

REFERENCE TITLE: **employment; conditions; labor organizations; discrimination**

State of Arizona
House of Representatives
Fifty-fifth Legislature
Second Regular Session
2022

HB 2630

Introduced by
Representatives Andrade: Bolding, Hernandez M, Powers Hannley, Solorio,
Senator Gabaldon

AN ACT

AMENDING SECTIONS 23-408 AND 23-908, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 6, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-911; AMENDING SECTION 23-1342, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 8, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-1343; AMENDING SECTIONS 41-1463, 41-1464 AND 41-1481, ARIZONA REVISED STATUTES; RELATING TO LABOR.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 23-408, Arizona Revised Statutes, is amended to
3 read:

4 23-408. Inspection of places and practices of employment;
5 closing conference; prohibitions; employee
6 initiation of investigation; violation;
7 classification; injunction

8 A. Except as prescribed in section 23-432, subsection E, the
9 director of the division of occupational safety and health, or the
10 director's authorized representative, on presentation of credentials,
11 shall be ~~permitted~~ ALLOWED to inspect places of employment, question
12 employees and investigate conditions, practices or matters in connection
13 with employment subject to this article at reasonable times, as the
14 director or the director's authorized representative may deem appropriate
15 to determine whether any person has violated ~~any provision of~~ this article
16 or any rule or regulation issued pursuant to this article or that may aid
17 in ~~the enforcement of~~ ENFORCING this article. An employer or other person
18 shall not refuse to admit the director or the director's authorized
19 representatives to any place or refuse to ~~permit~~ ALLOW the inspection if
20 the proper credentials are presented and the inspection is made at a
21 reasonable time.

22 B. In making inspections and investigations, the director or the
23 director's authorized representative may require the attendance and
24 testimony of witnesses and the production of evidence under oath.
25 Witnesses shall be paid the same fees and mileage paid to witnesses in the
26 courts of this state. If any person fails or refuses to obey such an
27 order, the director or the director's authorized representative may apply
28 to any superior court in any county where the person is found, resides or
29 transacts business for an order requiring the person to produce evidence
30 and to give testimony as ordered. Failure to obey such an order is
31 contempt of court.

32 C. The director or the director's authorized representative shall
33 inspect at least every six months any operation that mixes rock, sand,
34 gravel or similar materials with water and cement or with asphalt and that
35 is not included in the definition of mine in section 27-301. The director
36 or the director's authorized representative shall monitor and work with
37 the mine inspector only to the extent necessary to ensure this state's
38 compliance with federal occupational safety and health act
39 standards; (P.L. 91-596).

40 D. Notice of an intended inspection shall not be given to an
41 employer before the time of actual entry on the workplace, except by
42 specific authorization by the director.

43 E. A representative of the employer and a representative authorized
44 by the employer's employees shall be given an opportunity to accompany the
45 director or the director's authorized representative during the physical

1 inspection of any workplace for the purpose of aiding the inspection.
2 ~~Where~~ IF there is no authorized employee representative, the director or
3 the director's authorized representative shall consult a reasonable number
4 of employees concerning matters of safety and health in the workplace.

5 F. Except as provided in section 23-426, information and facts
6 developed by the commission, the director or any employee of the
7 commission or division in the course of any inspection or investigation
8 are public records subject to inspection pursuant to title 39, chapter 1,
9 article 2, if, pursuant to section 23-415, subsection D, the inspection or
10 investigation has been closed or a citation has been issued. ~~Such~~ THE
11 information and facts shall not be admissible in any court or before any
12 administrative body except pursuant to this article. Notwithstanding this
13 subsection, the director or any commission employee is not required to
14 appear at any deposition, trial or hearing concerning a division
15 inspection or investigation unless the appearance is related to a hearing
16 held pursuant to this article. Hearings held pursuant to this article are
17 open to the public.

18 G. During the inspection or investigation and in deciding whether
19 to recommend and issue a citation, the director or the director's
20 authorized representative and the commission may consider whether an
21 employee has committed misconduct by violating the employer's policies, if
22 any, regarding substance abuse while working, as evidenced by the results
23 of testing for substance abuse or other evidence of impairment while
24 working.

25 H. An employee of the division or the commission may not:

26 1. Before, during or after an inspection or investigation,
27 communicate to an employer that the employer should not be represented by
28 an attorney or that the employer may be treated more favorably by the
29 division or the commission if the employer is not represented by an
30 attorney.

31 2. Conduct an audio recording of an oral statement provided during
32 an interview without the knowledge and consent of the person being
33 interviewed. The employee of the division or the commission shall inform
34 the person being interviewed of the person's right to receive a copy of
35 the recorded oral statement within a reasonable time.

36 3. Obtain a written statement during an interview without informing
37 the person of the person's right to receive a copy of the written
38 statement within a reasonable time.

39 I. An employee or a representative of employees who believes that a
40 violation of a safety or health standard or regulation exists that
41 threatens physical harm or that an imminent danger exists may request an
42 investigation by giving notice to the director or the director's
43 authorized representative of the violation or danger. Any notice shall be
44 in writing, set forth with reasonable particularity the grounds for the
45 notice and be signed by the employees or representative of the employees.

1 On the request of the employee giving the notice, the employee's name and
2 the names of other employees referred to in the notice shall not appear on
3 any copy of the notice or any record published, released or made
4 available. ON RECEIVING THE NOTICE, THE DIRECTOR SHALL NOTIFY THE
5 EMPLOYER THAT A NOTICE HAS BEEN FILED. If on receipt of the notice the
6 director determines that there are reasonable grounds to believe that the
7 violation or danger exists, the director shall make an investigation in
8 accordance with this article as soon as practicable to determine if the
9 violation or danger exists. If the director determines there are no
10 reasonable grounds to believe that a violation or danger exists, the
11 director shall notify the employees or representative of the employees in
12 writing of the determination. ON RECEIVING NOTICE FROM THE DIRECTOR, THE
13 EMPLOYER MAY NOT REQUIRE ANY EMPLOYEE TO PERFORM ANY DUTY RELATING TO THE
14 ALLEGED VIOLATION OR DANGER UNTIL THE DIRECTOR HAS DETERMINED WHETHER THE
15 VIOLATION OR DANGER EXISTS. IF THE DIRECTOR DETERMINES A VIOLATION OR
16 DANGER EXISTS, THE EMPLOYER MAY NOT REQUIRE ANY EMPLOYEE TO PERFORM ANY
17 DUTY RELATING TO THE VIOLATION OR DANGER UNTIL THE VIOLATION OR DANGER IS
18 CORRECTED.

19 J. Any person who violates ~~any provision of~~ this section is guilty
20 of a class 2 misdemeanor.

21 K. The commission, or the commission's authorized representative,
22 in addition to initiating an action under subsection I of this section,
23 may file in the superior court in the county where the inspection was
24 refused a verified complaint against an employer who violates subsection A
25 of this section and request an injunction against continued refusal to
26 ~~permit~~ ALLOW an inspection.

27 Sec. 2. Section 23-908, Arizona Revised Statutes, is amended to
28 read:

29 23-908. Injury reports by employer and physician; schedule of
30 fees; violation; classification

31 A. Every employer that is affected by this chapter, and every
32 physician who attends an injured employee of that employer, shall file
33 with the commission and the employer's insurance carrier from time to time
34 a full and complete report of every known injury to the employee arising
35 out of or in the course of employment and resulting in loss of life or
36 injury. The report shall be furnished to the commission and the insurance
37 carrier at times and in the form and detail the commission prescribes, and
38 the report shall make special answers to all questions required by the
39 commission under its rules.

40 B. The commission shall fix a schedule of fees to be charged by
41 physicians, physical therapists or occupational therapists attending
42 injured employees and, subject to subsection C of this section, for
43 prescription medicines required to treat an injured employee under this
44 chapter. Notwithstanding subsection C of this section, the schedule of
45 fees may include other reimbursement guidelines for medications dispensed

1 in settings that are not accessible to the general public. The commission
2 shall annually review the schedule of fees. For the purposes of this
3 subsection, settings that are not accessible to the general public do not
4 include mail order pharmacies delivering pharmaceutical services to
5 workers' compensation claimants, if both of the following apply:

6 1. The pharmacy does not limit or restrict access to claimants with
7 an affiliation to a medical provider or other entity.

8 2. Any medical provider or other entity referring a claimant to the
9 pharmacy does not receive or accept any rebate, refund, commission,
10 preference or other consideration as compensation for the referral.

11 C. If a schedule of fees for prescription medicines adopted
12 pursuant to subsection B of this section includes provisions regarding the
13 use of generic equivalent drugs or interchangeable biological products,
14 those provisions shall comply with section 32-1963.01, subsections A, B
15 and D through L. If the commission considers the adoption of fee schedule
16 provisions that involve specific prices, values or reimbursements for
17 prescription drugs, the commission shall base the adoption on studies or
18 practices that are validated and accepted in the industry, including the
19 applicability of formulas that use average wholesale price, plus a
20 dispensing fee, and that have been made publicly available for at least
21 one hundred eighty days before any hearing conducted by the commission.

22 D. Notwithstanding section 12-2235, information obtained by any
23 physician or surgeon examining or treating an injured person shall not be
24 considered a privileged communication if that information is requested by
25 interested parties for a proper understanding of the case and a
26 determination of the rights involved. Hospital records of an employee
27 concerning an industrial claim shall not be considered privileged if
28 requested by an interested party in order to determine the rights
29 involved. Medical information from any source pertaining to conditions
30 unrelated to the pending industrial claim shall remain privileged.

31 E. When an accident occurs to an employee, the employee shall
32 forthwith report the accident and the injury resulting from the accident
33 to the employer, and any physician employed by the injured employee shall
34 forthwith report the accident and the injury resulting from the accident
35 to the employer, the insurance carrier and the commission. **AN EMPLOYEE WHO
36 REPORTS AN INJURY PURSUANT TO THIS SUBSECTION IS ENTITLED TO RECEIVE
37 IMMEDIATE MEDICAL ATTENTION.**

38 F. If an accident occurs to an employee, the employer may designate
39 in writing a physician chosen by the employer, who shall be allowed by the
40 employee, or any person in charge of the employee, to make one examination
41 of the injured employee in order to ascertain the character and extent of
42 the injury occasioned by the accident. The physician so chosen shall
43 forthwith report to the employer, the insurance carrier and the commission
44 the character and extent of the injury as the physician ascertains. If
45 the accident is not reported by the employee or the employee's physician

1 forthwith, as required, or if the injured employee or those in charge of
2 the employee refuse to allow the employer's physician to make the
3 examination, and the injured employee is a party to the refusal, ~~no~~
4 compensation shall NOT be paid for the injury claimed to have resulted
5 from the accident. The commission may relieve the injured person or that
6 person's dependents from the loss or forfeiture of compensation if ~~it~~ THE
7 COMMISSION believes after investigation that the circumstances attending
8 the failure on the part of the employee or physician to report the
9 accident and injury are such as to have excused them.

10 G. Within ten days after receiving notice of an accident, the
11 employer shall inform the insurance carrier and the commission on the
12 forms and in the manner as prescribed by the commission.

13 H. Immediately on notice to the employer of an accident resulting
14 in an injury to an employee, the employer shall provide the employee with
15 the name and address of the employer's insurance carrier, the policy
16 number and the expiration date.

17 I. Any person failing or refusing to comply with this section is
18 guilty of a petty offense.

19 J. Subsection B of this section does not prohibit:

20 1. A healthcare provider or pharmacy from entering into a separate
21 contract or network that governs fees, in which case reimbursement shall
22 be made according to the applicable contracted charge or negotiated rate.

23 2. An employer from directing medical, surgical or hospital care
24 pursuant to ~~the provisions of~~ section 23-1070.

25 Sec. 3. Title 23, chapter 6, article 1, Arizona Revised Statutes,
26 is amended by adding section 23-911, to read:

27 23-911. Injury reenactment prohibited

28 AN EMPLOYER MAY NOT REQUIRE ANY EMPLOYEE TO REENACT AN INJURY
29 ARISING OUT OF OR IN THE COURSE OF EMPLOYMENT IF THAT INJURY RESULTED IN
30 THE LOSS OF LIFE OR AN INJURY.

31 Sec. 4. Section 23-1342, Arizona Revised Statutes, is amended to
32 read:

33 23-1342. Compelling or coercing another not to join labor
34 union as requisite to employment; retaliation,
35 harassment and intimidation; violation,
36 classification; labor organization presentations

37 A. A person who coerces or compels any other person to enter into
38 an agreement, either written or oral, not to join or become a member of a
39 labor organization, as a condition of the other person obtaining
40 employment or continuing in ~~the employment of such person~~, OR A PERSON WHO
41 RETALIATES AGAINST, HARASSES OR INTIMIDATES ANY OTHER PERSON FOR SEEKING
42 TO JOIN OR BECOME A MEMBER OF A LABOR ORGANIZATION, is guilty of a class 2
43 misdemeanor.

1 B. AN EMPLOYER SHALL ALLOW A LABOR ORGANIZATION TO OFFER
2 PRESENTATIONS TO NEW EMPLOYEES. PRESENTATIONS ALLOWED PURSUANT TO THIS
3 SUBSECTION MAY NOT BE MORE THAN ONE HOUR, UNLESS THE EMPLOYER AND LABOR
4 ORGANIZATION AGREE ON A LONGER TIME LIMIT.

5 Sec. 5. Title 23, chapter 8, article 3, Arizona Revised Statutes,
6 is amended by adding section 23-1343, to read:

7 23-1343. Employer policy effect on labor contracts

8 AN EMPLOYER POLICY DOES NOT SUPERSEDE ANY VALID PROVISION OF A
9 COLLECTIVE BARGAINING AGREEMENT.

10 Sec. 6. Section 41-1463, Arizona Revised Statutes, is amended to
11 read:

12 41-1463. Discrimination; unlawful practices; definition

13 A. ~~Nothing contained in~~ This article ~~shall be interpreted to~~ DOES
14 NOT require that the less qualified be preferred over the better qualified
15 simply because of race, color, religion, sex, GENDER, GENDER IDENTITY OR
16 EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, age or national origin or
17 on the basis of disability.

18 B. It is an unlawful employment practice for an employer:

19 1. To fail or refuse to hire or to discharge any individual or
20 otherwise to discriminate against any individual with respect to the
21 individual's compensation, terms, conditions or privileges of employment
22 because of the individual's race, color, religion, sex, GENDER, GENDER
23 IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, age or
24 national origin or on the basis of disability.

25 2. To limit, segregate or classify employees or applicants for
26 employment in any way that would deprive or tend to deprive any individual
27 of employment opportunities or otherwise adversely affect the individual's
28 status as an employee, because of the individual's race, color, religion,
29 sex, GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL
30 STATUS, age or national origin or on the basis of disability.

31 3. To fail or refuse to hire, to discharge or to otherwise
32 discriminate against any individual based on the results of a genetic test
33 received by the employer, notwithstanding subsection J, paragraph 2 of
34 this section.

35 C. It is an unlawful employment practice for an employment agency
36 to fail or refuse to refer for employment or otherwise to discriminate
37 against any individual because of the individual's race, color, religion,
38 sex, GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL
39 STATUS, age or national origin or on the basis of disability or to
40 classify or refer for employment any individual on the basis of the
41 individual's race, color, religion, sex, GENDER, GENDER IDENTITY OR
42 EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, age or national origin or
43 on the basis of disability.

1 D. It is an unlawful employment practice for a labor organization:

2 1. To exclude or to expel from its membership or otherwise to
3 discriminate against any individual because of the individual's race,
4 color, religion, sex, GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL
5 ORIENTATION, MARITAL STATUS, age or national origin or on the basis of
6 disability.

7 2. To limit, segregate or classify its membership or applicants for
8 membership or to classify or fail or refuse to refer for employment any
9 individual in any way that would deprive or tend to deprive the individual
10 of employment opportunities or would limit those employment opportunities
11 or otherwise adversely affect the individual's status as an employee or as
12 an applicant for employment because of the individual's race, color,
13 religion, sex, GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION,
14 MARITAL STATUS, age or national origin or on the basis of disability.

15 3. To cause or attempt to cause an employer to discriminate against
16 an individual in violation of this section.

17 E. It is an unlawful employment practice for any employer, labor
18 organization or joint labor-management committee controlling
19 apprenticeship or other training or retraining programs, including
20 on-the-job training programs, to discriminate against any individual
21 because of the individual's race, color, religion, sex, GENDER, GENDER
22 IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, age or
23 national origin or on the basis of disability in admission to or
24 employment in any program established to provide apprenticeship or other
25 training and, if the individual is an otherwise qualified individual, to
26 fail or refuse to reasonably accommodate the individual's disability.

27 F. With respect to a qualified individual, it is an unlawful
28 employment practice for a covered entity to:

29 1. Participate in any contractual or other arrangement or
30 relationship that has the effect of subjecting a qualified individual who
31 applies with or who is employed by the covered entity to unlawful
32 employment discrimination on the basis of disability.

33 2. Use standards, criteria or methods of administration that have
34 the effect of discriminating on the basis of disability or that perpetuate
35 the discrimination of others who are subject to common administrative
36 control.

37 3. Exclude or otherwise deny equal jobs or benefits to an
38 individual qualified for the job or benefits because of the known
39 disability of an individual with whom the individual qualified for the job
40 or benefits is known to have a relationship or association.

41 4. Not make reasonable accommodations to the known physical or
42 mental limitations of an otherwise qualified individual who is an
43 applicant or employee unless the covered entity can demonstrate that the
44 accommodation would impose an undue hardship on the operation of the
45 business of the covered entity or the individual only meets the definition

1 of disability as prescribed in section 41-1461, paragraph 5, subdivision
2 (c).

3 5. Deny employment opportunities to a job applicant or employee who
4 is an otherwise qualified individual if the denial is based on the need of
5 the covered entity to make reasonable accommodation to the physical or
6 mental impairment of the applicant or employee.

7 6. Use qualification standards, employment tests or other selection
8 criteria, including those based on an individual's uncorrected vision,
9 that screen out or tend to screen out an individual with a disability or a
10 class of individuals with disabilities, unless the standard, test or other
11 selection criteria, as used by the covered entity, is shown to be job
12 related for the position in question and is consistent with business
13 necessity.

14 7. Fail to select and administer tests relating to employment in
15 the most effective manner to ensure that, when the test is administered to
16 a job applicant or employee who has a disability that impairs sensory,
17 manual or speaking skills, the test results accurately reflect the skills
18 or aptitude or whatever other factor of the applicant or employee that the
19 test purports to measure, rather than reflecting the impaired sensory,
20 manual or speaking skills of the applicant or employee, except if the
21 skills are the factors that the test purports to measure.

22 G. Women who are affected by pregnancy or childbirth or related
23 medical conditions shall be treated the same for all employment-related
24 purposes, including receipt of benefits under fringe benefit programs, as
25 other persons not so affected but similar in their ability or inability to
26 work, and subsection J, paragraph 3 of this section may not be interpreted
27 to allow otherwise.

28 H. Notwithstanding any other provision of this article, it is not
29 an unlawful employment practice:

30 1. For an employer to hire and employ employees, for an employment
31 agency to classify or refer for employment any individual, for a labor
32 organization to classify its membership or classify or refer for
33 employment any individual or for an employer, labor organization or joint
34 labor-management committee controlling apprenticeship or other training or
35 retraining programs to admit or employ any individual in any such program,
36 on the basis of the individual's religion, sex, GENDER or national origin
37 in those certain instances when religion, sex, GENDER or national origin
38 is a bona fide occupational qualification reasonably necessary to the
39 normal operation of that particular business or enterprise.

40 2. For any school, college, university or other educational
41 institution or institution of learning to hire and employ employees of a
42 particular religion if the school, college, university or other
43 educational institution or institution of learning is in whole or in
44 substantial part owned, supported, controlled or managed by a particular
45 religion or religious corporation, association or society, or if the

1 curriculum of the school, college, university or other educational
2 institution or institution of learning is directed toward the propagation
3 of a particular religion.

4 3. For an employer to fail or refuse to hire or employ any
5 individual for any position, for an employment agency to fail or refuse to
6 refer any individual for employment in any position or for a labor
7 organization to fail or refuse to refer any individual for employment in
8 any position, if both of the following apply:

9 (a) The occupancy of the position or access to the premises in or
10 on which any part of the duties of the position are performed or are to be
11 performed is subject to any requirement imposed in the interest of the
12 national security of the United States under any security program in
13 effect pursuant to or administered under any statute of the United States
14 or any executive order of the president of the United States.

15 (b) The individual has not fulfilled or has ceased to fulfill that
16 requirement.

17 4. With respect to age, for an employer, employment agency or labor
18 organization:

19 (a) To take any action otherwise prohibited under subsection B, C
20 or D of this section if age is a bona fide occupational qualification
21 reasonably necessary to the normal operation of the particular business or
22 if the differentiation is based on reasonable factors other than age.

23 (b) To observe the terms of a bona fide seniority system or any
24 bona fide employee benefit plan such as a retirement, pension, deferred
25 compensation or insurance plan, which is not a subterfuge to evade the
26 purposes of the age discrimination provisions of this article, except that
27 ~~no~~ AN employee benefit plan may NOT excuse the failure to hire any
28 individual and ~~no~~ A seniority system or employee benefit plan may NOT
29 require or allow the involuntary retirement of any individual specified by
30 section 41-1465 because of the individual's age.

31 (c) To discharge or otherwise discipline an individual for good
32 cause.

33 I. For the purposes of this article, unlawful employment practice
34 does not include any action or measure taken by an employer, labor
35 organization, joint labor-management committee or employment agency with
36 respect to an individual who is a member of the communist party of the
37 United States or of any other organization required to register as a
38 communist-action or communist-front organization by final order of the
39 subversive activities control board pursuant to the subversive activities
40 control act of 1950.

41 J. Notwithstanding any other provision of this article, it is not
42 an unlawful employment practice:

43 1. For an employer to apply different standards of compensation or
44 different terms, conditions or privileges of employment pursuant to a bona
45 fide seniority or merit system or a system that measures earnings by

1 quantity or quality of production or to employees who work in different
2 locations, if these differences are not the result of an intention to
3 discriminate because of race, color, religion, sex, GENDER, GENDER
4 IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS or national
5 origin.

6 2. For an employer to give and act on the results of any
7 professionally developed ability test if the test, its administration or
8 action on the results is not designed, intended or used to discriminate
9 because of race, color, religion, sex, GENDER, GENDER IDENTITY OR
10 EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS or national origin.

11 3. For any employer to differentiate on the basis of sex, GENDER,
12 GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS or
13 disability in determining the amount of the wages or compensation paid or
14 to be paid to employees of the employer if the differentiation is
15 authorized by the provisions of section 6(d) or section 14 of the fair
16 labor standards act of 1938, as amended (29 United States Code section
17 206(d)).

18 K. ~~Nothing contained in~~ This chapter ~~applies~~ DOES NOT APPLY to any
19 business or enterprise on or near an Indian reservation with respect to
20 any publicly announced employment practice of the business or enterprise
21 under which a preferential treatment is given to any individual because
22 the individual is an Indian living on or near a reservation.

23 L. ~~Nothing contained in~~ This article ~~or~~ AND article 6 of this
24 chapter ~~requires~~ DO NOT REQUIRE any employer, employment agency, labor
25 organization or joint labor-management committee subject to this article
26 to grant preferential treatment to any individual or group because of the
27 race, color, religion, sex, GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL
28 ORIENTATION, MARITAL STATUS or national origin of the individual or group
29 on account of an imbalance that may exist with respect to the total number
30 or percentage of persons of any race, color, religion, sex, GENDER, GENDER
31 IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS or national
32 origin employed by any employer, referred or classified for employment by
33 any employment agency or labor organization, admitted to membership or
34 classified by any labor organization or admitted to or employed in any
35 apprenticeship or other training program, in comparison with the total
36 number or percentage of persons of that race, color, religion, sex,
37 GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS
38 or national origin in any community, state, section or other area, or in
39 the available workforce in any community, state, section or other area.
40 THIS ARTICLE AND ARTICLE 6 OF THIS CHAPTER DO NOT REQUIRE ANY EMPLOYER,
41 EMPLOYMENT AGENCY, LABOR ORGANIZATION OR JOINT LABOR-MANAGEMENT COMMITTEE
42 SUBJECT TO THIS ARTICLE TO RETAIN OR MAINTAIN RECORDS REGARDING AN
43 INDIVIDUAL'S OR GROUP'S SEX, GENDER, GENDER IDENTITY OR EXPRESSION, SEXUAL
44 ORIENTATION OR MARITAL STATUS.

1 M. The age discrimination prohibitions of this article ~~may not be~~
2 ~~construed to~~ DO NOT prohibit compulsory retirement of any employee who has
3 attained sixty-five years of age and who, for the ~~two-year~~ TWO-YEAR period
4 immediately before retirement, is employed in a bona fide executive or
5 high policymaking position, if the employee is entitled to an immediate
6 nonforfeitable annual retirement benefit from a pension, profit sharing,
7 savings or deferred compensation plan or any combination of plans of the
8 employer for the employee, that equals, in the aggregate, at least
9 \$44,000. In applying the retirement benefit test of this subsection, if
10 any retirement benefit is in a form other than a straight life annuity,
11 with no ancillary benefits, or if employees contribute to the plan or make
12 rollover contributions, the benefit shall be adjusted in accordance with
13 rules adopted by the division so the benefit is the equivalent of a
14 straight life annuity, with no ancillary benefits, under a plan to which
15 employees do not contribute and under which no rollover contributions are
16 made.

17 N. A covered entity may require that an individual with a
18 disability shall not pose a direct threat to the health or safety of other
19 individuals in the workplace. For the purposes of this subsection,
20 "direct threat" means a significant risk to the health or safety of others
21 that cannot be eliminated by reasonable accommodation.

22 O. This article does not alter the standards for determining
23 eligibility for benefits under this state's workers' compensation laws or
24 under state and federal disability benefit programs.

25 P. For the purposes of this section and section 41-1481, with
26 respect to employers or employment practices involving a disability,
27 "individual" means a qualified individual.

28 Sec. 7. Section 41-1464, Arizona Revised Statutes, is amended to
29 read:

30 41-1464. Other unlawful employment practices; opposition to
31 unlawful practices; filing of charges;
32 participation in proceedings; notices and
33 advertisements for employment

34 A. It is an unlawful employment practice for an employer to
35 discriminate against any of the employer's employees or applicants for
36 employment, for an employment agency or joint labor-management committee
37 controlling apprenticeship or other training or retraining programs,
38 including on-the-job training programs, to discriminate against any
39 individual or for a labor organization to discriminate against any member
40 or applicant for membership because the employee, the member, the
41 applicant or the individual in an apprenticeship or other training or
42 retraining program has opposed any practice that is an unlawful employment
43 practice under this article or has made a charge, testified, assisted or
44 participated in any manner in an investigation, proceeding or hearing
45 under article 6 of this chapter.

1 B. It is an unlawful employment practice for an employer, labor
 2 organization, employment agency or joint labor-management committee
 3 controlling apprenticeship or other training or retraining programs,
 4 including on-the-job training programs, to print or publish or cause to be
 5 printed or published any notice or advertisement relating to employment by
 6 ~~an~~ THE employer or membership in or any classification or referral for
 7 employment by ~~a~~ THE labor organization, ~~or relating to~~ any classification
 8 or referral for employment by ~~an~~ THE employment agency or ~~relating to~~
 9 admission or ~~to~~ employment in any program established to provide
 10 apprenticeship or other training by ~~a~~ THE joint labor-management
 11 committee indicating any preference, limitation, specification or
 12 discrimination based on race, color, religion, sex, GENDER, GENDER
 13 IDENTITY OR EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS or national
 14 origin, except that ~~a~~ THE notice or advertisement may indicate a
 15 preference, limitation, specification or discrimination based on religion,
 16 sex, GENDER or national origin when religion, sex, GENDER or national
 17 origin is a bona fide occupational qualification for employment.

18 C. It is unlawful for an employer, labor organization or employment
 19 agency to print or publish or cause to be printed or published any notice
 20 or advertisement relating to employment by an employer or membership in or
 21 any classification or referral for employment by a labor organization or
 22 relating to any classification or referral for employment by an employment
 23 agency, indicating any preference, limitation, specification or
 24 discrimination based on age, except that the notice or advertisement may
 25 indicate a preference, limitation, specification or discrimination based
 26 on age when age is a bona fide occupational qualification for employment.

27 Sec. 8. Section 41-1481, Arizona Revised Statutes, is amended to
 28 read:

29 41-1481. Filing charges; investigation; findings;
 30 conciliation; compliance proceedings; appeals;
 31 attorney fees; violation; classification

32 A. A charge under this section shall be filed within one hundred
 33 eighty days after the alleged unlawful employment practice occurred. A
 34 charge is deemed filed on receipt by the division from or on behalf of a
 35 person claiming to be aggrieved or, if filed by a member of the division,
 36 when executed by the member on oath or affirmation. A charge is deemed
 37 filed by or on behalf of a person claiming to be aggrieved if received
 38 from the United States equal employment opportunity commission. A charge
 39 ~~shall~~ MUST be in writing on oath or affirmation and shall contain the
 40 information, including the date, place and circumstances of the alleged
 41 unlawful employment practice, and be in the form as the division
 42 requires. The division shall not make charges public.

43 B. Whenever a charge is filed by or on behalf of a person claiming
 44 to be aggrieved or by a member of the division, referred to as the
 45 charging party, alleging that an employer, employment agency, labor

1 organization or joint labor-management committee controlling
2 apprenticeship or other training or retraining programs, including
3 on-the-job training programs, has engaged in an unlawful employment
4 practice, the division shall serve notice of and a copy of the charge on
5 the employer, employment agency, labor organization or joint
6 labor-management committee, referred to as the respondent, within ten days
7 and shall investigate the charge. If the division determines after the
8 investigation that there is not reasonable cause to believe that the
9 charge is true, the division shall enter an order determining the same and
10 dismissing the charge and shall notify the charging party and the
11 respondent of its action. If the division determines after the
12 investigation that there is reasonable cause to believe that the charge is
13 true, the division shall enter an order containing its findings of fact
14 and shall endeavor to eliminate the alleged unlawful employment practice
15 by informal methods of conference, conciliation and persuasion. Any party
16 to the informal proceeding may be represented by counsel. Counsel need
17 not be a member of the state bar if counsel is licensed to practice law in
18 any other state or territory of the United States. Nothing said or done
19 during and as a part of the informal endeavors may be made public by the
20 division or its officers or employees or used as evidence in a subsequent
21 proceeding without the written consent of the persons concerned. If a
22 civil action resulting from a charge is commenced in any federal or state
23 court, evidence collected by or submitted to the division during the
24 investigation of the charge and the source of the evidence shall be
25 subject to discovery by the parties to the civil action. Any person who
26 makes public information in violation of this subsection is guilty of a
27 class 1 misdemeanor. The division shall make its determination on
28 reasonable cause as promptly as possible and as far as practicable not
29 later than sixty days ~~from~~ AFTER the filing of the charge. If more than
30 two years have elapsed after the alleged unlawful employment practice
31 occurred, and if the charging party has received a notice of right to sue,
32 the division may cease investigation of a charge without reaching a
33 determination.

34 C. All conciliation agreements ~~shall~~ MUST provide that the charging
35 party waives, releases and covenants not to sue the respondent or claim
36 against the respondent in any forum with respect to the matters ~~which~~ THAT
37 were alleged as charges filed with the division, subject to performance by
38 the respondent of the promises and representations contained in the
39 conciliation agreement. The charging party or the respondent may prepare
40 a conciliation agreement that the division shall submit to the other party
41 and that, if accepted by the other party, shall be accepted by the
42 division.

43 D. If within thirty days after the division has made a
44 determination that reasonable cause exists to believe that the charge is
45 true the division has not accepted a conciliation agreement to which the

1 charging party and the respondent are parties, the division may bring a
2 civil action against the respondent, other than the state, named in the
3 charge. The charging party shall have the right to intervene in a civil
4 action brought by the division. If a charge filed with the division
5 pursuant to subsection A of this section is dismissed by the division or
6 if within ninety days ~~from~~ AFTER the filing of ~~such~~ THE charge the
7 division has not filed a civil action under this section or has not
8 entered into a conciliation agreement with the charging party, the
9 division shall so notify the charging party. After providing the notice a
10 civil action may be brought against the respondent named in the charge by
11 the charging party or, if that charge was filed by a member of the
12 division, by any person whom the charge alleges was aggrieved by the
13 alleged unlawful employment practice. ~~In no event shall any~~ AN action MAY
14 NOT be brought pursuant to this article more than one year after the
15 charge to which the action relates has been filed. On application by the
16 complainant and in the circumstances as the court may deem just, the court
17 may appoint an attorney for such complainant and may authorize the
18 commencement of the action without the payment of fees, costs or
19 security. On timely application, the court may in its discretion allow
20 the division to intervene in civil actions in which the state is not a
21 defendant on certification that the case is of general public
22 importance. ~~Upon~~ ON request the court may stay further proceedings for
23 not more than sixty days pending the further efforts of the parties or the
24 division to obtain voluntary compliance.

25 E. Whenever a charge is filed with the division and the division
26 concludes on the basis of a preliminary investigation that prompt judicial
27 action is necessary to carry out the purposes of this article or article 4
28 of this chapter, the division may bring an action for appropriate
29 temporary or preliminary relief pending final disposition of the
30 charge. Any temporary restraining order or other order granting
31 preliminary or temporary relief ~~shall~~ MUST be issued in accordance with
32 the Arizona rules of civil procedure. The court having jurisdiction over
33 the proceedings shall assign ~~such~~ THE action for A hearing at the earliest
34 practicable date and cause the action to be expedited in every way.

35 F. The court shall assign any action brought under this article for
36 A hearing at the earliest practicable date and cause the action to be in
37 every way expedited. If the action has not been scheduled for trial
38 within one hundred twenty days after issue has been joined, the judge may
39 appoint a master pursuant to rule 53 of the Arizona rules of civil
40 procedure.

41 G. If the court finds that the defendant has intentionally engaged
42 in or is intentionally engaging in an unlawful employment practice alleged
43 in the complaint, the court may enjoin the defendant from engaging in the
44 unlawful employment practice and order the affirmative action ~~as may be~~
45 THAT THE COURT DETERMINES IS appropriate. Affirmative action may

1 include, ~~but is not limited to,~~ reinstatement or hiring of employees with
2 or without back pay payable by the employer, employment agency or labor
3 organization responsible for the unlawful employment practice or any other
4 equitable relief as the court deems appropriate. Back pay liability shall
5 not accrue from a date more than two years before the filing of the charge
6 with the division. Interim earnings or amounts earnable with reasonable
7 diligence by the person or persons discriminated against shall reduce the
8 back pay otherwise allowable. An order of the court shall not require the
9 admission or reinstatement of an individual as a member of a union or the
10 hiring, reinstatement or promotion of an individual as an employee or the
11 payment to the individual of any back pay if the individual was refused
12 admission, suspended or expelled or was refused employment or advancement
13 or was suspended or discharged for any reason other than discrimination on
14 account of race, color, religion, sex, GENDER, GENDER IDENTITY OR
15 EXPRESSION, SEXUAL ORIENTATION, MARITAL STATUS, age, disability or
16 national origin or a violation of section 41-1464.

17 H. ~~In any case in which~~ IF an employer, employment agency or labor
18 organization fails to comply with an order of a court issued in a civil
19 action brought under this section, a party to the action or the division
20 on the written request of a person aggrieved by ~~such~~ THE failure may
21 commence proceedings to compel compliance with the order.

22 I. Any civil action brought under this section and any proceedings
23 brought under subsection H of this section are subject to appeal as
24 provided in sections 12-120.21, 12-120.22 and 12-120.24.

25 J. In any action or proceeding under this section the court may
26 allow the prevailing party, other than the division, a reasonable attorney
27 fee as part of the costs.