

## Vermont Statutes On-Line

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#### Chapter 005 : Employment Practices

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### Title 21 : Labor

#### Chapter 005 : Employment Practices

##### Subchapter 006 : FAIR EMPLOYMENT PRACTICES

**Cite as: 21 V.S.A. § 495d**

##### **§ 495d. Definitions**

As used in this subchapter:

- (1) "Employer" means any individual, organization, or governmental body, including any partnership, association, trustee, estate, corporation, joint stock company, insurance company, or legal representative, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor thereof, and any common carrier by mail, motor, water, air, or express company doing business in or operating within this State, and any agent of such employer, that has one or more individuals performing services for it within this State.
- (2) "Employee" means every person who may be permitted, required, or directed by any employer, in consideration of direct or indirect gain or profit, to perform services.
- (3) "Employment agency" means every person, corporation, association, or governmental body representative thereof engaged in the business of advertising for advising, classifying, training, or referral of persons for employment within this State, or that at the direction of any employer advertises, locates, advises, classifies, trains, refers, or selects persons to engage in any employment.
- (4) "Labor organization" means any organization or association that represents not less than five employees and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, promotions, or other terms and conditions of employment.

(5) “Individual with a disability” means any natural person who:

- (A) has a physical or mental impairment that substantially limits one or more major life activities;
- (B) has a history or record of such an impairment; or
- (C) is regarded as having such an impairment.

(6) “Qualified individual with a disability” means:

- (A) An individual with a disability who is capable of performing the essential functions of the job or jobs for which the individual is being considered with reasonable accommodation to the disability.
- (B) Does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

(7) “Physical or mental impairment” means:

- (A)(i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; or endocrine;
- (ii) any mental or psychological disorder, such as developmental disability, organic brain syndrome, emotional or mental condition or psychiatric disability, and specific learning disabilities;
- (B) the term “physical or mental impairment” includes diseases and conditions such as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, and drug addiction and alcoholism.

(8) “Substantially limits” means the degree that the impairment affects an individual’s employability. An individual with a disability who is likely to experience difficulty in securing, retaining, or advancing in employment would be considered substantially limited.

(9) “Major life activities” means functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, and receiving education or vocational training.

(10) “Has a history or record of such an impairment” means that the individual has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more life activity.

(11) “Is regarded as having such an impairment” means that the individual:

- (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by an employer as constituting such a limitation;

(B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(C) has none of the impairments defined in subdivision (7)(A) of this section but is treated by an employer as having such an impairment.

(12)(A) “Reasonable accommodation” means the changes and modifications that can be made in the structure of a job or in the manner in which a job is performed unless it would impose an undue hardship on the employer.

(B) “Reasonable accommodation” may include:

(i) making the facilities used by the employees, including common areas used by all employees such as hallways, restrooms, cafeterias, and lounges, readily accessible to and usable by individuals with disabilities; and

(ii) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, and other similar actions.

(C) Factors to be considered in determining whether an undue hardship is imposed by the requirement that reasonable accommodation be made for an individual with a disability include:

(i) the overall size of the employer’s operation with respect to the number of employees, number and type of facilities, and size of budget; and

(ii) the cost for the accommodation needed.

(13)(A) “Sexual harassment” is a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors, and other verbal, physical, written, auditory, or visual conduct of a sexual nature when:

(i) submission to that conduct is made either explicitly or implicitly a term or condition of employment;

(ii) submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or

(iii) the conduct has the purpose or effect of interfering with an individual’s work or creating an intimidating, hostile, or offensive work environment.

(B) Sexual harassment need not be severe or pervasive in order to be unlawful pursuant to this subchapter.

(14) “Pregnancy-related condition” means a limitation of an employee’s ability to perform the functions of a job caused by pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

(15) “Crime victim” means any of the following:

(A) a person who has obtained a relief from abuse order issued under 15 V.S.A. § 1103;

(B) a person who has obtained an order against stalking or sexual assault issued under 12 V.S.A. chapter 178;

(C) a person who has obtained an order against abuse of a vulnerable adult issued under 33 V.S.A. chapter 69; or

(D)(i) a victim as defined in 13 V.S.A. § 5301, provided that the victim is identified as a crime victim in an affidavit filed by a law enforcement official with a prosecuting attorney of competent state or federal jurisdiction; and

(ii) shall include the victim's child, foster child, parent, spouse, stepchild or ward of the victim who lives with the victim, or a parent of the victim's spouse, provided that the individual is not identified in the affidavit as the defendant.

(16) "Harass" means to engage in unwelcome conduct based on an employee's race, color, religion, national origin, sex, sexual orientation, gender identity, ancestry, place of birth, age, crime victim status, or physical or mental condition that interferes with the employee's work or creates a work environment that is intimidating, hostile, or offensive. In determining whether conduct constitutes harassment:

(A) The determination shall be made on the basis of the record as a whole, according to the totality of the circumstances, and a single incident may constitute unlawful harassment.

(B) Incidents that may be harassment shall be considered in the aggregate with varying types of conduct and conduct based on multiple characteristics viewed in totality rather than in isolation.

(C) Conduct may constitute harassment, regardless of whether:

(i) the complaining employee is the individual being harassed;

(ii) the complaining employee acquiesced or otherwise submitted to or participated in the conduct;

(iii) the conduct is also experienced by others outside the protected class involved in the conduct;

(iv) the complaining employee was able to continue carrying out the employee's job duties and responsibilities despite the conduct;

(v) the conduct resulted in a physical or psychological injury; or

(vi) the conduct occurred outside the workplace.

(17) "Race" includes traits associated with or perceived to be associated with race, including hair type, hair texture, hairstyles, and protective hairstyles. As used in this subdivision, the term "protective hairstyles" includes hairstyles such as individual braids, cornrows, locs, twists, Bantu knots, afros, afro puffs, and other formations, as well as wigs, headwraps, and other head coverings. (Added 1975, No. 198 (Adj. Sess.), § 3; amended 1981, No. 65, § 3; 1993, No. 39, §§ 2, 3, eff. Oct. 1, 1993; 1999, No. 103 (Adj. Sess.), § 2; 2013, No. 96 (Adj. Sess.), § 130; 2017, No. 21, § 1, eff. Jan. 1, 2018; 2017, No. 113 (Adj.

Sess.), § 146; 2017, No. 184 (Adj. Sess.), § 2; 2023, No. 80, § 2, eff. July 1, 2023; 2023, No. 92 (Adj. Sess.), § 2, eff. July 1, 2024; 2025, No. 18, § 30, eff. May 13, 2025.)

**Title 21 : Labor**

**Chapter 005 : Employment Practices**

**Subchapter 006 : FAIR EMPLOYMENT PRACTICES**

**Cite as: 21 V.S.A. § 495h**

**§ 495h. Sexual harassment**

(a)(1) All employers, employment agencies, and labor organizations have an obligation to ensure a workplace free of sexual harassment.

(2) All persons who engage a person to perform work or services have an obligation to ensure a working relationship with that person that is free from sexual harassment.

(b) Every employer shall:

(1) Adopt a policy against sexual harassment that shall include:

(A) a statement that sexual harassment in the workplace is unlawful;

(B) a statement that it is unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of sexual harassment;

(C) a description and examples of sexual harassment;

(D) a statement of the range of consequences for employees who commit sexual harassment;

(E) if the employer has more than five employees, a description of the process for filing internal complaints about sexual harassment and the names, addresses, and telephone numbers of the person or persons to whom complaints should be made; and

(F) the complaint process of the appropriate State and federal employment discrimination enforcement agencies, and directions as to how to contact such agencies.

(2) Post in a prominent and accessible location in the workplace, a poster providing, at a minimum, the elements of the employer's sexual harassment policy required by subdivision (1) of this subsection.

(3) Provide to all employees an individual written copy of the employer's policy against sexual harassment.

(c)(1) Employers shall provide individual copies of their written policies to new employees upon their being hired.

(2) If an employer makes changes to its policy against sexual harassment, it shall provide to all employees a written copy of the updated policy.

(d) The Commissioner of Labor shall prepare and provide to employers subject to this section a model policy and a model poster, which may be used by employers for the purposes of this section.

(e) A claim that an individual did not receive the information required to be provided by this section shall not, in and of itself, result in the automatic liability of any employer to any current or former employee or applicant in any action alleging sexual harassment. An employer's compliance with the notice requirements of this section does not insulate the employer from liability for sexual harassment of any current or former employee or applicant.

(f)(1) Employers and labor organizations are encouraged to conduct an education and training program for all new employees and members that includes at a minimum all the information outlined in this section within one year after commencement of employment.

(2) Employers and labor organizations are encouraged to conduct an annual education and training program for all employees and members that includes at a minimum all the information outlined in this section.

(3) Employers are encouraged to conduct additional training for new supervisory and managerial employees and members within one year after commencement of employment or membership, which should include at a minimum the information outlined in this section, the specific responsibilities of supervisory and managerial employees, and the actions that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

(4) Employers, labor organizations, and appropriate State agencies are encouraged to cooperate in making this training available.

(g)(1) An employer shall not require any employee or prospective employee, as a condition of employment, to sign an agreement or waiver that does either of the following:

(A) prohibits, prevents, or otherwise restricts the employee or prospective employee from opposing, disclosing, reporting, or participating in an investigation of sexual harassment; or

(B) except as otherwise permitted by State or federal law, purports to waive a substantive or procedural right or remedy available to the employee with respect to a claim of sexual harassment.

(2) Any provision of an agreement that violates subdivision (1) of this subsection shall be void and unenforceable.

(h)(1) An agreement to settle a claim of sexual harassment shall not prohibit, prevent, or otherwise restrict the employee from working for the employer or any parent company, subsidiary, division, or affiliate of the employer.

(2) An agreement to settle a sexual harassment claim shall expressly state that:

(A) it does not prohibit, prevent, or otherwise restrict the individual who made the claim from doing any of the following:

(i) lodging a complaint of sexual harassment committed by any person with the Attorney General, a State's Attorney, the Human Rights Commission, the Equal Employment Opportunity Commission, or any other State or federal agency;

(ii) testifying, assisting, or participating in any manner with an investigation related to a claim of sexual harassment conducted by the Attorney General, a State's Attorney, the Human Rights Commission, the Equal Employment Opportunity Commission, or any other State or federal agency;

(iii) complying with a valid request for discovery in relation to civil litigation or testifying in a hearing or trial related to a claim of sexual harassment that is conducted by a court, pursuant to an arbitration agreement, or before another appropriate tribunal; or

(iv) exercising any right the individual may have pursuant to State or federal labor relations laws to engage in concerted activities with other employees for the purposes of collective bargaining or mutual aid and protection; and

(B) it does not waive any rights or claims that may arise after the date the settlement agreement is executed.

(3) Any provision of an agreement to settle a sexual harassment claim that violates subdivision (1) or (2) of this subsection shall be void and unenforceable with respect to the individual who made the claim.

(4) Nothing in subdivision (2) of this subsection shall be construed to prevent an agreement to settle a sexual harassment claim from waiving or releasing the claimant's right to seek or obtain any remedies relating to sexual harassment of the claimant by another party to the agreement that occurred before the date on which the agreement is executed.

(i)(1)(A)(i) For the purpose of assessing compliance with the provisions of this section, the Attorney General or designee, or, if the employer is the State, the Human Rights Commission or designee, may, with 48 hours' notice, at reasonable times and without unduly disrupting business operations enter and inspect any place of business or employment, question any person who is authorized by the employer to receive or investigate complaints of sexual harassment, and examine an employer's records, policies, procedures, and training materials related to the prevention of sexual harassment and the requirements of this section.

(ii) An employer may agree to waive or shorten the 48-hour notice period.

(iii) As used in this subsection (i), the term “records” includes de-identified data regarding the number of complaints of sexual harassment received and the resolution of each complaint.

(B) The employer shall at reasonable times and without unduly disrupting business operations make any persons who are authorized by the employer to receive or investigate complaints of sexual harassment and any records, policies, procedures, and training materials related to the prevention of sexual harassment and the requirements of this section available to the Attorney General or designee or, if the employer is the State, the Human Rights Commission or designee.

(2) Following an inspection and examination pursuant to subdivision (1) of this subsection (i), the Attorney General or the Human Rights Commission shall notify the employer of the results of the inspection and examination, including any issues or deficiencies identified, provide resources regarding practices and procedures for the prevention of sexual harassment that the employer may wish to adopt or utilize, and identify any technical assistance that the Attorney General or the Human Rights Commission may be able to provide to help the employer address any identified issues or deficiencies. If the Attorney General or the Human Rights Commission determines that it is necessary to ensure the employer’s workplace is free from sexual harassment, the employer may be required, for a period of up to three years, to provide an annual education and training program that satisfies the provisions of subdivision (4) of this subsection to all employees or to conduct an annual, anonymous working-climate survey, or both.

(3)(A) The Attorney General shall keep records, materials, and information related to or obtained through an inspection carried out pursuant to this subsection (i) confidential as provided pursuant to 9 V.S.A. § 2460(a)(4).

(B) The Human Rights Commission shall keep records, materials, and information related to or obtained through an inspection carried out pursuant to this subsection (i) confidential as provided pursuant to 9 V.S.A. § 4555.

(4) If required by the Attorney General or Human Rights Commission pursuant to subdivision (2) of this subsection, an employer shall conduct:

(A) an annual education and training program for all employees that includes at a minimum all the information outlined in this section; and

(B) an annual education and training program for supervisory and managerial employees that includes at a minimum all the information outlined in this section, the specific responsibilities of supervisory and managerial employees, and the actions that these employees must take to ensure immediate and appropriate corrective action in addressing sexual harassment complaints.

(j) The Attorney General shall adopt rules as necessary to implement the provisions of this section. (Added 1993, No. 39, § 4, eff. Oct. 1, 1993; amended 2005, No. 103 (Adj. Sess.), § 3, eff. April 5, 2006; 2017, No. 183 (Adj. Sess.), § 1.)