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New Jersey Administrative Code

Title 13

Law and Public Safety

Administrative Rules of the Division on Civil Rights

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE**

Title 13, Chapter 4 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

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

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2018 d.145, effective June 28, 2018.

See: 50 N.J.R. 889(a), 50 N.J.R. 1818(a).

CHAPTER HISTORICAL NOTE:

Chapter 4, Rules of Practice and Procedure, was adopted and became effective prior to September 1, 1969.

Subchapter 13, Proposed Findings and Final Order, was repealed by R.1985 d.697, effective January 21,

1986. See: 17 N.J.R. 2682(a), 18 N.J.R. 198(b).

Pursuant to Executive Order No. 66(1978), Chapter 4, Rules of Practice and Procedure, was readopted as R.1991 d.67, effective January 17, 1991. See: 22 N.J.R. 3689(a), 23 N.J.R. 608(a).

Pursuant to Executive Order No. 66(1978), Chapter 4, Rules of Practice and Procedure, was readopted as R.1996 d.42, effective December 20, 1995. See: 27 N.J.R. 4128(a), 28 N.J.R. 271(a).

Pursuant to Executive Order No. 66(1978), Chapter 4, Rules of Practice and Procedure, was readopted as R.2000 d.503, effective November 20, 2000. See: 32 N.J.R. 3716(a), 32 N.J.R. 4452(a).

Chapter 4, Rules of Practice and Procedure, was repealed and Chapter 4, Rules of Practice and Procedure, was adopted as new rules by R.2005 d.324, effective September 19, 2005. See: 37 N.J.R. 1138(a), 37 N.J.R. 3701(a).

Chapter 4, Rules of Practice and Procedure, was readopted as R.2011 d.073, effective January 28, 2011. See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 4, Rules of Practice and Procedure, was scheduled to expire on January 28, 2018. See: 43 N.J.R. 1203(a).

Chapter 4, Rules of Practice and Procedure, was readopted as R.2018 d.145, effective June 28, 2018. See: Source and Effective Date.

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Inserted "of," and a comma following "proceedings", and substituted "this chapter refers" for "these rules refer".

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 1. GENERAL PROVISIONS**

§ 13:4-1.2. Liberal construction of provisions

(a) These provisions shall be liberally construed by the Director to permit the Division on Civil Rights to discharge its statutory functions and to secure just and expeditious determinations of all matters before the Division on Civil Rights.

(b) The Director may, upon notice to all parties, in the interest of justice, relax the application of these rules.

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 1. GENERAL PROVISIONS**

§ 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In (a) and (b), substituted "this chapter" for "these rules"; in (a), added a comma following "amend", "time", and "necessary"; and in (b) substituted "their" for "his or her".

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 1. GENERAL PROVISIONS

§ 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.

"Aggrieved person" includes any person who:

1. Claims to have been injured by a discriminatory practice; or
2. Believes that such person will be injured by a discriminatory housing practice that is about to occur.

"Attorney for the Division" means an attorney appointed or assigned by the Attorney General of New Jersey.

"Complainant" means any person filing a verified complaint alleging discrimination under 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.

"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.

"Division" means the State Division on Civil Rights, Department of Law and Public Safety.

"Electronically" means through the New Jersey Civil Rights and Bias Incident System (NJCRBIS), available at 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.

"Investigatory files" means all pleadings, dispositions and orders relating to the verified complaint and all materials, documents, notes, statements, communications, including electronic communications, and

recorded proceedings made or received by the Division during the course of the Division's investigation of the verified complaint.

"Office of Administrative Law" or "OAL" refers to the agency created by N.J.S.A. 52:14F-1 et seq.

"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.

"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.

"Respondent" means any party charged with unlawful discrimination under 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.

History

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

In definition "Office of the Division", substituted "that" for "which" and updated the Division's web address.

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Added definitions "Electronically" and "Position statement"; rewrote definition "Administrative law judge" and "Investigator"; in definition "Director", substituted "their" for "his or her" twice; and in definition "Office of the Division" updated the addresses.

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 1. GENERAL PROVISIONS**

§ 13:4-1.5. Validity of rules if any portion declared invalid

If any rule, sentence, paragraph or section of these rules, or the application thereof to any persons or circumstances, shall be adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any rule shall lose its force and effect, such judgment or action shall not affect, impair or void the remainder of these rules.

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 1. GENERAL PROVISIONS**

§ 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. 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.

History

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

In (a), updated the Division's web address, substituted "that" for "which" following the second occurrence of "parties" and a comma for "and" preceding "facsimile", and inserted "and email address".

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Rewrote the section.

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 1. GENERAL PROVISIONS

§ 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.

History

HISTORY:

New Rule, R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 1. GENERAL PROVISIONS**

§ 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.

History

HISTORY:

New Rule, R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Substituted "with" for "at the offices or with any official or field investigator of".

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 2. COMMENCEMENT OF ACTIONS**

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

(a) Any aggrieved person, including any individual, or group of individuals, partnership, educational institution, association, labor organization, or corporation, may file, or through an attorney at law file, a verified complaint for any practice violative of the Law Against Discrimination or the Family Leave Act which affects the aggrieved person.

(b) Any legal guardian, legal representative, trustee, trustee in bankruptcy, receiver or fiduciary may file, or through an attorney at law file, a verified complaint for any practice violative of the Law Against Discrimination or the Family Leave Act which affects an aggrieved person that the individual represents.

(c) Groups and associations dedicated to the elimination of discrimination in the sale and rental of real property, in the hiring and promotional practices of employers and unions, and in the operation of public accommodations may file, or through an attorney at law file, a verified complaint for any practice violative of the Law Against Discrimination or Family Leave Act which affects the membership of the group or association or which adversely affects the mission of the group or association.

(d) The Attorney General, the Director, the Commissioner of Labor, or the Commissioner of Education may also file a verified complaint alleging unlawful discrimination.

(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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In (e), substituted "their" for "his or her", "complaint or may intervene" for "complaint, intervene," and "complaint pending before the Division" for "complaints filed by complainants".

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NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 2. COMMENCEMENT OF ACTIONS

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

- (a) Any complainant shall be considered a party to any proceeding in the Division resulting from the filing of such verified complaint and shall have the rights of a party enumerated by these rules and by the Law Against Discrimination and the Family Leave Act.
- (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) All complainants and individuals on whose behalf a verified complaint has been filed pursuant to (b) above and (d) below shall be notified of any settlement of individual grievances and of the right to file a motion urging the Director to continue the proceeding.
- (d) Where the Director has filed a verified complaint which seeks relief for one or more unnamed members of a protected class, the Director shall have the discretion to settle such verified complaint on such terms as the Director deems appropriate.
- (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.

History

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

In (b), substituted "The" for "If any complainant files a verified complaint with the Division on behalf of any individual or individuals, the" and "any" for "such".

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In (b), inserted "complainant or"; and rewrote (e).

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

- (a) A verified complaint shall be filed in a format approved by the Director.
- (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) The verified complaint shall be entitled in the Department of Law and Public Safety, Division on Civil Rights, and shall set forth in the caption the names of the complainants and respondents.
- (d) The verified complaint shall set forth in separate numbered paragraphs the following:
 - 1. The full name of all complainants;
 - 2. The full name and address of all respondents, if known;
 - 3. A brief statement setting forth the facts deemed to constitute the alleged discrimination, including the specific prohibited basis or bases that gave rise to the alleged discrimination;
 - 4. The section of the Law Against Discrimination or Family Leave Act allegedly violated;
 - 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. The county in which the alleged discrimination took place.

History

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

In (a), substituted "in a format" for "upon a printed form"; in (b), inserted a comma following the first occurrence of "complaint" and inserted the last sentence; deleted former (d)3; recodified (d)4 through (d)8 as (d)3 through (d)7; in (d)3, inserted ", including the specific prohibited basis or bases that gave rise to the alleged discrimination"; in (d)5, deleted "verified" preceding the second occurrence of "complaint" and substituted the final occurrence of "verified complaint" for "Verified Complaint"; and in (d)6, deleted "notarized signature and" preceding "verification".

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In (b), substituted "complainant submits a completed and signed" for "complainant appears at an office of the Division or before an officer of the Division with a completed"; in (d)1, deleted "and address" following "name"; in (d)5, substituted "they file" for "he or she files" and "that" for "which"; and in (d)6, inserted "that the information provided is true and accurate".

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§ 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Inserted "calendar".

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§ 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Rewrote the section.

▼ Annotations

Case Notes

Younger abstention applied to an association's claims that an investigation by the New Jersey Division on Civil Rights (DCR) into alleged discrimination by the association against couples who wished to hold civil union ceremonies violated the association's First Amendment rights; the DCR's proceedings were judicial in nature from the time a complaint was filed under N.J.A.C. 13:4-2.6, the elimination of prohibited discrimination was a sufficiently important state interest, and the DCR proceedings and the availability of judicial review afforded the association an adequate opportunity to raise its constitutional claims. *Ocean Grove Camp Meeting Ass'n of the United Methodist Church v. Vespa-Papaleo*, 339 Fed. Appx. 232, 2009 U.S. App. LEXIS 15741 (2009).

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§ 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Substituted "Upon, or before, receipt of a" for "Upon receipt of the", "written information that" for "a form adopted by the Director, which", and "their" for "his or her", and added the last sentence.

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§ 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) In its discretion, the Division may serve a Document and Information Request, interrogatories or any other type of discovery request along with the copy of the verified complaint.

History

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

In (b), inserted ", interrogatories or any other type of discovery request along".

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In (a), inserted "electronically," and "calendar", and updated the N.J.S.A. cites.

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§ 13:4-2.9 Amendment of verified complaints

- (a) Prior to transmittal of a case to the Office of Administrative Law, the complainant with the approval of the Director may file an amended verified complaint with the Division.
- (b) Amendments that cure technical defects, clarify or amplify allegations made in the original verified complaint, or allege additional acts which constitute unlawful practices related to or growing out of the subject matter of the original verified complaint, will relate back to the date the verified complaint was first received.
- (c) Following transmittal of a case to the Office of Administrative Law, any motion to amend a verified complaint shall be initially presented to the administrative law judge hearing the matter.
- (d) Using the standards set forth in the Uniform Administrative Procedure Rules, any pleading may be amended during or after hearing with leave of the administrative law judge to conform to the evidence presented.
- (e) If a complainant should die while a verified complaint is pending, an executor or administrator for the complainant's estate may file a motion to be substituted as the complainant.
- (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.

History

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

Added (e).

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Added (f).

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§ 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) The Division shall serve a copy of the pseudonym verified complaint prepared under this section upon any respondent named therein. Any service of a pseudonym verified complaint shall be accompanied by a notice informing the respondent that, upon review of the verified complaint, if the respondent is unable to identify with sufficient assurance the identity of the person filing the verified complaint or the aggrieved party or any other identified minor, the respondent shall notify the Division in writing not later than 10 days after the date the verified complaint is served. The respondent's notice shall also designate a person upon whom the Division shall serve a copy of the first verified complaint and other papers concerning the Division's investigation, and shall further contain an acknowledgment that any information provided by the Division or other person will be kept strictly confidential. Thereafter, upon receipt of a release from the complainant in cases where it is the aggrieved party that is identified by a pseudonym, the Division shall forward the verified complaint identifying the complainant, aggrieved party and/or other identified minor to the respondent along with a protective order prohibiting the

respondent from disclosing the identity of the complainant, aggrieved party and/or other identified minor.

Any violation of such a protective order will subject the violator to penalties pursuant to N.J.S.A. 10:5-14.1a.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In (a), substituted "their" for "his or her", "a party or witness" for "an aggrieved party", and ", party, or witness" for "and the address, if any, shall be that of the Division's office investigating the verified complaint or the address of an attorney or other representative designated by the complainant or aggrieved party", deleted "and address" following the first occurrence of "name", and inserted a comma following "disclosed".

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Section was "Time for filing answers". Rewrote the section.

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 3. ANSWERS

§ 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) Allegations in any answer setting forth an affirmative defense shall be taken as denied.

(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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Section was "Form and content of answers". In (a), substituted "each allegation" for "the allegations", and inserted a comma following "intends" and "faith"; added (c); recodified former (c) as (d); and rewrote (d).

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§ 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Section was "Service of answers". Rewrote the section.

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 4. INVESTIGATIONS**

§ 13:4-4.1 Timing of investigations

(a) An investigation by the Division may be commenced either prior to or subsequent to the filing of a verified complaint.

(b) Upon receipt of a verified complaint and answer, the Division shall promptly initiate an investigation into the allegations of discrimination.

(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.

History

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

In (a), substituted "commenced" for "conducted".

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In (c), inserted "dual-filed with the Federal Department of Housing and Urban Development (HUD)",

"unless it is impracticable to do so," , and "calendar", substituted "the delay" for "its failure to do so", and updated the N.J.S.A. cites.

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§ 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) During the pendency of the Division's investigation, only the Division may seek discovery from the parties.

(c) In connection with an investigation of the operation of any real property, as defined by N.J.S.A. 10:5-5n, the Division may require the submission of information concerning the protected classes or protected characteristics of the occupants of or applicants for such real property, the terms and conditions on which the sale or lease of said real property is to be made to the general public, the vacancy rate of such real property subject to rent, the plans for advertising or notifying the public of the availability of said real property for rental or sale, the standard form documents used in the rental or sale of such real property and such other information as may be reasonably necessary to carry out the provisions of the Law Against Discrimination.

(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. The protected classes or protected characteristics of employees or applicants;
2. The employment records of employees;
3. The procedures for advertising or notifying the public of the availability of jobs;

4. The procedures for hiring or selecting employees;
5. The testing, seniority, promotion and discharge procedures; and
6. Such other information as may be reasonably necessary to carry out the provisions of the Law Against Discrimination or Family Leave Act.

History

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

Section was "Investigatory Procedures". Rewrote (c) and (d)1.

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Rewrote (a) and the introductory paragraph of (d).

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 4. INVESTIGATIONS**

§ 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Inserted "calendar".

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 4. INVESTIGATIONS**

§ 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) A subpoena shall state the time and place where the person designated is directed to attend.

(c) A subpoena may be issued by the Director upon the application of any party if that party can demonstrate to the Director that the subpoena is reasonable, and that the matters sought therein are relevant and material to the investigation.

(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) Following transmittal of a case to OAL for hearing, the procedures set forth at N.J.A.C. 1:1, shall govern the issuance of subpoenas.

(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.

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

In (d), deleted "is a corporation and" following the first occurrence of "respondent" and "and (g)" following "(f)"; and deleted (g).

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In (a), substituted "they deem" for "he or she deems", and "that" for "which", and inserted ", electronic records,"; in (d), deleted "with the Division" following "appearance", inserted "the" preceding "respondent" and preceding "respondent's", and substituted "at" for "in"; and rewrote (f).

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§ 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. The name and address of the witness to be deposed;
2. A showing of the materiality of that witness's testimony; and
3. A showing that the witness will be unable to attend, or cannot be compelled to attend, any future proceeding. Said motion shall request an order requiring the witness to appear and testify before an officer, representative or agent of the Division.

(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) No depositions shall be taken by parties for any reasons or by any manner other than that contained in (a) above, except in exceptional circumstances, prior to transmittal of a case to OAL.

(d) The Division may take depositions of witnesses as part of any investigation when, in the discretion of the Director, such depositions will aid the investigatory process.

History

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

In (a)3, substituted "any future proceeding" for "the hearing" and deleted a comma following "representative".

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In the introductory paragraph of (a), inserted "the" preceding "OAL", deleted "material" preceding "witness" and substituted "the New Jersey Court Rules" for "civil actions"; and in (b), substituted "their" for "his or her".

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 4. INVESTIGATIONS**

§ 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Section was "Enforcement of depositions, interrogatories, subpoenas, other investigatory orders".

Substituted "they" for "he or she", and updated the N.J.S.A. and N.J.A.C. cites.

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NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 4. INVESTIGATIONS

§ 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. The Division may request the parties to provide affidavits from witnesses who appear at the fact-finding conference.
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) If the respondent or the complainant refuses or fails to attend a scheduled fact-finding conference, the Division may schedule an alternate conference date. The Division may subpoena any party or witness who has failed to attend the initially scheduled fact-finding conference. The Division may also subpoena any documents which either party was requested to bring, and fails to bring, to the fact-finding conference.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Section was "Fact finding conferences". Rewrote the section.

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 4. INVESTIGATIONS

§ 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Rewrote the section.

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NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Rewrote (a); and in (b), substituted "such request" for "the request for information or documents", and "argument. If" for "argument; if", inserted a comma following "granted", and inserted "default".

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 5. DEFAULTS**

§ 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.** Result in the suppression of any and all defenses of the respondent; and
- 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.** The date of service of the verified complaint and/or request for information or documents on respondent and the date of the service of any order requiring answers to the verified complaint and/or request for information or documents and extending the time in which to answer them;
- 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.

History

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

Section was "Default Procedure". In the introductory paragraph of (a), substituted "default procedure" for "Default Procedure"; in the introductory paragraph of the notice and order in (a), substituted "The" for "Said the"; rewrote (b); added new (c)1; deleted former (c)4; recodified former (c)1 through (c)3 as (c)2 through (c)4; in (c)3, deleted a comma following "extended" and inserted "and" at the end; and in (c)4, substituted a period for "; and" at the end.

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Rewrote the section.

▼ Annotations

Case Notes

Default judgment was properly entered against a landlord where he held out his apartment for rent, allowed the tenant to move in, accepted her rent money, and then, within days, told her that because she was a female her presence disturbed him enough that he wanted her to leave and terminated her rental for no other expressed reason than that she was a female; these actions were a clear violation of New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1 et seq. for which the landlord was fined \$ 5,000 and the tenant was entitled to \$ 12,155.45 as compensation for her monetary losses with interest, and for her pain and humiliation. Callahan v. Proud, OAL Dkt. No. CRT 02331-09S, 2009 N.J. AGEN LEXIS 725, Final Decision (August 14, 2009).

N.J.A.C. 13:4-5.3

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 5. DEFAULTS

§ 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) As a condition of vacating the default, the Director may order the respondent to pay costs or reasonable expenses, including attorney's fees, to the State of New Jersey or an aggrieved representative or party.
- (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) After transmittal of the case to OAL, a motion to vacate a default shall be directed to the Administrative Law Judge pursuant to N.J.A.C. 1:1.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In (a), substituted "Within 20 calendar days after service of the notice" for "At any time after entry",

"answer" for "answers", and ", the respondent's position statement, and responses to all requests" for

"and all request", inserted a comma following the first occurrence of "default", and "the" preceding

"OAL", and deleted "the" preceding "entry"; and in (c), substituted "pursuant to this chapter" for "finding

as to probably cause"" and "this chapter" for "these rules".

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 5. DEFAULTS**

§ 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) After receiving the initial decision of the administrative law judge, the Director shall enter a final order pursuant to N.J.S.A. 10:5-17.

(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) The order described in (c) above shall be the only final order provided for by this rule; all other orders provided by this rule shall be interlocutory in nature.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Rewrote (a) and (c).

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RULES OF PRACTICE AND PROCEDURE 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. Lack of jurisdiction;
2. The complainant is unavailable or unwilling to participate in conciliation or investigation, or to attend a hearing;
3. Relief is precluded by the respondent's absence or other special circumstances;
4. The complainant has initiated an action in Superior Court pursuant to N.J.S.A. 10:5-13, or raised the same claim in Federal court;
5. The verified complaint was not timely filed pursuant to N.J.S.A. 10:5-13;
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. Reasonableness of offer;
3. Reasonableness of complainant's refusal, if any;

4. The amount of complainant's economic loss, and respondent's degree of responsibility therefor;
5. The evidence of the complainant's mental pain and suffering;
6. The egregiousness of the discrimination charged; and
7. Whether the public interest is best served by the continuation of the proceedings.

(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.

History

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

In (a)4, inserted ", or raised the same claim in Federal court"; and in (a)6, deleted ", N.J.S.A. 10:5-1 et seq." following "Act".

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Rewrote the section.

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 7. MOTIONS AND OTHER CASE
ACTIONS**

§ 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) Copies of said motion shall be filed and served together with supporting affidavits and briefs.
- (c) Following transmittal of a case to the Office of Administrative Law, motions to intervene shall be made pursuant to N.J.A.C. 1:1-12.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In (a), inserted a comma following the first occurrence of "in" and "with".

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 7. MOTIONS AND OTHER CASE
ACTIONS**

§ 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) Following transmittal of a case to the Office of Administrative Law, all motions to sever or consolidate shall be initially presented to the OAL, pursuant to N.J.A.C. 1:1. Subject to the requirements of N.J.S.A. 10:5-13, requests for consolidation of cases pending before the Division with cases pending before OAL but involving the jurisdiction of other agencies shall be handled in accordance with N.J.A.C. 1:1.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In (a), substituted "they" for "he or she", and "that" for "which" twice, and inserted a comma following "Division", "thereto", "with", and "from".

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 7. MOTIONS AND OTHER CASE
ACTIONS**

§ 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. Mistake, inadvertence, surprise, or excusable neglect;
2. Fraud, misrepresentation or other misconduct of an adverse party;
3. Newly discovered evidence, which the moving party can demonstrate is reasonably likely to change the final decision of the Director and which by due diligence could not have been discovered in time to be presented at the hearing or during the investigation of the matter; or
4. Any other reason consistent with the public policy of the Law Against Discrimination or Family Leave Act and in the interest of justice.

(b) No motion filed pursuant to this section, and no order granting such motion, shall suspend the operation of any final Director's order unless otherwise specified by order of the Director.

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In the introductory paragraph of (a), inserted "calendar" twice, deleted "the" preceding the first occurrence of "service", and "or" preceding "no", inserted a comma following "cause" twice, inserted "filed electronically or shall be", and updated the N.J.A.C. cite.

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 7. MOTIONS AND OTHER CASE
ACTIONS**

§ 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.

History

HISTORY:

New Rule, R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Former N.J.A.C. 13:4-7.5, Service of motions and other pleadings, recodified as N.J.A.C. 13:4-7.6.

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 7. MOTIONS AND OTHER CASE
ACTIONS**

§ 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) The Division may, in the discretion of the Director, serve pleadings and other papers on behalf of a party appearing pro se.

History

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

In (a), deleted ", by registered or certified mail, return receipt requested or by overnight mail by commercial courier," following "parties".

Recodified from N.J.A.C. 13:4-7.5 and amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Inserted commas throughout the section; in (a), inserted "the" preceding "OAL", "either electronically or", and "calendar"; in (b), substituted "For documents not filed electronically," for "Such", and inserted ", by mail or in person,"; and deleted (e).

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 8. WITHDRAWAL OF COMPLAINTS**

§ 13:4-8.1 Withdrawals

- (a) A pending verified complaint, or any part thereof, may be withdrawn by the complainant at any time before issuance of a finding of no probable cause by the Division.
- (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 themselves as, or continuing as, a complainant based on the same facts.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In (b), substituted "filed electronically, by mail, or in person" for "in writing"; and in (c), substituted "themselves" for "himself or herself".

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Inserted designation (a); in (a), inserted a comma following "case", inserted "calendar", and substituted "at" for "in"; and added (b).

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 9. CONCILIATION AND MEDIATION**

§ 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.

History

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

Inserted "or otherwise required by law".

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Substituted "parties" for "complainant and respondent".

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 9. CONCILIATION AND MEDIATION**

§ 13:4-9.3 Mediation proceedings

(a) At any time following the filing of a verified complaint, mediation proceedings may be scheduled at the discretion of the Director.

(b) The Director may designate a mediator employed by the Division or otherwise appointed by the Director to conduct the mediation proceedings. In the event the mediation is unsuccessful, the mediator shall not participate in any way in the investigation, motions or hearing of the case.

(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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Rewrote (c); and in (d), substituted "their" for "his or her".

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 9. CONCILIATION AND MEDIATION**

§ 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) At the Director's discretion, conciliation may be conducted according to the rules applicable for mediation set forth in this subchapter.

History

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

In (e), inserted "or complainants".

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Rewrote (a); in (b), substituted "calendar-days' " for "days", and substituted "any" for "the"; in (c), substituted "The notice at (b) above" for "This"; in (d), inserted ", at the discretion of the Director,"; and in (e), substituted "parties" for "respondent and the complainant or complainants,".

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NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Section was "Orders and findings of Director". Substituted "they" for "he or she".

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 10. ORDERS OF THE DIRECTOR**

§ 13:4-10.2 Findings of probable cause

- (a) Following the completion of an investigation of a verified complaint filed with the Division, the Director shall determine whether or not probable cause exists to credit the allegations of the verified complaint.
- (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) A finding of no probable cause pursuant to (c) above shall be considered a final order. Findings of probable cause pursuant to (b) above, and agency determinations pursuant to (d) above, shall not be considered final orders.
- (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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In (b) and (c), substituted "to believe" for "in the belief"; in (b), (c), and (d), substituted "they" for "he or she"; in (d), inserted a comma following "some" and "all"; and added (f).

▼ Annotations

Case Notes

In a discrimination case wherein the complainant asserted that her agoraphobia required the New Jersey Motor Vehicle Commission (MVC) to exempt her from appearing to be photographed for her driver's license, the court upheld the finding of the Division on Civil Rights that the complainant's medical evidence did not clearly specify the extent of her limitations and she failed to show the accommodations offered by the MVC were unreasonable. *Wojtkowiak v. New Jersey Motor Vehicle Comm'n*, 439 N.J. Super. 1, 106 A.3d 519, 2015 N.J. Super. LEXIS 1 (2015).

While a state civil rights administrative agency reviewed plaintiff former employee's claims against defendant former employer under state law, the elements were the same as those under the Age Discrimination in Employment Act (ADEA), 28 U.S.C.S. § 621 et seq., and since the agency's finding of no probable cause, which was a final order under N.J.S.A. 10:5-21 and N.J.A.C. 13:4-10.2, was affirmed by a state court, issue preclusion and 28 U.S.C.S. § 1738 prevented re-litigation of the same ADEA claims in federal court. *Bostanci v. New Jersey City Univ.*, 476 Fed. Appx. 499, 2012 U.S. App. LEXIS 1148 (2012).

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NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 10. ORDERS OF THE DIRECTOR

§ 13:4-10.3. Service of Director's orders

All orders of the Director, including findings of probable cause and no probable cause, shall be promptly served on all parties.

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NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 11. HEARINGS

§ 13:4-11.1 When hearings ordered

- (a)** The Director shall determine when a hearing shall be necessary in any matter.
- (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)** Upon receipt of a request made pursuant to (c) above, the Division shall file the action with the Office of Administrative Law, unless at the time of receipt of the request the Division has found no probable cause or otherwise dismissed the verified complaint.
- (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)** When a complainant files a request with the Division pursuant to (c) above, complainant thereby waives any right to have an attorney for the Division prosecute the verified complaint. The parties shall,

however, send copies of all pleadings, briefs and memoranda to the Division's attorney at the same time as filing such papers with OAL. The Division's attorney may attend preliminary proceedings such as pre-hearing conferences in order to determine the appropriateness of intervention, and may intervene on behalf of the Division in any case pursuant to N.J.S.A. 10:5-13.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

In (b), inserted "or (d),"; throughout (c), (e), and (f), substituted "their" for "his or her"; in (c) and (f), substituted "themselves" for "himself or herself"; in (c), inserted "calendar"; and in (f), substituted "they" for "he or she".

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 11. HEARINGS

§ 13:4-11.2. Conduct of hearings

The procedure for conducting hearings, issuing initial decisions and issuing final orders shall be governed by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 11. HEARINGS

§ 13:4-11.3. Temporary injunction

If the Director determines that the interests of the complainant may be irreparably damaged by the lapse of time before a hearing could be scheduled or between the scheduling of a hearing and the ultimate disposition of the matter in the Division, he or she shall instruct the attorney for the Division to seek such temporary injunctive relief in the Superior Court of New Jersey, pursuant to N.J.S.A. 10:5-14.1, as may be appropriate to preserve the rights of the complainant. Where a complainant is proceeding pro se or through a private attorney, pursuant to N.J.S.A. 10:5-13, the complainant may apply to the Court for temporary injunctive relief.

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Section was "Protection of witnesses: preventing reprisals". In (a), inserted a comma following "expel" and "testified", substituted "they have" for "he or she has" twice, and inserted "or investigation"; and in

(b), inserted a comma following "are", inserted "the" preceding "respondents", deleted "of the Division"

following "Director", substituted "necessary" for "unnecessary", and inserted ", as well as the public interest".

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE 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.

History

HISTORY:

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Rewrote the section.

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 13. ACCESS TO DIVISION'S
INVESTIGATORY FILES**

§ 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.

History

HISTORY:

Amended by R.2011 d.073, effective February 22, 2011.

See: 42 N.J.R. 2571(a), 43 N.J.R. 436(a).

In (a)1, inserted "; notes of settlement discussions".

Amended by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Section was "Discovery of the Division's investigatory files by parties to the verified complaint". Rewrote the section.

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 13. ACCESS TO DIVISION'S
INVESTIGATORY FILES**

§ 13:4-13.3 (Reserved)

History

HISTORY:

Repealed by R.2020 d.129, effective December 7, 2020.

See: 52 N.J.R. 1597(a), 52 N.J.R. 2109(a).

Section was "Discovery of Division's investigatory files by non-parties".

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 4.
RULES OF PRACTICE AND PROCEDURE SUBCHAPTER 13. ACCESS TO DIVISION'S
INVESTIGATORY FILES**

§ 13:4-13.4. Copying costs

The Division's fee for copying documents requested pursuant to this section shall be the same fee as is applicable to requests granted pursuant to N.J.S.A. 47:1A-1 et seq. The Director may waive or modify this fee in the case of an indigent party or in other extraordinary situations for good cause.

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N.J.A.C. 13:8

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 51 No. 20, October 21, 2019

NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 8. DISPLAY OF OFFICIAL POSTERS OF THE DIVISION ON CIVIL RIGHTS

Title 13, Chapter 8 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

[N.J.S.A. 10:5-6](#), 10:5-8.g, 10:5-12, and 34:11B-6 and 16.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2019 d.112, effective September 26, 2019.

See: [51 N.J.R. 707\(a\)](#), [51 N.J.R. 1572\(a\)](#).

CHAPTER HISTORICAL NOTE:

Chapter 8, Display of Official Posters of the Division on Civil Rights, was adopted and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), the expiration date for Chapter 8, Display of Official Posters of the Division on Civil Rights, was established by R.2000 d.389, effective September 18, 2000. See: [32 N.J.R. 2579\(a\)](#), [32 N.J.R. 3442\(a\)](#).

Subchapter 2, Poster Forms, was repealed by R.2000 d.389, effective September 18, 2000. See: [32 N.J.R. 2579\(a\)](#), [32 N.J.R. 3442\(a\)](#).

Chapter 8, Display of Official Posters of the Division on Civil Rights, was readopted as R.2006 d.140, effective March 17, 2006. As a part of R.2006 d.140, Subchapter 2, Family Leave Act Poster, was adopted as new rules; and Appendices A, B and C were repealed, effective April 17, 2006. See: [37 N.J.R. 3908\(a\)](#), [38 N.J.R. 1759\(a\)](#).

Public Notice: Revised posters available from the New Jersey Division on Civil Rights. See: [43 N.J.R. 1061\(b\)](#).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 8, Display of Official Posters of the Division on Civil Rights, was scheduled to expire on September 13, 2013. See: [43 N.J.R. 1203\(a\)](#).

Chapter 8, Display of Official Posters of the Division on Civil Rights, was readopted as R.2012 d.094, effective April 12, 2012. See: [43 N.J.R. 952\(a\)](#), [44 N.J.R. 1533\(a\)](#).

Chapter 8, Display of Official Posters of the Division on Civil Rights, was readopted as R.2019 d.112, effective September 26, 2019. See: Source and Effective Date. See, also, section annotations.

Annotations

Notes

[*Chapter Notes*](#)

Research References & Practice Aids

CHAPTER EXPIRATION DATE:

Chapter 8, Display of Official Posters of the Division on Civil Rights, expires on September 26, 2026.

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NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 8. DISPLAY OF OFFICIAL POSTERS OF THE DIVISION ON CIVIL RIGHTS > SUBCHAPTER 1. LAW AGAINST DISCRIMINATION POSTERS

§ 13:8-1.1 Definitions

The definitions set forth in [N.J.S.A. 10:5-1](#) et seq. shall apply to this subchapter.

History

HISTORY:

Amended by R.2000 d.389, effective September 18, 2000.

See: [32 N.J.R. 2579\(a\)](#), [32 N.J.R. 3442\(a\)](#).

Changed N.J.A.C. reference, and substituted "apply" for "obtain" following "shall".

Amended by R.2006 d.140, effective April 17, 2006.

See: [37 N.J.R. 3908\(a\)](#), [38 N.J.R. 1759\(a\)](#).

Substituted "subchapter" for "chapter".

Annotations

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N.J.A.C. 13:8-1.2

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 51 No. 20, October 21, 2019

NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 8. DISPLAY OF OFFICIAL POSTERS OF THE DIVISION ON CIVIL RIGHTS > SUBCHAPTER 1. LAW AGAINST DISCRIMINATION POSTERS

§ 13:8-1.2 Display of employment poster

All labor organizations, employment agencies, and employers of employees covered by the Law Against Discrimination ([N.J.S.A. 10:5-1](#) et seq.) shall display the official employment poster of the Division in places easily visible to all employees and applicants for employment. The official employment poster of the Division is available for downloading and printing on the Division's website, , or at any of the Division's offices. Any poster printed from the Division's website shall be printed on no smaller than letter size paper (8 1/2 by 11 inches) and contain text that is fully legible and large enough to be easily read. Whenever the poster is modified, the Division shall issue and publicize a public notice consistent with [N.J.A.C. 13:1E-4.4](#) to alert covered entities that a revised poster has been published and is available from the Division.

History

HISTORY:

Amended by R.2000, d.389, effective September 18, 2000.

See: [32 N.J.R. 2579\(a\)](#), [32 N.J.R. 3442\(a\)](#).

Inserted a reference to Appendix A.

Amended by R.2006 d.140, effective April 17, 2006.

See: [37 N.J.R. 3908\(a\)](#), [38 N.J.R. 1759\(a\)](#).

Rewrote the section.

Amended by R.2019 d.112, effective October 21, 2019.

See: [51 N.J.R. 707\(a\)](#), [51 N.J.R. 1572\(a\)](#).

Inserted a comma following "agencies", and updated the website address.

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N.J.A.C. 13:8-1.3

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§ 13:8-1.3 Display of housing poster

(a) All real estate brokers and all persons who engage in the business of selling or renting their own real property shall display the official housing poster of the Division in places easily visible to all prospective tenants and purchasers. The official housing poster of the Division is available for downloading and printing on the Division's website, , or at any of the Division's offices. Any poster printed from the Division's website shall be printed on no smaller than letter size paper (8 1/2 by 11 inches) and contain text that is fully legible and large enough to be easily read. Whenever the poster is modified, the Division shall issue and publicize a public notice consistent with [N.J.A.C. 13:1E-4.4](#) to alert covered entities that a revised poster has been published and is available from the Division.

(b) For the purpose of this Section, a person is not engaged in the business of selling real property solely because he sells or attempts to negotiate the sale of his own residence.

History

HISTORY:

Amended by R.2000 d.389, effective September 18, 2000.

See: [32 N.J.R. 2579\(a\)](#), [32 N.J.R. 3442\(a\)](#).

Inserted a reference to Appendix B.

Amended by R.2006 d.140, effective April 17, 2006.

See: [37 N.J.R. 3908\(a\)](#), [38 N.J.R. 1759\(a\)](#).

Rewrote (a).

Amended by R.2019 d.112, effective October 21, 2019.

See: [51 N.J.R. 707\(a\)](#), [51 N.J.R. 1572\(a\)](#).

In (a), updated the website address.

Annotations

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N.J.A.C. 13:8-1.4

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§ 13:8-1.4 Display of public accommodation poster

All places of public accommodation shall display the official public accommodation poster of the Division in places easily visible to all persons seeking or using the accommodations. The official public accommodations poster of the Division is available for downloading and printing on the Division's website, , or at any of the Division's offices. Any poster printed from the Division's website shall be printed on no smaller than letter size paper (8 1/2 by 11 inches) and contain text that is fully legible and large enough to be easily read. Whenever the poster is modified, the Division shall issue and publicize a public notice consistent with [N.J.A.C. 13:1E-4.4](#) to alert covered entities that a revised poster has been published and is available from the Division.

History

HISTORY:

Amended by R.2000 d.389, effective September 18, 2000.

See: [32 N.J.R. 2579\(a\)](#), [32 N.J.R. 3442\(a\)](#).

Inserted a reference to Appendix C.

Amended by R.2006 d.140, effective April 17, 2006.

See: [37 N.J.R. 3908\(a\)](#), [38 N.J.R. 1759\(a\)](#).

Rewrote the section.

Amended by R.2019 d.112, effective October 21, 2019.

See: [51 N.J.R. 707\(a\)](#), [51 N.J.R. 1572\(a\)](#).

Updated the website address.

Annotations

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Case Notes

Minister's First Amendment claims challenging constitutionality of provision authorizing promulgation of regulations requiring employers and providers of public accommodations to post public notices stating that discrimination based upon "affectational or sexual orientation" is illegal was not ripe for adjudication; state had not promulgated such regulation. [*Presbytery of New Jersey of the Orthodox Presbyterian Church v. Florio, D.N.J. 1995, 902 F.Supp. 492.*](#)

Where a Division investigator's inspection found no poster displayed in a location easily visible to patrons or prospective patrons, and respondent provided no evidence to contradict the inspector's findings and conclusions, respondent failed to comply with the posting requirements of [N.J.A.C. 13:8-1.4](#) and the failure to comply with the posting requirement constituted a violation of New Jersey's Law Against Discrimination (LAD), [N.J.S.A. 10:5-1](#) et seq. Because the Division expended additional time and resources in attempting to secure respondent's compliance with the law, and never received confirmation that respondent agreed to comply with the law, the \$ 250 payment originally sought was insufficient to ensure compliance with the LAD and carry out the admonitory and deterrent purposes of the LAD's statutory penalties; a \$ 1,000 penalty was appropriate for respondent's LAD violation (modifying [2009 N.J. AGEN LEXIS 686](#)). [Director, N.J. Div. on Civil Rights v. Pretzel Time, OAL Dkt. No. CRT 01787-09, 2009 N.J. AGEN LEXIS 1005](#), Final Decision (November 4, 2009).

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N.J.A.C. 13:8-1.5

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§ 13:8-1.5 Violation

Failure to comply with this subchapter shall constitute a violation of [N.J.S.A. 10:5-12.j](#).

History

HISTORY:

Amended by R.2006 d.140, effective April 17, 2006.

See: [37 N.J.R. 3908\(a\)](#), [38 N.J.R. 1759\(a\)](#).

Substituted "subchapter" for "Chapter"; corrected the N.J.S.A. reference.

Annotations

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N.J.A.C. 13:8-2.1

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NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 8. DISPLAY OF OFFICIAL POSTERS OF THE DIVISION ON CIVIL RIGHTS > SUBCHAPTER 2. FAMILY LEAVE ACT POSTER

§ 13:8-2.1 Definitions

The definitions set forth in [N.J.S.A. 34:11B-1](#) et seq. shall apply to this subchapter.

Annotations

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§ 13:8-2.2 Display of Family Leave Act poster

All employers covered by the Family Leave Act ([N.J.S.A. 34:11B-1](#) et seq.), whether or not they have any eligible employees under the act, shall display the official Family Leave Act poster of the Division in places easily visible to all employees. The official Family Leave Act poster of the Division is available for downloading and printing on the Division's website, www.njcivilrights.gov, or at any of the Division's offices. Any poster printed from the Division's website shall be printed on no smaller than letter size paper (8 1/2 by 11 inches) and contain text that is fully legible and large enough to be easily read. Whenever the poster is modified, the Division shall issue and publicize a public notice consistent with [N.J.A.C. 13:1E-4.4](#) to alert covered employers that a revised poster has been published and is available from the Division.

History

HISTORY:

Amended by R.2019 d.112, effective October 21, 2019.

See: [51 N.J.R. 707\(a\)](#), [51 N.J.R. 1572\(a\)](#).

Updated the website address.

Annotations

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N.J.A.C. 13:8-2.3

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§ 13:8-2.3 Violation

Failure to comply with this subchapter shall constitute a violation of [N.J.S.A. 34:11B-6](#).

Annotations

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N.J.A.C. 13:9

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NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 9. ADVERTISING RELATING TO REAL PROPERTY

Title 13, Chapter 9 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

[N.J.S.A. 10:5-8](#), 10:5-12, and 10:5-18.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2018 d.205, effective December 17, 2018.

See: [50 N.J.R. 1335\(a\)](#), [50 N.J.R. 2554\(a\)](#).

CHAPTER HISTORICAL NOTE:

Chapter 9, Newspaper Advertisement Relating to Real Property, was filed and became effective prior to September 1, 1969.

Pursuant to Executive Order No. 66(1978), Chapter 9, Newspaper Advertisement Relating to Real Property, was readopted as R.2000 d.186, effective April 7, 2000. See: [32 N.J.R. 647\(b\)](#), [32 N.J.R. 1619\(a\)](#).

Chapter 9, Newspaper Advertising Relating to Real Property, was readopted as R.2005 d.370, effective October 4, 2005. As a part of R.2009, d.370, Chapter 9 was renamed Advertising Relating to Real Property, effective November 7, 2005. See: [37 N.J.R. 1681\(a\)](#), [37 N.J.R. 4276\(a\)](#).

Chapter 9, Advertising Relating to Real Property, was readopted as R.2011 d.110, effective March 17, 2011. See: [42 N.J.R. 2718\(a\)](#), [43 N.J.R. 1031\(a\)](#).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 9, Advertising Relating to Real Property, expired on March 17, 2018. See: [43 N.J.R. 1203\(a\)](#).

Chapter 9, Advertising Relating to Real Property, was adopted as new rules by R.2018 d.205, effective December 17, 2018. See: Source and Effective Date. See, also, section annotations.

Annotations

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Research References & Practice Aids

CHAPTER EXPIRATION DATE:

Chapter 9, Advertising Relating to Real Property, expires on December 17, 2025.

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N.J.A.C. 13:9-1.1

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NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 9. ADVERTISING RELATING TO REAL PROPERTY > SUBCHAPTER 1. GENERAL PROVISIONS

§ 13:9-1.1 Discriminatory advertising regarding realty

(a) It shall be a violation of the Law Against Discrimination, [N.J.S.A. 10:5-1](#) et seq., for any person, including any newspaper or publication published or circulated within this State, to make, print, publish, circulate, issue, display, post, utter or disseminate or to cause to be made, printed, published, circulated, issued, displayed, posted, uttered or disseminated any print or electronic notice, listing, statement, sign or advertisement regarding the sale, lease, sub-lease, rental or assignment of any real property, which expresses, overtly or subtly, directly or indirectly, any preference, limitation, specification or discrimination as to race, creed, color, national origin, ancestry, marital status, civil union status, domestic partnership status, sex, pregnancy, breastfeeding, gender identity or expression, familial status, nationality, disability, affectional or sexual orientation, source of lawful income used for rental or mortgage payments, or liability for service in the Armed Forces of the United States, as such terms may be defined in the Law Against Discrimination, [N.J.S.A. 10:5-1](#) et seq.

(b) This section applies to real property as defined in the Law Against Discrimination, [N.J.S.A. 10:5-1](#) et seq., public housing and the rental of:

1. A single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as a residence at the time of such rental; and
2. A room or rooms to another person or persons by the owner or occupant of a one-family dwelling occupied by the owner or occupant as a residence at the time of such rental.

History

HISTORY:

Amended by R.1995 d.243, effective May 15, 1995.

See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

Amended by R.2000 d.186, effective May 1, 2000.

See: [32 N.J.R. 647\(b\)](#), [32 N.J.R. 1619\(a\)](#).

Rewrote (a).

Amended by R.2005 d.370, effective November 7, 2005.

See: [37 N.J.R. 1681\(a\)](#), [37 N.J.R. 4276\(a\)](#).

Deleted chapter statements; rewrote (a); deleted former (b); added new (b).

Amended by R.2011 d.110, effective April 18, 2011.

See: [42 N.J.R. 2718\(a\)](#), [43 N.J.R. 1031\(a\)](#).

In (a), inserted "print or electronic", "civil union status," and "gender identity or expression, familial status," and deleted a comma following the first occurrence of "rental" and "specification" and "or familial status" following "payments".

Amended by R.2018 d.205, effective December 17, 2018.

See: [50 N.J.R. 1335\(a\)](#), [50 N.J.R. 2554\(a\)](#).

In (a), inserted "pregnancy, breastfeeding," and "or liability for service in the Armed Forces of the United States,".

Annotations

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Oral statements suffice for a violation of the prohibition against discriminatory "statements or utterances" under New Jersey's Law Against Discrimination, [N.J.S.A. 10:5-1](#) et seq.; writing is not required. [Almeida v. Moreira, OAL Dkt. No. CRT 01061-08, 2009 N.J. AGEN LEXIS 617](#), Final Decision (March 9, 2009).

There is no constitutional distinction between rental transactions of exempt and non-exempt real property; a discriminatory statement made in connection with the rental of an owner-occupied two-unit dwelling is commercial speech for purposes of the prohibition against discriminatory "statements or utterances" in New Jersey's Law Against Discrimination, [N.J.S.A. 10:5-1](#) et seq. [Almeida v. Moreira, OAL Dkt. No. CRT 01061-08, 2009 N.J. AGEN LEXIS 617](#), Final Decision (March 9, 2009).

Although complainant contended that the landlord told him that he would not rent his owner-occupied two-unit dwelling to complainant because complainant had two children, the landlord denied making the statement and the Director of New Jersey Division on Civil Rights had limited authority to reject the ALJ's credibility determinations and the factual findings that the landlord did not violate New Jersey's Law Against Discrimination, [N.J.S.A. 10:5-1](#) et seq.; there was no basis to conclude that the ALJ's credibility determinations were arbitrary or were not based on sufficient competent evidence in the record. [Almeida v. Moreira, OAL Dkt. No. CRT 01061-08, 2009 N.J. AGEN LEXIS 617](#), Final Decision (March 9, 2009).

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N.J.A.C. 13:10

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NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 10. MULTIPLE DWELLING REPORTS

Title 13, Chapter 10 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

[N.J.S.A. 10:5-8](#) and [10:5-12](#).

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2017 d.182, effective September 6, 2017.

See: [49 N.J.R. 717\(a\)](#), [49 N.J.R. 3360\(a\)](#).

CHAPTER HISTORICAL NOTE:

Chapter 10, Multiple Dwelling Reports, was adopted as R.1970 d.114, effective September 21, 1970. See: 2 N.J.R. 36(a), 2 N.J.R. 86(a). Pursuant to Executive Order No. 66(1978), Chapter 10 expired on March 15, 1984.

Chapter 10, Multiple Dwelling Reports, was readopted as new rules by R.1984 d.169, effective May 7, 1984. See: 16 N.J.R. 415(a), 16 N.J.R. 1095(b).

Pursuant to Executive Order No. 66(1978), Chapter 10, Multiple Dwelling Reports, was readopted as R.1989 d.211, effective March 27, 1989. See: 21 N.J.R. 11(b), 21 N.J.R. 1016(a).

Pursuant to Executive Order No. 66(1978), Chapter 10, Multiple Dwelling Reports, was readopted as R.1994 d.203, effective March 25, 1994. See: 26 N.J.R. 901(a), 26 N.J.R. 1666(b). Pursuant to Executive Order No. 66(1978), Chapter 10 expired on March 25, 1999.

Chapter 10, Multiple Dwelling Reports, was adopted as new rules by R.1999 d.178, effective June 7, 1999. See: [31 N.J.R. 518\(a\)](#), [31 N.J.R. 1495\(a\)](#).

Chapter 10, Multiple Dwelling Reports, was readopted as R.2004 d.479, effective November 24, 2004. See: [36 N.J.R. 3228\(a\)](#), [36 N.J.R. 5685\(b\)](#).

Chapter 10, Multiple Dwelling Reports, was readopted as R.2010 d.055, effective March 16, 2010. See: [42 N.J.R. 45\(a\)](#), [42 N.J.R. 797\(a\)](#).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 10, Multiple Dwelling Reports, was scheduled to expire on March 16, 2017. See: [43 N.J.R. 1203\(a\)](#).

Chapter 10, Multiple Dwelling Reports, was readopted as R.2017 d.182, effective September 6, 2017. See: Source and Effective Date. See, also, section annotations.

Annotations

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Research References & Practice Aids

CHAPTER EXPIRATION DATE:

Chapter 10, Multiple Dwelling Reports, expires on September 6, 2024.

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§ 13:10-1.1 Words and phrases defined

The following words and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. (Unless the context indicates to the contrary all terms used in this rule have the same meanings as in [N.J.S.A. 10:5-1](#) et seq.)

"Apartment rental turn-over" means a change of leaseholder.

"Applicant" means any person who appears before either the owner, lessor, agent or other principal or operator of a multiple apartment development for the purpose of renting an apartment.

"Barrier free" means adequate and sufficient features which are available in buildings or structures so as to make them accessible to and usable by people with physical disabilities.

"Leaseholder" means the party with whom the landlord has contracted for the apartment rental, whether the contracting be orally or in writing. It shall include any sublettee or assignee of the contract where notice or approval of subletting or assignment is a condition of the contract.

"Multiple apartment development" means one or more buildings situated at the same general location and operated under one management or with ownership in common. It shall include, but not be limited to, an apartment building or buildings and garden apartments.

"Racial/ethnic designation" means designation in one or more of the following classifications:

- 1.Black or African American: a person having origins in any of the original peoples of Africa;
- 2.American Indian or Alaska Native: a person having origins in any of the original peoples of North or South America;
- 3.Asian: a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam;
- 4.Hispanic or Latino: a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish origin or culture, or a person having a Spanish surname;
- 5.Native Hawaiian or Other Pacific Islander: a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands; and/or
- 6.White or Caucasian: a person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

History

HISTORY:

Amended by R.1994 d.203, effective April 18, 1994.

See: 26 New Jersey Register 901(a), 26 New Jersey Register 1666(b).

Annotations

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§ 13:10-2.1 Purpose

The provisions of this chapter are adopted to enable the Division on Civil Rights to study patterns of housing occupancy, investigate practices of discrimination and affirmatively administer the Law Against Discrimination, [N.J.S.A. 10:5-1](#) et seq.

History

HISTORY:

Amended by R.1994 d.203, effective April 18, 1994.

See: 26 New Jersey Register 901(a), 26 New Jersey Register 1666(b).

Annotations

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Case Notes

Rules upheld as rational approach to enforcing Law Against Discrimination; rules do not violate statute's prohibition against property owners recording tenants' protected specifications (race, creed, etc.). [New Jersey Builders, Owners and Managers Ass'n v. Blair, 60 N.J. 330, 288 A.2d 855 \(1972\)](#).

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§ 13:10-2.2 Persons required to report

(a)The owner or owners of every multiple apartment development which has 25 units or more shall file an annual report with the Division on Civil Rights concerning the racial/ethnic composition of the multiple dwelling, whether any of its buildings or developments are barrier-free, and factors affecting its composition.

(b)Where there are multiple owners of a development and the development is operated as one unit, a consolidated report may be filed.

History

HISTORY:

Amended by R.1994 d.203, effective April 18, 1994.

See: 26 New Jersey Register 901(a), 26 New Jersey Register 1666(b).

Annotations

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§ 13:10-2.3 Form and contents of report

(a) The report shall be submitted on forms approved by the Attorney General and said forms shall be available on the website of the Division on Civil Rights (www.NJCivilRights.gov).

(b) The report may include information concerning:

1. Racial/ethnic designation of applicants for apartment rental;
2. Racial/ethnic designation of apartment leaseholders;
3. Apartment rental turn-overs;
4. Apartment rental recruiting techniques;
5. Rental rates and apartment sizes;
6. Whether the multiple apartment development is barrier-free; and
7. Such other information as the Attorney General determines is necessary to effectuate the purposes of this rule.

History

HISTORY:

Amended by R.1994 d.203, effective April 18, 1994.

See: 26 N.J.R. 901(a), 26 N.J.R. 1666(b).

Amended by R.2004 d.126, effective April 5, 2004.

See: [35 N.J.R. 5366\(a\)](#), [36 N.J.R. 1813\(a\)](#).

In (a), inserted a reference to the Division on Civil Rights website.

Amended by R.2008 d.246, effective August 18, 2008.

See: [39 N.J.R. 3715\(a\)](#), [40 N.J.R. 4818\(b\)](#).

In (a), deleted ", at any office of the Division on Civil Rights or other place so designated by the Attorney General" from the end.

Amended by R.2017 d.182, effective October 2, 2017.

See: [49 N.J.R. 717\(a\)](#), [49 N.J.R. 3360\(a\)](#).

In (a), updated the website.

Annotations

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N.J.A.C. 13:10-2.4

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§ 13:10-2.4 Filing of reports

- (a) One copy of the report shall be filed with the Division on Civil Rights on a yearly basis. The report shall be filed electronically using the website of the Division on Civil Rights.
- (b) The report shall be due on January 30 of each year. Each annual report shall include information for January 1 through December 31 of the preceding year.
- (c) The date of filing of a report filed through the Division on Civil Rights website shall be the date the report is submitted in full on the website and an acknowledgment of receipt is issued.

History

HISTORY:

Amended by R.1979 d.112, effective March 15, 1979.

See: 11 N.J.R. 203(a).

Amended by R.1994 d.203, effective April 18, 1994.

See: 26 N.J.R. 901(a), 26 N.J.R. 1666(b).

Amended by R.2004 d.126, effective April 5, 2004.

See: [35 N.J.R. 5366\(a\)](#), [36 N.J.R. 1813\(a\)](#).

In (a), added the second sentence; rewrote (b); added (c).

Amended by R.2008 d.246, effective August 18, 2008.

See: [39 N.J.R. 3715\(a\)](#), [40 N.J.R. 4818\(b\)](#).

In (a), substituted "shall" for "may" and deleted "or by delivering a copy of the report to the Division's office" from the end; and in (c), deleted the former last sentence.

Annotations

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N.J.A.C. 13:10-2.5

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 51 No. 20, October 21, 2019

NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 10. MULTIPLE DWELLING REPORTS > SUBCHAPTER 2. REPORTING

§ 13:10-2.5 Maintenance of records

(a)The owner or owners of the multiple apartment development shall be responsible to have maintained at all times the following records:

- 1.Racial/ethnic designation of each applicant for apartment rental;
- 2.Racial/ethnic designation of each apartment leaseholder;
- 3.Racial/ethnic designation of each new leaseholder;
- 4.Apartment rental recruiting techniques employed; and
- 5.Such other records as the Attorney General determines is necessary to effectuate the purposes of these provisions.

(b)Such records shall be kept on file for a period of three years and shall be produced for inspection upon request of the Division on Civil Rights during business hours.

Annotations

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N.J.A.C. 13:10-2.6

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NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 10. MULTIPLE DWELLING REPORTS > SUBCHAPTER 2. REPORTING

§ 13:10-2.6 Violations

Failure to comply with this chapter shall constitute a violation of the Law Against Discrimination, [N.J.S.A. 10:5-1](#) et seq.

History

HISTORY:

Amended by R.1994 d.203, effective April 18, 1994.

See: 26 New Jersey Register 901(a), 26 New Jersey Register 1666(b).

Annotations

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N.J.A.C. 13:10-2.7

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NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 10. MULTIPLE DWELLING REPORTS > SUBCHAPTER 2. REPORTING

§ 13:10-2.7 Late filing penalties

(a)An owner or owners of a multiple apartment development who files a report more than 15 calendar days after the time for filing reports set forth in [N.J.A.C. 13:10-2.4](#), but not later than 30 calendar days after such time for filing, shall be subject to a penalty for late filing of \$ 100.00.

(b)An owner or owners of a multiple apartment development who files a report more than 30 calendar days after the time for filing reports set forth in [N.J.A.C. 13:10-2.4](#), but not later than 60 calendar days after such time for filing, shall be subject to a penalty for late filing of \$ 250.00.

(c)An owner or owners of a multiple apartment development who files a report more than 60 calendar days after the time for filing reports set forth in [N.J.A.C. 13:10-2.4](#), but not later than 90 calendar days after such time for filing, shall be subject to a penalty for late filing of \$ 500.00.

(d)An owner or owners of a multiple apartment development who files a report more than 90 calendar days after the time for filing reports set forth in [N.J.A.C. 13:10-2.4](#) shall be subject to a penalty in an amount designated by the Director of the Division on Civil Rights pursuant to [N.J.S.A. 10:5-14.1a](#).

(e)Payment of the fees under (a), (b) and (c) above shall be transmitted in the form of a check made payable to "Treasurer--State of New Jersey."

(f)The Director of the Division on Civil Rights may, in his or her discretion, waive all or part of the penalties incurred with the late filing of a report or reports for good cause shown, so long as such waiver would not compromise the purpose of the reports as set forth in [N.J.A.C. 13:10-2.1](#). An owner of a multiple apartment development may apply to the Director of the Division on Civil Rights for a waiver or relaxation of the penalties incurred because of the late filing or failure to file a report or reports. Such request shall be made in writing, and shall set forth, with specificity, the owner's reasons for late filing or failure to file. If applicable, documentation supporting the request should be included. The Director may consider such factors as the owner's previous filing history, the owner's promptness in filing the report upon notice of delinquency, DCR resources expended on addressing the delinquency, and any exceptional circumstances related to the delinquency (which may include an owner's undue hardship, economic or otherwise).

History

HISTORY:

New Rule, R.2004 d.126, effective April 5, 2004.

See: [35 N.J.R. 5366\(a\)](#), [36 N.J.R. 1813\(a\)](#).

Amended by R.2017 d.182, effective October 2, 2017.

See: [49 N.J.R. 717\(a\)](#), [49 N.J.R. 3360\(a\)](#).

Section was "Late filing fees". Added (f).

Annotations

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[N.J.A.C. 13:11](#)

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NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 11. EMPLOYMENT ADVERTISING

Title 13, Chapter 11 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

[N.J.S.A. 10:5-6](#), 10:5-8.g, and 10:5-12.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2014 d.119, effective June 23, 2014.

See: [46 N.J.R. 272\(a\)](#), [46 N.J.R. 1697\(b\)](#).

CHAPTER HISTORICAL NOTE:

Chapter 11, Employment Advertising, was adopted as R.1972 d.76, effective May 29, 1972. See: 4 N.J.R. 50(b), 4 N.J.R. 106(a).

Chapter 11, Employment Advertising, was readopted as R.2007 d.38, effective December 27, 2006. See: [38 N.J.R. 3493\(a\)](#), [39 N.J.R. 491\(a\)](#).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 11, Employment Advertising, was scheduled to expire on December 27, 2013. See: [43 N.J.R. 1203\(a\)](#).

Chapter 11, Employment Advertising, was readopted as R.2014 d.119, effective June 23, 2014. See: Source and Effective Date. See, also, section annotations.

Annotations

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Research References & Practice Aids

CHAPTER EXPIRATION DATE:

Chapter 11, Employment Advertising, expires on June 23, 2021.

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N.J.A.C. 13:11-1.1

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NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 11. EMPLOYMENT ADVERTISING > SUBCHAPTER 1. GENERAL PROVISIONS

§ 13:11-1.1 Employment advertising generally

(a) It shall be a violation of the Law Against Discrimination, [N.J.S.A. 10:5-1](#) et seq., and more particularly, [N.J.S.A. 10:5-12](#), a, b, c, and e, for any employer, union, or employment agency, or any newspaper or other publication published or circulated within this State to print, publish, post, or circulate, or to cause to be printed, published, posted, or circulated, any print, electronic, or other advertisement relating to employment, employment opportunities, job openings, union membership, apprentice programs, job training programs, or any of the terms, conditions, or privileges thereof, which expresses, overtly or subtly, directly or indirectly, any limitation, specification, preference, or discrimination based on race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, sex, nationality, affectional or sexual orientation, gender identity or expression, disability, atypical hereditary cellular or blood trait, genetic information, refusal to submit to a genetic test or to make available the results of a genetic test, or liability for service in the Armed Forces of the United States, or any intent to make such limitation, unless based on a bona fide occupational qualification.

(b) The use of any word, term, phrase, or expression that tends to influence, persuade or dissuade, encourage or discourage, attract, or repel any person or persons because of race, creed, color, national origin, ancestry, age, marital status, civil union status, domestic partnership status, nationality, affectional or sexual orientation, gender identity or expression, disability, atypical hereditary cellular or blood trait, genetic information, refusal to submit to a genetic test or to make available the results of a genetic test, or liability for service in the Armed Forces of the United States, or sex shall be considered discriminatory advertising in violation of the Law Against Discrimination, [N.J.S.A. 10:5-1](#) et seq.

(c) Notwithstanding (a) and (b) above, the following language, whether alone or in any combination, does not violate the LAD when published in an advertisement for employment, employment opportunities, job openings, union membership, apprentice programs or job training programs provided the advertisement does not otherwise exclude, directly or indirectly, any qualified applicant based on a characteristic listed in (a) above:

1. Equal Opportunity Employer;
2. Equal Opportunity/Affirmative Action Employer;
3. All qualified applicants encouraged to apply; or
4. Equal Opportunity/Affirmative Action Employer: All qualified individuals, including minorities, women and people with disabilities, are encouraged to apply.

History

HISTORY:

Amended by R.2001 d.479, effective December 17, 2001.

See: [33 N.J.R. 2236\(a\)](#), [33 N.J.R. 4380\(a\)](#).

Rewrote (a); and added (c).

Amended by R.2007 d.38, effective February 5, 2007.

See: [38 N.J.R. 3493\(a\)](#), [39 N.J.R. 491\(a\)](#).

In (a), inserted ", post", ", or to cause to be printed, published, posted or circulated," "print, electronic or other" and "domestic partnership status,"; and in (b), substituted "any" for "language including but not limited to 'Black', 'Negro', 'colored', 'white', 'restricted', 'interracial', 'segregated', 'Christian', 'Jewish', 'men', 'women', 'girl', 'boy', 'gal', 'guy', 'married', 'single' or any other" preceding "word", and inserted ", domestic partnership status, nationality, affectional or sexual orientation, disability, atypical hereditary cellular or blood trait, genetic information, refusal to submit to a genetic test or to make available the results of a genetic test, or liability for service in the Armed Forces of the United States".

Amended by R.2014 d.119, effective July 21, 2014.

See: [46 N.J.R. 272\(a\)](#), [46 N.J.R. 1697\(b\)](#).

Rewrote (a) and (b).

Annotations

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The Employment Advertising Rule, [N.J.A.C. 13:11-1.1](#) et seq., is not invalid as abridging freedom of the press; furthermore, the Rule's coverage of newspapers is within the legislative delegation of rule-making power to the Director of the Division on Civil Rights, and its general prohibition of sex-segregated columns in employment advertising is reasonable and valid. [Passaic Daily News v. Blair, 63 N.J. 474, 308 A.2d 649 \(1973\)](#).

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N.J.A.C. 13:11-1.2

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§ 13:11-1.2 Exception for advertising ordered by Director

Nothing contained in this Chapter shall be deemed to prohibit the Director from including in any of his orders against any respondent employer, union or employment agency a provision requiring said respondent to include in any advertisement regarding any employment opportunity the term "Equal Opportunity" or any substantially similar term.

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N.J.A.C. 13:11-1.3

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§ 13:11-1.3 Preferences expressed in category heading, label, or job title

(a) No language in a category heading, label, or job title associated with any advertisement related to employment or employment-related opportunities shall express any limitation, specification, discrimination, or preference based on age, sex, affectional or sexual orientation, gender identity or expression, marital status, civil union status, domestic partnership status, race, creed, color, national origin, ancestry, nationality, disability, or liability for service in the Armed Forces of the United States, except for category headings, labels, or job titles for advertisements for jobs or employment-related opportunities that meet the bona fide occupational qualification standards set forth in [N.J.A.C. 13:11-1.4](#).

(b) Whenever a "help wanted" advertisement is to contain any job title or job description for a position that is not one for which sex is a "bona fide occupational qualification" as defined in [N.J.A.C. 13:11-1.4](#), the job title shall be stated in terms that are neutral in terms of sex, unless use of a gender-neutral job title is not practicable.

(c) If the use of a neutral job title is not practicable, then the advertisement may contain the non-neutral job title provided, however, that the advertisement also includes:

1. The job title which is the sex counterpart of the non-neutral job title; or
2. The designation "M/W".

(d) Newspapers that print employment advertisements using the designation "M/W" are encouraged to voluntarily print a box on their employment advertising page indicating that the abbreviation "M/W" when used means "men or women".

History

HISTORY:

Recodified from [N.J.A.C. 13:11-1.4](#) and amended by R.2007 d.38, effective February 5, 2007.

See: [38 N.J.R. 3493\(a\)](#), [39 N.J.R. 491\(a\)](#).

Section was "Preferences expressed in body of advertisement appearing under joint 'Men and Women' columns". Rewrote (a) and (b); and in (d), substituted "that" for "which", inserted "using the designation 'M/W' ", and deleted the "Examples of Prohibited Terms" table. Former [N.J.A.C. 13:11-1.3](#), Maintenance of segregated columns, repealed.

Amended by R.2014 d.119, effective July 21, 2014.

See: [46 N.J.R. 272\(a\)](#), [46 N.J.R. 1697\(b\)](#).

Section was "Preferences expressed in column heading or body of advertisement". Rewrote (a); in (b), substituted "[N.J.A.C. 13:11-1.4](#)" for "those provisions"; and deleted (e).

Annotations

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N.J.A.C. 13:11-1.4

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NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 11. EMPLOYMENT ADVERTISING > SUBCHAPTER 1. GENERAL PROVISIONS

§ 13:11-1.4 Bona fide occupational qualification exception; application

(a) For the purposes of this chapter, the "bona fide occupational qualification" (BFOQ) exception shall include only those vocational qualifications that are reasonably necessary to the normal operation of the particular business, enterprise, or apprentice or other training program.

(b) The exception shall be interpreted so that individuals will be considered for employment on the basis of their individual capacities and not on the basis of any characteristics generally attributable to their group.

(c) The employer, employment agency, or union has the burden of establishing that race, creed, color, national origin, ancestry, nationality, age, marital status, civil union status, affectional or sexual orientation, gender identity or expression, domestic partnership status, disability, liability for service in the Armed Forces of the United States, or sex is a bona fide occupational qualification.

(d) The application of the exception is not warranted where based on, for example:

1. Assumptions of the comparative general employment characteristics of persons of a particular race, creed, color, national origin, ancestry, nationality, age, sex, affectional or sexual orientation, gender identity or expression, civil union status, domestic partnership status, disability, liability for service in the Armed Forces of the United States, or marital status, such as their turnover rate;
2. Stereotyped characteristics of the aforementioned classes, such as their mechanical ability or aggressiveness;
3. Customer, client, co-worker or employer preference, or historical usage, tradition, or custom; or
4. The necessity of providing separate facilities of a personal nature, such as rest rooms or dressing rooms.

(e) In regard to sex, the application of the exception may be warranted where it is necessary for authenticity or genuineness, such as for an actor or actress, or where the job in question necessarily involves intimate personal contact with persons of the opposite sex, and the employer demonstrates that such contact is an essential function of the job and a central purpose of the employer's enterprise, that clients, patients, or others served would not consent to service by members of the opposite sex, that the legitimate privacy interests of clients, patients, or others served by the employee outweigh the public interest in equal employment opportunity, and that no reasonable alternatives to a gender-based BFOQ are feasible.

History

HISTORY:

Recodified from [N.J.A.C. 13:11-1.5](#) and amended by R.2007 d.38, effective February 5, 2007.

See: [38 N.J.R. 3493\(a\)](#), [39 N.J.R. 491\(a\)](#).

In (c) and (d)1, inserted "nationality," and ", affectional or sexual orientation, domestic partnership status, disability, liability for service in the Armed Forces of the United States". Former [N.J.A.C. 13:11-1.4](#), Preferences expressed in body of advertisement appearing under joint "Men and Women" columns, recodified to [N.J.A.C. 13:11-1.3](#).

Amended by R.2014 d.119, effective July 21, 2014.

See: [46 N.J.R. 272\(a\)](#), [46 N.J.R. 1697\(b\)](#).

In (a), substituted "this chapter" for "these provisions" and "that" for "which", inserted "(BFOQ)", and inserted a comma following "enterprise"; in (c), inserted a comma following "agency" and following "States", and inserted "civil union status," and "gender identity or expression,"; in (d)1, inserted "gender identity or expression, civil union status," and inserted a comma following "disability" and following "States"; in (d)3, substituted "preference" for "reference", and inserted a comma following "tradition"; and rewrote (e).

Annotations

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Case Notes

Questions whether home health care clients would not consent to personal care service by members of opposite sex, and whether clients would stop patronizing business if members of opposite sex were allowed to perform service, as would support bona fide occupational qualification exception to Law Against Discrimination based on client privacy rights, was for jury. [Spragg v. Shore Care, 293 N.J.Super. 33, 679 A.2d 685 \(A.D. 1996\)](#).

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§ 13:11-1.5 Ruling by Division on bona fide occupational qualifications for particular jobs

(a)Any employer, union, employment agency, newspaper, or other publication may make an inquiry of the Division on Civil Rights (at (609) 984-3138, 140 East Front Street, PO Box 89, Trenton, New Jersey 08625-0089) as to whether race, creed, color, national origin, ancestry, nationality, age, sex, affectional or sexual orientation, gender identity or expression, disability, liability for service in the Armed Forces of the United States, domestic partnership status, civil union status, or marital status is a bona fide occupational qualification for a particular job which they intend to publish, print, or circulate or cause to be published, printed, or circulated. If an inquiry is made with respect to a specific advertisement, the entity making the inquiry shall supply a copy of the advertisement the entity seeks to publish.

(b)The Division shall give opinions in response to such inquiries as soon as practicable following receipt of all relevant material and information in connection with the inquiry.

(c)An opinion rendered orally or in writing by the Division prior to the publication of any advertisement in response to such an inquiry shall be binding for the purpose of these provisions, except in those instances in which the inquiry has not fully and accurately disclosed the relevant facts regarding the particular job or advertisement in question.

(d)The Division shall maintain records as to each inquiry made pursuant to this section, to include the name, title and address of the caller, a summary of the job and job duties, the basis for the exception claimed and the time, date, identification number and disposition of the inquiry.

(e)A newspaper or other publication shall not be in violation of this chapter where it has accepted any specific advertisement in good faith and in reasonable reliance upon the representations of the person placing the advertisement that he or she has obtained from the Division an opinion that there is a bona fide occupational qualification for the specific job advertised together with the identification number of that opinion.

History

HISTORY:

Recodified from [N.J.A.C. 13:11-1.6](#) and amended by R.2007 d.38, effective February 5, 2007.

See: [38 N.J.R. 3493\(a\)](#), [39 N.J.R. 491\(a\)](#).

Rewrote (a); in (b), deleted "promptly, and whenever possible, no later than two hours after the inquiry is received," following "shall" and inserted "as soon as practicable following receipt of all relevant material and information in connection with the inquiry"; in (c), inserted "or advertisement"; and in (e), inserted gender neutral language. Former [N.J.A.C. 13:11-1.5](#), Bona fide occupational qualification exception; application, recodified to [N.J.A.C. 13:11-1.4](#).

Amended by R.2014 d.119, effective July 21, 2014.

See: [46 N.J.R. 272\(a\)](#), [46 N.J.R. 1697\(b\)](#).

Rewrote (a); in (d), substituted "section" for "Section"; and in (e), substituted "this chapter" for "these provisions".

Annotations

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§ 13:11-1.6 Violations

Failure to comply with this chapter will constitute a violation of [N.J.S.A. 10:5-12](#).

History

HISTORY:

Recodified from [N.J.A.C. 13:11-1.7](#) by R.2007 d.38, effective February 5, 2007.

See: [38 N.J.R. 3493\(a\)](#), [39 N.J.R. 491\(a\)](#).

Former [N.J.A.C. 13:11-1.6](#), Ruling by Division on bona fide occupational qualifications for particular jobs, recodified to [N.J.A.C. 13:11-1.5](#).

Amended by R.2014 d.119, effective July 21, 2014.

See: [46 N.J.R. 272\(a\)](#), [46 N.J.R. 1697\(b\)](#).

Substituted "chapter" for "Chapter".

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§ 13:11-1.7 (Reserved)

History

HISTORY:

Recodified to [N.J.A.C. 13:11-1.6](#) by R.2007 d.38, effective February 5, 2007.

See: [38 N.J.R. 3493\(a\)](#), [39 N.J.R. 491\(a\)](#).

Section was "Violations".

Annotations

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N.J.A.C. 13:11-1.8

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§ 13:11-1.8 (Reserved)

History

HISTORY:

Repealed by R.2007 d.38, effective February 5, 2007.

See: [38 N.J.R. 3493\(a\)](#), [39 N.J.R. 491\(a\)](#).

Section was "Effective date".

Annotations

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N.J.A.C. 13:13

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NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 13. REGULATIONS PERTAINING TO DISCRIMINATION ON THE BASIS OF DISABILITY

Title 13, Chapter 13 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

[N.J.S.A. 10:5-4.1](#), 10:5-8, and 10:5-12.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

Effective: December 18, 2018.

See: [51 N.J.R. 137\(a\)](#).

CHAPTER HISTORICAL NOTE:

Chapter 13, Regulations Pertaining to Discrimination on the Basis of Handicap, was adopted as new rules by R.1985 d.305, effective June 17, 1985. See: 17 N.J.R. 671(a), 17 N.J.R. 1574(a).

Pursuant to Executive Order No. 66(1978), Chapter 13, Regulations Pertaining to Discrimination on the Basis of Handicap, was readopted as R.1990 d.360, effective July 16, 1990. See: 22 N.J.R. 1436(a), 22 N.J.R. 2181(a).

Pursuant to Executive Order No. 66(1978), Chapter 13, Regulations Pertaining to Discrimination on the Basis of Handicap, was readopted as R.1995 d.424, effective July 12, 1995. See: 27 N.J.R. 1954(a), [27 N.J.R. 2956\(c\)](#).

Pursuant to Executive Order No. 66(1978), Chapter 13, Regulations Pertaining to Discrimination on the Basis of Handicap, was readopted as R.2000 d.273, effective June 6, 2000. As a part of R.2000 d.273, Chapter 13, Regulations Pertaining to Discrimination on the Basis of Handicap, was renamed Regulations Pertaining to Discrimination on the Basis of Disability, effective July 3, 2000. See: [32 N.J.R. 1155\(a\)](#), [32 N.J.R. 2445\(a\)](#).

Chapter 13, Regulations Pertaining to Discrimination on the Basis of Disability, was readopted as R.2006 d.13, effective December 2, 2005. See: [37 N.J.R. 2607\(a\)](#), [38 N.J.R. 335\(a\)](#).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 13, Regulations Pertaining to Discrimination on the Basis of Disability, was scheduled to expire on May 31, 2013. See: [43 N.J.R. 1203\(a\)](#).

Chapter 13, Regulations Pertaining to Discrimination on the Basis of Disability, was readopted as R.2012 d.039, effective January 18, 2012. See: [43 N.J.R. 149\(a\)](#), [44 N.J.R. 505\(a\)](#).

Chapter 13, Regulations Pertaining to Discrimination on the Basis of Disability, was readopted, effective December 18, 2018. See: Source and Effective Date.

Annotations

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Research References & Practice Aids

CHAPTER EXPIRATION DATE:

Chapter 13, Regulations Pertaining to Discrimination on the Basis of Disability, expires on December 18, 2025.

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§ 13:13-1.1 Purpose

This chapter is designed to implement the Law Against Discrimination, [N.J.S.A. 10:5-1](#) et seq. ("the act" or "the statute"), as it pertains specifically to discrimination on the basis of physical and mental disability.

History

HISTORY:

Amended by R.1995 d.243, effective May 15, 1995.

See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

Amended by R.2000 d.273, effective July 3, 2000.

See: [32 N.J.R. 1155\(a\)](#), [32 N.J.R. 2445\(a\)](#).

Changed N.J.A.C. reference, and substituted a reference to disabilities for a reference to handicaps.

Amended by R.2006 d.13, effective January 3, 2006.

See: [37 N.J.R. 2607\(a\)](#), [38 N.J.R. 335\(a\)](#).

Substituted ", " for "." following "Discrimination."

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Any handicapped individual aggrieved by an action or inaction of the Commission may take an informal appeal to a Commission-designated representative. [Ryans v. New Jersey Commission for the Blind and Visually Impaired, 542 F.Supp. 841 \(D.N.J.1982\)](#).

"Tax leveling" approved, to increase backpay award under the Law Against Discrimination, [N.J.S.A. 10:5-1](#) et seq., to compensate for the higher tax burden incurred by receiving backpay in a lump sum. Ponsi v. Cliffside Park Bd. of Educ., OAL Dkt. No. CRT 10536-06, 2008 N.J. AGEN LEXIS 1237, Final Decision (September 1, 2008).

ALJ appropriately decided teacher's LAD ([N.J.S.A. 10:5-1](#) et seq.) claim within the context of a school law dispute -- which teacher himself initiated by choosing to file his appeal with the Commissioner of Education rather than the Division on Civil Rights, as the Board policy on which teacher relied in asserting Commissioner jurisdiction clearly gave him the option to do. The ALJ correctly analyzed petitioner's claim primarily in terms of school law and secondarily in terms of the standard applicable to claims under the LAD, concluding from her review of the law, testimony and evidence that petitioner had no entitlement under the former and had not met his burden of proof under the latter. [Varjian v. Bd. of Educ. of Midland Park, OAL Dkt. No. EDU 9917-05, 2007 N.J. AGEN LEXIS 1009](#), Commissioner's Decision (October 15, 2007), aff'd, [SB NO. 30-07, 2008 N.J. AGEN LEXIS 674 \(N.J. State Bd. of Educ., May 27, 2008\)](#).

Discussion of attorney fees and costs pursuant to N.J.S.A. 10:5-27.1. [Williams v. State Shuttle/Top Ten Leasing, Inc., OAL Dkt. No. CRT 5188-04, 2006 N.J. AGEN LEXIS 986](#), Final Decision (Attorney Fee Order) (August 17, 2006).

To prove pretext, employee may not simply show that the employer's reason was false but must also demonstrate that a discriminatory reason more likely motivated the employer's actions than the employer's proffered legitimate reason. [Williams v. State Shuttle/Top Ten Leasing, Inc., OAL Dkt. No. CRT 5188-04, 2006 N.J. AGEN LEXIS 1094](#), Final Decision (August 17, 2006).

In disability discrimination case, employer's reasons for failing to re-hire bus driver were unworthy of credence and were a pretext for disability discrimination where employer alternately claimed that it offered bus driver a position, but he rejected it; that it did not re-hire driver because it had replaced him and had no appropriate position for him; that driver did not have appropriate medical clearance to return to work, and was unable to perform full range of duties; and that it did re-hire driver but he failed to call in for assignments. Director found employer's multiplicity of reasons to justify its actions inconsistent and contradictory, compelling the conclusion that employer's articulated reasons were unworthy of credence. [Williams v. State Shuttle/Top Ten Leasing, Inc., OAL Dkt. No. CRT 5188-04, 2006 N.J. AGEN LEXIS 1094](#), Final Decision (August 17, 2006).

Attorney fees under N.J.S.A. 10:5-27.1. [Heusser v. N.J. Highway Auth., OAL Dkt. No. CRT 01863-98, 2005 N.J. AGEN LEXIS 1071](#), Final Decision (August 30, 2005).

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N.J.A.C. 13:13-1.2

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§ 13:13-1.2 Construction

(a) Consistent with the public policy underlying the Law Against Discrimination and with firmly established principles for the interpretation of such remedial legislation, the remedial provisions of the statute will be given a broad construction and its exceptions construed narrowly.

(b) The provisions of these regulations are severable. If any provision or the application of any provisions of these regulations to any person or circumstances is invalid, such invalidity shall not affect other provisions or applications which can be given effect without the invalid provision or application.

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N.J.A.C. 13:13-1.3

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§ 13:13-1.3 Definitions

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

"Covered multifamily dwellings" means buildings covered by the provisions of the Barrier-Free Subcode of the State Uniform Construction Code Act, [N.J.S.A. 52:27D-119](#) et seq. and [N.J.A.C. 5:23-7](#).

"Disability" as used in this chapter will have the same meaning as the term "disability" is given by [N.J.S.A. 10:5-5\(q\)](#). "A person with a disability" also means:

- 1.A person who is perceived as or believed to be a person with a disability, whether or not that individual is actually a person with a disability; and
- 2.A person who has been a person with a disability at any time.

History

HISTORY:

Amended by R.1995 d.243, effective May 15, 1995.

See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

Amended by R.2000 d.273, effective July 3, 2000.

See: [32 N.J.R. 1155\(a\)](#), [32 N.J.R. 2445\(a\)](#).

Rewrote "Handicapped" definition as "Disability".

Amended by R.2006 d.13, effective January 3, 2006.

See: [37 N.J.R. 2607\(a\)](#), [38 N.J.R. 335\(a\)](#).

In definition "Disability", substituted "disability" for "handicapped."

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Because an employer's expressed reason for terminating an employee was its belief that the employee worked less hard and was not as productive as another due to the employee's cancer, there was sufficient evidence of the employer's discriminatory intent under [N.J.S.A. 10:5-4.1](#), [N.J.A.C. 13:13-1.3](#) to preclude summary judgment. [MYERS v. AT&T, 380 N.J. Super. 443, 882 A.2d 961, 2005 N.J. Super. LEXIS 276, 17 Am. Disabilities Cas. \(BNA\) 149 \(2005\)](#).

Obese person may be considered handicapped for purposes of law against discrimination. [Gimello v. Agency Rent-A-Car Systems, Inc., 250 N.J. Super. 338, 594 A.2d 264 \(A.D.1991\)](#).

Although teacher claimed that his work environment was rendered hostile by the cumulative effect of numerous adverse actions at the hands of the Board and its administration, for which there was no possible explanation other than discrimination toward him as a former cancer patient, reality revealed by the record was that teacher's absence and return to work coincided with the emergence of a new building-level administration which progressively undertook to make systematic changes in the operation of the high school, a number of which affected teacher's ability to maintain what he perceived as his accustomed position of status and autonomy (namely, teaching only honors and college prep courses). Teacher had no vested entitlement to teach what he wanted to teach and was no more entitled than any other teacher to determine his own schedule of classes. [Varjian v. Bd. of Educ. of Midland Park, OAL Dkt. No. EDU 9917-05, 2007 N.J. AGEN LEXIS 1009](#), Commissioner's Decision (October 15, 2007), *aff'd*, [SB NO. 30-07, 2008 N.J. AGEN LEXIS 674 \(N.J. State Bd. of Educ., May 27, 2008\)](#).

Employer's articulated reasons (employee's "lie" about her activities during her medical leave plus past performance problems) were not true reasons for discharging employee, but were pretext for disability discrimination. Company president's decision to discharge employee because he couldn't "deal with it anymore," despite her offer of medical documentation explaining that her doctor had cleared her to engage in other restricted activities, but had not yet cleared her to return to work, demonstrated nothing less than an intolerance for employee because of her disability (adopting as modified [Initial Decision, 2007 N.J. AGEN LEXIS 430](#)). [Lampley v. Astral Air Parts, Inc., OAL Dkt. No. CRT 1307-06, 2007 N.J. AGEN LEXIS 857](#), Final Decision (August 17, 2007).

To prove pretext, employee must do more than show that the reason her employer gave for dismissing her was false; she must show that the employer's true reason was unlawful discrimination, in this case, discrimination against people with obesity. Even if police officer recruit had presented evidence to show that she was treated less favorably than similarly situated recruits, she did not present sufficient evidence to show that she was targeted because of perceived obesity. [Hidalgo v. Camden City Police Dep't, OAL Dkt. No. CRT 02913-01, 2006 N.J. AGEN LEXIS 558](#), Final Decision (June 5, 2006).

Police officer recruit was not differentially treated or subjected to a hostile work environment due to perceived obesity, and city police department reasonably arrived at the decision that her temporary disability, a shoulder injury, precluded job performance where there was medical evidence that employee had an injury and that she would be unable to complete the physical training portion of the academy class in which she was enrolled. City offered to accommodate employee's disability by permitting her to resign from the academy, so that she could re-enroll in a new session once her shoulder healed, and employee presented no contradictory medical evidence to show that she was able to safely engage in physical training at the time of her dismissal, or would have been able to do so at any time before her academy class graduated. [Hidalgo v. Camden City Police Dep't, OAL Dkt. No. CRT 02913-01, 2006 N.J. AGEN LEXIS 558](#), Final Decision (June 5, 2006).

N.J.A.C. 13:13-2.1

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§ 13:13-2.1. Job advertising and solicitation

(a) It is unlawful to print or cause to be printed any advertisement which has the effect of discouraging people with disabilities from applying for a job for which they are qualified, despite a particular disability or which contains the words "able-bodied persons wanted," or their equivalent. An employer may include a statement of the particular physical or mental abilities reasonably necessary for the performance of the essential functions of the job.

(b) The publication by any communications medium of any notice of advertisement relating to employment, or to membership in a labor organization, indicating any preference, limitation, specification, or discrimination based on disability is unlawful unless such notice or advertisement falls within one of the exceptions enumerated by [N.J.A.C. 13:13-2.8](#).

(c) All employers, labor organizations and employment agencies should conduct job vacancy, membership recruitment and employment referral programs in such a manner as to assure that all persons, including people with disabilities, are given fair and adequate notice of job vacancies, membership opportunities and employment referral opportunities:

1. Employers and labor organizations are encouraged to place notices or advertisements relating to employment, or to membership in a labor organization, in the newspaper having the largest circulation in the relevant labor market, unless the position sought to be filled requires specialized training, education, experience or licensing of a type not commonly found among members of the workforce in the relevant labor market.

2. Employers should encourage their referral sources to seek and refer qualified individuals with disabilities.

3. Employers are encouraged to list all job openings and requests for referrals with institutions, agencies, and organizations of or serving people with disabilities including the Division of Vocational Rehabilitation Services in the New Jersey Department of Labor.

History

HISTORY:

Amended by R.2000 d.273, effective July 3, 2000.

See: [32 New Jersey Register 1155\(a\)](#), [32 New Jersey Register 2445\(a\)](#).

Substituted references to people with disabilities for references to handicapped persons throughout; and in (c), substituted a reference to disability for a reference to handicap.

Amended by R.2006 d.13, effective January 3, 2006.

See: [37 New Jersey Register 2607\(a\)](#), [38 New Jersey Register 335\(a\)](#).

In (a), added "essential functions of the."

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Rules precluding maintenance of classified advertising employment columns segregated on basis of sex upheld as not abridging freedom of the press and as within the Director's rulemaking power; individual rules examined. [Passaic Daily News v. Blair, 63 N.J. 474, 308 A.2d 649 \(1973\)](#).

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N.J.A.C. 13:13-2.2

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§ 13:13-2.2 Job referrals

(a) The knowing use by an employer of any employment agency or recruitment source which does not refer people with disabilities or which discriminates against people with disabilities is an unlawful act of discrimination.

(b) The failure or refusal of any employment agency or labor organization to refer for employment any individual because that individual is a person with a disability is an unlawful employment practice. It is unlawful for an employment agency or labor organization to comply with an employer's request for referrals if such a request indicates either directly or indirectly that the employer will discriminate against people with disabilities.

(c) It is an unlawful employment practice for any employment agency or labor organization to classify people with disabilities in any way which would deprive or have the effect of depriving people with disabilities of employment opportunities or otherwise affect employee status.

History

HISTORY:

Amended by R.2000 d.273, effective July 3, 2000.

See: [32 New Jersey Register 1155\(a\)](#), [32 New Jersey Register 2445\(a\)](#).

Substituted references to people with disabilities for references to handicapped persons throughout.

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§ 13:13-2.3. Employment criteria

(a) It is an unlawful employment practice for any employer, employment agency or labor organization to make use of any employment test or other selection criterion that screens out or has the effect of screening out people with disabilities unless:

1. That test score or other selection criterion is shown to be job related for the position in question; and
2. Alternative job-related tests or criteria that do not screen out or have the effect of screening out fewer people with disabilities are not available.

(b) An employer, employment agency or labor organization shall select and administer tests concerning employment which accurately reflect, with the benefit of reasonable accommodation, the applicant's or employee's job skills, aptitude or competency, rather than reflecting the applicant's or employee's impaired sensory, manual or speaking skills (except where those skills are the factors that the test purports to measure, and are necessary to perform the essential functions of the job in question).

History

HISTORY:

Amended by R.2000 d.273, effective July 3, 2000.

See: [32 New Jersey Register 1155\(a\)](#), [32 New Jersey Register 2445\(a\)](#).

In (a), substituted references to people with disabilities for references to handicapped individuals throughout.

Amended by R.2006 d.13, effective January 3, 2006.

See: [37 New Jersey Register 2607\(a\)](#), [38 New Jersey Register 335\(a\)](#).

In (b), added "essential functions of the."

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Termination of car salesman for inadequate sales and performance affirmed. *Casey v. Winner Ford*, 97 N.J.A.R.2d (CRT) 161.

Dismissal of food service worker was due to her refusal to accept transfer ordered for legitimate financial reasons, and not due to age or handicap discrimination. *Cosimano v. Gardner Merchant Food Services, Inc.*, 96 N.J.A.R.2d (CRT) 53.

Employer that fails to determine whether employee's hearing impairment precludes performance or invites risk to self or others may not dismiss employee because of disability. *Downing v. Hostess Helpers, Inc.*, 96 N.J.A.R.2d (CRT) 11.

Vocational technical school improperly discriminated against instructor; diabetes. *Hawryluk v. Union County Vocational-Technical Schools*, 94 N.J.A.R.2d (CRT) 123.

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N.J.A.C. 13:13-2.4

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§ 13:13-2.4. Pre-employment inquiries

(a) It shall be an unlawful practice for an employer, employment agency or labor organization to elicit or attempt to elicit, either verbally or through the use of an application form or request for documentation, any information which would tend to divulge the existence of a disability or health condition, unless required or necessitated by Federal law or regulation. An employer, employment agency or labor organization may inquire whether an applicant is precluded from satisfactorily performing the essential functions of the job in question.

(b) It is not unlawful for an employer to invite applicants for employment to identify themselves as a person with a disability:

1. To satisfy the affirmative action requirements of Federal law;
2. To implement a court ordered or other bona fide affirmative action plan to promote the employment of people with disabilities; or
3. To implement a special program which is designed to benefit people with disabilities when a condition for a person's participation in the program is that he or she is a person with a disability.

(c) Employers who request such information must observe requirements under Section 503 of the Americans with Disabilities Act, [42 U.S.C. § 12101](#) et seq., regarding the manner in which the information is requested and used, and the procedure for maintaining such information as a separate, confidential record, apart from regular personnel records.

(d) The act does not prohibit any officially recognized agency from keeping necessary records in order to provide services to individuals requiring rehabilitation or employment assistance.

(e) It is not unlawful for an employer to condition an offer of employment on the results of a medical examination held subsequent to such offer and prior to the employee's entrance on duty, provided that:

1. All entering employees are subjected to such examination; and
2. The results of such an examination are used in accordance with these regulations and are not used to disqualify an applicant except to the extent that any disability discovered would, even with reasonable accommodation, preclude the safe or adequate performance of the essential functions of the job in question, as defined in [N.J.A.C. 13:13-2.8](#). An examination should consider the degree to which the person has compensated for his limitations and the rehabilitation services he has received or is receiving.

History

HISTORY:

Amended by R.1995 d.243, effective May 15, 1995.

See: 26 New Jersey Register 1942(a), 27 New Jersey Register 2005(a).

Amended by R.2000 d.273, effective July 3, 2000.

See: [32 New Jersey Register 1155\(a\)](#), [32 New Jersey Register 2445\(a\)](#).

In (a), substituted a reference to disability for a reference to handicap; and in (b), substituted references to people with disabilities for references to handicapped persons throughout.

Amended by R.2006 d.13, effective January 3, 2006.

See: [37 New Jersey Register 2607\(a\)](#), [38 New Jersey Register 335\(a\)](#).

In (a), added "essential functions of the" and deleted "duties" following "job"; in (e)2, added "essential functions of the."

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N.J.A.C. 13:13-2.5

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§ 13:13-2.5 Reasonable accommodation

(a) All employers shall conduct their employment procedures in such a manner as to assure that all people with disabilities are given equal consideration with people who do not have disabilities for all aspects of employment including, but not limited to, hiring, promotion, tenure, training, assignment, transfers, and leaves on the basis of their qualifications and abilities. Each individual's ability to perform a particular job must be assessed on an individual basis.

(b) An employer must make a reasonable accommodation to the limitations of an employee or applicant who is a person with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business. The determination as to whether an employer has failed to make reasonable accommodation will be made on a case-by-case basis.

1. Under circumstances where such accommodation will not impose an undue hardship on the operation of an employer's business, examples of reasonable accommodation may include:

- i. Making facilities used by employees readily accessible and usable by people with disabilities;
- ii. Job restructuring, part-time or modified work schedules or leaves of absence;
- iii. Acquisition or modification of equipment or devices; and
- iv. Job reassignment and other similar actions.

2. An employer shall consider the possibility of reasonable accommodation before firing, demoting or refusing to hire or promote a person with a disability on the grounds that his or her disability precludes job performance.

3. In determining whether an accommodation would impose undue hardship on the operation of an employer's business, factors to be considered include:

- i. The overall size of the employer's business with respect to the number of employees, number and type of facilities, and size of budget;
- ii. The type of the employer's operations, including the composition and structure of the employer's workforce;
- iii. The nature and cost of the accommodation needed, taking into consideration the availability of tax credits and deductions and/or outside funding; and
- iv. The extent to which accommodation would involve waiver of an essential requirement of a job as opposed to a tangential or non-business necessity requirement.

History

HISTORY:

Amended by R.2000 d.273, effective July 3, 2000.

See: [32 N.J.R. 1155\(a\)](#), [32 N.J.R. 2445\(a\)](#).

Substituted references to people with disabilities for references to handicapped persons throughout; and in (a), substituted a reference to people who do not have disabilities for a reference to non-handicapped persons.

Amended by R.2006 d.13, effective January 3, 2006.

See: [37 N.J.R. 2607\(a\)](#), [38 N.J.R. 335\(a\)](#).

In (b)1ii, added "or leaves of absence."

Amended by R.2012 d.039, effective February 21, 2012.

See: [43 N.J.R. 149\(a\)](#), [44 N.J.R. 505\(a\)](#).

In (b)3iii, inserted ", taking into consideration the availability of tax credits and deductions and/or outside funding".

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Under the New Jersey Law Against Discrimination (LAD), an employer was not obligated to accommodate a commuting problem of an employee with epilepsy; a change to day shift sought by the employee was not an "accommodation," that the employer was legally obligated to provide, but was simply a request for an easier, more convenient commute. [Laresca v. American Tel. & Tel., D.N.J. 2001, 161 F.Supp.2d 323](#).

Neither employee's computer illiteracy or difficulty nor his requested transfer suggested to employer that employee was unable to perform his job duties because of dyslexia and absent knowledge of employee's dyslexia disability, employer did not violate [New Jersey Law Against Discrimination. Illingworth v. Nestle U.S.A., Inc., D.N.J. 1996, 926 F.Supp. 482](#).

Federal regulations did not preempt former employee's handicap discrimination and workers' compensation retaliation claims under New Jersey law. [Kube v. New Penn Motor Exp., Inc., D.N.J. 1994, 865 F.Supp. 221](#).

In an employee's suit alleging wrongful termination or failure to provide a reasonable accommodation, where the jury found for the employer, a new trial was not warranted, because it was possible to read the jury's verdict as finding the rare circumstance in which an employer failed to accommodate an employee but the employee suffered no adverse consequence, and the appellate court was bound to adopt that reading. [Bull v. UPS, 620 Fed. Appx. 103, 2015 U.S. App. LEXIS 12034 \(2015\)](#).

Former employee failed to show that his former employer failed to accommodate his disability in violation of New Jersey's Law Against Discrimination because the employee's request for a leave of absence for an undetermined duration was not a request for a reasonable accommodation. [Shann v. Atl. Health Sys., 2017 U.S. Dist. LEXIS 186758 \(2017\)](#).

Employee's retaliation claim remained for trial because there were sufficient facts in record that could lead a reasonable jury to find that the employee established a prima facie case of retaliation under the New Jersey Law

Against Discrimination. Reasonable accommodation was a right protected by the law and that right could take the form of a temporary leave of absence, pursuant to this section. [*Boles v. Wal-Mart Stores, Inc.*, 2014 U.S. Dist. LEXIS 41926, 29 Am. Disabilities Cas. \(BNA\) 1802 \(2014\)](#).

Failure to extend a disabled employee's leave of absence for a finite period of time could, subject an employer to liability for failure to provide a reasonable accommodation. [*Boles v. Wal-Mart Stores, Inc.*, 2014 U.S. Dist. LEXIS 41926, 29 Am. Disabilities Cas. \(BNA\) 1802 \(2014\)](#).

Detective's total knee replacement surgery did not qualify as a reasonable accommodation under the New Jersey Law Against Discrimination (LAD) since he never sought to enforce his right to the surgery prior to retiring; thus, the detective's failure to utilize the New Jersey Workers' Compensation Act's administrative remedies to obtain knee replacement surgery precluded his failure-to-accommodate claim under the [*LAD. Caraballo v. City of Jersey City Police Dep't*, 2019 N.J. LEXIS 440 \(2019\)](#).

New Jersey Supreme Court held that medical procedure sought by detective-his double knee replacement surgery-was neither a modification to the work environment nor a removal of workplace barriers; rather, it was a means to treat or mitigate the effects of his injuries; thus, the total knee replacement surgery did not qualify as a reasonable accommodation under the [*New Jersey Law Against Discrimination. Caraballo v. City of Jersey City Police Dep't*, 2019 N.J. LEXIS 440 \(2019\)](#).

Where a plaintiff attempts to prove a disability discrimination claim by circumstantial evidence, the reasonable-accommodation consideration belongs in the second-prong analysis of the prima facie case, and the plaintiff may satisfy the second prong by putting forth evidence either that she was actually performing her job or was able, with or without reasonable accommodation, to perform her job to her employer's legitimate expectations; the employer may rebut the reasonable-accommodation showing by providing evidence that the proposed accommodation is unreasonable. [*Grande v. Saint Clare's Health Sys.*, 2017 N.J. LEXIS 746 \(2017\)](#).

In a trooper's employment discrimination case wherein he asserted race and disability discrimination as well as a failure to accommodate, a new trial was ordered since the jury charge given was legally insufficient since it failed to require a finding that the trooper suffered an adverse employment action. The appellate court also gave direction as to the availability of punitive damages in a New Jersey Law Against Discrimination, [*N.J.S.A. 10:5-1*](#) through 49, case. [*Victor v. State*, 401 N.J. Super. 596, 952 A.2d 493, 2008 N.J. Super. LEXIS 166, 13 Accom. Disabilities Dec. \(CCH\) P13-153, 20 Am. Disabilities Cas. \(BNA\) 1591 \(2008\)](#).

In a former employee's Law Against Discrimination, [*N.J.S.A. 10:5-1*](#) to [*10:5-49*](#), suit against a county, the trial court erred in granting a directed verdict in favor of the former employee on the subject of failure to accommodate, which required a new trial on remand. The reviewing court held that reasonable minds could have differed regarding whether the county was willing to have accommodated the former employee with regard to his disability and, as such, the issue should have been submitted to the jury to determine. [*POTENTE v. COUNTY OF HUDSON*, 187 N.J. 103, 900 A.2d 787, 2006 N.J. LEXIS 1037 \(2006\)](#).

Accommodations listed under the ADA and Law Against Discrimination (LAD) are designed to make certain changes in the work environment or structuring of employees' time that will allow disabled employees to remain at work without their physical handicaps impeding their job performance. [*Jones v. Aluminum Shapes & Frank Wimmersberger*, 772 A.2d 34 \(2001\)](#).

"Reasonable accommodation" under the ADA and Law Against Discrimination (LAD) refers to the duty of an employer to attempt to accommodate the physical disability of the employee, not to a duty on the part of the employer to acquiesce to the disabled employee's requests for certain benefits or remuneration. [*Jones v. Aluminum Shapes & Frank Wimmersberger*, 772 A.2d 34 \(2001\)](#).

Employee failed to show that city should have allowed her to work at home in her court clerk position in order to accommodate her epilepsy disability as would show that employer's proffered reason for terminating employee was

pretext for discrimination under [Law Against Discrimination. Melick v. Township of Oxford, 294 N.J.Super. 386, 683 A.2d 584 \(A.D.1996\).](#)

Municipality was not required to provide second opportunity for rehabilitation to firefighter who tested positive for cocaine and whose reinstatement after first testing positive was conditioned upon abstaining from use of drugs. [Matter of Jackson, 294 N.J.Super 233, 683 A.2d 203 \(A.D.1996\).](#)

Terminated police officer's handicap discrimination suit was precluded by adverse decision of [Merit System Board. Ensslin v. Township of North Bergen, 275 N.J.Super. 352, 646 A.2d 452 \(A.D.1994\).](#) certification denied 142 N.J. 446, 663 A.2d 1354.

No reasonable accommodation would permit officer to perform essential functions of job; no violation of [Law Against Discrimination. Ensslin v. Township of North Bergen, 275 N.J.Super. 352, 646 A.2d 452 \(A.D.1994\).](#) certification denied 142 N.J. 446, 663 A.2d 1354.

Adequate consideration given provisions of [Law Against Discrimination. Ensslin v. Township of North Bergen, 275 N.J.Super. 352, 646 A.2d 452 \(A.D.1994\).](#) certification denied 142 N.J. 446, 663 A.2d 1354.

Fire fighter who was an alcoholic and drug addict was a "handicapped person" under [Law Against Discrimination. Matter of Cahill, 245 N.J.Super. 397, 585 A.2d 977 \(A.D.1991\).](#)

Determination of a city department of public works (DPW) that an employee holding the position of Laborer 1 was properly removed from his position on the ground that he was unable to perform his duties was improper. Although the employee was subject to a permanent work restriction due to a work-related injury that required him to refrain from lifting more than 50 pounds, that restriction did not foreclose his reinstatement into his former Laborer 1 position because that position did not require him to lift any weight in excess of 50 pounds. That being so, it was a position that he could hold without accommodation, and DPW thus could not prevail on its claim that the employee was properly removed for inability to perform the duties of his position. Moreover, that also meant that it was irrelevant whether he had requested an accommodation or whether the DPW had failed to grant him an accommodation. [In re Green, Atlantic City Dep't of Pub. Works, OAL DKT. NO. CSV 13691-14, 2015 N.J. AGEN LEXIS 312,](#) Initial Decision (June 8, 2015).

Appointing authority's determination that a judiciary clerk who was employed in a county courthouse could not perform the essential duties of her position was supported by the evidence which established that the clerk's preexisting asthma and allergies were aggravated by environmental factors that were present in the courthouse and that her physicians determined that she could not render services at that location. Though the appointing authority had temporarily accommodated her condition by assigning her to a different position in a different facility and although she was able to perform certain aspects of her position from the second location, there remained essential responsibilities that could only be performed at the courthouse. Because she could not return to the courthouse, she was properly removed from her position because she was unable to perform her job duties from a different location. Moreover, the facts established that the appointing authority had sought to accommodate the clerk's disability, as it was required to do by [N.J.A.C. 13:13-2.5\(b\)](#), there was no reasonable accommodation that would make it possible for the clerk to remain in her position. While termination of the clerk's employment thus was proper, that termination was not properly accomplished under [N.J.A.C. 4A:2-2.3\(a\)\(3\)](#), which was a disciplinary provision, because there was no claim of wrongdoing on the clerk's part. Her termination thus was properly converted into a resignation in good standing. [In re Exarchakis, Superior Court of New Jersey, Monmouth Vicinage, OAL DKT. NO. CSV 4455-13, AGENCY DKT. NO. 2013-2357, 2014 N.J. AGEN LEXIS 284,](#) Initial Decision (May 19, 2014).

Action of the Administrative Office of the Courts, Monmouth Vicinage, in terminating an employee working as a judiciary clerk for inability to perform duties pursuant to [N.J.A.C. 4A:2-2.3\(a\)\(3\)](#) was appropriate under [N.J.A.C. 13:13-2.5\(b\)](#) when she could not work at the courthouse due to allergies and asthma and the essential requirements of her job required her presence at the courthouse. The Administrative Office looked at ways to accommodate the employee but there were none. Because the employee was medically unfit and was not guilty of

wrongdoing, her termination status was changed to a resignation in good standing in order to avoid the harsh consequences of removal. [*In re Sophie Exarchakis, Superior Court of New Jersey, Monmouth Vicinage, OAL Dkt. No. CSV 4455-13, 2014 N.J. AGEN LEXIS 284*](#), Initial Decision (May 19, 2014).

Termination of a licensed practical nurse for the Hudson County Department of Corrections was appropriate. Although the nurse's blindness in one eye was a clear disability and [*N.J.A.C. 13:13-2.5\(b\)*](#) requires a reasonable accommodation on a case by case basis, the record contained no evidence that the nurse ever raised the question of accommodation. [*In re Carol Payton, Hudson Cnty., Dep't. of Corr., OAL Dkt. No. CSV 12269-12, 2013 N.J. AGEN LEXIS 357*](#), Initial Decision (December 27, 2013).

County board of social services (BSS) failed to make a good faith effort to assist an employee who was disabled by reason of cerebral palsy in seeking and obtaining accommodations that would have made it possible for him to succeed in his position as a human services specialist. There was credible evidence that the BSS did not focus on crucial accommodations that the employee had repeatedly requested such as reading software and other assistive technology and that those and other failures on the part of the BSS, including failures to consider the employee's request that he be transferred to another vacant position which would require less accommodations, taken as a whole, established that the BSS had failed to engage in a meaningful interactive process with the employee and thus had unlawfully denied reasonable accommodations in violation of applicable laws and regulations. The employee was therefore entitled to lost wages, interest thereon, a lump sum of \$ 2500 as compensation for pain and humiliation, statutory damages and attorney's fees. [*In re Roldan, Mercer Cnty. Bd. of Soc. Servs., OAL DOCKET NO. CSV 8070-07, OAL DOCKET NO. CRT 10598-10, DCR DOCKET NOS. 2007-49584 and EL11HK-53258, 2011 N.J. AGEN LEXIS 940*](#), Findings, Determination and Order (Consolidated) (December 2, 2011).

School board failed to meet its obligation to reasonably accommodate high school teacher's mental disability (depression and anxiety) and specifically failed to engage in an interactive process with teacher to explore the feasibility of providing reasonable accommodations that would have permitted teacher to return to work (adopting as modified [*Initial Decision, 2008 N.J. AGEN LEXIS 187*](#)). *Ponsi v. Cliffside Park Bd. of Educ.*, OAL Dkt. No. CRT 10536-06, 2008 N.J. AGEN LEXIS 1237, Final Decision (September 1, 2008).

Jurisdiction of boards of education under [*N.J.S.A. 18A:16-4*](#), to determine whether an employee who has previously been deemed ineligible for services based on "mental abnormality" has provided sufficient "proof of recovery" to warrant return to work, does not deprive the employee of the right to reasonable accommodations under the Law Against Discrimination, [*N.J.S.A. 10:5-1*](#) et seq. *Ponsi v. Cliffside Park Bd. of Educ.*, OAL Dkt. No. CRT 10536-06, 2008 N.J. AGEN LEXIS 1237, Final Decision (September 1, 2008).

In a case where respondent technical school failed to appear, the ALJ found that a student had sustained the burden of proving that the school failed to accommodate her dyslexia. [*Guy v. Southern N.J. Tech. School, OAL Dkt. No. CRT 10486-07, 2008 N.J. AGEN LEXIS 313*](#), Initial Decision (April 28, 2008).

Employer's behavior did not rise to the level of denial of reasonable accommodation for employee's carpal tunnel syndrome, where employee's own recitation of the events demonstrated that employer promptly provided the first set of equipment employee requested, and while the ergonomic keyboard and wrist rest proved to be an ineffective accommodation, employer provided precisely the equipment employee believed would solve the problem. Although the delay in providing the subsequently requested keyboard tray was unfortunate, the record reflected that employer made sufficient efforts to provide the accommodation to meet its obligations and that it acted in good faith (adopting as modified [*Initial Decision, 2007 N.J. AGEN LEXIS 796*](#)). [*Moebis v. Hartford Life Private Placement et al, OAL Dkt. No. CRT 6322-06, 2008 N.J. AGEN LEXIS 135*](#), Final Decision (February 6, 2008).

In disability discrimination case, employer failed to demonstrate that accommodating employee's need for a smoke-free work environment in 2003 would have been an undue hardship, where (1) the ALJ found insufficient company president's testimony that banning smoking from the office area would impair productivity, and noted that president dismissed other possible accommodations out of hand after merely discussing them with his partner; and (2) Director found insufficient president's contention that employee could not be trusted to work in a secluded area.

If employee had performance deficiencies, employer was free to address them independently, but an employee cannot be denied reasonable accommodations as a form of discipline for failure to comply with an employer's work rules (adopting as modified [Initial Decision, 2007 N.J. AGEN LEXIS 430](#)). [Lampley et al. v. Astral Air Parts, Inc., OAL Dkt. No. CRT 1307-06, 2007 N.J. AGEN LEXIS 857](#), Final Decision (August 17, 2007).

In disability discrimination case, the fact that employer had now, in response to the Legislature's 2006 mandate, banned smoking from the same office area in which employee previously worked was sufficient to demonstrate that employee could have been accommodated without undue hardship in 2003 if employer had engaged in a good faith interactive process. [Lampley v. Astral Air Parts, Inc., OAL Dkt. No. CRT 1307-06, 2007 N.J. AGEN LEXIS 857](#), Final Decision (August 17, 2007).

Once an employee has requested assistance due to a disability, it is the employer's obligation to initiate the process of working with the employee to determine the appropriate accommodations, and this interactive process is crucial. [Lampley v. Astral Air Parts, Inc., OAL Dkt. No. CRT 1307-06, 2007 N.J. AGEN LEXIS 857](#), Final Decision (August 17, 2007).

Emotional distress damages of \$ 50,000 to compensate employee for her pain and humiliation was appropriate; especially in light of the testimony regarding the physical and emotional symptoms employee suffered as a result of employer's refusal to provide reasonable accommodations (smoke-free work environment) and unlawful termination of her employment when she was recuperating from cardiac surgical procedures, there was no merit in employer's contention that the amount of the award was punitive. [Lampley v. Astral Air Parts, Inc., OAL Dkt. No. CRT 1307-06, 2007 N.J. AGEN LEXIS 857](#), Final Decision (August 17, 2007).

[Initial Decision \(2006 N.J. AGEN LEXIS 188\)](#) adopted, which denied a teacher's application for accidental disability benefits. Collateral estoppel applied to prevent the teacher from relitigating whether she was disabled, as it had been previously determined that she was not totally and permanently disabled in the context of [N.J.S.A. 43:15A-43](#) and that she was able to perform the duties in the general area of her employment. The duties in the general area of her employment were to teach and the accommodation offered her after she was injured while assisting a student, pursuant to this section, afforded her the opportunity to perform the general duties of a teacher. [In re Megargee, OAL Dkt. No. TYPPE 02690-2004 S, 2006 N.J. AGEN LEXIS 683](#), Final Decision (April 20, 2006), aff'd, N.J. Sup. Ct., App. Div. (Docket No. A-4866-05T2) (June 14, 2007).

[Initial Decision \(2006 N.J. AGEN LEXIS 890\)](#) adopted, which explained that reasonable accommodation for a disabled employee requires an "interactive process," in which "both employer and employee bear responsibility for communicating with one another to identify the precise limitations resulting from the disability and potential reasonable accommodation that could overcome those limitations." "In general, the interactive process must ordinarily begin with the employee providing notice to the employer of the employee's disability and any resulting limitations, and expressing a desire for reassignment if no reasonable accommodation is possible in the employee's existing job." [Fischbach v. Ocean County, OAL Dkt. No. CSV 4180-06 \(CSV 4698-05 On Remand\), 2007 N.J. AGEN LEXIS 93](#), Final Decision (January 17, 2007).

[Initial Decision \(2006 N.J. AGEN LEXIS 890\)](#) adopted, which concluded that, although the employee, who had hypertension, was unable to claim protection under the Americans with Disabilities Act, the employee was considered "handicapped" under the definition contained in the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-5](#); therefore, the requirement for reasonable accommodation applied. [Fischbach v. Ocean County, OAL Dkt. No. CSV 4180-06 \(CSV 4698-05 On Remand\), 2007 N.J. AGEN LEXIS 93](#), Final Decision (January 17, 2007).

[Initial Decision \(2006 N.J. AGEN LEXIS 890\)](#) adopted, which concluded that the employer reasonably accommodated the employee, who had hypertension and was considered "handicapped" under the New Jersey Law Against Discrimination; in order to both retain the employee, who had been employed as a Senior Recycling Operator, and to accommodate the limitations on his ability to perform certain duties, notably driving trucks, the employer assigned him to a position with a different title that did not require such duties. Merely because the employee's salary and title were diminished from that held previously did not make the accommodation

unreasonable. [Fischbach v. Ocean County, OAL Dkt. No. CSV 4180-06 \(CSV 4698-05 On Remand\), 2007 N.J. AGEN LEXIS 93](#), Final Decision (January 17, 2007).

Adopting Initial Decision's conclusion that county employer had reasonably accommodated an employee, who had hypertension, by assigning him to a position with a different title which did not require that he perform certain duties, notably driving trucks, even though the accommodation involved the employee's demotion from "Senior Recycling Operator" to the position of "Recycling Operator." Nonetheless, since the employee asserted that he would not have promotional opportunities to the Assistant Supervisor, Recycling Operations position if he remained in the Recycling Operator title, the Merit System Board recommended that future announcements for Assistant Supervisor, Recycling Operations, be open to employees holding the titles of Senior Recycling Operator and Recycling Operator, pursuant to [N.J.A.C. 4A:4-2.4](#) (adopting [2006 N.J. AGEN LEXIS 890](#)). [Fischbach v. Ocean County, OAL Dkt. No. CSV 4180-06 \(CSV 4698-05 On Remand\), 2007 N.J. AGEN LEXIS 93](#), Final Decision (January 17, 2007).

Employer did not attempt to accommodate driver's disability where record reflected no evidence that employer considered modifying its scheduling procedures to provide driver with assignments or otherwise explored alternative assignments that would address limitations presented by driver's disability (AIDS diagnosis limiting him to part-time work). By conditioning driver's return to work on being able to perform functions his physician had not cleared him to perform, employer denied, or, at best, ignored driver's medical limitations instead of trying to accommodate them. [Williams v. State Shuttle/Top Ten Leasing, Inc., OAL Dkt. No. CRT 5188-04, 2006 N.J. AGEN LEXIS 1094](#), Final Decision (August 17, 2006).

Employer's assertion that there were no bus driver positions available, plus its failure to inform driver that it considered driver's medical clearance deficient, supported the conclusion that employer did not consider reasonable accommodation before deciding to deny re-employment to driver due to his disability. [Williams v. State Shuttle/Top Ten Leasing, Inc., OAL Dkt. No. CRT 5188-04, 2006 N.J. AGEN LEXIS 1094](#), Final Decision (August 17, 2006).

Collection of disability compensation by an employee does not necessarily render a disability-based discrimination claim invalid, and the employee must be given the opportunity to explain the inconsistency; driver's application for disability benefits presented no bar to driver's failure to hire/denial of reasonable accommodation claim. [Williams v. State Shuttle/Top Ten Leasing, Inc., OAL Dkt. No. CRT 5188-04, 2006 N.J. AGEN LEXIS 1094](#), Final Decision (August 17, 2006).

Where city employer considered possible accommodations, offered the accommodation of resignation and re-enrollment, and reasonably arrived at the conclusion that employee's injuries precluded job performance as a police officer, dismissal of employee's complaint was appropriate. Employee rejected the accommodation offered by city, and requested a different accommodation--permission to complete the non-physical components of the academy and return to the academy to complete the physical training once her injury healed but reasonable accommodation provisions do not mandate that an employer provide the specific accommodation requested by an employee. [Hidalgo v. Camden City Police Dep't, OAL Dkt. No. CRT 02913-01, 2006 N.J. AGEN LEXIS 558](#), Final Decision (June 5, 2006).

Reasonable accommodation requires the employer and the employee to work together in good faith to assess the employee's abilities and limitations and the range of available accommodations that would not impose an undue burden on the employer's operations. [Hidalgo v. Camden City Police Dep't, OAL Dkt. No. CRT 02913-01, 2006 N.J. AGEN LEXIS 558](#), Final Decision (June 5, 2006).

Dismissal of youth worker for mental incapacity was improper absent attempt to reasonably accommodate. *Roberts v. Division of Youth and Family Services*, 97 N.J.A.R.2d (CSV) 9.

Employer took reasonable steps to accommodate handicapped computer operator before firing her. *O'Hara v. Department of the Treasury*, 96 N.J.A.R.2d (CSV) 273.

Alcoholism which initially led to excessive absenteeism did not warrant tenured teacher's removal once she successfully completed school district's rehabilitation program. *Jersey City School District v. Howard*, 95 N.J.A.R.2d (EDU) 301.

Excessive absenteeism provided sufficient cause for school board to terminate employee from her position as a tenured secretary. *Matter of Tenure Hearing of Jones*, 95 N.J.A.R.2d (EDU) 285.

Use of illegal amphetamines in breach of drug rehabilitation contract with school board was unbecoming and warranted tenured teacher's dismissal. *Matter of Yanniello Tenure Hearing*, 95 N.J.A.R.2d (EDU) 262.

Inability to do assigned tasks of engineering technician warranted termination when psychological disability from which employee was suffering could not be accommodated. *Sallie v. Department of Transportation*, 95 N.J.A.R.2d (CSV) 100.

Board of education reasonably accommodated alcoholic teacher; dismissal. *State Operated School District of Jersey City v. Howard*. 93 N.J.A.R.2d (EDU) 556.

Turnpike Authority unlawfully discriminated against employee on basis of his handicap. *Troxell v. New Jersey Turnpike Authority*, 92 N.J.A.R.2d (CRT) 5.

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N.J.A.C. 13:13-2.6

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 51 No. 20, October 21, 2019

NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 13. REGULATIONS PERTAINING TO DISCRIMINATION ON THE BASIS OF DISABILITY > SUBCHAPTER 2. EMPLOYMENT

§ 13:13-2.6 Wages and fringe benefits

(a)An employer's wage scale must be unrelated to the disability of its employees, except where permitted by State or Federal law.

(b)Occupational training and retraining programs, including, but not limited to, guidance programs, apprentice training programs and executive training programs, shall not be conducted in such a manner as to discourage or otherwise discriminate against people with disabilities.

(c)It is an unlawful practice for any employer to discriminate against people with disabilities, with regard to fringe benefits provided either directly by an employer or through contracts with insurance carriers. Fringe benefits as used in this section include, but are not limited to, medical, hospital, accident and life insurance, retirement benefits, profit sharing and bonus plans and leave. This subsection does not, for example, prohibit any employer from providing medical insurance, which limits coverage for certain procedures or treatments, unless these activities are being used as a subterfuge to evade the purposes of this subchapter. Rather, whatever medical insurance is made available to non-disabled employees must be equally available to employees with disabilities.

(d)Regulations promulgated pursuant to the Law Against Discrimination shall supersede any inconsistent term of a collective bargaining agreement.

History

HISTORY:

Amended by R.2000 d.273, effective July 3, 2000.

See: [32 N.J.R. 1155\(a\)](#), [32 N.J.R. 2445\(a\)](#).

In (a), substituted "disability of its employees" for "existence of handicap"; in (b), substituted "people with disabilities" for "persons possessing handicaps"; and in (c), substituted "against people with disabilities" for "between persons who are handicapped and those who are not", substituted a reference to non-disabled employees for a reference to non-handicapped employees, and substituted a reference to employees with disabilities for a reference to handicapped employees.

Amended by R.2012 d.039, effective February 21, 2012.

See: [43 N.J.R. 149\(a\)](#), [44 N.J.R. 505\(a\)](#).

Rewrote (c).

Annotations

Notes

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N.J.A.C. 13:13-2.7

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 51 No. 20, October 21, 2019

NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 13. REGULATIONS PERTAINING TO DISCRIMINATION ON THE BASIS OF DISABILITY > SUBCHAPTER 2. EMPLOYMENT

§ 13:13-2.7 Labor organizations

(a) It is unlawful for any labor organization to exclude or expel any individual from membership or from any apprenticeship program because that individual is a person with a disability.

(b) It is an unlawful employment practice for any labor organization to discriminate on the basis of disability with respect to hiring, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances or any other matter directly or indirectly related to membership in or employment by such an organization.

(c) It is unlawful for a labor organization to cause or to attempt to cause an employer to discriminate against an individual because that individual is a person with a disability.

(d) It is unlawful to engage in any activity proscribed by (a), (b), or (c) above notwithstanding that activity is authorized or required by the constitution or by-laws of a labor organization or by a collective bargaining agreement or other contract to which the labor organization is a party.

History

HISTORY:

Amended by R.1995 d.243, effective May 15, 1995.

See: 26 New Jersey Register 1942(a), 27 New Jersey Register 2005(a).

Amended by R.2000 d.273, effective July 3, 2000.

See: [32 New Jersey Register 1155\(a\)](#), [32 New Jersey Register 2445\(a\)](#).

In (a), substituted "is a person with a disability" for "possesses a handicap" at the end; in (b), substituted "disability with" for "a person's handicap in" following "basis of"; and in (c), substituted "that individual is a person with a disability" for "of a handicap" at the end.

Annotations

Notes

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N.J.A.C. 13:13-2.8

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 51 No. 20, October 21, 2019

NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 13. REGULATIONS PERTAINING TO DISCRIMINATION ON THE BASIS OF DISABILITY > SUBCHAPTER 2. EMPLOYMENT

§ 13:13-2.8 Exception

(a) It shall be lawful to take any action otherwise prohibited under this section where it can reasonably be determined that an applicant or employee, as a result of the individual's disability, cannot perform the essential functions of the job even with reasonable accommodation.

1. Refusal to refer, admit to membership, hire or transfer a person with a disability may be lawful where the nature or extent of the individual's disability reasonably precludes the performance the essential functions of the particular employment even with reasonable accommodation. Such a decision, however, must be based upon an objective standard supported by factual evidence rather than on the basis of general assumptions that a particular disability would interfere with the individual's ability to perform the essential functions of the job.

2. Refusal to select a person with a disability may be lawful where it can be demonstrated that the employment of that individual in a particular position would be hazardous to the safety or health of such individual, other employees, clients or customers where hazard cannot be eliminated or reduced by reasonable accommodation. Such a decision must be based upon an objective standard supported by factual or scientifically validated evidence, rather than on the basis of general assumptions that a particular disability would create a hazard to the safety or health of such individual, other employees, clients or customers. A "hazard" to the person with a disability is a materially enhanced risk of serious harm.

3. The burden of proof is upon the employer, employment agency or labor organization to demonstrate in each case that the exception relied upon is based upon an objective standard supported by factual evidence, but no exception shall be based on:

i. A refusal to select a person with a disability because of the preferences of co-workers, clients, customers or the employer.

ii. A refusal to select a person with a disability because of the increased cost of insurance whether actual or anticipated, under a group or employee insurance plan provided in accordance with the law or as a fringe benefit.

iii. A refusal to select a person with a disability because of an assumption not supported by factual documented proof that such individual will incur a high rate of absenteeism in the future.

History

HISTORY:

Amended by R.1995 d.243, effective May 15, 1995.

See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

Amended by R.2000 d.273, effective July 3, 2000.

See: [32 N.J.R. 1155\(a\)](#), [32 N.J.R. 2445\(a\)](#).

Substituted references to persons with disabilities for references to handicapped individuals throughout.

Amended by R.2006 d.13, effective January 3, 2006.

See: [37 N.J.R. 2607\(a\)](#), [38 N.J.R. 335\(a\)](#).

In (a), deleted "presently" throughout; added "essential functions of the" to introductory paragraph (a) and (a)1; in (a)1, also substituted "essential functions" for "duties."

Amended by R.2012 d.039, effective February 21, 2012.

See: [43 N.J.R. 149\(a\)](#), [44 N.J.R. 505\(a\)](#).

In (a)1, deleted a comma following "hire" and inserted "even with reasonable accommodation"; and in (a)2, inserted "where hazard cannot be eliminated or reduced by reasonable accommodation".

Annotations

Notes

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Case Notes

Temporary leave of absence did not have to be granted under New Jersey Law Against Discrimination (NJLAD) to reasonably accommodate handicapped employee's inability to presently perform essential functions of his job. [Conoshenti v. Public Service Electric & Gas Company, 364 F.3d 135](#).

Trial court erred in its summary judgment dismissal of a nurse's disability discrimination claim because issues of material fact existed as to whether 1) her absences from work were sufficiently chronic and excessive to preclude her from demonstrating that she was actually performing her job when she was fired; 2) her disability precluded her from performing the essential functions of her job; and 3) she presented a risk of injury to herself or patients. [Grande v. Saint Clare's Health Sys., 2017 N.J. LEXIS 746 \(2017\)](#).

In a former employee's Law Against Discrimination, [N.J.S.A. 10:5-1](#) to [10:5-49](#), suit against a county, the trial court erred in granting a directed verdict in favor of the former employee on the subject of failure to accommodate, which required a new trial on remand. The reviewing court held that reasonable minds could have differed regarding whether the county was willing to have accommodated the former employee with regard to his disability and, as such, the issue should have been submitted to the jury to determine. [POTENTE v. COUNTY OF HUDSON, 187 N.J. 103, 900 A.2d 787, 2006 N.J. LEXIS 1037 \(2006\)](#).

Municipality was not required to provide second opportunity for rehabilitation to firefighter who tested positive for cocaine and whose reinstatement after first testing positive was conditioned upon abstaining from use of drugs. [Matter of Jackson, 294 N.J.Super. 233, 683 A.2d 203 \(A.D.1996\)](#).

Under the New Jersey Law Against Discrimination (LAD), [N.J.S.A. 10:5-1](#) to -42, a dismissal based on a physical limitation that does not affect an employee's ability to perform the job safely and effectively cannot constitute good cause for termination. The same principle should apply in determining whether good cause exists for dismissal from

public employment, irrespective of whether the employee alleges a violation of the [*LAD. Greenwood v. State Police Training Ctr.*, 127 N.J. 500, 606 A.2d 336, 1992 N.J. LEXIS 369, 3 Am. Disabilities Cas. \(BNA\) 1301 \(1992\).](#)

Employer does not have good cause to terminate a public employee on the basis of a physical limitation unless there is substantial evidence that the limitation either prevents the employee from adequately performing the job or creates a substantial risk of serious injury to the employee or others. [*Greenwood v. State Police Training Ctr.*, 127 N.J. 500, 606 A.2d 336, 1992 N.J. LEXIS 369, 3 Am. Disabilities Cas. \(BNA\) 1301 \(1992\).](#)

Employer may not base his decision to discharge a handicapped employee for safety reasons on subjective evaluations or conclusory medical reports. [*Greenwood v. State Police Training Center*, 127 N.J. 500, 606 A.2d 336 \(1992\).](#)

Employer does not have good cause to terminate a public employee on basis of a physical limitation unless limitation either prevents employee from adequately performing job or creates substantial risk of serious injury. [*Greenwood v. State Police Training Center*, 127 N.J. 500, 606 A.2d 336 \(1992\).](#)

Possible consequences of an injury to police trainee who had limited vision in his right eye did not constitute good cause for trainee's dismissal. [*Greenwood v. State Police Training Center*, 127 N.J. 500, 606 A.2d 336 \(1992\).](#)

Police Training Commission did not have good cause to dismiss trainee who had limited vision in his right eye from police training program. [*Greenwood v. State Police Training Center*, 127 N.J. 500, 606 A.2d 336 \(1992\).](#)

Alleged different treatment of information regarding condition of surgeon who was patient at his own hospital and was diagnosed as having acquired immunodeficiency syndrome (AIDS) would not support cause of action under the New Jersey law against discrimination. [*Estate of Behringer v. Medical Center at Princeton*, 249 N.J.Super. 597, 592 A.2d 1251 \(L.1991\).](#)

In determining whether surgeon with AIDS may legitimately be restricted in his surgical privileges, test to be applied is whether continuation of surgical privileges causes reasonable probability of substantial harm to others, including co-workers and patients. [*Estate of Behringer v. Medical Center at Princeton*, 249 N.J.Super. 597, 592 A.2d 1251 \(L.1991\).](#)

Where physician is being treated at his own hospital, it is imperative that hospital take reasonable steps to insure confidentiality not only of human immunodeficiency virus (HIV) test result, but also of disease diagnosis which is conclusive of acquired immunodeficiency syndrome (*AIDS*). [*Estate of Behringer v. Medical Center at Princeton*, 249 N.J.Super. 597, 592 A.2d 1251 \(L.1991\).](#)

In context of informed consent, risk of surgical accident involving AIDS-positive surgeon would be legitimate concern to surgical patient, warranting disclosure of risk. [*Estate of Behringer v. Medical Center at Princeton*, 249 N.J.Super. 597, 592 A.2d 1251 \(L.1991\).](#)

In deciding whether nature and extent of employee's handicap reasonably precludes job performance, employer may consider whether handicapped person can do his or her work without posing serious threat of injury to health and safety of himself or herself or other employees. [*Jansen v. Food Circus Supermarkets, Inc.*, 110 N.J. 363, 541 A.2d 682 \(1988\), on remand.](#)

To invoke safety defense as justification for otherwise unlawful handicap discrimination employer must reasonably conclude that employee's handicap poses materially enhanced risk of serious injury. [*Jansen v. Food Circus Supermarkets, Inc.*, 110 N.J. 363, 541 A.2d 682 \(1988\), on remand.](#)

Employer's decision not to employ handicapped person must be justified by a "probability" rather than a "possibility" of injury to handicapped person or others. [*Jansen v. Food Circus Supermarkets, Inc.*, 110 N.J. 363, 541 A.2d 682 \(1988\), on remand.](#)

Opinion by employer's medical experts that epileptic employee employed as meatcutter would probably suffer another seizure at work did not support conclusion that such a seizure would probably result in harm to employee or others. [*Jansen v. Food Circus Supermarkets, Inc.*, 110 N.J. 363, 541 A.2d 682 \(1988\)](#), on remand.

Epileptic supermarket employee was reasonably precluded from performance of duties of meat cutter; decision of employer to terminate employee was reasonably arrived at and sufficiently supported by independent medical testimony that there was a reasonable probability of future seizures. [*Jansen v. Food Circus Supermarkets, Inc.*, 214 N.J.Super. 51, 518 A.2d 486 \(App.Div.1986\)](#), reversed [*110 N.J. 363, 541 A.2d 682*](#).

Fire department did not illegally discriminate in refusing to hire 53-year-old applicant for firefighter position. *McKeever v. Kirkwood Board of Fire Commissioners*, 96 N.J.A.R.2d (CRT) 79.

Alcoholism which initially led to excessive absenteeism did not warrant tenured teacher's removal once she successfully completed school district's rehabilitation program. *Jersey City School District v. Howard*, 95 N.J.A.R.2d (EDU) 301.

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N.J.A.C. 13:13-3.1

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§ 13:13-3.1. Application

This subchapter on discrimination in real property applies to vendors and lessors of property and their agents, real estate brokers, agents and salespersons, lending institutions and other persons. For the purpose of this subchapter, lending institutions include banks, building and loan associations, insurance companies and any other enterprise whose business consists in whole or in part in the making or purchasing of any loan or extension of credit, for whatever purpose, whether secured by residential real estate or not, including, but not limited to, financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any real property or part or portion thereof, or any agent or employee thereof.

History

HISTORY:

Amended by R.1995 d.243, effective May 15, 1995.

See: 26 New Jersey Register 1942(a), 27 New Jersey Register 2005(a).

Amended by R.2006 d.13, effective January 3, 2006.

See: [37 New Jersey Register 2607\(a\)](#), [38 New Jersey Register 335\(a\)](#).

Substituted "or purchasing of any loan or extension of credit, for whatever purpose, whether secured by residential real estate or not, including, but not limited to," for "of commercial loans or other forms of" and substituted "any real property or part or portion thereof, or any agent or employee thereof" for "housing accommodations."

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N.J.A.C. 13:13-3.2

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§ 13:13-3.2. Advertising and solicitation

(a) This section applies to real property, public housing and the rental of:

1. A single apartment or flat in a two-family dwelling, the other occupancy unit of which is occupied by the owner as a residence at the time of such rental; and

2. A room or rooms to another person or persons by the owner or occupant of a one-family dwelling occupied by the owner or occupant as a residence at the time of such rental.

(b) It is unlawful for any person to make, print, circulate, issue, display, post, utter, disseminate or publish or cause to be made, printed, circulated, issued, displayed, posted, uttered, disseminated or published any notice, listing, statement, sign or advertisement with respect to the sale, rental, sub-lease, assignment or lease of real property which expresses, overtly or subtly, directly or indirectly, any preference, limitation, specification, or discrimination based upon disability.

(c) It is unlawful for any real estate broker, agent or salesperson to accept for listing any housing accommodation when the seller or lessor or his or her agent has expressed, directly or indirectly, an intention to discriminate against people with disabilities.

(d) It is not unlawful for any person to make, print or publish or cause to be made, printed or published any notice, listing, statement, or advertisement which indicates that barrier free accommodations are available for sale, rent, lease or occupancy.

History

HISTORY:

Amended by R.1995 d.243, effective May 15, 1995.

See: 26 New Jersey Register 1942(a), 27 New Jersey Register 2005(a).

Amended by R.2000 d.273, effective July 3, 2000.

See: [32 New Jersey Register 1155\(a\)](#), [32 New Jersey Register 2445\(a\)](#).

In (b) substituted "disability" for "a handicap"; in (c) added "or her" following "his" and substituted "people with disabilities" for "handicapped persons".

Amended by R.2006 d.13, effective January 3, 2006.

See: [37 New Jersey Register 2607\(a\)](#), [38 New Jersey Register 335\(a\)](#).

In (a)1 and (a)2, deleted "or the household of the owner's or occupant's family"; rewrote (b).

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N.J.A.C. 13:13-3.3

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§ 13:13-3.3 Inquiries

It is unlawful for any person to make or cause to be made any written or oral inquiry or record concerning the disability of any prospective purchaser, tenant or prospective occupant of any real property, or the disability of any other person associated with a prospective purchaser, tenant or prospective occupant, unless such information is required by an agency of local, State or Federal government and the person states clearly that the information requested is intended for use solely by the government agency.

History

HISTORY:

Amended by R.1995 d.243, effective May 15, 1995.

See: 26 New Jersey Register 1942(a), 27 New Jersey Register 2005(a).

Amended by R.2000 d.273, effective July 3, 2000.

See: [32 New Jersey Register 1155\(a\)](#), [32 New Jersey Register 2445\(a\)](#).

Substituted a reference to disability for a reference to handicap.

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N.J.A.C. 13:13-3.4

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§ 13:13-3.4 Sale or rental

(a) It is unlawful for any person to discriminate on the basis of disability in the actual showing, sale, rental or lease of available real property. For example, a representation to any person, because that person is a person with a disability, that real property is not available for inspection, sale or rental when such real property is in fact so available is a violation of the act.

(b) It is unlawful for any person to misrepresent the price of real property listed for sale, rent or lease or to fail to communicate to the seller or lessor any offer made by a prospective buyer or lessor because the applicant or prospective occupant is a person with a disability, or because of any other person associated with the applicant or prospective occupant is a person with a disability.

(c) It is unlawful for any person to fail or refuse to show, rent or lease any real property to a person because he or she is a person with a disability who is accompanied by a guide or service dog or animal. Policies which restrict the availability of housing accommodations to persons without pets shall be void with respect to the above-mentioned segment of this protected class.

(d) It is unlawful for any person to fail or refuse to show, rent or lease any real property because a person with a disability will be residing or intends to reside in a dwelling or because of the disability of any person associated with a buyer or renter.

(e) It is unlawful for any person to discriminate against any individual because of disability in the price, terms, conditions or privileges of the sale, rental or lease of real property or in the provision of services for facilities in connection therewith. People with disabilities shall not be required to pay extra compensation or additional security deposits as a result of their maintaining or requiring special practices or accessories though such persons may be liable for any specific damage which may be done to the premises by virtue of their requirement.

1. This provision does not require a landlord to install or bear the expense of any such special accessories or practices. Apart from requiring payment for specific damage which may be done to the premises, however, a landlord may not charge a person with a disability an extra fee, for example, for keeping a guide or service dog or animal or maintaining special equipment such as a shower bar.

(f) It is unlawful for any person to:

1. Refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the person with a disability, if the modifications may be necessary to afford the person with a disability full enjoyment of the premises, except that, in the case of a rental, the landlord may:

i. Where it is reasonable to do so, condition permission for a modification on the renter's agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

ii. Where it is necessary in order to ensure with reasonable certainty that funds will be available to pay for the restorations at the end of the tenancy, negotiate as part of such a restoration agreement a provision requiring that the tenant pay into an interest bearing escrow account, over a reasonable period, a reasonable amount of money not to exceed the cost of the restorations and, the interest in such account shall accrue to the benefit of the tenant; and

iii. Condition permission for a modification on the renter providing a reasonable description of the proposed modifications as well as reasonable assurances that the work will be done in a workmanlike manner and that any required building permits will be obtained; and

2. Refuse to make reasonable accommodations in rules, policies, practices or services, or reasonable structural modifications, when such accommodations or modifications may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling, including public and common areas.

(g) It is unlawful for any person to fail or refuse to rent to, or to impose different terms of tenancy upon, any person with a disability because that individual is a recipient of Federal, State or local assistance, including medical assistance or housing subsidies.

History

HISTORY:

Amended by R.1995 d.243, effective May 15, 1995.

See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

Amended by R.2000 d.273, effective July 3, 2000.

See: [32 N.J.R. 1155\(a\)](#), [32 N.J.R. 2445\(a\)](#).

Rewrote the section.

Amended by R.2012 d.039, effective February 21, 2012.

See: [43 N.J.R. 149\(a\)](#), [44 N.J.R. 505\(a\)](#).

In (f)2, inserted "or reasonable structural modifications", "or modifications", and ", including public and common areas".

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N.J.A.C. 13:13-3.5

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§ 13:13-3.5 Eviction

It is an unlawful act of discrimination for any person to evict a tenant because the tenant is a person with a disability, or because that person is associated with another person who is a person with a disability.

History

HISTORY:

Amended by R.1995 d.243, effective May 15, 1995.

See: 26 New Jersey Register 1942(a), 27 New Jersey Register 2005(a).

Amended by R.2000 d.273, effective July 3, 2000.

See: [32 New Jersey Register 1155\(a\)](#), [32 New Jersey Register 2445\(a\)](#).

Substituted references to persons with disabilities for references to persons who possess handicaps throughout.

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§ 13:13-3.6 Financing

It is unlawful for any lending institution or person to discriminate against an individual seeking a loan or other form of financial assistance whether in the initial extension of credit or in the terms and conditions of the obligation because that individual or an intended occupant of real property is a person with a disability, or because that individual or intended occupant is associated with another person who is a person with a disability. An application for loans or other forms of financial assistance means and extends to the purchase of an existing property, the construction of new buildings and the rehabilitation, repair or maintenance of existing property.

History

HISTORY:

Amended by R.1995 d.243, effective May 15, 1995.

See: 26 New Jersey Register 1942(a), 27 New Jersey Register 2005(a).

Amended by R.2000 d.273, effective July 3, 2000.

See: [32 New Jersey Register 1155\(a\)](#), [32 New Jersey Register 2445\(a\)](#).

Substituted references to persons with disabilities for references to persons who possess handicaps throughout.

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N.J.A.C. 13:13-3.7

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§ 13:13-3.7 Covered multifamily dwellings

In connection with the design and construction of covered multifamily dwellings for first occupancy after March 13, 1991, it shall be unlawful to fail to design and construct dwellings which comply with the standards set forth in the Barrier-Free subcode of the State Uniform Construction Code Act, [N.J.S.A. 52:27D-119](#) et seq., and [N.J.A.C. 5:23-7](#).

History

HISTORY:

New Rule, R.1995 d.243, effective May 15, 1995.

See: 26 New Jersey Register 1942(a), 27 New Jersey Register 2005(a).

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N.J.A.C. 13:13-4.1

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§ 13:13-4.1 Purpose

The purpose of this subchapter is to implement the provisions of the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-1](#) to 49, as it pertains to unlawful discrimination against people with disabilities by the owners, lessees, proprietors, managers, superintendents, agents or employees of any place of public accommodation.

History

HISTORY:

Amended by R.2001 d.480, effective December 17, 2001.

See: [33 New Jersey Register 1852\(a\)](#), [33 New Jersey Register 4380\(b\)](#).

Rewrote the section.

Annotations

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N.J.A.C. 13:13-4.2

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§ 13:13-4.2 Definitions

The following words and terms, as used in this subchapter, shall have the following meanings:

"LAD" means the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-1](#) to 49.

"Path of travel" means a continuous, unobstructed means of pedestrian passage by which the facilities may be approached, entered, and exited, and which connects the facility to an exterior approach (including sidewalks, streets, and parking areas), an entrance to the facility, and to other parts of the facility, and includes a continuous, unobstructed means of pedestrian passage to the areas of the facility where goods or services are made available to the general public, and to the restrooms, telephones, and drinking fountains.

"Person with a disability" and "people with disabilities" shall have the same meaning as the term "disabled" as defined in [N.J.S.A. 10:5-5\(q\)](#), and explained in [N.J.S.A. 10:5-4.1](#), and shall include people who are perceived as having a disability.

"Place of public accommodation" shall include the places set forth in [N.J.S.A. 10:5-5\(l\)](#), and shall also specifically include organizations that make membership available to the general public and entities that offer examinations or courses related to applications, licensing, certification or credentialing for secondary or post-secondary education, professional, or trade purposes.

"Qualified interpreter" means an interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

"Service animal" means any animal individually trained to do work or perform tasks for the benefit of a person with a disability, including, but not limited to, guiding people with impaired vision, alerting people with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or retrieving dropped items.

"Service dog" means any guide dog, signal dog, or other dog individually trained to do work or perform tasks for the benefit of a person with a disability, including, but not limited to, guiding people with impaired vision, alerting people with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or retrieving dropped items.

"Smoking" means the burning of a lighted cigar, cigarette, pipe, or any other matter or substance which contains tobacco.

History

HISTORY:

New Rule, R.2001 d.480, effective December 17, 2001.

See: [33 N.J.R. 1852\(a\)](#), [33 N.J.R. 4380\(b\)](#).

Former [N.J.A.C. 13:13-4.2](#), General practices, recodified to [N.J.A.C. 13:13-4.3](#).

Amended by R.2012 d.039, effective February 21, 2012.

See: [43 N.J.R. 149\(a\)](#), [44 N.J.R. 505\(a\)](#).

In definition "Person with a disability", deleted " 'handicapped' or" following "term".

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§ 13:13-4.3 Unlawful practices

(a) It shall be unlawful for an owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation to refuse, withhold from or deny an individual, either directly or indirectly, on account of that person's disability or perceived disability, access to any of the accommodations, advantages, facilities or privileges of a place of public accommodation. It shall also be unlawful for an owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation to discriminate against a person with a disability in the price, eligibility criteria, methods of administration, standards, terms, or conditions upon which access to such accommodations, advantages, facilities or privileges may depend.

(b) It shall be unlawful for an owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, directly or indirectly, such as through contractual, licensing, or other arrangements, to accord a person with a disability differential terms, conditions or privileges of a place of public accommodation, or to accord a person with a disability differential opportunity to participate in or benefit from a good, service, facility, privilege, advantage, or accommodation otherwise offered to the general public.

1. Separate goods, services, privileges, facilities, or terms and conditions of enjoyment shall be deemed differential unless such action is necessary to provide a person with a disability with a good, service, facility, privilege, advantage, or accommodation, or other opportunity that is as effective as that offered to the general public, and provided the separate accommodation comports with the standards set forth in [N.J.A.C. 13:13-4.4](#).

(c) It shall be unlawful for an owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation to refuse, withhold, or deny, either directly or indirectly, the right of people with disabilities to be accompanied in any place of public accommodation by guide or service dogs, specially trained by a service animal trainer as that term is defined in the LAD. This subsection shall also apply to trainers of service or guide dogs engaged in the actual training process and activities of such animals, and to service animal trainers and people with disabilities accompanied by service animals other than dogs, provided the use of such other service animals in the place of public accommodation is deemed to be a reasonable accommodation under all of the circumstances. Service animal trainers or people with disabilities accompanied by service or guide dogs or service or guide animals shall be liable for any damage done to the premises or facilities by such dogs or animals.

(d) It shall be unlawful for an owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation to publish, circulate, issue, display, post or mail or cause to be printed, circulated, issued, displayed, posted or mailed any written, printed or broadcast notice indicating directly or indirectly that the right of a person with a disability to have equal access to a place of public accommodation will be denied or abridged.

(e) It shall be unlawful for any person to refuse to buy from, sell to, lease from or to, license, contract with, or trade with, provide goods, services or information to, or otherwise do business with any other person on the basis of that person's disability or on the disability of such other person's spouse, partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates,

suppliers, or customers, except as provided by [N.J.S.A. 10:5-12](#)(1) with respect to collective bargaining, labor disputes, and actions to protest unlawful discrimination or unlawful employment practices.

History

HISTORY:

Recodified from [N.J.A.C. 13:13-4.2](#) and amended by R.2001 d.480, effective December 17, 2001.

See: [33 N.J.R. 1852\(a\)](#), [33 N.J.R. 4380\(b\)](#).

Rewrote the section.

Annotations

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In a discrimination case wherein the complainant asserted that her agoraphobia required the New Jersey Motor Vehicle Commission (MVC) to exempt her from appearing to be photographed for her driver's license, the court upheld the finding of the Division on Civil Rights that the complainant's medical evidence did not clearly specify the extent of her limitations and she failed to show the accommodations offered by the MVC were unreasonable. [Wojtkowiak v. New Jersey Motor Vehicle Comm'n](#), 439 N.J. Super. 1, 106 A.3d 519, 2015 N.J. Super. LEXIS 1 (2015).

As a school district provided plaintiff's special education child a free and appropriate public education pursuant to the Individuals with Disabilities Education Act, the fact that the child could not attend the child's neighborhood school was not a disability discrimination in violation of the New Jersey Law against [Discrimination. J.T. v. Dumont Pub. Schs](#), 438 N.J. Super. 241, 103 A.3d 269, 2014 N.J. Super. LEXIS 160 (2014).

In a public accommodation disability discrimination claim against a municipality under the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-1](#) to [10:5-49](#), alleging an overall lack of access, trial judge abused his discretion in denying injunctive relief as to the park accessibility issue because he failed to consider all relevant factors; significantly, despite a jury finding that the disabled individual was wrongfully excluded from the park, the trial judge concluded the slope's deviation from regulatory requirements was de minimus and did not deny her access altogether and also erroneously presumed harm on the part of the municipality in making the park readily accessible without any factual support whatsoever. [Stoney v. Maple Shade Twp.](#), 426 N.J. Super. 297, 44 A.3d 601, 2012 N.J. Super. LEXIS 70 (2012).

In a public accommodation disability discrimination claim against a municipality under the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-1](#) to [10:5-49](#), the jury verdict was upheld finding the municipality not liable under Title II of the Americans with Disabilities Act (ADA), [42 U.S.C.S. §§ 12101-12213](#), and the New Jersey Law Against Discrimination (LAD), [N.J.S.A. 10:5-1](#) to -49, for denying the suing disabled person access to its park, and the disable person's motion for a directed verdict and/or for a judgment notwithstanding the verdict was properly denied, because the trial court properly charged the jury with governing legal principles, namely: that for facilities preexisting 1992, a public entity may satisfy the ADA by adopting a variety of measures less costly than structural

change, including assigning aides to assist disabled persons in accessing services; nor does a facility not accessible without assistance necessarily violate the LAD, which requires a reasonable accommodation; thus, the question of whether the disabled person was discriminated against by being denied reasonable access to the park was one for the jury to resolve. [*Lasky v. Moorestown Twp.*, 425 N.J. Super. 530, 42 A.3d 212, 2012 N.J. Super. LEXIS 68 \(2012\)](#).

In a public accommodation disability discrimination claim against a municipality under the New Jersey Law Against Discrimination, [*N.J.S.A. 10:5-1*](#) to [*10:5-49*](#), alleging an overall lack of access, the Superior Court of New Jersey, Appellate Division held that an advance request for an accommodation from the disabled individual is not a precondition to filing suit. [*Lasky v. Borough of Hightstown*, 426 N.J. Super. 68, 43 A.3d 445, 2012 N.J. Super. LEXIS 71 \(2012\)](#).

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§ 13:13-4.4 Integrated settings

(a)An owner, lessee, proprietor, manager, superintendent, agent or employee of a place of public accommodation shall, to the extent reasonable, afford goods, services, facilities, privileges, advantages, and accommodations to a person with a disability in the most integrated setting appropriate to the needs of that person.

(b)Notwithstanding the existence of separate or different programs or activities provided in accordance with this subchapter, an owner, lessee, proprietor, manager, superintendent, agent or employee of a public accommodation shall not deny a person with a disability the opportunity to participate in programs or activities that are not separate or different, in accordance with [N.J.A.C. 13:13-4.8](#).

History

HISTORY:

New Rule, R.2001 d.480, effective December 17, 2001.

See: [33 N.J.R. 1852\(a\)](#), [33 N.J.R. 4380\(b\)](#).

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In a discrimination case wherein the complainant asserted that her agoraphobia required the New Jersey Motor Vehicle Commission (MVC) to exempt her from appearing to be photographed for her driver's license, the court upheld the finding of the Division on Civil Rights that the complainant's medical evidence did not clearly specify the extent of her limitations and she failed to show the accommodations offered by the MVC were unreasonable. [Wojtkowiak v. New Jersey Motor Vehicle Comm'n, 439 N.J. Super. 1, 106 A.3d 519, 2015 N.J. Super. LEXIS 1 \(2015\)](#).

In a public accommodation disability discrimination claim against a municipality under the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-1](#) to [10:5-49](#), alleging an overall lack of access, the Superior Court of New Jersey,

Appellate Division held that an advance request for an accommodation from the disabled individual is not a precondition to filing suit. [Lasky v. Borough of Hightstown, 426 N.J. Super. 68, 43 A.3d 445, 2012 N.J. Super. LEXIS 71 \(2012\).](#)

In a public accommodation disability discrimination claim against a municipality under the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-1](#) to [10:5-49](#), alleging an overall lack of access, trial judge abused his discretion in denying injunctive relief as to the park accessibility issue because he failed to consider all relevant factors; significantly, despite a jury finding that the disabled individual was wrongfully excluded from the park, the trial judge concluded the slope's deviation from regulatory requirements was de minimus and did not deny her access altogether and also erroneously presumed harm on the part of the municipality in making the park readily accessible without any factual support whatsoever. [Stoney v. Maple Shade Twp., 426 N.J. Super. 297, 44 A.3d 601, 2012 N.J. Super. LEXIS 70 \(2012\).](#)

In a public accommodation disability discrimination claim against a municipality under the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-1](#) to [10:5-49](#), the jury verdict was upheld finding the municipality not liable under Title II of the Americans with Disabilities Act (ADA), [42 U.S.C.S. §§ 12101-12213](#), and the New Jersey Law Against Discrimination (LAD), [N.J.S.A. 10:5-1](#) to -49, for denying the suing disabled person access to its park, and the disabled person's motion for a directed verdict and/or for a judgment notwithstanding the verdict was properly denied, because the trial court properly charged the jury with governing legal principles, namely: that for facilities preexisting 1992, a public entity may satisfy the ADA by adopting a variety of measures less costly than structural change, including assigning aides to assist disabled persons in accessing services; nor does a facility not accessible without assistance necessarily violate the LAD, which requires a reasonable accommodation; thus, the question of whether the disabled person was discriminated against by being denied reasonable access to the park was one for the jury to resolve. [Lasky v. Moorestown Twp., 425 N.J. Super. 530, 42 A.3d 212, 2012 N.J. Super. LEXIS 68 \(2012\).](#)

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N.J.A.C. 13:13-4.5

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§ 13:13-4.5 Examinations

An owner, lessee, proprietor, manager, superintendent, agent or employee of a place of public accommodation that offers examinations or courses related to applications, licensing, certification or credentialing for secondary or post-secondary education, professional, or trade purposes shall assure that examinations are selected and administered to best ensure that when an examination is administered to a person with a disability that impairs sensory, manual, or speaking skills, the examination results accurately reflect the individual's aptitude or achievement level or whatever other factor the examination purports to measure, rather than reflecting the individual's impaired sensory, manual, or speaking skills, except where those skills are the factors that the examination purports to measure.

History

HISTORY:

New Rule, R.2001 d.480, effective December 17, 2001.

See: [33 New Jersey Register 1852\(a\)](#), [33 New Jersey Register 4380\(b\)](#).

Annotations

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N.J.A.C. 13:13-4.6

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§ 13:13-4.6 Prohibited charges

It shall be unlawful for an owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation to impose a surcharge on a particular person with a disability or any group of people with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that may be required by law.

History

HISTORY:

New Rule, R.2001 d.480, effective December 17, 2001.

See: [33 New Jersey Register 1852\(a\)](#), [33 New Jersey Register 4380\(b\)](#).

Annotations

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N.J.A.C. 13:13-4.7

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§ 13:13-4.7 Retaliation or coercion

(a) It shall be unlawful for any person to discriminate against any individual because that individual has opposed any act or practice prohibited by the LAD or because that individual filed a complaint, testified, assisted, or participated in any investigation or proceeding under the LAD.

(b) It shall be unlawful for any person to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by the LAD.

History

HISTORY:

New Rule, R.2001 d.480, effective December 17, 2001.

See: [33 New Jersey Register 1852\(a\)](#), [33 New Jersey Register 4380\(b\)](#).

Annotations

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N.J.A.C. 13:13-4.8

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§ 13:13-4.8 Reasonable probability of serious harm

(a) Nothing in this subchapter shall be construed as requiring an owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation to permit a person with a disability to participate in or benefit from the goods, services, facilities, privileges, advantages and accommodations of that public accommodation if to do so creates a reasonable probability of serious harm to the person with a disability, or to others, that cannot be mitigated with reasonable accommodation.

(b) In determining whether providing a person with a disability with access to a public accommodation poses a reasonable probability of serious harm to that individual, or to others, that cannot be mitigated with reasonable accommodation, an owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain the probability that the serious harm will actually occur and whether reasonable modifications of policies, practices, or procedures will mitigate the probability of serious harm.

(c) An owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation may impose legitimate safety requirements that are necessary for the safe operation of the facility. Such safety requirements shall be based on actual risks and not on mere speculation, stereotypes, or generalizations about people with disabilities.

History

HISTORY:

New Rule, R.2001 d.480, effective December 17, 2001.

See: [33 N.J.R. 1852\(a\)](#), [33 N.J.R. 4380\(b\)](#).

Amended by R.2012 d.039, effective February 21, 2012.

See: [43 N.J.R. 149\(a\)](#), [44 N.J.R. 505\(a\)](#).

In (a) and (b), substituted "mitigated" for "eliminated"; and in (b), substituted "mitigate" for "eliminate".

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N.J.A.C. 13:13-4.9

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§ 13:13-4.9 Smoking

Nothing in this subchapter shall be construed as making it unlawful to prohibit or impose restrictions on smoking in places of public accommodation.

History

HISTORY:

New Rule, R.2001 d.480, effective December 17, 2001.

See: [33 New Jersey Register 1852\(a\)](#), [33 New Jersey Register 4380\(b\)](#).

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N.J.A.C. 13:13-4.10

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§ 13:13-4.10 Insurance

(a) Nothing in the LAD or this subchapter shall be construed as interfering with the operation of the terms or conditions and administration of any bona fide insurance plan or program.

(b) It shall be unlawful for an owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation to refuse to serve a person with a disability because its insurance company conditions coverage or rates on the absence of people with disabilities.

History

HISTORY:

New Rule, R.2001 d.480, effective December 17, 2001.

See: [33 New Jersey Register 1852\(a\)](#), [33 New Jersey Register 4380\(b\)](#).

Annotations

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N.J.A.C. 13:13-4.11

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§ 13:13-4.11 Reasonable accommodation

(a) An owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation shall make reasonable accommodations to the limitations of a patron or prospective patron who is a person with a disability, including making such reasonable modifications in policies, practices, or procedures, as may be required to afford goods, services, facilities, privileges, advantages, or accommodations to a person with a disability, unless the owner, lessee, proprietor, manager, superintendent, agent or employee of the place of public accommodation demonstrates that making the accommodations would impose an undue burden on its operation.

(b) In determining whether an accommodation is unreasonable because it will impose an undue burden on the operation of a place of public accommodation, factors to be considered include:

1. The overall size of the business which runs the place of public accommodation with respect to the number of employees, number and type of facilities, and size of budget;
2. The nature and cost of the accommodation sought;
3. Whether the accommodation sought will result in a fundamental alteration to the goods, services, program or activity offered; and
4. Whether the accommodation sought involves an alteration that will threaten or destroy the historic significance of a building or facility that is eligible for listing in the National Register of Historic Places under the National Historic Preservation Act ([16 U.S.C. §§ 470](#) et seq.) or designated as historic under State or local law.

History

HISTORY:

New Rule, R.2001 d.480, effective December 17, 2001.

See: [33 N.J.R. 1852\(a\)](#), [33 N.J.R. 4380\(b\)](#).

Amended by R.2006 d.13, effective January 3, 2006.

See: [37 N.J.R. 2607\(a\)](#), [38 N.J.R. 335\(a\)](#).

In (a), added "reasonable accommodations to the limitations of a patron or prospective patron who is a person with a disability, including making" and substituted "accommodations" for "modifications."

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Prison officials who subjected wheelchair-bound visitors to searches that were more intrusive than the searches that were applied to visitors who were able to pass through a metal detector at a prison's main entrance violated [N.J.S.A. 10:5-4](#) and N.J.A.C. 13:13-14.11(a) because the prison officials did not provide wheelchair-bound visitors with a reasonable accommodation, such as a hand held metal detection wand, or an accessible private search room. The prison officials were not entitled to immunity under [N.J.S.A. 59:3-3](#) because subjecting wheelchair-bound visitors to a more intrusive search procedure than able-bodied visitors was neither objectively reasonable nor a good faith effort. [Brewer v. Hayman, 2009 U.S. Dist. LEXIS 59321 \(2009\)](#).

Plaintiffs, a former student and the student's parents, stated a claim against defendants, a school district and district employees, under [N.J.S.A. 10:5-4](#) and [10:5-5](#) of the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-1](#) et seq., based on defendants' alleged failure to accommodate the student, who had severe depression, by providing educational services and modifying attendance policies; plaintiffs' suggested accommodations may have been reasonable under [N.J.A.C. 13:13-4.11\(b\)](#). [D.G. v. Somerset Hills Sch. Dist., 559 F. Supp. 2d 484, 2008 U.S. Dist. LEXIS 32093 \(2008\)](#).

Claimant has the burden to prove the extent of the disability where it is relevant to the reasonableness of the accommodations offered or demanded and when the extent of the disability is not readily apparent, expert medical evidence is required. [Wojtkowiak v. New Jersey Motor Vehicle Comm'n, 439 N.J. Super. 1, 106 A.3d 519, 2015 N.J. Super. LEXIS 1 \(2015\)](#).

In a discrimination case wherein the complainant asserted that her agoraphobia required the New Jersey Motor Vehicle Commission (MVC) to exempt her from appearing to be photographed for her driver's license, the court upheld the finding of the Division on Civil Rights that the complainant's medical evidence did not clearly specify the extent of her limitations and she failed to show the accommodations offered by the MVC were unreasonable. [Wojtkowiak v. New Jersey Motor Vehicle Comm'n, 439 N.J. Super. 1, 106 A.3d 519, 2015 N.J. Super. LEXIS 1 \(2015\)](#).

In a public accommodation disability discrimination claim against a municipality under the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-1](#) to [10:5-49](#), alleging an overall lack of access, trial judge abused his discretion in denying injunctive relief as to the park accessibility issue because he failed to consider all relevant factors; significantly, despite a jury finding that the disabled individual was wrongfully excluded from the park, the trial judge concluded the slope's deviation from regulatory requirements was de minimus and did not deny her access altogether and also erroneously presumed harm on the part of the municipality in making the park readily accessible without any factual support whatsoever. [Stoney v. Maple Shade Twp., 426 N.J. Super. 297, 44 A.3d 601, 2012 N.J. Super. LEXIS 70 \(2012\)](#).

In a public accommodation disability discrimination claim against a municipality under the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-1](#) to [10:5-49](#), alleging an overall lack of access, the Superior Court of New Jersey, Appellate Division held that an advance request for an accommodation from the disabled individual is not a precondition to filing suit. [Lasky v. Borough of Hightstown, 426 N.J. Super. 68, 43 A.3d 445, 2012 N.J. Super. LEXIS 71 \(2012\)](#).

In a public accommodation disability discrimination claim against a municipality under the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-1](#) to [10:5-49](#), the jury verdict was upheld finding the municipality not liable under Title

II of the Americans with Disabilities Act (ADA), [42 U.S.C.S. §§ 12101-12213](#), and the New Jersey Law Against Discrimination (LAD), [N.J.S.A. 10:5-1](#) to -49, for denying the suing disabled person access to its park, and the disable person's motion for a directed verdict and/or for a judgment notwithstanding the verdict was properly denied, because the trial court properly charged the jury with governing legal principles, namely: that for facilities preexisting 1992, a public entity may satisfy the ADA by adopting a variety of measures less costly than structural change, including assigning aides to assist disabled persons in accessing services; nor does a facility not accessible without assistance necessarily violate the LAD, which requires a reasonable accommodation; thus, the question of whether the disabled person was discriminated against by being denied reasonable access to the park was one for the jury to resolve. [Lasky v. Moorestown Twp., 425 N.J. Super. 530, 42 A.3d 212, 2012 N.J. Super. LEXIS 68 \(2012\)](#).

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N.J.A.C. 13:13-4.12

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§ 13:13-4.12 Examples of reasonable accommodation

(a) Accommodations that may be reasonable in a particular situation include, but are not limited to:

1. Permitting the use of service or guide animals, other than dogs, that are individually trained to do work or perform tasks for the benefit of a person with a disability;
2. Making reasonable structural alterations such as:
 - i. Repositioning shelves or telephones;
 - ii. Rearranging furniture and equipment;
 - iii. Installing accessible door hardware;
 - iv. Adding raised markings on elevator control buttons;
 - v. Installing flashing alarm lights;
 - vi. Widening doors and installing offset hinges to widen doorways; and/or
 - vii. Installing an accessible paper cup dispenser at an existing inaccessible water fountain;
3. Providing at least one accessible restroom for each sex or an accessible single unisex restroom, and making alterations such as the following to ensure accessibility:
 - i. Installing grab bars in toilet stalls;
 - ii. Rearranging toilet partitions to increase maneuvering space;
 - iii. Insulating lavatory pipes under sinks to prevent burns;
 - iv. Installing a raised toilet seat;
 - v. Installing a full-length bathroom mirror; and/or
 - vi. Repositioning the paper towel dispenser in a bathroom;
4. Creating designated accessible parking spaces;
5. Installing vehicle hand controls;
6. Providing an accessible check-out aisle or modifying policies and practices to ensure that an equivalent level of convenient service is provided to a person with a disability as is provided to others. If only one check-out aisle is accessible, and it is generally used for express service, one way of providing equivalent service is to allow persons with mobility impairments to make all their purchases at that aisle;
7. Providing auxiliary aids and services to ensure effective communication, such as:
 - i. Qualified, effective interpreters, notetakers, computer-aided transcription services, written materials, accessible telephones, including telephone handset amplifiers, assistive listening

devices or systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, "telecommunications devices for deaf persons" (TDD's), and videotext displays or alternate effective means for decoding captions to facilitate television use by people with impaired hearing;

ii. Qualified readers, Brailled materials and versions of books, books and materials on audio cassettes, large print materials, screen reader software; magnification software; optical readers; secondary auditory programs (SAP); and/or

iii. Other specialized equipment or devices;

8. Providing wheelchair seating spaces and seats with removable aisle-side arm rests that permit people who use wheelchairs to sit with family members or other companions and that are located so that the seats:

i. Are dispersed throughout the seating area;

ii. Provide lines of sight and choice of admission prices comparable to what is available to members of the general public; and

iii. Adjoin an accessible route that also serves as a means of egress in case of emergency;

9. Offering examinations or courses in a place and manner accessible to people with disabilities or offering alternate accessible arrangements; such accommodations shall include making reasonable modifications to the time permitted for completion of an examination or course; and/or

10. To the extent reasonable, ensuring that the path of travel to the areas of the facility where goods or services are made available to the general public, and to the restrooms, telephones, and drinking fountains, are readily accessible to and useable by people with disabilities, including people who use wheelchairs; this may include, but shall not be limited to:

i. Providing accessible entrances, walks and sidewalks, curb ramps and other interior or exterior pedestrian ramps, clear floor paths through lobbies, corridors, rooms, and other areas, parking access aisles, and accessible elevators and lifts;

ii. Remodeling merchandise display areas in a department store;

iii. Replacing an inaccessible floor surface and/or removing high pile, low density carpeting; and/or

iv. Eliminating a turnstile or providing an alternative accessible path.

History

HISTORY:

New Rule, R.2001 d.480, effective December 17, 2001.

See: [33 N.J.R. 1852\(a\)](#), [33 N.J.R. 4380\(b\)](#).

Amended by R.2012 d.039, effective February 21, 2012.

See: [43 N.J.R. 149\(a\)](#), [44 N.J.R. 505\(a\)](#).

In (a)6, inserted ". If only one check-out aisle is accessible, and it is generally used for express service, one way of providing equivalent service is to allow persons with mobility impairments to make all their purchases at that aisle"; and in (a)7ii, deleted "and" preceding "large", and substituted ", screen reader software; magnification software; optical readers; secondary auditory programs (SAP);" for a semicolon.

Annotations

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In a public accommodation disability discrimination claim against a municipality under the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-1](#) to [10:5-49](#), alleging an overall lack of access, trial judge abused his discretion in denying injunctive relief as to the park accessibility issue because he failed to consider all relevant factors; significantly, despite a jury finding that the disabled individual was wrongfully excluded from the park, the trial judge concluded the slope's deviation from regulatory requirements was de minimus and did not deny her access altogether and also erroneously presumed harm on the part of the municipality in making the park readily accessible without any factual support whatsoever. [Stoney v. Maple Shade Twp., 426 N.J. Super. 297, 44 A.3d 601, 2012 N.J. Super. LEXIS 70 \(2012\).](#)

In a public accommodation disability discrimination claim against a municipality under the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-1](#) to [10:5-49](#), alleging an overall lack of access, the Superior Court of New Jersey, Appellate Division held that an advance request for an accommodation from the disabled individual is not a precondition to filing suit. [Lasky v. Borough of Hightstown, 426 N.J. Super. 68, 43 A.3d 445, 2012 N.J. Super. LEXIS 71 \(2012\).](#)

In a public accommodation disability discrimination claim against a municipality under the New Jersey Law Against Discrimination, [N.J.S.A. 10:5-1](#) to [10:5-49](#), the jury verdict was upheld finding the municipality not liable under Title II of the Americans with Disabilities Act (ADA), [42 U.S.C.S. §§ 12101-12213](#), and the New Jersey Law Against Discrimination (LAD), [N.J.S.A. 10:5-1](#) to -49, for denying the suing disabled person access to its park, and the disabled person's motion for a directed verdict and/or for a judgment notwithstanding the verdict was properly denied, because the trial court properly charged the jury with governing legal principles, namely: that for facilities preexisting 1992, a public entity may satisfy the ADA by adopting a variety of measures less costly than structural change, including assigning aides to assist disabled persons in accessing services; nor does a facility not accessible without assistance necessarily violate the LAD, which requires a reasonable accommodation; thus, the question of whether the disabled person was discriminated against by being denied reasonable access to the park was one for the jury to resolve. [Lasky v. Moorestown Twp., 425 N.J. Super. 530, 42 A.3d 212, 2012 N.J. Super. LEXIS 68 \(2012\).](#)

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§ 13:13-4.13 Referrals

An owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation may refer a person with a disability to another place of public accommodation, if that person is seeking, or requires, treatment or services outside of the referring entity's area of specialization, and if, in the normal course of its operations, the referring entity would make a similar referral for an individual who is not a person with a disability and who seeks or requires the same treatment or services.

History

HISTORY:

New Rule, R.2001 d.480, effective December 17, 2001.

See: [33 New Jersey Register 1852\(a\)](#), [33 New Jersey Register 4380\(b\)](#).

Annotations

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N.J.A.C. 13:14

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 51 No. 20, October 21, 2019

NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 14. RULES PERTAINING TO THE FAMILY LEAVE ACT

Title 13, Chapter 14 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

[N.J.S.A. 34:11B-16.](#)

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2014 d.134, effective July 30, 2014.

See: [46 N.J.R. 583\(a\)](#), [46 N.J.R. 1884\(c\)](#).

CHAPTER HISTORICAL NOTE:

Chapter 14, Rules Pertaining to the Family Leave Act, was adopted as R.1991 d.475, effective September 16, 1991. See: 23 N.J.R. 1993(a), 23 N.J.R. 2864(b).

Pursuant to Executive Order No. 66(1978), Chapter 14, Rules Pertaining to the Family Leave Act, was readopted as R.1996 d.482, effective September 16, 1996. See: [28 N.J.R. 3510\(a\)](#), [28 N.J.R. 4484\(a\)](#).

Chapter 14, Rules Pertaining to the Family Leave Act, was readopted as R.2001 d.327, effective August 20, 2001. See: [33 N.J.R. 1495\(a\)](#), [33 N.J.R. 3030\(a\)](#).

Chapter 14, Rules Pertaining to the Family Leave Act, was readopted as R.2007 d.77, effective February 6, 2007. See: [38 N.J.R. 4627\(a\)](#), [39 N.J.R. 781\(c\)](#).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 14, Rules Pertaining to the Family Leave Act, was scheduled to expire on February 6, 2014. See: [43 N.J.R. 1203\(a\)](#).

Chapter 14, Rules Pertaining to the Family Leave Act, was readopted as R.2014 d.134, effective July 30, 2014. See: Source and Effective Date. See, also, section annotations.

Annotations

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Research References & Practice Aids

CHAPTER EXPIRATION DATE:

Chapter 14, Rules Pertaining to the Family Leave Act, expires on July 30, 2021.

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N.J.A.C. 13:14-1

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Title 13, Chapter 14, Subchapter 1 Notes

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Research References & Practice Aids

LAW REVIEW AND JOURNAL COMMENTARIES:

How Federal Family Leave Compares with N.J. Law. Donna M. Kaye, 136 N.J.L.J. No. 2, 11 (1994).

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N.J.A.C. 13:14-1.1

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November 1, 2021

**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 14.
RULES PERTAINING TO THE FAMILY LEAVE ACT SUBCHAPTER 1. GENERAL PROVISIONS**

§ 13:14-1.1 Purpose

The purpose of this chapter is to implement the provisions of N.J.S.A. 34:11B-1 et seq. which provide for family leave for employees in certain cases and prohibit certain employer practices by establishing interpretations of the provisions of that statute.

N.J.A.C. 13:14-1.2

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 53 No. 21,
November 1, 2021

**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 14.
RULES PERTAINING TO THE FAMILY LEAVE ACT SUBCHAPTER 1. GENERAL PROVISIONS**

§ 13:14-1.2 Definitions

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

"Act" means the "Family Leave Act," N.J.S.A. 34:11B-1 et seq., unless the context indicates otherwise.

"Base Hours" means the hours of work for which an employee receives compensation. Base hours shall include overtime hours for which the employee is paid additional or overtime compensation, and hours for which the employee receives workers' compensation benefits. Base hours shall also include hours an employee would have worked except for having been in military service. At the option of the employer, base hours may include hours for which the employee receives other types of compensation, such as administrative, personal leave, vacation, or sick leave.

"Base salary" as used in section 4h(1) of the Act means the salary paid to an employee, excluding overtime, bonuses, etc., but not excluding salary withheld for State, Federal, and local taxes, FICA, employee contributions to any pension, health and/or insurance plans or programs, etc.

"Care" means, but is not limited to, physical care, emotional support, visitation, assistance in treatment, transportation, arranging for a change in care, assistance with essential daily living matters and personal attendant services.

"Child," for the purpose of determining whether an employee is eligible for family leave because of such employee's parental status, means a child as defined in the Act to whom such employee is a biological parent, adoptive parent, foster parent, parent pursuant to a valid written agreement between the parent and a gestational carrier, resource family parent, step-parent, parent-in-law, or legal guardian, or has a "parent-child relationship" as defined at N.J.S.A. 34:11B-3, or has sole or joint legal or physical custody, care, guardianship, or visitation.

"Closure of a school or place of care," for the purpose of determining whether an employee is eligible for

family leave to provide in-home care or treatment to a child due to the closure of the school or place of care of the child of the employee, by order of a public official due to an epidemic or other public health emergency, includes, but is not limited to, periods of time when in-home care or treatment of the child are required because the order by a public official results in the school or place of care being closed to the child of the employee to in-person instruction or care during specific times of the day or days of the week, but does not include when the child of an employee may attend the school or place of care, but the employee chooses to provide in-home care or treatment of the child.

"Consecutive leave" means leave that is taken without interruption based upon an employee's regular work schedule, and does not include breaks in employment in which an employee is not regularly scheduled to work. (For example, when an employee is normally scheduled to work from September

through June and is not scheduled to work during July and August, a leave taken continuously during May, June and September shall be considered a consecutive leave.)

"Disrupt unduly the operations of the employer," as used in sections 4j and 5b of the Act, means an intermittent or reduced leave schedule that, if implemented, would cause the employer measurable harm, economic or otherwise, significantly greater than any measurable harm that would befall the employer if the same employee was granted a consecutive leave. The burden of proof in these instances rests with the employer. Whether the intermittent or reduced leave schedule would disrupt unduly the operations of the employer will be determined by the Division on a case-by-case basis. There is a presumption that an intermittent or reduced leave schedule for an employee taking leave to provide care for a family member who has been diagnosed with a communicable disease or is suspected of having a communicable disease would disrupt unduly the operations of the employer. This presumption does not apply to an employee who does not come into contact with other people while working or an employee who can work remotely while taking the leave.

"Eligible employee" means any individual employed by the same employer for 12 months or more, who has worked 1,000 or more base hours during the preceding 12-month period. Any time, up to a maximum of 90 calendar days, during which a person is laid off or furloughed by an employer due to that employer curtailing operations because of a state of emergency shall be regarded as time in which the person is employed for the purpose of determining eligibility for leave time under the Act. In making the determination, the base hours per week during the layoff or furlough shall be deemed to be the same as the average number of hours worked per week during the rest of the 12-month period. An employee is considered to be employed in the State of New Jersey if:

- 1.** Such employee works in New Jersey; or
- 2.** Such employee routinely performs some work in New Jersey and the employee's base of operations or the place from which such work is directed and controlled is in New Jersey.

"Employer" means an employer as defined in the Act, which employs 30 or more employees, whether employed in New Jersey or not, for each working day during each of 20 or more calendar workweeks in the then-current or immediately preceding calendar year. "Employer" also includes the State, any political subdivision thereof, and all public offices, agencies, boards, or bodies, regardless of the number of employees.

"Family leave" means leave from employment, so that the employee may provide care made necessary by reason of:

- 1.** The birth of a child of the employee, including a child born pursuant to a valid written agreement between the employee and a gestational carrier;
- 2.** The placement of a child into foster care with the employee or in connection with adoption of a child by the employee;
- 3.** The serious health condition of a family member of the employee; or
- 4.** In the event of a state of emergency declared by the Governor, or when indicated to be needed by the Commissioner of Health or other public health authority, an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of a communicable disease that:
 - i.** Requires in-home care or treatment of a child due to the closure of the school or place of care of the

child of the employee, by order of a public official due to the epidemic or other public health emergency;

ii. Prompts the issuance by a public health authority of a determination, including by mandatory quarantine, requiring or imposing responsive or prophylactic measures as a result of illness caused by an epidemic of a communicable disease, or known or suspected exposure to the communicable disease

because the presence in the community of a family member in need of care by the employee would jeopardize the health of others; or

iii. Results in the recommendation of a health care provider or public health authority, that a family member in need of care by the employee voluntarily undergoes self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of that family member in need of care by the employee would jeopardize the health of others.

"Family member" means a child, parent, parent-in-law, sibling, grandparent, grandchild, spouse, domestic partner or partner in a civil union, any other individual related by blood or marriage to the employee, or any other individual that the employee shows to have a close association with the employee, which is the equivalent of a family relationship.

"Health care provider" means a duly licensed health care provider or any other health care provider deemed appropriate by the Director of the Division on Civil Rights, including, but not limited to, any person licensed under Federal, state, or local law, or the laws of a foreign nation, to provide health care services.

"Health insurance policy" means all health benefits provided by an employer to an employee. Health benefits include the opportunity provided by an employer to participate in a group health plan.

"Intermittent leave" means leave due to a single qualifying reason (the serious health condition of a specific family member; the birth or placement of a child with the employee for adoption or foster care; or the provision of care to a family member made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease), taken in separate periods of time, rather than one continuous period, and may be scheduled in increments of hours, days, or weeks.

"Parent" means a person who is the biological parent, adoptive parent, foster parent, resource family parent, step-parent, parent-in-law, or legal guardian; a person who became a parent pursuant to a valid written agreement with a gestational carrier; a person who has a "parent-child relationship" with a child as defined at N.J.S.A. 34:11B-3; or a person who has sole or joint legal or physical custody, care, guardianship, or visitation with a child.

"Reduced leave schedule" means leave due to a single qualifying reason (the serious health condition of a specific family member; the birth or placement of a child with the employee for adoption or foster care; or the provision of care to a family member made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent the spread of a communicable disease), that is scheduled for fewer than an employee's usual number of hours worked per workweek, but not for fewer than an employee's usual number of hours worked per workday, unless agreed to by the employee and the employer.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition which requires:

- 1.** Inpatient care in a hospital, hospice, or residential medical care facility; or
- 2.** Continuing medical treatment or continuing supervision by a health care provider.

As used in this definition, "continuing medical treatment or continuing supervision by a health care provider" means:

- 1.** A period of incapacity (that is, inability to work, attend school or perform regular daily activities due to a serious health condition, treatment therefore and recovery therefrom) of more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also

involves:

- i. Treatment two or more times by a health care provider; or
 - ii. Treatment by a health care provider on one occasion which results in a regimen of continuing treatment under the supervision of a health care provider;
- 2. Any period of incapacity due to pregnancy, or for prenatal care;
 - 3. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition;
 - 4. A period of incapacity, which is permanent or long term, due to a condition for which treatment may not be effective (such as Alzheimer's disease, a severe stroke, or the terminal stages of a disease) where the individual is under continuing supervision of, but need not be receiving active treatment by, a health care provider; or
 - 5. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

"Spouse" means a person to whom an employee is lawfully married as defined by New Jersey law.

"State of emergency" means a natural or man-made disaster or emergency for which a state of emergency has been declared by the President of the United States or the Governor, or for which a state of emergency has been declared by a municipal emergency management coordinator.

"Substantial and grievous economic injury" as used in section 4h(2) of the Act means economic harm that will befall an employer which is of such a magnitude that it would substantially and adversely affect the employer's operations, considerably beyond the costs which are associated with replacing an employee who has requested family leave.

"Workweek" means the number of days that an employee normally works each calendar week, irrespective of the number of hours worked each day. (For purposes of a reduced leave, an employee who normally works five days each calendar week is entitled to a maximum of 60 days of family leave. An employee who normally works four days each calendar week is entitled to a maximum of 48 days of family leave).

History

HISTORY:

Amended by R.2001 d.327, effective September 4, 2001.

See: 33 N.J.R. 1495(a), 33 N.J.R. 3030(a).

In "Base hours", substituted "the" for "an employee's regular" and deleted "excluding overtime" in the first sentence, and added the second and third sentences; rewrote "Employer".

Amended by R.2002 d.374, effective November 18, 2002.

See: 34 N.J.R. 208(a), 34 N.J.R. 3968(a).

Deleted "Disability leave"; rewrote "Employer".

Amended by R.2007 d.77, effective March 5, 2007.

See: 38 N.J.R. 4627(a), 39 N.J.R. 781(c).

In definition "Base Hours", inserted the third sentence; in definition "Care", inserted "arranging for a change in care,"; in definition "Employer", inserted the last sentence; and in definition "Serious health condition", inserted information regarding definition of "continuing medical treatment or continuing supervision by a health care provider".

Amended by R.2014 d.134, effective September 2, 2014.

See: 46 N.J.R. 583(a), 46 N.J.R. 1884(c).

Substituted definition " 'Child,' for definition 'Child' " and rewrote the definition; added definitions "Family member" and "Parent"; deleted definition "Reduced leave"; in the introductory paragraph of definition "Eligible employee", deleted "in the State of New Jersey" preceding "for 12 months", and substituted ", who" for "and"; in definition "Employer", inserted a comma following "Act" and following "boards", and inserted ", regardless of whether that government entity employs 50 or more employees"; rewrote definitions "Intermittent leave" and "Reduced leave schedule"; and in definition "Serious health condition", in paragraph 5 under "continuing medical treatment or continuing supervision by a health care provider", substituted "of" for the fifth instance of "or", and inserted a comma following "(physical therapy)".

Administrative correction.

See: 51 N.J.R. 412(a).

Amended by R.2021 d.115, effective October 18, 2021.

See: 53 N.J.R. 352(a), 53 N.J.R. 1792(c).

Rewrote the section.

▼ Annotations

Case Notes

Under New Jersey law as predicated by federal court, the New Jersey Family Leave Act's definition of "employer" did not exempt firms that employed fewer than 50 people within New Jersey. Callari v. Rehau Inc., 14 F.Supp.2d 620 (D.N.J. 1998).

"Base hours" include regular hours for which employee is paid workers' compensation benefits, as that term is used in Family Leave Act section defining "employee." Kenney v. Meadowview Nursing and Convalescent Center, 706 A.2d 295, 308 N.J.Super. 565 (A.D. 1998).

Corporation having less than dozen employees in New Jersey, but with 164 employees in six states, was "employer" for purposes of New Jersey's Family Leave Act. Essex Crane Rental Corp. v. Director, Div. on Civil Rights, 294 N.J.Super. 101, 682 A.2d 750 (A.D.1996).

N.J.A.C. 13:14-1.3

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NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 14. RULES PERTAINING TO THE FAMILY LEAVE ACT SUBCHAPTER 1. GENERAL PROVISIONS

§ 13:14-1.3 Applicability

(a) For the purpose of counting employees, an employer, as defined in the Act and in this chapter, shall consider:

- 1.** Employees in this State, irrespective of their eligibility for family leave;
- 2.** Employees who work outside of the State of New Jersey; and
- 3.** Employees of an employer's subsidiary, division or other related entity. In making the determination of whether to count the employees of an employer's subsidiary, division or other entity, the Division on Civil Rights will consider any or all of the following factors on a case by case basis:
 - i.** The interrelationship of the employer's operation;
 - ii.** The degree of centralized control of labor relations;
 - iii.** The existence of common management; and/or
 - iv.** The degree of common ownership or financial control.

(b) Employers that are government entities are deemed to be an "employer" under the Act notwithstanding the requirements of (a) above. Government entities may deny leave under the Act to those employees that are exempt pursuant to N.J.A.C. 13:14-1.9.

History

HISTORY:

Amended by R.2007 d.77, effective March 5, 2007.

See: 38 N.J.R. 4627(a), 39 N.J.R. 781(c).

Rewrote (b).

▼ Annotations

Case Notes

Salesperson who was discharged on day she announced her pregnancy suffered unlawful discrimination; employer's assertion that it had previously made determination to discharge salesperson was not credible. *Raiani v. Interactive Incorporated*, 96 N.J.A.R.2d (CRT) 131.

Pregnant employee failed to establish that employer's proffered reasons for discharging her were pretextual and that her pregnancy was determinative factor in decision to discharge. *Perry v. Manuel S. Newman & Company*, 96 N.J.A.R.2d (CRT) 85.

N.J.A.C. 13:14-1.4

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NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 14. RULES PERTAINING TO THE FAMILY LEAVE ACT SUBCHAPTER 1. GENERAL PROVISIONS

§ 13:14-1.4 Terms of leave

(a) Family leave may be taken for up to 12 weeks within any 24-month period. The leave may be paid, unpaid, or a combination of paid and unpaid.

(b) Except where emergent circumstances warrant shorter notice, the employee who requests the leave must provide the employer with the following notice:

1. For intermittent or reduced leave to:

- i.** Care for or bond with a newborn or a child placed with the employee for adoption or foster care or to care for a family member with a serious health condition, at least 15 days' notice; or
- ii.** Care for a family member made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, the employee must provide notice as soon as practicable; and

2. For consecutive leave to:

- i.** Care for or bond with a newborn or a child placed with the employee for adoption or foster care, at least 30 days' notice; or
- ii.** Care for a family member with a serious health condition or to care for a family member made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, the employee must provide notice in a reasonable and practicable manner.

(c) In emergent circumstances, the employee must provide the employer with as much notice as possible.

(d) An employer may establish a policy that requires employees to provide such notice in writing, except that such policy must provide that, in emergent circumstances, an employee may provide the employer with oral notice when written notice is impracticable. The policy may require that an employee provide

the employer written notice after submitting oral notice. A policy requiring written notice shall not be applicable to an employee unless the employer adequately informs the employee of such a policy.

(e) In determining the 24-month period in which the 12 weeks of leave shall be granted under the Act, an employer may choose from any of the following methods:

1. The calendar year;
2. Any fixed "leave year," such as a fiscal year or a year starting on an employee's "anniversary date";
3. The 24-month period measured forward from the date any employee's first leave under the Act begins; or
4. A "rolling" 24-month period measured backward from the date an employee uses any leave under the Act.

(f) An employer may choose any method of determining the 24-month period listed at (e) above, provided that employees are notified of the alternative chosen and the alternative chosen is applied consistently and uniformly to all employees. An employer wishing to change to another alternative is required to give at least 60 days' notice to all employees, and the transition must take place in such a way that the employees retain the full benefit of 12 weeks of leave under whichever method affords the greatest benefit to the employee. Under no circumstances may a new method be implemented in order to avoid the Act's leave requirements. If an employer fails to select and notify employees of one of the options listed at (e) above for measuring the 24-month period, the option that provides the most beneficial outcome for the employee will be used.

History

HISTORY:

Amended by R.2001 d.327, effective September 4, 2001.

See: 33 N.J.R. 1495(a), 33 N.J.R. 3030(a).

In (a), substituted "will" for "to" preceding "be determined", and added ", as set forth in N.J.A.C. 13:14-1.5".

Amended by R.2007 d.77, effective March 5, 2007.

See: 38 N.J.R. 4627(a), 39 N.J.R. 781(c).

In (a), deleted the second sentence; and added (c) and (d).

Amended by R.2014 d.134, effective September 2, 2014.

See: 46 N.J.R. 583(a), 46 N.J.R. 1884(c)

In (a), inserted a comma following the first occurrence of "unpaid", and substituted "with notice no later than 30 days prior to the commencement of the leave, except where emergent circumstances warrant shorter notice" for "reasonable advance notice the length of which will be determined by the type of

leave requested, as set forth in N.J.A.C. 13:14-1.5".

Amended by R.2021 d.115, effective October 18, 2021.

See: 53 N.J.R. 352(a), 53 N.J.R. 1792(c).

Rewrote the section.

▼ Annotations

Case Notes

Employee's conversation with her direct supervisor that she would need family leave to care for her terminally ill husband constituted sufficient proper advance notice of her need for leave. *Barone v. Leukemia Society of America*, 42 F.Supp.2d 452 (D.N.J. 1998).

N.J.A.C. 13:14-1.5

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 14.
RULES PERTAINING TO THE FAMILY LEAVE ACT SUBCHAPTER 1. GENERAL PROVISIONS**

§ 13:14-1.5 Leave entitlements

(a) An eligible employee may take 12 weeks of family leave within any 24-month period in order to provide care made necessary by reason of:

- 1.** The birth of a child of the employee;
- 2.** The placement for adoption or foster care of a child with an employee;
- 3.** The serious health condition of a family member of the employee; or
- 4.** In the event of a state of emergency declared by the Governor, or when indicated to be needed by the New Jersey Commissioner of the Department of Health or other public health authority, an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of a communicable disease that:
 - i.** Requires in-home care or treatment of a child due to the closure of the school or place of care of the child of the employee, by order of a public official due to the epidemic or other public health emergency;
 - ii.** Prompts the issuance by a public health authority of a determination, including by mandatory quarantine, requiring or imposing responsive or prophylactic measures as a result of illness caused by an epidemic of a communicable disease or known or suspected exposure to the communicable disease because the presence in the community of a family member in need of care by the employee, would jeopardize the health of others; or

iii. Results in the recommendation of a health care provider or public health authority, that a family member in need of care by the employee voluntarily undergoes self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of that family member in need of care by the employee, would jeopardize the health of others.

(b) The leave may be paid, unpaid, or a combination of paid and unpaid. Should an eligible employee take less than 12 weeks of family leave for any of the above reasons, such employee shall be entitled to

take additional leave for any of the above reasons, provided that the total leave taken does not exceed 12 weeks in any consecutive 24-month period and the other qualifications and restrictions contained in the Act, attendant to each type of leave, are not abridged.

(c) An eligible employee is entitled to up to 12 weeks of family leave in order to care for such employee's newly born child or child placed for adoption or foster care with such employee. An employee is entitled to a family leave for the birth, adoption, or foster care of a child if the employer falls within the statutory definition of employer at the time leave commences and the leave begins within one year of the birth or placement for adoption or foster care of the child. An employee taking a family leave for any of these reasons may take consecutive leave or take leave intermittently or on a reduced leave schedule. When requesting family leave on an intermittent basis or reduced leave schedule, the employee shall make a reasonable effort to schedule such leave, so as not to unduly disrupt the operations of the employer, and if possible, prior to beginning the leave, the employee shall provide the employer with a regular schedule of the hours, days, days of the week, or weeks on which the leave will be taken. All leaves must be taken in conformance with the notice provisions at N.J.A.C. 13:14-1.4.

(d) An employee whose family member has a serious health condition is entitled to up to 12 weeks of family leave taken on a consecutive, reduced leave or when medically necessary, intermittent basis. The care that an employee provides need not be exclusive and may be given in conjunction with any other care provided. When requesting family leave on an intermittent basis or reduced leave schedule, the employee shall make a reasonable effort to schedule such leave so as not to unduly disrupt the operations of the employer, and if possible, prior to beginning the leave, the employee shall provide the employer with a regular schedule of the hours, days, days of the week, or weeks on which the leave will be taken. All leaves must be taken in conformance with the notice provisions at N.J.A.C. 13:14-1.4.

1. For purposes of this subsection, the total time within which an intermittent or reduced leave is taken may not exceed a 12-month period, if such leave is taken in connection with a single serious health condition. Intermittent leaves taken in connection with more than one serious health condition episode must be taken within a consecutive 24-month period, or until such time as the employee's 12-week family leave entitlement is exhausted, whichever is shorter. Any remaining family leave to which the employee is entitled, subsequent to the expiration of any or all intermittent or reduced leaves, may be taken in a manner consistent with this chapter.

(e) An employee who takes leave to care for a family member made necessary by an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, is entitled to up to 12 weeks of family leave taken on a consecutive, reduced leave, or intermittent basis. The care that an employee provides need not be exclusive and may

be given in conjunction with any other care provided. When requesting family leave on an intermittent basis or reduced leave schedule, the employee shall make a reasonable effort to schedule such leave, so as not to unduly disrupt the operations of the employer, and if possible, prior to beginning the leave, the employee shall provide the employer with a regular schedule of the hours, days, days of the week, or weeks on which the leave will be taken. There is a presumption that an intermittent or reduced leave schedule for an employee taking leave to provide care for a family member who has been diagnosed with a communicable disease or is suspected of having a communicable disease would disrupt unduly the operations of the employer. This presumption does not apply to an employee who does not come into contact with other people while working or an employee who can work remotely while taking the leave. Nothing in this section shall preclude an employer from requiring an employee requesting intermittent or reduced leave to provide care for a family member who has been diagnosed with a communicable disease or is suspected of having a communicable disease to work remotely during the time the employee is taking such leave to reduce or eliminate a health or safety risk. All leaves must be taken in conformance with the notice provisions at N.J.A.C. 13:14-1.4. For purposes of this subsection, the total time within which reduced leave is taken may not exceed a 12-month period, if such leave is taken in connection with a single declaration of a state of emergency by the Governor or indication by the New Jersey Commissioner of the Department of Health or other public health authority. Any remaining family leave to which the employee is entitled, subsequent to the expiration of a reduced leave, may be taken in a manner consistent with this chapter.

(f) If an employee needs intermittent leave or leave on a reduced leave schedule that is foreseeable, the employer may require the employee during the period of leave to temporarily transfer to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than the employee's regular position. The alternative position must have equivalent pay and benefits to the employee's regular position. An employer may not transfer an employee to an alternative position in order to discourage the employee from taking leave or otherwise work a hardship on the employee. When an employee who is taking leave intermittently or on a reduced leave schedule and has been transferred to an alternative position is able to return to full-time work, they must be placed in the same or equivalent job as the one they left when the leave commenced.

(g) An employee's entitlement to return to work prior to the prearranged expiration of a requested family leave shall be governed by the employer's policy with respect to other leaves of absence.

1. If an employer permits an employee to return to work prior to the prearranged expiration of other leaves, then that policy shall similarly govern an employee's entitlement to return to work prior to the prearranged expiration of the requested family leave.

2. If an employer does not permit an employee to return to work prior to the prearranged expiration of other leaves, then the employee is not entitled to return to work prior to the prearranged expiration of family leave.

3. An employer which does not have a policy of either permitting or denying an employee to return to work prior to the prearranged expiration of any other leave of absence shall permit an employee to return to work prior to the prearranged expiration of requested family leave if the early return of an

employee will not cause the employer undue hardship, such as, requiring the employer to incur the expense of continuing the employment of a temporary employee who was hired to replace the employee who is taking family leave.

(h) An employer shall not require an employee to take a leave of absence beyond the period of time that an employee requests family leave.

History

HISTORY:

Amended by R.2007 d.77, effective March 5, 2007.

See: 38 N.J.R. 4627(a), 39 N.J.R. 781(c).

In (d)1, substituted "30" for "15"; and added (d)4.

Amended by R.2021 d.115, effective October 18, 2021.

See: 53 N.J.R. 352(a), 53 N.J.R. 1792(c).

Rewrote the section.

N.J.A.C. 13:14-1.6

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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 14.
RULES PERTAINING TO THE FAMILY LEAVE ACT SUBCHAPTER 1. GENERAL PROVISIONS**

§ 13:14-1.6 Relation with other laws

(a) Where an employee requests leave for a reason covered by both the New Jersey Family Leave Act and another law, the leave simultaneously counts against the employee's entitlement under both laws. For example, the Federal Family and Medical Leave Act (FMLA), 29 U.S.C. §§ 2601 et seq., provides leave to care for a seriously ill spouse and the New Jersey Family Leave Act also provides leave for that reason. Under this example, since the leave is taken for a purpose covered by both the Federal FMLA and the New Jersey Family Leave Act, the leave simultaneously counts against the employee's entitlement under both laws.

(b) Medical or disability leave that an employee takes under other laws, but that is not covered under the New Jersey Family Leave Act, shall not abridge an employee's right to leave or other protections granted under the New Jersey Family Leave Act. For example, the Federal FMLA provides leave for an employee's own disability, but New Jersey's Family Leave Act does not provide leave for an employee's own disability. Some situations which may arise under this example include, but are not limited to:

1. If an employee first takes FMLA leave under Federal law because of their own disability, including a disability related to pregnancy or childbirth, the employee would be entitled to an additional 12 weeks of leave within 24 months under the New Jersey Family Leave Act to care for a seriously ill family member;

family member due to an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease; or a newly born child or a child placed with the employee for adoption or foster care, because the prior disability leave was taken for a purpose not covered by the New Jersey Family Leave Act. Under this example, if an eligible employee is on FMLA disability leave under Federal law while pregnant for four weeks and is on FMLA disability leave under Federal law following childbirth for an additional six weeks to recover from childbirth, those 10 weeks that the employee is on disability leave count against the employee's Federal FMLA entitlement only, and the employee retains the full 12-week entitlement under the New Jersey Family Leave Act to care for the newly born child; and

2. If an employee takes FMLA leave under Federal law because of their own disability, including a disability related to pregnancy or childbirth, and a family member becomes seriously ill; a family member needs care due to an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease; or a child is born or adopted or placed with the employee for foster care while they are still on FMLA disability leave under Federal law, the intervening birth, adoption, care required due to an epidemic or communicable disease, or serious family illness does not convert the FMLA leave under Federal law to a leave under the New Jersey Family Leave Act. For as long as the employee continues to be eligible for FMLA leave under Federal law based on their own disability, the leave does not simultaneously count against the employee's entitlement under the New Jersey Family Leave Act.

(c) An employee retains all rights under the Temporary Disability Benefits Law, N.J.S.A. 43:21-25 et seq., when taking leave under the New Jersey Family Leave Act, and an employee's receipt of disability benefits or other compensation does not limit or impair the employee's right to take leave to care for a covered family member under the New Jersey Family Leave Act while receiving such benefits. For example, if an employee is receiving temporary disability benefits based on a post-partum medical condition, but has exhausted their Federal FMLA leave, the employee is entitled to begin their 12 weeks of leave under the New Jersey Family Leave Act to care for their newly born child, even though they are still disabled as defined by the Temporary Disability Benefits Law and is receiving compensation under that law.

History

HISTORY:

Repeal and New Rule, R.2002 d.374, effective November 18, 2002.

See: 34 N.J.R. 208(a), 34 N.J.R. 3968(a).

Section was "Disability leave".

Amended by R.2007 d.77, effective March 5, 2007.

See: 38 N.J.R. 4627(a), 39 N.J.R. 781(c).

In (b)1, inserted the last sentence.

Amended by R.2021 d.115, effective October 18, 2021.

See: 53 N.J.R. 352(a), 53 N.J.R. 1792(c).

Rewrote the section.

▼ Annotations

Case Notes

Pregnant claimant's civil rights claims denied for failure to prove former employer's legitimate, nondiscriminatory reasons for dismissal were pretextual. *Brady v. Dickstein Associates Insurance Agency*, 96 N.J.A.R.2d (CRT) 68.

N.J.A.C. 13:14-1.7

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 53 No. 21,
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**NJ - New Jersey Administrative Code TITLE 13. LAW AND PUBLIC SAFETY CHAPTER 14.
RULES PERTAINING TO THE FAMILY LEAVE ACT SUBCHAPTER 1. GENERAL PROVISIONS**

§ 13:14-1.7 Accrued paid leave

For the purpose of governing the use of accrued paid leave, employers shall treat family leave in the same manner as similar leaves of absence have been treated. If an employer has had a past practice or policy of requiring its employees to exhaust all accrued paid leave during a leave of absence, the employer may require employees to do so during a family leave. If an employer has a policy of allowing employees to take unpaid leaves without first exhausting accrued paid leave while on leave, it shall not require employees to exhaust accrued paid leave while on family leave. In situations where an employer does not have an established policy in this regard, the employee shall be entitled to utilize any accrued paid leave as part of the family leave. If such an employee determines not to utilize accrued paid leave, the employer shall not require such employee to utilize any accrued paid leave as part of the leave.

Where an employer maintains leaves of absence which provide different policies and/or practices regarding the use of accrued paid leave, the employer shall treat family leave in the same manner as that other leave of absence which most closely resembles family leave.

History

HISTORY:

Amended by R.2001 d.327, effective September 4, 2001.

See: 33 New Jersey Register 1495(a), 33 New Jersey Register 3030(a).

In the first sentence, substituted "manner" for "matter" preceding "as similar leaves", and in the third sentence, deleted "family" preceding the third reference to leave.

N.J.A.C. 13:14-1.8

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§ 13:14-1.8 Other employment

An employee on family leave may not engage in other full-time employment during the term of the leave, unless such employment commenced prior to the leave and is not otherwise prohibited by law. During the term of family leave an employee may commence part-time employment which shall not exceed half the regularly scheduled hours worked for the employer from whom the employee requested leave. An employee may continue part-time employment which commenced prior to the employee's family leave, at the same number of hours that the employee was regularly scheduled at that part-time employment prior to such leave. An employer may not maintain a policy or practice which prohibits part-time employment during the course of a leave or prohibits continuation of lawful full-time employment that commenced prior to the leave.

History

HISTORY:

Amended by R.2021 d.115, effective October 18, 2021.

See: 53 N.J.R.352(a), 53 N.J.R. 1792(c).

Inserted "at that part-time employment", and "or prohibits continuation of lawful full-time employment that commenced prior to the leave".

N.J.A.C. 13:14-1.9

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§ 13:14-1.9 Exemptions

(a) An employer is not required to grant a family leave to any employee who would otherwise be eligible under this Act if:

- 1.** The employee's base salary ranks within the highest paid five percent or the employee's base salary is one of the seven highest, whichever number of employees is greater (for purposes of this exception, all employees of an employer whether employed in New Jersey or not shall be included in this calculation);
- 2.** The employer can demonstrate that the granting of the leave would cause a substantial and grievous economic injury to the employer's operations; and
- 3.** The employer notifies the employee of its decision to deny the leave when that decision is made.

(b) The provisions of (a) above shall not apply when, in the event of a state of emergency declared by the Governor or when indicated to be needed by the New Jersey Commissioner of the Department of Health or other public health authority, the family leave is for an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease.

History

HISTORY:

Amended by R.2021 d.115, effective October 18, 2021.

See: 53 N.J.R. 352(a), 53 N.J.R. 1792(c).

In (a)1, substituted "the employee's" for "his or her"; in (a)3, substituted "decision" for "intent", and "that decision" for "such determination"; and added (b).

N.J.A.C. 13:14-1.10

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§ 13:14-1.10 Certification by an employee or health care provider

(a) An employer may require an employee who requests family leave to sign a form of certification attesting that such employee is taking family leave in connection with the birth of a child or the placement of a child with the employee for adoption or foster care; to care for a family member because of that family member's serious health condition; or to care for a family member because of an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, whichever is applicable. Any employee who refuses to sign such certification may be denied the requested leave. The employer may not require the employee to sign or otherwise submit a form of certification attesting to additional facts, including the employee's eligibility for family leave.

1. An employer may subject an employee to reasonable disciplinary measures, depending on the circumstances, when an employee intentionally misrepresents that such employee is taking family leave in connection with the birth of a child, or the placement of a child with the employee for adoption or foster care; to care for a family member because of that family member's serious health condition; or to care for a family member because of an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, whichever is applicable. The form of certification established by the employer shall contain a statement warning the employee of the consequences of refusing to sign the certification or falsely certifying.

(b) An employer may require that any period of family leave for a serious health condition of a family member or for the birth or placement of a child with the employee for adoption or foster care be supported by certification issued by a health care provider, as described at (b)1 and 2 below, or where the leave is for an epidemic of a communicable disease, a known or suspected exposure to a communicable disease, or efforts to prevent spread of a communicable disease, certification issued by a school, place of care for children, public health authority, public official, or health care provider, as described at (b)3 below.

1. Where the certification is for the serious health condition of a family member of the employee, the certification shall be sufficient if it states the approximate date on which the serious health condition commenced, the probable duration of the condition and the medical facts within the provider's knowledge showing that the family member's health condition meets the criteria of a serious health condition. In any case in which the employer has reason to doubt the validity of the certification provided, the

employer may require, at its own expense, that an employee obtain an opinion regarding the serious health condition from a second health care provider designated or approved, but not employed on a regular basis, by the employer. If the second opinion differs from the certification provided, the employer may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the employer and the employee concerning the serious health condition. The opinion of the third health care provider shall be considered to be final and shall be binding on the employer and the employee.

2. Where the certification is for the birth or placement of a child with the employee for adoption or foster care, the certification need only state the date of birth or date of placement, whichever is appropriate.

3. Where the certification is for an epidemic of a communicable disease, a known or suspected exposure to the communicable disease, or efforts to prevent spread of the communicable disease, the certification shall be sufficient if it includes:

i. For leave taken to provide in-home care or treatment of a child due to the closure of the school or place of care of the child of the employee, by order of a public official due to the epidemic or other public health emergency, the date on which the closure of the school or place of care of the child of the employee commenced, and the reason for such closure;

ii. For leave taken due to a public health authority's issuance of a determination requiring or imposing responsive or prophylactic measures as a result of illness caused by an epidemic of a communicable disease or known or suspected exposure to the communicable disease because the presence in the community of a family member in need of care by the employee would jeopardize the health of others, the date of issuance of the determination and the probable duration of the determination; or

iii. For leave taken because a health care provider or public health authority recommends that a family member in need of care by the employee voluntarily undergo self-quarantine as a result of suspected exposure to a communicable disease because the presence in the community of that family member in need of care by the employee would jeopardize the health of others, the date of the recommendation, the probable duration of the condition, and medical or other facts within the health care provider or public health authority's knowledge regarding the condition.

(c) An employer shall not use the certification requirements provided in (a) and (b) above to intimidate, harass or otherwise discourage an employee from requesting or taking family leave or asserting any of the employee's rights to family leave under these regulations or the Act.

History

HISTORY:

Amended by R.2014 d.134, effective September 2, 2014.

See: 46 N.J.R. 583(a), 46 N.J.R. 1884(c).

Section was "Certification by an employee". In the introductory paragraph of (b), deleted "duly licensed" following "a", and deleted "or any other health care provider determined by the Director to be capable of providing adequate certification" following "provider"; and in (b)1, inserted "approximate", and

substituted "showing that the family member's health condition meets the criteria of a serious health" for "regarding the condition".

Amended by R.2021 d.115, effective October 18, 2021.

See: 53 N.J.R. 352(a), 53 N.J.R. 1792(c).

Rewrote the section.

N.J.A.C. 13:14-1.11

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§ 13:14-1.11 Reinstatement

(a) Upon the expiration of a family leave, an employee shall be restored to the position such employee held immediately prior to the commencement of the leave. If such position has been filled, the employer shall reinstate such employee to an equivalent position of like seniority, status, employment benefits, pay, and other terms and conditions of employment.

(b) If, during a family leave provided by the Act, the employer experiences a reduction in force or layoff and the employee would have lost the employee's position had the employee not been on leave, as a result of the reduction in force or pursuant to the good faith operation of a bona fide layoff and recall system including a system under a collective bargaining agreement where applicable, the employee shall not be entitled to reinstatement to the former or an equivalent position. The employee shall retain all rights under any applicable layoff and recall system, including a system under a collective bargaining agreement, as if the employee had not taken the leave.

N.J.A.C. 13:14-1.12

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§ 13:14-1.12 Multiple requests for family leave

An employer shall grant a family leave to more than one employee from the same family (for example, a husband and a wife, or a brother and a sister) at the same time, provided such employees are otherwise eligible for the leave.

HISTORY:

Amended by R.2007 d.77, effective March 5, 2007.

See: 38 N.J.R. 4627(a), 39 N.J.R. 781(c).

Inserted "a husband and a wife, or a".

N.J.A.C. 13:14-1.13

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§ 13:14-1.13 Employers with multiple leaves of absence

Where an employer maintains leaves of absence which provide benefits, other than health benefits, that differ depending upon the type of leave taken, such employer shall provide those benefits to an employee on family leave in the same manner as it provides benefits to employees who are granted that other leave of absence which most closely resembles family leave.

N.J.A.C. 13:14-1.14

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§ 13:14-1.14 Notice to employees

(a) Employers covered under the Act shall display the official Family Leave Act poster of the Division on Civil Rights in accordance with N.J.A.C. 13:8-2.2. The poster is available for printing from the Division's website, www.njcivilrights.gov.

(b) If an employer covered under the Act maintains written guidance to employees concerning employee benefits or leave rights, such as in an employee handbook, information concerning leave under the Act and employee obligations under the Act must be included in the handbook or other document. If an employer does not have written policies, manuals, or handbooks describing employee benefits and leave provisions, the employer shall provide written guidance to each of its employees concerning all the employee's rights and obligations under the Act. Employers may duplicate and provide its employees a copy of the NJFLA Fact Sheet available on the Division's website, www.njcivilrights.gov, to provide such

guidance.

History

HISTORY:

Repeal and New Rule, R.2007 d.77, effective March 5, 2007.

See: 38 N.J.R. 4627(a), 39 N.J.R. 781(c).

Section was "Retroactivity".

Amended by R.2014 d.134, effective September 2, 2014.

See: 46 N.J.R. 583(a), 46 N.J.R. 1884(c).

In (a), inserted the second sentence; and in (b), substituted "www.njcivilrights.gov" for "www.njcivilrights.org".

N.J.A.C. 13:14-1.15

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§ 13:14-1.15 Prohibition against retaliation

No employer shall discharge or in any way retaliate against or penalize any employee because such employee sought information about family leave provisions, filed a complaint alleging a violation of the Act or this chapter or exercised any right granted under the Act or this chapter.

N.J.A.C. 13:14-1.16

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§ 13:14-1.16 Processing of complaints

Any complaint filed in the Division which alleges a violation of the Act or these regulations shall be processed in the same manner as a complaint filed under the terms of N.J.S.A. 10:5-1 et seq. and N.J.A.C. 13:4.

N.J.A.C. 13:15

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 51 No. 20, October 21, 2019

NJ - New Jersey Administrative Code > TITLE 13. LAW AND PUBLIC SAFETY > CHAPTER 15. HOUSING FOR OLDER PERSONS

Title 13, Chapter 15 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

[N.J.S.A. 10:5-8](#), 10:5-12, and 10:5-18.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2019 d.019, effective February 19, 2019.

See: [50 N.J.R. 1337\(a\)](#), [51 N.J.R. 216\(a\)](#).

CHAPTER HISTORICAL NOTE:

Chapter 15, Housing for Older Persons, was adopted as R.1995 d.243, effective May 15, 1995. See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

Pursuant to Executive Order No. 66(1978), Chapter 15, Housing for Older Persons, was readopted as R.2000 d.187, effective April 7, 2000. See: [32 N.J.R. 648\(a\)](#), [32 N.J.R. 1619\(b\)](#).

Chapter 15, Housing for Older Persons, was readopted as R.2005 d.371, effective October 4, 2005. See: [37 N.J.R. 1682\(a\)](#), [37 N.J.R. 4277\(a\)](#).

Chapter 15, Housing for Older Persons, was readopted as R.2011 d.111, effective March 17, 2011. See: [42 N.J.R. 2719\(a\)](#), [43 N.J.R. 1032\(a\)](#).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 15, Housing for Older Persons, expired on March 17, 2018. See: [43 N.J.R. 1203\(a\)](#).

Chapter 15, Housing for Older Persons, was adopted as new rules by R.2019 d.019, effective February 19, 2019. See: Source and Effective Date. See, also, section annotations.

Annotations

Notes

[*Chapter Notes*](#)

Research References & Practice Aids

CHAPTER EXPIRATION DATE:

Chapter 15, Housing for Older Persons, expires on February 19, 2026.

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§ 13:15-1.1. Purpose

The purpose of this chapter is to effectuate the exemption in the Law Against Discrimination, [N.J.S.A. 10:5-1](#) to 42, and the Fair Housing Act, 42 U.S.C. § 3601 et seq., that relates to housing for older persons.

Annotations

Notes

[Chapter Notes](#)

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§ 13:15-1.2 Exemption

(a) The provisions regarding familial status in the Law Against Discrimination do not apply to housing that satisfies the requirements of [N.J.A.C. 13:15-1.3](#), [1.4](#), or [1.5](#). Nothing in the requirements of [N.J.A.C. 13:15-1.3](#), [1.4](#), or [1.5](#) shall be construed to restrict the age of any purchaser or grantee of housing who does not reside in, or intend to reside in, such housing.

(b) Nothing in this chapter limits the applicability of any reasonable local or State restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

History

HISTORY:

Amended by R.2005 d.371, effective November 7, 2005.

See: [37 N.J.R. 1682\(a\)](#), [37 N.J.R. 4277\(a\)](#).

In (a), substituted "the Law Against Discrimination" for "this chapter".

Amended by R.2019 d.019, effective February 19, 2019.

See: [50 N.J.R. 1337\(a\)](#), [51 N.J.R. 216\(a\)](#).

Rewrote (a).

Annotations

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[Chapter Notes](#)

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N.J.A.C. 13:15-1.3

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§ 13:15-1.3. Elderly housing programs

The provisions regarding familial status in this chapter shall not apply to housing provided under any State program that the Attorney General determines is specifically designed and operated to assist elderly persons (as defined in the State program); or provided under any Federal program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons (as defined in the Federal program).

History

HISTORY:

Amended by R.2005 d.371, effective November 7, 2005.

See: [37 New Jersey Register 1682\(a\)](#), [37 New Jersey Register 4277\(a\)](#).

Rewrote the section.

Annotations

Notes

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N.J.A.C. 13:15-1.4

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§ 13:15-1.4 62 or over housing

(a) The provisions regarding familial status in this chapter shall not apply to housing intended for, and solely occupied by, persons 62 years of age or older. Housing satisfies the requirements of this section even though:

1. There are persons residing in such housing on September 13, 1988 who are under 62 years of age, provided that all new occupants are persons 62 years of age or older;
2. There are unoccupied units, provided that such units are reserved for occupancy by persons 62 years of age or over; and
3. There are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(b) The following examples illustrate the application of (a) above:

Example 1: John and Mary apply for housing at the Vista Heights apartment complex which is an elderly housing complex operated for persons 62 years of age or older. John is 62 years of age. Mary is 59 years of age. If Vista Heights wishes to retain its "62 or over" exemption it must refuse to rent to John and Mary because Mary is under 62 years of age. However, if Vista Heights does rent to John and Mary, it might qualify for the "55 or over" exemption in [24 C.F.R. § 100.304](#), as set forth by the Secretary of Housing and Urban Development to administer and enforce Title VIII of the Federal Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

Example 2: The Blueberry Hill retirement community has 100 dwelling units. On September 13, 1988, 15 units were vacant and 35 units were occupied with at least one person who is under 62 years of age. The remaining 50 units were occupied by persons who were all 62 years of age or older. Blueberry Hill can qualify for the "62 or over" exemption as long as all units that were occupied after September 13, 1988 are occupied by persons who were 62 years of age or older. The people under 62 in the 35 units previously described need not be required to leave Blueberry Hill to qualify for the "62 or over" exemption.

Annotations

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Chapter Notes

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§ 13:15-1.5 55 or over housing

(a) The provisions regarding familial status shall not apply to housing intended and operated for occupancy by at least one person 55 years of age or older per unit, provided that the housing satisfies the requirements of (b)1 or (b)2 below, and the requirements of (c).

(b) If either of the following requirements, and the requirements of (c) below, are satisfied, the provisions regarding familial status shall not apply to housing intended for occupancy by at least one person 55 years of age or older per unit:

1. The housing facility has significant facilities and services specifically designed to meet the physical or social needs of older persons. "Significant facilities and services specifically designed to meet the physical or social needs of older persons" include, but are not limited to, social and recreational programs, continuing education, information and counseling, recreational, homemaker, outside maintenance and referral services, an accessible physical environment, emergency and preventive health care of programs, congregate dining facilities, transportation to facilitate access to social services, and services designed to encourage and assist residents to use the services and facilities available to them (the housing facility need not have all of these features to qualify for the exemption under this subparagraph); or

2. It is not practicable to provide significant facilities and services designed to meet the physical or social needs of older persons and the housing facility is necessary to provide important housing opportunities for older persons. In order to satisfy this paragraph, the owner or manager of the housing facility must demonstrate through credible and objective evidence that the provision of significant facilities and services designed to meet the physical or social needs of older persons would result in depriving older persons in the relevant geographic area of needed and desired housing. The following factors, among others, are relevant in meeting the requirements of this paragraph:

i. Whether the owner or manager of the housing facility has endeavored to provide significant facilities and services designed to meet the physical or social needs of older persons either by the owner or by some other entity. Demonstrating that such services and facilities are expensive to provide is not alone sufficient to demonstrate that the provision of such services is not practicable;

ii. The amount of rent charged, if the dwellings are rented, or the price of the dwellings, if they are offered for sale;

iii. The income range of the residents of the housing facility;

iv. The demand for housing for older persons in the relevant geographic area;

v. The range of housing choices for older persons within the relevant geographic area;

vi. The availability of other similarly priced housing for older persons in the relevant geographic area. If similarly priced housing for older persons with significant facilities and services is reasonably available in the relevant geographic area, then the housing facility does not meet the requirements of this paragraph; and

vii.The vacancy rate of the housing facility.

(c)If the following requirements of this subsection, and of either (b)1 or 2 above, are satisfied, the provisions regarding familial status shall not apply to housing intended for occupancy by at least one person 55 years of age or older per unit:

1.At least 80 percent of the units in the housing facility are occupied by at least one person 55 years of age or older per unit, except that a newly constructed housing facility for first occupancy after March 12, 1989 need not comply with this paragraph until 25 percent of the units in the facility are occupied; and

2.The owner or manager of a housing facility publishes and adheres to policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this paragraph:

i.The manner in which the housing facility is described to prospective residents;

ii.The nature of any advertising designed to attract prospective residents;

iii.Age verification procedures;

iv.Lease provisions;

v.Written rules and regulations; and

vi.Actual practices of the owner or manager in enforcing relevant lease provisions and relevant rules or regulations.

(d)Housing satisfies the requirements of this section even though:

1.On September 13, 1988, under 80 percent of the occupied units in the housing facility are occupied by at least one person 55 years of age or older per unit, provided that at least 80 percent of the units that are occupied by new occupants after September 13, 1988 are occupied by at least one person 55 years of age or older.

2.There are unoccupied units, provided that at least 80 percent of such units are reserved for occupancy by at least one person 55 years of age or over.

3.There are units occupied by employees of the housing facility (and family members residing in the same unit) who are under 55 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(e)The application of this section may be illustrated by the following examples:

Example 1: A. John and Mary apply for housing at the Valley Heights apartment complex which is a 100 unit housing complex that is operated for persons 55 years of age or older in accordance with all the requirements of this section. John is 56 years of age. Mary is 50 years of age. Eighty units are occupied by at least one person who is 55 years of age or older. Eighteen units are occupied exclusively by persons who are under 55. Among the units occupied by new occupants after September 13, 1988 were 18 units occupied exclusively by persons who are under 55. Two units are vacant. At the time John and Mary apply for housing, Valley Heights qualifies for the "55 or over" exemption because 82 percent of the occupied units (80/98) at Valley Heights are occupied by at least one person 55 years or older. If John or Mary are accepted for occupancy, then 81 out of the 99 occupied units (82 percent) will be occupied by at least one person who is 55 years of age or older and Valley Heights will continue to qualify for the "55 or over" exemption.

B.If only 78 out of the 98 occupied units had been occupied by at least one person 55 years of age or older, Valley Heights would still qualify for the exemption, but could not rent to John or Mary if they were both under 55 without losing the exemption.

Example 2: Green Meadow is a 1,000 unit retirement community that provides significant facilities and services specifically designed to meet the physical or social needs of older persons. On September 13,

1988, Green Meadow published and thereafter adhered to policies and procedures demonstrating an intent to provide housing for persons 55 years of age or older. On September 13, 1988, 100 units were vacant and 300 units were occupied only by people who were under 55 years old. Consequently, on September 13, 1988, 67 percent of the Green Meadow's occupied units (600 out of 900) were occupied by at least one person 55 years of age or older. Under (d)1 above, Green Meadows qualifies for the "55 or over" exemption even though, on September 13, 1988, under 80 percent of the occupied units of the housing facility were occupied by at least one person 55 years of age or older per unit, provided that at least 80 percent of the units that were occupied after September 13, 1988 are occupied by at least one person 55 years of age or older. Under (d) above, Green Meadow qualifies for the "55 or over" exemption, even though it has unoccupied units, provided that at least 80 percent of its unoccupied units are reserved for occupancy by at least one person 55 years of age or over.

Example 3: Waterfront Gardens is a 200 unit housing facility to be constructed after March 12, 1989. The owner and manager of Waterfront Gardens intends to operate the new facility in accordance with the requirements of this section. Waterfront Gardens need not comply with the requirement in (c)1 above that at least 80 percent of the occupied units be occupied by at least one person 55 years of age or older per unit until 50 units (25 percent) are occupied. When the 50th unit is occupied, then 80 percent of the 50 occupied units (that is, 40 units) must be occupied by at least one person who is 55 years of age or older for Waterfront Gardens to qualify for the "55 or over" exemption.

Annotations

Notes

[Chapter Notes](#)

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