

EXECUTIVE CABINET
Kentucky Commission on Human Rights
(Amended at ARRS Committee)

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 344.080, 344.190, 29 C.F.R. 1604.5

NECESSITY, FUNCTION, AND CONFORMITY: KRS 344.190(14) requires the Kentucky Commission on Human Rights to promulgate administrative regulations to effect the purposes of KRS Chapter 344, including requiring the posting of notices prepared or approved by the commission. 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 by 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 determined 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.

(HR-4; 1 Ky.R. 238; eff. 1-8-1975; 18 Ky.R. 2868; 3184; eff. 4-14-1992; 19 Ky.R. 2083; 2393; eff. 5-10-1993; TAm eff. 9-12-2018; Cert eff. 1-29-2020; 50 Ky.R. 80; 51 Ky.R. 38; eff. 10-1-2024.)

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