4112-5-05 **Sex discrimination.**

(A) Sex as a bona fide occupational qualification. The BFOQ exception as to sex shall be narrowly construed so as to prohibit employment practices which tend to deny employment opportunities unnecessarily to one sex or the other. Requests for a BFOQ must be submitted pursuant to rule 4112-3-15 of the Administrative Code.

(B) Application of the BFOQ exception. The following situations do not warrant application of the BFOQ exception.

(1) Refusal to hire, promote, recall, or deny an individual any term, condition or privilege of employment based upon stereotyped characterizations of the sexes. Individuals shall be considered on the basis of individual capacities rather than on the basis of characteristics generally attributed to that group.

(2) Refusal to hire, promote or recall or deny an individual any term, condition or privilege of employment when such refusal or denial is based on assumptions of the general comparative employment characteristics of that sex.

(3) Refusal to hire based upon state employment laws or administrative regulations which restrict or limit employment of one sex and do not take into account the capacities, preferences and abilities of the individual and therefore discriminate on the basis of sex. Such laws and regulations conflict with and are superseded by Chapter 4112. of the Revised Code.

(C) Job opportunities advertising. Help wanted advertising which indicates a preference, limitation or specification based on sex shall constitute unlawful sex discrimination unless sex is a BFOQ for a particular job.

(D) Pre-employment inquiries. Any pre-employment inquiries by an employer, in connection with the prospective employment of an individual, which express directly or indirectly any limitation, specification or preference as to sex shall be unlawful unless based on a BFOQ.

(E) Fringe benefits. It shall be an unlawful employment practice for an employer to discriminate on the basis of sex with regard to fringe benefits.

(1) Benefits available to employees and their spouses and families which are conditioned on whether the employee is the head of the household or principal wage earner are a prima facie violation of the prohibitions against sex discrimination contained in Chapter 4112. of the Revised Code.

(2) An employer's declaration that the cost of a benefit program is greater with

respect to one sex than the other shall not be a valid defense to a charge of unlawful sex discrimination.

(3) It shall be an unlawful employment practice for an employer to maintain a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which differentiates benefits available on the basis of sex.

(F) Marital status. An employment rule or regulation which restricts the employment of married members of one sex and which is not applicable to married members of the other sex shall constitute unlawful sex discrimination, unless such rule or regulation is based on a BFOQ.

(G) Pregnancy, ~~and~~ childbirth, and related medical conditions.

(1) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy, childbirth or related medical conditions is a prima facie violation of the prohibitions against sex discrimination contained in Chapter 4112. of the Revised Code.

~~(a) {Enter paragraph text here}~~

(2) An employee affected by pregnancy, childbirth or related medical condition shall be treated the same for all employment-related purposes, including eligibility for light duty positions and participation in modified work programs, accrual of seniority, receipt of benefits under fringe benefits programs, and all other benefits and privileges of employment, as other employees not so affected but similar in their ability or inability to work, and regardless of whether she is otherwise similarly situated in all respects.

(3) Distinctions based upon length of service, the nature of the medical condition, or whether the medical condition is related to an on-the-job injury, shall not constitute a legitimate, nondiscriminatory reason for treating an employee affected by pregnancy, childbirth or a related medical condition less favorably than other persons not so affected but similar in their ability or inability to work.

~~(2)~~(4) Where an adverse employment action taken against ~~termination of employment of~~ an employee who is temporarily ~~disabled~~ limited, in part or in whole, in her ability to work due to pregnancy , childbirth or a related medical condition is based upon ~~caused by~~ an employment policy or practice under which less than twelve weeks of pregnancy, childbirth or ~~insufficient or no~~ maternity leave is available, such ~~termination shall constitute unlawful sex discrimination~~ policy shall be presumed to have a disparate impact on women

and constitutes unlawful sex discrimination unless justified by business necessity.

~~(3)~~(5) Written and unwritten employment policies and practices involving commencement and duration of pregnancy, childbirth or maternity leave shall be so construed as to provide for individual capacities and the medical status of the woman involved.

(6) No employer shall be permitted to place an employee affected by pregnancy, childbirth or a related medical condition on mandatory leave, or otherwise limit or alter her job duties, in the absence of an objective, verifiable safety justification and only when the pregnancy or related medical condition interferes with her ability to safely perform her position.

~~(4) Employment policies involving accrual of seniority and all other benefits and privileges of employment, including company-sponsored sickness and accident insurance plans, shall be applied to disability due to pregnancy and childbirth on the same terms and conditions as they are applied to other temporary leaves of absence of the same classification under such employment policies.~~

~~(5) Women shall not be penalized in their conditions of employment because they require time away from work on account of childbearing. When, under the employer's leave policy the female employee would qualify for leave, then childbearing must be considered by the employer to be a justification for leave of absence for female employees for a reasonable period of time. For example, if the female meets the equally applied minimum length of service requirements for leave time, she must be granted a reasonable leave on account of childbearing. Conditions applicable to her leave (other than its length) and to her return to employment shall be in accordance with the employer's leave policy.~~

~~(6)~~(7) ~~Notwithstanding paragraphs (G)(1) to (G)(5) of this rule, if the employer has no leave policy, childbearing must be considered by the employer to be a justification for leave of absence for a female employee for a reasonable period of time. Following childbirth, and~~ Upon ~~upon~~ signifying her intent to return to employment ~~within a reasonable time~~, ~~such~~ an ~~female~~ employee who was temporarily limited, in part or in whole, in her ability to work due to pregnancy, childbirth or a related medical condition shall be reinstated to her original position or to a position of like status and pay, without loss of service credits or other benefits.

(H) Separate lines of progression and seniority systems. It is an unlawful employment practice to maintain separate lines of progression or separate seniority lists based on sex where such practice would adversely affect any employee unless sex is a BFOQ

for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) Females are prohibited from applying for jobs labeled in a male line of progression and vice versa.

(2) A female scheduled for layoff is prohibited from displacing a less senior male and vice versa.

(3) The seniority system or line of progression classifies similar jobs as light or heavy or in some other manner and thereby operates to create unreasonable obstacles to the advancement of either sex into jobs which members of that sex would reasonably be expected to perform.

(I) Employment agencies.

(1) It shall constitute unlawful sex discrimination for an employment agency to deal exclusively with one sex, except to the extent that such agency limits its services to furnishing employees for particular jobs for which sex is a BFOQ.

(2) An employment agency that receives a job order containing an, unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based on a BFOQ.

(3) An employment agency that receives a job order containing an unlawful sex specification will not share responsibility with the employer placing the order if the agency does not have reason to believe that the employer's claim of a BFOQ is without substance and the agency makes and maintains a written record available to the commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim that sex is a BFOQ.

(J) Sexual harassment.

(1) Harassment on the basis of sex is a violation of division (A) of section 4112.02 of the Revised Code. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(2) In determining whether alleged conduct constitutes sexual harassment, the commission will look at the record as a whole and the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case-by-case basis.

(3) Applying general agency principles, an employer, employment agency, joint apprenticeship committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(4) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the work place where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action.

(5) An employer may also be responsible for the acts of nonemployees (e.g., customers) with respect to sexual harassment of employees in the work place, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such nonemployees.

(6) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their

right to raise and how to raise the issue of harassment under Chapter 4112. of the Revised Code, and developing methods to sensitize all concerned.

(7) Other related practices. Where employment opportunities or benefits are granted because of an individual's submission to the employer's requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

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