or by a local agency shall be regarded as expenditures by such State, subject to such limitations and conditions as the Secretary shall by regulation prescribe.

(15) Governor

The term “Governor” means a chief executive officer of a State.

(16) Impartial hearing officer

(A) In general

The term “impartial hearing officer” means an individual—

(i) who is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education);

(ii) who is not a member of the State Rehabilitation Council described in section 725 of this title;

(iii) who has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(iv) who has knowledge of the delivery of vocational rehabilitation services, the State plan under section 721 of this title, and the Federal and State rules governing the provision of such services and training with respect to the performance of official duties; and

(v) who has no personal or financial interest that would be in conflict with the objectivity of the individual.

(B) Construction

An individual shall not be considered to be an employee of a public agency for purposes of subparagraph (A)(i) solely because the individual is paid by the agency to serve as a hearing officer.

(17) Independent living core services

The term “independent living core services” means—

(A) information and referral services;

(B) independent living skills training;

(C) peer counseling (including cross-disability peer counseling); and

(D) individual and systems advocacy.

(18) Independent living services

The term “independent living services” includes—

(A) independent living core services; and

(B)(i) counseling services, including psychological, psychotherapeutic, and related services;

(ii) services related to securing housing or shelter, including services related to community group living, and supportive of the purposes of this chapter and of the subchapters of this chapter, and adaptive housing services (including appropriate accommodations to and modifications of any space used to serve, or occupied by, individuals with disabilities);

(iii) rehabilitation technology;

(iv) mobility training;

(v) services and training for individuals with cognitive and sensory disabilities, including life skills training, and interpreter and reader services;

(vi) personal assistance services, including attendant care and the training of personnel providing such services;

(vii) surveys, directories, and other activities to identify appropriate housing, recreation opportunities, and accessible transportation, and other support services;

(viii) consumer information programs on rehabilitation and independent living services available under this chapter, especially for minorities and other individuals with disabilities who have traditionally been unserved or underserved by programs under this chapter;

(ix) education and training necessary for living in a community and participating in community activities;

(x) supported living;

(xi) transportation, including referral and assistance for such transportation and training in the use of public transportation vehicles and systems;

(xii) physical rehabilitation;

(xiii) therapeutic treatment;

(xiv) provision of needed prostheses and other appliances and devices;

(xv) individual and group social and recreational services;

(xvi) training to develop skills specifically designed for youths who are individuals with disabilities to promote self-awareness and esteem, develop advocacy and self-empowerment skills, and explore career options;

(xvii) services for children;

(xviii) services under other Federal, State, or local programs designed to provide resources, training, counseling, or other assistance, of substantial benefit in enhancing the independence, productivity, and quality of life of individuals with disabilities;

(xix) appropriate preventive services to decrease the need of individuals assisted under this chapter for similar services in the future;

(xx) community awareness programs to enhance the understanding and integration into society of individuals with disabilities; and

(xxi) such other services as may be necessary and not inconsistent with the provisions of this chapter.

(19) Indian; American Indian; Indian American; Indian tribe

(A) In general

The terms “Indian”, “American Indian”, and “Indian American” mean an individual who is a member of an Indian tribe.

(B) Indian tribe

The term “Indian tribe” means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaskan native village or regional village corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act [43 U.S.C. 1601 et seq.]).

(20) Individual with a disability

(A) In general

Except as otherwise provided in subparagraph (B), the term “individual with a disability” means any individual who—

(i) has a physical or mental impairment which for such individual constitutes or results in a substantial impediment to employment; and

(ii) can benefit in terms of an employment outcome from vocational rehabilitation services provided pursuant to subchapter I, III, or VI of this chapter.

(B) Certain programs; limitations on major life activities

Subject to subparagraphs (C), (D), (E), and (F), the term “individual with a disability” means, for purposes of sections 701, 711, and 712 of this title, and subchapters II, IV, V, and VII of this chapter, any person who has a disability as defined in section 12102 of title 42.

(C) Rights and advocacy provisions

(i) In general; exclusion of individuals engaging in drug use

For purposes of subchapter V of this chapter, the term “individual with a disability” does not include an individual who is currently engaging in the illegal use of drugs, when a covered entity acts on the basis of such use.

(ii) Exception for individuals no longer engaging in drug use

Nothing in clause (i) shall be construed to exclude as an individual with a disability an individual who—

(I) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(II) is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(III) is erroneously regarded as engaging in such use, but is not engaging in such use;

except that it shall not be a violation of this chapter for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subclause (I) or (II) is no longer engaging in the illegal use of drugs.

(iii) Exclusion for certain services

Notwithstanding clause (i), for purposes of programs and activities providing health services and services provided under subchapters I, II, and III of this chapter, an individual shall not be excluded from the benefits of such programs or activities on the basis of his or her current illegal use of drugs if he or she is otherwise entitled to such services.

(iv) Disciplinary action

For purposes of programs and activities providing educational services, local educational agencies may take disciplinary action pertaining to the use or possession of illegal drugs or alcohol against

any student who is an individual with a disability and who currently is engaging in the illegal use of drugs or in the use of alcohol to the same extent that such disciplinary action is taken against students who are not individuals with disabilities. Furthermore, the due process procedures at section 104.36 of title 34, Code of Federal Regulations (or any corresponding similar regulation or ruling) shall not apply to such disciplinary actions.

(v) Employment; exclusion of alcoholics

For purposes of sections 793 and 794 of this title as such sections relate to employment, the term “individual with a disability” does not include any individual who is an alcoholic whose current use of alcohol prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others.

(D) Employment; exclusion of individuals with certain diseases or infections

For the purposes of sections 793 and 794 of this title, as such sections relate to employment, such term does not include an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

(E) Rights provisions; exclusion of individuals on basis of homosexuality or bisexuality

For the purposes of sections 791, 793, and 794 of this title—

(i) for purposes of the application of subparagraph (B) to such sections, the term “impairment” does not include homosexuality or bisexuality; and

(ii) therefore the term “individual with a disability” does not include an individual on the basis of homosexuality or bisexuality.

(F) Rights provisions; exclusion of individuals on basis of certain disorders

For the purposes of sections 791, 793, and 794 of this title, the term “individual with a disability” does not include an individual on the basis of—

(i) transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) compulsive gambling, kleptomania, or pyromania; or

(iii) psychoactive substance use disorders resulting from current illegal use of drugs.

(G) Individuals with disabilities

The term “individuals with disabilities” means more than one individual with a disability.

(21) Individual with a significant disability

(A) In general

Except as provided in subparagraph (B) or (C), the term “individual with a significant disability” means an individual with a disability—

(i) who has a severe physical or mental impairment which seriously limits one or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome;

(ii) whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(iii) who has one or more physical or mental disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, intellectual disability, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and vocational rehabilitation needs described in subparagraphs (A) and (B) of paragraph (2) to cause comparable substantial functional limitation.

(B) Independent living services and centers for independent living

For purposes of subchapter VII of this chapter, the term “individual with a significant disability” means an individual with a severe physical or mental impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of independent living services will improve the ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment, respectively.

(C) Research and training

For purposes of subchapter II of this chapter, the term “individual with a significant disability” includes an individual described in subparagraph (A) or (B).

(D) Individuals with significant disabilities

The term “individuals with significant disabilities” means more than one individual with a significant disability.

(E) Individual with a most significant disability

(i) In general

The term “individual with a most significant disability”, used with respect to an individual in a State, means an individual with a significant disability who meets criteria established by the State under section 721(a)(5)(C) of this title.

(ii) Individuals with the most significant disabilities

The term “individuals with the most significant disabilities” means more than one individual with a most significant disability.

(22) Individual's representative; applicant's representative

The terms “individual's representative” and “applicant's representative” mean a parent, a family member, a guardian, an advocate, or an authorized representative of an individual or applicant, respectively.

(23) Institution of higher education

The term “institution of higher education” has the meaning given the term in section 1001 of title 20.

(24) Local agency

The term “local agency” means an agency of a unit of general local government or of an Indian tribe (or combination of such units or tribes) which has an agreement with the designated State agency to conduct a vocational rehabilitation program under the supervision of such State agency in accordance with the State plan approved under section 721 of this title. Nothing in the preceding sentence of this paragraph or in section 721 of this title shall be construed to prevent the local agency from arranging to utilize another local public or nonprofit agency to provide vocational rehabilitation services if such an arrangement is made part of the agreement specified in this paragraph.

(25) Local workforce investment board

The term “local workforce investment board” means a local workforce investment board established under section 117 of the Workforce Investment Act of 1998 [29 U.S.C. 2832].

(26) Nonprofit

The term “nonprofit”, when used with respect to a community rehabilitation program, means a community rehabilitation program carried out by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual and the income of which is exempt from taxation under section 501(c)(3) of title 26.

(27) Ongoing support services

The term “ongoing support services” means services—

(A) provided to individuals with the most significant disabilities;

(B) provided, at a minimum, twice monthly—

(i) to make an assessment, regarding the employment situation, at the worksite of each such individual in supported employment, or, under special circumstances, especially at the request of the client, off site; and

(ii) based on the assessment, to provide for the coordination or provision of specific intensive services, at or away from the worksite, that are needed to maintain employment stability; and

(C) consisting of—

(i) a particularized assessment supplementary to the comprehensive assessment described in paragraph (2)(B);

(ii) the provision of skilled job trainers who accompany the individual for intensive job skill training at the worksite;

(iii) job development, job retention, and placement services;

(iv) social skills training;

(v) regular observation or supervision of the individual;

(vi) followup services such as regular contact with the employers, the individuals, the individuals' representatives, and other appropriate individuals, in order to reinforce and stabilize the job placement;

(vii) facilitation of natural supports at the worksite;

(viii) any other service identified in section 723 of this title; or

(ix) a service similar to another service described in this subparagraph.

(28) Personal assistance services

The term "personal assistance services" means a range of services, provided by one or more persons, designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform if the individual did not have a disability. Such services shall be designed to increase the individual's control in life and ability to perform everyday activities on or off the job.

(29) Public or nonprofit

The term "public or nonprofit", used with respect to an agency or organization, includes an Indian tribe.

(30) Rehabilitation technology

The term "rehabilitation technology" means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of and address the barriers confronted by individuals with disabilities in areas which include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(31) Secretary

The term “Secretary”, except when the context otherwise requires, means the Secretary of Education.

(32) State

The term “State” includes, in addition to each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(33) State workforce investment board

The term “State workforce investment board” means a State workforce investment board established under section 111 of the Workforce Investment Act of 1998 [29 U.S.C. 2821].

(34) Statewide workforce investment system

The term “statewide workforce investment system” means a system described in section 111(d)(2) of the Workforce Investment Act of 1998 [29 U.S.C. 2821(d)(2)].

(35) Supported employment

(A) In general

The term “supported employment” means competitive work in integrated work settings, or employment in integrated work settings in which individuals are working toward competitive work, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities—

(i)(I) for whom competitive employment has not traditionally occurred; or

(II) for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

(ii) who, because of the nature and severity of their disability, need intensive supported employment services for the period, and any extension, described in paragraph (36)(C) and extended services after the transition described in paragraph (13)(C) in order to perform such work.

(B) Certain transitional employment

Such term includes transitional employment for persons who are individuals with the most significant disabilities due to mental illness.

(36) Supported employment services

The term “supported employment services” means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment, that—

(A) are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual to achieve competitive employment;

(B) are based on a determination of the needs of an eligible individual, as specified in an individualized plan for employment; and

(C) are provided by the designated State unit for a period of time not to extend beyond 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator involved jointly agree to extend the time in order to achieve the employment outcome identified in the individualized plan for employment.

(37) Transition services

The term “transition services” means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities shall be based upon the individual student's needs, taking into account the student's preferences and interests, and shall include instruction, community experiences, the development of employment and other post school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.

(38) Vocational rehabilitation services

The term “vocational rehabilitation services” means those services identified in section 723 of this title which are provided to individuals with disabilities under this chapter.

(39) Workforce investment activities

The term “workforce investment activities” means workforce investment activities, as defined in section 101 of the Workforce Investment Act of 1998 [29 U.S.C. 2801], that are carried out under that Act.

(Pub. L. 93–112, §7, formerly §6, as added Pub. L. 105–220, title IV, §403, Aug. 7, 1998, 112 Stat. 1097; amended Pub. L. 105–244, title I, §102(a)(9)(A), Oct. 7, 1998, 112 Stat. 1619; renumbered §7 and amended Pub. L. 105–277, div. A, §101(f) [title VIII, §402(a)(1), (b)(3), (c)(1)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–412, 2681–413, 2681–415; Pub. L. 105–394, title IV, §402(a), Nov. 13, 1998, 112 Stat. 3661; Pub. L. 110–325, §7, Sept. 25, 2008, 122 Stat. 3558; Pub. L. 111–256, §2(d)(1), Oct. 5, 2010, 124 Stat. 2643.)

References in Text

The Controlled Substances Act, referred to in par. (10)(B), is title II of Pub. L. 91–513, Oct. 27, 1970, 84 Stat. 1242, as amended, which is classified principally to subchapter I (§801 et seq.) of chapter 13 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 21 and Tables.

The Alaska Native Claims Settlement Act, referred to in par. (19)(B), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

The Workforce Investment Act of 1998, referred to in par. (39), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

Prior Provisions

Provisions similar to this section were contained in section 706 of this title prior to repeal by Pub. L. 105–220.

A prior section 705, Pub. L. 93–112, §6, Sept. 26, 1973, 87 Stat. 359; Pub. L. 99–506, title X, §1001(a)(2), Oct. 21, 1986, 100 Stat. 1841; Pub. L. 100–630, title II, §201(b), Nov. 7, 1988, 102 Stat. 3303; Pub. L. 102–569, title I, §128(b)(1), Oct. 29, 1992, 106 Stat. 4388, related to consolidated rehabilitation plan, prior to repeal by Pub. L. 105–220, title IV, §403, Aug. 7, 1998, 112 Stat. 1093.

A prior section 7 of Pub. L. 93–112 was renumbered section 8 and is classified to section 706 of this title.

Another prior section 7 of Pub. L. 93–112 was classified to section 706 of this title prior to repeal by Pub. L. 105–220.

Amendments

2010—Par. (21)(A)(iii). Pub. L. 111–256 substituted “intellectual disability,” for “mental retardation,”.

2008—Par. (9)(B). Pub. L. 110–325, §7(1), substituted “the meaning given it in section 12102 of title 42” for “a physical or mental impairment that substantially limits one or more major life activities”.

Par. (20)(B). Pub. L. 110–325, §7(2), substituted “any person who has a disability as defined in section 12102 of title 42.” for “any person who—

“(i) has a physical or mental impairment which substantially limits one or more of such person's major life activities;

“(ii) has a record of such an impairment; or

“(iii) is regarded as having such an impairment.”

1998—Pub. L. 105–277, §101(f) [title VIII, §402(b)(3)], made technical amendment to section designation and catchline in the original and inserted par. (1) heading.

Par. (2)(B). Pub. L. 105–277, §101(f) [title VIII, §402(c)(1)(A)], substituted “nature” for “objectives, nature,”.

Par. (3). Pub. L. 105–394, §402(a)(1), which directed the amendment of section 6 of the Rehabilitation Act of 1973 by substituting “3002” for “2202(2)”, was executed to this section, which is section 7 of that act, to reflect the probable intent of Congress and the renumbering of section 6 as 7 by Pub. L. 105–277, §101(f) [title VIII, §402(a)(1)].

Par. (4). Pub. L. 105–394, §402(a)(2), which directed the amendment of section 6 of the Rehabilitation Act of 1973 by substituting “3002” for “2202(3)”, was executed to this section, which is section 7 of that act, to reflect the probable intent of Congress and the renumbering of section 6 as 7 by Pub. L. 105–277, §101(f) [title VIII, §402(a)(1)].

Par. (7). Pub. L. 105–277, §101(f) [title VIII, §402(c)(1)(B)], struck out heading and text of par. (7). Text read as follows: “The term ‘criminal act’ means any crime, including an act, omission, or possession under the laws of the United States or a State or unit of general local government, which poses a substantial threat of personal injury, notwithstanding that by reason of age, insanity, or intoxication or otherwise the person engaging in the act, omission, or possession was legally incapable of committing a crime.”

Par. (16)(A)(iii). Pub. L. 105–277, §101(f) [title VIII, §402(c)(1)(C)], substituted “eligible individual” for “client”.

Par. (23). Pub. L. 105–244 substituted “section 1001 of title 20” for “section 1141(a) of title 20”.

Par. (36)(C). Pub. L. 105–277, §101(f) [title VIII, §402(c)(1)(D)], substituted “employment outcome” for “rehabilitation objectives”.

Effective Date of 2008 Amendment

Pub. L. 110–325, §8, Sept. 25, 2008, 122 Stat. 3559, provided that: “This Act [enacting sections 12103 and 12205a of Title 42, The Public Health and Welfare, amending this section, former section 706 of this title, and sections 12101, 12102, 12111 to 12114, 12201, and 12206 to 12213 of Title 42, and enacting provisions set out as notes under section 12101 of Title 42] and the amendments made by this Act shall become effective on January 1, 2009.”

Effective Date of 1998 Amendment

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

Definitions

For meaning of references to an intellectual disability and to individuals with intellectual disabilities in provisions amended by section 2 of Pub. L. 111–256, see section 2(k) of Pub. L. 111–256, set out as a note under section 1400 of Title 20, Education.

29 Code of Federal Regulations § 1630.3. EXCEPTIONS TO THE DEFINITIONS OF “DISABILITY” AND “QUALIFIED INDIVIDUAL WITH A DISABILITY.”

(a) The terms disability and qualified individual with a disability do not include individuals currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(1) Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C 812)

(2) Illegal use of drugs means the use of drugs the possession or distribution of which is unlawful under the Controlled Substances Act, as periodically updated by the Food and Drug Administration. This term does not include the use of a drug taken under the supervision of a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(b) However, the terms disability and qualified individual with a disability may not exclude an individual who:

(1) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs; or

(2) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(c) It shall not be a violation of this part for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (b) (1) or (2) of this section is no longer engaging in the illegal use of drugs. (See § 1630.16(c) Drug testing).

(d) Disability does not include:

(1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) Compulsive gambling, kleptomania, or pyromania; or

(3) Psychoactive substance use disorders resulting from current illegal use of drugs.

(e) Homosexuality and bisexuality are not impairments and so are not disabilities as defined in this part.

28 Code of Federal Regulations § 35.104. DEFINITIONS.

For purposes of this part, the term—

1991 Standards means the requirements set forth in the ADA Standards for Accessible Design, originally published on July 26, 1991, and republished as Appendix D to 28 CFR part 36.

2004 ADAAG means the requirements set forth in appendices B and D to 36 CFR part 1191 (2009).

2010 Standards means the 2010 ADA Standards for Accessible Design, which consist of the 2004 ADAAG and the requirements contained in § 35.151.

Act means the Americans with Disabilities Act (Pub. L. 101-336, 104 Stat. 327, 42 U.S.C. 12101-12213 and 47 U.S.C. 225 and 611).

Archived web content means web content that—

(1) Was created before the date the public entity is required to comply with subpart H of this part, reproduces paper documents created before the date the public entity is required to comply with subpart H, or reproduces the contents of other physical media created before the date the public entity is required to comply with subpart H;

(2) Is retained exclusively for reference, research, or recordkeeping;

(3) Is not altered or updated after the date of archiving; and

(4) Is organized and stored in a dedicated area or areas clearly identified as being archived.

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids and services includes—

(1) Qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

(2) Qualified readers; taped texts; audio recordings; Brailled materials and displays; screen reader software; magnification software; optical readers; secondary auditory programs (SAP); large print materials; accessible electronic and information technology; or other effective methods of making visually delivered materials available to individuals who are blind or have low vision;

(3) Acquisition or modification of equipment or devices; and

(4) Other similar services and actions.

Complete complaint means a written statement that contains the complainant's name and address and describes the public entity's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of this part. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Conventional electronic documents means web content or content in mobile apps that is in the following electronic file formats: portable document formats (“PDF”), word processor file formats, presentation file formats, and spreadsheet file formats.

Current illegal use of drugs means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

Designated agency means the Federal agency designated under subpart G of this part to oversee compliance activities under this part for particular components of State and local governments.

Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures, or by the provision of auxiliary aids or services as provided in § 35.139.

Disability. The definition of disability can be found at § 35.108.

Drug means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812).

Existing facility means a facility in existence on any given date, without regard to whether the facility may also be considered newly constructed or altered under this part.

Facility means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

Historic preservation programs means programs conducted by a public entity that have preservation of historic properties as a primary purpose.

Historic Properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under State or local law.

Housing at a place of education means housing operated by or on behalf of an elementary, secondary, undergraduate, or postgraduate school, or other place of education, including dormitories, suites, apartments, or other places of residence.

Illegal use of drugs means the use of one or more drugs, the possession or distribution of which is unlawful under the Controlled Substances Act (21 U.S.C. 812). The term illegal use of drugs does

not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

Individual with a disability means a person who has a disability. The term individual with a disability does not include an individual who is currently engaging in the illegal use of drugs, when the public entity acts on the basis of such use.

Medical diagnostic equipment ("MDE") means equipment used in, or in conjunction with, medical settings by health care providers for diagnostic purposes. MDE includes, for example, examination tables, examination chairs (including chairs used for eye examinations or procedures and dental examinations or procedures), weight scales, mammography equipment, x-ray machines, and other radiological equipment commonly used for diagnostic purposes by health professionals.

Mobile applications ("apps") means software applications that are downloaded and designed to run on mobile devices, such as smartphones and tablets.

Other power-driven mobility device means any mobility device powered by batteries, fuel, or other engines—whether or not designed primarily for use by individuals with mobility disabilities—that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistance mobility devices (EPAMDs), such as the Segway® PT, or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section. This definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2).

Public entity means—

(1) Any State or local government;

(2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government; and

(3) The National Railroad Passenger Corporation, and any commuter authority (as defined in section 103(8) of the Rail Passenger Service Act).

Qualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural,

communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

Qualified interpreter means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators.

Qualified reader means a person who is able to read effectively, accurately, and impartially using any necessary specialized vocabulary.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended.

Service animal means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Examples of work or tasks include, but are not limited to, assisting individuals who are blind or have low vision with navigation and other tasks, alerting individuals who are deaf or hard of hearing to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting an individual during a seizure, alerting individuals to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability to individuals with mobility disabilities, and helping persons with psychiatric and neurological disabilities by preventing or interrupting impulsive or destructive behaviors. The crime deterrent effects of an animal's presence and the provision of emotional support, well-being, comfort, or companionship do not constitute work or tasks for the purposes of this definition.

Special district government means a public entity—other than a county, municipality, township, or independent school district—authorized by State law to provide one function or a limited number of designated functions with sufficient administrative and fiscal autonomy to qualify as a separate government and whose population is not calculated by the United States Census Bureau in the most recent decennial Census or Small Area Income and Poverty Estimates.

Standards for Accessible Medical Diagnostic Equipment (“Standards for Accessible MDE”) means the standards promulgated by the Architectural and Transportation Barriers Compliance Board under section 510 of the Rehabilitation Act of 1973, as amended, found at 36 CFR part 1195 (revised as of July 1, 2017), with the exception of M301.2.2 and M302.2.2.

State means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

Total population means—

(1) If a public entity has a population calculated by the United States Census Bureau in the most recent decennial Census, the population estimate for that public entity as calculated by the United States Census Bureau in the most recent decennial Census; or

(2) If a public entity is an independent school district, or an instrumentality of an independent school district, the population estimate for the independent school district as calculated by the United States Census Bureau in the most recent Small Area Income and Poverty Estimates; or

(3) If a public entity, other than a special district government or an independent school district, does not have a population estimate calculated by the United States Census Bureau in the most recent decennial Census, but is an instrumentality or a commuter authority of one or more State or local governments that do have such a population estimate, the combined decennial Census population estimates for any State or local governments of which the public entity is an instrumentality or commuter authority; or

(4) For the National Railroad Passenger Corporation, the population estimate for the United States as calculated by the United States Census Bureau in the most recent decennial Census.

User agent means any software that retrieves and presents web content for users.

Video remote interpreting (VRI) service means an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in § 35.160(d).

WCAG 2.1 means the Web Content Accessibility Guidelines (“WCAG”) 2.1, W3C Recommendation 05 June 2018, https://www.w3.org/TR/2018/REC-WCAG21-20180605/ and https://perma.cc/UB8A-GG2F. WCAG 2.1 is incorporated by reference elsewhere in this part (see §§ 35.200 and 35.202).

Web content means the information and sensory experience to be communicated to the user by means of a user agent, including code or markup that defines the content's structure, presentation,

and interactions. Examples of web content include text, images, sounds, videos, controls, animations, and conventional electronic documents.

Wheelchair means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of indoor or of both indoor and outdoor locomotion. This definition does not apply to Federal wilderness areas; wheelchairs in such areas are defined in section 508(c)(2) of the ADA, 42 U.S.C. 12207(c)(2).

[Order No. 1512-91, 56 FR 35716, July 26, 1991, as amended by AG Order No. 3180-2010, 75 FR 56177, Sept. 15, 2010; 76 FR 13285, Mar. 11, 2011; AG Order 3702-2016, 81 FR 53223preview citation details, Aug. 11, 2016; AG Order No. 5919-2024, 89 FR 31336, Apr. 24, 2024; AG Order No. 5982-2024, 89 FR 65187, Aug. 9, 2024]

29 Code of Federal Regulations § 1630.10. QUALIFICATION STANDARDS, TESTS, AND OTHER SELECTION CRITERIA.

(a) In general. It is unlawful for a covered entity to use qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job related for the position in question and is consistent with business necessity.

(b) Qualification standards and tests related to uncorrected vision. Notwithstanding § 1630.2(j)(1)(vi) of this part, a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criterion, as used by the covered entity, is shown to be job related for the position in question and is consistent with business necessity. An individual challenging a covered entity's application of a qualification standard, test, or other criterion based on uncorrected vision need not be a person with a disability, but must be adversely affected by the application of the standard, test, or other criterion.

[76 FR 17002, Mar. 25, 2011]

42 United States Code § 12113. DEFENSES.

(a) In general

It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise

deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.

(b) Qualification standards

The term "qualification standards" may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Qualification standards and tests related to uncorrected vision

Notwithstanding section 12102(4)(E)(ii) of this title, a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.

(d) Religious entities

(1) In general

This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement

Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(e) List of infectious and communicable diseases

(1) In general

The Secretary of Health and Human Services, not later than 6 months after July 26, 1990, shall—

(A) review all infectious and communicable diseases which may be transmitted through handling the food supply;

(B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;

(C) publish the methods by which such diseases are transmitted; and

(D) widely disseminate such information regarding the list of diseases and their modes of transmissability 1 to the general public.

Such list shall be updated annually.

(2) Applications

In any case in which an individual has an infectious or communicable disease that is transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction

Nothing in this chapter shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissability 1 published by the Secretary of Health and Human Services.

(Pub. L. 101–336, title I, §103, July 26, 1990, 104 Stat. 333; Pub. L. 110–325, §5(b), Sept. 25, 2008, 122 Stat. 3557.)

Editorial Notes

References in Text

This chapter, referred to in subsecs. (a) and (e)(3), was in the original "this Act", meaning Pub. L. 101–336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

Amendments

2008—Subsecs. (c) to (e). Pub. L. 110–325 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

Statutory Notes and Related Subsidiaries

Effective Date of 2008 Amendment

Amendment by Pub. L. 110–325 effective Jan. 1, 2009, see section 8 of Pub. L. 110–325, set out as a note under section 705 of Title 29, Labor.

Effective Date

Section effective 24 months after July 26, 1990, see section 108 of Pub. L. 101–336, set out as a note under section 12111 of this title.

Labor Code § 21.115. BUSINESS NECESSITY.

(a) Subject to Subsection (b), an employer does not commit an unlawful employment practice by engaging in a practice that has a discriminatory effect and that would otherwise be prohibited by this chapter if the employer establishes that the practice:

(1) is not intentionally devised or operated to contravene the prohibitions of this chapter; and

(2) is justified by business necessity.

(b) An employer may not use a qualification standard, employment test, or other selection criterion based on an individual's uncorrected vision unless the standard, test, or criterion is consistent with business necessity and job-related for the position to which the standard, test, or criterion applies.

Acts 1993, 73rd Leg., ch. 269, Sec. 1, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 337 (H.B. 978), Sec. 4, eff. September 1, 2009.

29 Code of Federal Regulations § 1630.16. SPECIFIC ACTIVITIES PERMITTED.

(a) Religious entities. A religious corporation, association, educational institution, or society is permitted to give preference in employment to individuals of a particular religion to perform work connected with the carrying on by that corporation, association, educational institution, or society of its activities. A religious entity may require that all applicants and employees conform to the religious tenets of such organization. However, a religious entity may not discriminate against a qualified individual, who satisfies the permitted religious criteria, on the basis of his or her disability.

(b) Regulation of alcohol and drugs. A covered entity:

(1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) May require that all employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the entity holds its other employees, even if any unsatisfactory performance or behavior is related to the employee's drug use or alcoholism;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, regarding alcohol and the illegal use of drugs; and

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the Departments of Defense and Transportation and of the Nuclear Regulatory Commission that apply to employment in sensitive positions subject to such regulations.

(c) Drug testing —

(1) General policy. For purposes of this part, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of such drug tests by a covered entity to its job applicants or employees is not a violation of § 1630.13 of this part. However, this part does not encourage, prohibit, or authorize a covered entity to conduct drug tests of job applicants or employees to determine the illegal use of drugs or to make employment decisions based on such test results.

(2) Transportation employees. This part does not encourage, prohibit, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the Department of Transportation of authority to:

(i) Test employees of entities in, and applicants for, positions involving safety sensitive duties for the illegal use of drugs or for on-duty impairment by alcohol; and

(ii) Remove from safety-sensitive positions persons who test positive for illegal use of drugs or on-duty impairment by alcohol pursuant to paragraph (c)(2)(i) of this section.

(3) Confidentiality. Any information regarding the medical condition or history of any employee or applicant obtained from a test to determine the illegal use of drugs, except information regarding the illegal use of drugs, is subject to the requirements of § 1630.14(b) (2) and (3) of this part.

(d) Regulation of smoking. A covered entity may prohibit or impose restrictions on smoking in places of employment. Such restrictions do not violate any provision of this part.

(e) Infectious and communicable diseases; food handling jobs —

(1) In general. Under title I of the ADA, section 103(d)(1), the Secretary of Health and Human Services is to prepare a list, to be updated annually, of infectious and communicable diseases which are transmitted through the handling of food. (Copies may be obtained from Center for Infectious Diseases, Centers for Disease Control, 1600 Clifton Road, NE., Mailstop C09, Atlanta, GA 30333.) If an individual with a disability is disabled by one of the infectious or communicable diseases included on this list, and if the risk of transmitting the disease associated with the handling of food cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling. However, if the individual with a disability is a current employee, the employer must consider whether he or she can be accommodated by reassignment to a vacant position not involving food handling.

(2) Effect on State or other laws. This part does not preempt, modify, or amend any State, county, or local law, ordinance or regulation applicable to food handling which:

(i) Is in accordance with the list, referred to in paragraph (e)(1) of this section, of infectious or communicable diseases and the modes of transmissibility published by the Secretary of Health and Human Services; and

(ii) Is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, where that risk cannot be eliminated by reasonable accommodation.

(f) Health insurance, life insurance, and other benefit plans —

(1) An insurer, hospital, or medical service company, health maintenance organization, or any agent or entity that administers benefit plans, or similar organizations may underwrite risks, classify risks, or administer such risks that are based on or not inconsistent with State law.

(2) A covered entity may establish, sponsor, observe or administer the terms of a bona fide benefit plan that are based on underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law.

(3) A covered entity may establish, sponsor, observe, or administer the terms of a bona fide benefit plan that is not subject to State laws that regulate insurance.

(4) The activities described in paragraphs (f) (1), (2), and (3) of this section are permitted unless these activities are being used as a subterfuge to evade the purposes of this part.

[56 FR 35734, July 26, 1991, 76 FR 17003, Mar. 25, 2011]

28 Code of Federal Regulations § 35.140. EMPLOYMENT DISCRIMINATION PROHIBITED.

(a) No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment under any service, program, or activity conducted by a public entity.

(b)

(1) For purposes of this part, the requirements of title I of the Act, as established by the regulations of the Equal Employment Opportunity Commission in 29 CFR part 1630, apply to employment in any service, program, or activity conducted by a public entity if that public entity is also subject to the jurisdiction of title I.

(2) For the purposes of this part, the requirements of section 504 of the Rehabilitation Act of 1973, as established by the regulations of the Department of Justice in 28 CFR part 41, as those requirements pertain to employment, apply to employment in any service, program, or activity conducted by a public entity if that public entity is not also subject to the jurisdiction of title I.

20 United States Code § 1681. SEX.

(a) Prohibition against discrimination; exceptions

No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance, except that:

(1) Classes of educational institutions subject to prohibition

in regard to admissions to educational institutions, this section shall apply only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education;

(2) Educational institutions commencing planned change in admissions

in regard to admissions to educational institutions, this section shall not apply (A) for one year from June 23, 1972, nor for six years after June 23, 1972, in the case of an educational institution which has begun the process of changing from being an institution which admits only students of one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education or (B) for seven years from the date an educational institution begins the process of changing from being an institution which admits only students of only one sex to being an institution which admits students of both sexes, but only if it is carrying out a plan for such a change which is approved by the Secretary of Education, whichever is the later;

(3) Educational institutions of religious organizations with contrary religious tenets

this section shall not apply to an educational institution which is controlled by a religious organization if the application of this subsection would not be consistent with the religious tenets of such organization;

(4) Educational institutions training individuals for military services or merchant marine

this section shall not apply to an educational institution whose primary purpose is the training of individuals for the military services of the United States, or the merchant marine;

(5) Public educational institutions with traditional and continuing admissions policy

in regard to admissions this section shall not apply to any public institution of undergraduate higher education which is an institution that traditionally and continually from its establishment has had a policy of admitting only students of one sex;

(6) Social fraternities or sororities; voluntary youth service organizations

this section shall not apply to membership practices—

(A) of a social fraternity or social sorority which is exempt from taxation under section 501(a) of title 26, the active membership of which consists primarily of students in attendance at an institution of higher education, or

(B) of the Young Men's Christian Association, Young Women's Christian Association, Girl Scouts, Boy Scouts, Camp Fire Girls, and voluntary youth service organizations which are so exempt, the membership of which has traditionally been limited to persons of one sex and principally to persons of less than nineteen years of age;

(7) Boy or Girl conferences

this section shall not apply to—

(A) any program or activity of the American Legion undertaken in connection with the organization or operation of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(B) any program or activity of any secondary school or educational institution specifically for—

(i) the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference; or

(ii) the selection of students to attend any such conference;

(8) Father-son or mother-daughter activities at educational institutions

this section shall not preclude father-son or mother-daughter activities at an educational institution, but if such activities are provided for students of one sex, opportunities for reasonably comparable activities shall be provided for students of the other sex; and

(9) Institution of higher education scholarship awards in "beauty" pageants

this section shall not apply with respect to any scholarship or other financial assistance awarded by an institution of higher education to any individual because such individual has received such award in any pageant in which the attainment of such award is based upon a combination of factors related to the personal appearance, poise, and talent of such individual and in which participation is limited to individuals of one sex only, so long as such pageant is in compliance with other nondiscrimination provisions of Federal law.

(b) Preferential or disparate treatment because of imbalance in participation or receipt of Federal benefits; statistical evidence of imbalance

Nothing contained in subsection (a) of this section shall be interpreted to require any educational institution to grant preferential or disparate treatment to the members of one sex on account of an imbalance which may exist with respect to the total number or percentage of persons of that sex participating in or receiving the benefits of any federally supported program or activity, in comparison with the total number or percentage of persons of that sex in any community, State, section, or other area: Provided, That this subsection shall not be construed to prevent the consideration in any hearing or proceeding under this chapter of statistical evidence tending to show that such an imbalance exists with respect to the participation in, or receipt of the benefits of, any such program or activity by the members of one sex.

(c) "Educational institution" defined

For purposes of this chapter an educational institution means any public or private preschool, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department.

(Pub. L. 92–318, title IX, §901, June 23, 1972, 86 Stat. 373; Pub. L. 93–568, §3(a), Dec. 31, 1974, 88 Stat. 1862; Pub. L. 94–482, title IV, §412(a), Oct. 12, 1976, 90 Stat. 2234; Pub. L. 96–88, title III, §301(a)(1), title V, §507, Oct. 17, 1979, 93 Stat. 677, 692; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095.)

Editorial Notes

References in Text

This chapter, referred to in subsecs. (b) and (c), was in the original "this title", meaning title IX of Pub. L. 92–318 which enacted this chapter and amended sections 203 and 213 of Title 29, Labor, and sections 2000c, 2000c–6, 2000c–9, and 2000h–2 of Title 42, The Public Health and Welfare. For complete classification of title IX to the Code, see Short Title note below and Tables.

Amendments

1986—Subsec. (a)(6)(A). Pub. L. 99–514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954", which for purposes of codification was translated as "title 26" thus requiring no change in text.

1976—Subsec. (a)(6) to (9). Pub. L. 94–482 substituted "this" for "This" in par. (6) and added pars. (7) to (9).

1974—Subsec. (a)(6). Pub. L. 93–568 added par. (6).

Statutory Notes and Related Subsidiaries

Effective Date of 1976 Amendment

Pub. L. 94–482, title IV, §412(b), Oct. 12, 1976, 90 Stat. 2234, provided that: "The amendment made by subsection (a) [amending this section] shall take effect upon the date of enactment of this Act [Oct. 12, 1976]."

Effective Date of 1974 Amendment

Pub. L. 93–568, §3(b), Dec. 31, 1974, 88 Stat. 1862, provided that: "The provisions of the amendment made by subsection (a) [amending this section] shall be effective on, and retroactive to, July 1, 1972."

Short Title of 1988 Amendment

Pub. L. 100–259, §1, Mar. 22, 1988, 102 Stat. 28, provided that: "This Act [enacting sections 1687 and 1688 of this title and section 2000d–4a of Title 42, The Public Health and Welfare, amending sections 706 and 794 of Title 29, Labor, and section 6107 of Title 42, and enacting provisions set out as notes under sections 1687 and 1688 of this title] may be cited as the 'Civil Rights Restoration Act of 1987'."

Short Title

Pub. L. 107–255, Oct. 29, 2002, 116 Stat. 1734, provided "That title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.; Public Law 92–318) [title IX of Pub. L. 92–318, enacting this chapter and amending sections 203 and 213 of Title 29, Labor, and sections 2000c, 2000c–6, 2000c–9, and 2000h–2 of Title 42, The Public Health and Welfare] may be cited as the 'Patsy Takemoto Mink Equal Opportunity in Education Act'."

Transfer of Functions

"Secretary" substituted for "Commissioner" in subsec. (a)(2) pursuant to sections 301(a)(1) and 507 of Pub. L. 96–88, which are classified to sections 3441(a)(1) and 3507 of this title and which transferred functions of Commissioner of Education to Secretary of Education.

Regulations; Nature of Particular Sports: Intercollegiate Athletic Activities

Pub. L. 93–380, title VIII, §844, Aug. 21, 1974, 88 Stat. 612, directed Secretary to prepare and publish, not more than 30 days after Aug. 21, 1974, proposed regulations implementing the provisions of this chapter regarding prohibition of sex discrimination in federally assisted programs, including reasonable regulations for intercollegiate athletic activities considering the nature of the particular sports.

Executive Documents

Coordination of Implementation and Enforcement of Provisions

For provisions relating to the coordination of implementation and enforcement of the provisions of this chapter by the Attorney General, see section 1–201(b) of Ex. Ord. No. 12250, Nov. 2, 1980, 45 F.R. 72995, set out under section 2000d–1 of Title 42, The Public Health and Welfare.

Ex. Ord. No. 14021. Guaranteeing an Educational Environment Free From Discrimination on the Basis of Sex, Including Sexual Orientation or Gender Identity

Ex. Ord. No. 14021, Mar. 8, 2021, 86 F.R. 13803, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. It is the policy of my Administration that all students should be guaranteed an educational environment free from discrimination on the basis of sex, including discrimination in the form of sexual harassment, which encompasses sexual violence, and including discrimination on the basis of sexual orientation or gender identity. For students attending schools and other educational institutions that receive Federal financial assistance, this guarantee is codified, in part, in Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 et seq., which prohibits

discrimination on the basis of sex in education programs or activities receiving Federal financial assistance.

Sec. 2. Review of Agency Actions. (a) Within 100 days of the date of this order [Mar. 8, 2021], the Secretary of Education, in consultation with the Attorney General, shall review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (collectively, agency actions) that are or may be inconsistent with the policy set forth in section 1 of this order, and provide the findings of this review to the Director of the Office of Management and Budget.

(i) As part of the review required under subsection (a) of this section, the Secretary of Education shall review the rule entitled "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 85 FR 30026 (May 19, 2020), and any other agency actions taken pursuant to that rule, for consistency with governing law, including Title IX, and with the policy set forth in section 1 of this order.

(ii) As soon as practicable, and as appropriate and consistent with applicable law, the Secretary of Education shall review existing guidance and issue new guidance as needed on the implementation of the rule described in subsection (a)(i) of this section, for consistency with governing law, including Title IX, and with the policy set forth in section 1 of this order.

(iii) The Secretary of Education shall consider suspending, revising, or rescinding—or publishing for notice and comment proposed rules suspending, revising, or rescinding—those agency actions that are inconsistent with the policy set forth in section 1 of this order as soon as practicable and as appropriate and consistent with applicable law, and may issue such requests for information as would facilitate doing so.

(b) The Secretary of Education shall consider taking additional enforcement actions, as appropriate and consistent with applicable law, to enforce the policy set forth in section 1 of this order as well as legal prohibitions on sex discrimination in the form of sexual harassment, which encompasses sexual violence, to the fullest extent permissible under law; to account for intersecting forms of prohibited discrimination that can affect the availability of resources and support for students who have experienced sex discrimination, including discrimination on the basis of race, disability, and national origin; to account for the significant rates at which students who identify as lesbian, gay, bisexual, transgender, and queer (LGBTQ+) are subject to sexual harassment, which encompasses sexual violence; to ensure that educational institutions are providing appropriate support for students who have experienced sex discrimination; and to ensure that their school procedures are fair and equitable for all.

Sec. 3. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

J.R. Biden, Jr.

29 United States Code § 206. MINIMUM WAGE.

(a) Employees engaged in commerce; home workers in Puerto Rico and Virgin Islands; employees in American Samoa; seamen on American vessels; agricultural employees

Every employer shall pay to each of his employees who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, wages at the following rates:

(1) except as otherwise provided in this section, not less than-

(A) $5.85 an hour, beginning on the 60th day after May 25, 2007;

(B) $6.55 an hour, beginning 12 months after that 60th day; and

(C) $7.25 an hour, beginning 24 months after that 60th day;

(2) if such employee is a home worker in Puerto Rico or the Virgin Islands, not less than the minimum piece rate prescribed by regulation or order; or, if no such minimum piece rate is in effect, any piece rate adopted by such employer which shall yield, to the proportion or class of employees

prescribed by regulation or order, not less than the applicable minimum hourly wage rate. Such minimum piece rates or employer piece rates shall be commensurate with, and shall be paid in lieu of, the minimum hourly wage rate applicable under the provisions of this section. The Administrator, or his authorized representative, shall have power to make such regulations or orders as are necessary or appropriate to carry out any of the provisions of this paragraph, including the power without limiting the generality of the foregoing, to define any operation or occupation which is performed by such home work employees in Puerto Rico or the Virgin Islands; to establish minimum piece rates for any operation or occupation so defined; to prescribe the method and procedure for ascertaining and promulgating minimum piece rates; to prescribe standards for employer piece rates, including the proportion or class of employees who shall receive not less than the minimum hourly wage rate; to define the term "home worker"; and to prescribe the conditions under which employers, agents, contractors, and subcontractors shall cause goods to be produced by home workers;

(3) if such employee is employed as a seaman on an American vessel, not less than the rate which will provide to the employee, for the period covered by the wage payment, wages equal to compensation at the hourly rate prescribed by paragraph (1) of this subsection for all hours during such period when he was actually on duty (including periods aboard ship when the employee was on watch or was, at the direction of a superior officer, performing work or standing by, but not including off-duty periods which are provided pursuant to the employment agreement); or

(4) if such employee is employed in agriculture, not less than the minimum wage rate in effect under paragraph (1) after December 31, 1977.

(b) Additional applicability to employees pursuant to subsequent amendatory provisions

Every employer shall pay to each of his employees (other than an employee to whom subsection (a)(5) 1 applies) who in any workweek is engaged in commerce or in the production of goods for commerce, or is employed in an enterprise engaged in commerce or in the production of goods for commerce, and who in such workweek is brought within the purview of this section by the amendments made to this chapter by the Fair Labor Standards Amendments of 1966, title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.], or the Fair Labor Standards Amendments of 1974, wages at the following rate: Effective after December 31, 1977, not less than the minimum wage rate in effect under subsection (a)(1).

(c) Repealed. Pub. L. 104–188, [title II], §2104(c), Aug. 20, 1996, 110 Stat. 1929

(d) Prohibition of sex discrimination

(1) No employer having employees subject to any provisions of this section shall discriminate, within any establishment in which such employees are employed, between employees on the basis of sex by paying wages to employees in such establishment at a rate less than the rate at which he pays wages to employees of the opposite sex in such establishment for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions, except where such payment is made pursuant to (i) a seniority system; (ii) a merit system; (iii) a system which measures earnings by quantity or quality of production; or

(iv) a differential based on any other factor other than sex: Provided, That an employer who is paying a wage rate differential in violation of this subsection shall not, in order to comply with the provisions of this subsection, reduce the wage rate of any employee.

(2) No labor organization, or its agents, representing employees of an employer having employees subject to any provisions of this section shall cause or attempt to cause such an employer to discriminate against an employee in violation of paragraph (1) of this subsection.

(3) For purposes of administration and enforcement, any amounts owing to any employee which have been withheld in violation of this subsection shall be deemed to be unpaid minimum wages or unpaid overtime compensation under this chapter.

(4) As used in this subsection, the term "labor organization" means any organization of any kind, or any agency or employee representation committee 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 of employment, or conditions of work.

(e) Employees of employers providing contract services to United States

(1) Notwithstanding the provisions of section 213 of this title (except subsections (a)(1) and (f) thereof), every employer providing any contract services (other than linen supply services) under a contract with the United States or any subcontract thereunder shall pay to each of his employees whose rate of pay is not governed by chapter 67 of title 41 or to whom subsection (a)(1) of this section is not applicable, wages at rates not less than the rates provided for in subsection (b) of this section.

(2) Notwithstanding the provisions of section 213 of this title (except subsections (a)(1) and (f) thereof) and the provisions of chapter 67 of title 41, every employer in an establishment providing linen supply services to the United States under a contract with the United States or any subcontract thereunder shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (b), except that if more than 50 per centum of the gross annual dollar volume of sales made or business done by such establishment is derived from providing such linen supply services under any such contracts or subcontracts, such employer shall pay to each of his employees in such establishment wages at rates not less than those prescribed in subsection (a)(1) of this section.

(f) Employees in domestic service

Any employee-

(1) who in any workweek is employed in domestic service in a household shall be paid wages at a rate not less than the wage rate in effect under subsection (b) unless such employee's compensation for such service would not because of section 209(a)(6) of the Social Security Act [42 U.S.C. 409(a)(6)] constitute wages for the purposes of title II of such Act [42 U.S.C. 401 et seq.], or

(2) who in any workweek-

(A) is employed in domestic service in one or more households, and

(B) is so employed for more than 8 hours in the aggregate,

shall be paid wages for such employment in such workweek at a rate not less than the wage rate in effect under subsection (b).

(g) Newly hired employees who are less than 20 years old

(1) In lieu of the rate prescribed by subsection (a)(1), any employer may pay any employee of such employer, during the first 90 consecutive calendar days after such employee is initially employed by such employer, a wage which is not less than $4.25 an hour.

(2) In lieu of the rate prescribed by subsection (a)(1), the Governor of Puerto Rico, subject to the approval of the Financial Oversight and Management Board established pursuant to section 2121 of title 48, may designate a time period not to exceed four years during which employers in Puerto Rico may pay employees who are initially employed after June 30, 2016, a wage which is not less than the wage described in paragraph (1). Notwithstanding the time period designated, such wage shall not continue in effect after such Board terminates in accordance with section 2149 of title 48.

(3) No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in paragraph (1) or (2).

(4) Any employer who violates this subsection shall be considered to have violated section 215(a)(3) of this title.

(5) This subsection shall only apply to an employee who has not attained the age of 20 years, except in the case of the wage applicable in Puerto Rico, 25 years, until such time as the Board described in paragraph (2) terminates in accordance with section 2149 of title 48.

(June 25, 1938, ch. 676, §6, 52 Stat. 1062 ; June 26, 1940, ch. 432, §3(e), (f), 54 Stat. 616 ; Oct. 26, 1949, ch. 736, §6, 63 Stat. 912 ; Aug. 12, 1955, ch. 867, §3, 69 Stat. 711 ; Aug. 8, 1956, ch. 1035, §2, 70 Stat. 1118 ; Pub. L. 87–30, §5, May 5, 1961, 75 Stat. 67 ; Pub. L. 88–38, §3, June 10, 1963, 77 Stat. 56 ; Pub. L. 89–601, title III, §§301–305, Sept. 23, 1966, 80 Stat. 838 , 839, 841; Pub. L. 93–259, §§2–4, 5(b), 7(b)(1), Apr. 8, 1974, 88 Stat. 55 , 56, 62; Pub. L. 95–151, §2(a)–(d)(2), Nov. 1, 1977, 91 Stat. 1245 , 1246; Pub. L. 101–157, §§2, 4(b), Nov. 17, 1989, 103 Stat. 938 , 940; Pub. L. 101–239, title X, §10208(d)(2)(B)(i), Dec. 19, 1989, 103 Stat. 2481 ; Pub. L. 104–188, [title II], §§2104(b), (c), 2105(c), Aug. 20, 1996, 110 Stat. 1928 , 1929; Pub. L. 110–28, title VIII, §§8102(a), 8103(c)(1)(B), May 25, 2007, 121 Stat. 188 , 189; Pub. L. 114–187, title IV, §403, June 30, 2016, 130 Stat. 586 .)

Editorial Notes

References in Text

Subsection (a)(5), referred to in subsec. (b), was redesignated subsec. (a)(4) of this section by Pub. L. 110–28, title VIII, §8103(c)(1)(B), May 25, 2007, 121 Stat. 189 .

The Fair Labor Standards Amendments of 1966, referred to in subsec. (b), is Pub. L. 89–601, Sept. 23, 1966, 80 Stat. 830 . For complete classification of this Act to the Code, see Short Title of 1966 Amendment note set out under section 201 of this title and Tables.

The Education Amendments of 1972, referred to in subsec. (b), is Pub. L. 92–318, June 23, 1972, 86 Stat. 235 . Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§1681 et seq.) of Title 20, Education. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of Title 20 and Tables.

The Fair Labor Standards Amendments of 1974, referred to in subsec. (b), is Pub. L. 93–259, Apr. 8, 1974, 88 Stat. 55 . For complete classification of this Act to the Code, see Short Title of 1974 Amendment note set out under section 201 of this title and Tables.

The Social Security Act, referred to in subsec. (f)(1), is act Aug. 14, 1935, ch. 531, 49 Stat. 620 . Title II of such Act is classified generally to subchapter II (§401 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Codification

In subsec. (e)(1), "chapter 67 of title 41" substituted for "the Service Contract Act of 1965 (41 U.S.C. 351–357)" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854 , which Act

enacted Title 41, Public Contracts.

In subsec. (e)(2), "chapter 67 of title 41" substituted for "the Service Contract Act of 1965" on authority of Pub. L. 111–350, §6(c), Jan. 4, 2011, 124 Stat. 3854 , which Act enacted Title 41, Public Contracts.

Amendments

2016-Subsec. (g)(2) to (5). Pub. L. 114–187 added pars. (2) to (5) and struck out former pars. (2) to (4) which read as follows:

"(2) No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in paragraph (1).

"(3) Any employer who violates this subsection shall be considered to have violated section 215(a)(3) of this title.

"(4) This subsection shall only apply to an employee who has not attained the age of 20 years."

2007-Subsec. (a)(1). Pub. L. 110–28, §8102(a), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "except as otherwise provided in this section, not less than $4.25 an hour during the period ending on September 30, 1996, not less than $4.75 an hour during the year beginning on October 1, 1996, and not less than $5.15 an hour beginning September 1, 1997;".

Subsec. (a)(3) to (5). Pub. L. 110–28, §8103(c)(1)(B), redesignated pars. (4) and (5) as (3) and (4), respectively, and struck out former par. (3) which read as follows: "if such employee is employed in American Samoa, in lieu of the rate or rates provided by this subsection or subsection (b), not less than the applicable rate established by the Secretary of Labor in accordance with recommendations of a special industry committee or committees which he shall appoint pursuant to sections 205 and 208 of this title. The minimum wage rate thus established shall not exceed the rate prescribed in paragraph (1) of this subsection;".

1996-Subsec. (a)(1). Pub. L. 104–188, §2104(b), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "except as otherwise provided in this section, not less than $3.35 an hour during the period ending March 31, 1990, not less than $3.80 an hour during the year beginning April 1, 1990, and not less than $4.25 an hour after March 31, 1991;".

Subsec. (c). Pub. L. 104–188, §2104(c), struck out subsec. (c) which related to employees in Puerto Rico.

Subsec. (g). Pub. L. 104–188, §2105(c), added subsec. (g).

1989-Subsec. (a)(1). Pub. L. 101–157, §2, amended par. (1) generally. Prior to amendment, par. (1) read as follows: "not less than $2.65 an hour during the year beginning January 1, 1978, not less than $2.90 an hour during the year beginning January 1, 1979, not less than $3.10 an hour during the year beginning January 1, 1980, and not less than $3.35 an hour after December 31, 1980, except as otherwise provided in this section;".

Subsec. (a)(3). Pub. L. 101–157, §4(b)(1), substituted "pursuant to sections 205 and 208 of this title" for "in the same manner and pursuant to the same provisions as are applicable to the special industry committees provided for Puerto Rico and the Virgin Islands by this chapter as amended from time to time. Each such committee shall have the same powers and duties and shall apply the same standards with respect to the application of the provisions of this chapter to employees employed in American Samoa as pertain to special industry committees established under section 205 of this title with respect to employees employed in Puerto Rico or the Virgin Islands".

Subsec. (c). Pub. L. 101–157, §4(b)(2), amended subsec. (c) generally, substituting provisions relating to the application of wage rates under subsec. (a)(1) to employees in Puerto Rico for provisions relating to the superseding of subsec. (a)(1) wage rates by wage orders of a special industry committee for employees in Puerto Rico and the Virgin Islands.

Subsec. (f)(1). Pub. L. 101–239 substituted "209(a)(6)" for "209(g)".

1977-Subsec. (a)(1). Pub. L. 95–151, §2(a), substituted "not less than $2.65 an hour during the year beginning January 1, 1978, not less than $2.90 an hour during the year beginning January 1, 1979, not less than $3.10 an hour during the year beginning January 1, 1980, and not less than $3.35 an hour after December 1, 1980" for "not less than $2 an hour during the period ending December 31, 1974, not less than $2.10 an hour during the year beginning January 1, 1975, and not less than $2.30 an hour after December 31, 1975".

Subsec. (a)(5). Pub. L. 95–151, §2(b), substituted provisions for a minimum wage rate of not less than the minimum wage rate in effect under par. (1) after Dec. 31, 1977, for provisions for a minimum wage rate of not less than $1.60 an hour during the period ending Dec. 31, 1974, $1.80 an hour during the year beginning Jan. 1, 1975, $2 an hour during the year beginning Jan. 1, 1976, $2.20 an hour during the year beginning Jan. 1, 1977, and $2.30 an hour after Dec. 31, 1977.

Subsec. (b). Pub. L. 95–151, §2(c), substituted provisions for a minimum wage rate, effective after Dec. 31, 1977, of not less than the minimum wage rate in effect under subsec. (a)(1) of this section, for provisions for a minimum wage rate of not less than $1.90 an hour during the period ending Dec. 31, 1974, not less than $2 an hour during the year beginning Jan. 1, 1975, not less than $2.20 an hour during the year beginning Jan. 1, 1976, and not less than $2.30 an hour after Dec. 31, 1976.

Subsec. (c)(1). Pub. L. 95–151, §2(d)(2)(A), inserted "(A)" before "heretofore" and cl. (B), and substituted "subsection (a)(1)" for "subsections (a) and (b)".

Subsec. (c)(2). Pub. L. 95–151, §2(d)(1), added par. (2). Former par. (2), relating to applicability, etc., of wage rate orders effective on the effective date of the Fair Labor Standards Amendments of 1974, and effective on the first day of the second and each subsequent year after such date, was struck out.

Subsec. (c)(3). Pub. L. 95–151, §2(d)(1), (2)(B), (C), redesignated par. (5) as (3) and substituted references to subsec. (a)(1) of this section, for references to subsec. (a) or (b) of this section. Former par. (3), relating to appointment of a special industry committee for recommendations with respect to highest minimum wage rates for employees employed in Puerto Rico or the Virgin Islands subject to the amendments to this chapter by the Fair Labor Standards Amendments of 1974, was struck out.

Subsec. (c)(4). Pub. L. 95–151, §2(d)(1), (2)(B), (D), redesignated par. (6) as (4) and struck out "or (3)" after "(2)". Former par. (4), relating to wage rates of employees in Puerto Rico or the Virgin Islands subject to the former provisions of subsec. (c)(2)(A) or (3) of this section, was struck out.

Subsec. (c)(5), (6). Pub. L. 95–151, §2(d)(2)(B), redesignated pars. (5) and (6) as (3) and (4), respectively.

1974-Subsec. (a)(1). Pub. L. 93–259, §2, substituted "not less than $2 an hour during the period ending December 31, 1974, not less than $2.10 an hour during the year beginning January 1, 1975, and not less than $2.30 an hour after December 31, 1975" for "not less than $1.40 an hour during the first year from the effective date of the Fair Labor Standards Amendments of 1966 and not less than $1.60 an hour thereafter".

Subsec. (a)(5). Pub. L. 93–259, §4, substituted provisions for a minimum wage rate not less than: $1.60 an hour during period ending Dec. 31, 1974; $1.80, $2, and $2.20 an hour during years beginning Jan. 1, 1975, 1976, and 1977, respectively; and $2.30 an hour after Dec. 31, 1977 for former provisions for a minimum wage rate not less than $1 an hour during first year from the effective date of the Fair Labor Standards Amendments of 1966, not less than $1.15 an hour during second year from such date, and not less than $1.30 an hour thereafter.

Subsec. (b). Pub. L. 93–259, §3, inserted references to "title II of the Education Amendments of 1972" and "Fair Labor Standards Amendments of 1974" and substituted provisions for a minimum wage rate not less than $1.90 an hour during period ending Dec. 31, 1974; $2 and $2.20 an hour during years beginning Jan. 1, 1975, and 1976, respectively; and $2.30 an hour after Dec. 31, 1976 for former provisions for a minimum wage rate not less than: $1 an hour during first year from effective date of Fair Labor Standards Amendments of 1966; $1.15, $1.30, and $1.45 an hour during second, third, and fourth years from such date; and $1.60 an hour thereafter.

Subsec. (c)(2) to (6). Pub. L. 93–259, §5(b), added pars. (2) to (6) and struck out former pars. (2) to (4) which had provided:

"(2) In the case of any such employee who is covered by such a wage order and to whom the rate or rates prescribed by subsection (a) would otherwise apply, the following rates shall apply:

"(A) The rate or rates applicable under the most recent wage order issued by the Secretary prior to the effective date of the Fair Labor Standards Amendments of 1966, increased by 12 per centum, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a review committee appointed under paragraph (C). Such rate or rates shall become effective sixty days after the effective date of the Fair Labor Standards Amendments of 1966 or one year from the effective date of the most recent wage order applicable to such employee therefore issued by the Secretary pursuant to the recommendations of a special industry committee appointed under section 205 of this title, whichever is later.

"(B) Beginning one year after the applicable effective date under paragraph (A), not less than the rate or rates prescribed by paragraph (A), increased by an amount equal to 16 per centum of the rate or rates applicable under the most recent wage order issued by the Secretary prior to the effective date of the Fair Labor Standards Amendments of 1966, unless such rate or rates are superseded by the rate or rates prescribed in a wage order issued by the Secretary pursuant to the recommendations of a review committee appointed under paragraph (C).

"(C) Any employer, or group of employers, employing a majority of the employees in an industry in Puerto Rico or the Virgin Islands, may apply to the Secretary in writing for the appointment of a review committee to recommend the minimum rate or rates to be paid such employees in lieu of the rate or rates provided by paragraph (A) or (B). Any such application with respect to any rate or rates provided for under paragraph (A) shall be filed within sixty days following the enactment of the Fair Labor Standards Amendments of 1966 and any such application with respect to any rate or rates provided for under paragraph (B) shall be filed not more than one hundred and twenty days and not less than sixty days prior to the effective date of the applicable rate or rates under paragraph (B). The Secretary shall promptly consider such application and may appoint a review committee if he has reasonable cause to believe, on the basis of financial and other information contained in the application, that compliance with any applicable rate or rates prescribed by paragraph (A) or (B) will substantially curtail employment in such industry. The Secretary's decision upon any such

application shall be final. Any wage order issued pursuant to the recommendations of a review committee appointed under this paragraph shall take effect on the applicable effective date provided in paragraph (A) or (B).

"(D) In the event a wage order has not been issued pursuant to the recommendation of a review committee prior to the applicable effective date under paragraph (A) or (B), the applicable percentage increase provided by any such paragraph shall take effect on the effective date prescribed therein, except with respect to the employees of an employer who filed an application under paragraph (C) and who files with the Secretary an undertaking with a surety or sureties satisfactory to the Secretary for payment to his employees of an amount sufficient to compensate such employees for the difference between the wages they actually receive and the wages to which they are entitled under this subsection. The Secretary shall be empowered to enforce such undertaking and any sums recovered by him shall be held on a special deposit account and shall be paid, on order of the Secretary, directly to the employee or employees affected. Any such sum not paid to an employee because of inability to do so within a period of three years shall be covered into the Treasury of the United States as miscellaneous receipts.

"(3) In the case of any such employee to whom subsection (a)(5) or subsection (b) would otherwise apply, the Secretary shall within sixty days after the effective date of the Fair Labor Standards Amendments of 1966 appoint a special industry committee in accordance with section 205 of this title to recommend the highest minimum wage rate or rates in accordance with the standards prescribed by section 208 of this title, but not in excess of the applicable rate provided by subsection (a)(5) or subsection (b), to be applicable to such employee in lieu of the rate or rates prescribed by subsection (a)(5) or subsection (b), as the case may be. The rate or rates recommended by the special industry committee shall be effective with respect to such employee upon the effective date of the wage order issued pursuant to such recommendation but not before sixty days after the effective date of the Fair Labor Standards Amendments of 1966.

"(4) The provisions of sections 205 and 208 of this title, relating to special industry committees, shall be applicable to review committees appointed under this subsection. The appointment of a review committee shall be in addition to and not in lieu of any special industry committee required to be appointed pursuant to the provisions of subsection (a) of section 208 of this title, except that no special industry committee shall hold any hearing within one year after a minimum wage rate or rates for such industry shall have been recommended to the Secretary by a review committee to be paid in lieu of the rate or rates provided for under paragraph (A) or (B). The minimum wage rate or rates prescribed by this subsection shall be in effect only for so long as and insofar as such minimum wage rate or rates have not been superseded by a wage order fixing a higher minimum wage rate or rates (but not in excess of the applicable rate prescribed in subsection (a) or subsection (b)) hereafter issued by the Secretary pursuant to the recommendation of a special industry committee."

Subsec. (f). Pub. L. 93–259, §7(b)(1), added subsec. (f).

1966-Subsec. (a). Pub. L. 89–601, §301(a), inserted ", or is employed in an enterprise engaged in commerce or in the production of goods for commerce," in opening provisions.

Subsec. (a)(1). Pub. L. 89–601, §301(a), raised minimum wage to not less than $1.40 an hour during first year from the effective date of the Fair Labor Standards Amendments of 1966, and not less than $1.60 thereafter, except as otherwise provided in this section.

Subsec. (a)(4). Pub. L. 89–601, §301(b), added par. (4).

Subsec. (a)(5). Pub. L. 89–601, §302, added par. (5).

Subsec. (b). Pub. L. 89–601, §303, substituted provisions for a minimum wage for employees covered for first time by the Fair Labor Standards Amendments of 1966 (other than newly covered agricultural employees) at not less than $1 an hour during first year from the effective date of the 1966 amendments, not less than $1.15 an hour during second year from such date, not less than $1.30 an hour during third year from such date, not less than $1.45 an hour during fourth year from such date, and not less than $1.60 an hour thereafter, for provisions setting a timetable for increases in the minimum wage of employees first covered by the Fair Labor Standards Amendments of 1961.

Subsec. (c). Pub. L. 89–601, §304, provided for a percentage minimum wage increase for employees in Puerto Rico and the Virgin Islands who are covered by wage orders already in effect as the equivalent of the percentage increase on the mainland, provided for minimum wages for employees brought within coverage of this chapter for the first time by the Fair Labor Standards Amendments of 1966 at rates to be set by special industry committees so as to reach as rapidly as is economically feasible without substantially curtailing employment the objectives of the minimum wage prescribed for mainland employees, and eliminated the review committees that has been established by the Fair Labor Standards Amendments of 1961.

Subsec. (e). Pub. L. 89–601, §305, added subsec. (e).

1963-Subsec. (d). Pub. L. 88–38 added subsec. (d).

1961-Subsec. (a). Pub. L. 87–30, §5(a)(1), inserted "in any workweek" in opening provisions.

Subsec. (a)(1). Pub. L. 87–30, §5(a)(2), increased minimum wage from not less than $1 an hour to not less than $1.15 an hour during first two years from the effective date of the Fair Labor Standards Amendments of 1961, and not less than $1.25 an hour thereafter.

Subsec. (a)(3). Pub. L. 87–30, §5(a)(3), inserted "in lieu of the rate or rates provided by this subsection or subsection (b)" and "as amended from time to time" and struck out "now" before "applicable to".

Subsec. (b). Pub. L. 87–30, §5(b), added subsec. (b). Former subsec. (b) had provided that "This section shall take effect upon the expiration of one hundred and twenty days from June 25, 1938."

Subsec. (c). Pub. L. 87–30, §5(c), added subsec. (c). Former subsec. (c) had provided for wage orders recommended by special industrial committees and covering employees in Puerto Rico and the Virgin Islands to supersede minimum wages of $1 an hour and for continuance of wage orders in effect prior to effective date of this chapter until superseded by wage orders recommended by the special industrial committees.

1956-Subsec. (a)(3). Act Aug. 8, 1956, added par. (3).

1955-Subsec. (a)(1). Act Aug. 12, 1955, increased minimum wage from not less than 75 cents an hour to not less than $1 an hour.

1949-Subsec. (a). Act Oct. 26, 1949, §6(a), (b), struck out subpars. (1), (2), (3), and (4), inserted subpar. (1) fixing the minimum wage rate at not less than 75 cents an hour, and redesignated subpar. (5) as (2).

Subsec. (c). Act Oct. 26, 1949, §6(c), continued existing minimum wage rates in Puerto Rico and the Virgin Islands until superseded by special industry committee wage orders.

1940-Subsec. (a)(5). Act June 26, 1940, added par. (5).

Statutory Notes and Related Subsidiaries

Effective Date of 2015 Amendment

Pub. L. 114–61, §1(c), Oct. 7, 2015, 129 Stat. 546 , provided that: "This Act [amending provisions set out as notes under this section], and the amendments made by this Act, shall take effect as of September 29, 2015."

Effective Date of 2007 Amendment

Pub. L. 110–28, title VIII, §8102(b), May 25, 2007, 121 Stat. 188 , provided that: "The amendment made by subsection (a) [amending this section] shall take effect 60 days after the date of enactment of this Act [May 25, 2007]."

Pub. L. 110–28, title VIII, §8103(c)(2), May 25, 2007, 121 Stat. 189 , provided that: "The amendments made by this subsection [amending this section and repealing sections 205 and 208 of this title] shall take effect 60 days after the date of enactment of this Act [May 25, 2007]."

Effective Date of 1977 Amendment

Amendment by Pub. L. 95–151 effective Jan. 1, 1978, see section 15(a) of Pub. L. 95–151, set out as a note under section 203 of this title.

Effective Date of 1974 Amendment

Amendment by sections 2 to 4 and 7(b)(1) of Pub. L. 93–259 effective May 1, 1974, see section 29(a) of Pub. L. 93–259, set out as a note under section 202 of this title.

Pub. L. 93–259, §5(b), Apr. 8, 1974, 88 Stat. 56 , provided that the amendment made by that section is effective Apr. 8, 1974.

Effective Date of 1966 Amendment

Amendment by Pub. L. 89–601 effective Feb. 1, 1967, except as otherwise provided, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

Effective Date of 1963 Amendment

Pub. L. 88–38, §4, June 10, 1963, 77 Stat. 57 , provided that: "The amendments made by this Act [amending this section and enacting provisions set out below] shall take effect upon the expiration of one year from the date of its enactment [June 10, 1963]: Provided, That in the case of employees covered by a bona fide collective bargaining agreement in effect at least thirty days prior to the date of enactment of this Act [June 10, 1963], entered into by a labor organization as defined in section 6(d)(4) of the Fair Labor Standards Act of 1938, as amended [subsec. (d)(4) of this section], the amendments made by this Act shall take effect upon the termination of such collective bargaining agreement or upon the expiration of two years from the date of enactment of this Act [June 10, 1963], whichever shall first occur."

Effective Date of 1961 Amendment

Amendment by Pub. L. 87–30 effective upon expiration of one hundred and twenty days after May 5, 1961, except as otherwise provided, see section 14 of Pub. L. 87–30, set out as a note under

section 203 of this title.

Effective Date of 1955 Amendment

Act Aug. 12, 1955, ch. 867, §3, 69 Stat. 711 , provided that the amendment made by section 3 is effective Mar. 1, 1956.

Effective Date of 1949 Amendment

Amendment by act Oct. 26, 1949, effective ninety days after Oct. 26, 1949, see section 16(a) of act Oct. 26, 1949, set out as a note under section 202 of this title.

Applicability of Minimum Wage to American Samoa and the Commonwealth of the Northern Mariana Islands

Pub. L. 110–28, title VIII, §8103(a), (b), May 25, 2007, 121 Stat. 188 , 189, as amended by Pub. L. 111–117, div. D, title V, §520, Dec. 16, 2009, 123 Stat. 3283 ; Pub. L. 111–244, §2(a), Sept. 30, 2010, 124 Stat. 2618 ; Pub. L. 112–149, §4(a), July 26, 2012, 126 Stat. 1145 ; Pub. L. 113–34, §2, Sept. 18, 2013, 127 Stat. 518 ; Pub. L. 114–61, §1(a), Oct. 7, 2015, 129 Stat. 545 , provided that:

"(a) In General.-Section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206) shall apply to American Samoa and the Commonwealth of the Northern Mariana Islands.

"(b) Transition.-Notwithstanding subsection (a)-

"(1) the minimum wage applicable to the Commonwealth of the Northern Mariana Islands under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) shall be-

"(A) $3.55 an hour, beginning on the 60th day after the date of enactment of this Act [May 25, 2007]; and

"(B) increased by $0.50 an hour (or such lesser amount as may be necessary to equal the minimum wage under section 6(a)(1) of such Act), beginning 1 year after the date of enactment of this Act and each year thereafter until the minimum wage applicable to the Commonwealth of the Northern Mariana Islands under this paragraph is equal to the minimum wage set forth in such section, except that, beginning in 2010 and each year thereafter (except 2011, 2013, and 2015 when there shall be no increase), such increase shall occur on September 30; and

"(2) the minimum wage applicable to American Samoa under section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1)) shall be-

"(A) the applicable wage rate in effect for each industry and classification as of September 29, 2015; and

"(B) increased by $0.40 an hour (or such lesser amount as may be necessary to equal the minimum wage under section 6(a)(1) of such Act), beginning on September 30, 2015, and on September 30 of every third year thereafter, until the minimum wage applicable to American Samoa under this paragraph is equal to the minimum wage set forth in such section."

Report on the Impact of Past and Future Minimum Wage Increases

Pub. L. 110–28, title VIII, §8104, May 25, 2007, 121 Stat. 189 , as amended by Pub. L. 111–5, div. A, title VIII, §802(a), Feb. 17, 2009, 123 Stat. 186 ; Pub. L. 111–244, §2(b), Sept. 30, 2010, 124 Stat. 2618 ; Pub. L. 112–149, §4(b), July 26, 2012, 126 Stat. 1145 ; Pub. L. 114–61, §1(b), Oct. 7, 2015, 129 Stat. 545 , provided that:

"(a) Report.-The Government Accountability Office shall assess the impact of minimum wage increases that have occurred pursuant to section 8103 [of Pub. L. 110–28, amending this section, repealing sections 205 and 208 of this title, and enacting provisions set out as notes under this section], and not later than April 1, 2017, shall transmit to Congress a report of its findings. The Government Accountability Office shall submit a subsequent report not later than April 1, 2020.

"(b) Economic Information.-To provide sufficient economic data for the conduct of any report under subsection (a) the Bureau of the Census of the Department of Commerce shall include and separately report on American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands in its County Business Patterns data with the same regularity and to the same extent as each Bureau collects and reports such data for the 50 States. In the event that the inclusion of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands in such surveys and data compilations requires time to structure and implement, the Bureau of the Census shall in the interim annually report the best available data that can feasibly be secured with respect to such territories. Such interim report shall describe the steps the Bureau will take to improve future data collection in the territories to achieve comparability with the data collected in the United States. The Bureau of the Census, together with the Department of the Interior, shall coordinate their efforts to achieve such improvements.

"(c) Report on Alternative Methods of Increasing the Minimum Wage in American Samoa.-Not later than 1 year after the date of enactment of 'An Act to amend the Fair Minimum Wage Act of 2007 to reduce a scheduled increase in the minimum wage applicable to American Samoa' [Pub. L. 114–61, approved Oct. 7, 2015], the Government Accountability Office shall transmit to Congress a report on alternative ways of increasing the minimum wage in American Samoa to keep pace with the cost

of living in American Samoa and to eventually equal the minimum wage set forth in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(a)(1))."

[Pub. L. 111–5, div. A, title VIII, §802(b), Feb. 17, 2009, 123 Stat. 187 , provided that: "The amendment made by this section [amending section 8104 of Pub. L. 110–28, set out above] shall take effect on the date of enactment of this Act [Feb. 17, 2009]."]

Training Wage

Pub. L. 101–157, §6, Nov. 17, 1989, 103 Stat. 941 , provided that:

"(a) In General.-

"(1) Authority.-Any employer may, in lieu of the minimum wage prescribed by section 6 of the Fair Labor Standards Act of 1938 (29 U.S.C. 206), pay an eligible employee the wage prescribed by paragraph (2)-

"(A) while such employee is employed for the period authorized by subsection (g)(1)(B)(i), or

"(B) while such employee is engaged in on-the-job training for the period authorized by subsection (g)(1)(B)(ii).

"(2) Wage rate.-The wage referred to in paragraph (1) shall be a wage-

"(A) of not less than $3.35 an hour during the year beginning April 1, 1990; and

"(B) beginning April 1, 1991, of not less than $3.35 an hour or 85 percent of the wage prescribed by section 6 of such Act, whichever is greater.

"(b) Wage Period.-An employer may pay an eligible employee the wage authorized by subsection (a) for a period that-

"(1) begins on or after April 1, 1990;

"(2) does not exceed the maximum period during which an employee may be paid such wage as determined under subsection (g)(1)(B); and

"(3) ends before April 1, 1993.

"(c) Wage Conditions.-No eligible employee may be paid the wage authorized by subsection (a) by an employer if-

"(1) any other individual has been laid off by such employer from the position to be filled by such eligible employee or from any substantially equivalent position; or

"(2) such employer has terminated the employment of any regular employee or otherwise reduced the number of employees with the intention of filling the vacancy so created by hiring an employee to be paid such wage.

"(d) Limitations.-

"(1) Employee hours.-During any month in which employees are to be employed in an establishment under this section, the proportion of employee hours of employment to the total hours of employment of all employees in such establishment may not exceed a proportion equal to one-fourth of the total hours of employment of all employees in such establishment.

"(2) Displacement.-

"(A) Prohibition.-No employer may take any action to displace employees (including partial displacements such as reduction in hours, wages, or employment benefits) for purposes of hiring individuals at the wage authorized in subsection (a).

"(B) Disqualification.-If the Secretary determines that an employer has taken an action in violation of subparagraph (A), the Secretary shall issue an order disqualifying such employer from employing any individual at such wage.

"(e) Notice.-Each employer shall provide to any eligible employee who is to be paid the wage authorized by subsection (a) a written notice before the employee begins employment stating the requirements of this section and the remedies provided by subsection (f) for violations of this

section. The Secretary shall provide to employers the text of the notice to be provided under this subsection.

"(f) Enforcement.-Any employer who violates this section shall be considered to have violated section 15(a)(3) of the Fair Labor Standards Act of 1938 (29 U.S.C. 215(a)(3)). Sections 16 and 17 of such Act (29 U.S.C. 216 and 217) shall apply with respect to the violation.

"(g) Definitions.-For purposes of this section:

"(1) Eligible employee.-

"(A) In general.-The term 'eligible employee' means with respect to an employer an individual who-

"(i) is not a migrant agricultural worker or a seasonal agricultural worker (as defined in paragraphs (8) and (10) of section 3 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1802(8) and (10)) without regard to subparagraph (B) of such paragraphs and is not a nonimmigrant described in section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(a));

"(ii) has not attained the age of 20 years; and

"(iii) is eligible to be paid the wage authorized by subsection (a) as determined under subparagraph (B).

"(B) Duration.-

"(i) An employee shall initially be eligible to be paid the wage authorized by subsection (a) until the employee has been employed a cumulative total of 90 days at such wage.

"(ii) An employee who has been employed by an employer at the wage authorized by subsection (a) for the period authorized by clause (i) may be employed by any other employer for an additional 90 days if the employer meets the requirements of subsection (h).

"(iii) The total period, as authorized by clauses (i) and (ii), that an employee may be paid the wage authorized by subsection (a) may not exceed 180 days.

"(iv) For purposes of this subparagraph, the term 'employer' means with respect to an employee an employer who is required to withhold payroll taxes for such employee.

"(C) Proof.-

"(i) In general.-An individual is responsible for providing the requisite proof of previous period or periods of employment with other employers. An employer's good faith reliance on the proof presented to the employer by an individual shall constitute a complete defense to a charge that the employer has violated subsection (b)(2) with respect to such individual.

"(ii) Regulations.-The Secretary of Labor shall issue regulations defining the requisite proof required of an individual. Such regulations shall establish minimal requirements for requisite proof and may prescribe that an accurate list of the individual's employers and a statement of the dates and duration of employment with each employer constitute requisite proof.

"(2) On-the-job training.-The term 'on-the-job training' means training that is offered to an individual while employed in productive work that provides training, technical and other related skills, and personal skills that are essential to the full and adequate performance of such employment.

"(h) Employer Requirements.-An employer who wants to employ employees at the wage authorized by subsection (a) for the period authorized by subsection (g)(1)(B)(ii) shall-

"(1) notify the Secretary annually of the positions at which such employees are to be employed at such wage,

"(2) provide on-the-job training to such employees which meets general criteria of the Secretary issued by regulation after consultation with the Committee on Labor and Human Resources [now Committee on Health, Education, Labor, and Pensions] of the Senate and the Committee on Education and Labor [now Committee on Education and the Workforce] of the House of Representatives and other interested persons,

"(3) keep on file a copy of the training program which the employer will provide such employees,

"(4) provide a copy of the training program to the employees,

"(5) post in a conspicuous place in places of employment a notice of the types of jobs for which the employer is providing on-the-job training, and

"(6) send to the Secretary on an annual basis a copy of such notice.

The Secretary shall make available to the public upon request notices provided to the Secretary by employers in accordance with paragraph (6).

"(i) Report.-The Secretary of Labor shall report to Congress not later than March 1, 1993, on the effectiveness of the wage authorized by subsection (a). The report shall include-

"(1) an analysis of the impact of such wage on employment opportunities for inexperienced workers;

"(2) any reduction in employment opportunities for experienced workers resulting from the employment of employees under such wage;

"(3) the nature and duration of the training provided under such wage; and

"(4) the degree to which employers used the authority to pay such wage."

Practice of Public Agency in Treating Certain Individuals as Volunteers Prior to April 15, 1986; Liability

Certain public agencies not to be liable for violations of this section occurring before Apr. 15, 1986, with respect to services deemed by that agency to have been performed for it by an individual on a voluntary basis, see section 4(c) of Pub. L. 99–150, set out as a note under section 203 of this title.

Effect of Amendments by Public Law 99–150 on Public Agency Liability Respecting any Employee Covered Under Special Enforcement Policy

Amendment by Pub. L. 99–150 not to affect liability of certain public agencies under section 216 of this title for violation of this section occurring before Apr. 15, 1986, see section 7 of Pub. L. 99–150, set out as a note under section 216 of this title.

Inapplicability to Northern Mariana Islands

Pursuant to section 503(c) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands with the United States of America, as set forth in Pub. L. 94–241, Mar. 24, 1976, 90 Stat. 263 , set out as a note under section 1801 of Title 48, Territories and Insular Possessions, this section is inapplicable to the Northern Mariana Islands.

Rules, Regulations, and Orders Promulgated With Regard to 1966 Amendments

Secretary authorized to promulgate necessary rules, regulations, or orders on and after the date of the enactment of Pub. L. 89–601, Sept. 23, 1966, with regard to the amendments made by Pub. L. 89–601, see section 602 of Pub. L. 89–601, set out as a note under section 203 of this title.

Congressional Finding and Declaration of Policy

Pub. L. 88–38, §2, June 10, 1963, 77 Stat. 56 , provided that:

"(a) The Congress hereby finds that the existence in industries engaged in commerce or in the production of goods for commerce of wage differentials based on sex-

"(1) depresses wages and living standards for employees necessary for their health and efficiency;

"(2) prevents the maximum utilization of the available labor resources;

"(3) tends to cause labor disputes, thereby burdening, affecting, and obstructing commerce;

"(4) burdens commerce and the free flow of goods in commerce; and

"(5) constitutes an unfair method of competition.

"(b) It is hereby declared to be the policy of this Act [amending this section, and enacting provisions set out as notes under this section], through exercise by Congress of its power to regulate commerce among the several States and with foreign nations, to correct the conditions above referred to in such industries."

Definition of "Administrator"

The term "Administrator" as meaning the Administrator of the Wage and Hour Division, see section 204 of this title.

Executive Documents

Transfer of Functions

Functions relating to enforcement and administration of equal pay provisions vested by this section in Secretary of Labor and Administrator of Wage and Hour Division of Department of Labor transferred to Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, §1, 43 F.R. 19807, 92 Stat. 3781, set out in the Appendix to Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1–101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053.

Functions of all other officers of Department of Labor and functions of all agencies and employees of that Department, with exception of functions vested by Administrative Procedure Act (now covered by sections 551 et seq. and 701 et seq. of Title 5, Government Organization and Employees) in hearing examiners employed by Department, transferred to Secretary of Labor, with power vested in him to authorize their performance or performance of any of his functions by any of those officers, agencies, and employees, by Reorg. Plan No. 6 of 1950, §§1, 2, 15 F.R. 3174, 64 Stat. 1263, set out in the Appendix to Title 5.

34 Code of Federal Regulations § 106.54. COMPENSATION.

A recipient shall not make or enforce any policy or practice which, on the basis of sex:

(a) Makes distinctions in rates of pay or other compensation;

(b) Results in the payment of wages to employees of one sex at a rate less than that paid to employees of the opposite sex for equal work on jobs the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions.

[45 FR 30955, May 9, 1980, as amended at 85 FR 30579, May 19, 2020]

34 Code of Federal Regulations § 104.7. DESIGNATION OF RESPONSIBLE EMPLOYEE AND ADOPTION OF GRIEVANCE PROCEDURES.

(a) Designation of responsible employee. A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) Adoption of grievance procedures. A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process standards and that provide for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

28 Code of Federal Regulations § 35.107. DESIGNATION OF RESPONSIBLE EMPLOYEE AND ADOPTION OF GRIEVANCE PROCEDURES.

(a) Designation of responsible employee. A public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under this part, including any investigation of any complaint communicated to it alleging its noncompliance with this part or alleging any actions that would be prohibited by this part. The public entity shall make available to all interested individuals the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph.

(b) Complaint procedure. A public entity that employs 50 or more persons shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by this part.

34 Code of Federal Regulations § 106.8. DESIGNATION OF COORDINATOR; NONDISCRIMINATION POLICY; GRIEVANCE PROCEDURES; NOTICE OF NONDISCRIMINATION; TRAINING; STUDENTS WITH DISABILITIES; AND RECORDKEEPING.

(a) Designation of a Title IX Coordinator.

(1) Title IX Coordinator. Each recipient mustdesignate and authorize at least one employee, referred to herein as a Title IX Coordinator, to coordinate its efforts to comply with its responsibilities under Title IX and this part. If a recipient has more than one Title IX Coordinator, it must designate one of its Title IX Coordinators to retain ultimate oversight over those responsibilities and ensure the recipient's consistent compliance with its responsibilities under Title IX and this part.

(2) Delegation to designees. As appropriate, a recipient may delegate, or permit a Title IX Coordinator to delegate, specific duties to one or more designees.

(b) Adoption, publication, and implementation of nondiscrimination policy and grievance procedures.

(1) Nondiscrimination policy. Each recipient must adopt, publish, and implement a policy stating that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and this part, including in admission (unless subpart C of this part does not apply) and employment.

(2) Grievance procedures. A recipient must adopt, publish, and implement grievance procedures consistent with the requirements of § 106.45, and if applicable § 106.46, that provide for the prompt and equitable resolution of complaints made by students, employees, or other individuals who are participating or attempting to participate in the recipient's education program or activity, or by the Title IX Coordinator, alleging any action that would be prohibited by Title IX or this part.

(c) Notice of nondiscrimination. A recipient must provide a notice of nondiscrimination to students; parents, guardians, or other authorized legal representatives of elementary school and secondary school students; employees; applicants for admission and employment; and all unions and professional organizations holding collective bargaining or professional agreements with the recipient.

(1) Contents of notice of nondiscrimination.

(i) The notice of nondiscrimination must include the following elements:

(A) A statement that the recipient does not discriminate on the basis of sex and prohibits sex discrimination in any education program or activity that it operates, as required by Title IX and this part, including in admission (unless subpart C of this part does not apply) and employment;

(B) A statement that inquiries about the application of Title IX and this part to the recipient may be referred to the recipient's Title IX Coordinator, the Office for Civil Rights, or both;

(C) The name or title, office address, email address, and telephone number of the recipient's Title IX Coordinator;

(D) How to locate the recipient's nondiscrimination policy under paragraph (b)(1) of this section; and the recipient's grievance procedures under paragraph (b)(2) of this section; and

(E) How to report information about conduct that may constitute sex discrimination under Title IX; and how to make a complaint of sex discrimination under this part.

(ii) Nothing in this part prevents a recipient from including in its notice of nondiscrimination information about any exceptions or exemptions applicable to the recipient under Title IX.

(2) Publication of notice of nondiscrimination.

(i) Each recipient must prominently include all elements of its notice of nondiscrimination set out in paragraphs (c)(1)(i)(A) through (E) of this section on its website and in each handbook, catalog, announcement, bulletin, and application form that it makes available to persons entitled to notice under paragraph (c) of this section, or which are otherwise used in connection with the recruitment of students or employees.

(ii) If necessary, due to the format or size of any publication under paragraph (c)(2)(i) of this section, the recipient may instead include in those publications a statement that the recipient prohibits sex discrimination in any education program or activity that it operates and that individuals may report concerns or questions to the Title IX Coordinator, and provide the location of the notice on the recipient's website.

(iii) A recipient must not use or distribute a publication stating that the recipient treats applicants, students, or employees differently on the basis of sex, except as such treatment is permitted by Title IX or this part.

(d) Training. The recipient must ensure that the persons described in paragraphs (d)(1) through (4) of this section receive training related to their duties under Title IX promptly upon hiring or change of position that alters their duties under Title IX or this part, and annually thereafter. This training must not rely on sex stereotypes.

(1) All employees. All employees must be trained on:

(i) The recipient's obligation to address sex discrimination in its education program or activity;

(ii) The scope of conduct that constitutes sex discrimination under Title IX and this part, including the definition of sex-based harassment; and

(iii) All applicable notification and information requirements under §§ 106.40(b)(2) and 106.44.

(2) Investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures. In addition to the training requirements in paragraph (d)(1) of this section, all investigators, decisionmakers, and other persons who are responsible for implementing the recipient's grievance procedures or have the authority to modify or terminate supportive measures under § 106.44(g)(4) must be trained on the following topics to the extent related to their responsibilities:

(i) The recipient's obligations under § 106.44;

(ii) The recipient's grievance procedures under § 106.45, and if applicable § 106.46;

(iii) How to serve impartially, including by avoiding prejudgment of the facts at issue, conflicts of interest, and bias; and

(iv) The meaning and application of the term “relevant” in relation to questions and evidence, and the types of evidence that are impermissible regardless of relevance under § 106.45, and if applicable § 106.46.

(3) Facilitators of informal resolution process. In addition to the training requirements in paragraph (d)(1) of this section, all facilitators of an informal resolution process under § 106.44(k) must be trained on the rules and practices associated with the recipient's informal resolution process and on how to serve impartially, including by avoiding conflicts of interest and bias.

(4) Title IX Coordinator and designees. In addition to the training requirements in paragraphs (d)(1) through (3) of this section, the Title IX Coordinator and any designees under paragraph (a) of this section must be trained on their specific responsibilities under paragraph (a) of this section, §§ 106.40(b)(3), 106.44(f) and (g), the recipient's recordkeeping system and the requirements of paragraph (f) of this section, and any other training necessary to coordinate the recipient's compliance with Title IX.

(e) Students with disabilities. If a complainant or respondent is an elementary or secondary student with a disability, the recipient must require the Title IX Coordinator to consult with one or more

members, as appropriate, of the student's Individualized Education Program (IEP) team, 34 CFR 300.321, if any, or one or more members, as appropriate, of the group of persons responsible for the student's placement decision under 34 CFR 104.35(c), if any, to determine how to comply with the requirements of the Individuals with Disabilities Education Act, 20 U.S.C. 1400 et seq., and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, throughout the recipient's implementation of grievance procedures under § 106.45. If a complainant or respondent is a postsecondary student with a disability, the Title IX Coordinator may consult, as appropriate, with the individual or office that the recipient has designated to provide support to students with disabilities to determine how to comply with Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

(f) Recordkeeping. A recipient must maintain for a period of at least seven years:

(1) For each complaint of sex discrimination, records documenting the informal resolution process under § 106.44(k) or the grievance procedures under § 106.45, and if applicable § 106.46, and the resulting outcome.

(2) For each notification the Title IX Coordinator receives of information about conduct that reasonably may constitute sex discrimination under Title IX or this part, including notifications under § 106.44(c)(1) or (2), records documenting the actions the recipient took to meet its obligations under § 106.44.

(3) All materials used to provide training under paragraph (d) of this section. A recipient must make these training materials available upon request for inspection by members of the public.

[89 FR 33885, Apr. 29, 2024]

34 Code of Federal Regulations § 104.8. NOTICE.

(a) A recipient that employs fifteen or more persons shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 and this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its program or activity. The notification shall also include an identification of the responsible employee designated pursuant to § 104.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publication, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants, or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of this paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

[45 FR 30936, May 9, 1980, as amended at 65 FR 68054, Nov. 13, 2000]

34 Code of Federal Regulations § 110.25. DESIGNATION OF RESPONSIBLE EMPLOYEE, NOTICE, AND GRIEVANCE PROCEDURES.

(a) Designation of responsible employee. Each recipient shall designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under the Act and these regulations, including investigation of any complaints that the recipient receives alleging any actions that are prohibited by the Act and these regulations.

(b) Notice. A recipient shall notify its beneficiaries, in a continuing manner, of information regarding the provisions of the Act and these regulations. The notification must also identify the responsible employee by name or title, address, and telephone number.

(c) Grievance procedures. A recipient shall adopt and publish grievance procedures providing for prompt and equitable resolution of complaints alleging any action that would be prohibited by the Act or these regulations.

(Authority: 42 U.S.C. 6103)

[58 FR 40197, July 27, 1993, as amended at 65 FR 68057, Nov. 13, 2000]

Employee Welfare: Freedom from Discrimination, Harassment, and Retaliation

Note: This policy addresses discrimination, harassment, and retaliation against District employees. For Title IX and other provisions regarding discrimination, harassment, and retaliation against students, see FFH. For reporting requirements related to child abuse and neglect, see FFG.

Definitions

Solely for purposes of this policy, the term "employee" includes former employees, applicants for employment, and unpaid interns.

Statement Of Nondiscrimination

The District prohibits discrimination, including harassment, against any employee on the basis of race, color, religion, sex, national origin, age, disability, or any other basis prohibited by law. Retaliation against anyone involved in the complaint process is a violation of District policy and is prohibited.

Discrimination

Discrimination against an employee is defined as conduct directed at an employee on the basis of race, color, religion, sex, national origin, age, disability, or any other basis prohibited by law, that adversely affects the employee's employment.

In accordance with law, discrimination on the basis of sex includes discrimination on the basis of biological sex, gender identity, sexual orientation, gender stereotypes, or any other prohibited basis related to sex.

Prohibited Conduct

In this policy, the term "prohibited conduct" includes discrimination, harassment, and retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.

Prohibited conduct also includes sexual harassment as defined by Title IX. [See FFH(LEGAL)]

Prohibited Harassment

Prohibited harassment of an employee is defined as physical, verbal, or nonverbal conduct based on an employee's race, color, religion, sex, national origin, age, disability, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct:

1. Has the purpose or effect of unreasonably interfering with the employee's work performance;
2. Creates an intimidating, threatening, hostile, or offensive work environment; or
3. Otherwise adversely affects the employee's performance, environment, or employment opportunities.

Examples

Examples of prohibited harassment may include offensive or derogatory language directed at another person's religious beliefs or practices, accent, skin color, gender identity, or need for workplace accommodation; threatening or intimidating conduct; offensive jokes, name calling, slurs, or rumors; cyberharassment; physical aggression or assault; display of graffiti or printed material promoting racial, ethnic, or other negative stereotypes; or other kinds of aggressive conduct such as theft or damage to property.

Sex-Based Harassment

As required by law, the District shall follow the procedures below at Response to Sexual Harassment—Title IX upon a report of sex-based harassment, including sexual harassment, when such allegations, if proved, would meet the definition of sexual harassment under Title IX. [See FFH(LEGAL)]

Sexual Harassment

Sexual harassment is a form of sex discrimination defined as unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. Submission to the conduct is either explicitly or implicitly a condition of an employee's employment, or when submission to or rejection of the conduct is the basis for an employment action affecting the employee; or
2. The conduct is so severe, persistent, or pervasive that it has the purpose or effect of unreasonably interfering with the employee's work performance or creates an intimidating, threatening, hostile, or offensive work environment.

Examples

Examples of sexual harassment may include sexual advances; touching intimate body parts; coercing or forcing a sexual act on another; jokes or conversations of a sexual nature; and other sexually motivated conduct, contact, or communication, including electronic communication.

Reporting Procedures

Any employee who believes that he or she has experienced prohibited conduct or believes that another employee has experienced prohibited conduct should immediately report the alleged acts. The employee may report the alleged acts to his or her supervisor or campus principal.

Alternatively, the employee may report the alleged acts to one of the District officials below.

Definition Of District Officials	For the purposes of this policy, District officials are the Title IX coordinator, the ADA/Section 504 coordinator, and the Superintendent.
Title IX Coordinator	Reports of discrimination based on sex, including sexual harassment, may be directed to the designated Title IX coordinator. [See DIA(EXHIBIT)]
ADA / Section 504 Coordinator	Reports of discrimination based on disability may be directed to the designated ADA/Section 504 coordinator. [See DIA(EXHIBIT)]
Superintendent	The Superintendent shall serve as coordinator for purposes of District compliance with all other nondiscrimination laws.
Alternative Reporting Procedures	An employee shall not be required to report prohibited conduct to the person alleged to have committed the conduct. Reports concerning prohibited conduct, including reports against the Title IX coordinator or ADA/Section 504 coordinator, may be directed to the Superintendent. A report against the Superintendent may be made directly to the Board President or to the school attorney who shall then report it to the Board President. In the event of a report being made against the Superintendent, the Board shall appoint an appropriate person to conduct an investigation.
Timely Reporting	To ensure the District's prompt investigation, reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act.
Notice Of Report	Any District supervisor who receives a report of prohibited conduct shall immediately notify the appropriate District official listed above and take any other steps required by this policy. Any District employee who receives a report of prohibited conduct based on sex, including sexual harassment, shall immediately notify the Title IX coordinator.
Investigation Of Reports Other Than Title IX	The following procedures apply to all allegations of prohibited conduct other than allegations of harassment prohibited by Title IX. [See FFH(LEGAL)] For allegations of sex-based harassment that, if proved, would meet the definition of sexual harassment under Title IX, see the procedures below at Response to Sexual Harassment—Title IX. The District may request, but shall not require, a written report. If a report is made orally, the District official shall reduce the report to written form.

Initial Assessment	Upon receipt or notice of a report, the District official shall determine whether the allegations, if proved, would constitute prohibited conduct as defined by this policy. If so, the District shall immediately authorize or undertake an investigation, regardless of whether a criminal or regulatory investigation regarding the same or similar allegations is pending.
Interim Action	If appropriate, the District shall promptly take interim action calculated to prevent prohibited conduct during the course of an investigation.
District Investigation	The investigation may be conducted by the District official or a designee, such as the campus principal, or by a third party designated by the District, such as an attorney. When appropriate, the principal or supervisor shall be involved in or informed of the investigation. The investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.
Concluding The Investigation	Absent extenuating circumstances, the investigation should be completed within ten District business days from the date of the report; however, the investigator shall take additional time if necessary to complete a thorough investigation. The investigator shall prepare a written report of the investigation. The report shall be filed with the District official overseeing the investigation.
District Action	If the results of an investigation indicate that prohibited conduct occurred, the District shall promptly respond by taking appropriate disciplinary or corrective action reasonably calculated to address the conduct. The District may take action based on the results of an investigation, even if the conduct did not rise to the level of prohibited or unlawful conduct.

Confidentiality	To the greatest extent possible, the District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.
Appeal	A complainant who is dissatisfied with the outcome of the investigation may appeal through DGBA(LOCAL), beginning at the appropriate level. The complainant may have a right to file a complaint with appropriate state or federal agencies.

Response To Sexual Harassment—Title IX

General Response	For purposes of the District's response to reports of harassment prohibited by Title IX, definitions can be found in FFH(LEGAL). When the District receives notice or an allegation of conduct that, if proved, would meet the definition of sexual harassment under Title IX, the Title IX coordinator shall promptly contact the complainant to: • Discuss the availability of supportive measures and inform the complainant that they are available, with or without the filing of a formal complaint; • Consider the complainant's wishes with respect to supportive measures; and • Explain to the complainant the option and process for filing a formal complaint. The District's response to sexual harassment shall treat complainants and respondents equitably by offering supportive measures to both parties, as appropriate, and by following the Title IX formal complaint process before imposing disciplinary sanctions or other actions that are not supportive measures against a respondent. If a formal complaint is not filed, the District reserves the right to investigate and respond to prohibited conduct in accordance with Board policies and administrative procedures.
Title IX Formal Complaint Process	To distinguish the process described below from the District's general grievance policies [see DGBA, FNG, and GF], this policy refers to the grievance process required by Title IX regulations for responding to formal complaints of sexual harassment as the District's "Title IX formal complaint process." The Superintendent shall ensure the development of a Title IX formal complaint process that complies with legal requirements. [See FFH(LEGAL)] The formal complaint process shall be

posted on the District's website. In compliance with Title IX regulations, the District's Title IX formal complaint process shall address the following basic requirements:

1. Equitable treatment of complainants and respondents;
2. An objective evaluation of all relevant evidence;
3. A requirement that the Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process not have a conflict of interest or bias;
4. A presumption that the respondent is not responsible for the alleged sexual harassment until a determination is made at the conclusion of the Title IX formal complaint process;
5. Time frames that provide for a reasonably prompt conclusion of the Title IX formal complaint process, including time frames for appeals and any informal resolution process, and that allow for temporary delays or the limited extension of time frames with good cause and written notice as required by law;
6. A description of the possible disciplinary sanctions and remedies that may be implemented following a determination of responsibility for the alleged sexual harassment;
7. A statement of the standard of evidence to be used to determine responsibility for all Title IX formal complaints of sexual harassment;
8. Procedures and permissible bases for the complainant and respondent to appeal a determination of responsibility or a dismissal of a Title IX formal complaint or any allegations therein;
9. A description of the supportive measures available to the complainant and respondent;
10. A prohibition on using or seeking information protected under a legally recognized privilege unless the individual holding the privilege has waived the privilege;
11. Additional formal complaint procedures in 34 C.F.R. 106.45(b), including written notice of a formal complaint, consolidation of formal complaints, recordkeeping, and investigation procedures; and
12. Other local procedures as determined by the Superintendent.

Standard Of Evidence

The standard of evidence used to determine responsibility in a Title IX formal complaint of sexual harassment shall be the preponderance of the evidence.

Retaliation

The District prohibits retaliation against an employee who makes a claim alleging to have experienced discrimination or harassment, or another employee who, in good faith, makes a report of harassment or discrimination, files a complaint of harassment or discrimination, serves as a witness, or otherwise participates or refuses to participate in an investigation.

Examples	Examples of retaliation may include termination, refusal to hire, demotion, and denial of promotion. Retaliation may also include threats, intimidation, coercion, unjustified negative evaluations, unjustified negative references, or increased surveillance.
Records Retention	The District shall retain copies of allegations, investigation reports, and related records regarding any prohibited conduct in accordance with the District's records control schedules, but for no less than the minimum amount of time required by law. [See CPC] [For Title IX recordkeeping and retention provisions, see FFH(LEGAL) and the District's Title IX formal complaint process.]
Access To Policy And Procedures	Information regarding this policy and any accompanying procedures shall be distributed annually to District employees. Copies of the policy and procedures shall be posted on the District's website, to the extent practicable, and readily available at each campus and the District's administrative offices.

Student Welfare: Freedom from Discrimination, Harassment, and Retaliation

Note: This policy addresses discrimination, including harassment, and retaliation against District students. For provisions regarding discrimination, including harassment, and retaliation against District employees, see DIA. For reporting requirements related to child abuse and neglect, see FFG. Note that FFH shall be used in conjunction with FFI (bullying) for certain prohibited conduct.

Prohibited Conduct

In this policy, the term "prohibited conduct" includes discrimination, harassment, dating violence, and retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.

Prohibited conduct also includes sexual harassment as defined by Title IX. [See FFH(LEGAL)]

Statement Of Nondiscrimination

The District prohibits discrimination, including harassment, against any student. Discrimination is defined as treating a student or group of students differently from similarly situated students on the basis of race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law. One type of harassment this policy prohibits is dating violence, as defined below. Retaliation against anyone exercising their rights under this policy is a violation of District policy and is prohibited.

Harassment

Harassment of a student is defined as physical, verbal, or nonverbal conduct based on the student's race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
3. Otherwise adversely affects the student's educational opportunities.

Harassment includes dating violence as defined by law and this policy.

Examples

Examples of prohibited harassment may include offensive or derogatory language directed at another person's religious beliefs or practices, accent, skin color, or need for accommodation; threatening, intimidating, or humiliating conduct; offensive jokes, name calling, slurs, or rumors; cyberharassment; physical aggression or assault; display of graffiti or printed material promoting racial, ethnic, or other negative stereotypes; or other kinds of aggressive conduct such as theft or damage to property.

Title IX Sexual Harassment

As required by law, the District shall follow the procedures below at Response to Title IX Sexual Harassment upon a report of sex-based harassment, including sexual harassment, gender-based harassment, and dating violence, when such allegations, if proved, would meet the definition of sexual harassment in an education program or activity and against a person in the United States under Title IX. [See FFH(LEGAL)]

Other Sexual Harassment

By An Employee

Sexual harassment of a student by a District employee includes both welcome and unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. A District employee causes the student to believe that the student must submit to the conduct in order to participate in a school program or activity, or that the employee will make an educational decision based on whether or not the student submits to the conduct; or
2. The conduct is so severe, persistent, or pervasive that it:
    1. Affects the student's ability to participate in or benefit from an educational program or activity, or otherwise adversely affects the student's educational opportunities; or
    2. Creates an intimidating, threatening, hostile, or abusive educational environment.

Romantic or other inappropriate social relationships between students and District employees are prohibited. Any sexual relationship between a student and a District employee is always prohibited, even if consensual. [See DH]

By Others

Sexual harassment of a student, including harassment committed by another student, includes unwelcome sexual advances; requests for sexual favors; or sexually motivated physical, verbal, or nonverbal conduct when the conduct is so severe, persistent, or pervasive that it:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
3. Otherwise adversely affects the student's educational opportunities.

Examples

Examples of sexual harassment of a student may include sexual advances; touching intimate body parts or coercing physical contact that is sexual in nature; jokes or conversations of a sexual nature; and other sexually motivated conduct, contact, or communications, including electronic communication.

Necessary or permissible physical contact such as assisting a child by taking the child's hand, comforting a child with a hug, or other physical contact not reasonably construed as sexual in nature is not sexual harassment.

Gender-Based Harassment

Gender-based harassment includes physical, verbal, or nonverbal conduct based on the student's gender, the student's expression of characteristics perceived as stereotypical for the student's gender, or the student's failure to conform to stereotypical notions of masculinity or femininity. For purposes of this policy, gender-based harassment is considered prohibited harassment if the conduct is so severe, persistent, or pervasive that the conduct:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;

2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or

3. Otherwise adversely affects the student's educational opportunities.

Examples

Examples of gender-based harassment directed against a student, regardless of the student's or the harasser's actual or perceived sexual orientation or gender identity, may include offensive jokes, name-calling, slurs, or rumors; cyberharassment; physical aggression or assault; threatening or intimidating conduct; or other kinds of aggressive conduct such as theft or damage to property.

Dating Violence

Dating violence occurs when a person in a current or past dating relationship uses physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control the other person in the relationship. Dating violence also occurs when a person commits these acts against a person in a marriage or dating relationship with the individual who is or was once in a marriage or dating relationship with the person committing the offense.

For purposes of this policy, dating violence is considered prohibited harassment if the conduct is so severe, persistent, or pervasive that the conduct:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;

2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or

3. Otherwise adversely affects the student's educational opportunities.

Examples	Examples of dating violence against a student may include physical or sexual assaults; name-calling; put-downs; or threats directed at the student, the student's family members, or members of the student's household. Additional examples may include destroying property belonging to the student, threatening to commit suicide or homicide if the student ends the relationship, attempting to isolate the student from friends and family, stalking, threatening a student's spouse or current dating partner, or encouraging others to engage in these behaviors.

Reporting Procedures

Student Report	Any student who believes that he or she has experienced prohibited conduct and any person who believes that a student has experienced prohibited conduct should immediately report the alleged acts to a teacher, school counselor, principal, other District employee, or the appropriate District official listed in this policy.
Employee Report	Any District employee who suspects or receives direct or indirect notice that a student or group of students has or may have experienced prohibited conduct shall immediately notify the appropriate District official listed in this policy and take any other steps required by this policy.
Definition Of District Officials	For the purposes of this policy, District officials are the Title IX coordinator, the ADA/Section 504 coordinator, and the Superintendent.
Title IX Coordinator	Reports of discrimination based on sex, including sexual harassment, gender-based harassment, or dating violence, may be directed to the designated Title IX coordinator for students. [See FFH(EXHIBIT)]
ADA / Section 504 Coordinator	Reports of discrimination based on disability may be directed to the designated ADA/Section 504 coordinator for students. [See FFH(EXHIBIT)]

Superintendent

The Superintendent shall serve as coordinator for purposes of District compliance with all other nondiscrimination laws.

Alternative Reporting Procedures

An individual shall not be required to report prohibited conduct to the person alleged to have committed the conduct. Reports concerning prohibited conduct, including reports against the Title IX coordinator or ADA/Section 504 coordinator, may be directed to the Superintendent.

A report against the Superintendent may be made directly to the Board President or to the school attorney, who shall then report it to the Board President. In the event of a report being made against the Superintendent, the Board shall appoint an appropriate person to conduct an investigation.

Timely Reporting

To ensure the District's prompt investigation, reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act.

Notice To Parents

The District official or designee shall promptly notify the parents of any student alleged to have experienced prohibited conduct by a District employee or another adult. [For parental notification requirements regarding an allegation of educator misconduct with a student, see FFF.]

When the District receives a report of prohibited conduct that includes dating violence, the appropriate District official shall immediately notify the parent or guardian of the student who has been identified in the report as the alleged victim or perpetrator.

Investigation Of Reports Other Than Title IX

The following procedures apply to all allegations of prohibited conduct other than allegations of harassment prohibited by Title IX. [See FFH(LEGAL)] For allegations of sex-based harassment that, if proved, would meet the definition of sexual harassment under Title IX, including sexual harassment, gender-based harassment, and dating violence, see the procedures below at Response to Title IX Sexual Harassment.

The District may request, but shall not require, a written report. If a report is made orally, the District official shall reduce the report to written form.

Initial Assessment

Upon receipt or notice of a report, the District official shall determine whether the allegations, if proved, would constitute prohibited conduct as defined by this policy. If so, the District shall immediately undertake an investigation, except as provided below at Criminal Investigation.

If the District official determines that the allegations, if proved, would not constitute prohibited conduct as defined by this policy, the District official shall refer the complaint for consideration under FFI.

Interim Action	If appropriate and regardless of whether a criminal or regulatory investigation regarding the alleged conduct is pending, the District shall promptly take interim action calculated to address prohibited conduct or bullying prior to the completion of the District's investigation.
District Investigation	The investigation may be conducted by the District official or a designee, such as the principal, or by a third party designated by the District, such as an attorney. When appropriate, the principal shall be involved in or informed of the investigation. The investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.
Criminal Investigation	If a law enforcement or regulatory agency notifies the District that a criminal or regulatory investigation has been initiated, the District shall confer with the agency to determine if the District investigation would impede the criminal or regulatory investigation. The District shall proceed with its investigation only to the extent that it does not impede the ongoing criminal or regulatory investigation. After the law enforcement or regulatory agency has finished gathering its evidence, the District shall promptly resume its investigation.
Concluding The Investigation	Absent extenuating circumstances, such as a request by a law enforcement or regulatory agency for the District to delay its investigation, the investigation should be completed within ten District business days from the date of the report; however, the investigator shall take additional time if necessary to complete a thorough investigation. The investigator shall prepare a written report of the investigation. The report shall include a determination of whether prohibited conduct or bullying occurred. The report shall be filed with the District official overseeing the investigation.
Notification Of Outcome	Notification of the outcome of the investigation shall be provided to both parties in compliance with FERPA.

District Action	
Prohibited Conduct	If the results of an investigation indicate that prohibited conduct occurred, the District shall promptly respond by taking appropriate disciplinary action in accordance with the Student Code of Conduct and may take corrective action reasonably calculated to address the conduct.
Corrective Action	Examples of corrective action may include a training program for those involved in the report, a comprehensive education program for the school community, counseling to the victim and the student who engaged in prohibited conduct, follow-up inquiries to determine if any new incidents or any instances of retaliation have occurred, involving parents and students in efforts to identify problems and improve the school climate, increasing staff monitoring of areas where prohibited conduct has occurred, and reaffirming the District's policy against discrimination, harassment, and retaliation.
Bullying	If the results of an investigation indicate that bullying occurred, as defined by FFI, the District official shall refer to FFI for appropriate notice to parents and District action. The District official shall refer to FDB for transfer provisions.
Improper Conduct	If the investigation reveals improper conduct that did not rise to the level of prohibited conduct or bullying, the District may take disciplinary action in accordance with the Student Code of Conduct or other corrective action reasonably calculated to address the conduct.
Confidentiality	To the greatest extent possible, the District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.
Appeal	A student or parent who is dissatisfied with the outcome of the investigation may appeal through FNG(LOCAL), beginning at the appropriate level. A student or parent has the right to file a complaint with the United States Department of Education Office for Civil Rights.

Response To Title IX Sexual Harassment

General Response

For purposes of the District's response to reports of harassment prohibited by Title IX, definitions can be found in FFH(LEGAL).

When the District receives notice or an allegation of conduct that, if proved, would meet the definition of sexual harassment under Title IX, the Title IX coordinator shall promptly contact the complainant to:

- Discuss the availability of supportive measures and inform the complainant that they are available, with or without the filing of a formal complaint;
- Consider the complainant's wishes with respect to supportive measures; and
- Explain to the complainant the option and process for filing a formal complaint.

The District's response to sexual harassment shall treat complainants and respondents equitably by offering supportive measures to both parties, as appropriate, and by following the Title IX formal complaint process before imposing disciplinary sanctions or other actions that are not supportive measures against a respondent.

If a formal complaint is not filed or dismissed, the District reserves the right to investigate and respond to prohibited conduct in accordance with Board policies and the Student Code of Conduct. The Title IX coordinator also reserves the right to sign a formal complaint, initiating the Title IX grievance process, if it would be deliberately indifferent not to investigate and respond to the prohibited conduct in accordance with Board policies and the Student Code of Conduct.

Title IX Formal Complaint Process

To distinguish the process described below from the District's general grievance policies [see DGBA, FNG, and GF], this policy refers to the grievance process required by Title IX regulations for responding to formal complaints of sexual harassment as the District's "Title IX formal complaint process."

The Superintendent shall ensure the development of a Title IX formal complaint process that complies with legal requirements. [See FFH(LEGAL)] The formal complaint process shall be posted on the District's website. In compliance with Title IX regulations, the District's Title IX formal complaint process shall address the following basic requirements:

1. Equitable treatment of complainants and respondents;
2. An objective evaluation of all relevant evidence;
3. A requirement that the Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process not have a conflict of interest or bias;
4. A presumption that the respondent is not responsible for the alleged sexual harassment until a determination is made at the conclusion of the Title IX formal complaint process;
5. Time frames that provide for a reasonably prompt conclusion of the Title IX formal complaint process, including time frames for appeals and any informal resolution process, and that allow for temporary delays or the limited extension of time frames with good cause and written notice as required by law;

6. A description of the possible disciplinary sanctions and remedies that may be implemented following a determination of responsibility for the alleged sexual harassment;
7. A statement of the standard of evidence to be used to determine responsibility for all Title IX formal complaints of sexual harassment;
8. Procedures and permissible bases for the complainant and respondent to appeal a determination of responsibility or a dismissal of a Title IX formal complaint or any allegations therein;
9. A description of the supportive measures available to the complainant and respondent;
10. A prohibition on using or seeking information protected under a legally recognized privilege unless the individual holding the privilege has waived the privilege;
11. Additional formal complaint procedures in 34 C.F.R. 106.45(b), including written notice of a formal complaint, consolidation of formal complaints, recordkeeping, and investigation procedures; and
12. Other local procedures as determined by the Superintendent.

Standard Of Evidence

The standard of evidence used to determine responsibility in a Title IX formal complaint of sexual harassment shall be the preponderance of the evidence.

Retaliation

The District prohibits retaliation by a student or District employee against a student alleged to have experienced discrimination or harassment, including dating violence, or another student who, in good faith, makes a report of harassment or discrimination, files a complaint of harassment or discrimination, serves as a witness, or participates in an investigation. The definition of prohibited retaliation under this policy also includes retaliation against a student who refuses to participate in any manner in an investigation under Title IX. In the absence of a formal complaint, allegations of retaliation shall be investigated under Investigation of Reports Other Than Title IX, above.

Examples

Examples of retaliation may include threats, intimidation, coercion, rumor spreading, ostracism, assault, destruction of property, unjustified punishments, or unwarranted grade reductions. Unlawful retaliation does not include petty slights or annoyances.

False Claim

A student who intentionally makes a false claim or offers false statements in a District investigation regarding discrimination or harassment, including dating violence, shall be subject to appropriate disciplinary action in accordance with law.

Records Retention

The District shall retain copies of allegations, investigation reports, and related records regarding any prohibited conduct in accordance with the District's records control schedules, but for no less

than the minimum amount of time required by law. [See CPC]

[For Title IX recordkeeping and retention provisions, see FFH(LEGAL) and the District's Title IX formal complaint process.]

Access To Policy And Procedures

Information regarding this policy and any accompanying procedures shall be distributed annually in the employee and student handbooks. Copies of the policy and procedures shall be posted on the District's website, to the extent practicable, and readily available at each campus and the District's administrative offices.

Student Welfare: Freedom from Discrimination, Harassment, and Retaliation

Note: This policy addresses discrimination, including harassment, and retaliation against District students. For provisions regarding discrimination, including harassment, and retaliation against District employees, see DIA. For reporting requirements related to child abuse and neglect, see FFG. Note that FFH shall be used in conjunction with FFI (bullying) for certain prohibited conduct.

Prohibited Conduct

In this policy, the term "prohibited conduct" includes discrimination, harassment, dating violence, and retaliation as defined by this policy, even if the behavior does not rise to the level of unlawful conduct.

Prohibited conduct also includes sexual harassment as defined by Title IX. [See FFH(LEGAL)]

Statement Of Nondiscrimination

The District prohibits discrimination, including harassment, against any student. Discrimination is defined as treating a student or group of students differently from similarly situated students on the basis of race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law. One type of harassment this policy prohibits is dating violence, as defined below. Retaliation against anyone exercising their rights under this policy is a violation of District policy and is prohibited.

Harassment

Harassment of a student is defined as physical, verbal, or nonverbal conduct based on the student's race, color, religion, sex, gender, national origin, age, disability, or any other basis prohibited by law, when the conduct is so severe, persistent, or pervasive that the conduct:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
3. Otherwise adversely affects the student's educational opportunities.

Harassment includes dating violence as defined by law and this policy.

Examples

Examples of prohibited harassment may include offensive or derogatory language directed at another person's religious beliefs or practices, accent, skin color, or need for accommodation; threatening, intimidating, or humiliating conduct; offensive jokes, name calling, slurs, or rumors; cyberharassment; physical aggression or assault; display of graffiti or printed material promoting racial, ethnic, or other negative stereotypes; or other kinds of aggressive conduct such as theft or damage to property.

Title IX Sexual Harassment

As required by law, the District shall follow the procedures below at Response to Title IX Sexual Harassment upon a report of sex-based harassment, including sexual harassment, gender-based harassment, and dating violence, when such allegations, if proved, would meet the definition of sexual harassment in an education program or activity and against a person in the United States under Title IX. [See FFH(LEGAL)]

Other Sexual Harassment

By An Employee

Sexual harassment of a student by a District employee includes both welcome and unwelcome sexual advances; requests for sexual favors; sexually motivated physical, verbal, or nonverbal conduct; or other conduct or communication of a sexual nature when:

1. A District employee causes the student to believe that the student must submit to the conduct in order to participate in a school program or activity, or that the employee will make an educational decision based on whether or not the student submits to the conduct; or
2. The conduct is so severe, persistent, or pervasive that it:
    1. Affects the student's ability to participate in or benefit from an educational program or activity, or otherwise adversely affects the student's educational opportunities; or
    2. Creates an intimidating, threatening, hostile, or abusive educational environment.

Romantic or other inappropriate social relationships between students and District employees are prohibited. Any sexual relationship between a student and a District employee is always prohibited, even if consensual. [See DH]

By Others

Sexual harassment of a student, including harassment committed by another student, includes unwelcome sexual advances; requests for sexual favors; or sexually motivated physical, verbal, or nonverbal conduct when the conduct is so severe, persistent, or pervasive that it:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;
2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or
3. Otherwise adversely affects the student's educational opportunities.

Examples

Examples of sexual harassment of a student may include sexual advances; touching intimate body parts or coercing physical contact that is sexual in nature; jokes or conversations of a sexual nature; and other sexually motivated conduct, contact, or communications, including electronic communication.

Necessary or permissible physical contact such as assisting a child by taking the child's hand, comforting a child with a hug, or other physical contact not reasonably construed as sexual in nature is not sexual harassment.

Gender-Based Harassment

Gender-based harassment includes physical, verbal, or nonverbal conduct based on the student's gender, the student's expression of characteristics perceived as stereotypical for the student's gender, or the student's failure to conform to stereotypical notions of masculinity or femininity. For purposes of this policy, gender-based harassment is considered prohibited harassment if the conduct is so severe, persistent, or pervasive that the conduct:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;

2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or

3. Otherwise adversely affects the student's educational opportunities.

Examples

Examples of gender-based harassment directed against a student, regardless of the student's or the harasser's actual or perceived sexual orientation or gender identity, may include offensive jokes, name-calling, slurs, or rumors; cyberharassment; physical aggression or assault; threatening or intimidating conduct; or other kinds of aggressive conduct such as theft or damage to property.

Dating Violence

Dating violence occurs when a person in a current or past dating relationship uses physical, sexual, verbal, or emotional abuse to harm, threaten, intimidate, or control the other person in the relationship. Dating violence also occurs when a person commits these acts against a person in a marriage or dating relationship with the individual who is or was once in a marriage or dating relationship with the person committing the offense.

For purposes of this policy, dating violence is considered prohibited harassment if the conduct is so severe, persistent, or pervasive that the conduct:

1. Affects a student's ability to participate in or benefit from an educational program or activity, or creates an intimidating, threatening, hostile, or offensive educational environment;

2. Has the purpose or effect of substantially or unreasonably interfering with the student's academic performance; or

3. Otherwise adversely affects the student's educational opportunities.

Examples	Examples of dating violence against a student may include physical or sexual assaults; name-calling; put-downs; or threats directed at the student, the student's family members, or members of the student's household. Additional examples may include destroying property belonging to the student, threatening to commit suicide or homicide if the student ends the relationship, attempting to isolate the student from friends and family, stalking, threatening a student's spouse or current dating partner, or encouraging others to engage in these behaviors.

Reporting Procedures

Student Report	Any student who believes that he or she has experienced prohibited conduct and any person who believes that a student has experienced prohibited conduct should immediately report the alleged acts to a teacher, school counselor, principal, other District employee, or the appropriate District official listed in this policy.
Employee Report	Any District employee who suspects or receives direct or indirect notice that a student or group of students has or may have experienced prohibited conduct shall immediately notify the appropriate District official listed in this policy and take any other steps required by this policy.
Definition Of District Officials	For the purposes of this policy, District officials are the Title IX coordinator, the ADA/Section 504 coordinator, and the Superintendent.
Title IX Coordinator	Reports of discrimination based on sex, including sexual harassment, gender-based harassment, or dating violence, may be directed to the designated Title IX coordinator for students. [See FFH(EXHIBIT)]
ADA / Section 504 Coordinator	Reports of discrimination based on disability may be directed to the designated ADA/Section 504 coordinator for students. [See FFH(EXHIBIT)]

Superintendent

The Superintendent shall serve as coordinator for purposes of District compliance with all other nondiscrimination laws.

Alternative Reporting Procedures

An individual shall not be required to report prohibited conduct to the person alleged to have committed the conduct. Reports concerning prohibited conduct, including reports against the Title IX coordinator or ADA/Section 504 coordinator, may be directed to the Superintendent.

A report against the Superintendent may be made directly to the Board President or to the school attorney, who shall then report it to the Board President. In the event of a report being made against the Superintendent, the Board shall appoint an appropriate person to conduct an investigation.

Timely Reporting

To ensure the District's prompt investigation, reports of prohibited conduct shall be made as soon as possible after the alleged act or knowledge of the alleged act.

Notice To Parents

The District official or designee shall promptly notify the parents of any student alleged to have experienced prohibited conduct by a District employee or another adult. [For parental notification requirements regarding an allegation of educator misconduct with a student, see FFF.]

When the District receives a report of prohibited conduct that includes dating violence, the appropriate District official shall immediately notify the parent or guardian of the student who has been identified in the report as the alleged victim or perpetrator.

Investigation Of Reports Other Than Title IX

The following procedures apply to all allegations of prohibited conduct other than allegations of harassment prohibited by Title IX. [See FFH(LEGAL)] For allegations of sex-based harassment that, if proved, would meet the definition of sexual harassment under Title IX, including sexual harassment, gender-based harassment, and dating violence, see the procedures below at Response to Title IX Sexual Harassment.

The District may request, but shall not require, a written report. If a report is made orally, the District official shall reduce the report to written form.

Initial Assessment

Upon receipt or notice of a report, the District official shall determine whether the allegations, if proved, would constitute prohibited conduct as defined by this policy. If so, the District shall immediately undertake an investigation, except as provided below at Criminal Investigation.

If the District official determines that the allegations, if proved, would not constitute prohibited conduct as defined by this policy, the District official shall refer the complaint for consideration under FFI.

Interim Action	If appropriate and regardless of whether a criminal or regulatory investigation regarding the alleged conduct is pending, the District shall promptly take interim action calculated to address prohibited conduct or bullying prior to the completion of the District's investigation.
District Investigation	The investigation may be conducted by the District official or a designee, such as the principal, or by a third party designated by the District, such as an attorney. When appropriate, the principal shall be involved in or informed of the investigation. The investigation may consist of personal interviews with the person making the report, the person against whom the report is filed, and others with knowledge of the circumstances surrounding the allegations. The investigation may also include analysis of other information or documents related to the allegations.
Criminal Investigation	If a law enforcement or regulatory agency notifies the District that a criminal or regulatory investigation has been initiated, the District shall confer with the agency to determine if the District investigation would impede the criminal or regulatory investigation. The District shall proceed with its investigation only to the extent that it does not impede the ongoing criminal or regulatory investigation. After the law enforcement or regulatory agency has finished gathering its evidence, the District shall promptly resume its investigation.
Concluding The Investigation	Absent extenuating circumstances, such as a request by a law enforcement or regulatory agency for the District to delay its investigation, the investigation should be completed within ten District business days from the date of the report; however, the investigator shall take additional time if necessary to complete a thorough investigation. The investigator shall prepare a written report of the investigation. The report shall include a determination of whether prohibited conduct or bullying occurred. The report shall be filed with the District official overseeing the investigation.
Notification Of Outcome	Notification of the outcome of the investigation shall be provided to both parties in compliance with FERPA.

District Action	
Prohibited Conduct	If the results of an investigation indicate that prohibited conduct occurred, the District shall promptly respond by taking appropriate disciplinary action in accordance with the Student Code of Conduct and may take corrective action reasonably calculated to address the conduct.
Corrective Action	Examples of corrective action may include a training program for those involved in the report, a comprehensive education program for the school community, counseling to the victim and the student who engaged in prohibited conduct, follow-up inquiries to determine if any new incidents or any instances of retaliation have occurred, involving parents and students in efforts to identify problems and improve the school climate, increasing staff monitoring of areas where prohibited conduct has occurred, and reaffirming the District's policy against discrimination, harassment, and retaliation.
Bullying	If the results of an investigation indicate that bullying occurred, as defined by FFI, the District official shall refer to FFI for appropriate notice to parents and District action. The District official shall refer to FDB for transfer provisions.
Improper Conduct	If the investigation reveals improper conduct that did not rise to the level of prohibited conduct or bullying, the District may take disciplinary action in accordance with the Student Code of Conduct or other corrective action reasonably calculated to address the conduct.
Confidentiality	To the greatest extent possible, the District shall respect the privacy of the complainant, persons against whom a report is filed, and witnesses. Limited disclosures may be necessary in order to conduct a thorough investigation and comply with applicable law.
Appeal	A student or parent who is dissatisfied with the outcome of the investigation may appeal through FNG(LOCAL), beginning at the appropriate level. A student or parent has the right to file a complaint with the United States Department of Education Office for Civil Rights.

Response To Title IX Sexual Harassment

General Response

For purposes of the District's response to reports of harassment prohibited by Title IX, definitions can be found in FFH(LEGAL).

When the District receives notice or an allegation of conduct that, if proved, would meet the definition of sexual harassment under Title IX, the Title IX coordinator shall promptly contact the complainant to:

- Discuss the availability of supportive measures and inform the complainant that they are available, with or without the filing of a formal complaint;
- Consider the complainant's wishes with respect to supportive measures; and
- Explain to the complainant the option and process for filing a formal complaint.

The District's response to sexual harassment shall treat complainants and respondents equitably by offering supportive measures to both parties, as appropriate, and by following the Title IX formal complaint process before imposing disciplinary sanctions or other actions that are not supportive measures against a respondent.

If a formal complaint is not filed or dismissed, the District reserves the right to investigate and respond to prohibited conduct in accordance with Board policies and the Student Code of Conduct. The Title IX coordinator also reserves the right to sign a formal complaint, initiating the Title IX grievance process, if it would be deliberately indifferent not to investigate and respond to the prohibited conduct in accordance with Board policies and the Student Code of Conduct.

Title IX Formal Complaint Process

To distinguish the process described below from the District's general grievance policies [see DGBA, FNG, and GF], this policy refers to the grievance process required by Title IX regulations for responding to formal complaints of sexual harassment as the District's "Title IX formal complaint process."

The Superintendent shall ensure the development of a Title IX formal complaint process that complies with legal requirements. [See FFH(LEGAL)] The formal complaint process shall be posted on the District's website. In compliance with Title IX regulations, the District's Title IX formal complaint process shall address the following basic requirements:

1. Equitable treatment of complainants and respondents;
2. An objective evaluation of all relevant evidence;
3. A requirement that the Title IX coordinator, investigator, decision-maker, or any person designated to facilitate an informal resolution process not have a conflict of interest or bias;
4. A presumption that the respondent is not responsible for the alleged sexual harassment until a determination is made at the conclusion of the Title IX formal complaint process;
5. Time frames that provide for a reasonably prompt conclusion of the Title IX formal complaint process, including time frames for appeals and any informal resolution process, and that allow for temporary delays or the limited extension of time frames with good cause and written notice as required by law;

6. A description of the possible disciplinary sanctions and remedies that may be implemented following a determination of responsibility for the alleged sexual harassment;
7. A statement of the standard of evidence to be used to determine responsibility for all Title IX formal complaints of sexual harassment;
8. Procedures and permissible bases for the complainant and respondent to appeal a determination of responsibility or a dismissal of a Title IX formal complaint or any allegations therein;
9. A description of the supportive measures available to the complainant and respondent;
10. A prohibition on using or seeking information protected under a legally recognized privilege unless the individual holding the privilege has waived the privilege;
11. Additional formal complaint procedures in 34 C.F.R. 106.45(b), including written notice of a formal complaint, consolidation of formal complaints, recordkeeping, and investigation procedures; and
12. Other local procedures as determined by the Superintendent.

Standard Of Evidence

The standard of evidence used to determine responsibility in a Title IX formal complaint of sexual harassment shall be the preponderance of the evidence.

Retaliation

The District prohibits retaliation by a student or District employee against a student alleged to have experienced discrimination or harassment, including dating violence, or another student who, in good faith, makes a report of harassment or discrimination, files a complaint of harassment or discrimination, serves as a witness, or participates in an investigation. The definition of prohibited retaliation under this policy also includes retaliation against a student who refuses to participate in any manner in an investigation under Title IX. In the absence of a formal complaint, allegations of retaliation shall be investigated under Investigation of Reports Other Than Title IX, above.

Examples

Examples of retaliation may include threats, intimidation, coercion, rumor spreading, ostracism, assault, destruction of property, unjustified punishments, or unwarranted grade reductions. Unlawful retaliation does not include petty slights or annoyances.

False Claim

A student who intentionally makes a false claim or offers false statements in a District investigation regarding discrimination or harassment, including dating violence, shall be subject to appropriate disciplinary action in accordance with law.

Records Retention

The District shall retain copies of allegations, investigation reports, and related records regarding any prohibited conduct in accordance with the District's records control schedules, but for no less

than the minimum amount of time required by law. [See CPC]

[For Title IX recordkeeping and retention provisions, see FFH(LEGAL) and the District's Title IX formal complaint process.]

Access To Policy And Procedures

Information regarding this policy and any accompanying procedures shall be distributed annually in the employee and student handbooks. Copies of the policy and procedures shall be posted on the District's website, to the extent practicable, and readily available at each campus and the District's administrative offices.

EXHIBIT “C”

EASEMENT

Adkey Gill Pipe Line.

20421

STATE OF TEXAS §
COUNTY OF MIDIAND §

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Gulf Refining Company has heretofore installed three (3) pipelines at the location shown on the attached map, which is marked Exhibit "A" and made a part hereof for all purposes, under the rights claimed by Gulf Refining Company to be vested in Gulf Refining Company and Gulf Oil Corporation by virtue of that certain right-of-way deed from S. L. Newsom and wife, Maudie Lee Newsom, as Grantor, to Gulf Refining Company and Gulf Oil Corporation, as Grantees, dated November 24, 1944, and recorded in Volume 81, page 492, Deed Records, Midland County, Texas, covering the following described land in Midland County, Texas, to-wit:

The South One-half (S/2) of Section 2, Block X, H. P. Hilliard Survey; and

WHEREAS, Gulf Refining Company desires to install additional pipelines along and parallel to the course of the three existing pipelines; and

WHEREAS, William B. Neely, Trustee, herein called "Neely", is the owner of all that portion of said Section 2 which is more particularly described by metes and bounds in Section I hereof, SAVE AND EXCEPT an undivided one-half (1/2) interest in the oil, gas and other minerals in and under and that may be produced therefrom, and the remaining portions of the said S/2 of Section 2 are owned by other persons as shown by the records of Midland County, Texas; and

WHEREAS, there exists between Gulf Refining Company and Neely a bona fide dispute and disagreement as to the right of Gulf Refining Company to install said additional pipelines at said location under the terms of said right-of-way deed and Gulf Refining Company and Neely have agreed to settle and compromise the differences existing between them upon the terms and conditions and subject to the limitations herein contained:

NOW THEREFORE, this agreement made and entered into by and between Gulf Refining Company and Gulf Oil Corporation and William B. Neely,

3446

2042-2

Trustee, in consideration of said settlement and compromise and One Dollar ($1.00) cash by each in hand paid to the other, the receipt of which is hereby acknowledged, and of the mutual covenants, conditions and limitations herein contained:

W I T N E S S E T H:

I.

Gulf Refining Company and Gulf Oil Corporation hereby bargain, sell, release and forever quit claim unto the said William B. Neely, Trustee, his heirs, successors, legal representatives and assigns, all right, title and interest in and to that certain tract or parcel of land situated in Midland County, Texas, and described as follows, to-wit:

All of the South 3/4 of the South 1/2 of Section 2, Block X, H. P. Hilliard Survey in Midland County, Texas, which was patented to John Taylor, Assignee of H. P. Hilliard by Patent No. 265, Volume 4, recorded in Volume 2, page 580, Deed Records, Midland County, Texas, SAVE AND EXCEPT two (2) acres of land, more or less, out of the Southeast corner of that portion thereof lying West of the State Highway running in a Northeasterly direction through said land, said two acre tract being described by metes and bounds as follows:

BEGINNING at the SE corner of Section 2, Block X, H. P. Hilliard Survey,

THENCE S 74°32' W a distance of 1763.6' along the South line of said Section;

THENCE N 15°28' W a distance of 25.0' to a stake, the beginning call for this tract;

THENCE N 14°40' E a distance of 241.4' along the West boundary of Highway FM 706 to a stake to establish the NE corner of this tract;

THENCE S 74°32' W a distance of 478.1' to a stake to establish the NW corner of this tract;

THENCE S 15°28' E a distance of 208.7' to a stake to establish the SW corner of this tract;

THENCE N 74°32' a distance of 356.8' to a stake, the place of beginning of said tract and the SE corner of this tract, said two-acre tract being the same land described in that certain deed from S. L. Newsom to R. R. Herrington by deed recorded in Volume 101, page 187, Deed Records, Midland County, Texas, and also SAVE AND EXCEPT a tract containing 49.51 acres, more or less, lying East of said State Highway and being described by metes and bounds as follows, to-wit:

BEGINNING at a ½" iron pipe, the SE corner of the tract herein conveyed and the SE corner of Section 2, Block X, H. P. Hilliard Survey, Midland County, Texas;

20442-3

THENCE S 74°32' W. 1655.1 ft. along the center line of an East-West graded road to a point in the East R/W line of the New Lamesa Road for the SW corner of the tract herein conveyed;

THENCE N 14°35'E. 1870.5 ft. along E said Lamesa Road to R/W Marker No. 193;

THENCE N 13°11' E. 100 ft. to R/W Marker No. 194;

THENCE N 11°47' E 100 ft. to R/W Marker No. 195;

THENCE N 10°23' E 100 ft. to R/W Marker No. 196;

THENCE N 8°59' E 100 ft. to R/W Marker No. 197;

THENCE N 8°45' E 16.2 ft. to ½" iron pipe for the NW corner of the tract herein conveyed;

THENCE N 74°37' E 526.3 ft. to a point in center of a North-South graded road;

THENCE S 15°23' E 1989.4 ft. along center of a North-South graded road to the place of beginning, said 49.51 acre tract being the same land described in the deed from Jeff King and wife to O. W. Worley by deed recorded in Volume 108, page 220, Deed Records, Midland County, Texas;

acquired by them under and by virtue of that certain deed from S. L. Newson and wife, Maudie Lee Newsom, to Gulf Refining Company and Gulf Oil Corporation dated November 24, 1944, recorded in Volume 81, page 492, Deed Records, Midland County, Texas, insofar as the same relates to the lands of William B. Neely, Trustee, hereinabove described.

TO HAVE AND TO HOLD the said premises, together with all and singular the rights, privileges and appurtenances thereunto in any manner belonging unto the said William B. Neely, Trustee, his heirs, successors, legal representatives and assigns, forever, so that neither the said Gulf Refining Company nor Gulf Oil Corporation, nor their successors, nor any person or persons claiming under them, shall, at any time hereafter, have, claim, or demand any right or title to the aforesaid premises or appurtenances, or any part thereof, under and by virtue of said deed dated November 24, 1944, insofar as the same covers and includes the lands described in this section, or otherwise, except as herein expressly provided.

II.

William B. Neely, Trustee, does hereby grant and convey to Gulf Refining Company and Gulf Oil Corporation, hereinafter at times

346

2042-4

referred to collectively as "Gulf", their successors and assigns, the right-of-way easement and privilege to lay, repair, maintain, operate and remove pipelines and replace existing pipelines with other lines for the transportation of oil, oil products, gas, water, salt brine, liquified minerals or other mineral solutions over and through the following described land in Midland County, Texas, to-wit:

> BEGINNING at State Highway No. 349 Survey Station 178 + 08, a Point in the West Right of Way fence line of State Highway No. 349, the Southeast corner of said tract of land;
>
> THENCE N 64°58' W a distance of 2458.1 feet, the Southwest corner of said tract, a point;
>
> THENCE N 74°15' E a distance of 130.1 feet, the Northwest corner of said tract, a point;
>
> THENCE S 64°58' E a distance of 2343.8 feet, the Northeast corner of said tract, and State Highway No. 349 Survey Station 178 + 94.4, a point;
>
> THENCE S 14°30' W a distance of 86.4 feet to the place of beginning;
>
> All being within Section 2, H. P. Hilliard Survey, Block X, Midland County, Texas.

TO HAVE AND TO HOLD said right-of-way unto Gulf Refining Company and Gulf Oil Corporation, their successors and assigns, upon the terms, limitations and conditions as follows:

1. No pipeline shall be laid nearer than fifteen feet (15') from the North and South boundary lines of the above described right-of-way strip.

2. Each pipeline to be hereinafter installed, or replaced or reconditioned, shall be buried beneath the surface of the ground at a depth sufficient to insure that the top of the pipeline shall be thirty-six inches (36") below the surface of the soil.

3. Gulf shall have the right of ingress and egress to and from the pipeline only along the course of and within the boundary of said right-of-way, or by such other and additional means as shall from time to time be designated in writing by Neely, and not otherwise, and the right of ingress and egress shall be exercised only at proper and reasonable times.

4. Except in emergencies, Gulf shall not cut any fence nor move any irrigation water pipe, nor cut any irrigation ditch, without first having obtained the consent of Neely so to do, which consent shall not be unreasonably withheld.

5. Gulf shall not permit nor suffer any ditch in connection with the installation or removal of said pipeline to remain open longer than is reasonably necessary for the installation or removal of its pipelines and the soil moved in opening the ditch shall be restored as nearly as may be possible to that condition which existed immediately prior to the opening of said ditch.

6. No valves, fittings, meters, or other pipeline equipment or appurtenances shall be installed on the surface or at any depths below the surface less than the depth hereinabove specified in the case of the pipelines.

7. Gulf shall not permit or suffer any equipment or pipe to be stored on the right-of-way at any time in excess of the time required for construction.

8. Gulf shall not permit or suffer any equipment to be on the right-of-way at any time, except such equipment as is absolutely essential in laying, maintaining and removing the pipelines; that is to say, the right of ingress and egress is hereby denied to all equipment except to that equipment which is essential in laying, maintaining, and removing the pipeline.

9. Gulf and Neely each agree that payment of or obligation to pay damages as provided herein shall not be construed as permitting or excusing any continued or repeated violation of any of the covenants contained in paragraphs 1, 2, 3, 4, 5, 6, 7 or 8 above.

10. There is EXCEPTED from this right-of-way agreement and RESERVED unto Neely, all rights with respect to the use of the land contained within the boundaries of the right-of-way not herein specifically conferred upon Gulf, except that Neely shall not erect any buildings or permanent structures on said easement strip, which would interfere with the pipeline operations herein permitted.

348

204/2-6

11. Gulf agrees to pay Neely for all damage to any building, residence, or other structure, agricultural implements, irrigation equipment, water wells, livestock, shrubs, trees, grass, growing crops, fences and roads, arising out of installing, repairing, patrolling, maintaining and removing any pipeline, or as a result of the escape of any substances transported through said pipeline. This obligation is unconditional and absolute. The obligation of Gulf to pay damages as aforesaid, extends to damage within the boundaries of the right-of-way, as well as to damage caused outside of the boundaries of the right-of-way.

III.

The said William B. Neely, Trustee, does hereby expressly subordinate and make inferior to the foregoing grant and conveyance any right, title or interest he may have acquired by virtue of the conveyance by Magnolia Pipe Line Company of its rights, title and interest to William B. Neely, Trustee, as more particularly set forth by said instrument of record in Volume 263, page 278, Deed Records, Midland County, Texas, which instrument is incorporated herein by reference for all intents and purposes and the said William B. Neely, Trustee, does further subordinate and make inferior any right, title or interest he may have acquired by the foregoing instrument to the rights of Gulf Refining Company and Gulf Oil Corporation acquired by them by virtue of other right-of-way deeds or conveyances as reflected by the Records of the County Clerk of Midland County, Texas, across Section 2, Block X, H. P. Hilliard Survey, Midland County, Texas.

IV.

The terms and conditions hereof shall extend to and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

IN WITNESS WHEREOF, this instrument executed in duplicate originals this 18th day of February, 1957.

William B. Neely, Trustee

William B. Neely, Trustee

2042-7

GULF REFINING COMPANY

ATTEST: C. N. SHAFFER
Assistant Secretary

By J. L. Irvin
J. L. Irvin, Attorney in Fact.

GULF OIL CORPORATION

ATTEST: B. E. SCOTT
Assistant Secretary

By J. L. Irvin
J. L. Irvin, Attorney in Fact.

O.K. for

STATE OF TEXAS)

COUNTY OF HARRIS)

BEFORE ME, the undersigned authority, on this day personally appeared J. L. IRVIN, known to me to be the person whose name is subscribed to the foregoing instrument as Attorney in Fact of GULF REFINING COMPANY, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said GULF REFINING COMPANY.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 18th day of February, 1957.

B. F. Pickens
Notary Public in and for Harris County, Texas.

STATE OF TEXAS)

COUNTY OF HARRIS)

BEFORE ME, the undersigned authority, on this day personally appeared J. L. IRVIN, known to me to be the person whose name is subscribed to the foregoing instrument as Attorney in Fact of GULF OIL CORPORATION, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated, and as the act and deed of said GULF OIL CORPORATION.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 18th day of February, 1957.

B. F. Pickens
Notary Public in and for Harris County, Texas.

STATE OF TEXAS)

COUNTY OF MIDLAND)

BEFORE ME, the undersigned authority, on this day personally appeared WILLIAM B. NEELY, Trustee, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 20th day of February, 1957.

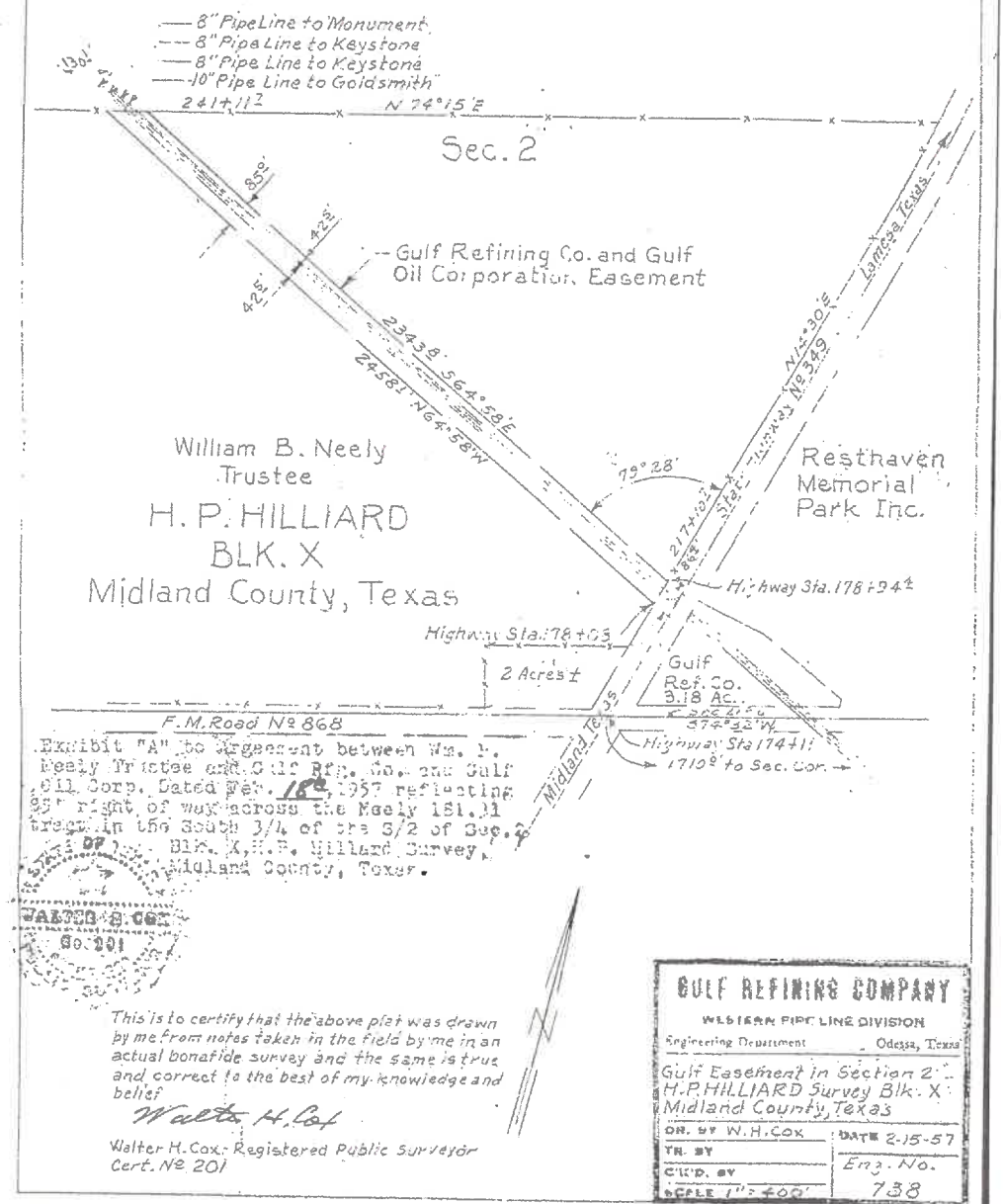
Mary M. Dunn
Notary Public in and for Midland County, Texas.

MARY M. DUNN
NOTARY PUBLIC

RWF/r
2-15-57
(2-7)

350

2042.8



Filed for Record on the 1 day of March A. D. 1957, at 10:30 o'clock A. M.

Duly Recorded this the 4 day of March A. D. 1957, at 9:06 o'clock A. M.

Instrument No. 2042

ROSENELLE CHERRY, County Clerk
Midland County, Texas

By Mary Gregory Deputy