

CHAPTER 11

EMPLOYMENT ADVERTISING

Authority

N.J.S.A. 10:5-8 and 10:5-12.

Source and Effective Date

R.2007 d.38, effective December 27, 2006.
See: 38 N.J.R. 3493(a), 39 N.J.R. 491(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 11, Employment Advertising, expires on June 25, 2014. See: 46 N.J.R. 272(a).

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: Source and Effective Date. See, also, section annotations.

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).

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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, domestic partnership status, sex, nationality, affec-

tional 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, 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 which 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, 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 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.

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”.

Case Notes

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).

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.

13:11-1.3 Preferences expressed in column heading or body of advertisement

(a) It shall be a violation of the Law Against Discrimination for any employer, union or employment agency, or any newspaper or other publication published or circulated within this State to publish, print, post or circulate or cause to be published, printed, 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, the language of which advertisement expresses any limitation, specification, discrimination or preference as to sex, affectional or sexual orientation, marital status, domestic partnership status, race, creed, color, national origin, ancestry, nationality, disability, liability for service in the Armed Forces of the United States or age of any intent to make such preference, specification or discrimination unless sex, affectional or sexual orientation, marital status, domestic partnership status, race, creed, color, national origin, ancestry, nationality, disability, liability for service in the Armed Forces of the United States or age is a bona fide occupational qualification for the particular job advertised.

(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 those provisions, 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".

(e) The fact that a term does not appear in the above partial list does not mean that such a term is acceptable.

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.

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

(a) For the purposes of these provisions, the "bona fide occupational qualification" exception shall include only those vocational qualifications which 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, affectional or sexual orientation, 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, 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 reference, 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.

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.

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).

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 (to the Bureau of Policy at (609) 984-7091, 140 East Front Street, Trenton, New Jersey 08625-0089) as to whether race, creed, color, national origin, ancestry, nationality, age, sex, affectional or sexual orientation, disability, liability for service in the Armed Forces of the United States, domestic partnership 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 these provisions 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.

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.

13:11-1.6 Violations

Failure to comply with this Chapter will constitute a violation of N.J.S.A. 10:5-12.

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.

13:11-1.7 (Reserved)

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".

13:11-1.8 (Reserved)

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".