

## CHAPTER 13

REGULATIONS PERTAINING TO DISCRIMINATION  
ON THE BASIS OF HANDICAP

## Authority

N.J.S.A. 10:5-4.1; 10:5-6; 10:5-8(g), (h);  
10:5-12; 10:5-29 through 29.6.

## Source and Effective Date

R.1995 d.424, effective July 12, 1995.  
See: 27 N.J.R. 1954(b), 27 N.J.R. 2956(c).

## Executive Order No. 66(1978) Expiration Date

Chapter 13, Regulations Pertaining to Discrimination on the Basis of Handicap, expires July 12, 2000.

## Chapter Historical Note

Chapter 13 formerly contained rules entitled, Dealers and Brokers which were recodified to N.J.A.C. 13:47A. Chapter 13, Regulations Pertaining to Discrimination on the Basis of Handicap, was originally adopted as R.1990 d.305, effective June 17, 1985. See: 17 N.J.R. 671(a), 17 N.J.R. 1574(a). Chapter 13 was readopted as R.1990 d.360, effective July 16, 1990. See: 22 N.J.R. 1436(a), 22 N.J.R. 2181(a). Chapter 13:13 was readopted as R.1995 d.424, effective July 12, 1995. See: Source and Effective Date.

See section annotations for specific rulemaking activity.

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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 to 42 ("the act" or "the statute"), as it pertains specifically to discrimination on the basis of physical and mental handicap.

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

## 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.

"Handicapped" as used in this chapter will have the same meaning as that term is given by N.J.S.A. 10:5-5(q). It is also unlawful to take any action prohibited by this chapter:

1. Because of a perception or belief that an individual suffers from a handicap, whether or not that individual is actually handicapped;
2. Because a person has been at any time handicapped; or
3. Because a handicapped person will be residing or intends to reside in a dwelling or because of the handicap of any person associated with a buyer or renter.

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

## 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 handicapped persons 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 handicap 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 the handicapped, 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 handicapped individuals.

3. Employers are encouraged to list all job openings and requests for referrals with institutions, agencies, and organizations of or serving the handicapped including the Division of Vocational Rehabilitation Services in the New Jersey Department of Labor.

**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 handicapped individuals or which discriminates against handicapped individuals 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 possesses a handicap 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 persons possessing handicaps.

(c) It is an unlawful employment practice for any employment agency or labor organization to classify handicapped individuals in any way which would deprive or have the effect of depriving handicapped persons of employment opportunities or otherwise affect employee status.

**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 handicapped persons 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 handicapped persons are not available.

(b) An employer, employment agency or labor organization shall select and administer tests concerning employment which accurately reflect, with the benefit of reasonable accommodation, the applicant's or employee's job skills, aptitude or competency, rather than reflecting the applicant's or employee's impaired sensory, manual or speaking skills (except where those skills are the factors that the test purports to measure, and are necessary to perform the job in question).

**Case Notes**

Employer that fails to determine whether employee's hearing impairment precludes performance or invites risk to self or others may not dismiss employee because of disability. *Downing v. Hostess Helpers, Inc.*, 96 N.J.A.R.2d (CRT) 11.

Vocational technical school improperly discriminated against instructor; diabetes. *Hawryluk v. Union County Vocational-Technical Schools*, 94 N.J.A.R.2d (CRT) 123.

**13:13-2.4 Pre-employment inquiries**

(a) It shall be an unlawful practice for an employer, employment agency or labor organization to elicit or attempt to elicit, either verbally or through the use of an application form or request for documentation, any information which would tend to divulge the existence of a handicap or health condition, unless required or necessitated by Federal law or regulation. An employer, employment agency or labor organization may inquire whether an applicant is precluded from satisfactorily performing the job duties in question.