

CHAPTER 363

DEPARTMENT OF HUMAN RIGHTS

363.01 Definitions.
 363.02 Exemptions.
 363.03 Unfair discriminatory practices.
 363.04 Department of human rights.
 363.06 Grievances.

363.071 Hearings.
 363.072 District court, review orders of panel or examiner.
 363.10 Repealed.

363.01 DEFINITIONS.

[For text of subs 1 to 24, see M.S.1982]

Subd. 25. **Disability.** "Disability" means any condition or characteristic that renders a person a disabled person. A disabled person is any person who (1) has a physical or mental impairment which substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.

Subd. 25a. **Qualified disabled person.** "Qualified disabled person" means:

(1) with respect to employment, a disabled person who, with reasonable accommodation, can perform the essential functions required of all applicants for the job in question; and

(2) with respect to services and programs, a disabled person who, with physical and program access, meets the essential eligibility criteria required of all applicants for the program or service in question.

For the purposes of this subdivision, "disability" excludes any condition resulting from alcohol or drug abuse which prevents a person from performing the essential functions of the job in question or constitutes a direct threat to property or the safety of others.

[For text of subs 26 to 32, see M.S.1982]

Subd. 33. **Physical access.** "Physical access" means (1) the absence of physical obstacles that limit a disabled person's opportunity for full and equal use of or benefit from goods, services, and privileges; or, when necessary, (2) the use of methods to overcome the discriminatory effect of physical obstacles. The methods may include redesign of equipment, assignment of aides, or use of alternate accessible locations.

Subd. 34. **Program access.** "Program access" means (1) the use of auxiliary aids or services to ensure full and equal use of or benefit from goods, services, and privileges; and (2) the absence of criteria or methods of administration that directly, indirectly, or through contractual or other arrangements, have the effect of subjecting qualified disabled persons to discrimination on the basis of disability, or have the effect of defeating or impairing the accomplishment of the objectives of the program.

History: 1983 c 276 s 1-4

363.02 EXEMPTIONS.

Subdivision 1. **Employment.** The provisions of section 363.03, subdivision 1, shall 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 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;

(3) The employment of one person in place of another, standing by itself, shall not be evidence of an unfair discriminatory practice;

(4) An age restriction applied uniformly and without exception to all individuals established by a bona fide apprenticeship program established pursuant to chapter 178, which limits participation to persons who enter the program prior to some specified age and the trade involved in the program predominantly involves heavy physical labor or work on high structures. After January 1, 1984, these age restrictions are exempt from the provisions of section 363.03, subdivision 1 only to the extent that they are declared exempt in rules adopted by the commissioner according to chapter 14. The commissioner must adopt rules governing this subject before January 1, 1984, and is authorized to adopt temporary, as well as permanent rules for this purpose. Neither shall the operation of a bona fide seniority system which mandates differences in such things as wages, hiring priorities, lay-off priorities, vacation credit, and job assignments based on seniority, be a violation of the age discrimination provisions of section 363.03, subdivision 1, so long as the operation of the system is not a subterfuge to evade the provisions of chapter 363;

(5) With respect to age discrimination, a practice by which a labor organization or employer offers or supplies varying insurance benefits or other fringe benefits to members or employees of differing ages, so long as the cost to the labor organization or employer for the benefits is reasonably equivalent for all members or employees;

(6) A restriction imposed by state statute, home rule charter, ordinance, or civil service rule, and applied uniformly and without exception to all individuals, which establishes a maximum age for entry into employment as a peace officer or firefighter.

(7) Nothing in this chapter concerning age discrimination shall be construed to validate or permit age requirements which have a disproportionate impact on persons of any class otherwise protected by section 363.03, subdivision 1 or 5.

It is not an unfair employment practice for an employer, employment agency or labor organization:

(i) to require or request a person to undergo physical examination, which may include a medical history, for the purpose of determining the person's capability to perform available employment, provided (a) that an offer of employment has been made on condition that the person meets the physical or mental requirements of the job; (b) that the examination tests only for essential job-related abilities; and (c) that the examination, unless limited to determining whether the person's disability would prevent performance of the job, is required of all persons conditionally offered employment for the same position regardless of disability; or

(ii) with the consent of the employee, to obtain additional medical information for the purposes of establishing an employee health record;

(iii) to administer pre-employment tests, provided that the tests (a) measure only essential job-related abilities, (b) are required of all applicants for the same position regardless of disability unless limited to determining whether the person's disability would prevent performance of the job, and (c) accurately measure the applicant's aptitude, achievement level, or whatever factors they purport to measure rather than reflecting the applicant's impaired sensory, manual, or

speaking skills, except when those skills are the factors that the tests purport to measure; or

(iv) to limit receipt of benefits payable under a fringe benefit plan for disabilities to that period of time which a licensed physician reasonably determines a person is unable to work; or

(v) to provide special safety considerations for pregnant women involved in tasks which are potentially hazardous to the health of the unborn child, as determined by medical criteria.

[For text of subds 2 to 4, see M.S.1982]

Subd. 5. **Disability.** Nothing in this chapter shall be construed to prohibit any program, service, facility or privilege afforded to a person with a disability which is intended to habilitate, rehabilitate or accommodate that person. It is a defense to a complaint or action brought under this chapter that the person bringing the complaint or action has a disability which in the circumstances and even with reasonable accommodation, as defined in section 363.03, subdivision 1, clause (6), poses a serious threat to the health or safety of the disabled person or others. The burden of proving this defense is upon the respondent.

[For text of subds 6 and 7, see M.S.1982]

History: 1983 c 276 s 5,6; 1983 c 301 s 198

363.03 UNFAIR DISCRIMINATORY PRACTICES.

Subdivision 1. **Employment.** 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, national origin, sex, marital status, status with regard to public assistance, disability, or age,

(a) to deny full and equal membership rights to a person seeking membership or to a member;

(b) to expel a member from membership;

(c) to discriminate against a person seeking membership or a member with respect to his hire, apprenticeship, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment; or

(d) to fail to classify properly, or refer for employment or otherwise to discriminate against a person or member.

(2) For an employer, because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, or age,

(a) to refuse to hire or to maintain a system of employment which unreasonably excludes a person seeking employment; or

(b) to discharge an employee; or

(c) to discriminate against a person 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, national origin, sex, marital status, status with regard to public assistance, disability, or age,

(a) to refuse or fail to accept, register, classify properly, or refer for employment or otherwise to discriminate against a person; 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, employment agency, or labor organization, before a person is employed by an employer or admitted to membership in a labor organization, to

(a) require the person to furnish information that pertains to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability, unless, for the purpose of national security, information pertaining to national origin is required by the United States, this state or a political subdivision or agency of the United States or this state, or for the purpose of compliance with the public contracts act or any rule, regulation or laws of the United States or of this state requiring information pertaining to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance or disability is required by the United States or a political subdivision or agency of the United States; 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, national origin, sex, marital status, status with regard to public assistance, disability or age.

(5) For an employer, an employment agency or a labor organization, with respect to all employment related purposes, including receipt of benefits under fringe benefit programs, not to treat women affected by pregnancy, childbirth, or disabilities related to pregnancy or childbirth, the same as other persons who are not so affected but who are similar in their ability or inability to work.

(6) For an employer with 50 or more permanent, full-time employees, an employment agency or a labor organization, not to make reasonable accommodation to the known disability of a qualified disabled person unless the employer, agency, or organization can demonstrate that the accommodation would impose an undue hardship on the business, agency, or organization. "Reasonable accommodation" means steps which must be taken to accommodate the known physical or mental limitations of a qualified disabled person. "Reasonable accommodation" may include but is not limited to: (a) making facilities readily accessible to and usable by disabled persons; and (b) job restructuring, modified work schedules that do not reduce the total number of hours normally worked, acquisition or modification of equipment or devices, and the provision of aides on a temporary or periodic basis.

In determining whether an accommodation would impose an undue hardship on the operation of a business or organization, factors to be considered include:

(a) the overall size of the business or organization with respect to number of employees or members and the number and type of facilities;

(b) the type of the operation, including the composition and structure of the work force, and the number of employees at the location where the employment would occur;

(c) the nature and cost of the needed accommodation;

(d) the reasonable ability to finance the accommodation at each site of business; and

(e) documented good faith efforts to explore less restrictive or less expensive alternatives, including consultation with the disabled person or with knowledgeable disabled persons or organizations.

In the case of an accommodation for a job applicant, any cost in excess of \$50 imposed on the prospective employer shall be deemed an undue hardship if no alternative costing \$50 or less exists. A prospective employer need not pay for an accommodation for a job applicant which costs \$50 or less if it is available from an alternative source without cost to the employer or applicant.

[For text of subd 2, see M.S.1982]

Subd. 3. Public accommodations. It is an unfair discriminatory practice:

To deny any person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation because of race, color, creed, religion, disability, national origin or sex. It is an unfair discriminatory practice for a taxicab company to discriminate in the access to, full utilization of or benefit from service because of a person's disability. Nothing in this subdivision requires any person to exercise a higher degree of care for a person having a disability or to modify property in any way except as required by the accessibility provisions of the state building code.

Subd. 4. Public services. It is an unfair discriminatory practice:

(1) To discriminate against any person in the access to, admission to, full utilization of or benefit from any public service because of race, color, creed, religion, national origin, disability, sex or status with regard to public assistance or to fail to ensure physical and program access for disabled persons unless the public service can demonstrate that providing the access would impose an undue hardship on its operation. In determining whether providing physical and program access would impose an undue hardship, factors to be considered include:

- (a) the type and purpose of the public service's operation;
- (b) the nature and cost of the needed accommodation;
- (c) documented good faith efforts to explore less restrictive or less expensive alternatives; and
- (d) the extent of consultation with knowledgeable disabled persons and organizations.

Physical and program access must be accomplished within six months of the effective date of this section, except for needed architectural modifications, which must be made within two years of the effective date of this section.

(2) For public transit services to discriminate in the access to, full utilization of, or benefit from service because of a person's disability. Public transit services may use any of a variety of methods to provide transportation for disabled people, provided that persons who are disabled are offered transportation that, in relation to the transportation offered nondisabled persons, is:

(a) in a similar geographic area of operation. To the extent that the transportation provided disabled people is not provided in the same geographic area of operation as that provided nondisabled people, priority must be given to those areas which contain the largest percent of disabled riders. A public transit service may not fail to provide transportation to disabled persons in a geographic area for which it provides service to nondisabled persons if doing so will exclude a sizeable portion of the disabled ridership;

- (b) during similar hours of operation;
- (c) for comparable fares;
- (d) with similar or no restrictions as to trip purpose; and
- (e) with reasonable response time.

Public transit services must meet these five criteria for the provision of transit services within three years of the effective date of this section.

Subd. 4a. [Repealed, 1983 c 276 s 11]

[For text of subds 5 and 6, see M.S.1982]

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 who are disabled or who are 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.1982]

Subd. 10. **Discrimination against blind or deaf persons prohibited.** (a) It is an unfair discriminatory practice for an owner, operator or manager of a hotel, restaurant, public conveyance or other public place, to prohibit a blind or deaf person from taking a guide dog into the public place or conveyance if the guide dog can be properly identified as being from a recognized school for seeing eye, hearing ear or guide dogs, and if the dog is properly harnessed or leashed so that the blind or deaf person may maintain control of the dog.

(b) No person shall require a blind or deaf person to make an extra payment or pay an additional charge when taking a guide dog into any of the public places referred to in paragraph (a).

History: 1983 c 216 art 1 s 59; 1983 c 276 s 7-10

363.04 DEPARTMENT OF HUMAN RIGHTS.

[For text of subds 1 and 2, see M.S.1982]

Subd. 4. **Task force, membership, appeals.** The commissioner may appoint a human rights advisory task force.

Subd. 4a. **Terms; compensation; removal; vacancies.** The expiration, membership terms, compensation, removal of members, and filling of vacancies on the task force shall be as provided in section 15.059.

Subd. 5. [Repealed, 1983 c 260 s 68]

[For text of subds 9 and 10, see M.S.1982]

History: 1983 c 260 s 60,61

363.06 GRIEVANCES.

[For text of subds 1 to 3, see M.S.1982]

Subd. 4. Inquiry into charge. (1) Consistent with clause (7), 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 other charges the commissioner shall make a determination within 12 months after the charge was filed 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 the court of appeals pursuant to section 363.072 or sections 14.63 to 14.68.

(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 which charges are processed and 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.

Subd. 4a. **Temporary rules.** The commissioner may adopt temporary rules pursuant to chapter 14 to carry out the purposes of this section. Temporary and permanent rules adopted pursuant to this subdivision apply to cases pending before the commissioner on the date of adoption.

[For text of subds 5 to 8, see M.S.1982]

History: 1983 c 247 s 143; 1983 c 301 s 199,200

363.071 HEARINGS.

[For text of subd 1, see M.S.1982]

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. The examiner shall order any respondent found to be in violation of any provision of section 363.03 to pay a civil penalty to the state. This penalty is in addition to compensatory and punitive damages to be paid to an aggrieved party. The hearing examiner shall determine the amount of the civil penalty to be paid, taking into account the seriousness and extent of the violation, the public harm occasioned by the violation, whether the violation was intentional, and the financial resources of the respondent. Any penalties imposed under this provision shall be paid into the general fund of the state. 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 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 subds 3 to 6, see M.S.1982]

History: 1983 c 301 s 201

363.072 DISTRICT COURT, REVIEW ORDERS OF PANEL OR EXAMINER.

Subdivision 1. **Appeal.** The commissioner or a person aggrieved by a final decision of the department reached after a hearing held pursuant to section 363.071 may seek judicial review in accordance with chapter 14.

Subd. 2. **Review procedure.** The judicial review proceedings shall be in accordance with chapter 14.

History: 1983 c 247 s 144,145

363.10 [Repealed, 1982 c 501 s 26; 1983 c 247 s 219]