

CHAPTER 7

EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

Authority

N.J.S.A. 10:5-12, 11A:1-3(d), 11A:2-6(b), 11A:7-1 through 7-9, 7-11 through 7-13.

Source and Effective Date

R.1997 d.437, effective September 22, 1997.  
See: 29 N.J.R. 3104(a), 29 N.J.R. 4457(a).

Executive Order No. 66(1978) Expiration Date

Chapter 7, Equal Employment Opportunity and Affirmative Action, expires on September 22, 2002.

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, Title Historical Note prior to N.J.A.C. 4A:1.

Pursuant to Executive Order No. 66(1978), Chapter 7 was readopted as R.1992 d.420, effective September 22, 1992. See: 24 N.J.R. 2496(c), 24 N.J.R. 3721(a).

Pursuant to Executive Order No. 66(1978), Chapter 7 was readopted as R.1997 d.437, effective September 22, 1997. See: Source and Effective Date. See, also, section annotations.

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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, ancestry, sex, affectional or sexual orientation, age, marital status, familial status, religion, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, 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 Rican, Cuban, Central or South American 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.

(e) Sexual harassment is a form of unlawful gender discrimination that will not be tolerated.

(f) This chapter prohibits all forms of unlawful discriminatory conduct, including sexual harassment, against any State employee by any other State employee or person doing business with the State. In addition, this chapter prohibits sexual harassment or any other form of unlawful discriminatory conduct by a State employee against a person doing business with the State. A "person doing business with the State" means an independent vendor performing services or supplying goods pursuant to a contract with the State.

(g) In local service, an appointing authority may establish policies and procedures for processing discrimination complaints.

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).

Amended by R.2002 d.10, effective January 7, 2002.

See: 33 N.J.R. 3281(a), 34 N.J.R. 261(a).

Rewrote (a); in (d)3, substituted "Rican" for "Rico" and "American" for "America"; added (e) through (g).

#### 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).

Denial of appointment based on applicant's sexual discrimination complaint constituted retaliation. *Graham v. Kearny Board of Education*, 97 N.J.A.R.2d (CRT) 173.

Police department's failure to apply male hiring standards to female candidate justifies unlawful discrimination damages. *McEvoy v. Borough of Glassboro and Glassboro Police Department*, 97 N.J.A.R.2d (CRT) 136.

Employee lacking appropriate job skills under operations reorganization loses age discrimination claim. *Botterman v. Bergen County Community Action Program*, 97 N.J.A.R.2d (CRT) 129.

Race discrimination claims dismissed after individuals hired were determined to be more qualified for position than complainant. *Parker v. Glassboro State College*, 96 N.J.A.R.2d (CRT) 24.

#### 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 (Reserved)

Amended by R.1994 d.618, effective December 19, 1994.

See: 26 N.J.R. 3507(a), 26 N.J.R. 5000(a).

Repealed by R.2002 d.10, effective January 7, 2002.

See: 33 N.J.R. 3281(a), 34 N.J.R. 261(a).

Section was "Prohibition of sexual harassment in State government".

#### Cross References

Disability discrimination, employment related grievances, procedures as under this chapter, see N.J.A.C. 12:7-4.1.

#### Case Notes

Employee's inappropriate touching of another employee warrants removal. *West v. Trenton Psychiatric Hospital*, 97 N.J.A.R.2d (CSV) 297.

Employer and supervisor liable to employee for sexual discrimination base on vulgar conduct and language and post-filing retaliation and hostile work environment. *Peoples v. Gloria Limousine and Charter Bus Company and Willie White*, 97 N.J.A.R.2d (CRT) 115.

Dismissal of training recruit for improper physical contact and inappropriate comments affirmed. *Goodman v. Monmouth County Police Academy*, 97 N.J.A.R.2d (PTC) 17.

## SUBCHAPTER 2. DIVISION OF EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

### 4A:7-2.1 Division responsibilities: State service

(a) The Department of Personnel, Division of Equal Employment Opportunity and Affirmative Action (Division of EEO/AA) shall develop, implement and administer an equal employment opportunity and affirmative action program for all State employees in the career, senior executive and unclassified services. Such program shall: