

REFERENCE TITLE: **employment discrimination; prohibition**

State of Arizona  
House of Representatives  
Fifty-second Legislature  
Second Regular Session  
2016

# **HB 2413**

Introduced by  
Representatives Mach, Mendez, Meyer

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

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

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

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

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

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

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

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

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

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

42           7. Fail to select and administer tests relating to employment in the  
43 most effective manner to ensure that, when the test is administered to a job  
44 applicant or employee who has a disability that impairs sensory, manual or  
45 speaking skills, the test results accurately reflect the skills or aptitude  
46 or whatever other factor of the applicant or employee that the test purports

1 to measure, rather than reflecting the impaired sensory, manual or speaking  
2 skills of the applicant or employee, except if the skills are the factors  
3 that the test purports to measure.

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

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

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

24 3. For an employer to fail or refuse to hire or employ any individual  
25 for any position, for an employment agency to fail or refuse to refer any  
26 individual for employment in any position or for a labor organization to fail  
27 or refuse to refer any individual for employment in any position, if both of  
28 the following apply:

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

35 (b) The individual has not fulfilled or has ceased to fulfill that  
36 requirement.

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

39 (a) To take any action otherwise prohibited under subsection B, C or D  
40 of this section if age is a bona fide occupational qualification reasonably  
41 necessary to the normal operation of the particular business or if the  
42 differentiation is based on reasonable factors other than age.

43 (b) To observe the terms of a bona fide seniority system or any bona  
44 fide employee benefit plan such as a retirement, pension, deferred  
45 compensation or insurance plan, which is not a subterfuge to evade the  
46 purposes of the age discrimination provisions of this article, except that no

1 employee benefit plan may excuse the failure to hire any individual and no  
2 seniority system or employee benefit plan may require or permit the  
3 involuntary retirement of any individual specified by section 41-1465 because  
4 of the individual's age.

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

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

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

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

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

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

35 3. For any employer to differentiate ~~upon~~ ON the basis of ~~sex~~ GENDER,  
36 GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION or disability in  
37 determining the amount of the wages or compensation paid or to be paid to  
38 employees of the employer if the differentiation is authorized by the  
39 provisions of section 6(d) or section 14 of the fair labor standards act of  
40 1938, as amended (29 United States Code section 206(d)).

41 J. Nothing contained in this chapter applies to any business or  
42 enterprise on or near an Indian reservation with respect to any publicly  
43 announced employment practice of the business or enterprise under which a  
44 preferential treatment is given to any individual because the individual is  
45 an Indian living on or near a reservation.

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

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

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

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

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

