

2017 -- H 6328

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS - UNLAWFUL EMPLOYMENT
PRACTICES

Introduced By: Representatives Keable, and Edwards

Date Introduced: June 14, 2017

Referred To: House Labor

It is enacted by the General Assembly as follows:

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

3 **28-5-7. Unlawful employment practices.**

4 It shall be an unlawful employment practice:

5 (1) For any employer:

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

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

15 (iii) In the recruiting of individuals for employment or in hiring them, to utilize any
16 employment agency, placement service, training school or center, labor organization, or any other
17 employee referring source which the employer knows, or has reasonable cause to know,
18 discriminates against individuals because of their race or color, religion, sex, sexual orientation,

1 gender identity or expression, disability, age, or country of ancestral origin;

2 (iv) To refuse to reasonably accommodate an employee's or prospective employee's
3 disability unless the employer can demonstrate that the accommodation would pose a hardship on
4 the employer's program, enterprise, or business; or

5 (v) When an employee has presented to the employer an internal complaint alleging
6 harassment in the workplace on the basis of race or color, religion, sex, disability, age, sexual
7 orientation, gender identity or expression, or country of ancestral origin, to refuse to disclose in a
8 timely manner in writing to that employee the disposition of the complaint, including a
9 description of any action taken in resolution of the complaint; provided, however, no other
10 personnel information shall be disclosed to the complainant.

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

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

21 (3) For any labor organization:

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

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

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

34 (iv) To refuse to reasonably accommodate a member's or prospective member's disability

1 unless the labor organization can demonstrate that the accommodation would pose a hardship on
2 the labor organization's program, enterprise, or business;

3 (4) Except where based on a bona fide occupational qualification certified by the
4 commission or where necessary to comply with any federal mandated affirmative action
5 programs, for any employer or employment agency, labor organization, placement service,
6 training school or center, or any other employee referring source, prior to employment or
7 admission to membership of any individual, to:

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

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

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

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

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

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

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

1 employment practice, it being the legislative intent that individuals may be held personally liable
2 for such conduct, including, but not limited to, individual employees of employers;

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

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

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

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

19 (8) (i) For any person who, on June 7, 1988, is providing either by direct payment or by
20 making contributions to a fringe benefit fund or insurance program, benefits in violation with §§
21 28-5-6, 28-5-7 and 28-5-38, until the expiration of a period of one year from June 7, 1988 or if
22 there is an applicable collective bargaining agreement in effect on June 7, 1988, until the
23 termination of that agreement, in order to come into compliance with §§ 28-5-6, 28-5-7 and 28-5-
24 38, to reduce the benefits or the compensation provided any employee on June 7, 1988, either
25 directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance
26 program.

27 (ii) Where the costs of these benefits on June 7, 1988 are apportioned between employers
28 and employees, the payments or contributions required to comply with §§ 28-5-6, 28-5-7 and 28-
29 5-38 may be made by employers and employees in the same proportion.

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

1 SECTION 2. As this is remedial legislation clarifying the intent of the general assembly
2 as to existing law, this act shall take effect upon passage and shall apply retroactively to all
3 pending claims and cases.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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RELATING TO LABOR AND LABOR RELATIONS - UNLAWFUL EMPLOYMENT
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1 This act would prohibit an employer, employment agency, labor organization, or
2 employee, to directly or indirectly commit any act declared to be an unlawful employment
3 practice, it being the legislative intent that individuals would be held personally liable for such
4 conduct, including, but not limited to, individual employees of employers.

5 This act would take effect upon passage and would apply retroactively to all pending
6 claims and cases.

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