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FAIR EMPLOYMENT PRACTICES 363.03

## CHAPTER 363

### FAIR EMPLOYMENT PRACTICES

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**363.01 DEFINITIONS.** Subdivision 1. **Terms.** For the purposes of this chapter, the words defined in this section have the meanings ascribed to them.

Subd. 2. **Board.** "Board" means the board of review appointed under provisions of this chapter.

Subd. 3. **Commission** "Commission" means the State Fair Employment Practices Commission.

Subd. 4. **Employment agency.** "Employment agency" means a person or persons who, or an agency which regularly undertakes, with or without compensation, to procure employees or opportunities for employment.

Subd. 5. **Labor organization.** "Labor organization" means any organization that exists wholly or partly for one or more of the following purposes:

- (1) Collective bargaining;
- (2) Dealing with employers concerning grievances, terms or conditions of employment; or
- (3) Mutual aid or protection of employees.

Subd. 6. **National origin.** "National origin" means the place of birth of an individual or of any of his lineal ancestors.

Subd. 7. **Person.** "Person" includes partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, receiver, and the state and its departments, agencies, and political subdivisions.

Subd. 8. **Respondent.** "Respondent" means a person against whom a complaint has been filed or issued.

Subd. 9. **Unfair employment practice.** "Unfair employment practice" means any act described in section 363.03.

Subd. 10. **Discriminate.** The term "discriminate" includes segregate or separate.

[1955 c 516 s 3]

**363.02 EXCEPTIONS.** This chapter does not apply to:

- (1) The employment of any individual
  - (a) by his parent, grandparent, spouse, child, or grandchild, or
  - (b) in the domestic service of any person;
- (2) A person who regularly employs fewer than eight individuals, excluding individuals described in clause (1); or
- (3) A religious or fraternal corporation, association, or society, with respect to qualifications based on religion, when religion shall be a bona fide occupational qualification for employment.

[1955 c 516 s 4]

**363.03 UNFAIR EMPLOYMENT PRACTICES.** Except when based on a bona fide occupational qualification, it is an unfair employment practice:

- (1) For a labor organization, because of race, color, creed, religion or national origin,
  - (a) to deny full and equal membership rights to an applicant for membership or to a member;
  - (b) to expel a member from membership;
  - (c) to discriminate against an applicant for membership or a member with respect to his hire, apprenticeship, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment; or

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- (d) to fail to classify properly, or refer for employment or otherwise to discriminate against a member;
- (2) For an employer, because of race, color, creed, religion, or national origin,
- (a) to refuse to hire an applicant for employment; or
  - (b) to discharge an employee; or
- (c) to discriminate against an employee with respect to his hire, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment;
- (3) For an employment agency, because of race, color, creed, religion, or national origin,
- (a) to refuse or fail to accept, register, classify properly, or refer for employment or otherwise to discriminate against an individual; or
  - (b) to comply with a request from an employer for referral of applicants for employment if the request indicates directly or indirectly that the employer fails to comply with the provisions of this chapter;
- (4) For an employer, labor organization, or employment agency to discharge, expel, or otherwise discriminate against a person because that person has opposed any practice forbidden under this chapter or has filed a complaint, testified, or assisted in any proceeding under this chapter;
- (5) For a person intentionally to aid, abet, incite, compel, or coerce another person to engage in any of the practices forbidden by this chapter;
- (6) For a person intentionally to attempt to aid, abet, incite, compel, or coerce another person to engage in any of the practices forbidden by this chapter;
- (7) For any person, employer, labor organization or employment agency to wilfully resist, prevent, impede, or interfere with the commission, the board of review, or any of its members or representatives in the performance of duty under this chapter;
- (8) For an employer, employment agency, or labor organization, before an individual is employed by an employer or admitted to membership in a labor organization, to
- (a) require the applicant to furnish information that pertains to the applicant's race, color, creed, religion or national origin, unless, for the purpose of national security, information pertaining to the national origin of the applicant is required by the United States, this state or a political subdivision or agency of the United States or this state; or
  - (b) cause to be printed or published a notice or advertisement that relates to employment or membership and discloses a preference, limitation, specification, or discrimination based on race, color, creed, religion or national origin.

[1955 c.516 s 5]

**363.04 STATE FAIR EMPLOYMENT PRACTICES COMMISSION.** Subdivision 1. **Creation, membership.** There is created a State Fair Employment Practices Commission, to consist of nine members, one from each congressional district of the state of Minnesota; and at least one of whom shall be an attorney at law, appointed by the governor with the advice and consent of the senate, for a term of five years to serve until a successor is appointed and qualified. The chairman shall be designated by the governor.

Subd. 2. **Terms.** To ensure a continuity of work, the initial appointments to the commission shall be: one member for a term of one year, two for a term of two years, two for a term of three years, two for a term of four years and two for a term of five years. All members shall serve until a successor is appointed and qualifies.

Subd. 3. **Vacancies.** A vacancy shall be filled by appointment by the governor for the balance of the unexpired term.

Subd. 4. **Removal.** Upon notice and hearing a member may be removed by the governor upon a finding of inefficiency, neglect of duty, misconduct or malfeasance in office.

Subd. 5. **Traveling expenses.** Each member of the commission shall receive reimbursement for necessary traveling expenses incurred on official business. Reimbursement shall be made in the manner provided by law for state employees.

[1955 c 516 s 6]

**363.05 DUTIES OF COMMISSION.** Subdivision 1. **Formulation of policies.** The commission shall formulate policies to effectuate the purposes of this chapter and shall:

(1) establish and maintain a principal office in St. Paul, and any other necessary branch offices at any location within the state;

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- (2) meet and function at any place within the state;
- (3) appoint an executive director to serve at the pleasure of the commission and fix his compensation and prescribe his duties;
- (4) employ such attorneys, clerks and other employees and agents as it may deem necessary, to fix their compensation and prescribe their duties;
- (5) to the extent permitted by federal law and regulation, utilize the records of the department of employment security of the state when necessary to effectuate the purposes of this chapter;
- (6) obtain upon request and utilize the services of all state governmental departments and agencies;
- (7) adopt suitable rules and regulations for effectuating the purposes of this chapter;
- (8) issue, receive, and investigate complaints alleging discrimination in employment because of race, color, creed, religion or national origin;
- (9) subpoena witnesses, administer oaths, and take testimony relating to the case before the commission, and require the production for examination of any books or papers relative to any matter under investigation or in question before the commission;
- (10) attempt to eliminate unfair employment practices by means of education, conference, conciliation, and persuasion;
- (11) conduct research and study discriminatory employment and labor practices based on race, color, creed, religion, or national origin;
- (12) publish the results of research and study of discriminatory employment and labor practices based on race, color, creed, religion, or national origin when in the judgment of the commission it will tend to eliminate such discrimination;
- (13) develop and recommend programs of formal and informal education designed to promote good will; and may make recommendations to agencies and officers of state or local subdivisions of government in aid of such policies and purposes in eliminating discriminatory employment and labor practices based on race, color, creed, religion, or national origin; and
- (14) make a written report of the activities of the commission to the governor each year and to the legislature at each session.

Subd. 2. **Executive director, duties.** To the extent determined by the commission and subject to its direction and control, the executive director may exercise the powers and perform the duties of the commission.

[1955 c 516 s 7]

**363.06 GRIEVANCES.** Subdivision 1. **Complaint filing.** Any person aggrieved by a violation of this chapter may file by himself, or his agent, or attorney a signed complaint with the commission, stating the name and address of the person alleged to have committed an unfair employment practice, setting out the details of the practice complained of and any other information required by the commission. Any employer whose employees, or some of them, or any labor union whose members, or some of them, refuse or threaten to refuse to cooperate with the provisions of this chapter, may file with the commission a signed complaint asking for assistance by conciliation or other remedial action.

Subd. 2. **Complaint, issuance by commission.** Whenever the commission has reason to believe that a person is engaging in an unfair employment practice, the commission may issue a complaint.

Subd. 3. **Time for filing complaint.** A complaint of an unfair employment practice must be filed within six months after the occurrence of the practice.

Subd. 4. **Inquiry into complaint.** When a complaint has been filed or issued, the commission shall promptly inquire into the truth of the allegations of the complaint. If after the inquiry the commission determines that there is probable cause for believing that an unfair employment practice exists, the commission shall immediately endeavor to eliminate the unfair employment practice through education, conference, conciliation, and persuasion. If the commission determines that there is no probable cause for believing that an unfair employment practice exists, the commission shall dismiss the complaint.

Subd. 5. **Attempts to eliminate unfair practices.** The commission, in complying with subdivision 4, shall endeavor to eliminate the unfair employment practice at the place where the practice occurred, or the respondent resides or has his principal place of business.

Subd. 6. **Publication of accounts of cases.** The commission may publish an account of a case in which the complaint has been dismissed or the terms of settle-

ment of a case that has been voluntarily adjusted. Except as provided in other sections of this chapter, the commission shall not disclose any information concerning its efforts in a particular case to eliminate an unfair employment practice through education, conference, conciliation and persuasion.

[1955 c 516 s 8]

**363.07 BOARD OF REVIEW.** Subdivision 1. **Creation, membership, terms, vacancies.** There is created a board of review. The board shall be drawn from a panel of 12 persons to be named and appointed by the governor with the advice and consent of the senate. Members on the board of review shall be apportioned so that each congressional district of the state of Minnesota shall have a minimum of one resident member on said board of review. At least four members of the panel shall be lawyers. For purposes of holding prescribed hearings, three persons, one of whom shall be a lawyer, shall be appointed from the panel by the governor and shall constitute and serve as the board of review. The governor shall designate a member of the board to serve as its chairman. No member of the panel of the board of review shall be a member of the commission. The term of office of each member of the panel shall be three years except that the terms of the members first appointed are: four for one year, four for two years, and four for three years. Members shall serve until a successor is appointed and qualifies. Vacancies shall be filled by the governor by and with the advice and consent of the senate.

Subd. 2. **Removal of member.** After written notice and a hearing, the governor may remove a member of the panel for inefficiency, neglect of duty, misconduct, or malfeasance in office.

Subd. 3. **Compensation, expenses.** Each member of the board shall receive \$25 per day while the board is in session and reimbursement for necessary expenses actually incurred on official business.

Subd. 4. **Notice to governor.** On failing to eliminate an unfair employment practice in the manner prescribed by section 363.06, the commission shall notify the governor in writing of that fact, and request him to appoint a board of review to conduct a public hearing in the case.

Subd. 5. **Hearings; powers.** The board shall conduct a hearing at a place designated by it within the county where the unfair employment practice occurred, or the respondent resides or has his principal place of business. It may subpoena witnesses, administer oaths, take testimony and require the production for examination of any books or papers relating to any matter under investigation or in question before the board. The board shall adopt and promulgate rules of practice to govern its hearings and it shall employ necessary assistants, fix their compensation, and prescribe their duties.

Subd. 6. **Notice to commission of hearing; service of complaint, answer.** The board of review shall notify the commission of the time and place of the hearing to be conducted by the board. Thereupon the commission shall issue and serve by registered mail upon the respondent a copy of the complaint and a written notice requiring the respondent to answer the allegations of the complaint at the hearing. The notice shall state the time and place of the hearing. Within fifteen days after receipt of the copy of the complaint and the notice, the respondent shall serve upon the commission, by registered mail, a verified answer to the complaint.

Subd. 7. **Conduct of hearings.** The commission shall submit evidence and present the case before the board in support of the complaint. The complainant shall appear in person at the hearing and is subject to cross-examination by the respondent, his attorney or agent. The respondent, his attorney or agent, may appear at the hearing, submit evidence, and present his case.

Subd. 8. **Evidence receivable.** The board of review shall not be bound by the strict rules of evidence that prevail in courts of law, but its findings must be based upon competent and substantial evidence. The board shall not receive in evidence any evidence pertaining to the efforts of the commission to eliminate the unfair employment practice through education, conference, conciliation, or persuasion. Each witness at the hearing shall testify under oath. All testimony and other evidence submitted at the hearing shall be recorded and transcribed. The board, at the request of the complainant or respondent, shall provide a copy of the transcript of the hearing without charge.

Subd. 9. **Finding of guilty.** If the board of review finds that the respondent has engaged in an unfair employment practice, it shall make findings and shall issue an order directing the respondent to cease and desist from the unfair employ-

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ment practice found to exist and to take such other affirmative action as in the judgment of the board will effectuate the purposes of this chapter and shall serve the order on the respondent personally, and the commission and the complainant by registered mail.

Subd. 10. **Finding of not guilty.** If the board finds that the respondent has not engaged in an unfair employment practice as alleged in the complaint, the board shall make findings of fact and conclusions of law and shall issue an order dismissing the complaint and shall serve it on the complainant personally, and the commission and the respondent by registered mail.

[1955 c 516 s 9]

**363.08 DISTRICT COURT, REVIEW ORDERS OF BOARD OF REVIEW.** Subdivision 1. **Institution of proceedings.** Subject to subdivisions 2 and 3, the commission, complainant or the respondent may institute in the manner prescribed by subdivision 4 a proceeding in the district court for judicial review and enforcement of an order of the board.

Subd. 2. **Time limit.** Except for a proceeding by the commission to enforce an order of the board, a proceeding in the district court shall be instituted within 60 days after service of an order of the board.

Subd. 3. **Jurisdiction.** A proceeding under this section shall be instituted in the district court for the judicial district in which an unfair employment practice covered by the order of the board occurred, or the respondent resides or has his principal place of business.

Subd. 4. **Procedure.** A proceeding under this section is instituted by:

(1) filing with the clerk of the district court a petition stating the relief requested and the grounds relied on for that relief; a transcript of the hearing held before the board, and a copy of the findings of fact, conclusions of law, and order of the board, and

(2) serving a proper notice of motion returnable at a special term of the court on the complainant, the respondent, and the commission.

Subd. 5. **District court, exclusive jurisdiction.** When a proceeding has been instituted under this section, the district court has exclusive jurisdiction of the proceeding and shall hear and determine the proceeding.

Subd. 6. **Appearances in court action.** The commission, complainant, respondent, and any person aggrieved by an order of the board may appear in the proceeding.

Subd. 7. **Court determination.** In a proceeding under this section, the district court shall determine whether the findings of the board are supported by competent and substantial evidence, and whether the order of the board is supported by the findings. The court may, in its discretion, remand the proceeding to the board for further hearing, or take additional evidence on any issue, or order a trial de novo to the court.

Subd. 8. **Court's power to issue orders.** The district court has power to grant temporary relief by restraining order or otherwise; to modify the order of the board in any particular; to order compliance with the order of the board; to issue its order modifying the order of the board and enjoining compliance therewith; to vacate the order of the board and dismiss the proceedings; or to make such orders in the matter as the interests of justice may require.

[1955 c 516 s 10]

**363.09 VIOLATION OF ORDERS; CITATION FOR CONTEMPT.** Any person, employer, labor organization, employment agency or party who or which shall wilfully violate any order of the district court entered pursuant to a proceeding under this chapter shall be cited to the district court for and as being in contempt. Procedure for review of the order shall not be deemed to be such wilful conduct.

Any person, employer, labor organization, employment agency, or party found in a proceeding before the district court to be in contempt shall be punishable under Minnesota Statutes, Section 588.10, which provides for imprisonment for not more than six months, or a fine of not more than \$250, or both.

A proceeding under this section shall be commenced by the commission serving a notice of motion, and an order to show cause upon the respondent, and the complainant, and filing the same with the clerk of the district court of the county in which the aforementioned order is entered.

[1955 c 516 s 11]

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**363.10 APPEAL TO SUPREME COURT.** The commission, or the respondent, may appeal to the supreme court as provided by Minnesota Statutes, Section 605.09, clauses (2) and (7) from an order of the district court issued pursuant to section 363.08, subdivision 8.

[1955 c 516 s 12]

**363.11 CONSTRUCTION.** The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of the civil rights law or of any other law of this state relating to discrimination because of race, creed, color, religion or national origin; but, as to acts declared unfair by section 363.03, the procedure herein provided shall, while pending, be exclusive.

[1955 c 516 s 13]

**363.12 DECLARATION OF POLICY.** As a guide to the interpretation and application of this chapter, be it enacted that the public policy of this state is to foster the employment of all individuals in this state in accordance with their fullest capacities, regardless of their race, color, creed, religion, or national origin, and to safeguard their rights to obtain and hold employment without discrimination. Such discrimination threatens the rights and privileges of the inhabitants of this state and menaces the institutions and foundations of democracy. It is also the public policy of this state to protect employers, labor organizations, and employment agencies from wholly unfounded charges of discrimination. This chapter is an exercise of the police power of this state in the interest of the public welfare.

[1955 c 516 s 1]

**363.13 TITLE.** This chapter shall be known as the Minnesota State Act for Fair Employment Practices.

[1955 c 516 s 2]