

## ELLIOTT-LARSEN CIVIL RIGHTS ACT (EXCERPT)

### Act 453 of 1976

#### ARTICLE 2

##### **37.2201 Definitions.**

Sec. 201. As used in this article:

- (a) "Employer" means a person that has 1 or more employees, and includes an agent of that person.
- (b) "Employment agency" means a person regularly undertaking with or without compensation to procure, refer, recruit, or place an employee for an employer or to procure, refer, recruit, or place for an employer or person the opportunity to work for an employer and includes an agent of that person.
- (c) "Labor organization" includes:
  - (i) An organization of any kind, or an agency or employee representation committee, group, association, or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.
  - (ii) A conference, general committee, joint or system board, or joint council that is subordinate to a national or international labor organization.
  - (iii) An agent of a labor organization.
- (d) "Sex" includes, but is not limited to, pregnancy, childbirth, the termination of a pregnancy, or a related medical condition.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1978, Act 153, Imd. Eff. May 22, 1978;—Am. 1980, Act 202, Imd. Eff. July 18, 1980;—Am. 2023, Act 31, Eff. Feb. 13, 2024.

##### **37.2202 Employer; prohibited practices; exceptions.**

Sec. 202. (1) An employer shall not do any of the following:

- (a) Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.
  - (b) Limit, segregate, or classify an employee or applicant for employment in a way that deprives or tends to deprive the employee or applicant of an employment opportunity or otherwise adversely affects the status of the employee or applicant because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.
  - (c) Segregate, classify, or otherwise discriminate against an individual on the basis of sex with respect to a term, condition, or privilege of employment, including, but not limited to, a benefit plan or system.
  - (d) Treat an individual affected by pregnancy, childbirth, the termination of a pregnancy, or a related medical condition differently for any employment-related purpose from another individual who is not so affected but similar in ability or inability to work, without regard to the source of any condition affecting the other individual's ability or inability to work.
- (2) This section does not prohibit the establishment or implementation of a bona fide retirement policy or system that is not a subterfuge to evade the purposes of this section.
- (3) This section does not apply to the employment of an individual by the individual's parent, spouse, or child.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1978, Act 153, Imd. Eff. May 22, 1978;—Am. 1991, Act 11, Eff. May 1, 1991;—Am. 2009, Act 190, Imd. Eff. Dec. 22, 2009;—Am. 2023, Act 6, Eff. Feb. 13, 2024;—Am. 2023, Act 31, Eff. Feb. 13, 2024.

##### **37.2202a Designation of racial or ethnic classifications in writing developed by employer; transmission of information to federal agency; "writing" defined.**

Sec. 202a. (1) An employer shall do both of the following if that employer lists racial or ethnic classifications in a writing developed or printed 90 or more days after the effective date of this section, and if that employer requests that an individual select a classification to designate his or her race or ethnicity:

- (a) Include in the writing the term "multiracial" as a classification, and a definition of that term that substantially provides that "multiracial" means having parents of different races.
  - (b) Exclude from the writing the term "other" as a classification.
- (2) If a federal agency requires an employer to transmit information obtained from an individual pursuant to a writing described in subsection (1), but rejects the classification "multiracial", the employer shall redesignate the individuals identified as multiracial by allocating those individuals to racial or ethnic

classifications approved by the federal agency in the same ratio that those classifications occur within the general population of the group from which the information was solicited.

(3) As used in this section, "writing" means that term as defined in section 2 of the freedom of information act, Act No. 442 of the Public Acts of 1976, being section 15.232 of the Michigan Compiled Laws.

**History:** Add. 1995, Act 88, Imd. Eff. June 20, 1995.

### **37.2203 Employment agency; prohibited practices generally.**

Sec. 203. An employment agency shall not fail or refuse to procure, refer, recruit, or place for employment, or otherwise discriminate against, an individual because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status; or classify or refer for employment an individual on the basis of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

### **37.2204 Labor organization; prohibited practices generally.**

Sec. 204. A labor organization shall not do any of the following:

(a) Exclude or expel from membership, or otherwise discriminate against, a member or applicant for membership because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.

(b) Limit, segregate, or classify membership or applicants for membership, or classify or fail or refuse to refer for employment an individual in a way that would deprive or tend to deprive that individual of an employment opportunity, or that would limit an employment opportunity, or that would adversely affect wages, hours, or employment conditions, or otherwise adversely affect the status of an employee or an applicant for employment, because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.

(c) Cause or attempt to cause an employer to violate this article.

(d) Fail to fairly and adequately represent a member in a grievance process because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

### **37.2205 Employer, labor organization, or joint labor-management committee; training programs; prohibited practices.**

Sec. 205. An employer, labor organization, or joint labor-management committee controlling an apprenticeship, on the job, or other training or retraining program, shall not discriminate against an individual because of religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status, in admission to, or employment or continuation in, a program established to provide apprenticeship on the job, or other training or retraining.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

### **37.2205a Employer, employment agency, or labor organization; record of information regarding misdemeanor arrest, detention, or disposition; failure to recite or acknowledge information; "law enforcement agency" defined.**

Sec. 205a. (1) An employer, employment agency, or labor organization, other than a law enforcement agency of this state or a political subdivision of this state, shall not in connection with an application for employment or membership, or in connection with the terms, conditions, or privileges of employment or membership request, make, or maintain a record of information regarding a misdemeanor arrest, detention, or disposition where a conviction did not result. A person is not guilty of perjury or otherwise for giving a false statement by failing to recite or acknowledge information the person has a civil right to withhold by this section. This section does not apply to information relative to a felony charge before conviction or dismissal.

(2) As used in this section, "law enforcement agency" includes the state department of corrections.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 1978, Act 610, Eff. Mar. 30, 1979;—Am. 1982, Act 45, Eff. Mar. 30, 1983;—Am. 1999, Act 202, Eff. Mar. 10, 2000.

**Compiler's note:** Enacting section 1 of Act 202 of 1999 provides:

"Enacting section 1. This amendatory act is curative and intended to correct any misinterpretation of legislative intent in the court of appeals decision *Neal v Department of Corrections*, 232 Mich App 730 (1998). This legislation further expresses the original intent of the legislature that an individual serving a sentence of imprisonment in a state or county correctional facility is not within the purview of this act. "

### **37.2205b Repealed. 1982, Act 45, Eff. Mar. 30, 1983.**

**Compiler's note:** The repealed section pertained to announcing availability of polygraph examination.

### **37.2206 Employer, labor organization, or employment agency; prohibited practices.**

Sec. 206. (1) An employer, labor organization, or employment agency shall not print, circulate, post, mail, or otherwise cause to be published a statement, advertisement, notice, or sign relating to employment by the employer, or relating to membership in or a classification or referral for employment by the labor organization, or relating to a classification or referral for employment by the employment agency, that indicates a preference, limitation, specification, or discrimination, based on religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status.

(2) Except as permitted by rules promulgated by the commission or by applicable federal law, an employer or employment agency shall not do any of the following:

(a) Make or use a written or oral inquiry or form of application that elicits or attempts to elicit information concerning the religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status of a prospective employee.

(b) Make or keep a record of information described in subdivision (a) or disclose that information.

(c) Make or use a written or oral inquiry or form of application that expresses a preference, limitation, specification, or discrimination based on religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status of a prospective employee.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

**Administrative rules:** R 37.1 et seq. of the Michigan Administrative Code.

### **37.2207 Individual seeking employment; prohibited practices.**

Sec. 207. An individual seeking employment shall not publish or cause to be published a notice or advertisement that specifies or indicates the individual's religion, race, color, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status, or expresses a preference, specification, limitation, or discrimination as to the religion, race, color, national origin, age, height, weight, sex, sexual orientation, gender identity or expression, or marital status of a prospective employer.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

### **37.2208 Application for exemption; bona fide occupational qualification.**

Sec. 208. A person subject to this article may apply to the commission for an exemption on the basis that religion, national origin, age, height, weight, or sex is a bona fide occupational qualification reasonably necessary to the normal operation of the business or enterprise. Upon sufficient showing, the commission may grant an exemption to the appropriate section of this article. An employer may have a bona fide occupational qualification on the basis of religion, national origin, sex, age, or marital status, height and weight without obtaining prior exemption from the commission, provided that an employer who does not obtain an exemption shall have the burden of establishing that the qualification is reasonably necessary to the normal operation of the business.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

### **37.2209 Covenants.**

Sec. 209. A contract to which this state, a political subdivision, or an agency of this state or of a political subdivision is a party must contain a covenant by the contractor and the contractor's subcontractors not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, sexual orientation, gender identity or expression, height, weight, or marital status. Breach of this covenant may be regarded as a material breach of the contract.

**History:** 1976, Act 453, Eff. Mar. 31, 1977;—Am. 2023, Act 6, Eff. Feb. 13, 2024.

### **37.2210 Plan.**

Sec. 210. A person subject to this article may adopt and carry out a plan to eliminate present effects of past discriminatory practices or assure equal opportunity with respect to religion, race, color, national origin, or sex if the plan is filed with the commission under rules of the commission and the commission approves the plan.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.

**Administrative rules:** R 37.27 et seq. of the Michigan Administrative Code.

### **37.2211 Different standards of compensation; different terms, conditions, or privileges of employment.**

Sec. 211. Notwithstanding any other provision of this article, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions or privileges of employment pursuant to a bona fide seniority or merit system.

**History:** 1976, Act 453, Eff. Mar. 31, 1977.