

REFERENCE TITLE: **employment discrimination; sexual harassment; definition**

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

HB 2679

Introduced by
Representative Wilmeth

AN ACT

**AMENDING SECTION 41-1461, ARIZONA REVISED STATUTES; RELATING TO
DISCRIMINATION IN EMPLOYMENT.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 41-1461, Arizona Revised Statutes, is amended to
3 read:

4 41-1461. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Auxiliary aids and services" includes:

7 (a) Qualified interpreters or other effective methods of making
8 aurally delivered materials available to individuals with hearing
9 impairments.

10 (b) Qualified readers, taped texts or other effective methods of
11 making visually delivered materials available to individuals with visual
12 impairments.

13 (c) Acquisition or modification of equipment or devices.

14 (d) Other similar services and actions.

15 2. "Because of sex" and "on the basis of sex" includes because of
16 or on the basis of pregnancy or childbirth or related medical conditions.

17 3. "Being regarded as having such a physical or mental impairment":

18 (a) Means an individual who establishes that the individual has
19 been subjected to an action prohibited under this article because of an
20 actual or perceived physical or mental impairment whether or not the
21 impairment limits or is perceived to limit a major life activity.

22 (b) Does not mean an impairment that is transitory and minor. For
23 the purposes of this subdivision, "transitory impairment" means an
24 impairment with an actual or expected duration of six months or less.

25 4. "Covered entity" means an employer, employment agency, labor
26 organization or joint labor-management committee.

27 5. "Disability" means, with respect to an individual, except any
28 impairment caused by current use of illegal drugs, any of the following:

29 (a) A physical or mental impairment that substantially limits one
30 or more of the major life activities of the individual.

31 (b) A record of such a physical or mental impairment.

32 (c) Being regarded as having such a physical or mental impairment.

33 6. "Employee":

34 (a) Means an individual employed by an employer.

35 (b) Does not include an elected public official of this state or
36 any political subdivision of this state, any person chosen by an elected
37 official to be on the elected official's personal staff, an appointee on
38 the policymaking level or an immediate adviser with respect to the
39 exercise of the constitutional or legal powers of the office, unless the
40 person or appointee is subject to the civil service laws of this state or
41 any political subdivision of this state.

42 7. "Employer":

43 (a) Means a person who has fifteen or more employees for each
44 working day in each of twenty or more calendar weeks in the current or
45 preceding calendar year, ~~and any agent of that person, except that to the~~
46 ~~extent that any person is alleged to have committed any act of sexual~~

1 ~~harassment, employer means, for purposes of administrative and civil~~
2 ~~actions regarding those allegations of sexual harassment, a person who has~~
3 ~~one or more employees in the current or preceding calendar year. OR A~~
4 PERSON WHO HAS ONE OR MORE EMPLOYEES IN THE CURRENT OR PRECEDING CALENDAR
5 YEAR AND ANY AGENT OF THAT PERSON, TO THE EXTENT THAT THE PERSON IS
6 ALLEGED TO HAVE:

7 (i) COMMITTED ANY ACT OF SEXUAL HARASSMENT.

8 (ii) DISCRIMINATED AGAINST ANYONE FOR OPPOSING SEXUAL HARASSMENT OR
9 MAKING A CHARGE, TESTIFYING, ASSISTING OR PARTICIPATING IN ANY MANNER IN
10 AN INVESTIGATION, PROCEEDING OR HEARING ARISING FROM SEXUAL HARASSMENT.

11 (b) Does not include either:

12 (i) The United States or any department or agency of the United
13 States, a corporation wholly owned by the government of the United States
14 or an Indian tribe.

15 (ii) A bona fide private membership club, other than a labor
16 organization, that is exempt from taxation under section 501(c) of the
17 internal revenue code of 1954.

18 8. "Employment agency" means any person regularly undertaking with
19 or without compensation to procure employees for an employer or to procure
20 for employees opportunities to work for an employer and includes an agent
21 of that person.

22 9. "Labor organization":

23 (a) Means a labor organization and any agent of a labor
24 organization.

25 (b) Includes:

26 (i) Any organization of any kind, any agency or employee
27 representation committee, group, association or plan in which fifteen or
28 more employees participate and that exists for the purpose, in whole or in
29 part, of dealing with employers concerning grievances, labor disputes,
30 wages, rates of pay, hours or other terms or conditions of employment.

31 (ii) Any conference, general committee, joint or system board or
32 joint council that is subordinate to a national or international labor
33 organization.

34 10. "Major life activities" includes:

35 (a) Caring for oneself, performing manual tasks, seeing, hearing,
36 eating, sleeping, walking, standing, lifting, bending, speaking,
37 breathing, learning, reading, concentrating, thinking, communicating and
38 working.

39 (b) The operation of a major bodily function, including functions
40 of the immune system, normal cell growth and digestive, bowel, bladder,
41 neurological, brain, respiratory, circulatory, endocrine and reproductive
42 functions.

43 11. "Person" means one or more individuals, governmental agencies,
44 political subdivisions, labor unions, partnerships, associations,
45 corporations, legal representatives, mutual companies, joint-stock

1 companies, trusts, unincorporated organizations, trustees, trustees in
2 bankruptcy or receivers.

3 12. "Qualified individual" means a person with a disability who,
4 with or without reasonable accommodation, is capable of performing the
5 essential functions of the employment position that the individual holds
6 or desires.

7 13. "Reasonable accommodation" includes:

8 (a) Making existing facilities used by employees readily accessible
9 to and usable by individuals with disabilities.

10 (b) Job restructuring, part-time or modified work schedules,
11 reassignment to a vacant position, acquisition or modification of
12 equipment or devices, appropriate adjustment or modification of
13 examinations, training materials or policies, the provision of qualified
14 readers, taped texts or other effective methods of making visually
15 delivered materials available to individuals with visual impairments, the
16 provision of auxiliary aids and services or interpreters and other similar
17 services and actions for individuals with disabilities.

18 14. "Religion" means all aspects of religious observance and
19 practice, as well as belief. Unlawful practices as prohibited by this
20 article include practices with respect to religion unless an employer
21 demonstrates that the employer is unable to reasonably accommodate an
22 employee's or prospective employee's religious observance or practice
23 without undue hardship on the conduct of the employer's business.

24 15. "Undue hardship":

25 (a) Means an action requiring significant difficulty or expense
26 when considered in light of the factors set forth in subdivision (b) of
27 this paragraph.

28 (b) When determining whether an accommodation would impose an undue
29 hardship on a covered entity, factors to be considered include:

30 (i) The nature and cost of the accommodations needed under this
31 article.

32 (ii) The overall financial resources of the facility or facilities
33 involved in the provision of the reasonable accommodation, the number of
34 persons employed at the facility, the effect on expenses and resources of
35 the facility and any other impact of the accommodation on the operation of
36 the facility.

37 (iii) The overall financial resources of the covered entity, the
38 overall size of the business of the covered entity with respect to the
39 number of its employees and the number, type and location of its
40 facilities.

41 (iv) The type of operation or operations of the covered entity,
42 including the composition, structure and functions of the workforce of the
43 covered entity.

44 (v) The geographic separateness and the administrative or fiscal
45 relationship of the facility to the covered entity.