

CHAPTER 2018-3

No. 56 AN ORDINANCE IN AMENDMENT OF CHAPTER 16, "OFFENSES AND MISCELLANEOUS PROVISIONS," SECTION 57, "UNLAWFUL EMPLOYMENT PRACTICES"

Approved February 9, 2018

Be it ordained by the City of Providence:

SECTION 1. Chapter 16, "Offenses and Miscellaneous Provisions," Section 57, "Unlawful employment practices," is hereby amended as follows:

Sec. 16-57. - Unlawful employment practices.

- (a) Findings and intent. It is the intent of the City of Providence to combat pregnancy discrimination by requiring employers to provide reasonable accommodations to pregnant women and those with conditions related to pregnancy and childbirth. Such a reasonable accommodation may include more frequent or longer breaks, time off to recover from childbirth, acquisition or modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, break time and private nonbathroom space for expressing breast milk, assistance with manual labor, or modified work schedules, among other things. It is not the intent of the City of Providence to require such accommodations if this provision would cause an undue hardship in the conduct of an employer's business.
- (b) For the purposes of this section:
 - (1) The term "reasonably accommodate" shall mean providing reasonable accommodations, including, but not limited to: more frequent or longer breaks, time off to recover from childbirth, acquisition or modification of equipment, seating, temporary transfer to a less strenuous or hazardous position, job restructuring, light duty, break time and private nonbathroom space for expressing breast milk, assistance with manual labor, or modified work schedules, provided that:
 - a. No employer shall be required by this subsection to create additional employment that the employer would not otherwise have created, unless the employer does so or would do so for other classes of employees who need accommodation, such as those who are injured on-the-job or those with disabilities and;
 - b. The employer shall not be required to discharge any employee, transfer any employee with more seniority, or promote any employee who is not qualified to perform the job, unless the employer does so or would do so to accommodate other classes of employees who need it, such as those who are injured on the job or those with disabilities.
 - c. Nothing in this article shall be construed to require an individual with a need related to pregnancy, childbirth, or a related medical condition to accept an accommodation which such individual chooses not to accept.
 - (2) The term "related conditions" includes, but is not limited to, lactation or the need to express breast milk for a nursing child.
 - (3) The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subsection 16-57(b)(1).
 - a. The employer shall have the burden of proving undue hardship. In making a determination of undue hardship, the factors that may be considered include, but shall not be limited to:
 - 1. The nature and cost of the accommodation;
 - 2. The overall financial resources of the employer; the overall size of the business of the employer with respect to the number of employees, and the number, type, and location of its facilities; and

3. The effect on expenses and resources or the impact otherwise of such accommodation upon the operation of the employer.
 - b. The fact that the employer provides or would be required to provide a similar accommodation to other classes of employees who need it, such as those who are injured on the job or those with disabilities, shall create a rebuttable presumption that the accommodation does not impose an undue hardship on the employer.
 - (4) The term "employer" includes any contractor hired by the City of Providence.
 - (5) The term "employer" shall mean any person located in whole or in part in the City of Providence employing four (4) or more individuals, and any person acting in the interest of an employer directly or indirectly.
- (c) It shall be an unlawful employment practice:
- (1) For any employer:
 - a. To fail or refuse to hire any applicant for employment or otherwise discriminate because of race or color, sex, sexual orientation, gender identity or expression, religion, marital status, disability, age, or country of ancestral origin; or
 - b. Because of such reasons, to discharge an employee or discriminate against him or her with respect to hire, tenure, compensation, promotion, terms, conditions, or privileges of employment, or any other matter directly or indirectly related to employment; or
 - c. In the recruiting of individuals for employment or in hiring them, to utilize any employment agency, placement service, training school or center, labor organization, or any other employee referring source which such employer knows, or has reasonable cause to know, discriminates against individuals because of their race or color, sex, sexual orientation, gender identity or expression, religion, marital status, disability, age, or country of ancestral origin;
 - d. To treat disabilities caused or contributed to by pregnancy, miscarriage, childbirth or recovery therefrom, differently than other temporary disabilities under any health or temporary disability insurance, or sick leave plan available in connection with employment. Pay, tenure, benefits, seniority, and reinstatement shall be afforded in the same manner for medically necessary pregnancy-related absences as they are for other medically necessary absences.
 - e. To refuse to reasonably accommodate an employee's or prospective employee's condition related to pregnancy, childbirth, or a related medical condition, including, but not limited to, the need to express breast milk for a nursing child, if she so requests; unless the employer can demonstrate that the accommodation would pose an undue hardship on the employer's program, enterprise, or business.
 - f. To require an employee to take leave if another reasonable accommodation can be provided to an employee's condition related to the pregnancy, childbirth, or a related medical condition.
 - g. To deny employment opportunities to an employee or prospective employee, if such denial is based on the refusal of the employer to reasonably accommodate an employee's or prospective employee's condition related to pregnancy, childbirth, or a related medical condition.
 - (2) For any employment agency:
 - a. To discriminate or to fail or refuse to classify properly or refer for employment or otherwise discriminate against any individual because of his or her race or color, sex, sexual orientation, gender identity or expression, religion, marital status, handicap, disability, age, or country of ancestral origin; or

- b. For any employment agency, placement service, training school or center, labor organization, or any other employee referring source to discriminate or to comply with an employer's request for the referral of job applicants if such request indicates either directly or indirectly that such employer will not afford full and equal employment opportunities to individuals regardless of their race or color, sex, sexual orientation, gender identity or expression, religion, marital status, disability, age, or country of ancestral origin.
- (3) For any labor organization:
- a. To discriminate against or deny full and equal membership rights to any applicant for membership because of his or her race or color, sex, sexual orientation, gender identity or expression, religion, marital status, disability, age, or country of ancestral origin; or
 - b. Because of such reasons, to deny a member full and equal membership rights, expel him or her from membership, or otherwise discriminate in any manner with respect to hire, tenure compensation, terms, conditions, or privileges of employment, or any other matter directly or indirectly related to membership or employment, whether or not authorized or required by the constitution or bylaws of such labor organization, or by a collective labor agreement or other contract; or
 - c. To fail or refuse to classify properly or refer for employment, or otherwise to discriminate against any member because of his or her race or color, sex, sexual orientation, gender identity or expression, religion, marital status, disability, age, or country of ancestral origin;
 - d. To treat disabilities caused or contributed to by pregnancy, miscarriage, childbirth or recovery therefrom differently than any other temporary disabilities under any health or temporary disability insurance or sick leave plan available in connection with employment. Pay, tenure, benefits, seniority, and reinstatement shall be afforded in the same manner for medically necessary pregnancy-related absences as they are for other medically necessary absences.
- (4) Except where based on a bona fide occupational qualification which has been certified by the commission, for any person, employer, employment agency, labor organization, placement service, training school or center, or any other employee referring source prior to employment or admission to membership of any individual, to:
- a. To discriminate or elicit or attempt to elicit any information directly or indirectly pertaining to the individual's race or color, sex, sexual orientation, gender identity or expression, religion, marital status, disability, age, or country of ancestral origin;
 - b. Except where based on a valid affirmative action program or record keeping or reporting requirements to make or keep a record of the individual's race or color, sex, sexual orientation, gender identity or expression, religion, marital status, disability, age, or country of ancestral origin;
 - c. Use any form of application or membership blank which contains questions or entries directly or indirectly pertaining to race or color, sex, sexual orientation, gender identity or expression, religion, marital status, disability, age, or country of ancestral origin;
 - d. Conduct any interview in person or otherwise where information is elicited pertaining to race or color, sex, sexual orientation, gender identity or expression, religion, marital status, disability, age, or country of ancestral origin;

- e. To discriminate or to directly or indirectly print or publish or cause to be printed or published, circulated, broadcasted, issued, used, displayed, posted or mailed any written, printed, painted or oral communication, notice, or advertisement relating to employment or membership indicating any preference, denial, limitation, specification, qualification, or discrimination based upon race or color, sex, sexual orientation, gender identity or expression, religion, marital status, disability, age, or country of ancestral origin;
 - f. Establish, announce, or follow a pattern, practice, or policy of denying, under-utilizing or limiting, through a quota system or otherwise, employment or membership opportunities of any group because of the race or color, sex, sexual orientation, gender identity or expression, religion, marital status, disability, age, or country of ancestral origin of such group.
- (5) For any person, employer, employment agency, labor organization, placement service, training school or center, or any other employee referring source to discriminate in any manner against any individual or deny that individual because he or she has opposed any practice forbidden by this article, or because he or she has made a charge, testified, or assisted in any manner in an investigation, proceeding, or hearing under this article;
- (6) For any person, whether or not an employer, employment agency, labor organization, placement, service training school or center, or employee, to aid, abet, incite, compel, or coerce the doing of any act declared by this section to be an unlawful employment practice, or to obstruct or prevent any person from complying with the provisions of this article or any regulation or order issued hereunder, or to attempt directly or indirectly to commit any act declared by this section to be an unlawful employment practice.
- (7) For any employer:
- (a) To inquire about a prospective employee's compensation history, unless the compensation information is a public record, require disclosure of compensation history, or condition employment or consideration for an interview for employment on disclosure of compensation history, or retaliate against a prospective employee for failing to comply with any compensation history inquiry;
 - (b) To rely on the compensation history of a prospective employee from any current or former employer of the individual in determining the compensation for such individual at any stage in the employment process, including the negotiation or drafting of any employment contract, unless such applicant voluntarily disclosed his or her compensation history to the employer, employment agency, or agent thereof.
 - (c) Enforcement.
Any employer that violates this section, shall be liable to the individual affected for damages incurred. Action to recover such liability may be maintained in any court of competent jurisdiction by one (1) or more individuals for and on their own behalf. Violators shall be responsible for all court costs associated with such legal action.
 - (d) Section 16-57(c)(7) shall not apply to any actions taken by an employer, employment agency, or employee or agent thereof, pursuant to any federal, state, or local law that specifically authorizes or requires the disclosure or verification of compensation history for employment purposes, nor to applicants for internal transfer or promotion with their current employer. For the purposes of Section 16-57(c)(7), "to inquire" shall mean to ask, request, or research verbally, in writing, or otherwise, and "compensation" shall mean all earnings of an individual, regardless of whether determined on the basis of time, task, piece, commission, or other method of calculation, and including fringe benefits, compensation supplements, or other compensation whether payable by the employer from employer funds or from amounts withheld from the employee's pay by the employer.

- (d) Notice of rights. An employer shall provide written notice of the right to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions pursuant to subsections 16-57(a), (b) and (c) to new employees at the commencement of employment, and to existing employees within one hundred twenty (120) days after the effective date of the ordinance amending section 16-57. Such notice may also be conspicuously posted at an employer's place of business in an area accessible to employees.
- (e) Subsections 16-57(a), (b) and (c) shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy, or to preempt, limit, diminish or otherwise affect any other law that provides greater protection or specific benefits with respect to pregnancy, childbirth or medical conditions related to childbirth.

SECTION 2. This Ordinance shall take effect ninety (90) days after passage.

IN CITY COUNCIL
JAN 18 2018
FIRST READING
READ AND PASSED

Lois Hoyer CLERK

IN CITY COUNCIL
FEB 01 2018

READ AND PASSED
Dan Coakley PRES.
Lois Hoyer CLERK

I HEREBY APPROVE.

[Signature]
Mayor
Date: 2/9/18