House Engrossed

employment discrimination; sexual harassment; definition

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

CHAPTER 169

HOUSE BILL 2679

AN ACT

AMENDING SECTION 41-1461, ARIZONA REVISED STATUTES; RELATING TO DISCRIMINATION IN EMPLOYMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 41-1461, Arizona Revised Statutes, is amended to read:

41-1461. Definitions
In this article, unless the context otherwise requires:
1. "Auxiliary aids and services" includes:
   (a) Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments.
   (b) Qualified readers, taped texts or other effective methods of making visually delivered materials available to individuals with visual impairments.
   (c) Acquisition or modification of equipment or devices.
   (d) Other similar services and actions.
2. "Because of sex" and "on the basis of sex" includes because of or on the basis of pregnancy or childbirth or related medical conditions.
3. "Being regarded as having such a physical or mental impairment":
   (a) Means an individual who establishes that the individual has been subjected to an action prohibited under this article because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.
   (b) Does not mean an impairment that is transitory and minor. For the purposes of this subdivision, "transitory impairment" means an impairment with an actual or expected duration of six months or less.
4. "Covered entity" means an employer, employment agency, labor organization or joint labor-management committee.
5. "Disability" means, with respect to an individual, except any impairment caused by current use of illegal drugs, any of the following:
   (a) A physical or mental impairment that substantially limits one or more of the major life activities of the individual.
   (b) A record of such a physical or mental impairment.
   (c) Being regarded as having such a physical or mental impairment.
6. "Employee":
   (a) Means an individual employed by an employer.
   (b) Does not include an elected public official of this state or any political subdivision of this state, any person chosen by an elected official to be on the elected official's personal staff, an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office, unless the person or appointee is subject to the civil service laws of this state or any political subdivision of this state.
7. "Employer":
   (a) Means a person who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of that person except that to the extent that any person is alleged to have committed any act of sexual
harassment, employer means, for purposes of administrative and civil
actions regarding those allegations of sexual harassment, a person who has
one or more employees in the current or preceding calendar year. OR A
PERSON WHO HAS ONE OR MORE EMPLOYEES IN THE CURRENT OR PRECEDING CALENDAR
YEAR AND ANY AGENT OF THAT PERSON, TO THE EXTENT THAT THE PERSON IS
ALLEGED TO HAVE:

(i) COMMITTED ANY ACT OF SEXUAL HARASSMENT.
(ii) DISCRIMINATED AGAINST ANYONE FOR OPPOSING SEXUAL HARASSMENT OR
MAKING A CHARGE, TESTIFYING, ASSISTING OR PARTICIPATING IN ANY MANNER IN
AN INVESTIGATION, PROCEEDING OR HEARING ARISING FROM SEXUAL HARASSMENT.
(b) Does not include either:
   (i) The United States or any department or agency of the United
   States, a corporation wholly owned by the government of the United States
   or an Indian tribe.
   (ii) A bona fide private membership club, other than a labor
organization, that is exempt from taxation under section 501(c) of the
internal revenue code of 1954.

8. "Employment agency" means any person regularly undertaking with
or without compensation to procure employees for an employer or to procure
for employees opportunities to work for an employer and includes an agent
of that person.

9. "Labor organization":
   (a) Means a labor organization and any agent of a labor
organization.
   (b) Includes:
      (i) Any organization of any kind, any agency or employee
representation committee, group, association or plan in which fifteen or
more employees participate and that exists for the purpose, in whole or in
part, of dealing with employers concerning grievances, labor disputes,
wages, rates of pay, hours or other terms or conditions of employment.
      (ii) Any conference, general committee, joint or system board or
joint council that is subordinate to a national or international labor
organization.

10. "Major life activities" includes:
    (a) Caring for oneself, performing manual tasks, seeing, hearing,
eating, sleeping, walking, standing, lifting, bending, speaking,
breathing, learning, reading, concentrating, thinking, communicating and
working.
    (b) The operation of a major bodily function, including functions
of the immune system, normal cell growth and digestive, bowel, bladder,
neurological, brain, respiratory, circulatory, endocrine and reproductive
functions.

11. "Person" means one or more individuals, governmental agencies,
political subdivisions, labor unions, partnerships, associations,
corporations, legal representatives, mutual companies, joint-stock
companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy or receivers.

12. "Qualified individual" means a person with a disability who, with or without reasonable accommodation, is capable of performing the essential functions of the employment position that the individual holds or desires.

13. "Reasonable accommodation" includes:
   (a) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities.
   (b) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers, taped texts or other effective methods of making visually delivered materials available to individuals with visual impairments, the provision of auxiliary aids and services or interpreters and other similar services and actions for individuals with disabilities.

14. "Religion" means all aspects of religious observance and practice, as well as belief. Unlawful practices as prohibited by this article include practices with respect to religion unless an employer demonstrates that the employer is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

15. "Undue hardship":
   (a) Means an action requiring significant difficulty or expense when considered in light of the factors set forth in subdivision (b) of this paragraph.
   (b) When determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:
      (i) The nature and cost of the accommodations needed under this article.
      (ii) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation, the number of persons employed at the facility, the effect on expenses and resources of the facility and any other impact of the accommodation on the operation of the facility.
      (iii) The overall financial resources of the covered entity, the overall size of the business of the covered entity with respect to the number of its employees and the number, type and location of its facilities.
      (iv) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of the covered entity.
      (v) The geographic separateness and the administrative or fiscal relationship of the facility to the covered entity.