

EXECUTIVE CABINET
Kentucky Commission on Human Rights
(Amendment)

104 KAR 1:040. Guidelines for advertising employment or licensing opportunities.

RELATES TO: KRS 344.040, 344.050, 344.060, 344.070, 29 U.S.C. 623(f), 42 U.S.C. 2000e-2(e)

STATUTORY AUTHORITY: KRS 344.190, 344.080, 29 C.F.R. 1604.5

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation establishes the procedures to be used by an employer, licensing agency, labor organization or employment agency in advertising for jobs or licensing opportunities.

Section 1. Definition. Bona fide occupational qualification is defined in 42 U.S.C. 2000e-2(e) and 29 U.S.C. 623(f).

Section 2. Help Wanted Notices or Advertisements. An advertisement or notice shall utilize a neutral job qualification, title, term, phrase or description unless a person's sex, religion, age between forty (40) and seventy (70), or national origin is deemed by the commission to be a bona fide occupational qualification.

Section 3. Bona-fide Occupational Qualification.

(1) An employer, labor organization, licensing agency, or employment agency shall have the burden of establishing with the commission that either sex, religion, age between forty (40) and seventy (70), or national origin is a bona fide occupational qualification.

(2) A sex or gender-based bona fide occupational qualification shall:

(a) Be necessary for reasons of personal modesty or privacy; and

(b) Comply with EEOC guidelines on "Job opportunities advertising" as found in Part 1604—Guidelines on Discrimination Because of Sex, 29 C.F.R. 1604.5.

Section 4.

(1) A person who intends to publish, print, circulate, or display a job advertisement may request the commission to determine whether sex, religion, age between forty (40) and seventy (70), or national origin is a bona fide occupational qualification for the job to be advertised.

(2)

(a) Within three (3) workdays of receipt of the request, the commission shall:

1. Make a determination in writing; and

2. Forward its written determination.

(b) The determination of the commission shall be based on:

1. The specific job;

2. Whether the qualification is reasonably necessary to the normal operation of the business; and

3. Any other pertinent factors.

Section 5. Newspapers and other publications which print employment advertisements shall be encouraged by the commission to:

(1) Maintain lists of gender-neutral terms; and

(2) Instruct their employees to advise advertisers of gender neutral job qualifications, titles and descriptions.

Section 6.

(1) In a conciliation agreement or order, the commission may include a provision requiring the respondent to use the term "equal opportunity employer", or a substantially similar term, in a notice or advertisement of employment or licensing opportunity.

(2) Persons advertising for employment opportunities shall be encouraged by the commission to use the terms specified in subsection (1) of this section in a notice or advertisement.

RAYMOND BURSE, Commission Chair
CYNTHIA FOX, Executive Director

APPROVED BY AGENCY: May 24, 2023

FILED WITH LRC: June 14, 2023 at 1:45 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 21, 2023, at 10 a.m. Eastern Time at the office of the Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2023. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: L. Joe Dunman, Staff Attorney Manager/Assistant General Counsel, Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202, phone (502) 595-4024, email joe.dunman@ky.gov; Colt Sells, Staff Attorney II, Kentucky Commission on Human Rights, 332 W. Broadway, Louisville, Kentucky 40202, phone (502) 595-4024, email colt.sells@ky.gov.