GL - Attachment K - Local Area Equal Opportunity Policy Statement

Chapter 11.08

FAIR EMPLOYMENT PRACTICES

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11.08.010 Purpose.

It is the policy of the City of Lincoln to foster employment of all employable persons in the city on the basis of merit regardless of their race, color, religion, sex, disability, national origin, ancestry, age, or marital status, and to safeguard their right to obtain and hold employment without discrimination because of their race, color, religion, sex, disability, national origin, ancestry, age, or marital status.

Denying equal opportunity for employment because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status is contrary to the principles of freedom and is a burden on the objectives of the public policy of the City of Lincoln. (Ord. 13793 §9; March 26, 1984: Ord. 12849 §26; February 19, 1980: Ord. 10917 §2; October 1, 1973).

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11.08.030 Exceptions.

This chapter shall not apply to:

(a) A religious corporation, association, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, or society of its religious activities, or

(b) The employment of any individual by:

(1) their parent, grandparent, spouse, child, or grandchild, or

(2) in the domestic service of any person. (Ord. 12849 §27; February 19, 1980: Ord. 12621 §14; July 2, 1979: Ord. 10917 §2; October 1, 1973).

11.08.040 Unlawful Employment Practices for an Employer.

It shall be an unlawful employment practice for an employer:

(a) To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against any individual with respect to such individual's compensation, terms, advancement potential, conditions, or privileges of employment because of such individual's race, color, religion, sex, disability, national origin, ancestry, age, or marital status;

(b) To limit, segregate, or classify employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect their status as an employee because of such individual's race, color, religion, sex, disability, national origin, ancestry, age, or marital status. (Ord. 13793 §10; March 26, 1984: Ord. 12849 §28; February 19, 1980: Ord. 10917 §2; October 1, 1973).

11.08.050 Unlawful Employment Practice for Employment Agency.

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment or otherwise to discriminate against any individual because of race, color, religion, sex, national origin, ancestry, disability, age, or marital status, or to classify or refer for employment any individual on the basis of race, color, religion, sex, disability, national origin, ancestry, age, or marital status. (Ord. 13793 §11; March 26, 1984: Ord. 12849 §29; February 19, 1980: Ord. 12621 §15; July 2, 1979: Ord. 12151 §31; November 21, 1977: Ord. 10917 §2; October 1, 1973).

11.08.060 Unlawful Employment Practices for Labor Organization.

It shall be an unlawful employment practice for a labor organization:

(a) To exclude or to expel from its membership or otherwise to discriminate against any individual because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status; or

(b) To limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect their status as an employee or as an applicant for employment because of such individual's race, color, religion, sex, disability, national origin, ancestry, age, or marital status; or

(c) Cause or attempt to cause an employer to discriminate against any individual in violation of this chapter. (Ord. 13793 §12; March 26, 1984: Ord. 12849 §30; February 19, 1980: Ord. 10917 §2; October 1, 1973).

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11.08.070 Unlawful Employment Practice; Controlling Apprenticeship or Training Program.

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status in admission to or employment in any program established to provide apprenticeship or other training. (Ord. 13793 §13; March 26, 1984: Ord. 12849 §31; February 19, 1980: Ord. 10917 §2; October 1, 1973).

11.08.075 Unlawful Employment Practice; Qualified Individual With Disability; Discrimination.

(a) It shall be an unlawful employment practice for an employer to discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) When referring to a qualified individual with a disability, discrimination shall include:

(1) Limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability of the applicant or employee;

(2) Participating in a contractual or other arrangement or relationship that has the effect of subjecting a qualified individual with a disability to discrimination in the application or employment process, including a relationship with an employment agency, a labor union, an organization providing fringe benefits to an employee of the employer, or an organization providing training and apprenticeship programs;

(3) Utilizing standards, criteria, or methods of administration

(i) that have the effect of discrimination on the basis of disability; or

(ii) that perpetuate the discrimination against others who are subject to common administrative control;

(4) Excluding or otherwise denying equal jobs or benefits to a qualified individual with a disability because of the known disability of an individual with whom the qualified individual with a disability is known to have a relationship or association;

(5) Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless such employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer;

(6) Denying employment opportunities to a job applicant or employee who is otherwise a qualified individual with a disability if the denial is based upon the need of such employer to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(7) Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test, or other selection criteria, as used by the employer, is shown to be job-related for the position in question and is consistent with business necessity;

(8) Failing to select and administer tests concerning employment in the most effective manner to ensure that, when the test is administered to a job applicant or employee who has a disability

that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure rather than reflecting the impaired sensory, manual, or speaking skills of the employee or applicant except when such skills are the factors that the test purports to measure;

(9) Conducting a medical examination or making inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of the disability, except that:

(i) An employer may make pre-employment inquiries into the ability of an applicant to perform job-related functions;

(ii) A test to determine the illegal use of drugs shall not be considered a medical examination; and

(iii) An employer may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of the applicant and may condition an offer of employment on the results of the examination if:

A. All entering employees are subjected to such an examination regardless of disability;

B. Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that

1) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations,

2) first-aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment,

3) government officials investigating compliance with this title shall be provided relevant information on request, and

4) information shall be made available in accordance with the Nebraska Workers' Compensation Act; and

C. The results of the examination are used only in a manner not inconsistent with this title; and

(10) Requiring a medical examination or making inquiries of an employee as to whether the employee is an individual with a disability or as to the nature or severity of the disability, unless the examination or inquiry is shown to be job-related and consistent with business necessity. A test to determine the illegal use of drugs shall not be considered a medical examination. An employer may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at the work site and may make inquiries into the ability of an employee to perform job-related functions if the information obtained regarding the medical condition or history of the employee is subject to the requirements in subdivisions (9)(iii)(B) and (C) of this section. (Ord. 17032 §1; July 15, 1996).

11.08.080 Lawful Employment Practices.

Notwithstanding any other provision of this chapter:

(a) It shall not be an unlawful employment practice to hire and employ employees, for an employment agency to classify or refer for employment any individual, or for any labor organization to

classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining to admit or employ any individual in such program on the basis of religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise; and

(b) It shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution of learning is directed toward the propagation of a particular religion. (Ord. 12849 §32; February 19, 1980: Ord. 12621 §16; July 2, 1979: Ord. 10917 §2; October 1, 1973).

11.08.090 National Security Employment; Exception.

Notwithstanding any other provisions of this chapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if:

(a) The occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any executive order of the President; and

(b) Such individual has not fulfilled or has ceased to fulfill that requirement. (Ord. 12849 §33; February 19, 1980: Ord. 12621 §17; July 2, 1979: Ord. 10917 §2; October 1, 1973).

11.08.100 Standards for Compensation Permitted; When.

(a) Notwithstanding any other provision of this chapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, for different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, if the employer can show that such differences are not the result of discrimination because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status; nor shall it be unlawful employment practice for an employer to give and to act upon the results of any validated ability tests if the employer can show that such test, its administration or action upon the result is not designed, intended, or used to discriminate because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status and are reasonably related to such employment.

(b) It shall not be an unlawful employment practice for an employer, employment agency, labor organization, or joint labor-management committee to deny privileges of employment when the nature and extent of a disability reasonably precludes the performance of the particular employment.

(c) Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of employee benefits, as other persons not

so affected but similar in their ability or inability to work, and nothing in this section shall be interpreted to provide otherwise.

This section shall not require an employer to provide employee benefits for abortion except when medical complications have arisen from an abortion. (Ord. 15106 §2; February 13, 1989: prior Ord. 13793 §14; March 26, 1984: Ord. 12849 §34; February 19, 1980: Ord. 12621 §18; July 2, 1979: Ord. 10917 §2; October 1, 1973).

11.08.110 Preferential Treatment Not to be Granted on Account of Existing Numbers or Percentage Imbalance.

Nothing contained in this chapter shall be interpreted to require any employer, employment agency, labor organization or joint labor-management committee subject to this chapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, national origin, ancestry, age, or marital status of such individual or group, on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, national origin, ancestry, age, or marital status in the city, or in the available work force in the city. (Ord. 13793 §15; March 26, 1984: Ord. 12849 §35; February 19, 1980: Ord. 10917 §2; October 1, 1973).

11.08.120 Participation in Investigation, Proceeding or Hearing; Discrimination Unlawful.

It shall be an unlawful employment practice for an employer to discriminate against any employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership because they have opposed any practice made an unlawful employment practice by this chapter, or because they have made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter. (Ord. 12849 §36; February 19, 1980: Ord. 12621 §19 July 2, 1979: Ord. 10917 §2; October 1, 1973).

11.08.130 Notice of Employment; Preference or Discrimination Because of Race, Color, Religion, Sex, Disability, National Origin, Ancestry, Age, or Marital Status; Unlawful.

It shall be an unlawful employment practice for an employer, labor organization, or employment agency to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in, or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, disability, national origin, ancestry, age, or marital status, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex or national origin, when religion, sex, or national origin is a bona fide occupational qualification for employment. (Ord. 13793 §16; March 26, 1984: Ord. 12849 §37; February 19, 1980: Ord. 10917 §2; October 1, 1973).

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11.08.140 Unlawful Employment Practice; Unlawful for Any Person to Aid or Abet in the Violation of this Chapter.

It shall be unlawful for any person, whether or not an employer, employment agency, or labor organization, to aid or abet in the doing of any act declared to be unlawful by this chapter. (P.C. §11.08.131: Ord. 12849 §38; February 19, 1980: prior Ord. 10917 §2; October 1, 1973).

11.08.150 Posting Excerpts of Fair Employment Practice Ordinances.

Every employer, employment agency, and labor organization subject to the provisions of this chapter shall on or before February 1, 1974, post and permanently maintain in a conspicuous place or places on the premises a notice to be prepared or approved by the commission which shall set forth excerpts of this chapter and such other relevant information which the commission deems necessary to explain said chapter. (P.C. §11.08.170: Ord. 12849 §39; February 19, 1980: Ord. 10917 §2; October 1, 1973).

11.08.160 Contracts with the City of Lincoln; Requirements.

Every contract to which the City of Lincoln or any of its agencies is a party shall contain a provision requiring the contractor and subcontractors not to discriminate against any employee or applicant for employment to be employed in the performance of such contract with respect to hire, tenure, terms, conditions, or privileges of employment because of race, color, religion, sex, disability, national origin, ancestry, age, or marital status. (P.C. §11.08.180: Ord. 13793 §17; March 26, 1984: Ord. 12849 §40; February 19, 1980: Ord. 10917 §2; October 1, 1973).