

CHAPTER 7**EQUAL EMPLOYMENT OPPORTUNITY
AND AFFIRMATIVE ACTION****Authority**

N.J.S.A. 10:5-1 et seq., 11A:7-1, 11A:7-2, 11A:7-3, 11A:7-4,
and 11A:7-5(a) and (b).

Source and Effective Date

R.2003 d.114, effective February 13, 2003.
See: 34 N.J.R. 3573(a), 35 N.J.R. 1408(a).

Chapter Expiration Date

Chapter 7, Equal Employment Opportunity and Affirmative Action,
expires on February 13, 2008.

Chapter Historical Note

Chapter 7, Equal Employment Opportunity and Affirmative Action,
was adopted as R.1987 d.403, effective October 5, 1987. See: 19 N.J.R.
1020(a), 19 N.J.R. 1827(a). See, also, Title Historical Note prior to
N.J.A.C. 4A:1.

Pursuant to Executive Order No. 66(1978), Chapter 7, Equal Employ-
ment Opportunity and Affirmative Action, was readopted as R.1992
d.420, effective September 22, 1992. See: 24 N.J.R. 2496(c), 24 N.J.R.
3721(a).

Pursuant to Executive Order No. 66(1978), Chapter 7, Equal Employ-
ment Opportunity and Affirmative Action, was readopted as R.1997
d.437, effective September 22, 1997. See: 29 N.J.R. 3104(a), 29 N.J.R.
4457(a).

Chapter 7, Equal Employment Opportunity and Affirmative Action,
was readopted as R.2003 R.114, effective February 13, 2003. See:
Source and Effective Date.

Subchapter 3, Policy Prohibiting Discrimination, Harassment or Hos-
tile Work Environments in the Workplace; Complaint Procedure, and
Appeals, was renamed Policy Prohibiting Discrimination in the Work-
place; Complaint Procedure, and Appeals, by R.2007 d.244, effective
August 20, 2007. See: 39 N.J.R. 1340(a), 39 N.J.R. 3499(a).

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**SUBCHAPTER 1. EQUAL EMPLOYMENT
OPPORTUNITY****4A:7-1.1 General provisions**

(a) There shall be equal employment opportunity for all
persons in, or applicants for, the career, unclassified and
senior executive services, regardless of race, creed, color,
national origin, nationality, ancestry, sex/gender (including
pregnancy), affectional or sexual orientation, gender identity
or expression, age, marital status, civil union status, domestic
partnership status, familial status, religion, atypical hereditary
cellular or blood trait, genetic information, liability for ser-
vice in the Armed Forces of the United States, or disability,
except where a particular qualification is specifically per-
mitted and is essential to successful job performance. See
N.J.A.C. 4A:4-4.5 on bona fide occupational qualification.

(b) Equal employment opportunity includes, but is not lim-
ited to, recruitment, selection, hiring, training, promotion,
transfer, work environment, layoff, return from layoff, com-
pensation and fringe benefits. Equal employment opportunity
further includes policies, procedures and programs for re-
cruitment, employment, training, promotion, and retention of
minorities, women and persons with disabilities. Equal em-
ployment opportunity but not affirmative action is required
with respect to persons identified solely by their affectional or
sexual orientation.

(c) Persons with disabilities shall include any person who
has a physical disability, infirmity, malformation or disfigure-
ment which is caused by bodily injury, birth defect or illness
including epilepsy and other seizure disorders, and which
shall include, but not be limited to, any degree of paralysis,
amputation, lack of physical coordination, blindness or visual
impediment, deafness or hearing impediment, muteness or
speech impediment or physical reliance on a service or guide
dog, wheelchair, or other remedial appliance or device, or any
mental, psychological or developmental disability resulting
from anatomical, psychological, physiological or neurological
conditions which prevents the normal exercise of any bodily
or mental functions or is demonstrable, medically or psycho-
logically, by accepted clinical or laboratory diagnostic tech-
niques. Disability shall also mean AIDS or HIV infection.
See N.J.S.A. 10:5-5(q). See also N.J.A.C. 4A:4-2.14 for
accommodation and waiver of examinations for persons with
disabilities.

(d) The following race/ethnic categories shall be used by
the Department of Personnel:

1. W: "White, not of Hispanic origin" means persons
having origins in any of the original peoples of Europe,
North Africa or the Middle East;
2. B: "Black, not of Hispanic origin" means persons
having origins in any of the Black racial groups of Africa;

3. H: "Hispanic" means persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

4. I: "American Indian or Alaskan Native" means persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition; and

5. A: "Asian or Pacific Islander" means persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands and Samoa.

(e) Sexual harassment is a form of prohibited gender discrimination that will not be tolerated.

(f) This chapter prohibits all forms of discriminatory conduct against any State employee by any other State employee or person doing business with the State. In addition, this chapter prohibits any form of discriminatory conduct by a State employee against a person doing business with the State. A "person doing business with the State" means an independent vendor performing services or supplying goods pursuant to a contract with the State.

(g) In local service, an appointing authority may establish policies and procedures for processing discrimination complaints.

Administrative Correction to (a): Changed cross-reference cites from "4:1-12.7, 4:2-6.3 and 4:3-6.4" to "4A:4-4.5".

See: 22 N.J.R. 2266(a).

Amended by R.1992 d.420, effective October 19, 1992.

See: 24 N.J.R. 2496(c), 24 N.J.R. 3721(a).

Revised (a)-(c).

Amended by R.1994 d.72, effective February 7, 1994.

See: 25 N.J.R. 4821(b), 26 N.J.R. 794(b).

Amended by R.2002 d.10, effective January 7, 2002.

See: 33 N.J.R. 3281(a), 34 N.J.R. 261(a).

Rewrote (a); in (d)3, substituted "Rican" for "Rico" and "American" for "America"; added (e) through (g).

Amended by R.2005 d.65, effective February 22, 2005.

See: 36 N.J.R. 4566(a), 37 N.J.R. 586(a).

In (a), inserted "domestic partnership status," following "age, marital status".

Amended by R.2007 d.244, effective August 20, 2007.

See: 39 N.J.R. 1340(a), 39 N.J.R. 3499(a).

In (a), inserted "nationality," "gender (including pregnancy)," "gender identity or expression," and "civil union status,"; rewrote (c); in (e), substituted "prohibited" for "unlawful"; and in (f), deleted "unlawful" preceding "discriminatory conduct" two times, deleted "including sexual harassment," preceding the first occurrence of "against", and deleted "sexual harassment or" following "prohibits" and "other" following "any".

Cross References

Disability discrimination, employment related grievances, procedures as under this chapter, see N.J.A.C. 12:7-2.2.

Disability discrimination, employment related grievances, procedures as under this chapter, see N.J.A.C. 12:7-4.1.

Hackensack Meadowlands Development Commission, disability discrimination grievance procedure, see N.J.A.C. 19:3A-3.3.

Case Notes

Review of selection process; use of written test as qualifying and ranking device requires testing only in areas where higher scores relate to better job performance; adverse impact of test on minorities demonstrated; violation of consent decree by State on firefighter promotion selection process; examination inadequate to select fire captain/lieutenant (citing N.J.A.C. 4:1). *Vulcan Pioneers, Inc. v. New Jersey Dep't of Civil Service*, 625 F.Supp. 527 (D.N.J.1985) affirmed 832 F.2d 811.

Temporary restraining order granted to prohibit the appointment of entry level firefighters based on statistical showing of race discrimination should hiring take place as planned (citing former N.J.A.C. 4:1). *U.S. v. State of New Jersey*, 23 F.E.P. Case 1717, 22 EPD # 30, 287, 473, 473 F.Supp. 1199 (D.N.J.1980).

Sex Discrimination. *Terry v. Mercer Cty. Freeholder Bd.*, 173 N.J.Super. 249, 414 A.2d 30 (App.Div.1980) modified 86 N.J. 141, 430 A.2d 194 (1981).

Sex discrimination claim. *Kiss v. Community Affairs Dep't*, 171 N.J.Super. 193, 408 A.2d 450 (App.Div.1979).

Sex discrimination in regard to veteran's preference. *Ballou v. State Department of Civil Service*, 75 N.J. 365, 382 A.2d 1118 (1978).

Denial of appointment based on applicant's sexual discrimination complaint constituted retaliation. *Graham v. Kearny Board of Education*, 97 N.J.A.R.2d (CRT) 173.

Police department's failure to apply male hiring standards to female candidate justifies unlawful discrimination damages. *McEvoy v. Borough of Glassboro and Glassboro Police Department*, 97 N.J.A.R.2d (CRT) 136.

Employee lacking appropriate job skills under operations reorganization loses age discrimination claim. *Botterman v. Bergen County Community Action Program*, 97 N.J.A.R.2d (CRT) 129.

Race discrimination claims dismissed after individuals hired were determined to be more qualified for position than complainant. *Parker v. Glassboro State College*, 96 N.J.A.R.2d (CRT) 24.

4A:7-1.2 Discriminatory inquiries

(a) A preemployment application shall not require an applicant to provide information covering subject matters which may be discriminatory, except where related to a job requirement or required by law. See Division on Civil Rights rules at N.J.A.C. 13:7-1.1.

(b) Preemployment and employment information which is required by the State or Federal government for statistical purposes may be obtained by an appointing authority or the Department of Personnel.

Cross References

Disability discrimination, employment related grievances, procedures as under this chapter, see N.J.A.C. 12:7-4.1.

4A:7-1.3 (Reserved)

Amended by R.1994 d.618, effective December 19, 1994.

See: 26 N.J.R. 3507(a), 26 N.J.R. 5000(a).

Repealed by R.2002 d.10, effective January 7, 2002.

See: 33 N.J.R. 3281(a), 34 N.J.R. 261(a).

Section was "Prohibition of sexual harassment in State government".