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**Iowa fair employment
practices guide**

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FAIR EMPLOYMENT

PRACTICES GUIDE

**Iowa Civil
Rights Commission**

February 1972

NON-DISCRIMINATORY EMPLOYMENT CRITERIA

Federal and state law prohibit employment discrimination by employers, labor unions, and others. This prohibition includes, but is not confined to, deliberate acts of discrimination.

Deliberate discrimination is but the tip of an iceberg. Existing racial and ethnic divisions in society have translated themselves into institutions which deny equal opportunity to minority persons. Similarly, traditional and outmoded views of the role of women give rise to widespread patterns of employment discrimination on the basis of sex. One of the most pervasive forms of employment discrimination is "systemic discrimination" -- discriminatory practices built into the systems and institutions which control access to employment opportunity.

The following are some common examples of racially discriminatory barriers to equal employment opportunity.

RECRUITMENT

APPLICATION FORMS: Rejection of minority applicants for failure to complete application form unless employer informs minority applicant of the defects and allows him an opportunity to correct them.

HIRING OFFICE: Location of establishment or hiring office in a "white" suburb, assuring that most "walk-in" applicants will be "white". The employer may not have caused the social and geographic segregation which tends to exclude minorities, but it cannot ignore the results.

EMPLOYEE REFERRAL: Giving preference to applicants referred by present employees where there are few or no minorities in the work force. If the employer's labor force consists of substantially all members of a majority group, and these members have consistently referred persons of the same race, color, religion, national origin, or sex as themselves, for the filling of vacancies, then the employer will be held to intend that this be the case.

INCUMBENT EMPLOYEES: Giving preference for vacant entry-level jobs to incumbent employees if qualified minority group applicants are available, when there is and has been a nearly all-white work force.

UNION HIRING HALL: Exclusive hiring arrangement with a union, knowing that the union refers only majority group employees.

MINORITY REFERRAL AGENCIES: Failure to recruit through agencies and organizations which attempt to secure employment for minorities or are likely to be in a position to refer minorities. There is a requirement that potential minority applicants be given equal meaningful notice and opportunity for employment.

EMPLOYMENT AGENCIES: Use, as the primary source of applicants, of employment agencies which refer "white" applicants almost exclusively.

ADVERTISING: Failure to advertise as an equal opportunity employer.

ADVERTISING: Failure to advertise in the minority press or in other ways to assure that advertising reaches the minority community.

SCHOOLS & COLLEGES: Recruitment in schools or colleges with a predominantly non-minority make-up where comparable recruitment is not done in predominantly minority institutions.

HISTORY: A past history of discriminatory practices continues to deter minority applicants until the employer has clearly demonstrated that equal employment opportunity is being achieved.

HIRING

TESTING: The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by the Iowa Civil Rights Act unless: (a) the test has been validated and evidences a high degree of utility and (b) the person giving or acting upon the results of the particular test can demonstrate that alternative suitable hiring, transfer or promotion procedures are unavailable for his use.

Evidence of a test's validity should consist of empirical data demonstrating that the test is predictive of or significantly correlated with important elements of work behavior which comprise or are relevant to the job or jobs for which candidates are being evaluated.

EDUCATION: Requiring a high school education or other educational requirement where such requirement has no empirical validity and is not necessary for the job. The publication and maintenance of such standards deters minority applicants because of the lower percentage of minorities who finish high school.

ARREST RECORD: Rejection of minorities for most jobs because of arrest record, due to different treatment of minorities by many law

enforcement agencies. This may apply to conviction records also and these should be carefully analyzed before a decision is made. Nature of conviction should be weighed against type and security of job.

CAR OWNERSHIP: Rejection of minorities for failure to own a car where other transportation may be available or where the person agrees to find transportation.

APPEARANCE: Rejection of minority applicants on the general grounds of "sloppy appearance" or "improper attitude", when the applicant is otherwise qualified. Rejection for such qualification must reasonably be seen as valid, especially where there are few minority employees in the company and the job applied for has not been traditionally open to minorities.

SPEAK ENGLISH: Requirement of ability to speak English unless the necessity for such has been validated.

REFERENCES: An employer may check applicant's references with respect to matters relevant to employment, but must handle the checking process without differential treatment based on race, sex, national origin, or religion. References have considerable potential for bias and should be scrutinized carefully. Former employer may be prejudiced and give unjust evaluation or may have been underpaying minority and want to keep this "cheap" labor.

ASSUMPTION OF CLASS CHARACTERISTICS: An employer may not justify restriction on employment by reference to the supposed special abilities or limitations of a racial or sexual class.

EXPERIENCE: Job qualifications which are not substantially related to job requirements unfairly penalize minority persons with limited education or job experience.

PROMOTION

TRADITIONAL JOBS: Where minority employees have been assigned to "traditional jobs" or departments, which do not afford equal access to opportunities for training or advancement within the organizations, this presents a continuing barrier to their equal enjoyment of employment opportunity.

PROMOTION: Where minorities have traditionally been locked into lower level jobs (i.e., janitorial, foundry) seniority rights must be measured on a plantwide rather than departmental basis.

SEX DISCRIMINATION IN EMPLOYMENT

1. The Commission believes that the bona fide occupational qualification exception relating to sex should be construed narrowly. Labels - "Men's jobs" and "Women's jobs" - tend to deny employment opportunities unnecessarily to one sex or the other. The Commission will find that the following situations do not warrant the application of the bona fide occupational qualification exception.
 - a. The refusal to hire a woman because of her sex, based on assumptions of the comparative employment characteristics of women in general. For example, the assumption that the turnover rate among women is higher than among men.
 - b. The refusal to hire an individual based on stereotyped characterizations of the sexes. Such stereotypes include, for example, that men are less capable of assembling intricate equipment; that women are less capable of aggressive salesmanship. The principle of non-discrimination requires that individuals be considered on the basis of individual capacities and not on the basis of any characteristics generally attributed to the group.
 - c. The refusal to hire an individual because of the preferences of co-workers, the employer, clients or customers except as covered specifically in section (e) of this paragraph.

- d. The fact that the employer may have to provide separate facilities for a person of the opposite sex will not justify discrimination under the bona fide occupational qualification exception unless the expense would be clearly unreasonable.
- e. Where it is necessary for the purpose of authenticity or genuineness, the Commission will consider sex to be a bona fide occupational qualification, e.g., an actor or actress.

2. Seniority and Lines of Progression

It is an unlawful employment practice to classify a job as "male" or "female" or to maintain separate lines of progression or separate seniority lists based on sex where this would adversely affect any employee unless sex is a bona fide occupational qualification for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

- a. A female is prohibited from applying for a job labeled "male," or for a job in a "male" line of progression; and vice versa.
- b. A male scheduled for layoff is prohibited from displacing a less senior female on a "female" seniority list; and vice versa.
- c. A seniority system or line of progression which distinguishes between "light" and "heavy" jobs constitutes an unlawful employment practice if it operates as a disguised form of classification by sex,

or creates unreasonable obstacles to the advancement by members of either sex into jobs which members of that sex would reasonably be expected to perform.

3. Married Women

The Commission has determined that an employer's rule which forbids or restricts the employment of married women and which is not applicable to married men is discrimination based on sex. It is not relevant that the rule is not directed against all females, for so long as sex is a factor in the application of the rule, such application involves a discrimination based on sex.

4. Job Opportunities Advertising and Sex

It is illegal for a help-wanted advertisement to indicate a preference, limitation, specification, or discrimination based on sex unless sex is a bona fide occupational qualification for the particular job involved. The placement of an advertisement in columns, classified by publishers on the basis of sex, such as columns headed "Male" or "Female," will be considered an expression of a preference, limitation, specification, or discrimination based on sex.

5. Employment Agencies and Sex

- a. The Iowa Civil Rights Act specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. The

Commission has determined that private employment agencies which deal exclusively with one sex are engaged in an unlawful employment practice, except to the extent that such agencies limit their services to furnishing employees for particular jobs for which sex is a bona fide occupational qualification.

- b. 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 upon a bona fide occupational qualification. However, an employment agency will not be deemed to be in violation of the law, regardless of the determination as to the employer, if the agency does not have reason to believe that the employer's claim of bona fide occupational qualification 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 of bona fide occupational qualification.
- c. It is the responsibility of employment agencies to keep informed of opinions and decisions of the Commission on sex discrimination.
- d. It shall be considered a discriminatory practice to refer only to the male or female gender and show pictures of only

one sex in recruitment advertisements such as posters, booklets, brochures, films, etc. This may discourage qualified applicants of either sex from applying for a particular job.

6. Pre-Employment Inquiries as to Sex

A pre-employment inquiry may ask "Male----, Female----"; or "Mr., Mrs., Miss," provided that the inquiry is made in good faith for a non-discriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification or discrimination as to sex shall be unlawful unless based upon a bona fide occupational qualification.

7. Pregnancy and Leave of Absence

- a. Women shall not be penalized in their conditions of employment because they require time away from work because 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. The leave of absence shall be determined by taking into consideration the willingness of the individual female employee to continue work, her on-the-job performance, and her need for personal medical safety.
- b. If the employer has no leave policy, childbearing must be considered by the

employer to be a justification for a leave of absence of a reasonable period of time for a female employee.

- c. Following childbearing, and upon signing her intent to return within a reasonable amount of time, such female employee shall be reinstated to her original job or to a position of like status and pay, without loss of service credits.

8. Affirmative Action

The Employer shall affirmatively promote the upgrading and advancement of female employees and not exclude them from jobs traditionally held by males in the employ of the company. Employees of both sexes shall have an equal opportunity to any available job that he or she is qualified to perform.

Such barriers to equal employment persist until positive action is taken to correct them. Therefore, nondiscrimination in employment in most cases can be achieved only through an affirmative effort to assure that practices are nondiscriminatory. For example, an employer can assure that his recruitment practices are non-discriminatory only by taking affirmative steps to assure that potential minority applicants are reached as effectively as potential nonminority applicants. Similarly, an employer can assure nondiscrimination in the training and advancement of employees only by assuring that minority and female employees have not become locked into jobs or departments which do not afford equal opportunity for advancement.

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