

CHAPTER 13**REGULATIONS PERTAINING TO DISCRIMINATION
ON THE BASIS OF DISABILITY****Authority**

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

Source and Effective Date

R.2006 d.13, effective December 2, 2005.
See: 37 N.J.R. 2607(a), 38 N.J.R. 335(a).

Chapter Expiration Date

Chapter 13, Regulations Pertaining to Discrimination on the Basis of Disability, expires on December 2, 2010.

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: 32 N.J.R. 1155(a), 32 N.J.R. 2445(a).

Chapter 13, Regulations Pertaining to Discrimination on the Basis of Disability, was readopted by R.2006 d.13, effective December 2, 2005. 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.

Amended by R.2006 d.13, effective January 3, 2006.

See: 37 N.J.R. 2607(a), 38 N.J.R. 335(a).

Substituted "," for "." following "Discrimination."

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 “disability” 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”.

Amended by R.2006 d.13, effective January 3, 2006.

See: 37 N.J.R. 2607(a), 38 N.J.R. 335(a).

In definition “Disability” substituted “disability” for “handicapped.”

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 “able-bodied 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 essential functions 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.

Amended by R.2006 d.13, effective January 3, 2006.

See: 37 N.J.R. 2607(a), 38 N.J.R. 335(a).

In (a), added “essential functions of the.”

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.

(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 essential functions of the job in question).

Amended by R.2000 d.273, effective July 3, 2000.
See: 32 N.J.R. 1155(a), 32 N.J.R. 2445(a).

In (a), substituted references to people with disabilities for references to handicapped individuals throughout.

Amended by R.2006 d.13, effective January 3, 2006.

See: 37 N.J.R. 2607(a), 38 N.J.R. 335(a).

In (b), added "essential functions of the."

Case Notes

Termination of car salesman for inadequate sales and performance affirmed. *Casey v. Winner Ford*, 97 N.J.A.R.2d (CRT) 161.

Dismissal of food service worker was due to her refusal to accept transfer ordered for legitimate financial reasons, and not due to age or handicap discrimination. *Cosimano v. Gardner Merchant Food Services, Inc.*, 96 N.J.A.R.2d (CRT) 53.

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 disability 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 essential functions of the job in question.

(b) It is not unlawful for an employer to invite applicants for employment to identify themselves as a person with a disability:

1. To satisfy the affirmative action requirements of Federal law;
2. To implement a court ordered or other bona fide affirmative action plan to promote the employment of people with disabilities; or
3. To implement a special program which is designed to benefit people with disabilities when a condition for a person's participation in the program is that he or she is a person with a disability.

(c) Employers who request such information must observe requirements under Section 503 of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., regarding the manner in which the information is requested and used, and the procedure for maintaining such information as a separate, confidential record, apart from regular personnel records.

(d) The act does not prohibit any officially recognized agency from keeping necessary records in order to provide services to individuals requiring rehabilitation or employment assistance.

(e) It is not unlawful for an employer to condition an offer of employment on the results of a medical examination held subsequent to such offer and prior to the employee's entrance on duty, provided that:

1. All entering employees are subjected to such examination; and
2. The results of such an examination are used in accordance with these regulations and are not used to disqualify an applicant except to the extent that any disability discovered would, even with reasonable accommodation, preclude the safe or adequate performance of the essential functions of the job in question, as defined in N.J.A.C. 13:13-2.8. An examination should consider the degree to which the person has compensated for his limitations and the rehabilitation services he has received or is receiving.

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 (a), substituted a reference to disability for a reference to handicap; and in (b), substituted references to people with disabilities for references to handicapped persons throughout.

Amended by R.2006 d.13, effective January 3, 2006.

See: 37 N.J.R. 2607(a), 38 N.J.R. 335(a).

In (a), added "essential functions of the" and deleted "duties" following "job"; in (e)2, added "essential functions of the."

13:13-2.5 Reasonable accommodation

(a) All employers shall conduct their employment procedures in such a manner as to assure that all people with disabilities are given equal consideration with people who do

not have disabilities for all aspects of employment including, but not limited to, hiring, promotion, tenure, training, assignment, transfers, and leaves on the basis of their qualifications and abilities. Each individual's ability to perform a particular job must be assessed on an individual basis.

(b) An employer must make a reasonable accommodation to the limitations of an employee or applicant who is a person with a disability, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its business. The determination as to whether an employer has failed to make reasonable accommodation will be made on a case-by-case basis.

1. Under circumstances where such accommodation will not impose an undue hardship on the operation of an employer's business, examples of reasonable accommodation may include:

- i. Making facilities used by employees readily accessible and usable by people with disabilities;
- ii. Job restructuring, part-time or modified work schedules or leaves of absence;
- iii. Acquisition or modification of equipment or devices; and
- iv. Job reassignment and other similar actions.

2. An employer shall consider the possibility of reasonable accommodation before firing, demoting or refusing to hire or promote a person with a disability on the grounds that his or her disability precludes job performance.

3. In determining whether an accommodation would impose undue hardship on the operation of an employer's business, factors to be considered include:

- i. The overall size of the employer's business with respect to the number of employees, number and type of facilities, and size of budget;
- ii. The type of the employer's operations, including the composition and structure of the employer's workforce;
- iii. The nature and cost of the accommodation needed; and
- iv. The extent to which accommodation would involve waiver of an essential requirement of a job as opposed to a tangential or non-business necessity requirement.

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 (a), substituted a reference to people who do not have disabilities for a reference to non-handicapped persons.

Amended by R.2006 d.13, effective January 3, 2006.
See: 37 N.J.R. 2607(a), 38 N.J.R. 335(a).

In (b)iii, added "or leaves of absence."

Law Review and Journal Commentaries

Discrimination—Collateral Estoppel—Police Officers. Judith Nallin, 138 N.J.L.J. No. 1, 49 (1994).

Overview of the ADA: Legal Protections for Persons with Disabilities. Linds Wong, Johathan J. Schlein, Daniel J. Zirrieth, 170 N.J.L.J. 8 (1995).

Disability Discrimination: Failure to Accommodate or Disparate Treatment. Arthur R. Fairbault, Jr., 223 N.J.L.J. 61 (2003).

Case Notes

Under the New Jersey Law Against Discrimination (LAD), an employer was not obligated to accommodate a commuting problem of an employee with epilepsy; a change to day shift sought by the employee was not an "accommodation," that the employer was legally obligated to provide, but was simply a request for an easier, more convenient commute. *Laresca v. American Tel. & Tel.*, D.N.J. 2001, 161 F.Supp.2d 323.

Neither employee's computer illiteracy or difficulty nor his requested transfer suggested to employer that employee was unable to perform his job duties because of dyslexia and absent knowledge of employee's dyslexia disability, employer did not violate New Jersey Law Against Discrimination. *Illingworth v. Nestle U.S.A., Inc.*, D.N.J. 1996, 926 F.Supp. 482.

Federal regulations did not preempt former employee's handicap discrimination and workers' compensation retaliation claims under New Jersey law. *Kube v. New Penn Motor Exp., Inc.*, D.N.J.1994, 865 F.Supp. 221.

Accommodations listed under the ADA and Law Against Discrimination (LAD) are designed to make certain changes in the work environment or structuring of employees' time that will allow disabled employees to remain at work without their physical handicaps impeding their job performance. *Jones v. Aluminum Shapes & Frank Wimmersberger*, 772 A.2d 34 (2001).

"Reasonable accommodation" under the ADA and Law Against Discrimination (LAD) refers to the duty of an employer to attempt to accommodate the physical disability of the employee, not to a duty on the part of the employer to acquiesce to the disabled employee's requests for certain benefits or remuneration. *Jones v. Aluminum Shapes & Frank Wimmersberger*, 772 A.2d 34 (2001).

Employee failed to show that city should have allowed her to work at home in her court clerk position in order to accommodate her epilepsy disability as would show that employer's proffered reason for terminating employee was pretext for discrimination under Law Against Discrimination. *Melick v. Township of Oxford*, 294 N.J.Super. 386, 683 A.2d 584 (A.D.1996).

Municipality was not required to provide second opportunity for rehabilitation to firefighter who tested positive for cocaine and whose reinstatement after first testing positive was conditioned upon abstaining from use of drugs. *Matter of Jackson*, 294 N.J.Super 233, 683 A.2d 203 (A.D.1996).

Terminated police officer's handicap discrimination suit was precluded by adverse decision of Merit System Board. *Ensslin v. Township of North Bergen*, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied 142 N.J. 446, 663 A.2d 1354.

No reasonable accommodation would permit officer to perform essential functions of job; no violation of Law Against Discrimination. *Ensslin v. Township of North Bergen*, 275 N.J.Super. 352, 646 A.2d 452 (A.D.1994), certification denied 142 N.J. 446, 663 A.2d 1354.

Adequate consideration given provisions of Law Against Discrimination. *Ensslin v. Township of North Bergen*, 275 N.J. Super. 352, 646 A.2d 452 (A.D.1994), certification denied 142 N.J. 446, 663 A.2d 1354.

Fire fighter who was an alcoholic and drug addict was a "handicapped person" under Law Against Discrimination. *Matter of Cahill*, 245 N.J. Super. 397, 585 A.2d 977 (A.D.1991).

In a case where respondent technical school failed to appear, the ALJ found that a student had sustained the burden of proving that the school failed to accommodate her dyslexia. *Guy v. Southern N.J. Tech. School*, OAL Dkt. No. CRT 10486-07, 2008 N.J. AGEN LEXIS 313, Initial Decision (April 28, 2008).

Dismissal of youth worker for mental incapacity was improper absent attempt to reasonably accommodate. *Roberts v. Division of Youth and Family Services*, 97 N.J.A.R.2d (CSV) 9.

Employer took reasonable steps to accommodate handicapped computer operator before firing her. *O'Hara v. Department of the Treasury*, 96 N.J.A.R.2d (CSV) 273.

Alcoholism which initially led to excessive absenteeism did not warrant tenured teacher's removal once she successfully completed school district's rehabilitation program. *Jersey City School District v. Howard*, 95 N.J.A.R.2d (EDU) 301.

Excessive absenteeism provided sufficient cause for school board to terminate employee from her position as a tenured secretary. *Matter of Tenure Hearing of Jones*, 95 N.J.A.R.2d (EDU) 285.

Use of illegal amphetamines in breach of drug rehabilitation contract with school board was unbecoming and warranted tenured teacher's dismissal. *Matter of Yanniello Tenure Hearing*, 95 N.J.A.R.2d (EDU) 262.

Inability to do assigned tasks of engineering technician warranted termination when psychological disability from which employee was suffering could not be accommodated. *Sallie v. Department of Transportation*, 95 N.J.A.R.2d (CSV) 100.

Board of education reasonably accommodated alcoholic teacher; dismissal. *State Operated School District of Jersey City v. Howard*. 93 N.J.A.R.2d (EDU) 556.

Turnpike Authority unlawfully discriminated against employee on basis of his handicap. *Troxell v. New Jersey Turnpike Authority*, 92 N.J.A.R.2d (CRT) 5.

13:13-2.6 Wages and fringe benefits

(a) An employer's wage scale must be unrelated to the disability of its employees, except where permitted by State or Federal law.

(b) Occupational training and retraining programs, including, but not limited to, guidance programs, apprentice training programs and executive training programs, shall not be conducted in such a manner as to discourage or otherwise discriminate against people with disabilities.

(c) It is an unlawful practice for any employer to discriminate against people with disabilities, with regard to fringe benefits provided either directly by an employer or through contracts with insurance carriers. Fringe benefits as used in this section include, but are not limited to, medical, hospital, accident and life insurance, retirement benefits, profit sharing and bonus plans, and leave. This subsection does not, for example, prohibit any employer from providing medical insurance which does not cover the cost of any medical condition arising out of preexisting illnesses, which costs are

incurred following an employee's date of hire. Rather, whatever medical insurance is made available to non-disabled employees must be equally available to employees with disabilities.

(d) Regulations promulgated pursuant to the Law Against Discrimination shall supersede any inconsistent term of a collective bargaining agreement.

Amended by R.2000 d.273, effective July 3, 2000.

See: 32 N.J.R. 1155(a), 32 N.J.R. 2445(a).

In (a), substituted "disability of its employees" for "existence of handicap"; in (b), substituted "people with disabilities" for "persons possessing handicaps"; and in (c), substituted "against people with disabilities" for "between persons who are handicapped and those who are not", substituted a reference to non-disabled employees for a reference to non-handicapped employees, and substituted a reference to employees with disabilities for a reference to handicapped employees.

13:13-2.7 Labor organizations

(a) It is unlawful for any labor organization to exclude or expel any individual from membership or from any apprenticeship program because that individual is a person with a disability.

(b) It is an unlawful employment practice for any labor organization to discriminate on the basis of disability with respect to hiring, tenure, promotion, transfer, compensation, terms, conditions or privileges of employment, representation, grievances or any other matter directly or indirectly related to membership in or employment by such an organization.

(c) It is unlawful for a labor organization to cause or to attempt to cause an employer to discriminate against an individual because that individual is a person with a disability.

(d) It is unlawful to engage in any activity proscribed by (a), (b), or (c) above notwithstanding that activity is authorized or required by the constitution or by-laws of a labor organization or by a collective bargaining agreement or other contract to which the labor organization is a party.

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 (a), substituted "is a person with a disability" for "possesses a handicap" at the end; in (b), substituted "disability with" for "a person's handicap in" following "basis of"; and in (c), substituted "that individual is a person with a disability" for "of a handicap" at the end.

13:13-2.8 Exception

(a) It shall be lawful to take any action otherwise prohibited under this section where it can reasonably be determined that an applicant or employee, as a result of the individual's disability, cannot perform the essential functions of the job even with reasonable accommodation.

1. Refusal to refer, admit to membership, hire, or transfer a person with a disability may be lawful where the nature or extent of the individual's disability reasonably precludes the performance the essential functions of the

particular employment. Such a decision, however, must be based upon an objective standard supported by factual evidence rather than on the basis of general assumptions that a particular disability would interfere with the individual's ability to perform the essential functions of the job.

2. Refusal to select a person with a disability may be lawful where it can be demonstrated that the employment of that individual in a particular position would be hazardous to the safety or health of such individual, other employees, clients or customers. Such a decision must be based upon an objective standard supported by factual or scientifically validated evidence, rather than on the basis of general assumptions that a particular disability would create a hazard to the safety or health of such individual, other employees, clients or customers. A "hazard" to the person with a disability is a materially enhanced risk of serious harm.

3. The burden of proof is upon the employer, employment agency or labor organization to demonstrate in each case that the exception relied upon is based upon an objective standard supported by factual evidence, but no exception shall be based on:

i. A refusal to select a person with a disability because of the preferences of co-workers, clients, customers or the employer.

ii. A refusal to select a person with a disability because of the increased cost of insurance whether actual or anticipated, under a group or employee insurance plan provided in accordance with the law or as a fringe benefit.

iii. A refusal to select a person with a disability because of an assumption not supported by factual documented proof that such individual will incur a high rate of absenteeism in the future.

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 handicapped individuals throughout.

Amended by R.2006 d.13, effective January 3, 2006.

See: 37 N.J.R. 2607(a), 38 N.J.R. 335(a).

In (a), deleted "presently" throughout; added "essential functions of the" to introductory paragraph (a) and (a)1; in (a)1, also substituted "essential functions" for "duties."

Case Notes

Temporary leave of absence did not have to be granted under New Jersey Law Against Discrimination (NJLAD) to reasonably accommodate handicapped employee's inability to presently perform essential functions of his job. *Conoshenti v. Public Service Electric & Gas Company*, 364 F.3d 135.

Municipality was not required to provide second opportunity for rehabilitation to firefighter who tested positive for cocaine and whose reinstatement after first testing positive was conditioned upon abstaining from use of drugs. *Matter of Jackson*, 294 N.J.Super. 233, 683 A.2d 203 (A.D.1996).

Employer may not base his decision to discharge a handicapped employee for safety reasons on subjective evaluations or conclusory medical reports. *Greenwood v. State Police Training Center*, 127 N.J. 500, 606 A.2d 336 (1992).

Employer does not have good cause to terminate a public employee on basis of a physical limitation unless limitation either prevents employee from adequately performing job or creates substantial risk of serious injury. *Greenwood v. State Police Training Center*, 127 N.J. 500, 606 A.2d 336 (1992).

Possible consequences of an injury to police trainee who had limited vision in his right eye did not constitute good cause for trainee's dismissal. *Greenwood v. State Police Training Center*, 127 N.J. 500, 606 A.2d 336 (1992).

Police Training Commission did not have good cause to dismiss trainee who had limited vision in his right eye from police training program. *Greenwood v. State Police Training Center*, 127 N.J. 500, 606 A.2d 336 (1992).

Alleged different treatment of information regarding condition of surgeon who was patient at his own hospital and was diagnosed as having acquired immunodeficiency syndrome (AIDS) would not support cause of action under the New Jersey law against discrimination. *Estate of Behringer v. Medical Center at Princeton*, 249 N.J.Super. 597, 592 A.2d 1251 (L.1991).

In determining whether surgeon with AIDS may legitimately be restricted in his surgical privileges, test to be applied is whether continuation of surgical privileges causes reasonable probability of substantial harm to others, including co-workers and patients. *Estate of Behringer v. Medical Center at Princeton*, 249 N.J.Super. 597, 592 A.2d 1251 (L.1991).

Where physician is being treated at his own hospital, it is imperative that hospital take reasonable steps to insure confidentiality not only of human immunodeficiency virus (HIV) test result, but also of disease diagnosis which is conclusive of acquired immunodeficiency syndrome (AIDS). *Estate of Behringer v. Medical Center at Princeton*, 249 N.J.Super. 597, 592 A.2d 1251 (L.1991).

In context of informed consent, risk of surgical accident involving AIDS-positive surgeon would be legitimate concern to surgical patient, warranting disclosure of risk. *Estate of Behringer v. Medical Center at Princeton*, 249 N.J.Super. 597, 592 A.2d 1251 (L.1991).

In deciding whether nature and extent of employee's handicap reasonably precludes job performance, employer may consider whether handicapped person can do his or her work without posing serious threat of injury to health and safety of himself or herself or other employees. *Jansen v. Food Circus Supermarkets, Inc.*, 110 N.J. 363, 541 A.2d 682 (1988), on remand.

To invoke safety defense as justification for otherwise unlawful handicap discrimination employer must reasonably conclude that employee's handicap poses materially enhanced risk of serious injury. *Jansen v. Food Circus Supermarkets, Inc.*, 110 N.J. 363, 541 A.2d 682 (1988), on remand.

Employer's decision not to employ handicapped person must be justified by a "probability" rather than a "possibility" of injury to handicapped person or others. *Jansen v. Food Circus Supermarkets, Inc.*, 110 N.J. 363, 541 A.2d 682 (1988), on remand.

Opinion by employer's medical experts that epileptic employee employed as meatcutter would probably suffer another seizure at work did not support conclusion that such a seizure would probably result in harm to employee or others. *Jansen v. Food Circus Supermarkets, Inc.*, 110 N.J. 363, 541 A.2d 682 (1988), on remand.

Epileptic supermarket employee was reasonably precluded from performance of duties of meat cutter; decision of employer to terminate employee was reasonably arrived at and sufficiently supported by