

State of Arizona  
House of Representatives  
Fifty-third Legislature  
Second Regular Session  
2018

## **HB 2437**

Introduced by  
Representatives Andrade: Alston, Blanc, Bolding, Cardenas, Chávez,  
Clark, Engel, Espinoza, Fernandez, Friese, Gabaldón, Hernandez,  
Martinez, Navarrete, Peten, Powers Hannley, Rios, Saldate, Salman,  
Senators Mendez, Miranda, Otondo, Peshlakai

### **AN ACT**

AMENDING TITLE 23, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 23-206 AND 23-207; AMENDING SECTIONS 23-408 AND 23-908, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-911; AMENDING SECTION 23-1342, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 8, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-1343; AMENDING SECTIONS 23-1501, 41-1463, 41-1464 AND 41-1481, ARIZONA REVISED STATUTES; RELATING TO LABOR.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 23, chapter 2, article 1, Arizona Revised  
3 Statutes, is amended by adding sections 23-206 and 23-207, to read:

4 23-206. Employee training requirements

5 ALL EMPLOYERS SHALL PROVIDE THE FOLLOWING:

6 1. NEW EMPLOYEE TRAINING THAT INCLUDES:

7 (a) WORKPLACE COUNSELING.

8 (b) SEXUAL HARASSMENT TRAINING.

9 (c) INFORMATION ON RELEVANT PROFESSIONAL EMPLOYMENT ORGANIZATIONS  
10 AND ASSOCIATIONS.

11 (d) INFORMATION ON ANY SKILLS TRAINING REQUIRED TO PROPERLY PERFORM  
12 ALL JOB DUTIES.

13 2. CURRENT EMPLOYEE TRAINING ON ANY NEW OR UPDATED WORKPLACE POLICY  
14 OR PROCEDURE.

15 3. DISCIPLINARY TRAINING FOR ANY EMPLOYEE WHO RECEIVES DISCIPLINARY  
16 ACTION FROM AN EMPLOYER THAT INCLUDES:

17 (a) WORKPLACE COUNSELING.

18 (b) INFORMATION ON WORKPLACE POLICIES RELATED TO THE CONDUCT THAT  
19 CAUSED THE DISCIPLINARY ACTION.

20 (c) INSTRUCTION ON HOW TO PROPERLY PERFORM THE EMPLOYEE'S JOB  
21 DUTIES.

22 23-207. Grounds for termination

23 NOTWITHSTANDING ANY OTHER LAW, AN EMPLOYER MAY NOT TERMINATE ANY  
24 EMPLOYEE, UNLESS THE EMPLOYEE COMMITS ANY OF THE FOLLOWING:

25 1. AT LEAST FOUR VIOLATIONS OF THE EMPLOYER'S POLICIES THAT RELATE  
26 TO THE EMPLOYEE'S JOB DUTIES.

27 2. ANY ACT OF SEXUAL HARASSMENT.

28 3. ANY FELONY OFFENSE.

29 Sec. 2. Section 23-408, Arizona Revised Statutes, is amended to  
30 read:

31 23-408. Inspection of places and practices of employment;  
32 closing conference; prohibitions; employee  
33 initiation of investigation; violation;  
34 classification; injunction

35 A. Except as prescribed in section 23-432, subsection E, the  
36 director of the division of occupational safety and health, or the  
37 director's authorized representative, on presentation of credentials,  
38 shall be permitted to inspect places of employment, question employees and  
39 investigate conditions, practices or matters in connection with employment  
40 subject to this article at reasonable times, as the director or the  
41 director's authorized representative may deem appropriate to determine  
42 whether any person has violated ~~any provision of~~ this article or any rule  
43 or regulation issued pursuant to this article or that may aid in the  
44 enforcement of this article. An employer or other person shall not refuse  
45 to admit the director or the director's authorized representatives to any

1 place or refuse to permit the inspection if the proper credentials are  
2 presented and the inspection is made at a reasonable time.

3 B. In making inspections and investigations, the director or the  
4 director's authorized representative may require the attendance and  
5 testimony of witnesses and the production of evidence under oath.  
6 Witnesses shall be paid the same fees and mileage paid to witnesses in the  
7 courts of this state. If any person fails or refuses to obey such an  
8 order, the director or the director's authorized representative may apply  
9 to any superior court in any county where the person is found, resides or  
10 transacts business for an order requiring the person to produce evidence  
11 and to give testimony as ordered. Failure to obey such an order is  
12 contempt of court.

13 C. The director or the director's authorized representative shall  
14 inspect at least every six months any operation that mixes rock, sand,  
15 gravel or similar materials with water and cement or with asphalt and that  
16 is not included in the definition of mine in section 27-301. The director  
17 or the director's authorized representative shall monitor and work with  
18 the mine inspector only to the extent necessary to ensure this state's  
19 compliance with federal occupational safety and health act  
20 standards, (P.L. 91-596).

21 D. Notice of an intended inspection shall not be given to an  
22 employer before the time of actual entry on the workplace, except by  
23 specific authorization by the director.

24 E. A representative of the employer and a representative authorized  
25 by the employer's employees shall be given an opportunity to accompany the  
26 director or the director's authorized representative during the physical  
27 inspection of any workplace for the purpose of aiding the inspection.  
28 ~~Where~~ IF there is no authorized employee representative, the director or  
29 the director's authorized representative shall consult a reasonable number  
30 of employees concerning matters of safety and health in the workplace.

31 F. Except as provided in section 23-426, information and facts  
32 developed by the commission, the director or any employee of the  
33 commission or division in the course of any inspection or investigation  
34 are public records subject to inspection pursuant to title 39, chapter 1,  
35 article 2, if, pursuant to section 23-415, subsection D, the inspection or  
36 investigation has been closed or a citation has been issued. ~~Such~~ THE  
37 information and facts ~~shall~~ ARE not ~~be~~ admissible in any court or before  
38 any administrative body except pursuant to this article. Notwithstanding  
39 this subsection, the director or any commission employee is not required  
40 to appear at any deposition, trial or hearing concerning a division  
41 inspection or investigation unless the appearance is related to a hearing  
42 held pursuant to this article. Hearings held pursuant to this article are  
43 open to the public.

44 G. During the inspection or investigation and in deciding whether  
45 to recommend and issue a citation, the director or the director's

1 authorized representative and the commission may consider whether an  
2 employee has committed misconduct by violating the employer's policies, if  
3 any, regarding substance abuse while working, as evidenced by the results  
4 of testing for substance abuse or other evidence of impairment while  
5 working.

6 H. An employee of the division or the commission may not:

7 1. Before, during or after an inspection or investigation,  
8 communicate to an employer that the employer should not be represented by  
9 an attorney or that the employer may be treated more favorably by the  
10 division or the commission if the employer is not represented by an  
11 attorney.

12 2. Conduct an audio recording of an oral statement provided during  
13 an interview without the knowledge and consent of the person being  
14 interviewed. The employee of the division or the commission shall inform  
15 the person being interviewed of the person's right to receive a copy of  
16 the recorded oral statement within a reasonable time.

17 3. Obtain a written statement during an interview without informing  
18 the person of the person's right to receive a copy of the written  
19 statement within a reasonable time.

20 I. An employee or a representative of employees who believes that a  
21 violation of a safety or health standard or regulation exists that  
22 threatens physical harm or that an imminent danger exists may request an  
23 investigation by giving notice to the director or the director's  
24 authorized representative of the violation or danger. Any notice shall be  
25 in writing, set forth with reasonable particularity the grounds for the  
26 notice and be signed by the employees or representative of the employees.  
27 On the request of the employee giving the notice, the employee's name and  
28 the names of other employees referred to in the notice shall not appear on  
29 any copy of the notice or any record published, released or made  
30 available. **ON RECEIVING THE NOTICE, THE DIRECTOR SHALL NOTIFY THE**  
31 **EMPLOYER THAT A NOTICE HAS BEEN FILED.** If on receipt of the notice the  
32 director determines that there are reasonable grounds to believe that the  
33 violation or danger exists, the director shall make an investigation in  
34 accordance with this article as soon as practicable to determine if the  
35 violation or danger exists. If the director determines there are no  
36 reasonable grounds to believe that a violation or danger exists, the  
37 director shall notify the employees or representative of the employees in  
38 writing of the determination. **ON RECEIVING NOTICE FROM THE DIRECTOR, THE**  
39 **EMPLOYER MAY NOT REQUIRE ANY EMPLOYEE TO PERFORM ANY DUTY RELATING TO THE**  
40 **ALLEGED VIOLATION OR DANGER UNTIL THE DIRECTOR HAS DETERMINED WHETHER THE**  
41 **VIOLATION OR DANGER EXISTS. IF THE DIRECTOR DETERMINES A VIOLATION OR**  
42 **DANGER EXISTS, THE EMPLOYER MAY NOT REQUIRE ANY EMPLOYEE TO PERFORM ANY**  
43 **DUTY RELATING TO THE VIOLATION OR DANGER UNTIL THE VIOLATION OR DANGER IS**  
44 **CORRECTED.**

1 J. Any person who violates ~~any provision of~~ this section is guilty  
2 of a class 2 misdemeanor.

3 K. The commission, or the commission's authorized representative,  
4 in addition to initiating an action under subsection I of this section,  
5 may file in the superior court in the county where the inspection was  
6 refused a verified complaint against an employer who violates subsection A  
7 of this section and request an injunction against continued refusal to  
8 permit an inspection.

9 Sec. 3. Section 23-908, Arizona Revised Statutes, is amended to  
10 read:

11 23-908. Injury reports by employer and physician; schedule of  
12 fees; violation; classification

13 A. Every employer that is affected by this chapter, and every  
14 physician who attends an injured employee of ~~such~~ AN employer, shall file  
15 with the commission and the employer's insurance carrier from time to time  
16 a full and complete report of every known injury to the employee arising  
17 out of or in the course of employment and resulting in loss of life or  
18 injury. ~~Such~~ A report shall be furnished to the commission and the  
19 insurance carrier at times and in the form and detail the commission  
20 prescribes, and the report ~~shall~~ MUST make special answers to all  
21 questions required by the commission under its rules.

22 B. The commission shall fix a schedule of fees to be charged by  
23 physicians, physical therapists or occupational therapists attending  
24 injured employees and, subject to subsection C of this section, for  
25 prescription medicines required to treat an injured employee under this  
26 chapter. The commission shall annually review the schedule of fees.

27 C. If a schedule of fees for prescription medicines adopted  
28 pursuant to subsection B of this section includes provisions regarding the  
29 use of generic equivalent drugs or interchangeable biological products,  
30 those provisions shall comply with section 32-1963.01, subsections A, B  
31 and D through L. If the commission considers the adoption of fee schedule  
32 provisions that involve specific prices, values or reimbursements for  
33 prescription drugs, the commission shall base the adoption on studies or  
34 practices that are validated and accepted in the industry, including the  
35 applicability of formulas that use average wholesale price, plus a  
36 dispensing fee, and that have been made publicly available for at least  
37 one hundred eighty days before any hearing conducted by the commission.

38 D. Notwithstanding section 12-2235, information obtained by any  
39 physician or surgeon examining or treating an injured person shall not be  
40 considered a privileged communication, ~~if~~ if that information is requested  
41 by interested parties for a proper understanding of the case and a  
42 determination of the rights involved. Hospital records of an employee  
43 concerning an industrial claim shall not be considered privileged if  
44 requested by an interested party in order to determine the rights

1 involved. Medical information from any source pertaining to conditions  
2 unrelated to the pending industrial claim shall remain privileged.

3 E. When an accident occurs to an employee, the employee shall  
4 forthwith report the accident and the injury resulting ~~therefrom~~ FROM THE  
5 ACCIDENT to the employer, and any physician employed by the injured  
6 employee shall forthwith report the accident and the injury resulting  
7 ~~therefrom~~ FROM THE ACCIDENT to the employer, the insurance carrier and the  
8 commission. AN EMPLOYEE WHO REPORTS AN INJURY PURSUANT TO THIS SUBSECTION  
9 IS ENTITLED TO RECEIVE IMMEDIATE MEDICAL ATTENTION.

10 F. ~~When~~ IF an accident occurs to an employee, the employer may  
11 designate in writing a physician chosen by the employer, who shall be  
12 permitted by the employee, or any person in charge of the employee, to  
13 make one examination of the injured employee in order to ascertain the  
14 character and extent of the injury occasioned by the accident. The  
15 physician so chosen shall forthwith report to the employer, the insurance  
16 carrier and the commission the character and extent of the injury as the  
17 physician ascertains. If the accident is not reported by the employee or  
18 the employee's physician forthwith, as required, or if the injured  
19 employee or those in charge of the employee refuse to permit the  
20 employer's physician to make the examination, and the injured employee is  
21 a party to the refusal, no compensation shall be paid for the injury  
22 claimed to have resulted from the accident. The commission may relieve  
23 the injured person or that person's dependents from the loss or forfeiture  
24 of compensation if it believes after investigation that the circumstances  
25 attending the failure on the part of the employee or physician to report  
26 the accident and injury are such as to have excused them.

27 G. Within ten days after receiving notice of an accident, the  
28 employer shall inform the insurance carrier and the commission on ~~such~~ THE  
29 forms and in ~~such~~ THE manner ~~as may be~~ THAT IS prescribed by the  
30 commission.

31 H. Immediately on notice to the employer of an accident resulting  
32 in an injury to an employee, the employer shall provide the employee with  
33 the name and address of the employer's insurance carrier, the policy  
34 number and the expiration date.

35 I. Any person failing or refusing to comply with this section is  
36 guilty of a petty offense.

37 Sec. 4. Title 23, chapter 6, article 1, Arizona Revised Statutes,  
38 is amended by adding section 23-911, to read:

39 23-911. Injury reenactment prohibited

40 AN EMPLOYER MAY NOT REQUIRE ANY EMPLOYEE TO REENACT AN INJURY  
41 ARISING OUT OF OR IN THE COURSE OF EMPLOYMENT IF THAT INJURY RESULTED IN  
42 THE LOSS OF LIFE OR AN INJURY.

1           Sec. 5. Section 23-1342, Arizona Revised Statutes, is amended to  
2 read:

3           23-1342. Compelling or coercing another not to join labor  
4                           union as requisite to employment; retaliation,  
5                           harassment and intimidation; violation,  
6                           classification; labor organization presentations

7           A. A person who coerces or compels any other person to enter into  
8 an agreement, either written or oral, not to join or become a member of a  
9 labor organization, as a condition of the other person obtaining  
10 employment or continuing in ~~the~~ employment ~~of such person~~, OR A PERSON WHO  
11 RETALIATES AGAINST, HARASSES OR INTIMIDATES ANY OTHER PERSON FOR SEEKING  
12 TO JOIN OR BECOME A MEMBER OF A LABOR ORGANIZATION, is guilty of a class 2  
13 misdemeanor.

14           B. AN EMPLOYER SHALL ALLOW A LABOR ORGANIZATION TO OFFER  
15 PRESENTATIONS TO NEW EMPLOYEES. PRESENTATIONS ALLOWED PURSUANT TO THIS  
16 SUBSECTION MAY NOT BE MORE THAN ONE HOUR, UNLESS THE EMPLOYER AND LABOR  
17 ORGANIZATION AGREE ON A LONGER TIME LIMIT.

18           Sec. 6. Title 23, chapter 8, article 3, Arizona Revised Statutes,  
19 is amended by adding section 23-1343, to read:

20           23-1343. Employer policy effect on labor contracts

21           AN EMPLOYER POLICY DOES NOT SUPERSEDE ANY VALID PROVISION OF A  
22 COLLECTIVE BARGAINING AGREEMENT.

23           Sec. 7. Section 23-1501, Arizona Revised Statutes, is amended to  
24 read:

25           23-1501. Severability of employment relationships; protection  
26                           from retaliatory discharges; exclusivity of  
27                           statutory remedies in employment

28           A. The public policy of this state is that:

29           1. The employment relationship is contractual in nature.

30           2. The employment relationship is severable at the pleasure of  
31 either the employee or the employer, SUBJECT TO SECTION 23-207, unless  
32 both the employee and the employer have signed a written contract to the  
33 contrary setting forth that the employment relationship shall remain in  
34 effect for a specified duration of time or otherwise expressly restricting  
35 the right of either party to terminate the employment relationship. Both  
36 the employee and the employer must sign this written contract, or this  
37 written contract must be set forth in the employment handbook or manual or  
38 any similar document distributed to the employee, if that document  
39 expresses the intent that it is a contract of employment, or this written  
40 contract must be set forth in a writing signed by the party to be  
41 charged. Partial performance of employment shall not be deemed sufficient  
42 to eliminate the requirements set forth in this paragraph. ~~Nothing in~~  
43 This paragraph ~~shall be construed to~~ DOES NOT affect the rights of public  
44 employees under the Constitution of Arizona and state and local laws of

1 this state or the rights of employees and employers as defined by a  
2 collective bargaining agreement.

3 3. An employee has a claim against an employer for termination of  
4 employment only if one or more of the following circumstances have  
5 occurred:

6 (a) The employer has terminated the employment relationship of an  
7 employee in breach of an employment contract, as set forth in paragraph 2  
8 of this subsection, in which case the remedies for the breach are limited  
9 to the remedies for a breach of contract.

10 (b) The employer has terminated the employment relationship of an  
11 employee in violation of a statute of this state. If the statute provides  
12 a remedy to an employee for a violation of the statute, the remedies  
13 provided to an employee for a violation of the statute are the exclusive  
14 remedies for the violation of the statute or the public policy set forth  
15 in or arising out of the statute, including the following:

16 (i) The civil rights act prescribed in title 41, chapter 9.

17 (ii) The occupational safety and health act prescribed in chapter  
18 2, article 10 of this title.

19 (iii) The statutes governing the hours of employment prescribed in  
20 chapter 2 of this title.

21 (iv) The agricultural employment relations act prescribed in  
22 chapter 8, article 5 of this title.

23 (v) The statutes governing disclosure of information by public  
24 employees prescribed in title 38, chapter 3, article 9.

25 All definitions and restrictions contained in the statute also apply to  
26 any civil action based on a violation of the public policy arising out of  
27 the statute. If the statute does not provide a remedy to an employee for  
28 the violation of the statute, the employee shall have the right to bring a  
29 tort claim for wrongful termination in violation of the public policy set  
30 forth in the statute.

31 (c) The employer has terminated the employment relationship of an  
32 employee in retaliation for any of the following:

33 (i) The refusal by the employee to commit an act or omission that  
34 would violate the Constitution of Arizona or the statutes of this state.

35 (ii) The disclosure by the employee in a reasonable manner that the  
36 employee has information or a reasonable belief that the employer, or an  
37 employee of the employer, has violated, is violating or will violate the  
38 Constitution of Arizona or the statutes of this state to either the  
39 employer or a representative of the employer who the employee reasonably  
40 believes is in a managerial or supervisory position and has the authority  
41 to investigate the information provided by the employee and to take action  
42 to prevent further violations of the Constitution of Arizona or statutes  
43 of this state or an employee of a public body or political subdivision of  
44 this state or any agency of a public body or political subdivision.



1 (iii) The exercise of rights under the workers' compensation  
2 statutes prescribed in chapter 6 of this title.

3 (iv) Service on a jury as protected by section 21-236.

4 (v) The exercise of voting rights as protected by section 16-1012.

5 (vi) The exercise of free choice with respect to nonmembership in a  
6 labor organization as protected by section 23-1302.

7 (vii) Service in the national guard or armed forces as protected by  
8 sections 26-167 and 26-168.

9 (viii) The exercise of the right to be free from the extortion of  
10 fees or gratuities as a condition of employment as protected by section  
11 23-202.

12 (ix) The exercise of the right to be free from coercion to purchase  
13 goods or supplies from any particular person as a condition of employment  
14 as protected by section 23-203.

15 (x) The exercise of a victim's right to leave work as provided in  
16 sections 8-420 and 13-4439.

17 (d) THE EMPLOYER HAS TERMINATED THE EMPLOYMENT RELATION IN  
18 VIOLATION OF SECTION 23-207.

19 B. If the statute provides a remedy to an employee for a violation  
20 of the statute, the remedies provided to an employee for a violation of  
21 the statute are the exclusive remedies for the violation of the statute or  
22 the public policy prescribed in or arising out of the statute.

23 Sec. 8. Section 41-1463, Arizona Revised Statutes, is amended to  
24 read:

25 41-1463. Discrimination; unlawful practices; exceptions;  
26 definition

27 A. ~~Nothing contained in~~ This article ~~shall be interpreted to~~ DOES  
28 NOT require that the less qualified be preferred over the better qualified  
29 simply because of race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR  
30 EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, age or national origin or  
31 on the basis of disability.

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

33 1. To fail or refuse to hire or to discharge any individual or  
34 otherwise to discriminate against any individual with respect to the  
35 individual's compensation, terms, conditions or privileges of employment  
36 because of the individual's race, color, religion, ~~sex~~ GENDER, GENDER  
37 IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, age or  
38 national origin or on the basis of disability.

39 2. To limit, segregate or classify employees or applicants for  
40 employment in any way ~~which~~ THAT would deprive or tend to deprive any  
41 individual of employment opportunities or otherwise adversely affect the  
42 individual's status as an employee, because of the individual's race,  
43 color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL  
44 ORIENTATION, MARITAL STATUS, age or national origin or on the basis of  
45 disability.

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

5           C. It is an unlawful employment practice for an employment agency  
6 to fail or refuse to refer for employment or otherwise to discriminate  
7 against any individual because of the individual's race, color, religion,  
8 ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL  
9 STATUS, age or national origin or on the basis of disability or to  
10 classify or refer for employment any individual on the basis of the  
11 individual's race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR  
12 EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, age or national origin or  
13 on the basis of disability.

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

15           1. To exclude or to expel from its membership or otherwise to  
16 discriminate against any individual because of the individual's race,  
17 color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL  
18 ORIENTATION, MARITAL STATUS, age or national origin or on the basis of  
19 disability.

20           2. To limit, segregate or classify its membership or applicants for  
21 membership or to classify or fail or refuse to refer for employment any  
22 individual in any way ~~which~~ THAT would deprive or tend to deprive the  
23 individual of employment opportunities or would limit those employment  
24 opportunities or otherwise adversely affect the individual's status as an  
25 employee or as an applicant for employment because of the individual's  
26 race, color, religion, ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL  
27 ORIENTATION, MARITAL STATUS, age or national origin or on the basis of  
28 disability.

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

31           E. It is an unlawful employment practice for any employer, labor  
32 organization or joint labor-management committee controlling  
33 apprenticeship or other training or retraining programs, including  
34 on-the-job training programs, to discriminate against any individual  
35 because of the individual's race, color, religion, ~~sex~~ GENDER, GENDER  
36 IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, age or  
37 national origin or on the basis of disability in admission to or  
38 employment in any program established to provide apprenticeship or other  
39 training and, if the individual is an otherwise qualified individual, to  
40 fail or refuse to reasonably accommodate the individual's disability.

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

43           1. Participate in any contractual or other arrangement or  
44 relationship that has the effect of subjecting a qualified individual who

1 applies with or who is employed by the covered entity to unlawful  
2 employment discrimination on the basis of disability.

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

7 3. Exclude or otherwise deny equal jobs or benefits to an  
8 individual qualified for the job or benefits because of the known  
9 disability of an individual with whom the individual qualified for the job  
10 or benefits is known to have a relationship or association.

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

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

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

29 7. Fail to select and administer tests relating to employment in  
30 the most effective manner to ensure that, when the test is administered to  
31 a job applicant or employee who has a disability that impairs sensory,  
32 manual or speaking skills, the test results accurately reflect the skills  
33 or aptitude or whatever other factor of the applicant or employee that the  
34 test purports to measure, rather than reflecting the impaired sensory,  
35 manual or speaking skills of the applicant or employee, except if the  
36 skills are the factors that the test purports to measure.

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

39 1. For an employer to hire and employ employees, for an employment  
40 agency to classify or refer for employment any individual, for a labor  
41 organization to classify its membership or classify or refer for  
42 employment any individual, ~~or~~ or for an employer, labor organization or  
43 joint labor-management committee controlling apprenticeship or other  
44 training or retraining programs to admit or employ any individual in any  
45 such program, on the basis of the individual's religion, ~~sex~~ GENDER or

1 national origin in those certain instances when religion, ~~sex~~ GENDER or  
2 national origin is a bona fide occupational qualification reasonably  
3 necessary to the normal operation of that particular business or  
4 enterprise.

5 2. For any school, college, university or other educational  
6 institution or institution of learning to hire and employ employees of a  
7 particular religion if the school, college, university or other  
8 educational institution or institution of learning is in whole or in  
9 substantial part owned, supported, controlled or managed by a particular  
10 religion or religious corporation, association or society, or if the  
11 curriculum of the school, college, university or other educational  
12 institution or institution of learning is directed toward the propagation  
13 of a particular religion.

14 3. For an employer to fail or refuse to hire or employ any  
15 individual for any position, for an employment agency to fail or refuse to  
16 refer any individual for employment in any position or for a labor  
17 organization to fail or refuse to refer any individual for employment in  
18 any position, if both of the following apply:

19 (a) The occupancy of the position or access to the premises in or  
20 ~~upon~~ ON which any part of the duties of the position are performed or are  
21 to be performed is subject to any requirement imposed in the interest of  
22 the national security of the United States under any security program in  
23 effect pursuant to or administered under any statute of the United States  
24 or any executive order of the president of the United States.

25 (b) The individual has not fulfilled or has ceased to fulfill that  
26 requirement.

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

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

33 (b) To observe the terms of a bona fide seniority system or any  
34 bona fide employee benefit plan such as a retirement, pension, deferred  
35 compensation or insurance plan, which is not a subterfuge to evade the  
36 purposes of the age discrimination provisions of this article, except that  
37 no employee benefit plan may excuse the failure to hire any individual and  
38 no seniority system or employee benefit plan may require or permit the  
39 involuntary retirement of any individual specified by section 41-1465  
40 because of the individual's age.

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

43 5. FOR A RELIGIOUS ORGANIZATION, INCLUDING AN EDUCATIONAL  
44 INSTITUTION THAT IS SUBSTANTIALLY CONTROLLED OR SUPPORTED BY A RELIGIOUS  
45 ORGANIZATION, TO FAIL TO HIRE, REFUSE TO HIRE, REFUSE TO PROMOTE OR

1 TERMINATE AN EMPLOYEE ON THE BASIS OF THAT EMPLOYEE'S GENDER, GENDER  
2 IDENTITY OR EXPRESSION, SEXUAL ORIENTATION OR MARITAL STATUS, IF THE  
3 POSITION IS DIRECTLY RELATED TO THE RELIGIOUS FUNCTIONS OF THE  
4 ORGANIZATION OR DIRECTLY INVOLVED IN THE PROVISION OF EDUCATION TO  
5 STUDENTS OF AN EDUCATIONAL INSTITUTION THAT IS SUBSTANTIALLY CONTROLLED OR  
6 SUPPORTED BY A RELIGIOUS ORGANIZATION.

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

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

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

24 2. For an employer to give and act ~~upon~~ ON the results of any  
25 professionally developed ability test provided that the test, its  
26 administration or action ~~upon~~ ON the results is not designed, intended or  
27 used to discriminate because of race, color, religion, ~~sex~~ GENDER, GENDER  
28 IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS or national  
29 origin.

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

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

42 K. Nothing contained in this article or article 6 of this chapter  
43 requires any employer, employment agency, labor organization or joint  
44 labor-management committee subject to this article to grant preferential  
45 treatment to any individual or group because of the race, color, religion,

1 ~~sex~~ GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL  
 2 STATUS or national origin of the individual or group on account of an  
 3 imbalance ~~which~~ THAT may exist with respect to the total number or  
 4 percentage of persons of any race, color, religion, ~~sex~~ GENDER, GENDER  
 5 IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS or national  
 6 origin employed by any employer, referred or classified for employment by  
 7 any employment agency or labor organization, admitted to membership or  
 8 classified by any labor organization or admitted to or employed in any  
 9 apprenticeship or other training program, in comparison with the total  
 10 number or percentage of persons of that race, color, religion, ~~sex~~ GENDER,  
 11 GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS or  
 12 national origin in any community, state, section or other area, or in the  
 13 available ~~work force~~ WORKFORCE in any community, state, section or other  
 14 area. THIS ARTICLE AND ARTICLE 6 OF THIS CHAPTER DO NOT REQUIRE ANY  
 15 EMPLOYER, EMPLOYMENT AGENCY, LABOR ORGANIZATION OR JOINT LABOR-MANAGEMENT  
 16 COMMITTEE SUBJECT TO THIS ARTICLE TO RETAIN OR MAINTAIN RECORDS REGARDING  
 17 AN INDIVIDUAL'S OR GROUP'S GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL  
 18 ORIENTATION OR MARITAL STATUS.

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

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

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

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

1           Sec. 9. Section 41-1464, Arizona Revised Statutes, is amended to  
2 read:

3           41-1464. Other unlawful employment practices; opposition to  
4                                   unlawful practices; filing of charges;  
5                                   participation in proceedings; notices and  
6                                   advertisements for employment

7           A. It is an unlawful employment practice for an employer to  
8 discriminate against any ~~of his~~ employees or applicants for employment,  
9 for an employment agency or joint labor-management committee controlling  
10 apprenticeship or other training or retraining programs, including  
11 on-the-job training programs, to discriminate against any individual or  
12 for a labor organization to discriminate against any member or applicant  
13 for membership because the member or applicant has opposed any practice  
14 ~~which~~ THAT is an unlawful employment practice under this article or has  
15 made a charge, testified, assisted or participated in any manner in an  
16 investigation, proceeding or hearing under article 6 of this chapter.

17           B. It is AN unlawful employment practice for an employer, labor  
18 organization, employment agency or joint labor-management committee  
19 controlling apprenticeship or other training or retraining programs,  
20 including on-the-job training programs, to print or publish or cause to be  
21 printed or published any notice or advertisement relating to employment by  
22 ~~such an~~ THE employer or membership in or any classification or referral  
23 for employment by ~~such a~~ THE labor organization, ~~or relating to~~ any  
24 classification or referral for employment by ~~such an~~ THE employment agency  
25 or ~~relating to~~ admission or ~~to~~ employment in any program established to  
26 provide apprenticeship or other training by ~~such a~~ THE joint  
27 labor-management committee indicating any preference, limitation,  
28 specification or discrimination based on race, color, religion, ~~sex~~  
29 GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS  
30 or national origin, except that ~~such a~~ THE notice or advertisement may  
31 indicate a preference, limitation, specification or discrimination based  
32 on religion, ~~sex~~ GENDER or national origin when religion, ~~sex~~ GENDER or  
33 national origin is a bona fide occupational qualification for employment.

34           C. It is unlawful for an employer, labor organization or employment  
35 agency to print or publish or cause to be printed or published any notice  
36 or advertisement relating to employment by an employer or membership in or  
37 any classification or referral for employment by a labor organization ~~or~~  
38 ~~relating to any classification or referral for employment by a labor~~  
39 ~~organization~~ or relating to any classification or referral for employment  
40 by an employment agency, indicating any preference, limitation,  
41 specification or discrimination based on age, except ~~such a~~ THAT THE  
42 notice or advertisement may indicate a preference, limitation,  
43 specification or discrimination based on age when age is a bona fide  
44 occupational qualification for employment.

1           Sec. 10. Section 41-1481, Arizona Revised Statutes, is amended to  
2 read:

3           41-1481. Filing charges; investigation; findings;  
4                   conciliation; compliance proceedings; appeals;  
5                   attorney fees; violation; classification

6           A. A charge under this section shall be filed within one hundred  
7 eighty days after the alleged unlawful employment practice occurred. A  
8 charge is deemed filed ~~upon~~ ON receipt by the division from or on behalf  
9 of a person claiming to be aggrieved or, if filed by a member of the  
10 division, when executed by ~~such~~ THE member ~~upon~~ ON oath or affirmation. A  
11 charge is deemed filed by or on behalf of a person claiming to be  
12 aggrieved if received from the United States equal employment opportunity  
13 commission. A charge ~~shall~~ MUST be in writing ~~upon~~ ON oath or affirmation  
14 and shall contain ~~such~~ information, including the date, place and  
15 circumstances of the alleged unlawful employment practice, and be in ~~such~~  
16 THE form ~~as~~ the division requires. Charges shall not be made public by  
17 the division.

18           B. ~~Whenever~~ IF a charge is filed by or on behalf of a person  
19 claiming to be aggrieved or by a member of the division, referred to as  
20 the charging party, alleging that an employer, employment agency, labor  
21 organization or joint labor-management committee controlling  
22 apprenticeship or other training or retraining programs, including  
23 on-the-job training programs, has engaged in an unlawful employment  
24 practice, the division shall serve notice of and a copy of the charge on  
25 ~~such~~ THE employer, employment agency, labor organization or joint  
26 labor-management committee, referred to as the respondent, within ten days  
27 and shall make an investigation of the charge. If the division determines  
28 after ~~such~~ THE investigation that there is not reasonable cause to believe  
29 that the charge is true, it shall enter an order determining the same and  
30 dismissing the charge and shall notify the charging party and the  
31 respondent of its action. If the division determines after ~~such~~ THE  
32 investigation that there is reasonable cause to believe that the charge is  
33 true, it shall enter an order containing its findings of fact and shall  
34 endeavor to eliminate the alleged unlawful employment practice by informal  
35 methods of conference, conciliation and persuasion. Any party to ~~such~~ AN  
36 informal proceeding may be represented by counsel. THE counsel need not  
37 be a member of the state bar if ~~he~~ THE COUNSEL is licensed to practice law  
38 in any other state or territory of the United States. Nothing said or  
39 done during and as a part of ~~such~~ THE informal endeavors may be made  
40 public by the division or its officers or employees or used as evidence in  
41 a subsequent proceeding without the written consent of the persons  
42 concerned. If a civil action resulting from a charge is commenced in any  
43 federal or state court, evidence collected by or submitted to the division  
44 during the investigation of the charge and the source of the evidence  
45 shall be subject to discovery by the parties to the civil action. Any



1 person who makes public information in violation of this subsection is  
 2 guilty of a class 1 misdemeanor. The division shall make its  
 3 determination on reasonable cause as promptly as possible and as far as  
 4 practicable not later than sixty days from the filing of the charge. If  
 5 more than two years have elapsed after the alleged unlawful employment  
 6 practice occurred, and if the charging party has received a notice of  
 7 right to sue, the division may cease investigation of a charge without  
 8 reaching a determination.

9 C. All conciliation agreements ~~shall~~ MUST provide that the charging  
 10 party waives, releases and covenants not to sue the respondent or claim  
 11 against the respondent in any forum with respect to the matters ~~which~~ THAT  
 12 were alleged as charges filed with the division, subject to performance by  
 13 the respondent of the promises and representations contained in the  
 14 conciliation agreement. The charging party or the respondent may prepare  
 15 a conciliation agreement ~~which~~ THAT the division shall submit to the other  
 16 party and ~~which~~ THAT, if accepted by the other party, shall be accepted by  
 17 the division.

18 D. If within thirty days after the division has made a  
 19 determination that reasonable cause exists to believe that the charge is  
 20 true the division has not accepted a conciliation agreement to which the  
 21 charging party and the respondent are parties, the division may bring a  
 22 civil action against the respondent, other than the state, named in the  
 23 charge. The charging party shall have the right to intervene in a civil  
 24 action brought by the division. If a charge filed with the division  
 25 pursuant to subsection A of this section is dismissed by the division or  
 26 if within ninety days from the filing of ~~such~~ THE charge the division has  
 27 not filed a civil action under this section or has not entered into a  
 28 conciliation agreement with the charging party, the division shall so  
 29 notify the charging party. Within ninety days after the giving of ~~such~~  
 30 THE notice a civil action may be brought against the respondent named in  
 31 the charge by the charging party or, if ~~such~~ THE charge was filed by a  
 32 member of the division, by any person whom the charge alleges was  
 33 aggrieved by the alleged unlawful employment practice. In no event shall  
 34 any action be brought pursuant to this article more than one year after  
 35 the charge to which the action relates has been filed. ~~upon~~ ON  
 36 application by the complainant and in such circumstances as the court may  
 37 deem just, the court may appoint an attorney for such complainant and may  
 38 authorize the commencement of the action without the payment of fees,  
 39 costs or security. ~~upon~~ ON timely application, the court may in its  
 40 discretion permit the division to intervene in civil actions in which the  
 41 state is not a defendant ~~upon~~ ON certification that the case is of general  
 42 public importance. ~~upon~~ ON request the court may stay further proceedings  
 43 for not more than sixty days pending the further efforts of the parties or  
 44 the division to obtain voluntary compliance.

1 E. ~~Whenever~~ IF a charge is filed with the division and the division  
2 concludes on the basis of a preliminary investigation that prompt judicial  
3 action is necessary to carry out the purposes of this article or article 4  
4 of this chapter, the division may bring an action for appropriate  
5 temporary or preliminary relief pending final disposition of ~~such~~ THE  
6 charge. Any temporary restraining order or other order granting  
7 preliminary or temporary relief ~~shall~~ MUST be issued in accordance with  
8 the supreme court rules of civil procedure. The court having jurisdiction  
9 over such proceedings shall assign ~~such~~ THE action for A hearing at the  
10 earliest practicable date and cause the action to be expedited in every  
11 way.

12 F. The court shall assign any action brought under this article for  
13 A hearing at the earliest practicable date and cause the action to be in  
14 every way expedited. If the action has not been scheduled for trial  
15 within one hundred twenty days after issue has been joined, the judge may  
16 appoint a master pursuant to rule 53 of the ~~supreme court~~ ARIZONA rules of  
17 civil procedure.

18 G. If the court finds that the defendant has intentionally engaged  
19 in or is intentionally engaging in an unlawful employment practice alleged  
20 in the complaint, the court may enjoin the defendant from engaging in ~~such~~  
21 THE unlawful employment practice and order ~~such~~ affirmative action ~~as may~~  
22 ~~be~~ THAT THE COURT DETERMINES IS appropriate. Affirmative action may  
23 include, ~~but is not limited to,~~ reinstatement or hiring of employees with  
24 or without back pay payable by the employer, employment agency or labor  
25 organization responsible for the unlawful employment practice or any other  
26 equitable relief as the court deems appropriate. Back pay liability shall  
27 not accrue from a date more than two years prior to the filing of the  
28 charge with the division. Interim earnings or amounts earnable with  
29 reasonable diligence by the person or persons discriminated against shall  
30 reduce the back pay otherwise allowable. ~~No~~ AN order of the court shall  
31 NOT require the admission or reinstatement of an individual as a member of  
32 a union or the hiring, reinstatement or promotion of an individual as an  
33 employee or the payment to ~~him~~ THE INDIVIDUAL of any back pay if ~~such~~ THE  
34 individual was refused admission, suspended or expelled or was refused  
35 employment or advancement or was suspended or discharged for any reason  
36 other than discrimination on account of race, color, religion, ~~sex,~~  
37 GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS,  
38 age, disability or national origin or a violation of section 41-1464.

39 H. ~~In any case in which~~ IF an employer, employment agency or labor  
40 organization fails to comply with an order of a court issued in a civil  
41 action brought under this section, a party to the action or the division  
42 ~~upon~~ ON the written request of a person aggrieved by ~~such~~ THE failure may  
43 commence proceedings to compel compliance with ~~such~~ THE order.

1 I. Any civil action brought under this section and any proceedings  
2 brought under subsection H of this section are subject to appeal as  
3 provided in sections 12-120.21, 12-120.22 and 12-120.24.

4 J. In any action or proceeding under this section the court may  
5 allow the prevailing party, other than the division, a reasonable  
6 ~~attorney's~~ ATTORNEY fee as part of the costs.