

CHAPTER 363

DEPARTMENT OF HUMAN RIGHTS

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363.03 UNFAIR DISCRIMINATORY PRACTICES.

[For text of subds 1 to 6, see M.S.1980]

Subd. 7. **Reprisals.** It is an unfair discriminatory practice for any employer, labor organization, employment agency, public accommodation, public service, educational institution, or owner, lessor, lessee, sublessee, assignee or managing agent of any real property, or any real estate broker, real estate salesperson or employee or agent thereof to intentionally engage in any reprisal against any person because that person:

(1) Opposed a practice forbidden under this chapter or has filed a charge, testified, assisted, or participated in any matter in an investigation, proceeding or hearing under this chapter; or

(2) Associated with a person or group of persons of different race, color, creed, religion or national origin.

A reprisal includes, but is not limited to, any form of intimidation, retaliation, or harassment. It is a reprisal for an employer to do any of the following with respect to an individual because that individual has engaged in the activities listed in clause (1) or (2): refuse to hire the individual; depart from any customary employment practice; transfer or assign the individual to a lesser position in terms of wages, hours, job classification, job security, or other employment status; or inform another employer that the individual has engaged in the activities listed in clause (1) or (2).

[For text of subds 8 and 9, see M.S.1980]

History: 1981 c 330 s 1

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[For text of subds 1 and 2, see M.S.1980]

Subd. 3. [Repealed, 1981 c 330 s 8]

[For text of subds 4 to 10, see M.S.1980]

363.06 GRIEVANCES.

Subdivision 1. **Charge filing.** Any person aggrieved by a violation of this chapter may bring a civil action as provided in section 363.14, subdivision 1, clause (a), or may file a verified charge with the commissioner or his designated agent, stating the name and address of the person alleged to have committed an unfair discriminatory practice, setting out the details of the practice complained of and, if applicable, providing witnesses, documents, and any other information required by the commissioner. The commissioner may dismiss a charge when the charging party fails to provide required information. The commissioner within five days of the filing shall serve a copy of the charge and a request for a response upon the

respondent personally or by registered or certified mail. After the filing of a charge the commissioner shall notify the charging party in writing of any change in the status of the charge. A copy of the notice shall be mailed to the respondent.

[For text of subd 2, see M.S.1980]

Subd. 3. Time for filing claim. A claim of an unfair discriminatory practice must be brought as a civil action pursuant to section 363.14, subdivision 1, clause (a), or filed in a charge with the commissioner within six months after the occurrence of the practice.

Subd. 4. Inquiry into charge. (1) Consistent with clause (7), when a charge has been filed, the commissioner shall promptly inquire into the truth of the allegations of the charge. The commissioner shall make an immediate inquiry when necessary to prevent a charging party from suffering irreparable loss in the absence of immediate action. The commissioner shall also make an immediate inquiry when it appears that a charge is frivolous or without merit and shall dismiss those charges. On all other charges the commissioner shall make a determination as to whether or not there is probable cause to credit the allegation of unfair discriminatory practices, and

(2) If the commissioner determines after investigation that no probable cause exists to credit the allegations of the unfair discriminatory practice, the commissioner shall, within ten days of the determination, serve upon the charging party and respondent written notice of the determination. Within ten days after receipt of notice, the charging party may request in writing on forms prepared by the department that the commissioner reconsider his determination. The request shall contain a brief statement of the reasons for and new evidence in support of the request for reconsideration. At the time of submission of the request to the commissioner, the charging party shall deliver or mail to the respondent a copy of the request for reconsideration. The commissioner shall either reaffirm or reverse his determination of no probable cause within 20 days after receipt of the request for reconsideration, and he shall within ten days notify in writing the charging party and respondent of his decision to reaffirm or reverse.

A decision by the commissioner that no probable cause exists to credit the allegations of an unfair discriminatory practice shall not be appealed to district court pursuant to section 363.072 or section 15.0424.

(3) If the commissioner determines after investigation that probable cause exists to credit the allegations of unfair discriminatory practices, the commissioner shall serve on the respondent and his attorney if he is represented by counsel, by first class mail, a notice setting forth a short plain written statement of the alleged facts which support the finding of probable cause and an enumeration of the provisions of law allegedly violated. If the commissioner determines that attempts to eliminate the alleged unfair practices through conciliation pursuant to subdivision 5 have been or would be unsuccessful or unproductive, the commissioner shall issue a complaint and serve on the respondent, by registered or certified mail, a written notice of hearing together with a copy of the complaint, requiring the respondent to answer the allegations of the complaint at a hearing before a hearing examiner at a time and place specified in the notice, not less than ten days after service of said complaint. A copy of the notice shall be furnished to the charging party and the attorney general.

(4) If, at any time after the filing of a charge, the commissioner has reason to believe that a respondent has engaged in any unfair discriminatory practice, the

commissioner may file a petition in the district court in a county in which the subject of the complaint occurs, or in a county in which a respondent resides or transacts business, seeking appropriate temporary relief against the respondent, pending final determination of proceedings under this chapter, including an order or decree restraining him from doing or procuring an act tending to render ineffectual an order the commissioner may enter with respect to the complaint. The court shall have power to grant temporary relief or a restraining order as it deems just and proper, but no relief or order extending beyond ten days shall be granted except by consent of the respondent or after hearing upon notice to the respondent and a finding by the court that there is reasonable cause to believe that the respondent has engaged in a discriminatory practice. Except as modified by this section, the Minnesota rules of civil procedure shall apply to an application, and the district court shall have authority to grant or deny the relief sought on conditions as it deems just and equitable. All hearings under this section shall be given precedence as nearly as practicable over all other pending civil actions.

(5) If a lessor, after he has engaged in a discriminatory practice defined in section 363.03, subdivision 2, clause (1), (a), leases or rents a dwelling unit to a person who has no knowledge of the practice or of the existence of a charge with respect to the practice, the lessor shall be liable for actual damages sustained by a person by reason of a final order as provided in this section requiring the person to be evicted from the dwelling unit.

(6) In any complaint issued under this section, the commissioner may seek relief for a class of individuals affected by an unfair discriminatory practice occurring on or after a date six months prior to the filing of the charge from which the complaint originates.

(7) The commissioner may adopt policies to determine the order in which charges are processed based on their particular social or legal significance, administrative convenience, difficulty of resolution, or other standard consistent with the provisions of this chapter.

[For text of subds 5 and 6, see M.S.1980]

Subd. 8. **Access to documents.** The charging party or his representative may review the answer of the respondent to the charge submitted pursuant to subdivision 1. The department shall make these documents available to the charging party.

History: 1981 c 330 s 2-5; 1981 c 364 s 1

363.071 HEARINGS.

[For text of subd 1, see M.S.1980]

Subd. 2. **Determination of discriminatory practice.** The hearing examiner shall make findings of fact and conclusions of law, and if the hearing examiner finds that the respondent has engaged in an unfair discriminatory practice, the hearing examiner shall issue an order directing the respondent to cease and desist from the unfair discriminatory practice found to exist and to take such affirmative action as in the judgment of the examiner will effectuate the purposes of this chapter. Such order shall be a final decision of the department. In all cases the examiner may order the respondent to pay an aggrieved party, who has suffered discrimination, compensatory damages, including damages for mental anguish or suffering, and, in all cases, may also order the respondent to pay an aggrieved party, who has suffered discrimination, punitive damages in an amount not more than \$6,000. Punitive damages shall be awarded pursuant to section 549.20. In

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any case where a political subdivision is a respondent the total of punitive damages awarded an aggrieved party may not exceed \$6,000 and in that case if there are two or more respondents the punitive damages may be apportioned among them. Punitive damages may only be assessed against a political subdivision in its capacity as a corporate entity and no regular or ex-officio member of a governing body of a political subdivision shall be personally liable for payment of punitive damages pursuant to this subdivision. In addition to the aforesaid remedies, in a case involving discrimination in

(a) employment, the examiner may order the hiring, reinstatement or upgrading of an aggrieved party, who has suffered discrimination, with or without back pay, admission or restoration to membership in a labor organization, or his admission to or participation in an apprenticeship training program, on-the-job-training program, or other retraining program, or any other relief the examiner deems just and equitable.

(b) housing, the examiner may order the sale, lease, or rental of the housing accommodation or other real property to an aggrieved party, who has suffered discrimination, or the sale, lease or rental of a like accommodation or other real property owned by or under the control of the person against whom the complaint was filed, according to terms as listed with a real estate broker, or if no such listing has been made, as otherwise advertised or offered by the vendor or lessor, or any other relief the examiner deems just and equitable.

The examiner shall cause the findings of fact, conclusions of law, and order to be served on the respondent personally, the charging party by registered or certified mail, and shall furnish copies to the attorney general and the commissioner.

[For text of subs 3 to 6, see M.S.1980]

History: 1981 c 364 s 2

363.073 CERTIFICATES OF COMPLIANCE FOR PUBLIC CONTRACTS.

Subdivision 1. **Scope of application.** No department or agency of the state shall accept any bid or proposal for a contract or execute any contract for goods or services in excess of \$50,000 with any business having more than 20 full time employees in Minnesota at any time during the previous 12 months, unless the firm or business has an affirmative action plan for the employment of minority persons, women, and the disabled that has been approved by the commissioner of human rights. Receipt of a certificate of compliance issued by the commissioner shall signify that a firm or business has an affirmative action plan that has been approved by the commissioner. A certificate shall be valid for a period of two years.

Subd. 2. **Revocation of certificate.** Certificates of compliance may be suspended or revoked by the commissioner if a holder of a certificate has not made a good faith effort to implement an affirmative action plan that has been approved by the commissioner. If a contractor does not effectively implement an affirmative action plan approved by the commissioner pursuant to subdivision 1, or fails to make a good faith effort to do so, the commissioner may refuse to approve subsequent plans submitted by that firm or business.

Subd. 3. **Revocation of contract.** A contract awarded by a department or agency of the state may be terminated or abridged by the department or agency because of suspension or revocation of a certificate based upon a contractor's failure to implement or make a good faith effort to implement an affirmative action plan approved by the commissioner under this section.

Subd. 4. **Technical assistance.** In the case of a contractor whose certificate of compliance has been suspended, the commissioner shall provide technical assistance that may enable the contractor to be recertified within 90 days after the contractor's certificate has been suspended.

History: 1981 c 326 s 1; 1981 c 356 s 377; 1Sp1981 c 4 art 3 s 14; art 4 s 33

NOTE: The amendment to this section by Laws 1981, Chapter 326, Section 1 is effective on the day temporary rules adopted pursuant to section 363.075 are effective. See Laws 1981, Chapter 326, Section 4.

363.074 RULES FOR CERTIFICATES OF COMPLIANCE.

The commissioner shall adopt rules to implement section 363.073 specifying the criteria used to review affirmative action plans and the standards used to review implementation of affirmative action plans. A firm or business certified to be in compliance with affirmative action requirements of a local human rights agency or the federal government shall be deemed to be in compliance with section 363.073 upon submission to the commissioner of an affirmative action plan approved by a local human rights agency or the federal government and amendments to the plan which are necessary to address the employment of disabled persons protected by section 363.03, subdivision 1.

History: 1981 c 326 s 2

363.075 TEMPORARY RULES.

The commissioner shall have authority to promulgate temporary rules pursuant to chapter 15 to carry out the purposes of section 363.073.

History: 1981 c 326 s 3

363.117 WITHDRAWAL FROM A LOCAL COMMISSION.

Notwithstanding the provisions of any law or ordinance to the contrary, a person who has filed a charge with a local commission may bring a civil action as provided in section 363.14 at the following times:

(a) Within 45 days after the local commission has determined that there is no probable cause to credit the allegations contained in the charge; or

(b) After 45 days from the filing of the charge if a hearing has not been held or if the local commission has not entered into a conciliation agreement to which the charging party is a signator. The charging party shall notify the local commission of his intention to bring a civil action, which shall be commenced within 90 days of giving the notice.

A charging party bringing a civil action shall mail by registered or certified mail a copy of the summons and complaint to the local commission and upon their receipt the local commission shall terminate all proceedings before the local commission relating to the charge. No charge shall be filed or reinstated with the local commission after a civil action relating to the same unfair discriminatory practice has been brought unless the civil action has been dismissed without prejudice.

History: 1981 c 330 s 7

363.14 COURT ACTIONS, SUITS BY PRIVATE PARTIES, INTERVENTION, DISTRICT COURT JURISDICTION, ATTORNEY'S FEES, AND COSTS.

Subdivision 1. **Court actions, suits by private parties, intervention.** A person may bring a civil action seeking redress for an unfair discriminatory practice:

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(a) Directly to district court; or

(b) Notwithstanding the provisions of any law to the contrary, (1) within 45 days after the commissioner has dismissed a charge because it is frivolous or without merit, because the charging party has failed to provide required information, or because the commissioner has determined that there is no probable cause to credit the allegations contained in a charge filed with the commissioner; or (2) after 45 days from the filing of a charge pursuant to section 363.06, subdivision 1 if a hearing has not been held pursuant to section 363.071 or if the commissioner has not entered into a conciliation agreement to which the charging party is a signator. The charging party shall notify the commissioner of his intention to bring a civil action, which shall be commenced within 90 days of giving the notice;

(c) The commissioner may dismiss, without prejudice to the charging party, any case filed with the department on or before June 30, 1978. The commissioner shall notify a charging party by regular mail sent before August 1, 1981, that he has a right to bring a civil action pursuant to this section. Upon giving this notice the commissioner shall end all proceedings in the department relating to the charge. Notwithstanding any statutory period of limitation to the contrary, an individual notified pursuant to this clause may bring a civil action relating to his charge; provided that the action is filed on or before February 1, 1982.

A charging party bringing a civil action shall mail by registered or certified mail a copy of the summons and complaint to the commissioner, and upon their receipt the commissioner shall terminate all proceedings in the department relating to the charge. No charge shall be filed or reinstated with the commissioner after a civil action relating to the same unfair discriminatory practice has been brought unless the civil action has been dismissed without prejudice.

Upon application by the complaining party to the district court at a special term and under circumstances the court deems just, the court may appoint an attorney for the person and may authorize the commencement of the action without payment of fees, costs, or security.

Upon timely application, the court may permit the department to intervene in a civil action brought pursuant to this section upon certification that the case is of general public importance.

[For text of subs 2 and 3, see M.S.1980]

History: 1981 c 330 s 6