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1	§ 495. UNLAWFUL EMPLOYMENT PRACTICE	§ 495. UNLAWFUL EMPLOYMENT PRACTICE
21 V.S.A. § 495	(a) It shall be unlawful employment practice, except	(a) It shall be unlawful employment practice, except
	where a bona fide occupational qualification requires persons	where a bona fide occupational qualification requires persons
	of a particular race, color, religion, national origin, sex,	of a particular race, color, religion, national origin, sex,
	sexual orientation, gender identity, ancestry, place of birth,	sexual orientation, gender identity, ancestry, place of birth,
	age, crime victim status, or physical or mental condition:	age, crime victim status, or physical or mental condition:
	(1) For any employer, employment agency, or labor	(1) For any employer, employment agency, or labor
	organization to harass or discriminate against any individual	organization to harass or discriminate against any individual
	because of race, color, religion, ancestry, national origin, sex,	because of race, color, religion, ancestry, national origin, sex,
	sexual orientation, gender identity, place of birth, crime	sexual orientation, gender identity, place of birth, crime
	victim status, or age or against a qualified individual with a	victim status, or age or against a qualified individual with a
	disability <u>;</u> .	disability <u>;</u>
	* * *	* * *
	(3) For any employment agency to fail or refuse to	(3) For any employment agency to fail or refuse to
	classify properly or refer for employment or to otherwise	classify properly or refer for employment or to otherwise
	<u>harass or</u> discriminate against any individual because of race,	<u>harass or</u> discriminate against any individual because of race,
	color, religion, ancestry, national origin, sex, sexual	color, religion, ancestry, national origin, sex, sexual
	orientation, gender identity, place of birth, crime victim	orientation, gender identity, place of birth, crime victim
	status, or age or against a qualified individual with a	status, or age or against a qualified individual with a
	disability <u>;</u> .	disability <u>;</u>
	(4) For any labor organization, to limit, segregate, or	(4) For any labor organization, to limit, segregate, or
	qualify its membership with respect to any individual because	qualify its membership with respect to any individual because
	of race, color, religion, ancestry, national origin, sex, sexual	of race, color, religion, ancestry, national origin, sex, sexual
	orientation, gender identity, place of birth, crime victim	orientation, gender identity, place of birth, crime victim
	status, or age to discriminate against any individual or against	status, or age to discriminate against any individual or against
	a qualified individual with a disability or to limit, segregate,	a qualified individual with a disability or to limit, segregate,
	or qualify its membership; or against a qualified individual	or qualify its membership; or against a qualified individual
	with a disability.	with a disability.
	***	***
	(7) For any employer, employment agency, labor	(7) For any employer, employment agency, labor
	organization, or person seeking employees to discriminate	organization, or person seeking employees to discriminate
	between employees on the basis of sex, race, or national	between employees on the basis of sex, race, color, religion,
	origin or against a qualified individual with a disability by	ancestry, national origin, sexual orientation, gender identity,
	paying wages to employees of one sex, race, or national	place of birth, crime victim status, or age or against a

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	origin or an employee who is a qualified individual with a	qualified individual with a disability by paying wages to
	<u>disability</u> at a rate less than the rate paid to employees of the	employees of one sex, race, color, religion, ancestry, national
	other sex or a different race or national origin or without the	origin, sexual orientation, gender identity, place of birth,
	physical or mental condition of the qualified individual with a	crime victim status, or age or an employee who is a qualified
	<u>disability</u> for equal work that requires equal skill, effort, and	individual with a disability at a rate less than the rate paid to
	responsibility and is performed under similar working	employees of the other sex or a different race, color, religion,
	conditions. An employer who is paying wages in violation of	ancestry, national origin, sexual orientation, gender identity,
	this section shall not reduce the wage rate of any other	place of birth, crime victim status, or age or without the
	employee in order to comply with this subsection.	physical or mental condition of the qualified individual with a
	(A) An employer may pay different wage rates	disability for equal work that requires equal skill, effort, and
	under this subsection when the differential wages are made	responsibility and is performed under similar working
	pursuant to:	conditions. An employer who is paying wages in violation of
	* * *	this section shall not reduce the wage rate of any other
	(iv) A bona fide factor other than sex, race,	employee in order to comply with this subsection.
	national origin, or physical or mental condition. An employer	(A) An employer may pay different wage rates
	asserting that differential wages are paid pursuant to this	under this subsection when the differential wages are made
	subdivision $(7)(A)(iv)$ shall demonstrate that the factor does	pursuant to:
	not perpetuate a sex-based differential in compensation, based	* * *
	on sex, race, national origin, or physical or mental condition;	(iv) A bona fide factor other than sex, race, color,
	is job-related with respect to the position in question; and is	religion, ancestry, national origin, sexual orientation, gender
	based upon a legitimate business consideration.	identity, place of birth, crime victim status, age, or physical or
	* * *	mental condition. An employer asserting that differential
	(C) Nothing in this section shall be construed to	wages are paid pursuant to this subdivision $(7)(A)(iv)$ shall
	diminish an employee's right to privacy regarding a disability	demonstrate that the factor does not perpetuate a sex-based
	or physical or mental condition under any other law, or	differential in compensation, based on sex, race, color,
	pursuant to an applicable contract or collective bargaining	religion, ancestry, national origin, sexual orientation, gender
	agreement.	identity, place of birth, crime victim status, or age, or physical
	(8) Retaliation prohibited. An employer, employment	or mental condition; is job-related with respect to the position
	agency, or labor organization shall not discharge or in any	in question; and is based upon a legitimate business
	other manner discriminate against any employee because the	consideration.
	employee:	* * *
	* * *	(C) Nothing in this section shall be construed to
	(i) An agreement to settle a claim of a violation of	diminish an employee's right to privacy under any other law,
	subsection (a) of this section shall not prohibit, prevent, or	or pursuant to an applicable contract or collective bargaining

otherwise restrict the employee from working for the employer or any parent company, subsidiary, division, or affiliate of the employer. Any provision of an agreement to settle a claim of a violation of subsection (a) of this section that violates this subsection shall be void and unenforceable with respect to the individual who made the claim. (j) Except for claims alleging a violation of subdivision (a)(7) of this section, an employee shall not be required to demonstrate the existence of another employee or individual to whom the employee's treatment can be compared to establish a violation of this section. (k) Notwithstanding any State or federal judicial precedent to the contrary: (1) harassment and discrimination need not be severe or pervasive to constitute a violation of this section; and (2) behavior that a reasonable employee with the same protected characteristic would consider to be a petty slight or trivial inconvenience shall not constitute unlawful harassment	Section	As Passed Senate	House General Recommendation, 4/27/23
employer or any parent company, subsidiary, division, or affiliate of the employer. Any provision of an agreement to settle a claim of a violation of subsection (a) of this section that violates this subsection shall be void and unenforceable with respect to the individual who made the claim. (j) Except for claims alleging a violation of subdivision (a)(7) of this section, an employee shall not be required to demonstrate the existence of another employee or individual to whom the employee's treatment can be compared to establish a violation of this section. (k) Notwithstanding any State or federal judicial precedent to the contrary: (1) harassment and discrimination need not be severe or pervasive to constitute a violation of this section; and (2) behavior that a reasonable employee with the same protected characteristic would consider to be a petty slight or trivial inconvenience shall not constitute unlawful harassment	2 3 3 4 4 4		,
affiliate of the employer. Any provision of an agreement to settle a claim of a violation of subsection (a) of this section that violates this subsection shall be void and unenforceable with respect to the individual who made the claim. (j) Except for claims alleging a violation of subdivision (a)(7) of this section, an employee shall not be required to demonstrate the existence of another employee or individual to whom the employee's treatment can be compared to establish a violation of this section. (k) Notwithstanding any State or federal judicial precedent to the contrary: (1) harassment and discrimination need not be severe or pervasive to constitute a violation of this section; and (2) behavior that a reasonable employee with the same protected characteristic would consider to be a petty slight or trivial inconvenience shall not constitute unlawful harassment			
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 (j) Except for claims alleging a violation of subdivision (a)(7) of this section, an employee shall not be required to demonstrate the existence of another employee or individual to whom the employee's treatment can be compared to establish a violation of this section. (k) Notwithstanding any State or federal judicial precedent to the contrary: (1) harassment and discrimination need not be severe or pervasive to constitute a violation of this section; and (2) behavior that a reasonable employee with the same protected characteristic would consider to be a petty slight or trivial inconvenience shall not constitute unlawful harassment (i) An agreement to settle a claim of a violation of subsection (a) of this section 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. Any provision of an agreement to settle a claim of a violation of subsection (a) of this section 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. Any provision of an agreement to settle a claim of a violation of subsection (a) of this section fall not prohibit, prevent, or otherwise restrict the employee from working for the employer or any parent company, subsidiary, division, or affiliate of the employer. Any provision of an agreement to settle a claim of a violation of subsection (a) of this section fall not prohibit, prevent, or otherwise restrict the employee from working for the employer or any parent company, subsidiary, division, or affiliate of the employer. Any provision of an agreement to settle a claim of a violation of subsection (a) of this section of an agreement to settle a claim of a violation of subsection (a) of this section of an agreement to settle a claim of a violation of subsection of an agreement to settle a claim of a viola		that violates this subsection shall be void and unenforceable	employee:
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to whom the employee's treatment can be compared to establish a violation of this section. (k) Notwithstanding any State or federal judicial precedent to the contrary: (1) harassment and discrimination need not be severe or pervasive to constitute a violation of this section; and (2) behavior that a reasonable employee with the same protected characteristic would consider to be a petty slight or trivial inconvenience shall not constitute unlawful harassment		(a)(7) of this section, an employee shall not be required to	subsection (a) of this section shall not prohibit, prevent, or
establish a violation of this section. (k) Notwithstanding any State or federal judicial precedent to the contrary: (1) harassment and discrimination need not be severe or pervasive to constitute a violation of this section; and (2) behavior that a reasonable employee with the same protected characteristic would consider to be a petty slight or trivial inconvenience shall not constitute unlawful harassment affiliate of the employer. Any provision of an agreement to settle a claim of a violation of subsection (a) of this section that violates this subsection shall be void and unenforceable with respect to the individual who made the claim. (j) Except for claims alleging a violation of subdivision (a)(7) of this section or disparate impact discrimination an employee shall not be required to demonstrate the existence of another employee or individual to whom the employee's		-	
(k) Notwithstanding any State or federal judicial precedent to the contrary: (1) harassment and discrimination need not be severe or pervasive to constitute a violation of this section; and (2) behavior that a reasonable employee with the same protected characteristic would consider to be a petty slight or trivial inconvenience shall not constitute unlawful harassment settle a claim of a violation of subsection (a) of this section that violates this subsection shall be void and unenforceable with respect to the individual who made the claim. (j) Except for claims alleging a violation of subdivision (a) of this section or protected that violates this subsection shall be void and unenforceable with respect to the individual who made the claim. (a) (7) of this section or disparate impact discrimination an employee shall not be required to demonstrate the existence of another employee or individual to whom the employee's			
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or pervasive to constitute a violation of this section; and (2) behavior that a reasonable employee with the same protected characteristic would consider to be a petty slight or trivial inconvenience shall not constitute unlawful harassment (j) Except for claims alleging a violation of subdivision (a)(7) of this section or disparate impact discrimination an employee shall not be required to demonstrate the existence of another employee or individual to whom the employee's			
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protected characteristic would consider to be a petty slight or trivial inconvenience shall not constitute unlawful harassment of another employee or individual to whom the employee's			
trivial inconvenience shall not constitute unlawful harassment of another employee or individual to whom the employee's			
		1 -	
I be a free discrimination nursuant to this section the free treatment can be compared to establish a violation of this			- · ·
		or discrimination pursuant to this section.	treatment can be compared to establish a violation of this
section.			
(k) Notwithstanding any State or federal judicial			
precedent to the contrary:			*
(1) harassment and discrimination need not be severe			
or pervasive to constitute a violation of this section; and			
(2) behavior that a reasonable employee with the same			
protected characteristic would consider to be a petty slight or trivial inconvenience shall not constitute unlawful harassment			
or discrimination pursuant to this section.			
2 § 495d. DEFINITIONS § 495d. DEFINITIONS	2	8 405d DEFINITIONS	•
21 V.S.A. § 495d As used in this subchapter: As used in this subchapter:	1 =	•	0
As used in this subchapter. ***	21 1.D.A. § 7/3u	*	_
(13)(A) "Sexual harassment" is a form of sex (13)(A) "Sexual harassment" is a form of sex		(13)(A) "Sexual harassment" is a form of sex	(13)(A) "Sexual harassment" is a form of sex
discrimination and means unwelcome sexual advances, discrimination and means unwelcome sexual advances,		\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \	\ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \ \
requests for sexual favors, and other verbal $\frac{\partial}{\partial r}$, physical, requests for sexual favors, and other verbal $\frac{\partial}{\partial r}$, physical,		,	/

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	written, auditory, or visual conduct of a sexual nature when:	written, auditory, or visual conduct of a sexual nature when:
	(A)(i) submission to that conduct is made either	(A)(i) submission to that conduct is made either
	explicitly or implicitly a term or condition of employment;	explicitly or implicitly a term or condition of employment;
	(B)(ii) submission to or rejection of such conduct by	(B)(ii) submission to or rejection of such conduct by
	an individual is used as a component of the basis for	an individual is used as a component of the basis for
	employment decisions affecting that individual; or	employment decisions affecting that individual; or
	(C)(iii) the conduct has the purpose or effect of	(C)(iii) the conduct has the purpose or effect of
	substantially interfering with an individual's work	substantially interfering with an individual's work
	performance or creating an intimidating, hostile, or offensive	performance or creating an intimidating, hostile, or offensive
	work environment.	work environment.
	(B) Sexual harassment need not be severe or	(B) Sexual harassment need not be severe or
	pervasive in order to be unlawful pursuant to this subchapter.	pervasive in order to be unlawful pursuant to this subchapter.
	* * *	* * *
	(16) "Harass" means to engage in unwelcome conduct	(16) "Harass" means to engage in unwelcome conduct
	based on an employee's race, color, religion, national origin,	based on an employee's race, color, religion, national origin,
	sex, sexual orientation, gender identity, ancestry, place of	sex, sexual orientation, gender identity, ancestry, place of
	birth, age, crime victim status, or physical or mental condition	birth, age, crime victim status, or physical or mental condition
	that interferes with the employee's work or creates a work	that interferes with the employee's work or creates a work
	environment that is intimidating, hostile, or offensive. In	environment that is intimidating, hostile, or offensive. In
	<u>determining whether conduct constitutes harassment:</u>	<u>determining whether conduct constitutes harassment:</u>
	(A) The determination shall be made on the basis of	(A) The determination shall be made on the basis of
	the record as a whole, according to the totality of the	the record as a whole, according to the totality of the
	circumstances, and a single incident may constitute unlawful	circumstances, and a single incident may constitute unlawful
	<u>harassment.</u>	<u>harassment.</u>
	(B) Incidents that may be harassment shall be	(B) Incidents that may be harassment shall be
	considered in the aggregate with varying types of conduct and	considered in the aggregate with varying types of conduct and
	conduct based on multiple characteristics viewed in totality,	conduct based on multiple characteristics viewed in totality
	rather than in isolation.	rather than in isolation.
	(C) Conduct may constitute harassment, regardless	(C) Conduct may constitute harassment, regardless
	of whether:	of whether:
	(i) the complaining employee is the individual	(i) the complaining employee is the individual
	being harassed;	being harassed;
	(ii) the complaining employee acquiesced or	(ii) the complaining employee acquiesced or
	otherwise submitted to or participated in the conduct;	otherwise submitted to or participated in the conduct;

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	(iii) the conduct is also experienced by others	(iii) the conduct is also experienced by others
	outside the protected class involved in the conduct;	outside the protected class involved in the conduct;
	(iv) the complaining employee was able to	(iv) the complaining employee was able to
	continue carrying out the employee's job duties and	continue carrying out the employee's job duties and
	responsibilities despite the conduct;	responsibilities despite the conduct;
	(v) the conduct resulted in a physical or	(v) the conduct resulted in a physical or
	psychological injury; or	psychological injury; or
	(vi) the conduct occurred outside the workplace.	(vi) the conduct occurred outside the workplace.
3	§ 4501. DEFINITIONS	§ 4501. DEFINITIONS
9 V.S.A. § 4501	As used in this chapter:	As used in this chapter:
	* * *	* * *
	(12)(A) "Harass" means to engage in unwelcome	(12)(A) "Harass" means to engage in unwelcome
	conduct that detracts from, undermines, or interferes with a	conduct that detracts from, undermines, or interferes with a
	person's:	person's:
	(i) use of a place of public accommodation or	(i) use of a place of public accommodation or
	any of the accommodations, advantages, facilities, or	any of the accommodations, advantages, facilities, or
	privileges of a place of public accommodation because of the	privileges of a place of public accommodation because of the
	person's race, creed, color, national origin, marital status, sex,	person's race, creed, color, national origin, marital status, sex,
	sexual orientation, gender identity, or disability; or	sexual orientation, gender identity, or disability; or
	(ii) terms, conditions, privileges, or protections in	(ii) terms, conditions, privileges, or protections in
	the sale or rental of a dwelling or other real estate, or in the	the sale or rental of a dwelling or other real estate, or in the
	provision of services or facilities in connection with a	provision of services or facilities in connection with a
	dwelling or other real estate, because of the person's race,	dwelling or other real estate, because of the person's race,
	sex, sexual orientation, gender identity, age, marital status,	sex, sexual orientation, gender identity, age, marital status,
	religious creed, color, national origin, or disability, or because	religious creed, color, national origin, or disability, or because
	the person intends to occupy a dwelling with one or more	the person intends to occupy a dwelling with one or more
	minor children, or because the person is a recipient of public	minor children, or because the person is a recipient of public
	assistance, or because the person is a victim of abuse, sexual	assistance, or because the person is a victim of abuse, sexual
	assault, or stalking.	assault, or stalking.
	(B) Notwithstanding any judicial precedent to the	(B) Notwithstanding any judicial precedent to the
	contrary, harassing conduct need not be severe or pervasive to	contrary, harassing conduct need not be severe or pervasive to
	be unlawful pursuant to the provisions of this chapter. In	be unlawful pursuant to the provisions of this chapter. In
	determining whether conduct constitutes unlawful	determining whether conduct constitutes unlawful
	harassment:	harassment:

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	(i) The determination shall be made on the basis	(i) The determination shall be made on the basis
	of the record as a whole, according to the totality of the	of the record as a whole, according to the totality of the
	circumstances, and a single incident may constitute unlawful	circumstances, and a single incident may constitute unlawful
	harassment.	harassment.
	(ii) Incidents that may be harassment shall be	(ii) Incidents that may be harassment shall be
	considered in the aggregate with varying types of conduct and	considered in the aggregate with varying types of conduct and
	conduct based on multiple characteristics viewed in totality,	conduct based on multiple characteristics viewed in totality
	rather than in isolation.	rather than in isolation.
	(iii) Conduct may constitute unlawful	(iii) Conduct may constitute unlawful
	harassment, regardless of whether:	harassment, regardless of whether:
	(I) the complaining person is the person being	(I) the complaining person is the person being
	harassed;	harassed;
	(II) the complaining person acquiesced or	(II) the complaining person acquiesced or
	otherwise submitted to or participated in the conduct;	otherwise submitted to or participated in the conduct;
	(III) the conduct is also experienced by others	(III) the conduct is also experienced by others
	outside the protected class involved in the conduct;	outside the protected class involved in the conduct;
	(IV) despite the conduct, the complaining	(IV) despite the conduct, the complaining
	person was able to:	person was able to:
	(aa) use the place of public accommodation	(aa) use the place of public accommodation
	or any of the accommodations, advantages, facilities, or	or any of the accommodations, advantages, facilities, or
	privileges of the place of public accommodation; or	privileges of the place of public accommodation; or
	(bb) enjoy the benefit of applicable terms,	(bb) enjoy the benefit of applicable terms,
	conditions, privileges, or protections in the sale or rental of	conditions, privileges, or protections in the sale or rental of
	the dwelling or other real estate, or to obtain services or	the dwelling or other real estate, or to obtain services or
	<u>facilities in connection with the dwelling or other real estate;</u>	<u>facilities in connection with the dwelling or other real estate;</u>
	(V) the conduct resulted in a physical or	(V) the conduct resulted in a physical or
	psychological injury; or	psychological injury; or
	(VI) the conduct occurred outside the place of	(VI) the conduct occurred outside the place of
	public accommodation or the dwelling or other real estate.	public accommodation or the dwelling or other real estate.
	(C) Behavior that a reasonable person with the same	(C) Behavior that a reasonable person with the same
	protected characteristic would consider to be a petty slight or	protected characteristic would consider to be a petty slight or
	trivial inconvenience shall not constitute unlawful harassment	trivial inconvenience shall not constitute unlawful harassment
	or discrimination pursuant to this chapter.	or discrimination pursuant to this chapter.
	(D) The provisions of this subdivision (12) shall not	

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	apply to any action brought under this chapter pursuant to the	
	provisions of 16 V.S.A. § 570f.	