

1 AN ACT relating to employment discrimination.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 344.040 is amended to read as follows:

- 4 (1) It is an unlawful practice for an employer:
- 5 (a) To fail or refuse to hire, or to discharge any individual, or otherwise to
6 discriminate against an individual with respect to compensation, terms,
7 conditions, or privileges of employment, because of the individual's race,
8 color, religion, national origin, sex, *weight*, age forty (40) and over, because
9 the person is a qualified individual with a disability, or because the individual
10 is a smoker or nonsmoker, as long as the person complies with any workplace
11 policy concerning smoking;
- 12 (b) To limit, segregate, or classify employees in any way which would deprive or
13 tend to deprive an individual of employment opportunities or otherwise
14 adversely affect status as an employee, because of the individual's race, color,
15 religion, national origin, sex, *weight*, or age forty (40) and over, because the
16 person is a qualified individual with a disability, or because the individual is a
17 smoker or nonsmoker, as long as the person complies with any workplace
18 policy concerning smoking;
- 19 (c) To fail to make reasonable accommodations for any employee with limitations
20 related to pregnancy, childbirth, or a related medical condition who requests
21 an accommodation, including but not limited to the need to express breast
22 milk, unless the employer can demonstrate the accommodation would impose
23 an undue hardship on the employer's program, enterprise, or business. The
24 following shall be required as to reasonable accommodations:
- 25 1. An employee shall not be required to take leave from work if another
26 reasonable accommodation can be provided;
- 27 2. The employer and employee shall engage in a timely, good faith, and

1 interactive process to determine effective reasonable accommodations;
2 and

3 3. If the employer has a policy to provide, would be required to provide, is
4 currently providing, or has provided a similar accommodation to other
5 classes of employees, then a rebuttable presumption is created that the
6 accommodation does not impose an undue hardship on the employer; or

7 (d) To require as a condition of employment that any employee or applicant for
8 employment abstain from smoking or using tobacco products outside the
9 course of employment, as long as the person complies with any workplace
10 policy concerning smoking.

11 (2) (a) A difference in employee contribution rates for smokers and nonsmokers in
12 relation to an employer-sponsored health plan shall not be deemed to be an
13 unlawful practice in violation of this section.

14 (b) The offering of incentives or benefits offered by an employer to employees
15 who participate in a smoking cessation program shall not be deemed to be an
16 unlawful practice in violation of this section.

17 (3) (a) An employer shall provide written notice of the right to be free from
18 discrimination in relation to pregnancy, childbirth, and related medical
19 conditions, including the right to reasonable accommodations, to:

- 20 1. New employees at the commencement of employment; and
- 21 2. Existing employees not later than thirty (30) days after June 27, 2019.

22 (b) An employer shall conspicuously post a written notice of the right to be free
23 from discrimination in relation to pregnancy, childbirth, and related medical
24 conditions, including the right to reasonable accommodations, at the
25 employer's place of business in an area accessible to employees.

26 ➔Section 2. KRS 344.050 is amended to read as follows:

27 (1) It is an unlawful practice for an employment agency to fail or refuse to refer for

1 employment, or otherwise to discriminate against, an individual because of his or
2 her race, color, religion, national origin, sex, weight, or age forty (40) and over, or
3 because the person is a qualified individual with a disability, or to classify or refer
4 for employment an individual on the basis of disability, race, color, religion,
5 national origin, sex, weight, or age between forty (40) and seventy (70).

6 (2) It is an unlawful practice for a licensing agency to refuse to license, or to bar or
7 terminate from licensing an individual because of race, color, religion, national
8 origin, sex, weight, or age forty (40) and over, or because the person is a qualified
9 individual with a disability.

10 ➔Section 3. KRS 344.060 is amended to read as follows:

11 It is an unlawful practice for a labor organization:

12 (1) To exclude or to expel from its membership, or otherwise to discriminate against, a
13 member or applicant for membership because of race, color, religion, national
14 origin, sex, weight, or age forty (40) and over, or because the person is a qualified
15 individual with a disability.

16 (2) To limit, segregate, or classify its membership, or to classify or fail to refer to refer
17 for employment an individual, in any way which would deprive or tend to deprive
18 an individual of employment opportunities, or would limit such employment
19 opportunities or otherwise adversely affect the status as an employee or as an
20 applicant for employment, because of race, color, religion, national origin, sex,
21 weight, or age forty (40) and over, or because the person is a qualified individual
22 with a disability.

23 (3) To cause or attempt to cause an employer to discriminate against an individual in
24 violation of this section.

25 ➔Section 4. KRS 344.070 is amended to read as follows:

26 It is an unlawful practice for an employer, labor organization, or joint labor-management
27 committee controlling apprenticeship or other training or retraining, including on-the-job

1 training programs to discriminate against an individual because of race, color, religion,
2 national origin, sex, weight, or age forty (40) and over, or because the person is a
3 qualified individual with a disability in admission to or employment in, any program
4 established to provide apprenticeship or other training.

5 →Section 5. KRS 344.080 is amended to read as follows:

6 It is an unlawful practice for an employer, labor organization, licensing agency, or
7 employment agency to print or publish or cause to be printed or published a notice or
8 advertisement relating to employment by such an employer or membership in or any
9 classification or referral for employment by the employment or licensing agency,
10 indicating any preference, limitation, specification, or discrimination, based on race,
11 color, religion, national origin, sex, weight, or age forty (40) and over, or because the
12 person is a qualified individual with a disability, except that such a notice or
13 advertisement may indicate a preference, limitation, or specification based on religion,
14 national origin, sex, or age forty (40) and over, or because the person is a qualified
15 individual with a disability, when religion, national origin, sex, or age forty (40) and over,
16 or because the person is a qualified individual with a disability, is a bona fide
17 occupational qualification for employment.

18 →Section 6. KRS 344.100 is amended to read as follows:

19 Notwithstanding any other provision of this chapter, it is not an unlawful practice for an
20 employer to apply different standards of compensation, or different terms, conditions, or
21 privileges of employment pursuant to a bona fide seniority or merit system, or a system
22 which measures earnings by quantity or quality of production or to employees who work
23 in different locations, if the differences are not the result of an intention to discriminate
24 because of race, color, religion, national origin, sex, weight, or age forty (40) and over, or
25 because the person is a qualified individual with a disability, nor is it an unlawful practice
26 for an employer to give and to act upon the results of any professionally developed ability
27 test provided that the test, its administration or action upon the results is not designed,

1 intended, or used to discriminate because of race, color, religion, national origin, sex,
2 weight, or age forty (40) and over, or because the person is a qualified individual with a
3 disability.

4 ➔Section 7. KRS 344.110 is amended to read as follows:

5 (1) Nothing contained in this chapter requires an employer, employment agency, labor
6 organization, or joint labor-management committee subject to this chapter to grant
7 preferential treatment to an individual or to a group because of the race, color,
8 religion, national origin, sex, weight, or age forty (40) and over, or because the
9 person is a qualified individual with a disability, of the individual or group on
10 account of an imbalance which may exist with respect to the total number or
11 percentage of persons of any race, color, religion, national origin, sex, weight, or
12 age forty (40) and over, or because the person is a qualified individual with a
13 disability, employed by an employer, referred or classified for employment by an
14 employment agency or labor organization, admitted to membership or classified by
15 a labor organization, or admitted to, or employed in, an apprenticeship or other
16 training program, in comparison with the total number or percentage of persons of
17 race, color, religion, national origin, sex, weight, or age forty (40) and over, or
18 because the person is a qualified individual with a disability, in the state or a
19 community, section, or other area, or in the available workforce in the state or a
20 community, section, or other area.

21 (2) Nothing contained in this chapter shall prohibit:
22 (a) Minimum hiring ages otherwise provided by law.
23 (b) State compliance with federal regulations.
24 (c) Termination of the employment of any person who is unable to perform the
25 essential functions of the job, with or without reasonable accommodation.
26 (d) Any post-job-offer physical or medical examinations of applicants or
27 employees which an employer requires to determine their ability to perform

- 1 the essential functions of the job, with or without reasonable accommodation.
- 2 (e) An employer, labor organization, or employment agency from observing the
- 3 terms of a bona fide seniority system or any bona fide employee benefit plan
- 4 such as a retirement, pension, or insurance plan which is not a subterfuge to
- 5 evade the purposes of this chapter, except that no such employee benefit plan
- 6 shall excuse the failure to hire any individual.