

CHAPTER 13

REGULATIONS PERTAINING TO DISCRIMINATION
ON THE BASIS OF DISABILITY

Authority

N.J.S.A. 10:5-1 through 49.

Source and Effective Date

R.2000 d.273, effective June 6, 2000.
See: 32 N.J.R. 1155(a), 32 N.J.R. 2445(a).

Executive Order No. 66(1978) Expiration Date

Chapter 13, Regulations Pertaining to Discrimination on the Basis of Disability, expires June 6, 2005.

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 Disability, was readopted as R.2000 d.273, effective June 6, 2000. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL PROVISIONS

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.

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.

Case Notes

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).

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.

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 “handicapped” 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.

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".

Case Notes

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).

SUBCHAPTER 2. EMPLOYMENT

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 "ablebodied 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 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.

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 (c), substituted a reference to disability for a reference to handicap.

Case Notes

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).

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.

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.

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.

(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.

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).

In (b) substituted "disability" for "a handicap"; in (c) added "or her" following "his" and substituted "people with disabilities" for "handicapped persons".

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.

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 a reference to disability for a reference to handicap.

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, when such accommo-

dations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling.

(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.

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.

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.

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 persons who possess handicaps throughout.

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.

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 persons who possess handicaps throughout.

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.

New Rule, R.1995 d.243, effective May 15, 1995.
See: 26 N.J.R. 1942(a), 27 N.J.R. 2005(a).

SUBCHAPTER 4. ACCESS TO PUBLIC ACCOMMODATIONS

13:13-4.1 Application

The term "person" as used in this subchapter shall mean the owners, lessees, proprietors, managers, superintendents, agents or employees of any place of public accommodation.

13:13-4.2 General practices

(a) It shall be unlawful for any person to refuse, withhold from or deny an individual, either directly or indirectly, on account of a handicap, access to any of the accommodations, advantages, facilities or privileges of a place of public accommodation. It shall be unlawful for any person to discriminate against a handicapped person in the price, terms, or conditions upon which access to such accommodations, advantages, facilities or privileges may depend.

(b) It shall be unlawful for any person to refuse, withhold or deny either directly or indirectly the right of visually handicapped or deaf persons to be accompanied by guide or service dogs, especially trained for the purpose, in any place of public accommodation. Such visually handicapped or deaf persons shall be liable for any damage done to the premises or facilities by such dogs.

(c) It shall be unlawful for any person 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 handicapped person to have equal access to a place of public accommodation will be denied or abridged.