

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1060

Introduced by Cavanaugh, 6.

Read first time January 21, 2020

Committee: Business and Labor

- 1 A BILL FOR AN ACT relating to the Nebraska Fair Employment Practice Act;
- 2 to amend section 48-1102, Revised Statutes Cumulative Supplement,
- 3 2018; to define a term; to harmonize provisions; and to repeal the
- 4 original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-1102, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 48-1102 For purposes of the Nebraska Fair Employment Practice Act,
4 unless the context otherwise requires:

5 (1) Person shall include one or more individuals, labor unions,
6 partnerships, limited liability companies, associations, corporations,
7 legal representatives, mutual companies, joint-stock companies, trusts,
8 unincorporated organizations, trustees, trustees in bankruptcy, or
9 receivers;

10 (2) Employer shall mean a person engaged in an industry who has
11 fifteen or more employees for each working day in each of twenty or more
12 calendar weeks in the current or preceding calendar year, any agent of
13 such a person, and any party whose business is financed in whole or in
14 part under the Nebraska Investment Finance Authority Act regardless of
15 the number of employees and shall include the State of Nebraska,
16 governmental agencies, and political subdivisions, but such term shall
17 not include (a) the United States, a corporation wholly owned by the
18 government of the United States, or an Indian tribe or (b) a bona fide
19 private membership club, other than a labor organization, which is exempt
20 from taxation under section 501(c) of the Internal Revenue Code;

21 (3) Labor organization shall mean any organization which exists
22 wholly or in part for one or more of the following purposes: Collective
23 bargaining; dealing with employers concerning grievances, terms, or
24 conditions of employment; or mutual aid or protection in relation to
25 employment;

26 (4) Employment agency shall mean any person regularly undertaking
27 with or without compensation to procure employees for an employer or to
28 procure for employees opportunities to work for an employer and shall
29 include an agent of such a person but shall not include an agency of the
30 United States, except that such term shall include the United States
31 Employment Service and the system of state and local employment services

1 receiving federal assistance;

2 (5) Covered entity shall mean an employer, an employment agency, a
3 labor organization, or a joint labor-management committee;

4 (6) Privileges of employment shall mean terms and conditions of any
5 employer-employee relationship, opportunities for advancement of
6 employees, and plant conveniences;

7 (7) Employee shall mean an individual employed by an employer;

8 (8) Commission shall mean the Equal Opportunity Commission;

9 (9) Disability shall mean (a) a physical or mental impairment that
10 substantially limits one or more of the major life activities of such
11 individual, (b) a record of such an impairment, or (c) being regarded as
12 having such an impairment. Disability shall not include homosexuality,
13 bisexuality, transvestism, transsexualism, pedophilia, exhibitionism,
14 voyeurism, gender-identity disorders not resulting in physical
15 impairments, other sexual behavior disorders, problem gambling,
16 kleptomania, pyromania, or psychoactive substance use disorders resulting
17 from current illegal use of drugs;

18 (10)(a) Qualified individual with a disability shall mean an
19 individual with a disability who, with or without reasonable
20 accommodation, can perform the essential functions of the employment
21 position that such individual holds or desires. Consideration shall be
22 given to the employer's judgment as to what functions of a job are
23 essential, and if an employer has prepared a written description before
24 advertising or interviewing applicants for the job, this description
25 shall be considered evidence of the essential functions of the job;

26 (b) Qualified individual with a disability shall not include any
27 employee or applicant who is currently engaged in the illegal use of
28 drugs when the covered entity acts on the basis of such use; and

29 (c) Nothing in this subdivision shall be construed to exclude as a
30 qualified individual with a disability an individual who:

31 (i) Has successfully completed a supervised drug rehabilitation

1 program or otherwise been rehabilitated successfully and is no longer
2 engaging in the illegal use of drugs;

3 (ii) Is participating in a supervised rehabilitation program and is
4 no longer engaging in such use; or

5 (iii) Is erroneously regarded as engaging in such use but is not
6 engaging in such use;

7 (11) Reasonable accommodation, with respect to disability, shall
8 include making existing facilities used by employees readily accessible
9 to and usable by individuals with disabilities, job restructuring, part-
10 time or modified work schedules, reassignment to a vacant position,
11 acquisition or modification of equipment or devices, appropriate
12 adjustment or modification of examinations, training manuals, or
13 policies, the provision of qualified readers or interpreters, and other
14 similar accommodations for individuals with disabilities. Reasonable
15 accommodation, with respect to pregnancy, childbirth, or related medical
16 conditions, shall include acquisition of equipment for sitting, more
17 frequent or longer breaks, periodic rest, assistance with manual labor,
18 job restructuring, light-duty assignments, modified work schedules,
19 temporary transfers to less strenuous or hazardous work, time off to
20 recover from childbirth, or break time and appropriate facilities for
21 breast-feeding or expressing breast milk. Reasonable accommodation shall
22 not include accommodations which the covered entity can demonstrate
23 require significant difficulty or expense thereby posing an undue
24 hardship upon the covered entity. Factors to be considered in determining
25 whether an accommodation would pose an undue hardship shall include:

26 (a) The nature and the cost of the accommodation needed under the
27 Nebraska Fair Employment Practice Act;

28 (b) The overall financial resources of the facility or facilities
29 involved in the provision of the reasonable accommodation, the number of
30 persons employed at such facility, the effect on expenses and resources,
31 or the impact otherwise of such accommodation upon the operation of the

1 facility;

2 (c) The overall financial resources of the covered entity, the
3 overall size of the business of a covered entity with respect to the
4 number of its employees, and the number, type, and location of its
5 facilities; and

6 (d) The type of operation or operations of the covered entity,
7 including the composition, structure, and functions of the work force of
8 such entity, and the geographic separateness and administrative or fiscal
9 relationship of the facility or facilities in question to the covered
10 entity;

11 (12) Marital status shall mean the status of a person whether
12 married or single;

13 (13) Because of sex or on the basis of sex shall include, but not be
14 limited to, because of or on the basis of pregnancy, childbirth, or
15 related medical conditions;

16 (14) Harass because of sex shall include making unwelcome sexual
17 advances, requesting sexual favors, and engaging in other verbal or
18 physical conduct of a sexual nature if (a) submission to such conduct is
19 made either explicitly or implicitly a term or condition of an
20 individual's employment, (b) submission to or rejection of such conduct
21 by an individual is used as the basis for employment decisions affecting
22 such individual, or (c) such conduct has the purpose or effect of
23 unreasonably interfering with an individual's work performance or
24 creating an intimidating, hostile, or offensive working environment;

25 (15) Unlawful under federal law or the laws of this state shall mean
26 acting contrary to or in defiance of the law or disobeying or
27 disregarding the law;

28 (16) Drug shall mean a controlled substance as defined in section
29 28-401;

30 (17) Illegal use of drugs shall mean the use of drugs, the
31 possession or distribution of which is unlawful under the Uniform

1 Controlled Substances Act, but shall not include the use of a drug taken
2 under supervision by a licensed health care professional or any other use
3 authorized by the Uniform Controlled Substances Act or other provisions
4 of state law;~~and~~

5 (18) Individual who is pregnant, who has given birth, or who has a
6 related medical condition shall mean an individual with a known
7 limitation who, with or without reasonable accommodation, can perform the
8 essential functions of the employment position that such individual
9 holds, desires, or may be temporarily assigned to. Consideration shall be
10 given to the employer's judgment as to what functions of a job are
11 essential, and if an employer has prepared a written description before
12 advertising or interviewing applicants for the job, this description
13 shall be considered evidence of the essential functions of the job; -

14 (19)(a) Race includes race, ancestry, color, ethnic group
15 identification, and ethnic background.

16 (b) Race is inclusive of traits historically associated with race,
17 including, but not limited to, hair texture and protective hairstyles;
18 and

19 (20) Protective hairstyles includes, but is not limited to,
20 hairstyles such as braids, locks, and twists.

21 Sec. 2. Original section 48-1102, Revised Statutes Cumulative
22 Supplement, 2018, is repealed.