

Nebraska Equal Opportunity Commission

(REALLY TINY) LEGAL UPDATE MAY 2021

Introduction and Contact Info

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Nebraska Equal Opportunity Commission

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What is the NEOC?

The NEOC is a *State-level agency* tasked with enforcing the state's anti-discrimination laws in housing, employment and public accommodations.

The NEOC *receives, investigates, and renders formal determinations* on charges filed.

The NEOC attempts to *conciliate* parties both during investigation and after a Reasonable Cause determination.

The NEOC provides information and assistance (*technical assistance*) in matters of civil rights laws and compliance.



Legal Update:

Bostock v. Clayton Cty, 140 S. Ct. 1731 (2020)

Question: *Does Title VII protect individuals who are homosexual or transgender from discrimination in the workplace?*

Answer from SCOTUS: *Yes. Such discrimination is “because of such individual’s . . . sex.”*

When an employee or applicant is treated differently for being homosexual or transgender, part of that different treatment is unavoidably based on that individual’s sex.

- Can’t fire a male employee for being attracted to men if you would not fire other employees (i.e. females) who are also attracted to men.
- Can’t fire a person who identifies as female who was assigned male at birth if you don’t also equally fire those who now identify as female who were assigned female at birth.

Legal Update:

Gardea v. JBS USA, LLC, 915 F.3d 537 (8th Cir. 2019)

Question: *Can infrequent lifting still be an essential job function?*

Answer from Court: *In some jobs, such as maintenance mechanic, yes – lifting can be an essential job function even if it only has to be done infrequently.*

In this particular job, the employee had restrictions where he couldn't lift things over forty pounds. However, his job required him to occasionally have to lift things over forty pounds. The plant where he worked had tight quarters where assistance devices were impractical. Some areas were so tight only one person could fit in the area.

Workers with this job classifications had to be able to lift heavy objects as an essential function.

Legal Update:

McNeil v. Union Pac. R.R. Co., 936 F.3d 786 (8th Cir. 2019)

Question: *Can a function be essential even if it was at one point temporarily excused?*

Answer from Court: *Yes – just because a function is temporarily excused because of a disability does not mean it is not essential or that an employer is expected to waive it continuously/forever.*

In this particular job, mandatory overtime was an essential job function due to scheduling and staffing. Management sometimes made temporary exceptions, but always required employees to return to performing overtime. The employer's willingness to sometimes temporarily allow short periods of no-overtime for individuals due to disability or other circumstances does not make the function non-essential.

Legal Update:

Nebraska LB451 – “Natural Hair Bill”

- Not a new law – this is an addition to FEPA (Fair Employment Practices Act)
- The primary mechanism that adds new protection is an expansion of the definition of the protected class RACE. **Race now includes characteristics such as skin color, hair texture, and protective hairstyles** (braids, locks, twists, and more).
- The bill included exception/protections:
 - Employees can enact a “bona fide health and safety standard” that regulates such characteristics, but will have to make a showing that the standard was needed for health and safety, was adopted for non-discriminatory reasons, was applied equally, and that the employer has attempted to accommodate.
 - Law enforcement and the Nebraska National Guard are exempted. (To what degree TBD.)

The End

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