

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

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

Source and Effective Date

R.2000 d.273, effective June 6, 2000.
See: 32 N.J.R. 1155(a), 32 N.J.R. 2445(a).

Executive Order No. 66(1978) Expiration Date

Chapter 13, Regulations Pertaining to Discrimination on the Basis of Disability, expires June 6, 2005.

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: 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.

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 “handicapped” 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”.

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 “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 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.

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: