

IC 22-9-2

Chapter 2. Age Discrimination

IC 22-9-2-1

Definitions

Sec. 1. For the purpose of this chapter:

"Discrimination" shall mean dismissal from employment of, or refusal to employ or rehire any person because of his age, if such person has attained the age of forty (40) years and has not attained the age of seventy-five (75) years.

"Person" shall mean and include an individual, partnership, limited liability company, corporation, or association.

"Employer" shall mean and include any person in this state employing one (1) or more individuals, labor organizations, the state and all political subdivisions, boards, departments and commissions thereof, but does not include:

- (1) religious, charitable, fraternal, social, educational or sectarian corporations, or associations not organized for private profit, other than labor organizations and nonsectarian corporations, or organizations engaged in social service work; or
- (2) a person or governmental entity which is subject to the federal Age Discrimination in Employment Act (29 U.S.C. 621 et seq.).

(Formerly: Acts 1965, c.368, s.1.) As amended by Acts 1979, P.L.206, SEC.3; P.L.8-1993, SEC.293; P.L.166-2009, SEC.1.

IC 22-9-2-2

Unfair employment practice; dismissal from employment

Sec. 2. It is declared to be an unfair employment practice and to be against public policy to dismiss from employment, or to refuse to employ or rehire, any person solely because of his age if such person has attained the age of forty (40) years and has not attained the age of seventy-five (75) years.

(Formerly: Acts 1965, c.368, s.2.) As amended by Acts 1979, P.L.206, SEC.4; P.L.166-2009, SEC.2.

IC 22-9-2-3

Unfair employment practice; labor organization membership

Sec. 3. It is hereby declared to be an unfair employment practice for any labor organization to deny full and equal membership rights to any applicant for membership or to fail or refuse to classify properly or refer for employment any member solely because of the age of such applicant or member if such person has attained the age of forty (40) years and has not attained the age of seventy-five (75) years.

(Formerly: Acts 1965, c.368, s.3.) As amended by Acts 1979, P.L.206, SEC.5; P.L.166-2009, SEC.3.

IC 22-9-2-4

Contracts; validity

Sec. 4. (a) Any provision in any contract, agreement or understanding entered into on or after October 1, 1965, but before October 1, 1979, which shall prevent or tend to prevent the employment of any person solely because of the person's age, who has attained the age of forty (40) years and has not attained the age of sixty-five (65) years shall be null and void.

(b) Any provision in any contract, agreement or understanding entered into after September 30, 1979, and before July 1, 2009, which prevents or tends to prevent the employment of any person solely because of the person's age, who has attained the age of forty (40) years and has not attained the age of seventy (70) years is null and void.

(c) Any provision in any contract, agreement, or understanding entered into after June 30, 2009, that prevents or tends to prevent the employment of any person who has attained forty (40) years of age and has not attained seventy-five (75) years of age solely because of the person's age is null and void.

(Formerly: Acts 1965, c.368, s.4.) As amended by Acts 1979, P.L.206, SEC.6; P.L.166-2009, SEC.4.

IC 22-9-2-5

Investigations; inspection

Sec. 5. The commissioner of labor shall investigate all complaints of discrimination, and for such purpose the commissioner shall have full power and authority:

(1) to receive, investigate and pass upon charges of discrimination against any person employed within the state; and

(2) to enter any place of business or employment within the state for the purpose of examination and making a transcript of records in any way appertaining to or having a bearing upon the question of the age of any person so employed.

(Formerly: Acts 1965, c.368, s.5.)

IC 22-9-2-6

Record of ages of employees; complaints; hearing; findings of fact

Sec. 6. Every person shall keep true and accurate records of the ages of all persons employed by him as reported by each employee, and shall upon demand furnish to the commissioner of labor, or his authorized representative, a true copy of any such record, verified upon oath. Such record shall be open to investigation by the commissioner at any reasonable time. If on all the testimony taken, the commissioner of labor shall make a preliminary determination that the employer has engaged in or is engaging in unfair employment practices, the commissioner shall endeavor to eliminate such unfair employment practices by informal methods of conference, conciliation and persuasion. If voluntary compliance

cannot be obtained, the commissioner of labor shall be empowered to issue a complaint stating the charges and giving not less than ten (10) days' notice of hearing before the commissioner of labor at a place therein fixed. Any complaint issued pursuant to this section must be so issued within four (4) months after the alleged unfair employment practices were committed. The respondent shall have the right to file an answer to such complaint and may appear at such hearing with or without counsel to present evidence and to examine and cross-examine witnesses. Upon the completion of testimony at such hearing, if determination is made that unfair practices were committed, the commissioner of labor shall state his findings of fact and, if satisfied therewith, may issue his finding that the employer has ceased to engage in unfair employment practices.

(Formerly: Acts 1965, c.368, s.6.)

IC 22-9-2-7

Complaint; dismissal; lack of evidence

Sec. 7. If the commissioner of labor shall find no probable cause exists to substantiate the charges, or, if upon all the evidence, he shall find that an employer has not engaged in unfair employment practices, the commissioner of labor shall state in writing his findings of fact and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such employer.

(Formerly: Acts 1965, c.368, s.7.)

IC 22-9-2-8

Unfair employment practice; dismissing employee for furnishing evidence at hearing

Sec. 8. It shall be an unfair employment practice for any employer to discharge an employee because he has furnished evidence in connection with a complaint under this chapter.

(Formerly: Acts 1965, c.368, s.8.) As amended by P.L.144-1986, SEC.180.

IC 22-9-2-9

Repealed

(Formerly: Acts 1965, c.368, s.9. Repealed by P.L.166-2009, SEC.6.)

IC 22-9-2-10

Domestic service; farm labor; exemptions

Sec. 10. These provisions shall not apply to a person employed in private domestic service or service as a farm laborer nor to a person who is qualified for benefits under the terms or conditions of an employer retirement or pension plan or system.

(Formerly: Acts 1965, c.368, s.10.)

IC 22-9-2-11**Conflict of laws; saving clause**

Sec. 11. Nothing contained herein shall be deemed to repeal any of the provisions of any law of this state relating to discrimination because of age, race or color, religion, or country of ancestral origin. Nothing herein shall be deemed to limit, restrict or affect the freedom of any employer in regard to (a) fixing compulsory retirement requirements for any class of employees at an age or ages less than seventy-five (75) years; (b) fixing eligibility requirements for participation in, or enjoyment by employees of, benefits under any annuity plan or pension or retirement plan on the basis that any employee may be excluded from eligibility therefor who, at the time he would otherwise become eligible for such benefits, is older than the age fixed in such eligibility requirements; or (c) keeping age records for any such purposes.

(Formerly: Acts 1965, c.368, s.11.) As amended by Acts 1979, P.L.206, SEC.7; P.L.166-2009, SEC.5.