

## **IC 22-9-5**

### Chapter 5. Employment Discrimination Against Disabled Persons

#### **IC 22-9-5-1**

##### **"Auxiliary aids and services" defined**

Sec. 1. As used in this chapter, "auxiliary aids and services" includes the following:

- (1) Qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments.
- (2) Qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments.
- (3) Acquisition or modification of equipment or devices.
- (4) Other similar services and actions.

*As added by P.L.111-1992, SEC.4.*

#### **IC 22-9-5-2**

##### **"Commerce" defined**

Sec. 2. As used in this chapter, "commerce" has the meaning set forth in Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

*As added by P.L.111-1992, SEC.4.*

#### **IC 22-9-5-3**

##### **"Commission" defined**

Sec. 3. As used in this chapter, "commission" refers to the civil rights commission.

*As added by P.L.111-1992, SEC.4.*

#### **IC 22-9-5-4**

##### **"Covered entity" defined**

Sec. 4. As used in this chapter, "covered entity" means an employer, an employment agency, a labor organization, or a joint labor-management committee.

*As added by P.L.111-1992, SEC.4.*

#### **IC 22-9-5-5**

##### **"Direct threat" defined**

Sec. 5. As used in this chapter, "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

*As added by P.L.111-1992, SEC.4.*

#### **IC 22-9-5-6**

##### **"Disability" and "illegal use of drugs" defined; illegal drug users; sexual behavior**

Sec. 6. (a) As used in this chapter, "disability" means with respect to an individual:

- (1) a physical or mental impairment that substantially limits at

- least one (1) of the major life activities of the individual;
- (2) a record of an impairment described in subdivision (1); or
- (3) being regarded as having an impairment described in subdivision (1).

(b) As used in this subsection, "illegal use of drugs" means the use of drugs the possession or distribution of which is unlawful under the Controlled Substances Act. The term does not include the use of a drug taken under the supervision of a licensed health care professional or another use authorized by the Controlled Substances Act (21 U.S.C. 812) or other provisions of federal law. For purposes of this chapter, an individual shall not be considered an individual with a disability solely because the individual is currently engaging in the illegal use of drugs. However, this subsection does not exclude as an individual with a disability an individual who:

- (1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;
- (2) is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs; or
- (3) is erroneously regarded as engaging in the illegal use of drugs but is not engaging in the illegal use of drugs.

It is not a violation of this chapter for a person or other entity covered by this chapter to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in subdivision (1) or (2) is no longer engaging in the illegal use of drugs. Nothing in this section shall be construed to encourage, prohibit, restrict, or authorize testing for the illegal use of drugs.

(c) Notwithstanding subsection (b), an individual shall not be denied health services or services provided in connection with drug rehabilitation on the basis of the current illegal use of drugs if the individual is otherwise entitled to those services.

(d) For purposes of this chapter, an individual shall not be considered an individual with a disability solely on the basis of the following:

- (1) Homosexuality.
- (2) Bisexuality.
- (3) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.
- (4) Compulsive gambling, kleptomania, or pyromania.
- (5) Psychoactive substance use disorders resulting from current illegal use of drugs (as defined in section 12 of this chapter).

*As added by P.L.111-1992, SEC.4. Amended by P.L.99-2007, SEC.187.*

#### **IC 22-9-5-7**

##### **"Discriminate" defined**

Sec. 7. As used in this chapter, "discriminate" includes the

following:

- (1) Limiting, segregating, or classifying a job applicant or an employee in a way that adversely affects the opportunities or status of the applicant or employee because of the disability of the applicant or employee.
- (2) Participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this chapter. Such relationship includes a relationship with:
  - (A) an employment or a referral agency;
  - (B) a labor union;
  - (C) an organization providing fringe benefits to an employee of the covered entity; or
  - (D) an organization providing training and apprenticeship programs.
- (3) Utilizing standards, criteria, or methods of administration:
  - (A) that have the effect of discrimination on the basis of disability; or
  - (B) that perpetuate the discrimination of others who are subject to common administrative control.
- (4) Excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or an association.
- (5) Not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee unless the covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity.
- (6) Denying employment opportunities to a job applicant or an employee who is an otherwise qualified individual with a disability if that denial is based on the need of the covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant.
- (7) Using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job related for the position in question and is consistent with business necessity.
- (8) Failing to select and administer tests concerning employment in the most effective manner to ensure that when the test is administered to a job applicant or an employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of the employee or applicant, except where those

skills are the factors that the test purports to measure.  
*As added by P.L.111-1992, SEC.4.*

#### **IC 22-9-5-8**

##### **"Drug" defined**

Sec. 8. As used in this chapter, "drug" means a controlled substance (as defined in schedules I through V of Section 202 of the Controlled Substances Act 21 U.S.C. 812).

*As added by P.L.111-1992, SEC.4.*

#### **IC 22-9-5-9**

##### **"Employee" defined**

Sec. 9. As used in this chapter, "employee" means an individual employed by an employer.

*As added by P.L.111-1992, SEC.4.*

#### **IC 22-9-5-9.5**

##### **"Service animal" defined**

Sec. 9.5. As used in this chapter, "service animal" refers to an animal trained as:

- (1) a hearing animal;
- (2) a guide animal;
- (3) an assistance animal;
- (4) a seizure alert animal;
- (5) a mobility animal;
- (6) a psychiatric service animal; or
- (7) an autism service animal.

*As added by P.L.155-2009, SEC.6.*

#### **IC 22-9-5-10**

##### **"Employer" defined**

Sec. 10. (a) During the time beginning July 26, 1992, and ending July 25, 1994, as used in this chapter, "employer" means a person engaged in an industry affecting commerce that has at least twenty-five (25) employees for each working day in each of at least twenty (20) calendar weeks in the current or preceding year and an agent of the person.

(b) After July 25, 1994, as used in this chapter, "employer" means a person engaged in an industry affecting commerce that has at least fifteen (15) employees for each working day in each of at least twenty (20) calendar weeks in the current or preceding year and an agent of the person.

(c) The term described in subsections (a) and (b) does not include any of the following:

- (1) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe.
- (2) A bona fide private membership club other than a labor organization that is exempt from taxation under Section 501(c) of the Internal Revenue Code.

*As added by P.L.111-1992, SEC.4.*

**IC 22-9-5-11****"Employment agency" defined**

Sec. 11. As used in this chapter, "employment agency" has the meaning set forth in Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

*As added by P.L.111-1992, SEC.4.*

**IC 22-9-5-12****"Illegal use of drugs" defined**

Sec. 12. As used in this chapter, "illegal use of drugs" means the use of drugs the possession or distribution of which is unlawful under the Controlled Substances Act. The term does not include the use of a drug taken under the supervision of a licensed health care professional, other uses authorized by the Controlled Substances Act (21 U.S.C. 812), or other provisions of federal law.

*As added by P.L.111-1992, SEC.4.*

**IC 22-9-5-13****"Industry affecting commerce" defined**

Sec. 13. As used in this chapter, "industry affecting commerce" has the meaning set forth in Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

*As added by P.L.111-1992, SEC.4.*

**IC 22-9-5-14****"Labor organization" defined**

Sec. 14. As used in this chapter, "labor organization" has the meaning set forth in Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

*As added by P.L.111-1992, SEC.4.*

**IC 22-9-5-15****"Person" defined**

Sec. 15. As used in this chapter, "person" has the meaning set forth in Section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

*As added by P.L.111-1992, SEC.4.*

**IC 22-9-5-16****"Qualified individual with a disability" defined**

Sec. 16. As used in this chapter, "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires. For the purposes of this chapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job the description shall be considered evidence of the essential functions of the job.

*As added by P.L.111-1992, SEC.4.*

### **IC 22-9-5-17**

#### **"Reasonable accommodation" defined**

Sec. 17. As used in this chapter, "reasonable accommodation" includes the following:

- (1) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities.
- (2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

*As added by P.L.111-1992, SEC.4.*

### **IC 22-9-5-18**

#### **"Undue hardship" defined; factors**

Sec. 18. (a) As used in this chapter, "undue hardship" means an action requiring significant difficulty or expense when considered in light of the factors set forth in subsection (b).

(b) In determining whether an accommodation would impose an undue hardship on a covered entity factors to be considered include the following:

- (1) The nature and cost of the accommodation needed under this chapter.
- (2) The:
  - (A) overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation;
  - (B) number of persons employed at the facility or facilities;
  - (C) effect on expenses and resources; or
  - (D) impact otherwise of the accommodation upon the operation of the facility or facilities.
- (3) The overall financial resources of the covered entity, the overall size of the business of a covered entity with respect to the number of employees, and the number, type, and location of facilities.
- (4) The type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of the entity, and the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

*As added by P.L.111-1992, SEC.4. Amended by P.L.21-1995, SEC.144.*

### **IC 22-9-5-19**

#### **Prohibition against discrimination**

Sec. 19. A covered entity may not discriminate against a qualified individual with a disability because of the disability of that individual in regard to any of the following:

- (1) Job application procedures.
- (2) The hiring, advancement, or discharge of employees.

- (3) Employee compensation.
- (4) Job training.
- (5) Other terms, conditions, and privileges of employment.

*As added by P.L.111-1992, SEC.4.*

#### **IC 22-9-5-20**

##### **Medical examinations and inquiries; permissibility and scope; disclosures; use of results**

Sec. 20. (a) The prohibition against discrimination in section 19 of this chapter includes medical examinations and inquiries. Except as otherwise provided by this section, a covered entity may not conduct a medical examination or make inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of a disability.

(b) A covered entity may make preemployment inquiries into the ability of an applicant to perform job related functions.

(c) A covered entity may require a medical examination after an offer of employment has been made to a job applicant and before the commencement of the employment duties of the applicant and may condition an offer of employment on the results of that examination if:

- (1) all entering employees are subjected to the examination regardless of disability;
- (2) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that:
  - (A) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
  - (B) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
  - (C) government officials investigating compliance with this chapter shall be provided relevant information on request; and
- (3) the results of the examination are used only in accordance with this chapter.

(d) A covered entity may not require a medical examination and may not make inquiries of an employee as to whether the employee is an individual with a disability or as to the nature or severity of the disability, unless the examination or inquiry is shown to be job related and consistent with business necessity.

(e) A covered entity may conduct voluntary medical examinations, including voluntary medical histories, that are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job related functions. Information obtained under this subsection is subject to the requirements of subsection (c)(2) and (c)(3).

(f) A covered entity may not interfere, directly or indirectly, with the use of an animal that has been or is being specially trained as a service animal.

(g) A covered entity may not refuse to permit an employee with a disability to keep a service animal with the employee at all times in the place of employment.

*As added by P.L.111-1992, SEC.4. Amended by P.L.155-2009, SEC.7.*

#### **IC 22-9-5-21**

##### **Qualification standards, tests, or criteria; defense to discrimination charges; direct threat to health and safety**

Sec. 21. (a) It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job related and consistent with business necessity, and performance cannot be accomplished by reasonable accommodation, as required under this chapter.

(b) As used in subsection (a), qualification standards may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

*As added by P.L.111-1992, SEC.4.*

#### **IC 22-9-5-22**

##### **Employment preference; religious organizations; educational institutions; conformity to religious tenets**

Sec. 22. (a) This chapter does not prohibit a religious corporation, an association, an educational institution, or a society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on of activities by that corporation, association, educational institution, or society.

(b) Under this chapter, a religious organization may require that all applicants and employees conform to the religious tenets of the organization.

*As added by P.L.111-1992, SEC.4.*

#### **IC 22-9-5-23**

##### **Food handling job assignment; denial to person having infectious or communicable disease; validity of other food handling provisions**

Sec. 23. (a) In any case in which an individual has an infectious or communicable disease that:

- (1) is transmitted to others through the handling of food;
- (2) is included on the list developed by the Secretary of Health and Human Services under 42 U.S.C. 12113; and
- (3) constitutes a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation;

a covered entity may refuse to assign or continue to assign the individual to a job involving food handling.

(b) Nothing in this chapter shall be construed to preempt, modify, or amend any statute, rule, or ordinance applicable to food handling that is designed to protect the public health from individuals who pose a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation pursuant to the list published by the Secretary of Health and Human Services under 42 U.S.C. 12113.

*As added by P.L.111-1992, SEC.4.*

#### **IC 22-9-5-24**

##### **Alcohol and illegal use of drugs; prohibitions; requisites; testing**

Sec. 24. (a) A covered entity may do the following:

- (1) Prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees.
- (2) Require that employees shall not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace.
- (3) Require that employees behave in conformance with the requirements established under the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et seq.).
- (4) Hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that the entity holds other employees, even if the unsatisfactory job performance or behavior is related to the drug use or alcoholism of the employee.
- (5) With respect to federal regulations regarding alcohol and the illegal use of drugs, require that:
  - (A) employees comply with the standards established in the regulations of the United States Department of Defense if the employees of the covered entity are employed in an industry subject to those regulations, including complying with regulations, if any, that apply to employment in sensitive positions in the industry, in the case of employees of the covered entity who are employed in those positions (as defined in the regulations of the United States Department of Defense);
  - (B) employees comply with the standards established in the regulations of the United States Nuclear Regulatory Commission if the employees of the covered entity are employed in an industry subject to those regulations, including complying with regulations, if any, that apply to employment in sensitive positions in the industry, in the case of employees of the covered entity who are employed in those positions (as defined in the regulations of the United States Nuclear Regulatory Commission); and
  - (C) employees comply with the standards established in the regulations of the United States Department of Transportation if the employees of the covered entity are employed in a transportation industry subject to those

regulations, including complying with regulations, if any, that apply to employment in sensitive positions in the industry, in the case of employees of the covered entity who are employed in those positions (as defined in the regulations of the United States Department of Transportation).

(b) For purposes of this chapter, a test to determine the illegal use of drugs shall not be considered a medical examination.

(c) Nothing in this chapter shall be construed to encourage, prohibit, or authorize the conducting of drug testing for the illegal use of drugs by job applicants or employees or making employment decisions based on the test results.

(d) Nothing in this chapter shall be construed to encourage, prohibit, restrict, or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the United States Department of Transportation of authority to:

(1) test employees in, and applicants for, positions involving safety sensitive duties for the illegal use of drugs and for on duty impairment by alcohol; and

(2) remove those persons who test positive for illegal use of drugs and on duty impairment by alcohol under subdivision (1) from safety sensitive duties in implementing subsection (c).

*As added by P.L.111-1992, SEC.4.*

#### **IC 22-9-5-25**

##### **Posting notices; provisions of chapter**

Sec. 25. Each employer, employment agency, labor organization, or joint labor-management committee covered under this chapter shall post notices in a format accessible to applicants, employees, and members describing the applicable provisions of this chapter, in the manner prescribed by Section 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-10).

*As added by P.L.111-1992, SEC.4.*

#### **IC 22-9-5-26**

##### **Complaints against covered entities; remedies; limitation**

Sec. 26. The remedies available regarding complaints directed against a covered entity under this chapter are limited to the remedies provided under IC 22-9-1-6(k).

*As added by P.L.111-1992, SEC.4. Amended by P.L.1-1993, SEC.188.*

#### **IC 22-9-5-27**

##### **Rules implementing chapter; conforming to federal rules**

Sec. 27. The commission shall adopt rules under IC 4-22-2 to carry out this chapter. These rules must not be in conflict with the provisions of the federal rules adopted under the employment discrimination provisions of the federal Americans with Disabilities Act (42 U.S.C. 1211 et seq.).

*As added by P.L.111-1992, SEC.4.*