

Works Contractor Registration to the Department may satisfy the requirements of (c)10 and 11 above by certifying and possessing documentation to establish that the contractor has applied to the USDOL for approval of a registered apprenticeship program for each craft that the contractor employs; or that a labor union with which the contractor is signatory to a collective bargaining agreement has applied to the USDOL for approval of a registered apprenticeship program for each craft that the contractor employs; or that an industry association or consortium of businesses of which the contractor is a member in good standing has applied to the USDOL, for approval of a registered apprenticeship program for each craft that the contractor employs.

(j) Pursuant to 29 CFR 29.6, every registered apprenticeship program must have at least one registered apprentice, except for the following specified periods of time, which may not exceed one year:

1. Between the date when a program is registered and the date of registration for its first apprentice(s); or
2. Between the date that a program graduates an apprentice and the date of registration for the next apprentice(s) in the program.

## LAW AND PUBLIC SAFETY

### (a)

#### DIVISION ON CIVIL RIGHTS

##### Rules of Practice and Procedure

**Adopted Amendments: N.J.A.C. 13:4-1.1, 1.3, 1.4, 1.6, 2 through 9, 10.1, 10.2, 11.1, 12, 13.1, and 13.2**

**Adopted New Rules: N.J.A.C. 13:4-1.7, 1.8, and 7.5**

**Adopted Repeal: N.J.A.C. 13:4-13.3**

Proposed: August 17, 2020, at 52 N.J.R. 1597(a).

Adopted: November 2, 2020, by the New Jersey Division on Civil Rights, Rachel Wainer Apter, Director.

Filed: November 4, 2020, as R.2020 d.129, **without change**.

Authority: N.J.S.A. 10:5-8, 10:5-12, 10:5-18, and 34:11B-16.

Effective Date: December 7, 2020.

Expiration Date: June 28, 2025.

##### Summary of Public Comment and Agency Response:

The official comment period ended on October 16, 2020. **No comments were received.**

##### Federal Standards Statement

The adopted amendments, new rules, and repeal do not impose standards beyond those required by Federal law. The Division on Civil Rights (DCR) maintains a work-sharing agreement with the U.S. Equal Employment Opportunity Commission (EEOC) and many charges are dual-filed with DCR and EEOC. The DCR's rulemaking to remove provisions permitting nonparties to access complaints and answers in the investigative file makes this chapter consistent with Federal practice, where the EEOC is prohibited from making charges filed with the agency available to the public.

**Full text** of the adoption follows:

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 13:4-1.1 Scope of rules

The following provisions shall constitute the practice and procedure of, and shall govern all proceedings, in the Division on Civil Rights. When a case is transmitted to the Office of Administrative Law, or the Director elects to hear the contested case, the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, shall govern proceedings in that case. Whenever this chapter refers to procedures to be followed after transmittal to the Office of Administrative Law, such references shall also be deemed to apply to instances where the Director elects to hear a contested case pursuant to N.J.S.A. 52:14F-8.

##### 13:4-1.3 Practice where rules do not govern

(a) The Director may rescind, amend, or expand this chapter from time to time, as necessary, to comply with the Law Against Discrimination, N.J.S.A. 10:5-1 et seq., or the Family Leave Act, N.J.S.A. 34:11B-1 et seq., and such new rules shall be filed with the Office of Administrative Law.

(b) In any matter that arises not governed by this chapter, the Director shall exercise their discretion.

##### 13:4-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Administrative law judge" means any person appointed pursuant to N.J.S.A. 52:14F-4 or 52:14F-5(m) and assigned by the Director of the Office of Administrative Law to preside over contested cases and other proceedings.

"Director" means the Director of the Division on Civil Rights who shall act for the Attorney General of New Jersey as chief executive officer of the Division in their place and with their powers.

"Electronically" means through the New Jersey Civil Rights and Bias Incident System (NJCRBIS), available at [www.njcivilrights.gov](http://www.njcivilrights.gov), or through another electronic means specified by the Director.

"Investigator" means any employee of the Division designated by the Civil Service Commission as "Investigator, Division on Civil Rights" or any person designated by the Director to perform investigative tasks.

"Office of the Division" means the offices located at 31 Clinton Street, Newark, New Jersey; 140 East Front Street, Trenton, New Jersey; 1325 Boardwalk, Atlantic City, New Jersey; 5 Executive Campus, Cherry Hill, New Jersey; and any additional offices that may from time to time be established and listed on the Division's website, [www.njcivilrights.gov](http://www.njcivilrights.gov).

"Position statement" means a legal brief or other writing that, in narrative fashion, responds to the allegations in a verified complaint, as well as explains the respondent's version of the facts and identifies specific documents and witnesses supporting its position.

##### 13:4-1.6 Attorneys; form of appearance on behalf of parties

(a) An attorney may appear on behalf of a party by completing a Division Notice of Appearance form electronically or by providing all of the information requested on such form in a letter or similar document. The Notice of Appearance form is available from the Division's offices or its website, [www.njcivilrights.gov](http://www.njcivilrights.gov). To constitute an appearance, a form, letter, or document shall contain the names of the parties, the Division's docket number, the name of the party or parties that the attorney is representing and the attorney's address, telephone number, facsimile number, and email address.

(b) If the attorney has consented to electronic service and filed the Notice of Appearance form electronically, nothing further shall be required of the attorney. If the attorney has not consented to electronic service or has not completed the Notice of Appearance form electronically, any document constituting an appearance shall be personally signed by the attorney filing the appearance and the attorney shall serve a physical copy of the document on the other party pursuant to the procedure set forth at N.J.A.C. 13:4-7.6 within three calendar days of filing.

(c) If a party appears through an attorney, all documents subsequent to the verified complaint may be served, as provided in this chapter, upon such attorney with the same force and effect as though served on the client, unless a specific rule requires service on the client also.

(d) An attorney who seeks to withdraw their appearance shall submit a Notice of Withdrawal of Appearance form to the Division electronically, by mail, or in person. Copies of this form are available from the Division's offices or its website.

(e) If the attorney has submitted the Notice of Withdrawal electronically, nothing else shall be required of the attorney. If the attorney has not submitted the Notice of Withdrawal form electronically, upon filing of the hard copy Notice of Withdrawal of Appearance form, the attorney shall concurrently serve copies of the Notice of Withdrawal of

Appearance form upon the client and other parties. The attorney shall include a certification that a copy of the notice was mailed or delivered to all counsel and pro se parties and to the client. When an attorney seeks to withdraw after a verified complaint has been transmitted to the Office of Administrative Law, the request for withdrawal shall be addressed to the administrative law judge pursuant to the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

#### 13:4-1.7 Electronic registration with the Division and consent to electronic service

(a) Any employer, housing provider, or place of public accommodation may register with the Division electronically and identify an individual to electronically accept service in connection with any complaint filed with the Division by providing the name, email address, and phone number for the individual authorized to accept service. When the Division receives a complaint against a respondent that has not so registered, the Division will attempt to find the information above, including by contacting the respondent, and will ask the respondent to register with the Division electronically. For any respondent registered with the Division electronically, the Division shall serve any verified complaint and all other filings electronically, and the respondent may respond to the complaint and other inquiries by the Division electronically.

(b) Any complainant may register with the Division electronically by providing their name, email address, and phone number. For any complainant registered with the Division electronically, the Division shall serve all filings electronically.

(c) When a complainant or respondent has registered with the Division electronically and submits any document to the Division electronically, it need not serve a physical copy of the document on the other party pursuant to the procedure set forth at N.J.A.C. 13:4-7.6.

#### 13:4-1.8 Computation of time

Unless otherwise provided in a specific rule, in computing any period of time fixed by this chapter, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or State or Federal holiday, in which case the period runs until the end of the next day which is neither a Saturday, Sunday, nor State or Federal holiday. In computing a period of time of less than seven days, Saturday, Sunday, and State or Federal holidays shall be excluded.

### SUBCHAPTER 2. COMMENCEMENT OF ACTIONS

#### 13:4-2.1 Manner of commencing actions

Any action may be commenced by the filing of a verified complaint with the Division.

#### 13:4-2.2 Who may file a verified complaint

(a)-(d) (No change.)

(e) The Director on their own behalf may file a verified complaint or may intervene or join as a complainant in any verified complaint pending before the Division.

#### 13:4-2.3 Rights of parties; notification of settlement

(a) (No change.)

(b) The proceeding initiated by any verified complaint shall, if the Director finds the continuation of the proceeding is in the public interest, proceed to conclusion, including the issuance of any lawful order by the Director, even if the grievances of any complainant or individual person represented by the above complainants have been satisfactorily ameliorated.

(c)-(d) (No change.)

(e) Complainants and respondents shall electronically, or by other means, provide the Division with their address, telephone number, and email address in connection with the filing of any complaint, and promptly notify the Division of any change in address, telephone number, or email address at all times until the time for an appeal of a final order has expired.

#### 13:4-2.4 Preparation and contents of verified complaint

(a) (No change.)

(b) The Division shall aid the complainant in the completion of the verified complaint, except where aid is refused by the complainant or

where the complainant submits a completed and signed verified complaint. The Division reserves the right to modify any verified complaint completed by the complainant to meet the Division's jurisdictional and formatting requirements.

(c) (No change.)

(d) The verified complaint shall set forth in separate numbered paragraphs the following:

1. The full name of all complainants;

2.-4. (No change.)

5. A statement giving all pertinent facts as to whether any other action, either criminal or civil, has been instituted in the matter. A complainant shall notify the Division if at any time during the pendency of the verified complaint, they file a complaint with any other agency or court concerning the matter that is the subject of the verified complaint;

6. A verification by the person or persons filing the verified complaint that the information provided is true and accurate; and

7. (No change.)

#### 13:4-2.5 Time period for filing verified complaints

Verified complaints shall be filed within 180 calendar days after the alleged act of discrimination or alleged violation of the Family Leave Act.

#### 13:4-2.6 How to file verified complaints

(a) Any person filing a verified complaint with the Division may file by submitting a signed verified complaint to the Division electronically, by regular mail, or in person at any office of the Division. A verified complaint shall be deemed filed on the date it is received by the Division. Any complaint that is submitted electronically may be signed electronically as well.

(b) The filing of a verified complaint or any other pleading shall be proven by the time it was submitted electronically, or, for filings submitted by regular mail or in person, the official stamp of the Division or by the signature of any official, employee, or investigator and their written notation indicating the date of receipt.

#### 13:4-2.7 Notification of filing

Upon, or before, receipt of a verified complaint, the Division shall provide the complainant with written information that notifies the complainant of their rights under the Law Against Discrimination or Family Leave Act, including the right to file a verified complaint in the Superior Court of New Jersey and be heard before a jury; the jurisdictional limitations of the Division; and any other provisions of the Law Against Discrimination or Family Leave Act that may apply to the verified complaint. The jurisdictional limitations of the Division include the limitation of the Division on Civil Rights to only administer claims under the Law Against Discrimination or Family Leave Act, and the inability of the Division on Civil Rights to afford parties the opportunity of a jury trial in claims heard before the Office of Administrative Law. If the complainant is registered with the Division electronically, such notice may be provided electronically.

#### 13:4-2.8 Service of verified complaints

(a) Upon receipt of a verified complaint, the Division shall promptly serve a copy on all respondents electronically, by certified mail or overnight delivery by commercial courier, or at the discretion of the Director, by personal delivery by an agent of the Division. In cases involving alleged violations of N.J.S.A. 10:5-12.g, h, i, k, and o, service of the verified complaint shall take place no later than 30 calendar days following the Division's receipt of the verified complaint.

(b) (No change.)

#### 13:4-2.9 Amendment of verified complaints

(a)-(e) (No change.)

(f) At any time prior to the transmittal of a matter to the Office of Administrative Law, the Director may on their own initiative amend any complaint to correctly identify the parties and/or clarify any claims made in the complaint to conform to the evidence. Any such amendment shall relate back to the date of the filing of the original complaint.

13:4-2.10 Verified complaints involving minors or other confidential information; use of pseudonym

(a) The Division shall take two verified complaints with the same docket number when the verified complaint involves a minor or when the Director determines, in their sole discretion, that the verified complaint involves confidential information regarding a party or witness. The first verified complaint shall include the full name of the aggrieved party and the full name of any other minor identified in the complaint and shall not be disclosed, except as required by law. The second verified complaint shall be identical to the first, except that a pseudonym shall be substituted for the name of the aggrieved party and/or any other identified minor, party, or witness.

(b) (No change.)

SUBCHAPTER 3. ANSWERS

13:4-3.1 Time for filing answers and position statements

(a) Respondents shall file an answer, position statement, and response to any Document and Information request with the Division within 20 calendar days after service of the verified complaint and any Document and Information Request.

(b) Respondents that fail to file an answer, position statement, and/or response to the Document and Information Request within the time period provided by this chapter are subject to a demand by subpoena, and/or entry of default in accordance with the procedure set forth at N.J.A.C. 13:4-5.

(c) Extensions of time for filing an answer, position statement, and/or responding to the Document and Information Request may be authorized by the Director upon good cause shown. Requests for extensions of time shall be submitted electronically or by mail.

13:4-3.2 Form and content of answers and position statements

(a) The answer to the verified complaint shall fully and completely advise the parties and the Division as to the nature of the respondent's defenses to each claim asserted, and shall admit or deny each allegation set forth in the verified complaint. Denials shall fairly meet the substance of the allegations denied. A respondent who intends, in good faith, to deny only part or a qualification of an allegation shall specify so much of it as true and material and deny only the remainder. The respondent may not generally deny all the allegations but shall make the denials as specific denials of designated allegations.

(b) (No change.)

(c) In addition to an answer to the verified complaint, respondents shall provide a position statement that explains, in narrative form, why the respondent believes that no violation of the Law Against Discrimination or Family Leave Act occurred, and a copy of each document and any other physical or electronic evidence necessary to support the facts, allegations, and defenses set forth in the position statement and answer.

(d) Respondents shall promptly notify the Division of any change in contact information, including mailing address, email address, phone number, and contact person, or other material change in the status of the respondent (such as bankruptcy filing or ceasing to operate as an ongoing concern) at all times until the time for an appeal of a final order has expired.

13:4-3.3 Service of answers and position statement

(a) If the respondent has consented to electronic service and filed the answer, position statement, and response to any Document and Information request with the Division electronically, the respondent shall not be required to serve a physical copy on the complainant. If the respondent has not consented to electronic service or has filed the answer, position statement, and response to any Document and Information request with the Division by mail, the respondent shall serve a physical copy of their answer and position statement on the complainant(s) pursuant to the procedure set forth at N.J.A.C. 13:4-7.6 within three calendar days of the filing of the answer.

(b) If service on the complainant is required pursuant to (a) above, respondents shall, within five business days of serving an answer, file a certification with the Division attesting that such service has been completed.

SUBCHAPTER 4. INVESTIGATIONS

13:4-4.1 Timing of investigations

(a)-(b) (No change.)

(c) In cases dual-filed with the Federal Department of Housing and Urban Development (HUD) involving alleged violations of N.J.S.A. 10:5-12.g, h, i, k, and o, unless it is impracticable to do so, the Division shall complete its investigation within 100 calendar days after the filing of the verified complaint. If the Division is unable to complete the investigation within that time period, it must notify the complainant(s) and respondent(s) in writing of the reasons for the delay.

13:4-4.2 Investigatory procedures

(a) In the conduct of investigations, all investigatory powers granted by N.J.S.A. 10:5-8.h through j shall be available to the Division. In its discretion, the Division may conduct investigations using any investigatory tool deemed appropriate, including, but not limited to, interrogatories, fact finding conferences, subpoenas, field visits, interviews, and depositions.

(b)-(c) (No change.)

(d) In connection with an investigation of any employer, as defined by N.J.S.A. 10:5-5.e, the Division may require the submission of any information or documents deemed appropriate, including, but not limited to, information concerning:

1.-6. (No change.)

13:4-4.3 Interrogatories

The Director may cause interrogatories to be served to aid the Division in its investigation. Unless otherwise specified in the interrogatories, responses shall be filed with the Division within 20 calendar days following service of the interrogatories.

13:4-4.4 Subpoenas

(a) The Director may issue such subpoenas as they deem necessary to aid the investigatory process. The Director shall issue subpoenas in the name of the Division, and the subpoenas shall direct the person designated to attend personally and, if necessary, to attend with any books, records, documents, electronic records, and any other evidence that relates to any matter under investigation.

(b)-(c) (No change.)

(d) Where a respondent is represented by an attorney who has filed a notice of appearance, the Director may issue a notice in lieu of subpoena requiring the respondent to produce documents or to produce its employees to attend any investigatory proceeding. Said notice in lieu of subpoena shall be served upon the respondent's attorney in the manner set forth at (f) below.

(e) (No change.)

(f) The subpoena shall be served either electronically when the respondent or party to be served has consented to electronic service, or by personal service by any person 18 or more years of age by delivery of a copy of the subpoena to the person named in the subpoena, by overnight delivery by commercial courier, or by registered or certified mail, return receipt requested.

13:4-4.5 Depositions by Division and parties

(a) On written motion of any party prior to transmittal of a case to the OAL, the Director may order that the testimony of any witness residing within or without the State be taken by deposition in the manner prescribed by law for depositions in the New Jersey Court Rules. Such motion may be granted only if it sets forth:

1.-3. (No change.)

(b) In their discretion, the Director may allow the taking of a deposition to be contingent upon the payment of all costs associated therewith by the moving party.

(c)-(d) (No change.)

13:4-4.6 Enforcement of a request for deposition testimony, interrogatories, subpoenas, other investigatory orders

If any person shall fail to appear at the time designated in a subpoena, or shall fail to comply with an order of the Director for the taking of depositions, interrogatories, or other investigatory procedures, or shall fail to provide information as requested pursuant to a lawful investigation,

they shall be subject to the appropriate enforcement provisions of N.J.S.A. 10:5-8.i, 10:5-19, and 10:5-26, as well as the provisions of N.J.A.C. 13:4-5 and 6.

#### 13:4-4.7 Fact-finding conferences

(a) As part of its investigation and at the discretion of the Director, the Division may convene a fact-finding conference for the purpose of obtaining evidence, identifying the issues in dispute, ascertaining the positions of the parties, and, where appropriate, exploring the possibility of settlement. The fact-finding conference is not an adjudication of the merits of the verified complaint.

(b) The Division shall provide the parties with written notice of the time and place of the fact-finding conference. The notice shall identify the individuals requested to attend and the documents and other evidence each party is requested to provide within the specified time frame.

(c) The conference shall be conducted as follows:

1. The Division employee shall conduct and control the proceedings.
2. Upon prior notice to the Division, the parties may bring witnesses to the conference in addition to those whose attendance may be specifically requested by the Division, but the Division employee shall have discretion over which witnesses shall be heard and the order in which they are heard. The Division employee may exclude any witness or other person from the conference, except that one representative of each party or counsel shall be permitted to remain throughout. In the case of parties that are not individuals, the Division employee may limit attendance at the conference to one representative of each party and counsel.
3. (No change.)
4. A party may be accompanied at a fact-finding conference by their attorney or another representative, and by a translator, if necessary.
5. An attorney for a party who has not previously entered their appearance shall do so at the outset of the conference.
6. Because the fact-finding conference is a means of investigation and not a hearing on the merits of a case, the parties shall not be entitled to cross-examine witnesses. All questioning shall be conducted by the Division employee(s), unless at their discretion they permit questions to be asked by other persons present at the conference.
7. At the discretion of the Director, a fact-finding conference may be recorded by the Division. The recording shall become part of the Division's investigative file and discovery of the recording will be governed by N.J.A.C. 13:13.
8. During the conference, the Division employee may allow a recess to permit the parties to discuss settlement.
9. The Division will provide, and pay the costs of, appropriate auxiliary aids and services, such as qualified sign language interpreters or translators, when necessary for the Division employee to effectively communicate with a party or witness.

(d) Postponements of a fact-finding conference shall be subject to the following:

1. Parties are discouraged from requesting adjournments, and adjournments will be granted only for good cause shown. Requests for adjournments shall be submitted electronically or by mail, addressed to the regional manager. Except in extraordinary circumstances, requests for adjournments must be made upon notice to all parties at least 10 calendar days prior to the conference.
2. If a party fails to appear at a fact-finding conference without obtaining a postponement, the Division may proceed with the conference without the party.

(e) (No change in text.)

#### 13:4-4.8 Director's investigations

(a) The Director, pursuant to N.J.S.A. 10:5-6; 10:5-8.c, g, h, i, and j; 10:5-9.1; and 10:5-13, may initiate and conduct an investigation to determine whether any entity, organization, industry, groups of industries, business persons, or groups of business persons, or other persons or groups of persons are complying with the Law Against Discrimination or Family Leave Act.

(b) All investigatory and discovery powers that the Division may utilize as set forth in the Law Against Discrimination, the Family Leave Act, and in this chapter, including, but not limited to, the power to issue subpoenas, take depositions, and serve interrogatories, may be utilized in the discretion of the Director during a Director's investigation.

## SUBCHAPTER 5. DEFAULTS

### 13:4-5.1 Applicability of default procedure

(a) If a respondent fails to timely respond to a verified complaint, interrogatories, and/or a request for information or documents, and the respondent has not filed a timely motion to dismiss the complaint pursuant to N.J.A.C. 13:4-7.5, or timely motion to strike the request for information or documents, the Director may, at their discretion, initiate the default procedure set forth in this subchapter.

(b) In the event the respondent files a motion to strike the request for information or documents within the time set to answer such request, said motion shall be supported by affidavit and/or brief and shall be ruled upon by the Director on the motion papers without oral argument. If said motion is granted, the request for information or documents shall be stricken and if said motion is denied the Director shall then follow the default procedure set forth below or enter any other appropriate order. The filing of a motion to strike a request for information or documents shall toll the time for filing a response to such a request with the Division until such time as a decision on the motion is rendered.

### 13:4-5.2 Default procedure

(a) When the Director determines to initiate the default procedure due to failure of a respondent to file an answer, position statement, or response to a Document and Information request, the Division shall do so by serving the following notice and order:

"NOTICE is hereby given that a verified complaint has been served upon you charging you with a violation of the Law Against Discrimination (and/or Family Leave Act as is applicable). Pursuant to this Division's authority under N.J.S.A. 10:5-8(i), a verified complaint and/or request for information or documents (as is applicable) has/have been served upon you. The verified complaint and/or request for information or documents has/have not been answered and filed within the time as therein prescribed. Should you fail to fully answer and file the answer to verified complaint, position statement, and request for information or documents within 10 calendar days, a default shall be entered in this case. Said default shall constitute:

- (a) an admission that the verified complaint and/or request for information or documents, if answered, would have established facts consistent with the allegations set forth in the Complaint;
- (b) a waiver of your right to have the Division conduct further investigations, engage in conciliation efforts or hold a public hearing;
- (c) a suppression of any and all defenses to the allegations raised in or arising out of the complaint and/or the investigation; and
- (d) an entry of a finding against you.

THEREFORE it is on this \_\_\_\_ day of \_\_\_\_, \_\_\_\_, ORDERED:

1. Respondent(s) shall file an Answer to the verified complaint, a Position Statement, and to requests for information or documents previously served.

2. Respondent(s) shall file said Answer, Position Statement, and/or responsive information or documents where required on or within the tenth business day following the date of this order."

(b) If, after the expiration of the time period set forth by the Director in any Notice and Order served pursuant to (a) above, the respondent has failed to file an answer to the verified complaint, position statement, and/or to fully answer and file the request for information or documents with the Director, the Director shall order the entry of a default on the docket of the Division. The entry of such default shall:

1. Constitute a waiver of the respondent's right to an investigation, conciliation efforts, or public hearing on the merits;
2. (No change.)
3. With respect to any request for information or documents, deem that the requested evidence establishes facts in accordance with the allegations set forth in the complaint or arising out of the investigation.

(c) Any order for entry of default must be supported by an affidavit of a field investigator or other Division employee authorized by the Director. The affidavit shall recite:

1. That a verified complaint was filed by the complainant alleging a timely violation of the Law Against Discrimination or Family Leave Act;
2. (No change.)
3. That the respondent failed to file an answer to the verified complaint, position statement, and/or to respond to the request for information or

documents within the time required by the Director's order as it may have been extended, or the respondent has made a motion to strike the request for information or documents and following denial thereafter by the Director has failed to answer within the time required by the Director's order; and

4. That the respondent has been given notice of the consequences of failure to answer the verified complaint, submit a position statement, and/or to respond to request for information or documents.

(d) Within 10 calendar days after entry of default, the Director shall serve notice of the entry of default and supporting affidavit upon the respondent. The notice shall inform the respondent that the case will be transmitted to the OAL for hearing on a default basis and that transmittal will occur 20 calendar days after service on the respondent of the notice of entry of default. The notice shall also inform the respondent of the opportunity provided by N.J.A.C. 13:4-5.3 for petitioning the Director to vacate the entry of default.

(e) Twenty calendar days after the respondent is served with notice of the entry of default, the Director shall transmit the case to the OAL for the purpose of a hearing on the complainant's proofs of the allegation of discrimination on a default basis in accordance with N.J.A.C. 13:4-5.4. In lieu of transmittal to the OAL, the Director may elect to pursue an action in Superior Court pursuant to N.J.S.A. 10:5-13.

#### 13:4-5.3 Vacation of default

(a) Within 20 calendar days after service of the notice of default, and before transmittal of the case to the OAL, the respondent may petition the Director who may vacate entry of default and reopen the case for good cause shown. The respondent's assertion of good cause shall be in affidavit form and shall include the full and complete answer to the verified complaint, the respondent's position statement, and responses to all requests for information or documents.

(b) (No change.)

(c) If the Director vacates the entry of default at any time prior to the date of transmittal of the case to the OAL, the verified complaint shall instead proceed to an investigation pursuant to this chapter, and where appropriate, conciliation or public hearing as provided by this chapter.

(d) (No change.)

#### 13:4-5.4 Default hearing and final order

(a) At a default hearing, the proofs shall consist of the order of entry of default, supporting affidavits, and any other evidence proffered by the complainant, and the only cognizable issues shall be whether the facts alleged in the complaint or arising out of the investigation constitute a violation of the Law Against Discrimination and/or Family Leave Act, and if so, the amount of damages and other relief to be provided. No evidence proffered by the respondent on its liability for actions in the verified complaint shall be admitted or considered at the default hearing.

(b) (No change.)

(c) If a violation of the Law Against Discrimination and/or Family Leave Act is found by the Director, the final order shall require the respondent to take any affirmative action, in the judgment of the Director, is necessary to both eliminate any violations, make the complainant whole, and serve the public interest.

(d) (No change.)

### SUBCHAPTER 6. ADMINISTRATIVE DISMISSALS

#### 13:4-6.1 Administrative dismissals

(a) The Director may, in their discretion, administratively dismiss a verified complaint for reasons including, but not limited to, the following:

1.-5. (No change.)

6. The verified complaint, on its face, fails to state a claim for relief under the New Jersey Law Against Discrimination or Family Leave Act;

7. The failure by the complainant to accept reasonable offers to resolve the allegations in the verified complaint;

8. The likelihood of success on the merits after a full investigation and/or hearing; or

9. Whether the public interest is best served by the continuation of the proceedings.

(b) In determining whether to administratively dismiss a verified complaint pursuant to (a)7 above, the Director will take the following factors into account:

1. The likelihood of success on the merits after a full investigation and/or hearing;

2.-4. (No change.)

5. The evidence of the complainant's mental pain and suffering;

6.-7. (No change.)

(c) Prior to administratively dismissing a case pursuant to (a)7 above, the Director shall notify the complainant of the reason for the dismissal, and shall offer the complainant the opportunity, pursuant to N.J.S.A. 10:5-13, to have the Division transmit the action to the Office of Administrative Law, where the complainant may present the action personally or through their own counsel at the OAL proceedings. If the complainant does not request such transmittal of the case within 30 calendar days of service of the notice by the Division, the matter will be administratively dismissed. When a complainant files a request with the Division for transmittal pursuant to this section, the complainant thereby waives any right to have an attorney for the Division prosecute the verified complaint, and the other procedures and requirements set forth at N.J.A.C. 13:4-11.1 apply.

### SUBCHAPTER 7. MOTIONS AND OTHER CASE ACTIONS

#### 13:4-7.1 Motions

(a) The procedure governing all motions made prior to transmittal of a case to the Office of Administrative Law shall be in accordance with this chapter. Where this chapter fails to address an issue, reference may be made to the New Jersey Court Rules. After transmittal, the procedure shall be in accordance with N.J.A.C. 1:1.

(b) All complainants and respondents, as well as the Division, may file motions either electronically, by mail, or in person. A copy of the motion papers shall be served on the other party at the time of filing, except where the motion was filed electronically.

(c) Unless otherwise provided in this chapter, a party opposing a motion shall file opposing papers no later than 10 calendar days following receipt of the motion. The moving party may file its reply responding to any matter raised by the opposing party no later than five business days after receipt of the opposing papers. All papers shall be filed either electronically, by mail, or in person. A copy of all papers shall be served on the other party at the time of filing, except where the papers were filed electronically.

#### 13:4-7.2 Motions to intervene

(a) Prior to transmittal of a case to the Office of Administrative Law, any person interested in, or associated with, the matters alleged in a verified complaint may file an original and two copies of a motion to intervene and shall serve an additional copy on each respondent and complainant by registered or certified mail, return receipt requested.

(b)-(c) (No change.)

#### 13:4-7.3 Motions for consolidation or severance of verified complaint

(a) Whenever the Director deems it necessary, they may order that any verified complaint filed with the Division, and any proceedings that may have been initiated with respect thereto, be consolidated with, or severed from, any other verified complaint that may have been instituted with the Division.

(b) (No change.)

#### 13:4-7.4 Motions for reconsideration

(a) Any party may, within 30 calendar days after service of a finding of probable cause, no probable cause, or other final order of the Director, file a motion for reconsideration seeking review of the agency's decision and/or the reopening of the record for further investigation. The motion shall be in writing and state the grounds upon which relief is sought. The motion shall be filed electronically or shall be served upon all opposing parties in accordance with N.J.A.C. 13:4-7.6, following which each opposing party may, within 10 calendar days following service of the motion, file a response to the motion. The Director may grant such motion and vacate or modify the order, and/or reopen the record upon showing of the following:

1.-4. (No change.)

(b) (No change.)

#### 13:4-7.5 Motions to dismiss a complaint

Any motion to dismiss a complaint shall be supported by affidavit and/or brief. The opposing party may file an opposition to the motion to dismiss. The Director shall rule on the motion to dismiss on the papers, without oral argument. If said motion is granted, any request for information or documents may be withdrawn or modified as determined by the Director.

#### 13:4-7.6 Service of motions and other pleadings

(a) Prior to transmittal to the OAL, unless otherwise instructed by the Director, every motion and every written notice, brief, or memorandum of law shall be served by the filing party either electronically or by mailing copies to all parties within three calendar days of said filing.

(b) For documents not filed electronically, documents shall not be deemed served until an affidavit of mailing to all other parties is filed with the Division, by mail or in person, at the time of, or subsequent to, filing the pleading.

(c) When any party has appeared through, or is represented by, an attorney, service upon such attorney shall be deemed valid service upon the party in all cases, unless timely written notice of withdrawal or substitution of such attorney is served upon the Director and all other parties.

(d) (No change.)

### SUBCHAPTER 8. WITHDRAWAL OF COMPLAINTS

#### 13:4-8.1 Withdrawals

(a) (No change.)

(b) A withdrawal shall be filed electronically, by mail, or in person, on a form provided by the Division, and shall be signed by the complainant or the complainant's attorney.

(c) Withdrawal of an individual verified complainant shall not preclude the Director from substituting himself as, or continuing as, a complainant based on the same facts.

### SUBCHAPTER 9. CONCILIATION AND MEDIATION

#### 13:4-9.1 Timing of conciliation proceedings

(a) At any time beginning with the filing of the verified complaint and ending with the closure of the case, or 45 calendar days from the date of a finding of probable cause, the Division shall, to the extent feasible, commence conciliation proceedings, which may, at the discretion of the Director, include mediation conducted by a mediator designated by the Director with respect to the verified complaint.

(b) The Director may cease conciliation proceedings when a respondent has declared its unwillingness to participate in conciliation or where the Director determines that a respondent is not engaging in conciliation in good faith.

#### 13:4-9.2 Confidentiality of conciliation and mediation records

Settlement proposals or other information exchanged during a conciliation conference or mediation proceedings shall be kept confidential by all persons involved in the conciliation conference or mediation proceedings and shall not be admissible as evidence unless obtained from a source independent of the conciliation or mediation. Conciliation and mediation agreements shall be available to the public unless the parties otherwise agree and the Attorney General determines that disclosure is not required to further the purposes of the law or otherwise required by law.

#### 13:4-9.3 Mediation proceedings

(a)-(b) (No change.)

(c) If mediation is unsuccessful and the respondent has not yet filed an answer to the verified complaint or a position statement, such answer and position statement and the responses to any Document and Information Request must be filed within 20 calendar days of service of notice on the respondent that the matter is being transferred to the Bureau of Enforcement for further investigation.

(d) If the Director finds that there has been a breach of the mediation agreement, the Director may, in their discretion, reopen the verified complaint for investigation or seek to enforce the agreement.

#### 13:4-9.4 Conciliation conference proceedings

(a) After a finding of probable cause, the Director or their representative shall engage in conciliation with respect to the verified complaint and may, at the Director's discretion, direct that the respondent appear at a conciliation conference.

(b) The respondent shall have at least five calendar-days' notice of the time and place of any conciliation conference.

(c) The notice at (b) above shall contain a provision advising the respondent that in the event conciliation is unsuccessful, a public hearing will be held.

(d) Failure to attend the conciliation conference may, at the discretion of the Director, be deemed to be an unsuccessful attempt at conciliation.

(e) Any conciliation agreement arising out of conciliation efforts by the Division shall be an agreement between the parties and shall be subject to the approval of the Division.

(f) (No change.)

### SUBCHAPTER 10. ORDERS OF THE DIRECTOR

#### 13:4-10.1 Orders and findings of the Director

At any time during the course of the proceedings, the Director may enter such orders, including protective orders and orders of dismissal, as may be necessary to effectuate the processing and determination of a case as they may deem appropriate to further the intent and purposes of the Law Against Discrimination or Family Leave Act. When a case is pending before the OAL, the procedures set forth at N.J.A.C. 1:1 shall apply.

#### 13:4-10.2 Findings of probable cause

(a) (No change.)

(b) If the Director determines based upon a review of the investigative findings that there is a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person to believe that the Law Against Discrimination or Family Leave Act has been violated, they shall issue a finding of probable cause.

(c) If the Director determines based upon a review of the investigative findings that there is not a reasonable ground of suspicion supported by facts and circumstances strong enough in themselves to warrant a cautious person to believe that the Law Against Discrimination or Family Leave Act has been violated, they shall issue a finding of no probable cause.

(d) If the Director determines based upon a review of the investigative findings that probable cause exists as to some, but not all, of the allegations of the verified complaint, they shall issue an agency determination setting forth those issues to which the Director finds that probable cause exists and those issues to which the Director finds that no probable cause exists. Any subsequent hearing on the verified complaint shall be limited to those issues in which the Director determines that probable cause exists.

(e) (No change.)

(f) In any finding of probable cause or no probable cause the Director may, in their sole discretion, use a pseudonym in place of the full name of the complainant or any witness when the complainant or witness is a minor, or where identification of the complainant or witness would involve disclosure of confidential personal information or adversely affect the privacy interests of the complainant or witness.

### SUBCHAPTER 11. HEARINGS

#### 13:4-11.1 When hearings ordered

(a) (No change.)

(b) When the Director has determined pursuant to N.J.A.C. 13:4-10.2(b) or (d), that probable cause exists to credit the allegations of a verified complaint and conciliation has failed to eliminate the alleged practices of discrimination or when, in the judgment of the Director, conciliation would not be feasible, the Director shall order a hearing.

(c) At any time after 180 calendar days from the filing of a verified complaint with the Division, a complainant may file a request with the Division to present the action by themselves or through their own attorney

to the Office of Administrative Law. Such request shall be in writing and signed by the complainant or their attorney.

(d) (No change.)

(e) The complainant or their attorney may be required to complete any forms that may be necessary to permit the Division to transmit the case to the Office of Administrative Law.

(f) When the Director orders a hearing pursuant to (b) above, the attorney for the Division shall present the case in support of the verified complaint to the Office of Administrative Law. If the complainant does not wish to rely on the Division’s prosecution of the verified complaint, they may request to present the case by themselves or through their own attorney to the Office of Administrative Law pursuant to (c) above.

(g) (No change.)

SUBCHAPTER 12. PROTECTION OF COMPLAINANTS AND WITNESSES

13:4-12.1 Protection of witnesses; preventing reprisals

(a) No person shall discharge, evict, expel, or otherwise discriminate or take reprisals against any person because they have opposed any practices or acts forbidden under the Law Against Discrimination or Family Leave Act or because they have filed a complaint, testified, or assisted in any proceeding or investigation under the Law Against Discrimination or Family Leave Act.

(b) For the purposes of this section, all persons who have been, are, or will be the respondents in proceedings before the Division shall be considered to be within the continuing jurisdiction of the Division and shall be subject to appropriate order of the Director as in the case of an unlawful reprisal, including such interim orders as may be deemed necessary to preserve the status quo and to protect the best interests of the parties, as well as the public interest.

SUBCHAPTER 13. ACCESS TO DIVISION’S INVESTIGATORY FILES

13:4-13.1 Confidentiality of Division’s investigatory files

In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., as amended and supplemented, any other law, rules promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Executive Order of the Governor, Rules of Court, or any Federal law, Federal regulation, or Federal order, and except as otherwise set forth in this subchapter, the Division’s investigatory records shall be considered confidential and exempt from public access pursuant to N.J.S.A. 47:1A-1 et seq., other than any final agency disposition or any finding of probable cause.

13:4-13.2 Access to the Division’s investigatory files by parties to the verified complaint

(a) After a finding of probable cause has been issued by the Director, after transmittal to the OAL pursuant to N.J.S.A. 10:5-13, after any final determination has been issued, or after any other agency closure, a party to a verified complaint may, upon request and notice to all other parties, receive access to the following information in the Division’s investigatory file of that verified complaint:

1. Statements made by any party or witness during the course of the Division’s investigation;
2. All factual written reports, or sound recordings, made by the field investigator or other employee or agent of the Division memorializing any witness or party interview, fact-finding conference, or site visit; and
3. All documentary information submitted by either party or by any witness.

(b) Parties shall not be provided work product of Division employees or agents, any attorney work product, intra-agency communications, attorney-client communications, records pertaining to settlement discussions, or any other privileged material that may be contained in the Division’s investigative file.

(c) When a request for access to material in the Division’s investigative file seeks confidential or privileged material, or where the purpose of the request is to oppress any party or to delay the resolution of the case, the Director may refuse, terminate, or limit access as the circumstances

warrant, including issuance of protective orders. At the discretion of the Director, information that is deemed confidential and/or private may be redacted prior to disclosure.

(d) Nothing in this subchapter shall preclude the Division from showing a party or witness a document from the investigative file during the pendency of an investigation when deemed necessary by the Division to complete the investigation.

13:4-13.3 (Reserved)

**PUBLIC UTILITIES**

**(a)**

**BOARD OF PUBLIC UTILITIES**

**Wastewater System Improvement Charge**

**Adopted New Rules: N.J.A.C. 14:9-11**

Proposed: April 20, 2020, at 52 N.J.R. 875(a).

Adopted: October 28, 2020, by the New Jersey Board of Public Utilities, Joseph L. Fiordaliso, President; Mary-Anna Holden, Dianne Solomon, Upendra J. Chivukula, and Robert M. Gordon, Commissioners.

Filed: October 30, 2020, as R.2020 d.128, **with non-substantial changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 48:2-13, 20, and 24.

BPU Docket Number: WX19050614.

Effective Date: December 7, 2020.

Expiration Date: February 19, 2021.

**Summary of Public Comments and Agency Responses:**

Written comments were submitted by: New Jersey Division of Rate Counsel (Rate Counsel), New Jersey Utilities Association (NJUA), Utility and Transportation Contractors Association of New Jersey (UTCA), National Utility Contractors Association-New Jersey (NUCA-NJ), New Jersey Laborers’-Employers’ Cooperation and Education Trust (NJLECET), SUEZ Water New Jersey Inc. (SUEZ), and New Jersey American Water Company, which filed with its subsidiary Environmental Disposal Corporation (collectively, NJAW). The summaries of the comments and the Board of Public Utility’s (“BPU” or “Board”) responses follows:

**General Comments**

1. COMMENT: The commenters support implementation of the proposed Wastewater System Improvement Charge (WSIC). (NJUA, UTCA, NUCA-NJ, NJLECET, SUEZ, and NJAW)

RESPONSE: The BPU thanks the commenters for their comments and support of the proposed WSIC rule.

2. COMMENT: The commenters recommend that pump and lift stations be added as eligible projects for recovery under the proposed WSIC rule. (UTCA, NUCA-NJ, NJLECET, SUEZ, and NJAW)

RESPONSE: The BPU disagrees with this recommendation because, as with the current Distribution System Improvement Charge (DSIC) for the water industry, the proposed Wastewater System Improvement Charge (WSIC) is an initiative intended to create a regulatory mechanism that enables the accelerated level of investment needed to promote the timely rehabilitation and replacement of certain non-revenue producing, critical wastewater system components, in order to address an aging infrastructure.

The current DSIC does not allow recovery for pumps, as the maintenance and replacement of pumps is a routine and recurring expense made by utilities on a regular basis that should be recovered as a rate base expenditure in the context of a base rate case proceeding. The maintenance and replacement of pumps and lift stations is also a routine and recurring expense in the wastewater industry that should be recovered as a rate base expenditure in the context of a base rate case proceeding.