

9 SEP 10 P1:49

SENATE
S. B. No. 3434

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Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

Employment discrimination occurs whenever an employer or its representatives adversely single out employees or applicants on the basis of age, race, gender, sexual orientation, disability, religion and a variety of other reasons.

Under the equal Protection Clause of the Constitution, employers can't discriminate against a person in any aspect of employment, such as: hiring and firing; compensation; assignment; or classification of employees; transfer; promotion; layoff; or recall; job advertisements; recruitment; testing; use of company facilities; training and apprenticeship programs; fringe benefits; pay; retirement plans; and disability leave.

ARTICLE III Bill of Rights

SEC. 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

To be considered as "illegal", such discrimination must however be in violation of a specific law. Otherwise, no protection from discrimination may be had even how unfair or unethical it may seem.

For example, an employer may be harder on a specific employee from anyone else for no apparent reason. While it might be unethical behavior for a boss, it's not discrimination by law. But if he or she is extra hard on the employee for a reason that's protected by law, such as religion, age or sex, then such shall constitute illegal discrimination, especially if such employee suffers damage such as getting passed over for a well-deserved raise or promotion.

This measure seeks to prevent certain acts of discrimination to protect employees and advocate the equal protection clause of the Constitution.

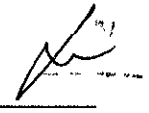

MIRIAM DEFENSOR SANTIAGO

FOURTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)

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1 AN ACT
2 PROHIBITING UNLAWFUL EMPLOYMENT PRACTICES RESULTING TO
3 DISCRIMINATION IN EMPLOYMENT

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

4 SECTION 1. *Title.* - This Act shall otherwise be known as the “*Unlawful*
5 *Employment Practice Act of 2010*”

6 SEC. 2. *Definitions.* - The following terms as used in this Act shall mean as
7 follows:

8 a) “Employer” - means any person regularly employing one or more persons
9 or regularly receiving the services of one or more persons providing
10 services pursuant to a contract, or any person acting as an agent of an
11 employer, directly or indirectly, the national government, local
12 government, or any political subdivision.

13 b) “Harassment” - includes sexual harassment, gender harassment, and
14 harassment based on pregnancy, childbirth, or related medical conditions.

15 SEC. 3. *Prohibited Acts.* - It shall be unlawful for any employer to do any of the
16 following:

17 a) To refuse to hire or employ the person or to refuse to select the person for
18 a training program leading to employment, or to bar or to discharge the
19 person from employment or from a training program leading to
20 employment, or to discriminate against the person in compensation or in
21 terms, conditions, or privileges of employment, because of the race,

22 religious creed, color, national origin, ancestry, physical disability, mental
23 disability, medical condition, marital status, sex, age, or sexual orientation
24 of any person,

25 b) To discriminate against any person in the selection or training of that
26 person in any apprenticeship training program or any other training
27 program leading to employment because of the race, religious creed, color,
28 national origin, ancestry, physical disability, mental disability, medical
29 condition, marital status, sex, age, or sexual orientation of the person
30 discriminated against.

31 c) For any employer or employment agency to print or circulate or cause to
32 be printed or circulated any publication, or to make any non-job-related
33 inquiry of an employee or applicant, either verbal or through use of an
34 application form, that expresses, directly or indirectly, any limitation,
35 specification, or discrimination as to race, religious creed, color, national
36 origin, ancestry, physical disability, mental disability, medical condition,
37 marital status, sex, age, or sexual orientation, or any intent to make any
38 such limitation, specification or discrimination. Nothing in this part
39 prohibits an employer or employment agency from inquiring into the age
40 of an applicant, or from specifying age limitations, where the law compels
41 or provides for that action.

42 d) For any employer, labor organization, employment agency, or person to
43 discharge, expel, or otherwise discriminate against any person because the
44 person has opposed any practices forbidden under this part or because the
45 person has filed a complaint, testified, or assisted in any proceeding under
46 this part.

47 SEC. 4 *Exceptions* – The following are the exceptions to the provisions of this
48 act:

49 a) An employer may refuse to hire or discharging an employee with a
50 medical condition or physical or mental disability, or subject an employer
51 to any legal liability resulting from the refusal to employ or the discharge
52 of an employee with a physical or mental disability, where the employee,
53 because of his or her physical or mental disability, is unable to perform his

54 or her essential duties even with reasonable accommodations, or cannot
55 perform those duties in a manner that would not endanger his or her health
56 or safety or the health or safety of others even with reasonable
57 accommodations.

58 b) An employer or employment agency may inquire into the ability of an
59 applicant to perform job-related functions and may respond to an
60 applicant's request for reasonable accommodation.

61 c) An employer or employment agency may require a medical or
62 psychological examination or make a medical or psychological inquiry of
63 a job applicant after an employment offer has been made but prior to the
64 commencement of employment duties, provided that the examination or
65 inquiry is job-related and consistent with business necessity and that all
66 entering employees in the same job classification are subject to the same
67 examination or inquiry.

68 d) An employer or employment agency to require any medical or
69 psychological examination of an employee, to make any medical or
70 *psychological inquiry of an employee, to make any inquiry whether an*
71 *employee has a mental disability, physical disability, or medical condition,*
72 *or to make any inquiry regarding the nature or severity of a physical*
73 *disability, mental disability, or medical condition.*

74 e) An employer or employment agency may require any examinations or
75 inquiries that it can show to be job-related and consistent with business
76 necessity. An employer or employment agency may conduct voluntary
77 medical examinations, including voluntary medical histories, which are
78 part of an employee health program available to employees at that
79 worksite.

80 *SEC. 5. Penalties.* – Any person who shall violate any provision of this Act shall
81 upon conviction, be subject to a fine of not less than One hundred thousand pesos
82 (P100,000.00) but not more than One Million Pesos (P1,000,000.00) or imprisonment of
83 not less than six (6) years but not more than twelve (12) years, or both upon the discretion
84 of the court.

85

86 In case the violation is committed by, or in the interest of a juridical person

87 duly licensed to engage in business in the Philippines, such license to engage in business
88 shall also be immediately revoked.

89 SEC 6. *Separability Clause*. – If any provision or part thereof is held invalid or
90 unconstitutional, the remainder of the law or the provision not otherwise affected shall
91 remain valid and subsisting.

92 SEC 7. *Repealing Clause*. – Any law, presidential decree or issuance, executive
93 order, letter of instruction, administrative order, rule or regulation contrary to, or
94 inconsistent with the provisions of this Act is hereby repealed, modified or amended
95 accordingly.

96 SEC 8. *Effectivity Clause*. – This Act shall take effect fifteen (15) days after its
97 publication in at least two (2) newspapers of general circulation.

Approved.