

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); P.L. 2006, c. 100 and 103; and 42 U.S.C. §2000e(a).

Source and Effective Date

R.2008 d.217, effective July 1, 2008.
 See: 40 N.J.R. 1408(a), 40 N.J.R. 4521(b).

Chapter Expiration Date

Chapter 7, Equal Employment Opportunity and Affirmative Action, expires on July 1, 2013.

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 Employment 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 Employment 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: 34 N.J.R. 3573(a), 35 N.J.R. 1408(a).

Subchapter 3, Policy Prohibiting Discrimination, Harassment or Hostile Work Environments in the Workplace; Complaint Procedure, and Appeals, was renamed Policy Prohibiting Discrimination in the Workplace; 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).

Chapter 7, Equal Employment Opportunity and Affirmative Action, was readopted as R.2008 d.217, effective July 1, 2008. See: Source and Effective Date.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. EQUAL EMPLOYMENT OPPORTUNITY

- 4A:7-1.1 General provisions
- 4A:7-1.2 Discriminatory inquiries
- 4A:7-1.3 (Reserved)

SUBCHAPTER 2. DIVISION OF EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

- 4A:7-2.1 Division responsibilities: State service
- 4A:7-2.2 Equal Employment Opportunity Advisory Commission: State service
- 4A:7-2.3 Appointing authority responsibilities

SUBCHAPTER 3. POLICY PROHIBITING DISCRIMINATION IN THE WORKPLACE; COMPLAINT PROCEDURE, AND APPEALS

- 4A:7-3.1 Policy prohibiting discrimination in the workplace

- 4A:7-3.2 Model procedures for internal complaints alleging discrimination in the workplace
- 4A:7-3.3 through 4A:7-3.4 (Reserved)

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 service in the Armed Forces of the United States, or disability, except where a particular qualification is specifically permitted 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 limited to, recruitment, selection, hiring, training, promotion, transfer, work environment, layoff, return from layoff, compensation and fringe benefits. Equal employment opportunity further includes policies, procedures and programs for recruitment, employment, training, promotion, and retention of minorities, women and persons with disabilities. Equal employment 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 disfigurement 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 psychologically, by accepted clinical or laboratory diagnostic techniques. 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).

Where the nature and extent of a county clerk's mental condition and accompanying alarming behavior precluded her from successfully performing her job, the appointing authority was not precluded from pursuing termination (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 574). In re *Wilson*, OAL Dkt. No. CSV 9640-04, 2007 N.J. AGEN LEXIS 1180, Final Decision (October 10, 2007), aff'd per curiam, No. A-1291-07T1, 2009 N.J. Super. Unpub. LEXIS 1055 (App.Div. May 5, 2009).

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.