

City of Wichita Expands Discrimination Protections for Employees

Alert

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After much controversy and debate, the Wichita City Council passed an ordinance aimed at banning discrimination within the City of Wichita. The ordinance, passed on October 12, 2021, does not supplant applicable state and federal laws; however, it creates additional considerations for businesses operating within the City of Wichita. The employee protections apply to private employers with four or more employees, as well as to city contractors.

The new ordinance provides protection to persons on the basis of their age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation, veteran status or any other factor protected by law (identified as a "protected class"). The ordinance requires all city contracts for goods or services to include provisions prohibiting discrimination in employment and in the performance of contracts. It also creates a category of "civil rights" providing that qualified persons have (1) a right to obtain and hold employment and the benefits associated therewith without discrimination; (2) a right to full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public accommodation without discrimination; (3) a right to engage in property transactions, including obtaining housing for rental or sale and credit therefor, without discrimination; and (4) a right to exercise rights granted under the new law without suffering coercion or retaliation.

WHAT IS PROHIBITED?

Employment

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The ordinance defines an employer as any individual or entity doing business within the City of Wichita which has four or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year. The City of Wichita and its contractors also qualify as employers. It is an unlawful discriminatory practice for an employer to refuse to hire or employ, or to discharge from employment or otherwise discriminate against an otherwise qualified employee, because of the employee's membership in a protected class.

Housing

The ordinance also prohibits individuals and entities from discriminating against any individual in the terms, conditions or privileges of the sale or rent of real property within the City of Wichita because of the individual's protected class. In addition to age, color, disability, familial status, gender identity, genetic information, national origin or ancestry, race, religion, sex, sexual orientation and veteran status, this provision defines "protected class" to prohibit discrimination on the basis of United States citizenship as well.

Public Accommodation

The ordinance also makes it an unlawful discriminatory practice for a place of public accommodation to refuse, deny or make a distinction (directly or indirectly), in offering goods, services, facilities, privileges, advantages or accommodations to any individual because of their membership in a protected class. A place of public accommodation is "every establishment within the city that is open to the general public and offers any product, service or facility." This includes hotels, apartment houses, restaurants, retail and wholesale establishments, theaters and public conveyances, among other places.

HOW WILL THE ORDINANCE BE ENFORCED?

The new ordinance allows an aggrieved individual to file a written complaint with the city clerk if the individual has been, or is being, subjected to an alleged unlawful discriminatory practice. This written complaint must be filed within 180 days of the alleged unlawful discriminatory practice. The complaint may be referred to a mediator for non-binding mediation at the request of the parties. If mediation is not successfully completed within 60 days of the referral, or if a party chooses not to pursue mediation, the complaint will be referred to an investigator who initiates a procedure for determining whether probable cause exists to find that an unlawful discriminatory practice has been committed, and whether a penalty should be imposed, which findings are referred to the law department. The law department may request conciliation and settlement and if a settlement is not reached, refer the matter to a hearing officer.

Civil penalties of up to \$2,000 for each violation may be imposed. In lieu of a civil penalty, the hearing officer is authorized to require reasonable educational requirements or other non-monetary discipline (such as community service) upon the business to address violations of the ordinance.

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WHAT'S NEXT?

Although most Wichita employers already include state and federal protected classes in their EEO and non-harassment policies, employers should review and update those policies to confirm the additional protected classes specifically set out in the city ordinance are also covered (e.g., gender identity and sexual orientation).

The city will begin accepting complaints under the ordinance on January 1, 2022. Although the protections under the ordinance are not necessarily greater than under state and federal laws, the awareness of, and purported simpler process may give rise to an uptick in claims brought directly by employees. If your business has questions related to this new ordinance, we can help.

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