

I MINA' TRENTAI TRES NA LIHESLATURAN GUÅHAN
2015 (FIRST) Regular Session

Bill No. 102-33 (COR)
As Corrected By the Prime Sponsor.

Introduced by: B.J.F. Cruz

AN ACT TO AMEND §§ 5201 AND 5202 OF ARTICLE 2, CHAPTER 5, TITLE 22, AND TO AMEND SUBSECTION (a) OF § 4101, ARTICLE 1, CHAPTER 4, TITLE 4, BOTH OF GUAM CODE ANNOTATED; RELATIVE TO DISCRIMINATION IN THE WORKPLACE AND TO CITING THIS ACT AS THE GUAM EMPLOYMENT NONDISCRIMINATION ACT (GENDA) OF 2015.

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Title.** This Act may be known and referred to as the *Guam*
3 *Employment Nondiscrimination Act (GENDA) of 2015.*

4 **Section 2. Nondiscrimination in Employment.** § 5201 of Article 2,
5 Chapter 5, Title 22, Guam Code Annotated, is *amended* to read:

6 **“§ 5201. Discriminatory Practices Made Unlawful; Offenses**
7 **Defined.**

8 It shall be an unlawful employment practice or unlawful
9 discrimination:

10 (a) For any employer to refuse to hire or employ or to bar
11 or discharge from employment, or otherwise to discriminate
12 against any individual in compensation or in the terms,
13 conditions, or privileges of employment because of race, sex

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1 including gender identity or expression, age, religion, color,
2 honorably discharged veteran and military status, sexual
3 orientation, or ancestry.

4 (b) For any employment agency to fail or refuse to refer
5 or employ, or to classify or otherwise to discriminate against
6 any individual because of race, sex including gender identity or
7 expression, age, religion, color, honorably discharged veteran
8 and military status, sexual orientation, or ancestry.

9 (c) For any employer or employment agency to print,
10 circulate or cause to be printed or circulated any statement,
11 advertisement or publication or to use any form of application
12 for employment or to make any inquiry in connection with
13 prospective employment, which expresses, directly or
14 indirectly, any limitation, specification or discrimination as to
15 race, sex including gender identity or expression, age, religion,
16 color, honorably discharged veteran and military status, sexual
17 orientation, or ancestry, unless based on a bona fide
18 occupational qualification;

19 (d) For any labor organization to exclude or expel from
20 its membership any person or to discriminate in any way
21 against any of its members, employer or employees because of
22 race, sex including gender identity or expression, age, religion,
23 color, honorably discharged veteran and military status, sexual
24 orientation, or ancestry;

25 (e) For any employer, labor organization or employment
26 agency to discharge, expel, or otherwise discriminate against
27 any person because he has opposed any practice forbidden by

1 this Chapter, or because he has filed a complaint, testified or
2 assisted in any proceeding respecting the employment practices
3 and discrimination prohibited under this Chapter.

4 (f) For any person whether an employer, employee or
5 not, to aid, abet, incite, compel or coerce the doing of any of the
6 practices forbidden by this Chapter, or to attempt to do so.

7 (g) for any employer, labor organization or employment
8 agency to require any person to become or remain a member of
9 any labor union or labor organization as a condition of
10 employment or continuation of employment, or to require a
11 person to abstain or refrain from membership in any labor
12 union or labor organization as a condition of employment or
13 continuation of employment, or to require any person to pay
14 dues, fees or other charges of any kind to any labor union or
15 labor organization as a condition of employment.”

16 **Section 3. Statutory Definitions.** § 5202 of Article 2, Chapter 5, Title
17 22, Guam Code Annotated, is *amended* to read:

18 **“§ 5202. Definitions.**

19 As used in this Chapter:

20 (a) *Disability* means any condition or characteristic that renders
21 a person a disabled person as defined in Subsection (b) of this Section.

22 (b) *Disabled person* means any person who:

23 (1) has a physical or mental impairment which
24 substantially limits one or more major life activities;

25 (2) has a history of, or has been classified as having an
26 impairment which substantially limits one or more major life
27 activities;

1 (3) has a physical or mental impairment that does not
2 substantially limit major life activities but that is treated by
3 others as constituting such a limitation; or

4 (4) has a physical or mental impairment that substantially
5 limits major life activities only as a result of the attitudes of
6 others as having such an impairment.

7 (c) *Discriminate* or *discrimination* means to segregate or
8 unreasonably differentiate in treatment, whether intended or
9 unintended, or to act in a manner fair in form but discriminatory in
10 operation based upon disability or use of adaptive devices.

11 (d) *Major life activities* means functions such as, but not limited
12 to, caring for one's self, performing manual tasks, walking, seeing,
13 hearing, speaking, breathing, learning and working.

14 (e) *Physical or mental impairment* means:

15 (1) any physiological disorder or condition, cosmetic
16 disfigurement or anatomical loss affecting one or more of the
17 following body systems: neurological, musculoskeletal, special
18 sense organs, respiratory, including speech organs,
19 cardiovascular, reproductive, digestive genito-urinary, hemic
20 and lymphatic, skin and endocrine; or

21 (2) any mental or physiological disorder, such as mental
22 retardation, organic brain syndrome, emotional or mental illness
23 and specific learning disabilities.

24 (f) *Use of adaptive device* means the utilization of any item to
25 compensate for a physical or mental impairment, including but not
26 limited to, braces or other supports, wheel chairs, talking boards,
27 hearing aids, corrective lenses or seeing eye dogs.

1 (g) *Qualified individual* means an individual who can perform
2 the essential functions of the job in question. As applied to a disabled
3 individual, *qualified individual* means an individual who, with
4 reasonable accommodation, can perform the essential functions of the
5 job in question. Receipt or alleged receipt of treatment for a disability,
6 whether physical or mental shall not constitute evidence of a person's
7 inability to perform the essential functions of a particular job or
8 position. In addition, uninsurability or increased cost of insurance
9 under a group or employee insurance plan does not render a disabled
10 person unqualified.

11 If a disabled person is qualified to perform a particular
12 occupation by reason of training or experience, the nature of that
13 occupation shall not be the basis for exception to the unfair or
14 discriminatory practices prohibited by this Section.

15 (h) Sexual orientation means having a preference for
16 heterosexuality, homosexuality, or bisexuality, having a history of any
17 one or more of these preferences, or being identified with any one or
18 more of these preferences.

19 (i) Gender identity or expression means a person's actual or
20 perceived gender, as well as a person's gender identity, gender-related
21 self-image, gender-related appearance, or gender-related expression,
22 regardless of whether that gender identity, gender-related self-image,
23 gender-related appearance, or gender-related expression is different
24 from that traditionally associated with the person's sex at birth.

25 (j) Veteran and military status means a person's status on active
26 duty in or status as a veteran of the armed forces of the United States,
27 status as a current member or veteran of any reserve component of the

1 armed forces of the United States, including the United States Army
2 Reserve, United States Marine Corps Reserve, United States Navy
3 Reserve, United States Air Force Reserve, and United States Coast
4 Guard Reserve, or status as a current member or veteran of the Guam
5 National Guard.”

6 **Section 4. Employment in the Service of the Government of Guam.**

7 Subsection (a) of § 4101 of Chapter 4, Title 4, Guam Code Annotated is
8 *amended* to read:

9 “(a) Employment in the service of the government of Guam
10 shall be based upon merit, and selection and promotion of employees
11 shall be free of personal or political consideration. No person shall be
12 discriminated against in an application for employment or promotion
13 or dismissed from employment on account of honorably discharged
14 veteran and military status, sexual orientation, race, color, age,
15 religion, sex—including gender identity or expression, national origin
16 or physical or mental impairment. No person shall be discriminated
17 against in an application for employment or promotion or dismissed
18 from employment because of the country where the college or
19 university from which he received any degree or training is located.
20 All personnel actions, including appointments and promotions, shall
21 be based, insofar as practicable, on competitive practical tests and
22 evaluations. Continuity of employment shall be dependent upon good
23 behavior, satisfactory performance and availability of funds. For the
24 purpose of this Section, the terms *sexual orientation, gender identity*
25 *or expression, veteran and military status* shall be defined in 22 GCA
26 § 5202.”

27 **Section 5. Religious Exemption.**

1 (a) In General. This Act *shall not* apply to a corporation, association,
2 educational institution or institution of learning, or society that is exempt
3 from the religious discrimination provisions of Title VII of the Civil Rights
4 Act of 1964 (42 U.S.C. 2000e et seq.) pursuant to section 702(a) or
5 703(e)(2) of such Act (42 U.S.C. 2000e–1(a), 2000e–2(e)(2)) (referred to in
6 this Section as a “religious employer”).

7 (b) Prohibition On Certain Government Actions. A religious
8 employer's exemption under this section *shall not* result in any action by the
9 government to penalize or withhold licenses, permits, certifications,
10 accreditation, contracts, grants, guarantees, tax-exempt status, or any
11 benefits or exemptions from that employer, or to prohibit the employer's
12 participation in programs or activities sponsored by that government.
13 Nothing in this Subsection shall be construed to invalidate any other law
14 (including a regulation) that otherwise applies to a religious employer
15 exempt under this Section.

16 **Section 6. Codification.** The Compiler of Laws is authorized to
17 codify Section 5 of this Act within the appropriate title of the Guam Code
18 Annotated. Section 5 *shall* apply only to the specific amendments made
19 pursuant to this Act.

20 **Section 7. Severability.** *If* any provision of this Act or its application
21 to any person or circumstance is found to be invalid or contrary to law, such
22 invalidity *shall not* affect other provisions or application of this Act which
23 can be given effect without the invalid provisions or application, and to this
24 end the provisions of this Act are severable.