

## [Chapter 11A - DISCRIMINATION](#)

### **ARTICLE IV. - EMPLOYMENT**

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#### **Sec. 11A-25. - Definitions.**

The definitions set out in Section 11A-2 shall apply to this article in addition to the definitions set forth below. As used in this article:

(1)

*Employee* shall mean an individual employed by an employer.

(2)

*Employer* shall mean any person who in the regular course of business has five (5) or more employees in Miami-Dade County in each of four (4) or more calendar weeks in the current calendar year and any agent, acting manager, contractor or subcontractor of such person, but such term does not include:

(a)

The United States or a corporation wholly owned by the government of the United States;

(b)

The State of Florida;

(c)

Miami-Dade County;

(d)

An Indian Tribe; or

(e)

A bona fide private membership club.

(3)

*Employment agency* shall mean any person or agent thereof, regularly undertaking, with or without compensation, to recruit for prospective employees, opportunities to work for an employer on any basis, including, full-time, part-time, temporary, permanent or any combination thereof.

(4)

*Labor organization* shall include any union, association, joint committee, board or other combination, or any agent thereof, which bargains or deals with employers concerning grievances, labor disputes, wages, rates of pay, hours or other terms or conditions of employment.

**Sec. 11A-26. - Unlawful employment practices.**

(1)

It shall be unlawful for any employer to engage in any practices described below on account of the race, color, religion, ancestry, sex, pregnancy, national origin, age, disability, marital status, familial status or sexual orientation of any individual or any person associated with such individual:

(a)

To fail or refuse to hire or to otherwise discriminate against any individual;

(b)

To print or circulate or cause to be printed or circulated, any advertisement, statement or publication or to use an application form or to make an inquiry in connection with prospective employment which expresses a limitation, preference, specification or to otherwise discriminate against an individual on any of the grounds specified in this article, or because of any such reason to discharge an employee or to discriminate with respect to training, hire, tenure, promotion, transfer, terms, conditions, wages, benefits or privileges of employment or in any other matter related to employment;

(c)

To utilize any employment agency or company providing employees which the prospective employer knows or has reasonable cause to know discriminates against individuals on any basis prohibited by this article;

(d)

To fail or refuse to make reasonable accommodation for a disabled individual. "Reasonable accommodation" in employment shall require every employer to make necessary adaptations to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability unless the employer can demonstrate that the adaptation would impose an undue hardship on the operation of its business.

(i)

Reasonable accommodation may include:

(I)

Making facilities used by employees readily accessible to and usable by persons with a disability; and

(II)

Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of readers or interpreters, and other similar actions.

(ii)

In determining whether an accommodation would impose an undue hardship on an employer, factors to be considered include:

(I)

The overall size of the employer with respect to number of employees, number and type of facilities, and size of budget;

(II)

The type of the employer's operation, including the composition and structure of the employer's work force; and

(III)

The nature and cost of the accommodation needed.

(iii)

An employer may not deny any employment opportunity to a qualified disabled employee or applicant if the basis for the denial is the need to make reasonable accommodation for the physical or mental limitations of the employee or applicant.

(e)

To limit, segregate, advertise, recruit or classify any employee or applicant for employment in any way which would deprive any individual of employment opportunities or otherwise adversely affect the individual's employment opportunities or status as an employee on any basis prohibited by this article.

(2)

It shall be unlawful for any employment agency or company providing employees to engage in any of the practices described below on account of any individual's race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status, familial status or sexual orientation:

(a)

To fail or refuse to hire or refer for employment or to otherwise discriminate against any individual;

(b)

To comply with an employer's request which directly or indirectly indicates a preference or any discrimination against any individual;

(c)

To classify or to refer for employment any individual;

(d)

To print or circulate or cause to be printed or circulated, a statement, advertisement or publication, to use a form of application or to make an inquiry in connection with prospective employment, which expresses directly or indirectly a limitation, specification or otherwise to discriminate against any individual.

(3)

It shall be an unlawful employment practice for a labor organization to engage in any of the practices described below on account of any individual's race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status, familial status or sexual orientation:

(a)

To exclude, to expel from its membership, or otherwise to discriminate against any individual;

(b)

To limit, or segregate or classify its membership, or applicants for membership, or to fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise to discriminate against any member or applicant for membership or otherwise to adversely affect his or her status as an employee or as an applicant for employment;

(c)

To cause or attempt to cause an employer to discriminate against an individual in violation of this article;

(d)

To fail or refuse to reasonably accommodate an individual's disability.

(4)

It shall be unlawful employment practice for any employer to discriminate against any of his or her employees or applicants for employment, for an employment agency or similar organization to discriminate against any individual, or for a labor organization to discriminate against any member or applicant for membership because he or she has opposed any practice made unlawful by this article or because he or she has testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this article.

(5)

Exemptions to unlawful employment practices.

(a)

Notwithstanding any other provision of this article it shall not be an unlawful employment practice:

(i)

For a school, college, university, or other educational institution or institution of learning to hire and employ individuals of a particular religion if: such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled or managed by a particular religion or by a particular religious corporation, association or society, or if the curriculum of such school, college, university or other educational institution of learning is directed toward the propagation of a particular religion and; the employment opportunity sought by the employee or applicant is directly or indirectly related propagating that religion.

(ii)

For an employer to hire and employ individuals, for an employment agency to classify or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his or her religion, sex or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational

qualification reasonably necessary to the normal operation of that particular business or enterprise. Additionally, nothing in this article shall apply with respect to a religious organization, association, society or any not for profit institution or organization operated, supervised or controlled by or in conjunction with any religious organization from limiting its employment to persons of the same religion or from giving preference to any such person; however, that religious organization, association or society shall not restrict membership based on race, color, national origin, ancestry or disability. Furthermore, nothing in this article relating to unlawful employment practices based on sexual orientation shall pertain to any religious organization, association, society, or any non-profit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society.

(iii)

For any employer to apply different standards of compensation, or different terms, conditions, benefits, privileges of employment pursuant to a bona fide, written seniority or merit system or piece-work system or a system which measures earnings by quantity provided that such difference does not discriminate because of race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status, familial status or sexual orientation.

(iv)

For an employer or employment agency or representative of either to give or to act upon the results of any professionally validated ability test provided that such test, its administration or action upon the result is not designed, intended or used to discriminate because of race, color, religion, ancestry, national origin, age, sex, pregnancy, disability, marital status or sexual orientation.

(b)

Nothing contained in this article shall apply to any business or enterprise on or near an Indian Tribe reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he or she is an Indian living on or near a reservation.

(c)

Nothing contained in this article shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this chapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, pregnancy, national origin, ancestry, age, disability, marital status, familial status or sexual orientation of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, pregnancy, national origin, ancestry, age, disability, marital status, familial status or sexual orientation in any community, section or other area of the county or in the available work force in any community, section or other area of the county.

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*(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 98-170, § 1, 12-1-98; Ord. No. 06-179, § 19, 12-5-06)*

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### **Sec. 11A-27. - Exception to jurisdiction; Miami-Dade County employees.**

(1)

Any employee of Miami-Dade County who believes he or she has been aggrieved by a violation of this article may file a complaint with the Fair Employment Practices Director.

(2)

The Fair Employment Practices Director shall have exclusive jurisdiction to resolve any complaint or amended complaint of violation of this article filed by or on behalf of an employee of Miami-Dade County, and in connection therewith, may exercise any and all powers granted to him or her by Article VI of this chapter.

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*(Ord. No. 97-17, § 1, 2-25-97)*

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### **Sec. 11A-28. - Procedures for employment discrimination complaints.**

(1)

*Filing an employment discrimination complaint.* Any person aggrieved by an unlawful employment action prohibited by this article must file a written, signed complaint with the Director within one hundred eighty days (180) after the alleged unlawful practice occurs.

(2)

*The complaint shall set forth the facts upon which it is based with sufficient specificity to identify the respondent.* Such complaint may be amended; however, the amended complaint must be filed within the period one hundred and eighty (180) days after the alleged unlawful practice occurs.

(3)

*Respondent.*

(a)

Upon the filing of any complaint, the Director shall promptly serve the complaint and a written notice on the respondent or person charged with the commission of a discriminatory practice, setting forth the rights and obligations of the parties including, but not limited to, the right to a fair and full hearing on the matter before the Commission on Human Rights or a Hearing Officer. Such service shall be by certified mail.

(b)

A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice to such person from the Director. Notice shall be served upon such additional or substitute respondent within ten (10) days of such joinder or substitution and shall explain the basis for the Director's belief that the person to whom the notice is addressed is properly joined as a respondent.

(c)

Each respondent may file an answer to the complaint, not later than twenty (20) days after receipt of the complaint and notice from the Director.

(4)

*Investigation of employment discrimination complaint.*

(a)

In conducting an investigation of a complaint, the Director shall have access at all reasonable times to premises, records, documents, individuals and other evidence or possible sources of evidence relevant to the complaint and may examine, record, photograph and copy such materials and take and record the testimony or statements of such persons and issue such interrogatories as are reasonably necessary for the furtherance of the investigation. The Board may enter an order compelling answers to interrogatories. The Board may issue subpoenas to compel access to or the production of materials, or appearance of persons, to the same extent and subject to the same limitations as all other subpoenas issued by the County Court of Miami-Dade County, Florida.

(5)

*Subpoenas.*

(a)

Witnesses summoned by subpoena of the Board shall be entitled to the same witness and mileage fees as are witnesses in proceedings in the County Court of Miami-Dade County, Florida. Fees payable to a witness summoned by subpoena issued at the request of a party shall be paid by the party, or where the party is unable to pay due to indigence, shall be paid by the Board.

(b)

Within ten (10) days after service of a subpoena upon any person, such person may petition the Board to revoke or modify the subpoena. The Board shall grant the petition if it finds that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which does not relate to any matter under investigation, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good reason.

(c)

In the case of the contumacy or refusal to obey a subpoena, the Board or any party may seek enforcement of a subpoena issued under the authority of this chapter by filing a petition for enforcement in the County Court of Miami-Dade County, Florida;

(d)

In any enforcement proceedings authorized by this chapter, the court may award to the prevailing party all or part of the costs and Attorney's fees incurred in obtaining the court order as authorized by the Florida Rules of Civil Procedures;

(e)

Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents or other evidence, if in his or her power to do so, may be fined by the County Court of Miami-Dade County, Florida, not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both.

(f)

Any person who, with intent thereby to mislead the Board or the Director, makes or causes to be made any false entry or statement of fact in any report, account, record or other document submitted to the Board pursuant to its subpoena or other order, or shall willfully neglect or fail to make or cause to be made full, true and correct entries in such reports, accounts, records or other documents, or shall willfully mutilate, alter or by any other means falsify any documentary evidence, may be fined by the County Court of Miami-Dade County, Florida, not more than five hundred dollars (\$500.00) or imprisoned not more than sixty (60) days or both.

(6)

*Applicability of Florida Rules of Civil Procedure.*

(a)

The provisions of Rule 1.090, Florida Rules of Civil Procedure, shall govern the computation of any period of time prescribed or allowed by this chapter or by rules, regulations, or orders adopted pursuant to this chapter.

(b)

All papers or pleadings required by this chapter to be served may be served by certified mail or in accordance with Rule 1.080, Florida Rules of Civil Procedure.

(7)

*Finding related to probable cause.*

(a)

The Director's finding related to probable cause shall be made, so far as practicable, no later than one hundred eighty (180) days after receipt of the complaint or amended complaint.

(b)

At the end of the investigation under this chapter, the Director shall prepare a finding related to probable cause consisting of a final investigative report and recommended order. The Director's determination shall be served upon the complainant and the respondent. The Director's final investigative report and recommended order shall contain:

(i)

The names and dates of contracts with witnesses;

(ii)

A summary and the dates of correspondence and other contacts with the complainant and the respondent;

(iii)

A summary description of other pertinent records;

(iv)

A summary of witness statements;

(v)

Any responses to requests for discovery; and

(vi)

Recommendations including, but not limited to the issues of liability for a violation of this chapter, affirmative action, reasonable accommodation, quantifiable damages, costs, attorney's fees, interest and civil fines.

(c)

The Director's recommended order shall become final fifteen (15) days after issuance, unless a hearing is requested pursuant to Section 11A-28(9). The final investigative report and final order may be amended if additional evidence is later discovered and if amended shall become final fifteen (15) days thereafter.

(d)

If the Director determines that no probable cause exist to believe that a violation of this chapter has occurred or is about to occur, the Director shall promptly dismiss the complaint. The Director shall publicly disclose each such dismissal.

(8)

*Conciliation.*

(a)

It is the policy of the Director and the Board to encourage conciliation of charges. The Director will work with the parties in an attempt to conciliate the agreement. If possible, a written conciliation agreement resolving the dispute between the complainant and the respondent shall be executed prior to a finding related to probable cause. Any time until final hearing by the Board, the Director will work with the parties in an attempt to conciliate the complaint.

(b)

A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the Director.

(c)

Whenever the Director has reasonable cause to believe that a party has breached a conciliation agreement, the Director shall refer the matter to the County Attorney with a recommendation that a civil action be filed in a court of competent jurisdiction for enforcement of such agreement.

(d)

Nothing said or done in the course of attempting conciliation under this chapter may be used as evidence in any subsequent proceeding under this chapter or otherwise without the written consent of the parties to the underlying charge of unlawful conduct.

(9)

*Hearing in front of Equal Opportunity Board or Hearing Examiner.*

(a)

Within fifteen (15) days after receipt of the Director's finding related to probable cause the respondent or the complainant may submit a written request for a hearing before the Board or a Hearing Officer. In conducting any hearing to determine whether a violation of this chapter has occurred, the Hearing Officer shall have the power to administer oaths, issue subpoenas, compel the production of and receive evidence. The determination of the Hearing Officer is subject to appeal in a court of competent jurisdiction in the same manner as a Final Order issued by the members of the Equal Opportunity Board. If a hearing before the Equal Opportunity Board is requested, such hearing shall be held in accordance with Section 11A-28 of this chapter, and the Board's Hearing Procedures. A written request for a hearing submitted more than fifteen (15) days after receipt of the Director's finding may be granted only upon a showing of good cause. The Director shall have the final authority in deciding whether good cause has been shown. No hearing may be had from the Director's decision that good cause has not been shown. No hearing may be had from the Director's finding of lack of jurisdiction.

(b)

In any hearing before the Board pursuant to this section, the respondent may file a written answer to the complaint. All parties shall appear at the hearing in person, with or without counsel, and may submit evidence, cross-examine witnesses, obtain issuance of subpoenas and otherwise be heard. Testimony taken at the hearing shall be under oath and a transcript shall be made available at cost to any interested party.

(c)

Discovery shall be permitted upon motion of any party and shall proceed in the manner provided by the Florida Rules of Civil Procedure.

(d)

The chairperson may direct that the parties submit a pre-hearing statement addressing the issues of law and fact that will be involved in such hearing, identify the witnesses that will testify, and provide a list of all documents or other types of exhibits that will be submitted.

(e)

Upon the conclusion of the hearing, an adjudicative final order shall be issued and served upon the parties.

(f)

In any proceeding under this article, the burden of proof rests upon the complainant.

(g)  
Copies of current rules of procedures shall be available at the office of the Director.

(10)  
*Enforcement by private persons.*

(a)  
If within one hundred eighty (180) days after a complaint is filed alleging discrimination, the Director has been unable to obtain voluntary compliance with the provisions of this Article, the aggrieved person may demand a notice of right-to-sue from the Director, the issuance of which shall terminate the jurisdiction of the Director and the Board over such a complaint. Not later than ninety (90) days following receipt of the notice of right-to-sue, the aggrieved person may commence a civil action in a court of competent jurisdiction against the respondent named in the complaint.

(b)  
If, in a private enforcement proceeding under this Article, the court finds that a discriminatory practice has occurred or is about to occur it may issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including temporary or permanent injunctive and other equitable relief, temporary restraining order, actual and punitive damages, reasonable attorney's fees, interest, costs or other appropriate relief.

(c)  
Upon request of the Board, the County Attorney may intervene on behalf of the County in an action brought under the provisions of this Article, if the Board certifies that the case is of great public importance to the citizens of Miami-Dade County.

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*(Ord. No. 97-17, § 1, 2-25-97; Ord. No. 06-179, § 20, 12-5-06; Ord. No. 09-53, § 16, 6-30-09)*

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