Gelijke toegang tot de arbeid voor gehandicapten; een grondrechtelijke en rechtsvergelijkende analyse
Hendriks, A.C

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**Selectie van Amerikaanse (Grond)wetsbepalingen**

1. **Constitutie (1787) en latere amendementen**

   *Commerce clause (Art. 1, sec. 8, sub 3):*
   
   The Congress shall have the power to regulate commerce with foreign nations, and among the several states, and with Indian tribes.

   *Amendment V (1791):*
   
   No person shall be held to answer for capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

   *Amendment XIV, sec. 1 (1868):*
   
   All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

   *Amendment XVI (1913):*
   
   The Congress shall lay and collect taxes on incomes, from whatever sources derived, without apportionment among the several States, and without regard to any census or enumeration.

2. **Civil Rights Act (1964)**

   *Section 2000e [Sec. 701] – Definitions*
   
   For the purposes of this subchapter—
   
   (b) The term ‘employer’ means a person engaged in industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current of preceding calendar year ...
(g) The term ‘commerce’ means trade, traffic, commerce, transportation, transmission, or communication among the several States; or any State and any place outside thereof; or within the district of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

... (j) The term ‘religion’ includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.

Section 2000e-2 [Sec. 703] – Unlawful employment practices

(a) It shall be an unlawful employment practice for an employer –

(1) to fail or to refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual’s race, color, religion, sex, or national origin.

... (d) It shall be an unlawful employment practice for any employer, labor organization, or joint management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

(e) Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees ... or ... to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, ...

(f) As used in this subchapter, the phrase ‘unlawful employment practice’ shall not be deemed to include any action or measure taken by an employer ... with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Act of 1950 [50 USC 781 et seq].

(g) Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual in any position, for an employer to discharge any individual from any position, ... if

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed,
is subject to any requirement imposed in the interest of the national security of
the United States under any security program in effect pursuant to or administered
under any statute of the United States or any executive order of the President;
and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Notwithstanding any other provision of this subchapter, it shall not be an
unlawful employment practice for an employer to apply different standards of
compensation, or different terms, conditions, or privileges of employment pursuant
to a bona fide seniority or merit system, or a system which measures earnings
by quantity of production or to employees who work in different locations, pro-
vided that such differences are not the result of an intention to discriminate on
the basis of race, color, religion, sex, or national origin. It shall not be an unlawful
employment practice under this subchapter for an employer to differentiate upon
the basis of sex in determining the amount of wages or compensation paid or to
be paid to employees of such employer if such differentiation is authorized by
the provision of section 206(d) of title 29 [section 6(d) of the Fair Labor Standards
Act of 1938, as amended].

(i) Nothing contained in this subchapter shall apply to any business or enterprise
on or near an Indian reservation with respect to any publicly announced employ-
ment practice of such business or enterprise under which a preferential treatment
is given to such individual because he is an Indian living on or near a reservation.

(j) Nothing contained in this subchapter shall be interpreted to require any
employer ... to grant preferential treatment to any individual or group because of
the race, color, religion, sex, or national origin of such individual or group on
account of an imbalance which may exist with respect to the total number or
percentage of persons of any race, color, religion, sex, or national origin employed
by an employer ... or admitted to, or employed in, any apprenticeship or other
training program, in comparison with the total number or percentage of persons
of such race, color, religion, sex, or national origin in any community, State,
section, or other area, or in the available work force in any community, State,
section, or other area.

(k) (1) (A) An unlawful employment practice based on disparate impact is estab-
lished under this title only if–

(i) a complaining party demonstrates that a respondent uses a particular em-
ployment practice that causes a disparate impact on the basis of race, color, re-
ligion, sex or national origin and the respondent fails to demonstrate that the
challenged practice is job related for the position in question and consistent with
business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph
(c) with respect to an alternative employment practice and the respondent refuses
to adopt such alternative employment practice.

(B) (i) With respect to demonstrating that a particular employment practice
causes a disparate impact as described in subparagraph (A) (i), the complaining
party shall demonstrate that each particular challenged employment practice causes
disparate impact, except that if the complaining party can demonstrate to the court
that the elements of a respondent’s decisionmaking process are not capable of separation for analysis, the decisionmaking process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(c) The demonstration referred to by subparagraph (A) (ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of 'alternative employment practice'.

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this title.

(3) Notwithstanding any other provision of this title, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 USC 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health professional, or any other use or possession authorized by the Controlled Substances Act [21 USC 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment practice under this title only if such rule is adopted or applied with the intent to discriminate because of race, color, religion, sex, or national origin.

... Section 2000e-5 [Sec. 706] – Enforcement provisions

(g) (1) If the court finds that the respondent has intentionally engaged in or intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring employees, with or without back pay (payable by the employer ... responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of the charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall be operate to reduce the back pay otherwise allowable.

3 Rehabilitation Act (1973)

Section 791 [Sec. 501] – Employment of individuals with disabilities

... (b) Federal agencies; affirmative action program plans
Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch shall, within one hundred and eighty days after September 26, 1973, submit to the Commission
and to the Committee an affirmative action program for the hiring, placement, and advancement of individuals of disabilities in such department, agency, or instrumentality. Such plan shall include a description of the extent to which and methods whereby the special needs of employees who are individuals with disabilities are being met. Such plan shall be updated annually and approved by the Commission, if the Commission determines, after consultation with the Committee, that such plan provides sufficient assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for individuals with disabilities.

Section 793 [Sec. 503] – Employment under Federal contracts

(a) Amount of contracts or subcontracts; provisions for employment and advancement of qualified individuals with disabilities; regulations
Any contract in excess of $10,000 entered into by any Federal department or agency for the procurement of personal property and nonpersonal services (including construction) for the United States shall contain a provision requiring that the party contracting with the United States shall take affirmative action to employ and advance in employment qualified individuals with disabilities. The provisions of this section shall apply to any subcontract in excess of $10,000 entered into by a prime contractor in carrying out any contract for the procurement of personal property and non personal services (including construction) for the United States. The President shall implement the provisions of the section by promulgating regulations within ninety days after September 26, 1973.

Section 794 [Sec. 504] – Nondiscrimination under Federal grants and programs

(a) Promulgation of rules and regulations
No otherwise qualified individual with a disability in the United States, as defined in section 706(8) of this title, shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Development Disabilities Act of 1978. Copies of such proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committee.

Section 12101 [Sec. 2] – Findings and purposes

4 Americans with disabilities Act (1990)
(b) Purpose. – It is the purpose of this chapter--
   (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;
   (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;
   (3) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of individuals with disabilities; and
   (4) to involve the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.

Section 12102 [Sec. 3] – Definitions
As used in this chapter:
...
(2) Disability. – The term ‘disability’ means, with respect to an individual--
   (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual.
   (B) a record of such impairment; or
   (C) being regarded as having such an impairment.

Section 12111 [Sec. 101] – Definitions
As used in this subchapter:
...
(2) Covered entity. – The term ‘covered entity’ means an employer, employment agency, labor organization, or joint labor-management committee.
(3) Direct threat. – The term ‘direct threat’ means a significant risk to the health and safety of others which cannot be eliminated by reasonable accommodation.
...
(5) Employer. –
   (A) In general. – The term ‘employer’ means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or receding year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or receding year, and any agent of such person.
   (B) Exceptions. – The term ‘employer’ does not include--
      (i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or
      (ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.
...
(8) Qualified individual with a disability. – The term ‘qualified individual with a disability’ means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation. – The term ‘reasonable accommodation’ may include:

(A) making existing facilities used by employers readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship. –

(A) In general. – The term ‘undue hardship’ means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered. – In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include:

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

Section 12112 [Sec. 102] – Discrimination

(a) General rule. – No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) Construction. – As used in subsection (a) of this section, the term ‘discriminate’ includes:
(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of a disability of such applicant or employee;

(2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity’s qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (...);

(3) utilizing standards, criteria, or methods of administration
   (A) that have the effect of discrimination on the basis of disability; or
   (B) that perpetuate the discrimination of others who are subjected to common administrative control;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5) (A) not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the covered entity; or
   (B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairment of the employee or applicant;

(6) using qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such applicant or employee (except where such skills are the factors that such test purports to measure).

(d) Medical examinations and inquiries. –

(1) In general. – The prohibition against discrimination as referred to in subsection (a) of this section shall include medical examinations and inquiries.

(2) Preemployment. –
   (A) Prohibited examination or inquiry. – Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.
(B) Acceptable inquiry. - A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination. - A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry. -

(A) Prohibited examinations and inquiries. - A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries. - A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement. - Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

Section 12113 [Sec. 103] - Defenses

(a) In general. - It may be a defense to a charge of discrimination under this Act that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished by reasonable accommodation, as required under this subchapter.

(b) Qualification standards. - The term 'qualification standards' may include a requirement that an individual shall not pose a direct threat to the health and safety of other individuals in the workplace.
Section 12116 [Sec. 106] – Regulations
Not later than 1 year after the date of enactment of this Act, the Commission shall issue regulations in an accessible format to carry out this title in accordance with subchapter II of chapter 5 of title 5, United States Code.

Section 12117 [Sec. 107] – Enforcement
(a) Powers, remedies, and procedures. – The powers, remedies, and procedures set forth in sections 705, 706, 707, 709, and 710 of the Civil Rights Act of 1964 (42 USC 2000e-4, 2000e-5, 2000e-5, 2000e-8, and 2000e-9) shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any other person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 106, concerning employment.

Section 12201 [Sec. 501] – Construction
(a) In general. – Except as otherwise provided in this chapter, nothing in this chapter shall be construed to apply to a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 USC 790 et seq.) or to the regulations issued by Federal agencies pursuant to such title.

Section 12211 [Sec. 511] – Definitions
(a) Homosexuality and bisexuality. – For the purposes of the definition of ‘disability’ in section 3(2), homosexuality and bisexuality are not impairments as such and as such are not disabilities under this chapter.
(b) Certain conditions. – Under this chapter, the term ‘disability’ shall not include—
   (1) transvestism, transsexuality, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments and other sexual behavior disorders;
   (2) compulsive gambling, kleptomania, or pyromania; or
(c) psychoactive substance use disorders resulting from current illegal use of drugs.

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