
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2157 Session of
2012

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M. O'BRIEN, PASHINSKI, PAYTON, QUINN, SANTONI, STURLA AND
YOUNGBLOOD, JANUARY 31, 2012

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, JANUARY 31, 2012

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 Pennsylvania
8 Fair 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,

1 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968, or
2 any person acting, directly or indirectly, in the interest of
3 any employer in relation to an employee.

4 "Employment agency." An employment agency licensed under the
5 act of July 31, 1941 (P.L.616, No.261), known as the Employment
6 Agency Law, or any person regularly undertaking with or without
7 compensation to procure employees for an employer or to procure
8 for individuals opportunities to work as employees for an
9 employer and includes an agent of such a person, and any person
10 who maintains an Internet website or print medium that publishes
11 advertisements or announcements of job openings for employees.

12 "Unemployment status." An individual's present or past
13 unemployment regardless of the length of time the individual was
14 unemployed.

15 Section 3. Prohibited acts.

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

17 (1) refuse to consider for employment or refuse to hire
18 an individual because of the individual's unemployment
19 status; or

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

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

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

30 (2) limit, segregate or classify individuals in any

manner that may limit their access to information about jobs or referral for consideration of jobs because of their unemployment status; or

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

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

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

(2) an employer or employment agency from considering an individual's employment history or factual and objective reasons underlying an individual's unemployment status in assessing an individual's ability to perform the vacant job.

An employer or employment agency may assess whether an individual's employment in a similar or related job for a period of time reasonably proximate to the consideration of the individual for employment is consistent with industry practice and necessary to successful performance of the vacant job.

Section 4. Enforcement.

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

(b) Investigations.--The department shall investigate credible complaints made to the department alleging violations

1 of this act.

2 (1) For the purposes of investigating complaints and
3 ascertaining whether an employer or employment agency is in
4 compliance with this act and regulations issued under this
5 act, the department shall have the authority to:

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

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

17 (iii) require statements in writing; and

18 (iv) interrogate individuals.

19 (2) The department shall provide a written response to
20 the complainant at the conclusion of the investigation
21 stating the department's determination related to whether a
22 violation of this act has occurred.

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

29 Section 5. Penalties.

30 (a) Fines.--The department shall levy administrative

1 penalties on an employer or employment agency that violates this
2 act or any regulation issued under this act.

3 (1) For a first offense, the fine shall be not less than
4 \$1,500 nor more than \$3,000 for each violation of this act.

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

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

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

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

19 Section 6. Retaliation prohibited.

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

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

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

28 (i) making a complaint to or informing the
29 department or any person about an employer's violation of
30 this act;

1 (ii) participating in investigations or proceedings;
2 and
3 (iii) informing any person of his or her potential
4 rights and assisting the person in asserting those
5 rights.

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

14 Section 7. Effective date.

15 This act shall take effect immediately.