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IOWA
CIVIL RIGHTS
COMMISSION

DEPARTMENTAL RULES

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CIVIL RIGHTS COMMISSION[240]

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CHAPTER 1
SEX-SEGREGATED WANT ADS

240—1.1(601A) Cease use.

1.1(1) All newspapers within the state of Iowa shall cease to use sex-segregated want ads—e.g. "Male Help Wanted", "Female Help Wanted", and "Male and Female Help Wanted" or "Men—Jobs of Interest", "Women—Jobs of Interest", and "Men and Women".

1.1(2) Any newspapers failing to comply with 1.1(1) shall be deemed in violation of the Iowa civil rights Act, sections 601A.6 and 601A.10, and legal proceedings shall henceforth be initiated against such newspaper.

1.1(3) The Iowa civil rights commission will regard any publication of sex preference for a job to be in violation of the Iowa civil rights Act and, therefore, suggests that all Iowa newspapers refrain from publishing any sex preference which an employer in its job order may want printed.

1.1(4) The Iowa civil rights commission suggests that Iowa newspapers, instead of using sex-titled, sex-segregated want ads, use neutral want ads, e.g. "Help Wanted", "Jobs of Interest", "Positions Available" or the like.

240—1.2(601A) Exception.

1.2(1) The Iowa civil rights commission recognizes that sex may, in very limited circumstances, be a bona fide occupational qualification, e.g. a woman to be a women's fashion model. Therefore an employer seeking to place a job order or want ad which shows sex preference, must, by affidavit, claim that such preference is based upon a bona fide occupational qualification.

1.2(2) The affidavit referred to in 1.2(1) must set out the complete basis upon which the employer believes that a person of a particular sex is required for the job the employer wishes to fill. The affidavit must also clearly state that the employer truly believes the sex preference is bona fide and that the employer, and not the newspaper or publisher of the ad, is responsible for the content of the ad.

1.2(3) Any newspaper, or other publisher which prints want ads, can publish a want ad with a sex preference, if, and only if, that newspaper or publisher has received from the employer the affidavit referred to in 1.2(1) and 1.2(2). The newspaper or publisher, upon receipt of such affidavit, will submit a copy thereof, by mail or other convenient method, to the Iowa civil rights commission.

[Filed December 18, 1970]

CHAPTER 2
EMPLOYEE SELECTION PROCEDURES

240—2.1(601A) "Test" defined. For the purpose of the rules in this chapter, the term "test" is defined as any paper-and-pencil or performance measure used as a basis for any employment decision. The rules in this chapter apply, for example, to ability tests which are designed to measure eligibility for hire, transfer, promotion, membership, training, referral or retention. This definition includes, but is not restricted to, measures of general intelligence, mental ability and learning ability; specific intellectual abilities; mechanical, clerical and other aptitudes; dexterity and co-ordination; knowledge and proficiency; occupational and other interests; and attitudes, personality or temperament. The term "test" includes all formal, scored, quantified or standardized techniques of assessing job suitability including, in addition to the above, specific qualifying or disqualifying personal history or background requirements, specific educational or work history requirements, scored interviews, biographical information blanks, interviewers' rating scales, scored application forms, etc.

240—2.2(601A) "Discrimination" defined. The use of any test which adversely affects hiring, promotion, transfer or any other employment or membership opportunity of classes protected by Title VII, Civil Rights Act 1964 and chapter 601A of the Code constitutes discrimination unless: (1) The test has been validated and evidences a high degree of utility as hereinafter described, and (2) 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.

240—2.3(601A) Evidence of validity.

2.3(1) Each person using tests to select from among candidates for a position or for membership shall have available for inspection evidence that the tests are being used in a manner which does not violate 2.2(601A). Such evidence shall be examined for indications of possible discrimination, such as instances of higher rejection rates for minority candidates than nonminority candidates. Furthermore, where technically feasible, a test should be validated for each minority group with which it is used; that is, any differential rejection rates that may exist, based on a test, must be relevant to performance on the jobs in question.

2.3(2) The term "technically feasible" as used in these rules means having or obtaining a sufficient number of minority individuals to achieve findings of statistical and practical significance, the opportunity to obtain unbiased job performance criteria, etc. It is the responsibility of the person claiming absence of technical feasibility to positively demonstrate evidence of this absence.

2.3(3) 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.

a. If job progression structures and seniority provisions are so established that new employees will probably, within a reasonable period of time and in a great majority of cases, progress to a higher level, it may be considered that candidates are being evaluated for jobs at that higher level. However, where job progression is not so nearly automatic, or the time span is such that higher level jobs or employees' potential may be expected to change in significant ways, it shall be considered that candidates are being evaluated for a job at or near the entry level. This point is made to underscore the principle that attainment of or performance at a higher level job is a relevant criterion in validating employment tests only when there is a high probability that persons employed will in fact attain that higher level job within a reasonable period of time.

b. Where a test is to be used in different units of multiunit organization and no significant differences exist between units, jobs, and applicant populations, evidence obtained in one unit may suffice for the others. Similarly, where the validation process requires the collection of data throughout a multiunit organization, evidence of validity specific to each unit may not be required. There may also be instances where evidence of validity is appropriately obtained from more than one company in the same industry. Both in this instance and in the use of data collected throughout a multiunit organization, evidence of validity specific to each unit may not be required: Provided, that no significant differences exist between units, jobs, and applicant populations.

240—2.4(601A) Minimum standards for validation.

2.4(1) For the purpose of satisfying the requirements of this chapter, empirical valid but not for those in which it is not valid. In this regard, where a test is valid for two accepted procedures for determining criterion-related validity, such as those described in "Standards for Educational and Psychological Tests and Manuals" published by American Psychological Association, 1200 17th Street, N.W., Washington, D. C. 20036. Evidence of content or construct validity, as defined in that publication, may also be appropriate where criterion-related validity is not feasible. However, evidence for content or construct validity should be accompanied by sufficient information from job analyses to demonstrate the

relevance of the content (in the case of job knowledge or proficiency tests) or the construct (in the case of trait measures). Evidence of content validity alone man be acceptable for well-developed tests that consist of suitable samples of the essential knowledge, skills or behaviors composing the job in question. The types of knowledge, skills or behaviors contemplated here do not include those which can be acquired in a brief orientation to the job.

2.4(2) Although any appropriate validation strategy may be used to develop such empirical evidence, the following minimum standards, as applicable, must be met in the research approach and in the presentation of results which constitute evidence of validity:

a. Where a validity study is conducted in which tests are administered to applicants, with criterion data collected later, the sample of subjects must be representative of the normal or typical candidate group for the job or jobs in question. This further assumes that the applicant sample is representative of the minority population available for the job or jobs in question in the local labor market. Where a validity study is conducted in which tests are administered to present employees, the sample must be representative of the minority groups currently included in the applicant population. If it is not technically feasible to include minority employees in validation studies conducted on the present work force, the conduct of a validation study without minority candidates does not relieve any person of his subsequent obligation for validation when inclusion of minority candidates becomes technically feasible.

b. Tests must be administered and scored under controlled and standardized conditions, with proper safeguards to protect the security of test scores and to insure that scores do not enter into any judgments of employee adequacy that are to be used as criterion measures. Copies of tests and test manuals, including instructions for administration, scoring, and interpretation of test results, that are privately developed and are not available through normal commercial channels must be included as a part of the validation evidence.

c. The work behaviors or other criteria of employee adequacy which the test is intended to predict or identify must be fully described; and, additionally, in the case of rating techniques, the appraisal form(s) and instructions to the rater(s) must be included as a part of the validation evidence. Such criteria may include measures other than actual work proficiency, such as training time, supervisory ratings, regularity of attendance and tenure. Whatever criteria are used they must represent major or critical work behaviors as revealed by careful job analyses.

d. In view of the possibility of bias inherent in subjective evaluations, supervisory rating techniques should be carefully developed, and the ratings should be closely examined for evidence of bias. In addition, minorities might obtain unfairly low performance criterion scores for reasons other than supervisors' prejudice, as, when as new employees, they have had less opportunity to learn job skills. The general point is that all criteria need to be examined to insure freedom from factors which would unfairly depress the scores of minority groups.

e. Differential validity. Data must be generated and results separately reported for minority and nonminority groups wherever technically feasible. Where a minority group is sufficiently large to constitute an identifiable factor in the local labor market, but validation data have not been developed and presented separately for that group, evidence of satisfactory validity based on other groups will be regarded as only provisional compliance with these rules pending separate validation of the test for the minority group in question. See 2.8 (601A). A test which is differentially valid may be used in groups for which it is valid but not for those in which it is not valid. In this regard, where a test is valid for two groups but one group characteristically obtains higher test scores than the other without a corresponding difference in job performance, cutoff scores must be set so as to predict the same probability of job success in both groups.

2.4(3) In assessing the utility of a test the following considerations will be applicable:

a. The relationship between the test and at least one relevant criterion must be statistically significant. This ordinarily means that the relationship should be sufficiently

high as to have a probability of no more than 1 to 20 to have occurred by chance. However, the use of a single test as the sole selection device will be scrutinized closely when that test is valid against only one component of job performance.

b. In addition to statistical significance, the relationship between the test and criterion should have practical significance. The magnitude of the relationship needed for practical significance or usefulness is affected by several factors, including:

(1) The larger the proportion of applicants who are hired for or placed on the job, the higher the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few job vacancies are available;

(2) The larger the proportion of applicants who become satisfactory employees when not selected on the basis of the test, the higher the relationship needs to be between the test and a criterion of job success for the test to be practically useful. Conversely, a relatively low relationship may prove useful when proportionately few applicants turn out to be satisfactory;

(3) The smaller the economic and human risks involved in hiring an unqualified applicant relative to the risks entailed in rejecting a qualified applicant, the greater the relationship needs to be in order to be practically useful. Conversely, a relatively low relationship may prove useful when the former risks are relatively high.

240—2.5(601A) Presentation of validity evidence. The presentation of the results of a validation study must include graphical and statistical representations of the relationships between the test and the criteria, permitting judgments of the test's utility in making predictions of future work behavior. (See 2.4(3) concerning assessing utility of a test.) Average scores for all tests and criteria must be reported for all relevant subgroups, including minority and nonminority groups where differential validation is required. Whenever statistical adjustments are made in validity results for less than perfect reliability or for restriction of score range in the test or the criterion, or both, the supporting evidence from the validation study must be presented in detail. Furthermore, for each test that is to be established or continued as an operational employee selection instrument, as a result of the validation study, the minimum acceptable cutoff (passing) score on the test must be reported. It is expected that each operational cutoff score will be reasonable and consistent with normal expectations of proficiency within the work force or group on which the study was conducted.

240—2.6(601A) Use of other validity studies. In cases where the validity of a test cannot be determined pursuant to 2.3(601A) and 2.4(601A) (e.g., the number of subjects is less than that required for a technically adequate validation study, or an appropriate criterion measure cannot be developed), evidence from validity studies conducted in other organizations, such as that reported in test manuals and professional literature, may be considered acceptable when: (1) The studies pertain to jobs which are comparable (i.e., have basically the same task elements), and (2) there are no major differences in contextual variables or sample composition which are likely to significantly affect validity. Any person citing evidence from other validity studies as evidence of test validity for his own jobs must substantiate in detail job comparability and must demonstrate the absence of contextual or sample differences cited in (1) and (2) of this rule.

240—2.7(601A) Assumption of validity.

2.7(1) Under no circumstances will the general reputation of a test, its author or its publisher, or casual reports of test utility be accepted in lieu of evidence of validity. Specifically ruled out are: Assumptions of validity based on test names or descriptive labels; all forms of promotional literature; data bearing on the frequency of a test's usage; testimonial statements of sellers, users, or consultants; and other nonempirical or anecdotal accounts of testing practices or testing outcomes.

2.7(2) Although professional supervision of testing activities may help greatly to insure technically sound and nondiscriminatory test usage, such involvement alone shall not be regarded as constituting satisfactory evidence of test validity.

240—2.8(601A) Continued use of tests. Under certain conditions, a person may be permitted to continue the use of a test which is not at the moment fully supported by the required evidence of validity. If, for example, determination of criterion-related validity in a specific setting is practicable and required but not yet obtained, the use of the test may continue: Provided: (1) The person can cite substantial evidence of validity as described in 2.6(601A); and (2) he has in progress validation procedures which are designed to produce, within a reasonable time, the additional data required. It is expected also that the person may have to alter or suspend test cutoff scores so that score ranges broad enough to permit the identification of criterion-related validity will be obtained.

240—2.9(601A) Employment agencies and employment services.

2.9(1) An employment service, including private employment agencies, state employment agencies, and the U.S. Training and Employment Service, as defined in section 701(c) of Title VII, Civil Rights Act of 1964 or 601A.2 of the Code, shall not make applicant or employee appraisals or referrals based on the results obtained from any psychological test or other selection standard not validated in accordance with these rules.

2.9(2) An employment agency or service which is requested by an employer or union to devise a testing program is required to follow the standards for test validation as set forth in these rules. An employment service is not relieved of its obligation herein because the test user did not request such validation or has requested the use of some lesser standard than is provided in these rules.

2.9(3) Where an employment agency or service is requested only to administer a testing program which has been elsewhere devised, the employment agency or service shall request evidence of validation, as described in the rules in this chapter, before it administers the testing program or makes referral pursuant to the test results. The employment agency must furnish on request such evidence of validation. An employment agency or service will be expected to refuse to administer a test where the employer or union does not supply satisfactory evidence of validation. Reliance by the test user on the reputation of the test, its author, or the name of the test shall not be deemed sufficient evidence of validity. See 2.7(1). An employment agency or service may administer a testing program where the evidence of validity comports with the standards provided in 2.6(601A).

240—2.10(601A) Disparate treatment. The principle of disparate or unequal treatment must be distinguished from the concepts of test validation. A test or other employee selection standard—even though validated against job performance in accordance with the rules in this chapter—cannot be imposed upon any individual or class protected by Title VII, Civil Rights Act of 1964 or chapter 601A where other employees, applicants or members have not been subjected to that standard. Disparate treatment, for example, occurs where members of a minority or sex group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, no new test or other employee selection standard can be imposed upon a class of individuals protected by Title VII or chapter 601A who, but for prior discrimination, would have been granted the opportunity to qualify under less stringent selection standards previously in force.

240—2.11(601A) Retesting. Employers, unions, and employment agencies should provide an opportunity for retesting and reconsideration to earlier "failure" candidates who have

availed themselves of more training or experience. In particular, if any applicant or employee during the course of an interview or other employment procedure claims more education or experience, that individual should be retested.

240—2.12(601A) Other selection techniques. Selection techniques other than tests, as defined in 2.1(601A), may be improperly used so as to have the effect of discriminating against minority groups. Such techniques include, but are not restricted to, unscored or casual interviews and unscored application forms. Where there are data suggesting employment discrimination, the person may be called upon to present evidence concerning the validity of his unscored procedures as well as of any tests which may be used, the evidence of validity being of the same types referred to in 2.3(601A) and 2.4(601A). Data suggesting the possibility of discrimination exist, for example, when there are differential rates of applicant rejection from various minority and nonminority or sex groups for the same job or group of jobs or when there are disproportionate representations of minority and nonminority or sex groups among present employees in different types of jobs. If the person is unable or unwilling to perform such validation studies, he has the option of adjusting employment procedures so as to eliminate the conditions suggestive of employment discrimination.

240—2.13(601A) Affirmative action. Nothing in these rules shall be interpreted as diminishing a person's obligation under Title VII, Civil Rights Act of 1964, Executive Order 11246 as amended by Executive Order 11375, or chapter 601A to undertake affirmative action to ensure that applicants or employees are treated without regard to race, color, religion, sex, or national origin. Specifically, the use of tests which have been validated pursuant to these rules does not relieve employers, unions or employment agencies of their obligations to take positive action in affording employment and training to members of classes protected by Title VII and chapter 601A.

[Filed September 15, 1971]

CHAPTER 3
RULES OF PRACTICE

240—3.1(601A) Definitions.

3.1(1) The term *"Act"* as used herein shall mean the Iowa civil rights Act of 1965, as amended (chapter 601A of the Code).

3.1(2) Unless indicated otherwise, the terms *"court"*, *"person"*, *"employment agency"*, *"labor organization"*, *"employer"*, *"employee"*, *"unfair practice"* or *"discriminatory practice"*, *"commission"*, *"commissioner"*, and *"public accommodation"* shall have the same meaning as set forth in chapter 601A.

3.1(3) The term *"chairperson"* shall mean the chairperson of the Iowa civil rights commission; and the term *"commissioner"* shall mean any member, including the chairperson, of the Iowa civil rights commission. The vice chairperson of the commission shall serve, in the absence of the chairperson, as acting chairperson; and, in the absence of the chairperson, the vice chairperson shall have all of the duties, powers, and authority conferred upon the chairperson by the Act and these rules. At all times it shall be necessary that a quorum be present before the commission can transact any official business.

3.1(4) The term *"executive director"* shall mean an employee of the commission, selected by, and serving at the will of, the commission as executive director, who shall have such duties, powers and authority as may be conferred upon him or her by the commission, subject to the provisions of the Act.

3.1(5) The term *"withdrawn"* shall mean that a complainant has indicated in writing the desire that no further action be taken by the commission regarding his or her complaint.

3.1(6) The term *"satisfactorily adjusted"* shall mean that the complainant has indicated in writing that the complaint has been resolved to his or her satisfaction, and that no further action is desired from the commission.

3.1(7) The term *"successfully conciliated"* shall mean that a written agreement has been executed on behalf of the respondent, on behalf of the complainant, and on behalf of the commission, the contents of which are designed to remedy the alleged discriminatory act or practice and any other unlawful discrimination which may have been uncovered during the course of the investigation.

3.1(8) The term *"no jurisdiction"* shall mean that the alleged discriminatory act or practice is not one that is prohibited by the Iowa civil rights Act or where the complaint does not conform to the requirements of the Act.

3.1(9) The term *"administratively closed"* shall mean that, in the opinion of the investigating commissioner, no useful purpose would be served by further action by the commission respecting a complaint, such as where the commission staff has not been successful in locating a complainant after diligent efforts or where the respondent has gone out of business.

240—3.2(601A) Description of agency organization.

3.2(1) The Iowa civil rights commission consists of seven members appointed by the governor who set the policy of the commission to carry out its mandate of preventing and eliminating discrimination within the state of Iowa who have such powers as are set forth in section 601A.5 of the Code. The policies of the commission are carried out by the commission staff under the direction of the executive director. The commission staff is divided into three divisions: (*a*) the compliance division which is involved in the investigation and conciliation of complaints, (*b*) the affirmative action division which assists employers with developing and implementing affirmative action programs, and (*c*) the education division which informs the public as to the activities of the commission and develops training programs for commission staff and the staffs of the local civil rights agencies. These divisions are under the supervision of the compliance director, the affirmative action director, and the education director respectively.

3.2(2) The complaint process is initiated by the filing of a verified complaint form obtainable from the Iowa Civil Rights Commission, State Capitol Building, Des Moines, Iowa 50319, where staff is available to assist the public in all matters pertaining to the activities of the commission.

240—3.3(601(A) The complaint.

3.3(1) *Amendment of complaint.* A complaint or any part thereof may be amended by the complainant or by the commission any time prior to the hearing thereon and, thereafter, at the discretion of the commissioners.

3.3(2) *Withdrawal of complaint.* A complaint or any part thereof may be withdrawn by the complainant at any time prior to the hearing thereon and, thereafter, at the discretion of the commissioners. However, nothing herein shall preclude the commission from continuing the investigation and initiating a complaint on its own behalf against the original respondent, as provided for in the Act, whenever it deems it in the public interest.

3.3(3) *Timely filing of the complaint.*

a. One hundred twenty-day limitation. The complaint shall be filed within the one hundred twenty days after the occurrence of the alleged unlawful practice of act.

b. Continuing violation. If the alleged unlawful discriminatory practice or act is of a continuing nature, the date of the occurrence of said alleged unlawful practice shall be deemed to be any date subsequent to the commencement of the alleged unlawful practice up to and including the date upon which the unlawful practice has ceased.

240—3.4(601A) Processing the complaint.

3.4(1) *Receipt and acknowledgment of complaint.* Upon the receipt of a verified complaint, the executive director, or a member of the commission staff designated by the

executive director, shall send a letter to the complainant acknowledging receipt of the complaint and recommending that the complainant take whatever additional legal or nonlegal action that may be necessary to protect his or her rights under other applicable provisions of city and municipal ordinances and state and federal law.

3.4(2) *Withdrawal and no jurisdiction.* Designated staff of the commission shall promptly close those cases which have been withdrawn by the complainant or in which the commission has no legal jurisdiction.

3.4(3) *Anonymity of complaint.* For purposes of public commission meetings the complaints shall be identified only by case number so that the anonymity of the complainants and respondents can be preserved. Nothing in this provision shall apply to executive sessions of the commission, or after the commission has made a decision to hold a public hearing.

240—3.5(601A) Investigation and conciliation.

3.5(1) *Investigating commissioner.*

a. Assignment of investigating commissioner. After a complaint has been filed, the executive director, or a designated staff member shall designate one of the commissioners, with the assistance of the commission staff, to make a prompt investigation of the allegations of the complaint. The commissioner assigned to a specific case shall be known as the investigating commissioner. As part of the investigation the respondent shall be permitted to submit a statement of his position in respect to the allegations of the complaint.

b. Disqualification of investigating commissioner. A commissioner appointed to act as an investigating commissioner shall disqualify himself or herself should he or she have a personal interest in the case at issue or any personal acquaintanceship with the complaining or responding party. Where such a conflict exists, the commissioner shall notify the staff promptly.

c. The investigation shall then proceed to a determination of whether or not there exists probable cause to credit the allegations of the complaint. After the designated investigating staff member has completed his investigation of the facts alleged in the complaint he shall prepare a written report and submit it to the investigating commissioner for finding.

d. The investigating commissioner shall find that there is either probable cause or no probable cause to believe that discrimination exists regarding a complaint, or, under the appropriate circumstances, that the complaint has been satisfactorily adjusted, or successfully conciliated, or the complaint should be administratively closed. The investigating commissioner will promptly notify commission staff of the finding.

(1) When the staff person assigned a case file, is not in agreement with the investigating commissioner's finding of "probable cause" or "no probable cause" the procedure shall be as follows:

(2) The staff person involved, upon receipt of the investigating commissioner's decision, shall make immediate arrangements with said commissioner for an informal meeting, to discuss the case involved, to ascertain that there is no misunderstanding as to the facts. If no agreement is reached, the matter shall then proceed as follows:

(3) The staff person shall prepare a hypothetical case based on the actual case involved but making the necessary changes in names, dates, places, etc., to protect the confidentiality. This case, along with any substantiating legal authorities and other citations, shall be submitted to the commission sitting in executive session. The commissioners, after discussion, may voice their opinions, without vote, for the benefit and guidance of the investigating commissioner, who shall render his or her finding in due course and following established procedure.

e. Both complainant and respondent will be notified in writing of the investigating commissioner's finding, said notification to be sent by certified mail from the commission's office within thrity days of the date that the finding has been received by staff.

f. As soon as the investigating commissioner finds that probable cause exists to credit the allegations outlined in the complaint the investigating commissioner or authorized staff member, or both, shall proceed immediately to attempt to eliminate such discriminatory or unfair practice by conference, conciliation, or persuasion or other remedial action. When a conference is held pursuant to this section, a synopsis of the facts which led to the finding of probable cause along with written recommendations for resolution will be presented to the respondent.

g. Both complainant and respondent shall be notified in writing of the time, date, and place of any conciliation meeting. The complainant may be present during attempts at conciliation if feasible.

h. Where the complaint has not been conciliated within forty-five days after the complainant and respondent have received notification of a probable cause finding, the conciliation may be deemed to have failed.

i. A conciliation agreement becomes effective after it has been signed by the respondent or the authorized representative of the respondent, by the complainant or his or her authorized representative, and by either the investigating commissioner, the chairperson, or the executive director on behalf of the commission.

j. Where a conciliation agreement has been agreed upon by the respondent, by the complainant, and by the commission, copies of the fully executed agreement shall be sent to the complainant and respondent by certified mail with return receipt requested and a copy thereof shall be sent to the investigating commissioner by regular mail.

3.5(2) *Letter to complainant.*

a. If the commission has not concluded action within one hundred eighty days after the filing of a complaint, the complainant may request from the commission a written statement as to the feasibility of a prompt exhaustion of the administrative process in relation to his or her complaint.

b. Within five days after the receipt of such letter, the commission staff shall prepare and send to the complainant a statement detailing the following:

(1) The names and addresses of the complainant and respondent;

(2) Date of filing of verified complaint;

(3) The action to date;

(4) Date that complaint is expected to be resolved if such action is expected within ninety days or a statement that resolution is not expected within ninety days.

c. The statement shall be dated and certified by the executive director or his designee.

d. A request for such a stipulation will not result in closure of the case unless the district court accepts jurisdiction.

240—3.6(601A) Subpoenas.

3.6(1) The executive director shall issue subpoenas, either under authorization of the investigating commissioner or, where he or she is not available, under the authorization of the chairperson of the commission. The issuance of a subpoena on behalf of a party shall depend upon a showing of the relevancy thereof.

3.6(2) Prior to the issuance of a subpoena under these rules, the commission staff shall make a request in written form. The written request shall be either hand delivered by a member of the commission staff or sent by certified mail, return receipt requested. A subpoena may be issued not less than one day after the written request has been delivered to the person having possession of the requested materials. Irrespective of the above provisions, subpoenas may be issued without prior oral or written requests where the complaint has been scheduled for public hearing.

3.6(3) Every subpoena shall state the name of the commission, the purpose for which the subpoena is issued, and the name and address of the party on whose behalf it was issued.

3.6(4) The subpoena shall be directed to specific person and shall command that person to produce designated books or papers under his or her control at a specified time and place. Where a public hearing has been scheduled, the subpoena may command the person to whom it is directed to attend and give testimony.

3.6(5) The subpoena shall be served either by personal service by any official authorized by law to serve subpoenas or by any member of the commission staff by delivery of a copy thereof to the person named therein.

3.6(6) Where service is accomplished by personal service, proof of service will be by acknowledgment of receipt by the person served or by the affidavit of the person serving the subpoena.

3.6(7) Upon prompt motion by the person to whom the subpoena is addressed, the executive director, the investigating commissioner or the chairperson of the commission may quash or modify a subpoena where its demands appear to be unreasonable or not relevant to the proceeding in question.

3.6(8) Where a party fails to respond to a subpoena, the commission may vote to file a petition with the district court as provided in the Act.

240—3.7(601A) Temporary injunctions. If the executive director or an appropriately designated staff person determined that a complainant may be irreparably injured before a public hearing can be called to determine the merits of the complaint, he will contact the investigating commissioner or, upon his or her unavailability, the chairperson of the commission who may authorize the executive director to instruct the attorney for the commission to seek such temporary injunctive relief as may be appropriate to preserve the rights of the complainant.

240—3.8(601A) Conducting the hearing.

3.8(1) After the commission has voted to hold a hearing on a complaint, the commission may delegate to staff matters relating to the scheduling of the hearing.

3.8(2) At least twenty days prior to the scheduled date of a public hearing, the commission staff shall cause to be served upon the respondent a notice that a public hearing will be held relative to the complaint and stating the time, date, and location of such hearing.

3.8(3) Hearing officers. The chairperson of the commission shall designate three members of the commission, or an administrative hearing officer, to conduct the hearing. The absence or disqualification of one or more members of a hearing panel appointed to hear a particular case shall not prevent the remaining panel members from hearing the case as independent hearing commissioners, unless other good cause can be shown that would prevent the individual commissioner(s) from acting as an independent hearing commissioner(s).

3.8(4) Any individual who has any interest in the case at issue, or personally knows the complainant or respondent, shall disqualify himself or herself to serve as a hearing examiner. The investigating commissioner in the case at issue shall not be appointed to serve as a hearing commissioner.

3.8(5) Power of the hearing officers. The hearing officer shall have full authority to make all decisions regarding the admission and exclusion of evidence, to control the procedures, and to rule upon all objections and motions. Except in extraordinary circumstances, evidence or testimony offered by any party shall be entered in the record subject to the objection of any party, in order that a complete record will be available in the event of appeal.

3.8(6) The hearing officer may require that written briefs be submitted on behalf of the respondent and on behalf of the complainant.

3.8(7) Sworn testimony. All testimony given at a commission hearing shall be under oath administered by the court reporter present at the hearing.

3.8(8) Order of presentation. The case in support of the complaint shall be presented to the hearing officer by one of the commission's attorneys, or by the attorney for the complainant, who shall present his evidence first. Where there is more than one complaining party the order of presentation shall be in the discretion of the hearing officer. After all the evidence and testimony of the complaining parties has been received, all other parties shall be allowed to present their evidence or testimony. All parties shall be allowed to cross-examine any witness immediately after her or his testimony has been received.

3.8(9) Stipulations. The parties may, by stipulation in writing filed with the commission at any stage of the proceeding or orally made at the hearing, agree upon any pertinent facts in the proceeding.

3.8(10) Transcript and record. All testimony given at a hearing held pursuant to chapter 601A, shall be transcribed by a certified court reporter retained by the commission. The written transcript of the record upon the hearing before the hearing officer shall consist of the notice of the hearing, the verified complaint, as the same may have been

amended, the certified transcript of the testimony taken at the hearing, the exhibits and depositions in evidence, written applications and stipulations.

240—3.9(601A) Findings and orders.

3.9(1) *Recommended decision and commission adoption.* After a review of the transcript, the evidence, and the briefs, the hearing officer shall state in writing his or her findings of fact, conclusions of law, and order, then recommend the same to the commission for its adoption, modification, or rejection.

3.9(2) *Disqualifications of investigating commissioner.* The investigating commissioner shall not take part in the consideration or adoption of the recommended decision.

3.9(3) If the commission fails to issue an order within sixty days from the date the administrative hearing officer submits his or her recommendations, the recommended findings and order shall become final.

240—3.10(601A) Appeals to the district court(s). Appeals to the district court from the decision of the commission shall be perfected pursuant to the provisions of section 601A.15.

240—3.11(601A) Partial invalidity. If any provision of these rules shall be held invalid, the remainder of these rules shall not be affected thereby. The invalidity of any of these rules with respect to a particular person or under particular circumstances shall not affect their application to other persons or under different circumstances.

240—3.12(601A) Availabilty of rules. Copies of these rules of practice and procedure shall be available to the public on request, and shall be kept on file in the office of the Secretary of State, State Capitol Building, Des Moines, Iowa 50319.

[Filed April 20, 1972; amended July 9, 1974, October 7, 1974, March 14, 1975]
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CHAPTER 4
RULES ON DISCRIMINATION BECAUSE OF SEX

240—4.1(601A) General principles. References to "employer" and "employers" in these rules state principles that are applicable not only to employers but also to labor organizations and to employment agencies insofar as their action or inaction may adversely affect employment opportunities, as defined in the Iowa Civil Rights Act, (section 601A.5 of the Code)*.

240—4.2(601A) Sex as a bona fide occupational qualification. The bona fide occupational qualification exception as to sex is strictly and narrowly construed. Labels—"men's jobs" and "women's jobs"—tend to deny employment opportunities unnecessarily to one sex or the other.

4.2(1) 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 nondiscrimination 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 coworkers, the employer, clients or customers except as covered specifically in 4.2(2).

4.2(2) Where it is necessary for the purpose of authenticity or genuineness, sex is a bona fide occupational qualification, e.g., an actor or actress.

*601A.7 probably intended

240—4.3(601A) Recruitment and advertising.

4.3(1) Employers engaged in recruiting activity must recruit employees of both sexes for all jobs unless sex is a bona fide occupational qualification.

4.3(2) Advertisement in newspapers and other media for employment must not express a sex preference unless sex is a bona fide occupational qualification for the job. The placement of an advertisement in columns headed "male" or "female" will be considered an expression of a preference, limitation, specification or discrimination based on sex.

240—4.4(601A) Employment agencies.

4.4(1) Section 601A.6(1) "*a*" and "*c*", specifically states that it shall be unlawful for an employment agency to discriminate against any individual because of sex. 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.

4.4(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 upon a bona fide occupational qualification. However, an employment agency is not 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.

4.4(3) It is the responsibility of employment agencies to keep informed of opinions and decisions of the commission on sex discrimination.

240—4.5(601A) 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 nondiscriminatory 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.

240—4.6(601A) Job policies and practices.

4.6(1) Written personnel policies relating to this subject area must expressly indicate that there shall be no discrimination against employees on account of sex. If the employer deals with a bargaining representative for his employees and there is a written agreement on conditions of employment, such agreement shall not be inconsistent with these guidelines.

4.6(2) Employees of both sexes shall have an equal opportunity to any available job that he or she is qualified to perform, unless sex is a bona fide occupational qualification.

4.6(3) No employer shall make any distinction based upon sex in employment opportunities, wages, hours, or other conditions of employment. In the area of employer contributions for insurance, pensions, welfare programs and other similar "fringe benefits" the employer will not violate these guidelines if his contributions are the same for men and women or if the resulting benefits are equal.

4.6(4) Any distinction between married and unmarried persons of one sex that is not made between married and unmarried persons of the opposite sex will be considered to be a distinction made on the basis of sex. Similarly, an employer must not deny employment to women with young children unless it has the same exclusionary policies for men; or terminate an employee of one sex in a particular job classification upon reaching a certain age unless the same rule is applicable to members of the opposite sex.

4.6(5) The employer's policies and practices must assure appropriate physical facilities to both sexes. The employer may not refuse to hire men or women, or deny men or

women a particular job because there are no restroom or associated facilities, unless the employer is able to show that the construction of the facilities would be unreasonable for such reasons as excessive expense or lack of space.

4.6(6) An employer must not deny a female employee the right to any job that she is qualified to perform. For example, an employer's rules cannot bar a woman from a job that would require more than a certain number of hours or from working at jobs that require lifting or carrying more than designated weights.

240—4.7(601A) Separate lines of progression and seniority systems.

4.7(1) 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.

4.7(2) 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.

240—4.8(601A) Discriminatory wages.

4.8(1) The employer's wages schedules must not be related to or based on the sex of the employees.

4.8(2) The employer may not discriminatorily restrict one sex to certain job classifications. The employer must take steps to make jobs available to all qualified employees in all classifications without regard to sex.

240—4.9(601A) Fringe benefits.

4.9(1) Fringe benefits, as used herein, include medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions, and privileges of employment.

4.9(2) It shall be an unlawful employment practice for an employer to discriminate between men and women with regard to fringe benefits.

4.9(3) Where an employer conditions benefits available to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, the benefits tend to be available only to male employees and their families. Due to the fact that such conditioning discriminatorily affects the rights of women employees, and that "head of household" or "principal wage earner" status bears no relationship to job performance, benefits which are so conditioned will be found a prima-facie violation of the prohibitions against sex discrimination contained in the Act.

4.9(4) It shall be an unlawful employment practice for an employer to make available benefits for the wives and families of male employees where the same benefits are not made available for the husbands and families of female employees; or to make available benefits for the wives of male employees which are not made available for female employees; or to make available benefits to the husbands of female employees which are not made available for male employees.

4.9(5) It shall not be a defense under chapter 601A to a charge of sex discrimination in benefits that the cost of such benefits is greater with respect to one sex than the other.

240—4.10(601A) Employment policies relating to pregnancy and childbirth.

4.10(1) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is in prima-facie violation of chapter 601A, and may be justified only upon showing of business necessity.

4.10(2) Disabilities caused or contributed to by pregnancy, miscarriage, legal abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment. Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance or sick leave plan, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.

4.10(3) Where the termination of an employee who is temporarily disabled is caused by an employment policy under which insufficient or no leave is available, such a termination violates the Act if it has a disparate impact on employees of one sex and is not justified by a business necessity.

[Filed October 9, 1972]

CHAPTER 5
DISCRIMINATION IN CREDIT

240—5.1(601A) Definitions.

5.1(1) *"Credit"* means an amount or limit to the extent of which a person may receive goods, services or money for payment in the future, and includes but is not limited to, loans for any purpose and in any amount, checking accounts, charge accounts, mortgages and other home financing, credit cards and credit ratings.

5.1(2) *"Credit institution"* means banks, savings and loan associations, finance companies, credit departments of all retail businesses, credit rating services, credit card issuers, credit bureaus, credit unions and all other loan, credit, financing and mortgaging institutions.

5.1(3) *"Credit card"* means a small card (as one issued by hotels, restaurants, stores, petroleum companies or banks) authorizing the person or company named or its agent to charge goods or services or borrow money.

240—5.2(601A) Practices prohibited.

5.2(1) The criteria used to evaluate applicants for credit and the standards necessary to be met by the successful applicants shall be the same regardless of the age, color, creed, national origin, race, religion, marital status, sex or physical disability of the applicant.

5.2(2) No credit institution shall require any information, reference or counter signature of any applicant for credit which would not be required of all applicants, regardless of their age, color, creed, national origin, race, religion, marital status, sex or physical disability.

5.2(3) It shall be an unlawful practice for any credit institution to discount or disregard the earnings or income of a spouse in computing family income.

5.2(4) It shall be an unlawful practice for any credit institution to refuse to loan money or extend credit to a woman solely because she is in the child-bearing years or solely because she is divorced, or solely because she is unmarried.

5.2(5) It shall be an unlawful practice for any credit institution to extinguish the established credit of any woman upon her marriage and to require that a new account be opened in the husband's name or either.

5.2(6) It shall be an unlawful practice for any credit institution to refuse to retain any records of credit transactions in the name of a married woman when she so requests in writing.

240—5.3(601A) Credit inquiries.

5.3(1) A credit application or credit interviewer may inquire as to age, disability, sex or marital status provided the inquiry is made in good faith for a nondiscriminatory

purpose which expresses directly or indirectly any limitation, specification, or discrimination as to age, disability, sex or marital status shall be unlawful.

5.3(2) The information required to be given by the applicant for credit should be limited to what is necessary for determining the applicant's financial conditions and prospects for repayment regardless of the applicant's age, color, creed, national origin, race, religion, marital status, sex or physical disability nor shall the consent of a spouse be required where the applicant is otherwise eligible for credit.

240—5.4(601A) Exception.

5.4(1) Cosignatures may be required of a married couple intending to establish a joint credit account with the company or business issuing the credit card.

5.4(2) The exception for cosignatures is limited, and the issuer should presume that the applicant is seeking a credit card in his or her own name regardless of the marital status of the applicant.

5.4(3) These rules shall not prohibit any party to a credit transaction from considering the application of Iowa law on dower, title, descent, and distribution to the particular case or from taking constructive action thereof.

[Filed September 6, 1974]

CHAPTER 6
AGE DISCRIMINATION IN EMPLOYMENT

240—6.1(601A) Ages protected.

6.1(1) Any person who has reached eighteen years of age may not be excluded from an employment right because of an arbitrary age limitation and shall be an aggrieved party for the purposes of section 601A.14 of the Code regardless of whether such person is excluded by reason of excessive age or insufficient age and shall possess all the rights and remedies to such discrimination provided in section 601A.6.

6.1(2) No employer, employment agency, or labor organization shall set an arbitrary age limitation in relation to employment or membership except as otherwise provided by these rules or by the Code.

240—6.2(601A) Help wanted notices.

6.2(1) No newspaper or other publication published within the state of Iowa shall accept, publish, print or otherwise cause to be advertised any notice of an employment opportunity from an employer, employment agency, or labor organization containing any indication of a preference, limitation, or specification based upon age, except as provided in these rules, unless such newspaper or publication has first obtained from the employer, employment agency, or labor organization an affidavit indicating that the age requirement for an applicant is a bona fide occupational qualification.

6.2(2) Help wanted notices of advertisements shall not contain terms and phrases such as "young", "boy", "girl", "college student", "recent college graduate", "retired person", or others of a similar nature unless there is a bona fide occupational requirement for the position.

240—6.3(601A) Job applications for and other pre-employment inquiries.

6.3(1) An employer, employment agency or labor organization may make pre-employment inquiry regarding the age of an applicant provided that the inquiry is made in good faith for a nondiscriminatory purpose. Any pre-employment inquiry in connection with prospective employment which expresses directly or indirectly any limitation, specification, or discrimination as to age shall be unlawful unless based upon a bona fide occupational qualification. The burden shall be on the employer, employment agency or labor organization to demonstrate that the direct or indirect pre-employment inquiry is based upon a bona fide occupational qualification.

6.3(2) Nothing in the above shall be construed to prohibit any inquiry as to whether an applicant is over eighteen years of age.

6.3(3) Nothing in the above shall be construed to prohibit postemployment inquiries as to age where such inquiries serve legitimate record-keeping purposes.

240—6.4(601A) Bona fide occupational qualifications.

6.4(1) An employer, employment agency, or labor organization may take any action otherwise prohibited under these rules where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business.

6.4(2) The concept of the bona fide occupational qualification is narrow in scope and will not be applied to include the mere preference or convenience of the employer.

6.4(3) Age requirements set by federal or state statute or regulatory agency shall be considered to be bona fide occupational qualifications where such requirements are necessarily related to the work which the employee must perform.

6.4(4) A bona fide occupational qualification will also be recognized where there exist special, individual occupational circumstances as such as where actors are required for characterizations of individuals of a specified age or where persons are used to advertise or promote the sale of products designed for, and directed to, certain age groups.

240—6.5(601A) Bona fide apprenticeship programs. Where an age limit is placed upon entrance into an apprenticeship program, such limitation shall not be a violation of chapter 601A where the employer can demonstrate a legitimate economic interest in such limitation in terms of the length of the training period and the costs involved in providing the training. The age limit shall not be set any lower than reasonably necessary to enable the employer to recover the costs of training the employee and a reasonable profit.

240—6.6(601A) Employment benefits.

6.6(1) An employer is not required to provide the same pension, retirement, or insurance benefits to all employees where the cost thereof varies with the age of the individual employee. Business necessity or bona fide underwriting criteria shall be the only basis used by employers for providing different benefits to employees of different ages unless such benefits are provided under a retirement plan or benefit system not adopted as a mere subterfuge to evade the purposes of the Iowa civil rights Act.

6.6(2) The existence of a provision in a retirement plan stating a maximum eligibility age for entrance into a retirement plan shall not authorize rejecting from employment an applicant who is over the maximum eligibility age for the retirement plan.

240—6.7(601A) Retirement plans and benefit systems. These rules shall not be construed so as to prohibit an employer to retire an employee or to require an employer to hire back such employee following retirement or to hire an applicant for employment whose age is the retirement age under the employer's retirement plan or benefit system provided that such plan or system is not a mere subterfuge for the purpose of evading the provisions of the Iowa civil rights Act.

[Filed December 23, 1974]

CHAPTER 7
DISABILITY DISCRIMINATION IN EMPLOYMENT

240—7.1(601A) General definitions.

7.1(1) The term *"physical and mental disability"* shall mean blindness, deafness or any physical or mental condition which constituted or constitutes a substantial handicap and which is unrelated to the person's ability to perform jobs or positions which are available to him or her. A substantial handicap shall be certified by the commission through the use of standards and criteria which are established by the state education and services branch of the Iowa department of public instruction and/or a medical examination or through medical records and evidence which have been submitted by a physician, psychiatrist or psychologist.

7.1(2) The term *"substantial handicap"* is a physical or mental disability which can constitute one of the following: Material rather than slight, permanent, stable or slowly progressive and which is seldom fully corrected by medical treatment, therapy or surgical means.

7.1(3) The term *"blindness"* shall mean central visual acuity of 20/200 or less in the better eye with correcting glasses or a field vision which at its widest diameter subtends an angular distance no greater than twenty degrees.

7.1(4) The term *"deafness"* shall mean that the average hearing level in the better ear at five hundred, one thousand and two thousand Hertz is over seventy-five decibels or less in the better ear with a hearing aid.

7.1(5) *"Fringe benefits"*, as used herein, include medical, hospital, accident insurance and retirement benefits, profit-sharing and bonus plans; leave, and other terms, privileges, and conditions of employment.

7.1(6) The term *"employer"*, as used herein, shall include any employer, labor organization, or employment agency insofar as their action or inaction may adversely affect employment opportunities, as defined in section 601A.2(5) of the Code.

240—7.2(601A) Assessment and placement.

7.2(1) If examinations or other assessments are required, examinations or other assessments should be directed towards determining whether an applicant for a job:

a. Has the physical and mental ability to perform the duties of the position. An individual applicant would have to identify the position for which he or she has applied.

b. Is physically and mentally qualified to do the work without adverse consequences such as creating a danger to life or health of fellow employees.

c. Is professionally competent or has the necessary skills or ability to become professionally competent to perform the duties and responsibilities which are required by the job.

7.2(2) Said examinations or other assessments should consider the degree to which the person has compensated for his limitations and the rehabilitation service he has received.

7.2(3) Physical standards for employment should be fair, reasonable, and adapted to the actual requirements of such employment. They shall be based on complete factual information concerning working conditions, hazards, and essential physical requirements of each job. Physical standards will not be used to arbitrarily eliminate the disabled person from consideration.

7.2(4) Where pre-employment tests are used, the opportunity will be provided applicants with disabilities to demonstrate pertinent knowledge, skills and abilities by testing methods adapted to their special circumstances.

7.2(5) Probationary trial periods in employment for entry-level positions which meet the criteria of business necessity may be instituted by the employer to prevent arbitrary elimination of the disabled.

7.2(6) An employer must attempt to make a reasonable accommodation to the physical and mental limitations of an employee or applicant unless the employer can demonstrate that such accommodation would impose an undue hardship on the conduct of the employer's business. In determining the extent of an employer's accommodation obligations, the following factors shall be included: (*a*) business necessity, and (*b*) financial cost and expenses.

7.2(7) Occupational training and retraining programs, including but not limited to guidance programs, apprentice training programs, on-the-job training programs and executive training programs, shall not be conducted in such a manner as to discriminate against persons with physical or mental disabilities.

240—7.3(601A) Disabilities arising during employment. When an individual becomes disabled, from whatever cause, during a term of employment, the employer shall make every reasonable effort to continue the individual in the same position or to retain and

reassign the employee and to assist in his or her rehabilitation. No terms in this section shall be construed to mean that the employer must erect a training and skills center.

240—7.4(601A) Wages and benefits.

7.4(1) While employers may re-engineer the conditions of work for the disabled person, the salary paid to said person shall be no lower than the lowest listed on the applicable wage grade schedule.

7.4(2) The wage schedule must be unrelated to the existence of physical or mental disabilities.

7.4(3) It shall be an unfair employment practice for an employer to discriminate between persons who are disabled and those who are not, with regard to fringe benefits, unless there is bona fide underwriting criteria.

7.4(4) A condition of disability shall not constitute a bona fide underwriting criteria in and of itself.

240—7.5(601A) Job policies.

7.5(1) Written personnel policies relating to this subject area must expressly indicate that there shall be no discrimination against employees on account of disability.

7.5(2) If the employer deals with a bargaining representative for his employees and there is a written agreement on conditions of employment, such agreement shall not be inconsistent with these guidelines.

240—7.6(601A) Recruitment and advertisement.

7.6(1) It shall be an unfair employment practice for any employer to print or circulate or cause to be printed or circulated any statement, advertisement or publication or to use any form of application pre-employment inquiry regarding mental or physical disability for prospective employment which is not a bona fide occupational qualification for employment and which directly or indirectly expresses any negative limitations, specifications, or discrimination as to persons with physical or mental disabilities. The burden shall be on the employer to demonstrate that the statement, advertisement, publication or inquiry is based upon a bona fide occupational qualification. This is subject, however, to the provisions of section 601A.6(1)"*c*".

7.6(2) It shall be an unfair employment practice to ask any question on the employment application form regarding a physical or mental disability unless the question is based upon a bona fide occupational qualification. The burden will be on the employer to demonstrate that the question is based upon a bona fide occupational qualification.

7.6(3) An employment interviewer may inquire as to a physical or mental disability provided the inquiry is made in good faith for a nondiscriminatory purpose.

240—7.7(601A) Bona fide occupational qualifications.

7.7(1) It shall be lawful for an employer, employment agency, or labor organization to take any action otherwise prohibited under these rules where mental or physical ability is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business.

7.7(2) The concept of the bona fide occupational qualification is narrow in scope and will not be applied to include the mere preference or convenience of the employer.

7.7(3) Physical or mental disability requirements set by federal or state statute or regulatory agency shall be considered to be bona fide occupational qualifications where such requirements are necessarily related to the work which the employee must perform.

[Filed December 23, 1974; amended February 14, 1975]

CHAPTER 8
DEFERRAL TO LOCAL HUMAN RIGHTS OR CIVIL RIGHTS ORGANIZATIONS

240—8.1(601A) Statement of purpose. It is the purpose of the Iowa civil rights commission, in adopting these rules, to promote the efficient enforcement of the Iowa civil rights Act of 1965, as amended [Chapter 601A of the Code]. To secure this end, the Iowa civil rights commission will use its deferral powers to encourage local human rights or civil rights organizations to:

a. Develop procedures and remedies necessary to insure the protection of rights secured by the Iowa civil rights Act,

b. Increase the efficiency of their operations,

c. Co-operate more fully with the commission in the sharing of data and resources, and

d. Co-ordinate investigations and conciliations with the commission in order to eliminate needless duplication.

240—8.2(601A) Definitions.

8.2(1) *"Commission"* refers to the Iowa civil rights commission.

8.2(2) *"Executive director"* refers to an employee of the commission selected by the commission to serve as executive director.

8.2(3) *"Chairperson"* refers to the chairperson of the Iowa civil rights commission.

8.2(4) *"Agency"* refers to any agency of municipal government established by ordinance for the purpose of eliminating discrimination on any basis protected by the Iowa civil rights Act.

8.2(5) *"Deferral"* refers to the process whereby the commission notifies an agency that a complaint has been filed with the commission and that the commission is postponing its investigative activities for a period of sixty days while the agency investigates and attempts to resolve the matter. Extensions of this time period may be granted by the commission or its duly authorized representative to an agency when just cause is shown by the agency for the time extension.

8.2(6) *"Deferral agency"* refers to any agency to which the commission defers under a contract as provided by these rules.

240—8.3(601A) Procedure for obtaining status as deferral agency.

8.3(1) Any agency desiring to be designated as a deferral agency by the commission may send a letter of application to the executive director of the commission attached to which must be a copy of the agency's enabling ordinance, a list of its employees, their functions, and the average number of hours worked by each per week, and a report for the previous twelve-month period of the number of cases filed with the agency, the number of probable cause and no probable cause findings, the number successfully conciliated, and the number taken to public hearing.

8.3(2) The executive director will evaluate the applications of the agencies and may designate agencies as deferral agencies where they conform to the following guidelines:

a. The agency should have professional staff to enable it to comprehensively investigate complaints to insure due process within a reasonable period of time.

b. The ordinance under which the agency is established should provide sufficient powers to the agency to enable it to provide remedies to discrimination comparable to those obtainable under the Iowa civil rights Act.

c. The enabling ordinance of the agency shall provide, at a minimum, that the agency may hold public hearings, issue cease and desist orders, and award backpay damages.

d. The agency should be making a diligent effort to investigate and resolve the complaints filed with it.

8.3(3) Where the executive director determines that an agency does not qualify as a deferral agency, he shall so inform the agency in writing along with the reasons for the agency's rejection.

If the reasons for the agency's rejection are corrected, the agency will then be designated as a deferral agency. The executive director's decision may be appealed to the commission at its subsequent regular meeting.

8.3(4) Where the executive director determines that an agency is qualified as a deferral agency, he will prepare contract between the commission and the agency containing the terms on which cases will be deferred. The contract will then be presented to the agency for a signature and, if the agency agrees to the contract, then to the commission for final approval. The commission chairperson or the executive director is authorized to sign the contract on behalf of the commission.

240—8.4(601A) Terms of the deferral contract.

8.4(1) The commission will agree to notify the deferral agency of all complaints filed with the commission which are within the deferral agency's jurisdiction, except where a complainant requests in written forms that the deferral agency not be notified.

8.4(2) The deferral agency will agree to aid all complainants whose complaints come within the commission's jurisdiction in completing the commission's complaint forms as well as notarizing them and forwarding the fully executed forms to the commission.

8.4(3) The commission will agree to postpone its investigation for at least sixty days of any complaint filed with a deferral agency unless otherwise agreed to by both parties. These waiver agreements will be made on an individual case basis.

8.4(4) The agency will agree not to disclose the filing of a complaint or confidential information pertaining to a complaint until such complaint has been officially set for public hearing.

8.4(5) The commission and the deferral agency shall share copies of all findings, case summaries, and conciliation agreements.

8.4(6) The period for which the contract will be in effect shall not be for more than two years.

8.4(7) The contract may contain such other terms as are agreed to by the parties.

240—8.5(601A) Access to information.

8.5(1) Where a complaint is on file with a deferral agency, the commission will allow the deferral agency access to the contents of the complainant's file provided that the deferral agency allows the commission like privileges and has not previously disclosed confidential information prior to public hearing.

8.5(2) Photocopying of materials from commission files for use by a deferral agency is solely at the discretion of the commission staff, but such photocopying will not be unreasonably denied.

240—8.6(601A) Substantial weight.

8.6(1) The commission will give substantial weight to the findings of a deferral agency where pertinent and relevant factual evidence exists to support those findings.

8.6(2) The commission will not necessarily be bound by the agency's conclusions of law.

240—8.7(601A) Notice to nondeferral agencies. Nothing in these rules shall prevent the commission from notifying a nondeferral agency that a complaint has been filed which is within the nondeferral agency's jurisdiction, and the fact that notification is given shall not entitle the agency to any other privileges granted under these rules to deferral agencies.

[Filed February 14, 1975]

CHAPTER 9
PROCEDURES FOR RULEMAKING AND DECLARATORY RULINGS

240—9.1(601A) Initiation of rulemaking procedures.

9.1(1) Any person may request the commission to adopt, amend, or request a rule by making such request in writing to the executive director clearly stating the intent, purposes, and general language of the desired rules.

9.1(2) The commission shall act upon such request within sixty days after its submission in accordance with section 17A.7 of the Code.

9.1(3) The commission may initiate rulemaking procedures upon its own motion in accordance with section 17A.4.

240—9.2(601A) Procedures for oral or written presentations.

9.2(1) Except where oral or written presentations are deemed unnecessary by the commission in accordance with section 17A.4(2), the commission shall allow for the submission of oral or written presentations, or both prior to its adoption of any rules.

9.2(2) Interested persons shall have twenty days from the date of publication of notice in the Iowa Administrative Code to submit written requests for oral presentations or to submit with presentations.

9.2(3) Notice of date, time and place of oral presentations by requesting parties will be published by appropriate media at least twenty days in advance with specific notice to requesting parties given by certified mail.

9.2(4) Interested parties may be limited to submitting written presentations at the discretion of the commission except when oral presentations are required by section 17A.4(1)"*b*".

240—9.3(601A) Procedures for obtaining declaratory rulings.

9.3(1) Any person may petition the commission for a declaratory ruling when the lack of a ruling would substantially jeopardize petitioner's business, place petitioner in eminent peril, or have a substantial detrimental effect on the public interest.

9.3(2) The petition shall contain the name, address, and telephone number of the petitioner, the precise factual situation involved, the exact question to which an answer is desired, the rules, statute, or orders applicable, if known, and a suggested declaratory ruling.

9.3(3) The petitioner may submit briefs in support of the proposition raised, and if petitioner elects to submit briefs they are to be filed with the petition. The commission may require petitioner to submit additional information or briefs in its discretion or necessary to determine the question.

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