

OFFICE OF POLICY AND LEGAL ANALYSIS

To: Members, Joint Standing Committee on Labor and Housing
From: Steven Langlin, Legislative Analyst
Date: February 17, 2021
Subj: **LD 29, “An Act To Conform the Maine Apprenticeship Program to the Federal Equal Employment Opportunity Act of 1972” (Rafferty)**

SUMMARY

This bill amends the information relating to a request for demographic data that an apprenticeship agreement under the Maine Apprenticeship Program must contain. It brings the program into compliance with federal Equal Employment Opportunity Act of 1972 standards.

TESTIMONY

Proponents	Opponents
<p><i>Sponsor</i></p> <ul style="list-style-type: none"><i>This bill proposes required statutory changes to ensure conformity with federal EEO changes</i><i>Bill proposed last year (LD 1912) but Legislature adjourned due to COVID</i> <p><i>Kimberley Moore, Maine DOL</i></p> <p><i>Kate Knox, EqualityMaine</i></p> <ul style="list-style-type: none"><i>Section 2 of the bill should be amended to clarify that equal opportunity will be afforded to all regardless of their gender identity.</i>	<ul style="list-style-type: none">None <p>Neither For Nor Against</p> <ul style="list-style-type: none">None

POTENTIAL ISSUES OR TECHNICAL PROBLEMS:

- The [Maine Human Rights Act](#) defines “sexual orientation” as “a person's actual or perceived heterosexuality, bisexuality, homosexuality or gender identity or expression.” Is it necessary to include the words “gender identity” if it’s already defined in “sexual orientation?” The EEOC interprets sex discrimination as forbidding employment discrimination based on gender identity or sexual orientation (see attachment).
- The bill reads “or because the person is 40 years of age or older.” MHRA prohibits *all* age discrimination. Should this be amended to simply read age? (see attachment).

COMMITTEE REQUESTS FOR ADDITIONAL INFORMATION:

- Rep. Bradstreet to MDOL: Does the bill as written bring the State into full compliance?

OTHER:

- Federal regulations governing Equal Employment Opportunity in apprenticeship can be found [here](#).
- State law governing the apprenticeship program can be found [here](#).

PRELIMINARY FISCAL IMPACT STATEMENT:

- Not yet determined



U.S. Equal Employment Opportunity Commission



Sex Discrimination

EEOC enforces two laws that protect you from sex-based discrimination at work:

- Title VII prohibits an employer from treating you differently, or less favorably, because of your sex. Title VII also prohibits employment decisions based on stereotypes about the abilities and traits of a particular gender. EEOC interprets and enforces Title VII's prohibition of sex discrimination as forbidding any employment discrimination based on **gender identity** or **sexual orientation**. These protections apply regardless of any contrary state or local laws. Both men and women are protected from discrimination on the basis of sex under Title VII.
- The Equal Pay Act requires that men and women in the same workplace be given equal pay for equal work. This means that employers may not pay men and women who perform substantially similar jobs at the same location unequal wages because of sex.

The laws enforced by EEOC also prohibit sexual harassment at work. Sex harassment includes conduct that is sexual in nature, such as sexual jokes or requests for sexual favors, and non-sexual conduct that is based on your gender. The law protects you from being sexually harassed by your supervisor, a supervisor in another area, a co-worker, and others in your workplace, such as a client or customer. The harasser, as well as the victim, can be a male or female.

It is also important for sponsors to maintain a recordkeeping system that allows them to see the results of their recruitment efforts. In addition to ensuring compliance with the EEO regulations, such recordkeeping enables sponsors to determine whether their recruitment strategies are working.

7. Is it enough for a sponsor to add "age" to the list of protected characteristics in its EEO Pledge, apprenticeship application, and other literature, or must the information specify age 40 or older?

While the part 30 regulations (§30.3) only specifically prohibit age discrimination against those 40 and older, sponsors do not need to include the modifier "40 or older" in their materials referring to age discrimination if they choose not to. Sponsors should also be aware of applicable state and/or local age discrimination laws that may apply, as some such laws prohibit age discrimination against those who are younger than 40.

8. May apprenticeship programs give a hiring preference to under-represented populations (such as women or minorities) in their programs?

No, sponsors are not permitted to engage in preferential hiring based on race, sex, or any other protected category. Further, nothing in the regulations requires sponsors to select unqualified applicants, or to select a less qualified person in preference to a more qualified one. Indeed, doing so on the basis of a protected characteristic like race or sex would be unlawful under the regulations (§30.6).

Sponsors are required to engage in outreach and recruitment activities designed to reach all demographic groups within the relevant recruitment area and need to ensure that their programs offer equal employment opportunities to all apprentices and applicants. Further, sponsors required to maintain affirmative action programs (AAPs) may need to set race, sex, ethnicity, or disability utilization goals if they find that their programs are underutilized in any of these particular groups. However, these goals are **not** quotas; they do not provide a sponsor with justification to extend a preference to any individual on the basis of a protected characteristic, nor do they permit sponsors to create set-asides for specific under-represented groups. For example, the regulations make it clear that sponsors should **not** establish separate ranking lists based on protected characteristics.

9. Is ethnicity included as a protected characteristic?

Yes. The terms ethnicity and national origin both refer to the same protected characteristic.

10. May a sponsor give priority to qualified workers who have been waiting for openings in its programs?

Yes, a sponsor may give priority to qualified workers who have been waiting for openings in its program, as long as that selection procedure is applied uniformly and consistently and complies with the requirements for selection devices under the Uniform Guidelines on Employee Selection Procedures (§30.10[1]).

On the other hand, nothing in the apprenticeship EEO regulations requires sponsors to give such priority. Historically, sponsors have periodically renewed their apprenticeship lists, regardless of how many previous applicants were waiting for openings. A sponsor may diversify its pool of applicants without automatically dismissing those who previously applied for an apprenticeship, thus widening the qualified applicant pool from which new apprentices are selected.