

EMPLOYMENT LAW SUMMARY

Ohio Fair Employment Laws – Overview



Because You're Different

In addition to the federal fair employment laws, Ohio law prohibits employers from engaging in certain discriminatory employment practices. Specifically, the Ohio Fair Employment Practice Law and the Ohio Minimum Fair Wage Standards Act provide discrimination protections for employees.

This Heffernan Insurance Brokers Employment Law Summary provides a general overview of Ohio's employment nondiscrimination laws and provides compliance suggestions for employers.

Fair Employment Practice Law (FEPL)

The FEPL applies to employers that have four or more employees in Ohio. Consequently, many Ohio employers that are not covered by federal anti-discrimination laws (which typically apply to employers with 15 or more employees) must comply still with the FEPL.

Required Poster

Employers subject to the FEPL must post a notice of the law's requirements in a conspicuous place or places on their premises. The OCRC provides a [model notice](#) that employers may use.

General Prohibitions

The FEPL prohibits unfair or discriminatory employment practices based on a person's protected status. Protected statuses under the FEPL include race, color, religion, sex, military status, national origin, disability, age and ancestry. In particular, it is illegal for employers to do any of the following on the basis of an individual's protected status:

- Discharge an employee without just cause;
- Refuse to hire an applicant; and
- Otherwise discriminate against a person with respect to hiring, tenure, terms, conditions and privileges of employment or any other matter directly or indirectly related to employment.

Hiring Practices

With respect to employment applicants, the FEPL specifically prohibits employers from:

- Eliciting or attempting to elicit information about an applicant's protected status;
- Making or keeping a record of an applicant's protected status;
- Using an employment application form that seeks to elicit information regarding an applicant's protected status (though exceptions may apply for employers that contract with the federal government);
- Printing or publishing any notice or advertisement that indicates a preference, limitation, specification or discrimination based upon an applicant's protected status;
- Announcing or following a policy of denying or limiting any group based on a protected status; and

- Using any employee-referring source that is known to discriminate based on protected status.

However, an employer may engage in any of the above activities if they are based on a bona fide occupational qualification (BFOQ) that is certified in advance by the [Ohio Civil Rights Commission](#) (OCRC).

Age Discrimination

Employees protected under the FEPL's age discrimination provisions are those who are age 40 and older. Employers may not discriminate against a job applicant or discharge an employee without just cause based on age if the applicant or employee is physically capable of performing the duties of the job and otherwise meets the established requirements of the job. However, it is not unlawful for an employer to:

- Establish BFOQs reasonably related to the particular business or occupation, such as standards for skill, aptitude, physical capability, intelligence, education, maturation and experience;
- Retire an employee who has attained age 65 and who, for the two-year period immediately before retirement, was employed in a bona fide executive or high policymaking position, if the employee is immediately entitled to retirement benefits at a certain level, in accordance with the federal Age Discrimination in Employment Act (ADEA);
- Observe the terms of any bona fide apprenticeship program, if the program is registered with the state apprenticeship council and is approved by the federal committee on apprenticeship under the Department of Labor; or
- Observe the terms of a bona fide seniority system or any bona fide employee benefit plan, such as a retirement, pension or insurance plan that is not a subterfuge to evade the nondiscrimination laws. However, no benefit plan will excuse an employer's failure to hire an individual, and no seniority system or benefit plan may require or permit the involuntary retirement of any individual based on age, except as provided for in the federal ADEA.

Disability Discrimination

The FEPL prohibits employers from discriminating against an individual on the basis of the individual's disability, which is defined as:

- A physical or mental impairment that substantially limits one or more major life activities, including the functions of caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;
- A record of a physical or mental impairment; or
- Being regarded as having a physical or mental impairment.

Exceptions

The FEPL does not require a disabled person to be employed or trained under circumstances that would significantly increase the occupational hazards affecting the disabled person, other employees, the general public or the work facilities.

Likewise, employers are not required to employ or train a disabled person in a job that requires the person to routinely undertake a task when the performance of the task is substantially and inherently impaired by the person's disability.

These exceptions do not apply where a reasonable accommodation would remove the limitation on a disabled person's ability to safely and substantially perform the job.

Pre-Employment Inquiries, Physicals And Testing

Pre-employment inquiries about a person's disability are permissible if they are designed to determine whether an applicant can:

- Perform the job without significantly increasing occupational hazards; or
- Perform the essential functions of the job with or without a reasonable accommodation.

Employers may also require pre-employment physical exams after a conditional offer of employment has been extended, but only if the exams are used:

- To determine whether an applicant can perform the job without significantly increasing occupational hazards or perform the essential functions of the job with or without a reasonable accommodation;
- To establish a base line for health records and facilitate preventive medicine programs; or
- For other reasons that the employer can demonstrate to be valid.

Pre-employment exams cannot be used to exclude an applicant, unless the disability causing the exclusion creates a significant occupational hazard or prevents substantial job performance. Employers must use separate forms to collect medical information, and they must protect the confidentiality of all collected medical information. However, supervisors may be given information and instructions necessary to the person's health and safety and may be informed of work restrictions and necessary accommodations.

Finally, an employer may not use any test or other criterion that creates barriers to employment opportunities for disabled persons, unless:

- The test or criterion has been validated as related to job performance for the position in question; and
- Alternative test or criteria to predict the same job performance, which have less adverse effect, are shown to be unavailable.

Validated tests must be administered to disabled persons in a manner which ensures that the test accurately reflects the applicant's or employee's job skills, aptitude or whatever other factor the test is measuring, rather than reflecting the person's disability, except where such disability impairs the very factors the test is measuring.

Reasonable Accommodation

An employer must make a reasonable accommodation for an employee or applicant's disability, unless the employer can demonstrate that an accommodation would impose an undue hardship on the employer's business. Accommodations may include, for example, job restructuring, providing access to the job, or acquisition or modification of equipment or devices.

In determining whether an accommodation imposes an undue hardship, employers should consider the following factors: business necessity; financial cost and expense when the costs are unreasonably high compared to the size of the employer's business; the value of the disabled employee's work; whether the costs can be included in planned remodeling or maintenance; the requirements of other laws and contracts; and other appropriate considerations the employer can support with objective evidence.

Illegal Use Of Controlled Substances And Drug Testing

In general, a "disability" does not include any physiological disorder or condition, mental or psychological disorder or disease or condition caused by an illegal use of any controlled substance by an employee or applicant, if an employer acts on the basis of that illegal use. Exceptions apply for employees who are involved in drug rehabilitation programs, who are successfully rehabilitated and no longer using illegal drugs and who are erroneously regarded as engaging in the illegal drug use.

The FEPL does not prohibit an employer from:

- Adopting or administering reasonable policies or procedures, including drug testing for the illegal use of any controlled substance, designed to ensure that an individual who is involved with a drug rehabilitation program or has been successfully rehabilitated is no longer illegally using drugs;
- Prohibiting the illegal use of controlled substances and the use of alcohol at the workplace by all employees;
- Requiring that employees not be under the influence of alcohol or illegally using controlled substances at the workplace;
- Requiring employees behave according to the requirements established under the federal Drug-Free Workplace Act; and
- Holding an employee who is an alcoholic or who engages in the illegal use of any controlled substance to the same qualification standards for employment or job performance as other employees are held to, even if any unsatisfactory performance or behavior is related to an employee's illegal drug use or alcoholism.

Sex Discrimination

Discrimination "on the basis of sex" includes on the basis of pregnancy, any illness arising out of and occurring during the course of a pregnancy, childbirth or related medical conditions. Women affected by pregnancy, childbirth or related medical conditions must be treated the same for all employment-related purposes as other persons not so affected but similar in their ability or inability to work.

Sexual harassment is also violation of the FEPL. Sexual harassment includes unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when:

- Submission to the conduct is made either explicitly or implicitly a term or condition of employment;
- Submission to or rejection of the conduct is used as the basis for employment decisions affecting an individual; or
- The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

An employer is responsible for the actions of its agents and supervisory employees with respect to sexual harassment, regardless of whether the employer:

- Authorized or prohibited the actions; or
- Knew or should have known about the actions.

An employer may be responsible for acts of sexual harassment in the workplace between fellow employees and by nonemployees (for example, customers) where the employer knew or should have known about the conduct and failed to take immediate and appropriate corrective action. If employment opportunities or benefits are granted because of an individual's submission to the employer's requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for, but did not receive, the employment opportunity or benefit.

Prohibited Retaliation

Employers are prohibited from discriminating against an employee because he or she has opposed an unlawful discriminatory practice or because the employee has made a charge of unlawful discrimination or testified, assisted or participated in any investigation, proceeding or hearing regarding an unlawful discriminatory practice.

Enforcement

The OCRC enforces the FEPL. An employee may file a charge with the OCRC alleging that his or her employer engaged in an unlawful discriminatory practice. In general, an employee must file a charge within six years after the alleged unlawful discriminatory practice was committed. As of April 12, 2021, however, employees will only have up to two years to file charges.

Minimum Fair Wage Standards Act (Wage Act)

The Ohio Wage Act prohibits employers from paying an employee a lower wage, on the basis of a protected status, than the wages they pay to another employee for equal work on jobs that are performed under similar conditions and require equal skill, effort and responsibility. The law also prohibits employers from retaliating against employees because they make a complaints or participate in any proceedings related to violations of the Wage Act.

Under the Wage Act, protected statuses include race, color, religion, sex, age, national origin and ancestry. Unlike the FEPL, the Wage Act does not include protections based on military status or disability.

Required Poster

Employers must post a summary of the Wage Act in a conspicuous and accessible place in the workplace. The Ohio Department of Commerce, Bureau of Wage and Hour Administration provides posters that employers may use for this requirement.

Exceptions

The Wage Act does not prohibit employers from paying wages at different rates for equal work under similar conditions on jobs requiring equal skill, effort and responsibility, when payment is made pursuant to any of the following:

- A seniority or merit system;
- A system which measures earnings by the quantity or quality of production; or
- A wage differential determined by any factor other than race, color, religion, sex, age, national origin or ancestry.

Employers may not reduce the wage rate of any employee in order to comply with the Wage Act.

Enforcement

An employee who is discriminated against in violation of the Wage Act may sue his or her employer and, if successful, recover two times the amount of the difference between the wages actually received and the wages paid to a person performing equal work for the employer, as well as attorney's fees and costs. Employees must initiate actions regarding wage discrimination within one year after the date of the violation.

Compliance Steps For Employers

Employers can help protect themselves from discrimination claims by creating a work environment that discourages employment discrimination and encourages diversity. To create this type of environment, employers should consider the following steps:

- Confirm that workplace nondiscrimination policies are complete, accurate and up-to-date, and that such policies are actually being followed;
- Update the policies as necessary to include a strict “no tolerance” policy for prohibited discrimination, and include information on how employees can report incidents of discrimination to the employer;
- Train managers and supervisors on the updated policies and educate employees regarding employment discrimination, including sexual harassment training; and
- Respond to employee complaints in a timely and professional manner.

More Information

Contact Heffernan Insurance Brokers for more information on fair employment laws in Ohio.

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