

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).~~[USC 2000e-2(e) and 29 USC 623(f).]~~

Section 2. Help Wanted Notices or Advertisements.

~~[(1)]~~ 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.

~~[(2)]~~ ~~[Employers shall, if possible, utilize gender neutral position titles and job descriptions selected from the commission's listing of "Gender Neutral Employee Advertisement" or "Gender Neutral Employment Terminology."]~~

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.~~["Guidelines on Job Opportunity Advertising on the Basis of Sex".]~~

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.

~~{Section 7.} {Materials Incorporated by Reference.}~~

~~{(1)} {The following material is incorporated by reference:}~~

~~{(a)} {"Gender Neutral Employee Advertisement (February, 1993)";}~~

~~{(b)} {"Gender Neutral Employment Terminology (February, 1993)";}~~

~~{(c)} {"EEOC Guidelines on Job Opportunity Advertising on the Basis of Sex: 29 CFR 1604.5 - Job Opportunities Advertising".}~~

~~{(2)} {This material may be inspected, copied or obtained:}~~

~~{(a)} {At the offices of the Kentucky Commission on Human Rights, The Heyburn Building, Suite 700, 332 West Broadway, Louisville, Kentucky 40202; or}~~

~~{(b)} {By calling:}~~

~~{1.} {(502) 595-4024;}~~

~~{2.} {(800) 295-5566;}~~

~~{3.} {(502) 595-4084, (TDD), for the hearing impaired;}~~

~~{4.} {Kentucky Relay Service, (800) 648-6056 (TTY/TDD). This is to certify that the Commissioners of the Kentucky Commission on Human Rights have approved this administrative regulation as amended prior to its filing with the Legislative Research Commission, as required by KRS 344.190(14).}~~

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: L. Joe Dunman

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation provides advertising guidelines to employers, labor organizations, licensing agencies, and employment agencies.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary because, pursuant to KRS 344.190, it establishes standards and procedures enforced by the Kentucky Commission on Human Rights.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 344.190(14) authorizes the Kentucky Commission on Human Rights "To adopt, promulgate, amend, and rescind regulations to effectuate the purposes and provisions of [KRS 344], including regulations requiring the posting of notices prepared or approved by the commission." This regulation relates to the posting of notices and advertisements.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation currently assists in the administration of KRS 344 by requiring employers, labor organizations, licensing agencies, and employment agencies to advertise job or licensing opportunities in compliance with the equal opportunity requirements of KRS 344.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

the amendment corrects the title of a federal regulation previously incorporated by reference.

(b) The necessity of the amendment to this administrative regulation:

The amendment to this administrative regulation is necessary to ensure employers, labor organizations, licensing agencies, and employment agencies can find and apply current federal regulations incorporated by the Commission on Human Rights.

(c) How the amendment conforms to the content of the authorizing statutes:

KRS 344.190(14) authorizes the Kentucky Commission on Human Rights "To adopt, promulgate, amend, and rescind regulations to effectuate the purposes and provisions of [KRS 344], including regulations requiring the posting of notices prepared or approved by the commission." This regulation relates to the posting of notices.

(d) How the amendment will assist in the effective administration of the statutes:

The amendment to this administrative regulation is necessary to ensure employers, labor organizations, public accommodations, and housing providers can find and post the correct notices as required under KRS 344.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This administrative regulation applies to all individuals, businesses, or state and local governments subject to KRS 344, which includes all "employers," "employment agencies," "labor organizations," "employees," "public accommodations," "real estate operators," and "real estate brokers" as defined by KRS 344.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Regulated entities must post notices stating their compliance with the provisions of KRS 344.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

No costs are imposed by this amendment. The notices are provided for free by the Kentucky Commission on Human Rights, as stated in the regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Compliance with this regulation will ensure fair and equal treatment for all Kentuckians in employment, as already required by KRS 344.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

The expected cost to implement this administrative regulation initially is nominal.

(b) On a continuing basis:

The expected cost to implement this administrative regulation on a continuing basis is nominal.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Funds from the budget of the Kentucky Commission on Human Rights will be used for the implementation and enforcement of this regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

An increase in fees or funding is not anticipated to be necessary by the change this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

No fees are associated with this administrative regulation.

(9) TIERING: Is tiering applied?

Tiering is not used in this administrative regulation, as this regulation will apply to all those subject to KRS 344 throughout all of the counties of the Commonwealth.

FISCAL NOTE

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

Any units, parts, or divisions of state or local governments that qualify as "employers," "licensing agencies," "labor organizations," or "employment agencies" as defined by KRS 344 will be impacted by this regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

This regulation is authorized by KRS 344.190.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This regulation will not generate any revenue for any state or local government in the first year.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This regulation will not generate any revenue for any state or local government in subsequent years.

(c) How much will it cost to administer this program for the first year?

This regulation will not impose any additional costs.

(d) How much will it cost to administer this program for subsequent years?

This regulation will not impose any additional costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):Not applicable.

Expenditures (+/-):Not applicable.

Other Explanation:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

(c) How much will it cost the regulated entities for the first year?

(d) How much will it cost the regulated entities for subsequent years?

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):Not applicable.

Expenditures (+/-):Not applicable.

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS13A.010(13)]. This regulation will not have a major economic impact.