

## GENERAL REGULATIONS

### 9 New York Code of Rules and Regulations (NYCRR) §466

*Statutory authority: Executive Law, §§ 295 [5]; 297.4 [d]; 297.4[e]*

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#### **Section 466.1 Posting of notices by employers, employment agencies, labor organizations and labor-management committees.**

(a) Every employer, employment agency, labor organization, and labor-management committee subject to the Human Rights Law, shall post and maintain at its offices, places of employment or employment training centers, notices furnished by the Division of Human Rights, indicating the substantive provisions of the Human Rights Law, the place where complaints may be filed and such other information as the Division of Human Rights deems pertinent.

(b) With respect to employers and employment agencies, such notices must be posted conspicuously in easily accessible and well-lighted places customarily frequented by employees and applicants for employment and at or near each location where the employees's services are performed or by applicants for or participants in apprenticeship, on-the-job training or other training or retraining programs.

(c) With respect to labor organizations and labor-management committees, such notices must be posted conspicuously in easily accessible and well-lighted places customarily frequented by members and applicants for membership in the labor organizations or by applicants for or participants in apprenticeship, on-the-job training or other training or retraining programs.

**466.2 Postings of notices at places of public accommodation, resort or amusement.**

(a) Every person being the owner, lessee, proprietor or manager of any place of public accommodation, resort or amusement, subject to the Human Rights Law, shall post and maintain at such place of public accommodation, resort or amusement, notices furnished by the Division of Human Rights indicating the substantive provisions of the Human Rights Law, the place where complaints may be filed and such other information as the Division of Human Rights deems pertinent.

(b) Such notices must be posted conspicuously in easily accessible and well-lighted places at the place of public accommodation, resort or amusement where they may be readily observed by those seeking any of the accommodations, advantages, facilities or privileges of such place of public accommodation, resort or amusement.

**466.3 Posting of notices concerning housing accommodations and commercial space.**

*(a) Notices at housing accommodations.*

(1) Every person being the owner, lessee, sub-lessee, assignee, or managing agent of housing accommodations subject to the Human Rights Law, shall post and maintain at such accommodations, notices furnished by the Division of Human Rights, indicating the substantive provisions of the Human Rights Law relative to housing accommodations, the place where complaints may be filed and such other information as the Division of Human Rights deems pertinent.

(2) Such notices must be posted conspicuously in easily accessible and well-lighted places at the housing accommodations, where they may be readily observed by those seeking such housing accommodations and/or facilities or services in connection therewith.

*(b) Notices at sites of commercial space.*

(1) Every person being the owner, lessee, sub-lessee or managing agent of commercial space, subject to the Human Rights Law, shall post and maintain it at the site of such commercial space, notices furnished by the Division of Human Rights, indicating the substantive provisions of the Human Rights Law relative to commercial space, the place where complaints may be filed and such other information as the Division of Human Rights deems pertinent.

(2) Such notices must be posted conspicuously in easily accessible and well-lighted places at the site of such commercial space where they may be readily observed by those seeking such commercial space or the facilities or services in connection therewith.

*(c) Notices at real estate offices.*

(1) Every person being a real estate broker or real estate salesman who has an office or office space in which he conducts his real estate transactions shall display and maintain at such office or in such office space notices furnished by the Division of Human Rights, indicating the substantive provisions of the Human Rights Law relative to housing accommodations and commercial space, the place where complaints may be filed and such other information as the Division of Human Rights deems pertinent.

(2) Such notices must be posted conspicuously at the real estate offices in easily accessible and well-lighted places, where the notices may be readily observed by those seeking housing accommodations or commercial space.

(d) *Notices at lending institutions.*

(1) Every bank, trust company, private banker, savings bank, industrial bank, savings and loan association, credit union, investment company, mortgage company, insurance company or other financial or lending institution, subject to the Human Rights Law, shall post and maintain at its public offices, notices furnished by the Division of Human Rights indicating the substantive provisions of the Human Rights Law relative to the financing of housing accommodations and commercial space, the place where complaints may be filed and such other information as the Division of Human Rights deems pertinent.

(2) Such notices must be posted conspicuously in easily accessible and well-lighted places in the public offices of such institutions where they may be readily observed by those seeking financial assistance.

**466.4 Posting of notices by volunteer fire departments and volunteer fire companies.**

(a) Every volunteer fire department and volunteer fire company subject to the Human Rights Law shall post and maintain at its fire houses, fire stations, offices and meeting halls notices furnished by the Division of Human Rights, indicating the substantive provisions of the Human Rights Law, relating to membership in volunteer fire departments and volunteer fire companies, the places where complaints may be filed, and such other information as the Division of Human Rights deems pertinent.

(b) Such notices must be posted conspicuously in easily accessible and well-lighted places customarily frequented by volunteer firemen and applicants for membership in volunteer fire departments and volunteer fire companies.

**466.5 Submission of plan to increase employment of members of minority group.**

(a) Any employer, employment agency, labor organization or joint labor management committee may submit to the division in writing a plan intended to increase the employment of members of a minority group, pursuant to subdivision 12 of section 296 of the Human Rights Law.

(b) The plan shall name the minority group or groups the increase of the employment of whose members is the object of the plan.

(c) The plan shall set forth the steps to be taken to increase the employment of members of the minority groups covered and the period of time during which it is to be operative.

(d) The plan shall not be based on, or result in, the discharge of any worker because of his non-membership in any such minority group.

(e) The division will determine whether or not to approve the plan and may do so on the basis of information available to it, including reports made by its employees and official government reports.

(f) The division statement of approval will be issued in writing and will set forth the period of time for which the plan may be operative. Such statement will specifically note the power of the division to rescind its approval of the plan at any time.

(g) A copy of the plan, when approved, shall be filed in the offices maintained by the division at One Fordham Plaza, Bronx, New York 10458 and at the regional offices serving the regions in which the plan is to be operative. Such plans shall be open to public inspection during regular business hours of the division.

#### **466.6 Access to personal information.**

(a) *Purpose and scope.*

(1) It is the responsibility and the intent of the agency to fully comply with the provisions of article 6-A of the Public Officers Law, the Personal Privacy Protection Law.

(2) The agency shall maintain in its records only such personal information that is relevant and necessary to accomplish a purpose of the agency that is required to be accomplished by statute or executive order, or to implement a program specifically authorized by law.

(3) Personal information will be collected, whenever practicable, directly from the person to whom the information pertains.

(4) The agency seeks to ensure that all records pertaining to or used with respect to individuals are accurate, relevant, timely and complete.

(5) These regulations provide information regarding the procedure by which members of the public may assert rights granted by the Personal Privacy Protection Law.

(b) *Designation of privacy compliance officer.*

(1) The privacy compliance officer for the division is the division's freedom of information officer. This business address is: One Fordham Plaza, Bronx, New York 10458.

(2) The privacy compliance officer is responsible for:

(i) assisting a data subject in identifying and requesting personal information, if necessary;

(ii) describing the contents of systems of records orally or in writing in order to enable a data subject to learn if a system of records includes a record or personal information identifiable to a data subject requesting such record or personal information;

(iii) taking one of the following actions upon locating the record sought:

(a) make the record available for inspection, in a printed form without codes or symbols, unless an accompanying document explaining such codes or symbols is also provided;

(b) permit the data subject to copy the record; or

(c) deny access to the record in whole or in part and explain in writing the reasons therefor;

(iv) making a copy available, upon request, upon payment of or offer to pay established fees, if any, or permitting the data subject to copy the records;

(v) upon request, certifying that a copy of record is a true copy; or

(vi) certifying, upon request, that:

- (a) the agency does not have possession of the record sought;
- (b) the agency cannot locate the record sought after having made a diligent search; or
- (c) the information sought cannot be retrieved by use of the description thereof, or by use of the name or other identifier of the data subject without extraordinary search methods being employed by the agency.

(c) *Proof of identity.*

(1) When a request is made in person, or when records are made available in person following a request made by mail, the agency may require appropriate identification, such as a driver's license, a photograph or similar information that confirms that the record sought pertains to the data subject.

(2) When a request is made by mail, the agency may require verification of a signature by appropriate identification.

(3) Proof of identity shall not be required regarding a request for a record accessible to the public pursuant to article 6 of the Public Officers Law.

(d) *Location.*

(1) Records shall be made available at the main office of the agency, which is located at: One Fordham Plaza, Bronx, New York 10458.

(2) Whenever practicable, records shall be made available at a regional office most convenient to a data subject. Regional offices are located throughout the State, the addresses for which may be obtained from the main office of the agency.

(e) *Hours for public inspection and copying.* The agency shall accept requests for records and produce records during regular business hours, which are 9 a.m.--5 p.m. on weekdays.

(f) *Requests for records.*

(1) All requests shall be made in writing, except that the agency may make records available upon an oral request made in person after the applicant has demonstrated proof of identity.

(2) A request shall reasonably describe the record sought. Whenever possible, the data subject should supply identifying information that assists the agency in locating the records sought.

(3) Requests based upon categories of information described in a notice of a system of records or a privacy impact statement shall be deemed to reasonably describe the record sought.

(4) Within five business days of the receipt of a request, the agency shall provide access to the record, deny access in writing explaining the reasons therefore, or acknowledge the receipt of the request in writing, stating the approximate date when the request will be granted or denied, which date shall not exceed 30 days from the date of the acknowledgment.

(g) *Amendment of records.* Within 30 business days of a request from a data subject for correction or amendment of a record or personal information that is reasonably described and that pertains to the data subject, the agency shall:

(1) make the amendment or correction in whole or in part and inform the data subject that, on request, such correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law; or

(2) inform the data subject in writing of its refusal to correct or amend the record, including the

reasons therefor.

(h) *Denial of request for a record or amendment or correction of a record or personal information.*

(1) Denial of a request for records or amendment or correction of a record or personal information:

- (i) shall be in writing, explaining the reasons therefor; and
- (ii) identifying the person to whom an appeal may be directed.

(2) A failure to grant or deny access to records within five business days of the receipt of a request or within 30 days of an acknowledgment or the receipt of a request, or a failure to respond to a request for amendment or correction of a record within 30 business days of receipt of such a request, shall be construed as a denial that may be appealed.

(3) Any such denial may be appealed to the commissioner, who may decide the appeal him/herself or refer it to General Counsel, One Fordham Plaza, Bronx, New York 10458.

(i) *Appeal.*

(1) Any person denied access to a record or denied a request to amend or correct a record or personal information pursuant to subdivision (h) of this section may, within 30 days of such denial, appeal to the commissioner.

(2) The time for deciding an appeal shall commence upon receipt of an appeal that identifies:

- (i) the date and location of a request for a record or amendment or correction of a record or personal information;
- (ii) the record that is the subject of the appeal; and
- (iii) the name and return address of the appellant.

(3) Within seven business days of an appeal of a denial of access, or within 30 days of an appeal concerning a denial of a request for correction or amendment, the person determining such appeals shall:

- (i) provide access to or correct or amend the record or personal information; or
- (ii) fully explain in writing the factual and statutory reasons for further denial and inform the data subject of the right to seek judicial review of such determination pursuant to article 78 of the Civil Practice Law and Rules.

(4) If, on appeal, a record or personal information is corrected or amended, the data subject shall be informed that, on request, the correction or amendment will be provided to any person or governmental unit to which the record or personal information has been or is disclosed pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law.

(5) The agency shall immediately forward to the Committee on Open Government a copy of any appeal made pursuant to this Part upon receipt, the determination thereof and the reasons therefor at the time of such determination.

(j) *Statement of disagreement by data subject.*

(1) If correction or amendment of a record or personal information is denied in whole or in part upon appeal, the determination rendered pursuant to the appeal shall inform the data subject of the right to:

- (i) file with the agency a statement of reasonable length setting forth the data subject's reasons for disagreement with the determination;
- (ii) request that such a statement of disagreement be provided to any person or governmental unit to which the record has been or is disclosed pursuant to paragraph (d), (i) or (l)

of subdivision 1 of section 96 of the Public Officers Law.

(2) Upon receipt of a statement of disagreement by a data subject, the agency shall:

- (i) clearly note any portions of the record that are disputed; and
- (ii) attach the data subject's statement as part of the record.

(3) When providing a data subject's statement of disagreement to a person or governmental unit in conjunction with a disclosure made pursuant to paragraph (d), (i) or (l) of subdivision 1 of section 96 of the Public Officers Law, the agency may also include a concise statement of its reasons for not making the requested amendment or correction.

(k) *Fees.*

(1) Unless otherwise prescribed by statute, there shall be no fee charged for:

- (i) inspection of records;
- (ii) search for records; or
- (iii) any certification pursuant to this Part.

(2) Unless otherwise prescribed by statute, copies of records shall be provided:

- (i) at a fee in the amount prescribed by Section 87 of the Freedom of Information Act; or
- (ii) upon payment of the actual cost of reproduction, if the record or personal information cannot be photocopied.

(3) The actual cost of reproduction shall be based upon the average unit cost for copying a record, excluding fixed costs of the agency, such as operator salaries and overhead.

(l) *Severability.* If any provision of this section or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this section or the application thereof to other persons and circumstances.

#### **466.7 Public access to records.**

(a) *Public index.* Pursuant to section 87.3 of the Freedom of Information Law, the division shall maintain and make available to the public an index of records. A copy of said index may be obtained from any office of the division during regular office hours.

(b) *Request for records.* Any person may request to inspect and copy any record in the division's custody which is required to be made available. Such request shall be in writing and sent to the division by mail, facsimile or electronic mail. A form is available on the division's website, [www.dhr.state.ny.us](http://www.dhr.state.ny.us).

(c) *Inspection of records.* Whenever feasible, records are to be made available for inspection at the division office where the request therefor was made. If the requested record is not located at such office, the request form shall be forwarded to the central office, which shall arrange for inspection. Inspection shall be permitted during regular office hours.

(d) *Fees.*

(1) Unless otherwise prescribed by statute, there shall be no fee charged for:

- (i) inspection of records;

- (ii) search for records; or
  - (iii) any certification pursuant to this Part.
- (2) Unless otherwise prescribed by statute, copies of records shall be provided:
- (i) at a fee in the amount prescribed by Section 87 of the Freedom of Information Act; or
  - (ii) upon payment of the actual cost of reproduction, if the record or personal information cannot be photocopied.
- (3) The actual cost of reproduction shall be based upon the average unit cost for copying a record, excluding fixed costs of the agency, such as operator salaries and overhead.
- (4) If a copy of the transcript of a public hearing is requested, the division shall refer the applicant to the reporting service.

(e) *Appeal of denial of record.* Any person denied access to a requested record may, within 30 days, appeal in writing to the commissioner. The commissioner may decide the appeal himself or herself or refer it to general counsel. If the commissioner or general counsel denies access to the requested record, his/her reasons shall be explained fully in writing within seven business days of the time of the appeal.

(f) *Designation of records access officer.* The records access officer for the division is the division's freedom of information officer. His/her business address is: One Fordham Plaza, Bronx, New York 10458.

(g) *Duty of administrative officer.* The administrative officer of the division shall maintain a record setting forth the name, public office address, title and salary of every officer or employee of the division, as required by section 87.3(b) of the Freedom of Information Law. He/she shall respond to and comply with requests for any such record made pursuant to the Freedom of Information Law. His/her business address is: One Fordham Plaza, Bronx, New York 10458.

#### **466.8 Discrimination on the basis of sex or marital status in extension of credit.**

(a) *Inquiries concerning marital history, status and number of dependents.* For purposes of Executive Law, section 296-a(1)(c), it shall not be considered an expression of limitation, specifications or discrimination on the basis of sex or marital status if:

(1) a creditor requires an applicant to disclose the name or names by which he or she has previously been known, provided that this information is used solely to determine the applicant's identity and previous credit history;

(2) where application is made for a mortgage and the creditor determines that the signature of the spouse is required in order to pass clear title in the event of a default, a creditor requests information concerning marital status, provided that the information disclosed by such inquiry is used solely for the purpose of perfecting title;

(3) a creditor inquires as to the number of the applicant's dependents, provided that the information disclosed by such inquiry is used solely to determine costs and expenses payable by the applicant.

(b) *Statement of reasons for rejection.* For purposes of Executive Law, section 296-a(4)(a), a statement of the specific reasons for rejection of an application for credit shall be deemed to be in

compliance with this section if It is a clear and meaningful statement of all of the factors which justified rejection.

(c) *Attribution of past joint obligations.* For purposes of Executive Law, section 296-a(4)(b), a response to a request for a separate credit history, made after July 15, 1974, shall include all obligations, whenever entered into, as to which the creditor or credit reporting bureau then has information in its files. In creating such a separate history, all obligations on which two parties were jointly liable shall be reported as the obligation of each, irrespective of the actual source of payments.

**466.9 Index of interested persons.** Persons or agencies interested in receiving notice of proposed rule making by the State Division of Human Rights may file with the division a written request that they be notified by mail of any proposed rule making. The request shall specify the address to which notice is to be mailed. Such request must be renewed yearly in December.

**466.10 Procedure for declaratory rulings.**

(a) Upon petition of any person, the State Division of Human Rights may issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by it.

(b) To obtain a declaratory ruling, a formal request in writing entitled "Petition for a Declaratory Ruling pursuant to State Administrative Procedure Act, section 204" must be submitted to the Commissioner of Human Rights.

(c) The commissioner may, in his/her sole discretion, issue a declaratory ruling. Nothing shall be deemed a declaratory ruling unless it is entitled as such, is in writing and is signed by the commissioner.

(d) Every declaratory ruling shall be made available to the public. A declaratory ruling shall be subject to review in the manner provided for in article 78 of the Civil Practice Law and Rules.

**466.11 (See separate document)**

**466.12 Payment of civil fines and penalties in installments by employers of fewer than fifty employees.**

(a) Statutory Authority. Pursuant to N.Y. Executive Law § 297.4(c), where the Commissioner finds that a respondent has engaged in any unlawful discriminatory practice, the Commissioner shall issue an order which may include, inter alia, the assessment of civil fines and penalties, in an amount not to exceed fifty thousand dollars, to be paid to the State by a respondent found to have committed an unlawful discriminatory act, or not to exceed one hundred thousand dollars to be paid to the State by a respondent found to have committed an unlawful discriminatory act which is found to be willful, wanton or malicious. § 297.4(c)(vi). Pursuant to Executive Law § 297.4(e), in cases of employment discrimination where the employer has fewer than fifty employees, such civil fine or penalty may be paid in reasonable installments, with reasonable interest resulting from the delay, and in no case may installments be made over a period longer than three years. Executive Law § 297.4(e) further requires the Division to promulgate regulations regarding installment payments.

(b) Installment payments; general. Any Commissioner's order assessing civil fines and penalties shall be made in accordance with the following:

(1) Civil fines and penalties shall be due no later than 60 days from the date of the Commissioner's order, unless payment in installments has been requested and ordered.

(2) Where the employer has fewer than fifty employees, and makes application in accordance with the provisions of paragraph (c) of this section, payment may be ordered in installments, in accordance with paragraph (d) of this section.

(c) Application for payment in installments.

(1) Payment in installments will only be ordered upon application of the respondent employer.

(2) Application for payment in installments shall be made (i) orally or in writing on the re-cord at the public hearing, or (ii) may be included in any written objections to the Administrative Law Judge's recommended order, filed pursuant to the Division's Rules of Practice, 9 N.Y.C.R.R. § 465.17(c).

(3) The burden of proof on the issue of whether the employer has fewer than fifty employees rests with the employer, who is responsible to offer evidence on the issue into the record in accordance with the Division's Rules of Practice, 9 N.Y.C.R.R. § 465.12(e) ("Form and content of proof"), 9 N.Y.C.R.R. § 465.12(i) ("Hearing record"), and 9 N.Y.C.R.R. § 465.17(c) ("Preparation and order").

(d) Commissioner's order after hearing assessing civil fines payable in installments; required content. Any Commissioner's order assessing civil fines and penalties, and providing that such civil fines and penalties are payable in installments by an employer of fewer than fifty employees, shall be made in accordance with the following:

(1) Payment shall be made in no more than three installments, in such form as the Division may now or in future be able to accept, and as specifically directed in the order.

(2) The amount and due date of each installment shall be explicitly stated in the Commissioner's order.

(3) The final payment shall be due no later than three years from the date of the Commissioner's order.

(4) The first installment shall be due 60 days from the date of the Commissioner's order, unless otherwise provided in the discretion of the Commissioner.

(e) Interest. Any portion of civil fines and penalties paid within 60 days after the date of the Commissioner's order shall not accrue any interest. Interest on any remaining installments may be reduced on all or any portion of an installment by paying in advance of the due dates. Any portion or installment of civil fines and penalties paid after 60 days from the date of the Commissioner's order shall accrue interest, from the date of the Commissioner's order to the date of payment, at the rate set forth in CPLR § 5004. Any other provision of law, applicable to the employer or the facts of the case, which indicates a different rate of interest is applicable, may be taken into consideration in the discretion of the Commissioner.