
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2158 Session of
2015

INTRODUCED BY DAWKINS, V. BROWN, BISHOP, FRANKEL, YOUNGBLOOD,
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JUNE 15, 2016

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JUNE 15, 2016

AN ACT

1 Prohibiting discrimination against persons based on unemployment
2 status; providing for powers and duties of the Department of
3 Labor and Industry; and imposing penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Fair
8 Employment Opportunity Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Department." The Department of Labor and Industry of the
14 Commonwealth.

15 "Employer." An employer as defined in the act of January 17,
16 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968, or
17 any person acting, directly or indirectly, in the interest of

1 any employer in relation to an employee.

2 "Employment agency." Any person regularly undertaking with
3 or without compensation to procure employees for an employer or
4 to procure for individuals opportunities to work as employees
5 for an employer and includes an agent of such a person, and a
6 person who maintains an Internet website or print medium that
7 publishes advertisements or announcements of job openings for
8 employees.

9 "Unemployment status." An individual's present or past
10 unemployment regardless of the length of time the individual was
11 unemployed.

12 Section 3. Prohibited acts.

13 (a) Employers.--It shall be unlawful for an employer to:

14 (1) refuse to consider for employment or refuse to hire
15 an individual because of the individual's unemployment
16 status; or

17 (2) publish or circulate, in any medium, an
18 advertisement or announcement for a job vacancy that includes
19 any provision stating that an individual's unemployment
20 status disqualifies the individual for a job or any provision
21 stating that an employer will not consider an individual for
22 employment based on the individual's unemployment status.

23 (b) Employment agencies.--It shall be unlawful for an
24 employment agency to:

25 (1) refuse to consider or refer an individual for
26 employment based on the individual's unemployment status;

27 (2) limit, segregate or classify individuals in any
28 manner that may limit their access to information about jobs
29 or referral for consideration of jobs because of their
30 unemployment status; or

1 (3) publish or circulate, in any medium, an
2 advertisement or announcement for a job vacancy that includes
3 any provision stating that an individual's unemployment
4 status disqualifies the individual for a job or any provision
5 stating that an employer will not consider an individual for
6 employment based on that individual's unemployment status.

7 (c) Employment assessment.--Notwithstanding any other
8 provision of this section, this act may not preclude:

9 (1) an employer from circulating an announcement for a
10 job vacancy that limits hiring to the employer's existing
11 work force; or

12 (2) an employer or employment agency from considering an
13 individual's employment history or factual and objective
14 reasons underlying an individual's unemployment status in
15 assessing an individual's ability to perform the vacant job.
16 An employer or employment agency may assess whether an
17 individual's employment in a similar or related job for a
18 period of time reasonably proximate to the consideration of
19 the individual for employment is consistent with industry
20 practice and necessary to successful performance of the
21 vacant job.

22 Section 4. Enforcement.

23 (a) Duties of department.--The department shall enforce and
24 administer the provisions of this act and may promulgate
25 regulations necessary to implement this act.

26 (b) Investigations.--The department shall investigate
27 credible complaints made to the department alleging violations
28 of this act.

29 (1) For the purposes of investigating complaints and
30 ascertaining whether an employer or employment agency is in

1 compliance with this act and regulations issued under this
2 act, the department shall have the authority to:

3 (i) enter and inspect a place of business to examine
4 and copy any records of an employer or employment agency
5 that the department deems necessary for the investigation
6 of a violation of this act, or to require production of
7 records that are regularly stored outside this
8 Commonwealth within a reasonable time, as determined by
9 the department, following written notice from the
10 department;

11 (ii) require production of records by an employer,
12 employment agency or media source that has circulated or
13 published the job announcement or advertisement;

14 (iii) require statements in writing; and

15 (iv) interrogate individuals.

16 (2) The department shall provide a written response to
17 the complainant at the conclusion of the investigation
18 stating the department's determination relating to whether a
19 violation of this act has occurred.

20 (c) Subpoenas.--The department shall have investigatory
21 subpoena power. Application may be made to the Commonwealth
22 Court to enforce a subpoena. However, nothing in this section
23 may be construed to excuse a person from producing documents and
24 records as requested by the department under any other provision
25 of law.

26 Section 5. Penalties.

27 (a) Fines.--The department shall levy administrative
28 penalties on an employer or employment agency that violates this
29 act or any regulation issued under this act.

30 (1) For a first offense, the fine shall be not less than

1 \$1,500 nor more than \$3,000 for each violation of this act.

2 (2) For a second or subsequent offense, the fine shall
3 be not less than \$3,000 nor more than \$6,000 for each
4 violation of this act.

5 (3) In the case of advertisements or announcements that
6 are in violation of this act, each medium, publication or
7 circulation source of an advertisement or announcement shall
8 constitute a separate violation of this act.

9 (b) Corrective action.--The department may order an employer
10 or employment agency to take any action that the department
11 deems necessary to correct a violation of this act.

12 (c) Procedure.--This section is subject to 2 Pa.C.S. Chs. 5
13 Subch. A (relating to practice and procedure of Commonwealth
14 agencies) and 7 Subch. A (relating to judicial review of
15 Commonwealth agency action).

16 Section 6. Retaliation prohibited.

17 (a) Unlawful acts.--It shall be unlawful for an employer or
18 employment agency to:

19 (1) interfere with, restrain or deny the exercise of any
20 rights provided under this act; or

21 (2) discharge, discriminate or take adverse action
22 against a person in retaliation for exercising rights
23 protected under this act. Rights protected under this act
24 include:

25 (i) making a complaint to or informing the
26 department or any person about an employer's violation of
27 this act;

28 (ii) participating in investigations or proceedings;
29 and

30 (iii) informing any person of his or her potential

1 rights and assisting the person in asserting those
2 rights.

3 (b) Civil actions.--An individual who in good faith alleges
4 a violation of this section may bring a civil action in a court
5 of competent jurisdiction against an employer or employment
6 agency within two years from the date upon which the violation
7 occurs. Taking adverse action against an individual within 90
8 days of the person's exercise of rights protected under this act
9 shall raise a rebuttable presumption of having done so in
10 retaliation for the exercise of those rights.

11 Section 7. Effective date.

12 This act shall take effect in 60 days.