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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS -- FAIR EMPLOYMENT PRACTICES

Introduced By: Senators Euer, Goldin, Murray, Valverde, and Cano

Date Introduced: March 14, 2019

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 28-5-6 and 28-5-7 of the General Laws in Chapter 28-5 entitled
2 "Fair Employment Practices" are hereby amended to read as follows:

3 **28-5-6. Definitions.**

4 When used in this chapter:

5 (1) "Age" means anyone who is at least forty (40) years of age.

6 (2) "Because of sex" or "on the basis of sex" include, but are not limited to, because of or
7 on the basis of pregnancy, childbirth, or related medical conditions, and women affected by
8 pregnancy, childbirth, or related medical conditions shall be treated the same for all employment
9 related purposes, including receipt of benefits under fringe benefit programs, as other persons not
10 so affected but similar in their ability or inability to work, and nothing in this chapter shall be
11 interpreted to permit otherwise.

12 (3) "Commission" means the Rhode Island commission against discrimination created by
13 this chapter.

14 (4) "Confidential" means to remain secret and not to be disclosed to another person or
15 entity.

16 ~~(4)~~(5) "Conviction" means, for the purposes of this chapter only, any verdict or finding of
17 guilt after a criminal trial or any plea of guilty or nolo contendere to a criminal charge.

18 ~~(5)~~(6) "Disability" means a disability as defined in § 42-87-1.

19 ~~(6)~~(7) "Discriminate" includes segregate or separate.

1 ~~(7)~~(8) "Employee" does not include any individual employed by his or her parents,
2 spouse, or child, or in the domestic service of any person.

3 ~~(8)~~(9) (i) "Employer" includes the state and all political subdivisions of the state and any
4 person in this state employing four (4) or more individuals, and any person acting in the interest
5 of an employer directly or indirectly.

6 (ii) Nothing in this subdivision shall be construed to apply to a religious corporation,
7 association, educational institution, or society with respect to the employment of individuals of its
8 religion to perform work connected with the carrying on of its activities.

9 ~~(9)~~(10) "Employment agency" includes any person undertaking with or without
10 compensation to procure opportunities to work, or to procure, recruit, refer, or place employees.

11 ~~(10)~~(11) "Firefighter" means an employee the duties of whose position includes work
12 connected with the control and extinguishment of fires or the maintenance and use of firefighting
13 apparatus and equipment, including an employee engaged in this activity who is transferred or
14 promoted to a supervisory or administrative position.

15 ~~(11)~~(12) "Gender identity or expression" includes a person's actual or perceived gender,
16 as well as a person's gender identity, gender-related self image, gender-related appearance, or
17 gender-related expression; whether or not that gender identity, gender-related self image, gender-
18 related appearance, or gender-related expression is different from that traditionally associated
19 with the person's sex at birth.

20 ~~(12)~~(13) "Labor organization" includes any organization which exists for the purpose, in
21 whole or in part, of collective bargaining or of dealing with employers concerning grievances,
22 terms or conditions of employment, or of other mutual aid or protection in relation to
23 employment.

24 ~~(13)~~(14) "Law enforcement officer" means an employee the duties of whose position
25 include investigation, apprehension, or detention of individuals suspected or convicted of
26 offenses against the criminal laws of the state, including an employee engaged in such activity
27 who is transferred or promoted to a supervisory or administrative position. For the purpose of this
28 subdivision, "detention" includes the duties of employees assigned to guard individuals
29 incarcerated in any penal institution.

30 (15) "Non-disparagement agreement" means an agreement which restricts an individual
31 from taking any action to include, but not limited to, speaking or publicizing information that
32 negatively impacts the other party to the agreement to include the reputation, products, services,
33 employees and management of the protected party.

34 ~~(14)~~(16) "Person" includes one or more individuals, partnerships, associations,

1 organizations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

2 ~~(15)~~(17) "Religion" includes all aspects of religious observance and practice, as well as
3 belief, unless an employer, union or employment agency demonstrates that it is unable to
4 reasonably accommodate to an employee's or prospective employee's or union member's religious
5 observance or practice without undue hardship on the conduct of its business.

6 ~~(16)~~(18) "Sexual orientation" means having or being perceived as having an orientation
7 for heterosexuality, bisexuality, or homosexuality. This definition is intended to describe the
8 status of persons and does not render lawful any conduct prohibited by the criminal laws of this
9 state nor impose any duty on a religious organization. This definition does not confer legislative
10 approval of that status, but is intended to assure the basic human rights of persons to obtain and
11 hold employment, regardless of that status.

12 ~~(17)~~(19) The terms, as used regarding persons with disabilities:

13 (i) "Auxiliary aids and services" and "reasonable accommodation" shall have the same
14 meaning as those items are defined in § 42-87-1.1; and

15 (ii) "Hardship" means an "undue hardship" as defined in § 42-87-1.1.

16 **28-5-7. Unlawful employment practices.**

17 It shall be an unlawful employment practice:

18 (1) For any employer:

19 (i) To refuse to hire any applicant for employment because of his or her race or color,
20 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of
21 ancestral origin;

22 (ii) Because of those reasons, to discharge an employee or discriminate against him or her
23 with respect to hire, tenure, compensation, terms, conditions or privileges of employment, or any
24 other matter directly or indirectly related to employment. However, if an insurer or employer
25 extends insurance related benefits to persons other than or in addition to the named employee,
26 nothing in this subdivision shall require those benefits to be offered to unmarried partners of
27 named employees;

28 (iii) In the recruiting of individuals for employment or in hiring them, to utilize any
29 employment agency, placement service, training school or center, labor organization, or any other
30 employee referring source which the employer knows, or has reasonable cause to know,
31 discriminates against individuals because of their race or color, religion, sex, sexual orientation,
32 gender identity or expression, disability, age, or country of ancestral origin;

33 (iv) To refuse to reasonably accommodate an employee's or prospective employee's
34 disability unless the employer can demonstrate that the accommodation would pose a hardship on

1 the employer's program, enterprise, or business; ~~or~~

2 (v) When an employee has presented to the employer an internal complaint alleging
3 harassment in the workplace on the basis of race or color, religion, sex, disability, age, sexual
4 orientation, gender identity or expression, or country of ancestral origin, to refuse to disclose in a
5 timely manner in writing to that employee the disposition of the complaint, including a
6 description of any action taken in resolution of the complaint; provided, however, no other
7 personnel information shall be disclosed to the complainant; or

8 (vi) To require an employee as a condition of employment, to execute a nondisclosure
9 agreement or an agreement with a clause that requires alleged violations of civil rights remain
10 confidential, or a non-disparagement agreement concerning alleged violations of civil rights or
11 alleged unlawful conduct. Any contract provision in violation of this subsection shall be void as a
12 violation of public policy.

13 (2)(i) For any employment agency to fail or refuse to properly classify or refer for
14 employment or otherwise discriminate against any individual because of his or her race or color,
15 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of
16 ancestral origin; or

17 (ii) For any employment agency, placement service, training school or center, labor
18 organization, or any other employee referring source to comply with an employer's request for the
19 referral of job applicants if the request indicates either directly or indirectly that the employer will
20 not afford full and equal employment opportunities to individuals regardless of their race or color,
21 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of
22 ancestral origin;

23 (3) For any labor organization:

24 (i) To deny full and equal membership rights to any applicant for membership because of
25 his or her race or color, religion, sex, sexual orientation, gender identity or expression, disability,
26 age, or country of ancestral origin;

27 (ii) Because of those reasons, to deny a member full and equal membership rights, expel
28 him or her from membership, or otherwise discriminate in any manner against him or her with
29 respect to his or her hire, tenure, compensation, terms, conditions or privileges of employment, or
30 any other matter directly or indirectly related to membership or employment, whether or not
31 authorized or required by the constitution or bylaws of the labor organization or by a collective
32 labor agreement or other contract;

33 (iii) To fail or refuse to classify properly or refer for employment, or otherwise to
34 discriminate against any member because of his or her race or color, religion, sex, sexual

1 orientation, gender identity or expression, disability, age, or country of ancestral origin; or

2 (iv) To refuse to reasonably accommodate a member's or prospective member's disability
3 unless the labor organization can demonstrate that the accommodation would pose a hardship on
4 the labor organization's program, enterprise, or business;

5 (4) Except where based on a bona fide occupational qualification certified by the
6 commission or where necessary to comply with any federal mandated affirmative action
7 programs, for any employer or employment agency, labor organization, placement service,
8 training school or center, or any other employee referring source, prior to employment or
9 admission to membership of any individual, to:

10 (i) Elicit or attempt to elicit any information directly or indirectly pertaining to his or her
11 race or color, religion, sex, sexual orientation, gender identity or expression, disability, age, or
12 country of ancestral origin;

13 (ii) Make or keep a record of his or her race or color, religion, sex, sexual orientation,
14 gender identity or expression, disability, age, or country of ancestral origin;

15 (iii) Use any form of application for employment, or personnel or membership blank
16 containing questions or entries directly or indirectly pertaining to race or color, religion, sex,
17 sexual orientation, gender identity or expression, disability, age, or country of ancestral origin;

18 (iv) Print or publish or cause to be printed or published any notice or advertisement
19 relating to employment or membership indicating any preference, limitation, specification, or
20 discrimination based upon race or color, religion, sex, sexual orientation, gender identity or
21 expression, disability, age, or country of ancestral origin; or

22 (v) Establish, announce, or follow a policy of denying or limiting, through a quota system
23 or otherwise, employment or membership opportunities of any group because of the race or color,
24 religion, sex, sexual orientation, gender identity or expression, disability, age, or country of
25 ancestral origin of that group;

26 (5) For any employer or employment agency, labor organization, placement service,
27 training school or center, or any other employee referring source to discriminate in any manner
28 against any individual because he or she has opposed any practice forbidden by this chapter, or
29 because he or she has made a charge, testified, or assisted in any manner in any investigation,
30 proceeding, or hearing under this chapter;

31 (6) For any person, whether or not an employer, employment agency, labor organization,
32 or employee, to aid, abet, incite, compel, or coerce the doing of any act declared by this section to
33 be an unlawful employment practice, or to obstruct or prevent any person from complying with
34 the provisions of this chapter or any order issued pursuant to this chapter, or to attempt directly or

1 indirectly to commit any act declared by this section to be an unlawful employment practice;

2 (7) For any employer to include on any application for employment, except applications
3 for law enforcement agency positions or positions related to law enforcement agencies, a question
4 inquiring or to otherwise inquire either orally or in writing whether the applicant has ever been
5 arrested, charged with or convicted of any crime; provided, that:

6 (i) If a federal or state law or regulation creates a mandatory or presumptive
7 disqualification from employment based on a person's conviction of one or more specified
8 criminal offenses, an employer may include a question or otherwise inquire whether the applicant
9 has ever been convicted of any of those offenses; or

10 (ii) If a standard fidelity bond or an equivalent bond is required for the position for which
11 the applicant is seeking employment and his or her conviction of one or more specified criminal
12 offenses would disqualify the applicant from obtaining such a bond, an employer may include a
13 question or otherwise inquire whether the applicant has ever been convicted of any of those
14 offenses; and

15 (iii) Notwithstanding, any employer may ask an applicant for information about his or her
16 criminal convictions at the first interview or thereafter, in accordance with all applicable state and
17 federal laws.

18 (8)(i) For any person who, on June 7, 1988, is providing either by direct payment or by
19 making contributions to a fringe benefit fund or insurance program, benefits in violation with §§
20 28-5-6, 28-5-7 and 28-5-38, until the expiration of a period of one year from June 7, 1988 or if
21 there is an applicable collective bargaining agreement in effect on June 7, 1988, until the
22 termination of that agreement, in order to come into compliance with §§ 28-5-6, 28-5-7 and 28-5-
23 38, to reduce the benefits or the compensation provided any employee on June 7, 1988, either
24 directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance
25 program.

26 (ii) Where the costs of these benefits on June 7, 1988 are apportioned between employers
27 and employees, the payments or contributions required to comply with §§ 28-5-6, 28-5-7 and 28-
28 5-38 may be made by employers and employees in the same proportion.

29 (iii) Nothing in this section shall prevent the readjustment of benefits or compensation for
30 reasons unrelated to compliance with §§ 28-5-6, 28-5-7 and 28-5-38.

31 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO LABOR AND LABOR RELATIONS -- FAIR EMPLOYMENT PRACTICES

1 This act would forbid an employer to require an employee to execute a nondisclosure
2 agreement; or non-disparagement agreement regarding alleged violations of civil rights or
3 criminal conduct as a condition of employment.

4 This act would take effect upon passage.

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