

● WEST VIRGINIA HUMAN RIGHTS ACT

STATUTORY CITATION: W. Va. Code §§ 5-11-1 – 5-11-20

GENERAL SUMMARY: The West Virginia Human Rights Act declares, in part, that equal opportunity in employment is a human and civil right of all persons, without regard to race, religion, color, national origin, ancestry, sex, age, blindness or disability. The Act defines certain unlawful discriminatory employment practices and establishes a state-administered framework for investigating and resolving related complaints.

With few exceptions, the law applies to all establishments — agricultural and non-agricultural alike — employing 12 or more workers in West Virginia for 20 or more calendar weeks in the current or preceding calendar year.

SPECIFIC TERMS AND CONDITIONS

UNLAWFUL PRACTICES — Employers subject to the law are generally prohibited from engaging in any of the following acts, among others:

(1) Discriminating against an individual with respect to compensation, hire, tenure, or the terms or conditions of employment, when the individual is able and competent to perform the required services and when such discrimination is on grounds of race, religion, color, national origin, ancestry, sex, age (40 or over), blindness, or disability.

(2) Eliciting pre-employment information, using any form of job application, or circulating any employment notice, concerning or indicating any preference or discrimination with respect to race, religion, color, national origin, ancestry, sex or age.

Employment agencies and labor organizations are subject to comparable prohibitions against discrimination.

Exceptions — Bona fide pension, retirement, insurance or welfare benefit plans are not regarded as discriminatory as long as they are not used as a subterfuge to evade the Act's anti-discrimination intent. Likewise, hiring or any other employment decision that recognizes a person's race, religion, color, national origin, ancestry, sex, age, blindness, or disability does not necessarily violate the law, provided such a decision is based on a bona fide occupational qualification.

COMPLAINTS — Anyone claiming to be aggrieved by an unlawful discriminatory practice may file a complaint with the state enforcement agency at any time within 365 days after the alleged act occurred. If the state agency's investigation finds probable cause for believing that the employer or other respondent named in the complaint has violated the Act, the staff must attempt to eliminate the unlawful practice informally. Failure to reach an informal compliance agreement will normally result in a formal hearing to allow the respondent to answer the charges, and if the evidence presented in the hearing sustains the allegations of the complaint, the agency will issue an order requiring the respondent to cease the unlawful practice and take affirmative action to compensate the complainant. Affirmative action may include hiring, reinstatement or promotion, with or without back pay, or other appropriate relief.

SPECIAL NOTES OR ADVISORIES

RETALIATION — A person may not discharge, discipline or discriminate in any manner against an employee because the employee has filed a complaint, participated in a proceeding, or exercised any other right afforded by these provisions.

ADMINISTRATION AND ENFORCEMENT

PRIMARY ENFORCEMENT AGENCY — *West Virginia Human Rights Commission, Charleston, West Virginia 25301 (304-558-2616; toll-free 888-676-5546)*. It is the Commission's responsibility to receive, investigate and attempt to resolve complaints of employment discrimination under the Human Rights Act. For that purpose, the Commission is authorized to hold public and private hearings, subpoena witnesses and documents, take sworn testimony, and pursue related investigatory action. In addition to civil liability to the worker or workers affected by an act of discrimination, an employer who fails to comply with a lawful final order of the Commission is subject to a criminal fine and imprisonment.

SECONDARY OR ASSOCIATED ENFORCEMENT AGENCY — *None*.

PRIVATE CIVIL ACTION — If the Commission fails to take certain action on a complaint within specified timeframes, or if a complaint is not resolved to the complainant's satisfaction, the complainant may request a right-to-sue letter from the Commission, permitting private legal action against the respondent within 90 days of issuance of the letter, or within 2 years after the alleged act occurred, whichever is later. As an alternative to filing a complaint with the Commission, a person who has been subjected to unlawful employment discrimination may take legal action against the employer or other party involved immediately, using a private attorney or public legal service provider.