

CIVIL RIGHTS COMMISSION[161]

Notice of Intended Action

**Proposing rulemaking related to discrimination in employment
and providing an opportunity for public comment**

The Civil Rights Commission hereby proposes to rescind Chapter 8, “Discrimination in Employment,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Executive Order 10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 216.

Purpose and Summary

The purpose of proposed Chapter 8 is to implement the Iowa Civil Rights Act by providing parameters and expectations regarding the complaint process for discrimination complaints in employment based on protected bases.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any, pursuant to 161—Chapter 15.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Commission no later than 4:30 p.m. on January 16, 2024. Comments should be directed to:

Jacob Bennington
Iowa Civil Rights Commission
6200 Park Avenue, Suite 100
Des Moines, Iowa 50321
Phone: 515.281.4482
Email: jacob.bennington@iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

January 16, 2024
10 a.m.

6200 Park Avenue, Suite 100
Des Moines, Iowa

February 16, 2024
10 a.m.

6200 Park Avenue, Suite 100
Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 161—Chapter 8 and adopt the following **new** chapter in lieu thereof:

CHAPTER 8
DISCRIMINATION IN EMPLOYMENT

161—8.1(216) Definitions.

“Has a record of such an impairment” means having a history of, or being misclassified as having, a mental or physical impairment that substantially limits a major life activity.

“Major life activities” includes but is not limited to caring for oneself, manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

“Physical or mental impairment” includes:

1. Physiological disorders or conditions, cosmetic disfigurements, or anatomical loss affecting any of the following systems: neurological; musculoskeletal; special sense organs; respiratory and speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic or lymphatic; skin; and endocrine; or
2. Mental or psychological disorders such as intellectual disabilities, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

“Regarded as having an impairment” means:

1. The perception of having an impairment that substantially limits major life activities; or
2. Having an impairment that substantially limits major life activities because of others' attitudes toward the impairment.

“Substantially disabled” means having a physical or mental impairment that substantially limits a major life activity, having a record of such impairment, or being regarded as having an impairment.

161—8.2(216) Bona fide occupational qualifications.

8.2(1) An employer, employment agency, or labor organization may take action otherwise prohibited under commission rules where the protected basis is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business.

8.2(2) Bona fide occupational qualifications are narrow in scope and do not include convenience or an employer's preferences.

8.2(3) An employer or employment agency's following of federal or state statutes or regulations establishing employment standards is not illegal discrimination when the standards are bona fide occupational qualifications.

8.2(4) A bona fide occupational qualification will also be recognized where there exist special, individual occupational circumstances such as acting or modeling.

8.2(5) Bona fide occupational qualifications do not include assumptions about a protected basis, comparative characteristics of a protected basis, and stereotypes based on a protected basis.

8.2(6) No publication shall advertise employment opportunities containing any indication of a preference, limitation, or restriction based upon age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability, unless there is a bona fide occupational qualification.

161—8.3(216) Preemployment inquiries.

8.3(1) Preemployment inquiries into an applicant's membership in a protected class are not prohibited so far as necessary to determine an applicant's bona fide occupational qualification for the position. The burden to show the existence of a bona fide occupational qualification shall be on the employer, employment agency, or labor organization.

8.3(2) This rule does not prohibit inquiry:

- a. As to whether a job applicant is over 18 years of age, or
- b. For postemployment inquiries regarding age, race, creed, color, sex, sexual orientation, gender identity, national origin, religion, or disability for legitimate record-keeping purposes.

8.3(3) An employment interviewer shall not ask about a disability unless the inquiry is made in good faith for a nondiscriminatory purpose.

161—8.4 to 8.10 Reserved.

161—8.11(216) Reasonable accommodations—assessment and placement.

8.11(1) Employers shall accommodate the known physical or mental limitations of qualified disabled applicants or employees, unless doing so would result in an undue hardship. Employers cannot deny employment to qualified disabled employees or applicants due to their need for reasonable accommodation.

8.11(2) Reasonable accommodation may include:

- a. Making facilities readily accessible to individuals with disabilities; and
- b. Job restructuring, modified work schedules, acquisition or modification of equipment or devices, readers or interpreters, or similar actions.

8.11(3) In determining whether an accommodation would impose an undue hardship on an employer, factors to be considered may include:

- a. The size of the employer, including the number of employees, number and type of facilities, and budget;
- b. The nature of the employer's operation, including the composition and structure of its workforce; and
- c. The nature and cost of the accommodation.

161—8.12(216) Physical examinations.

8.12(1) If examinations or assessments are required, they should be designed to determine whether an applicant:

- a. Has the ability to perform the duties of the position.
- b. Is qualified to do the work without adverse consequences such as creating a danger to the life or health of others.
- c. Is professionally competent or has the necessary skills or ability to become professionally competent to perform the duties of the job.

8.12(2) Physical standards for employment must be reasonable and based on complete, factual information about job duties, working conditions, hazards, and essential physical requirements.

161—8.13(216) Disability arising during employment. When an individual becomes disabled during employment, the employer shall provide reasonable accommodations pursuant to rule 161—8.11(216).

161—8.14 to 8.24 Reserved.

161—8.25(216) Retirement plans and benefit systems.

8.25(1) An employer shall not be required to:

- a.* Hire back an employee following retirement; or
- b.* Hire an applicant for employment whose age is the retirement age under the employer's retirement plan or benefit system provided that the plan or system is not a mere subterfuge for the purpose of evading the provisions of the Iowa civil rights Act of 1965.

8.25(2) Retirement plans shall not require involuntary retirement of a person under the age of 70 because of the person's age, except where otherwise provided in state law.

8.25(3) Mandatory retirement based on age will not be applied to members of the Iowa public employees' retirement system.

8.25(4) Employer contributions to insurance, pension, and other programs are not a violation of the Act if those contributions are the same for each employee or if the resulting benefits are equal.

These rules are intended to implement Iowa Code chapter 216.