

REFERENCE TITLE: **employment discrimination; prohibition**

State of Arizona  
Senate  
Fifty-first Legislature  
First Regular Session  
2013

## **SB 1163**

Introduced by  
Senators Gallardo, Hobbs, Jackson Jr., Lopez; Representative Quezada

**AN ACT**

**AMENDING SECTIONS 41-1463 AND 41-1464, ARIZONA REVISED STATUTES; RELATING TO  
DISCRIMINATION IN EMPLOYMENT.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 41-1463, Arizona Revised Statutes, is amended to  
3 read:

4 41-1463. Discrimination; unlawful practices; definition

5 A. Nothing contained in this article shall be interpreted to require  
6 that the less qualified be preferred over the better qualified simply because  
7 of race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL  
8 ORIENTATION, age or national origin or on the basis of disability.

9 B. It is an unlawful employment practice for an employer:

10 1. To fail or refuse to hire or to discharge any individual or  
11 otherwise to discriminate against any individual with respect to the  
12 individual's compensation, terms, conditions or privileges of employment  
13 because of the individual's race, color, religion, ~~sex~~ GENDER, GENDER  
14 IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, age or national origin or on the  
15 basis of disability.

16 2. To limit, segregate or classify employees or applicants for  
17 employment in any way ~~which~~ THAT would deprive or tend to deprive any  
18 individual of employment opportunities or otherwise adversely affect the  
19 individual's status as an employee, because of the individual's race, color,  
20 religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, age  
21 or national origin or on the basis of disability.

22 3. To fail or refuse to hire, to discharge, ~~or~~ or to otherwise  
23 discriminate against any individual based on the results of a genetic test  
24 received by the employer, notwithstanding subsection I, paragraph 2 of this  
25 section.

26 C. It is an unlawful employment practice for an employment agency to  
27 fail or refuse to refer for employment or otherwise to discriminate against  
28 any individual because of the individual's race, color, religion, ~~sex~~ GENDER,  
29 GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, age or national origin or  
30 on the basis of disability or to classify or refer for employment any  
31 individual on the basis of the individual's race, color, religion, ~~sex~~  
32 GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, age or national  
33 origin or on the basis of disability.

34 D. It is an unlawful employment practice for a labor organization:

35 1. To exclude or to expel from its membership or otherwise to  
36 discriminate against any individual because of the individual's race, color,  
37 religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, age  
38 or national origin or on the basis of disability.

39 2. To limit, segregate or classify its membership or applicants for  
40 membership or to classify or fail or refuse to refer for employment any  
41 individual in any way ~~which~~ THAT would deprive or tend to deprive the  
42 individual of employment opportunities or would limit those employment  
43 opportunities or otherwise adversely affect the individual's status as an  
44 employee or as an applicant for employment because of the individual's race,

1 color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL  
2 ORIENTATION, age or national origin or on the basis of disability.

3 3. To cause or attempt to cause an employer to discriminate against an  
4 individual in violation of this section.

5 E. It is an unlawful employment practice for any employer, labor  
6 organization or joint labor-management committee controlling apprenticeship  
7 or other training or retraining programs, including on-the-job training  
8 programs, to discriminate against any individual because of the individual's  
9 race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL  
10 ORIENTATION, age or national origin or on the basis of disability in  
11 admission to or employment in any program established to provide  
12 apprenticeship or other training and, if the individual is an otherwise  
13 qualified individual, to fail or refuse to reasonably accommodate the  
14 individual's disability.

15 F. With respect to a qualified individual, it is an unlawful  
16 employment practice for a covered entity to:

17 1. Participate in any contractual or other arrangement or relationship  
18 that has the effect of subjecting a qualified individual who applies with or  
19 who is employed by the covered entity to unlawful employment discrimination  
20 on the basis of disability.

21 2. Use standards, criteria or methods of administration that have the  
22 effect of discriminating on the basis of disability or that perpetuate the  
23 discrimination of others who are subject to common administrative control.

24 3. Exclude or otherwise deny equal jobs or benefits to an individual  
25 qualified for the job or benefits because of the known disability of an  
26 individual with whom the individual qualified for the job or benefits is  
27 known to have a relationship or association.

28 4. Not make reasonable accommodations to the known physical or mental  
29 limitations of an otherwise qualified individual who is an applicant or  
30 employee unless the covered entity can demonstrate that the accommodation  
31 would impose an undue hardship on the operation of the business of the  
32 covered entity or the individual only meets the definition of disability as  
33 prescribed in section 41-1461, paragraph 4, subdivision (c).

34 5. Deny employment opportunities to a job applicant or employee who is  
35 an otherwise qualified individual if the denial is based on the need of the  
36 covered entity to make reasonable accommodation to the physical or mental  
37 impairment of the applicant or employee.

38 6. Use qualification standards, employment tests or other selection  
39 criteria, including those based on an individual's uncorrected vision, that  
40 screen out or tend to screen out an individual with a disability or a class  
41 of individuals with disabilities, unless the standard, test or other  
42 selection criteria, as used by the covered entity, is shown to be job related  
43 for the position in question and is consistent with business necessity.

1           7. Fail to select and administer tests relating to employment in the  
2 most effective manner to ensure that, when the test is administered to a job  
3 applicant or employee who has a disability that impairs sensory, manual or  
4 speaking skills, the test results accurately reflect the skills or aptitude  
5 or whatever other factor of the applicant or employee that the test purports  
6 to measure, rather than reflecting the impaired sensory, manual or speaking  
7 skills of the applicant or employee, except if the skills are the factors  
8 that the test purports to measure.

9           G. Notwithstanding any other provision of this article, it is not an  
10 unlawful employment practice:

11           1. For an employer to hire and employ employees, for an employment  
12 agency to classify or refer for employment any individual, for a labor  
13 organization to classify its membership or classify or refer for employment  
14 any individual, ~~or~~ or for an employer, labor organization or joint  
15 labor-management committee controlling apprenticeship or other training or  
16 retraining programs to admit or employ any individual in any such program, on  
17 the basis of the individual's religion, ~~sex~~ GENDER or national origin in  
18 those certain instances when religion, ~~sex~~ GENDER or national origin is a  
19 bona fide occupational qualification reasonably necessary to the normal  
20 operation of that particular business or enterprise.

21           2. For any school, college, university or other educational  
22 institution or institution of learning to hire and employ employees of a  
23 particular religion if the school, college, university or other educational  
24 institution or institution of learning is in whole or in substantial part  
25 owned, supported, controlled or managed by a particular religion or religious  
26 corporation, association or society, or if the curriculum of the school,  
27 college, university or other educational institution or institution of  
28 learning is directed toward the propagation of a particular religion.

29           3. For an employer to fail or refuse to hire or employ any individual  
30 for any position, for an employment agency to fail or refuse to refer any  
31 individual for employment in any position or for a labor organization to fail  
32 or refuse to refer any individual for employment in any position, if both of  
33 the following apply:

34           (a) The occupancy of the position or access to the premises in or upon  
35 which any part of the duties of the position are performed or are to be  
36 performed is subject to any requirement imposed in the interest of the  
37 national security of the United States under any security program in effect  
38 pursuant to or administered under any statute of the United States or any  
39 executive order of the president of the United States.

40           (b) The individual has not fulfilled or has ceased to fulfill that  
41 requirement.

42           4. With respect to age, for an employer, employment agency or labor  
43 organization:

44           (a) To take any action otherwise prohibited under subsection B, C or D  
45 of this section if age is a bona fide occupational qualification reasonably

1 necessary to the normal operation of the particular business or if the  
2 differentiation is based on reasonable factors other than age.

3 (b) To observe the terms of a bona fide seniority system or any bona  
4 fide employee benefit plan such as a retirement, pension, deferred  
5 compensation or insurance plan, which is not a subterfuge to evade the  
6 purposes of the age discrimination provisions of this article, except that no  
7 employee benefit plan may excuse the failure to hire any individual and no  
8 seniority system or employee benefit plan may require or permit the  
9 involuntary retirement of any individual specified by section 41-1465 because  
10 of the individual's age.

11 (c) To discharge or otherwise discipline an individual for good cause.

12 5. FOR A RELIGIOUS ORGANIZATION, INCLUDING AN EDUCATIONAL INSTITUTION  
13 SUBSTANTIALLY CONTROLLED OR SUPPORTED BY A RELIGIOUS ORGANIZATION, TO FAIL TO  
14 HIRE, REFUSE TO HIRE, REFUSE TO PROMOTE OR TERMINATE AN EMPLOYEE ON THE BASIS  
15 OF THAT EMPLOYEE'S GENDER, GENDER IDENTITY OR EXPRESSION OR SEXUAL  
16 ORIENTATION, IF THE POSITION IS DIRECTLY RELATED TO THE RELIGIOUS FUNCTIONS  
17 OF THE ORGANIZATION OR DIRECTLY INVOLVED IN THE PROVISION OF EDUCATION TO  
18 STUDENTS OF AN EDUCATIONAL INSTITUTION SUBSTANTIALLY CONTROLLED OR SUPPORTED  
19 BY A RELIGIOUS ORGANIZATION.

20 H. As used in this article, unlawful employment practice does not  
21 include any action or measure taken by an employer, labor organization, joint  
22 labor-management committee or employment agency with respect to an individual  
23 who is a member of the communist party of the United States or of any other  
24 organization required to register as a communist-action or communist-front  
25 organization by final order of the subversive activities control board  
26 pursuant to the subversive activities control act of 1950.

27 I. Notwithstanding any other provision of this article, it is not an  
28 unlawful employment practice:

29 1. For an employer to apply different standards of compensation or  
30 different terms, conditions or privileges of employment pursuant to a bona  
31 fide seniority or merit system or a system ~~which~~ THAT measures earnings by  
32 quantity or quality of production or to employees who work in different  
33 locations, provided that these differences are not the result of an intention  
34 to discriminate because of race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY  
35 OR EXPRESSION, SEXUAL ORIENTATION or national origin.

36 2. For an employer to give and act upon the results of any  
37 professionally developed ability test provided that the test, its  
38 administration or action upon the results is not designed, intended or used  
39 to discriminate because of race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY  
40 OR EXPRESSION, SEXUAL ORIENTATION or national origin.

41 3. For any employer to differentiate upon the basis of ~~sex~~ GENDER,  
42 GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION or disability in  
43 determining the amount of the wages or compensation paid or to be paid to  
44 employees of the employer if the differentiation is authorized by the

1 provisions of section 6(d) or section 14 of the fair labor standards act of  
2 1938, as amended (29 United States Code section 206(d)).

3 J. Nothing contained in this chapter applies to any business or  
4 enterprise on or near an Indian reservation with respect to any publicly  
5 announced employment practice of the business or enterprise under which a  
6 preferential treatment is given to any individual because the individual is  
7 an Indian living on or near a reservation.

8 K. Nothing contained in this article or article 6 of this chapter  
9 requires any employer, employment agency, labor organization or joint  
10 labor-management committee subject to this article to grant preferential  
11 treatment to any individual or group because of the race, color, religion,  
12 ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION or national  
13 origin of the individual or group on account of an imbalance ~~which~~ THAT may  
14 exist with respect to the total number or percentage of persons of any race,  
15 color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL  
16 ORIENTATION or national origin employed by any employer, referred or  
17 classified for employment by any employment agency or labor organization,  
18 admitted to membership or classified by any labor organization or admitted to  
19 or employed in any apprenticeship or other training program, in comparison  
20 with the total number or percentage of persons of that race, color, religion,  
21 ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION or national  
22 origin in any community, state, section or other area, or in the available  
23 ~~work force~~ WORKFORCE in any community, state, section or other area. THIS  
24 ARTICLE OR ARTICLE 6 OF THIS CHAPTER DOES NOT REQUIRE ANY EMPLOYER,  
25 EMPLOYMENT AGENCY, LABOR ORGANIZATION OR JOINT LABOR-MANAGEMENT COMMITTEE  
26 SUBJECT TO THIS ARTICLE TO RETAIN OR MAINTAIN RECORDS REGARDING AN  
27 INDIVIDUAL'S OR GROUP'S GENDER, GENDER IDENTITY OR EXPRESSION OR SEXUAL  
28 ORIENTATION.

29 L. Nothing in the age discrimination prohibitions of this article may  
30 be construed to prohibit compulsory retirement of any employee who has  
31 attained sixty-five years of age and who, for the two year period immediately  
32 before retirement, is employed in a bona fide executive or high policymaking  
33 position, if the employee is entitled to an immediate nonforfeitable annual  
34 retirement benefit from a pension, profit sharing, savings or deferred  
35 compensation plan or any combination of plans of the employer for the  
36 employee, ~~which~~ THAT equals, in the aggregate, at least forty-four thousand  
37 dollars. In applying the retirement benefit test of this subsection, if any  
38 retirement benefit is in a form other than a straight life annuity, with no  
39 ancillary benefits, or if employees contribute to the plan or make rollover  
40 contributions, the benefit shall be adjusted in accordance with rules adopted  
41 by the division so the benefit is the equivalent of a straight life annuity,  
42 with no ancillary benefits, under a plan to which employees do not contribute  
43 and under which no rollover contributions are made.

1 M. A covered entity may require that an individual with a disability  
 2 shall not pose a direct threat to the health or safety of other individuals  
 3 in the workplace. For the purposes of this subsection, "direct threat" means  
 4 a significant risk to the health or safety of others that cannot be  
 5 eliminated by reasonable accommodation.

6 N. This article does not alter the standards for determining  
 7 eligibility for benefits under this state's workers' compensation laws or  
 8 under state and federal disability benefit programs.

9 O. For the purposes of this section and section 41-1481, with respect  
 10 to employers or employment practices involving a disability, "individual"  
 11 means a qualified individual.

12 Sec. 2. Section 41-1464, Arizona Revised Statutes, is amended to read:  
 13 41-1464. Other unlawful employment practices; opposition to  
 14 unlawful practices; filing of charges; participation  
 15 in proceedings; notices and advertisements for  
 16 employment

17 A. It is an unlawful employment practice for an employer to  
 18 discriminate against any ~~of his~~ employees or applicants for employment, for  
 19 an employment agency or joint labor-management committee controlling  
 20 apprenticeship or other training or retraining programs, including on-the-job  
 21 training programs, to discriminate against any individual or for a labor  
 22 organization to discriminate against any member or applicant for membership  
 23 because the member or applicant has opposed any practice ~~which~~ THAT is an  
 24 unlawful employment practice under this article or has made a charge,  
 25 testified, assisted or participated in any manner in an investigation,  
 26 proceeding or hearing under article 6 of this chapter.

27 B. It is AN unlawful employment practice for an employer, labor  
 28 organization, employment agency or joint labor-management committee  
 29 controlling apprenticeship or other training or retraining programs,  
 30 including on-the-job training programs, to print or publish or cause to be  
 31 printed or published any notice or advertisement relating to employment by  
 32 ~~such~~ an employer or membership in or any classification or referral for  
 33 employment by ~~such~~ a labor organization, ~~or relating to~~ relating to  
 34 referral for employment by ~~such~~ an employment agency or ~~relating to~~  
 35 or ~~to~~ employment in any program established to provide apprenticeship or  
 36 other training by ~~such~~ a joint labor-management committee indicating any  
 37 preference, limitation, specification or discrimination based on race, color,  
 38 religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION or  
 39 national origin, except that such a notice or advertisement may indicate a  
 40 preference, limitation, specification or discrimination based on religion,  
 41 ~~sex~~ GENDER or national origin when religion, ~~sex~~ GENDER, GENDER IDENTITY OR  
 42 EXPRESSION, SEXUAL ORIENTATION or national origin is a bona fide occupational  
 43 qualification for employment.

1           C. It is unlawful for an employer, labor organization or employment  
2 agency to print or publish or cause to be printed or published any notice or  
3 advertisement relating to employment by an employer or membership in or any  
4 classification or referral for employment by a labor organization ~~or relating~~  
5 ~~to any classification or referral for employment by a labor organization~~ or  
6 relating to any classification or referral for employment by an employment  
7 agency, indicating any preference, limitation, specification or  
8 discrimination based on age, except ~~such a~~ THAT THE notice or advertisement  
9 may indicate a preference, limitation, specification or discrimination based  
10 on age when age is a bona fide occupational qualification for employment.