

CHAPTER 7

**EQUAL EMPLOYMENT OPPORTUNITY
AND AFFIRMATIVE ACTION**

Authority

N.J.S.A. 10:5-12, 11A:1-2(d), 11A:2-6(b), 11A:7-1 through 11A:7-9, 11A:7-11, 11A:7-12, 11A:7-13.

Source and Effective Date

R.1992 d.420, effective September 22, 1992.
See: 24 N.J.R. 2496(c), 24 N.J.R. 3721(a).

Executive Order No. 66(1978) Expiration Date

Chapter 7, Equal Employment Opportunity and Affirmative Action, expires on September 22, 1997.

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 See, also, Historical Notes at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapter 21; repealed N.J.A.C. 4:2, State Service, specifically Subchapter 21; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapter 21. Pursuant to Executive Order No. 66(1978), Chapter 7 was readopted as R.1992 d.420. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

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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, sex, affectional or sexual orientation, age, marital status, religion, 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 qualifications.

(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 or mental impairment which substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment. See 29 U.S.C. 706 and 42 U.S.C. 12101 et seq. Persons with disabilities shall also include persons who are defined as handicapped under 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 Rico, Cuban, Central or South America 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.

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).

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).

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 Prohibition of sexual harassment in State government

(a) Sexual harassment is defined as unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct based on the gender of the employee affected when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of employment;
2. Submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting the employee; or

3. Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an unreasonably intimidating, hostile or offensive working environment. This type of sexual harassment includes, but is not limited to:

- i. Generalized gender-based remarks and behavior;
- ii. Inappropriate, unwanted, offensive physical or verbal sexual advances and comments;
- iii. Solicitation of sexual activity or other sex-linked behavior by promise of reward;
- iv. Coercion of sexual activity by threat of punishment; and
- v. Gross sexual imposition such as touching, fondling, grabbing or assault.

(b) The employee need not be a personal target of harassment to file a complaint. The employee instead may show that other employees of the same sex were sexually harassed.

(c) Conduct under (a)3 above by a supervisor, other superior or by coworkers constitutes prohibited sexual harassment when a reasonable person of the same sex in the employee's position would consider it sufficiently severe or pervasive to alter the conditions of employment or to create an intimidating, hostile or offensive working environment.

(d) In local service, an appointing authority may establish procedures for processing complaints of sexual harassment.

(e) The sexual harassment of any State employee by any other State employee or person doing business with the State shall constitute prohibited discrimination under this chapter.

(f) It shall be the responsibility of each appointing authority to:

1. Ensure that the working environment is free from acts of sexual harassment by its supervisors, employees and non-employees;
2. Take immediate and corrective action when sexual harassment has occurred; and
3. Make all employees aware of the policy against sexual harassment and of the procedure for filing complaints when sexual harassment has occurred.

(g) Employee complaints of sexual harassment in the State career, unclassified and senior executive services shall be processed in accordance with N.J.A.C. 4A:7-3.2 through 4A:7-3.4.

Amended by R.1994 d.618, effective December 19, 1994.
See: 26 N.J.R. 3507(a), 26 N.J.R. 5000(a).