

GENERAL REGULATIONS

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

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

466.1 Employers, employment agencies, labor organizations and labor management committees

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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.

(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)

REASONABLE ACCOMMODATION

9 New York Code of Rules and Regulations (NYCRR) §466.11

466.11 Provision of "reasonable accommodation" by employers, pursuant to Human Rights Law §292.21, §292.21-e, §295.5, §296.3 and §296.3-a.

(a) Reasonable accommodation.

(1) Reasonable accommodation is defined in the Human Rights Law at §292.21-e, as follows:

The term "reasonable accommodation" means actions taken which permit an employee, prospective employee or member with a disability to perform in a reasonable manner the activities involved in the job or occupation sought or held and include, but are not limited to, provision of an accessible worksite, acquisition or modification of equipment, support services for persons with impaired hearing or vision, job restructuring and modified work schedules; provided, however, that such actions do not impose an undue hardship on the business, program or enterprise of the entity from which action is requested.

(2) Reasonable accommodations may include, but are not limited to: making existing facilities more readily accessible to individuals with disabilities; acquisition or modification of equipment; job restructuring; modified work schedules; adjustments to work schedule for treatment or recovery; reassignment to an available position; adjustment of examinations, training materials or policies; providing readers or interpreters.

(3) Reasonable accommodation does not include among other things: providing for personal care needs, such as a personal care assistant, although such a personal care assistant should be accommodated where provided by the employee at no cost to the employer; providing non-work-related aids, such as a personal hearing aid or wheelchair, which are the employee's own responsibility.

(b) Determination of reasonableness.

(1) Whether an accommodation that has been requested or is under consideration is a "reasonable accommodation" required by the Human Rights Law will turn on a balancing of the following factors:

(i) efficacy or benefit provided by the accommodation toward removing the impediments to performance caused by the disability,

- (ii) convenience or reasonableness of the accommodation for the employer, including its comparative convenience as opposed to other possible accommodations, and
- (iii) the "hardships", costs, or problems it will cause for the employer, including those that may be caused for other employees.

(2) Accommodations that pose an "undue hardship" on the employer will not be required. "Undue hardship" means significant difficulty or expense to the employer. In determining whether an accommodation would result in undue hardship, consideration will be given to any relevant factor. Relevant factors can include, but are not necessarily limited to, those set forth in the Human Rights Law, at §296.3(b):

- (i) The overall size of the business, program or enterprise with respect to the number of employees, number and type of facilities, and size of budget;
- (ii) The type of operation which the business, program or enterprise is engaged in, including the composition and structure of the workforce; and
- (iii) The nature and cost of the accommodation needed, including consideration of any money available from other sources to assist the employer in paying the cost.

(c) Covered disabilities.

(1) The Human Rights Law protects from discrimination those individuals with disabilities which, with or without reasonable accommodation, do not prevent the individual from performing the duties of the job in a reasonable manner. The definition of "disability" in the Human Rights Law is more comprehensive than that under federal law in that it covers many conditions that have been found to be not a disability under the federal Americans with Disabilities Act.

(2) The term "disability" is defined in the Human Rights Law at §292.21 to mean:

- (i) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or
- (ii) a record of such an impairment or
- (iii) a condition regarded by others as such an impairment.

With regard to employment, the term is limited to disabilities which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.

- (3)** Not every disability covered by the Human Rights Law will require the consideration of reasonable accommodations. Only those disabilities which actually impede, as a matter of fact, the individual in performing the job will give rise to a consideration of accommodation. This is understood to include those situations in which the job impedes the individual's recovery or ability to obtain treatment, and accommodation can make recovery or treatment possible while the individual continues to be employed.
- (d)** Who is entitled to a reasonable accommodation.
- (1)** To be entitled to the protection of the Human Rights Law, the disabled individual must have the requisite job qualifications as well as be able to satisfactorily perform in the job.
- (i)** The disabled individual must be otherwise qualified for the job by education, skill, experience, ability, etc., to the same extent that such education, skill, experience, ability, etc., are required as bona fide job qualifications for nondisabled applicants or employees. See further, paragraph (f)(4) of this section.
- (ii)** The disabled individual must be able, with or without accommodation, to attain "reasonable performance". Reasonable performance is not perfect performance or performance unaffected by the disability, but reasonable job performance, reasonably meeting the employer's needs to achieve its business goals. See further, paragraphs (f)(1)-(3) of this section.
- (2)** To be entitled to a reasonable accommodation, the individual must meet the qualification and performance standards set forth in paragraph (1) of this subdivision, and must have a disability and a need for an accommodation which are known, or are made known, to the employer.
- (e)** Circumstances giving rise to the requirement that the employer consider reasonable accommodation, in accordance with the factors set forth in subdivision (b) of this section.
- (1)** Reasonable accommodation must be considered where the disability and need for accommodation are known to the employer.
- (2)** Reasonable accommodation must be considered when a qualified applicant or employee with a disability informs the employer of the disability (if the employer does not already know of its existence) and requests an accommodation.
- (3)** Reasonable accommodation must be considered when a current employee with a disability informs the employer of the disability (if the employer does not already know of its existence) and requests an accommodation, even if there has been no change in the employee's medical condition.

(f) Ability to reasonably perform the "activities involved in the job or occupation"; job restructuring.

(1) Ability to reasonably perform the "activities involved in the job or occupation" means the ability, with or without accommodation, to satisfactorily perform the essential functions of the job or occupation. See further, subparagraph (d)(1)(ii) of this section.

(2) Satisfactory performance means minimum acceptable performance of the essential functions of the job as established by the employer. The employer's judgment as to what is minimum acceptable performance will not be second-guessed, so long as standards for performance are applied equivalently to all employees in the same position. Such standards for satisfactory performance may include minimum productivity standards or quotas.

(3) Essential functions are those fundamental to the position; a function is essential if not performing that function would fundamentally change the job or occupation for which the position exists. What is an essential function is a factual question to be resolved by all relevant evidence. Evidence for determining the essential functions of a particular position would include, but would not be limited to, the following:

- (i)** the employer's judgment as to which functions are essential, particularly where so indicated in a pre-existing written job description;
- (ii)** how often the function is actually performed by other employees in the position;
- (iii)** how many other employees are available to whom the function could be reallocated by job restructuring;
- (iv)** the direct and specific consequences to the employer's business if the function is not performed by the particular disabled individual;
- (v)** the terms of a collective bargaining agreement. (Labor organizations are also required to reasonably accommodate the disabilities of a member, pursuant to §296.3.)

(4) When an employer fills a position with a specific purpose of acquiring special ability or expertise (for example: technical expertise, foreign language skill, physical strength in a firefighter), even if the amount of time actually spent on the job using the special ability or expertise is small, this ability or expertise is a bona fide qualification for the job. See further, subparagraph (d)(1)(i) of this section.

(5) As is true in any area covered by the Human Rights Law, the employer may hire the applicant who is most qualified with regard to the bona fide job qualifications, and is not required to hire a disabled applicant simply because the applicant meets the minimum job qualifications if there are other more qualified applicants.

(6) The Human Rights Law does not require, as a reasonable accommodation in the form of job restructuring, the creation of a completely unique position with either qualifications or functions tailored to the disabled individual's abilities.

(7) Reasonable accommodation, in the form of job restructuring, is required if a disabled individual meets the bona fide job qualifications, and can satisfactorily perform the essential functions of the position; the duties that the disabled individual cannot perform due to the disability, and that are not essential to the position, must not be required of the disabled individual.

(g) Safety concerns; objectionable behaviors.

(1) The Human Rights Law does not require accommodation of behaviors that do not meet the employer's workplace behavior standards that are consistently applied to all similarly situated employees, even if these behaviors are caused by a disability. This would include, but not be limited to:

(i) dress codes, grooming standards and time and attendance policy, though reasonable and necessary deviations must be allowed as accommodations;

(ii) conduct standards, including those which prohibit aggressive or threatening behavior;

(iii) discipline for theft of company property by a kleptomaniac;

(iv) discipline for intoxication or impairment on the job by an alcoholic.

(2) Reasonable accommodation is not required where the disability or the accommodation itself poses a direct threat.

(i) "Direct threat" means a significant risk of substantial harm to the health or safety of the employee or others that cannot be eliminated or reduced by reasonable accommodation.

(ii) In determining whether a direct threat exists, the employer must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective information, to ascertain: the nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable accommodations, such as modification of policies, practices, or procedures, will mitigate the risk.

(iii) Some jobs may have a bona fide classification as "safety sensitive", such as, for example, vehicle operators or persons who work with children. Heightened consideration of direct threat is to be encouraged in bona fide safety sensitive jobs.

(h) Drug addiction and alcoholism.

(1) Alcoholism and drug addiction are diseases. However, an individual who is currently using drugs illegally (see paragraph (4) of this subdivision), is not protected in this regard by the Human Rights Law. The Law does protect an individual who is a recovered/recovering alcoholic or drug addict.

(2) Adjustments to the work schedule, where needed to allow for ongoing treatment, must be allowed as an accommodation where reasonable, if the individual is still able to perform the essential functions of the job including predictable and regular attendance.

(3) The recovered/recovering alcoholic or drug addict should be expected to perform job tasks just as anyone else with similar skills, experience and background.

(4) Where the employer has knowledge of the current illegal use of drugs, the employee is not entitled by law to accommodation, and may be terminated.

(i) "Current illegal use of drugs" means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.

(ii) In determining whether recent use is enough to justify a reasonable belief in current use, the individual's successful participation in a program for rehabilitation or recovery since the recent use is relevant.

(5) Employers are encouraged, where the employer knows of current illegal use of drugs, or where job performance of an alcoholic or drug addict deteriorates to below acceptable standards, to utilize the practice of leave of absence and required attendance at a rehabilitation program, along with a "last chance" agreement requiring acceptable performance and attendance upon return. If an employee denies the problem and refuses the leave, treatment and last chance agreement, the employee may be terminated or disciplined for the documented performance problems.

(6) Drug testing.

(i) A test to determine the illegal use of drugs is not to be considered a medical test.

(ii) Nothing in these regulations is to be construed to encourage, prohibit, or authorize the conducting of drug tests for the illegal use of drugs by job applicants or employees, or the making of employment decisions based on the test results.

- (iii) Nothing in these regulations is to be construed to encourage, prohibit, restrict or authorize the otherwise lawful exercise by entities subject to the jurisdiction of the United State Department of Transportation, of authority to test applicants for or employees in safety sensitive positions for the illegal use of drugs or for on-duty impairment by alcohol, or to remove persons who test positive from safety sensitive duties.
- (iv) Any information regarding the medical condition or history of any applicant or employee obtained from a drug test, except information regarding illegal use of drugs, must be kept confidential, and may not be used in any way to the disadvantage of the applicant or employee.
- (i) Temporary disabilities.

 - (1) A current employee experiencing a temporary disability is protected by the Human Rights Law where the individual will be able to satisfactorily perform the duties of the job after a reasonable accommodation in the form of a reasonable time for recovery.
 - (2) The Human Rights Law requires no more than de minimis accommodations for temporary disabilities in the areas of worksite accessibility, acquisition or modification of equipment, job restructuring, or support services for persons with temporarily impaired hearing or vision.
 - (3) The Human Rights Law may require reasonable accommodation of temporary disabilities in the areas of modified work schedules, reassignment to an available position or available light duty, or adjustments to work schedules for recovery. The employer's past practice, pre-existing policies regarding leave time and/or light duty, specific workplace needs, the size and flexibility of the relevant workforce, and the employee's overall attendance record will be important factors in determining reasonable accommodation in this context.
- (j) Rights and duties of the employer.

 - (1) The employer must not make pre-employment inquiries with regard to the existence of a disability or need for accommodation. The employer should provide information to applicants and new employees as to their rights with regard to reasonable accommodation of disability, and as to procedures to be followed in requesting reasonable accommodation.
 - (2) The employer should advise all current employees on a regular basis as to their rights with regard to reasonable accommodation of disability, and as to procedures to be followed in requesting reasonable accommodation.
 - (3) The employer has the duty to reasonably accommodate known disabilities, where the need for the accommodation is known.

(4) The employer has a duty to move forward to consider accommodation once the need for accommodation is known or requested. The employer has the duty to clearly request from the applicant or employee any documentation that is needed.

(5) Once an accommodation is under consideration, the employer has the right to medical or other information that is necessary to verify the existence of the disability or that is necessary for consideration of the accommodation. The employer must maintain the confidentiality of individuals' medical information.

(6) The employer has the right to select which reasonable accommodation will be provided, so long as it is effective in meeting the need.

(7) It is recommended that the employer have a written policy and procedure for reasonable accommodation of disability. A sample procedure is available from the Division.

(k) Rights and duties of the employee.

(1) The employee must make the disability and need for accommodation known to the employer.

(2) An employee with a disability has a right to request an accommodation at any time, even if his/her medical condition has not changed.

(3) The employee must cooperate with the employer in the consideration and implementation of the requested reasonable accommodation.

(4) The employee must cooperate in providing medical or other information that is necessary to verify the existence of the disability or that is necessary for consideration of the accommodation. The employee has a right to have his/her medical information kept confidential.

(5) The employee has the right to refuse an accommodation despite the existence of a disability, if the employee can perform the job in a reasonable manner without the accommodation.

APPENDIX
to 9 New York Code of Rules and Regulations (NYCRR) §466.11

**SUGGESTIONS FOR A REASONABLE ACCOMMODATION
PLAN AND PROCEDURE**

For implementation of the employer's duty to reasonably accommodate employees and applicants with disabilities, pursuant to Executive Law (Human Rights Law) §296, §292.21, and §292.21-e.

A written policy or plan with regard to reasonable accommodation is not required by law. However, it is recommended that employers develop a Reasonable Accommodation Plan. Use of such a procedure will not provide a guarantee against a later finding that a denial was in violation of the law, but should guard against inadvertent or uninformed denials of reasonable accommodations, and will provide a record that will be useful to the employer in establishing factually why a denied accommodation was unreasonable. The Plan should contain at a minimum, three elements:

- a formal statement that it is the policy of the employer to provide reasonable accommodations to employees and applicants with disabilities,
- an written "Procedure for Processing Reasonable Accommodation Requests" which is disseminated to all staff, and
- a program designed to provide information to managers, supervisors, and staff about the concept of, and legal requirement for, reasonable accommodation.

Various resources are available, in the local community or from various state agencies, to help provide staff training, at little or no cost.

Sample Procedure

Employers may find that a uniform set of guidelines for reviewing reasonable accommodation requests will serve the best interests of the company and its employees. A procedure will also provide a framework with a definite beginning and end; if the employer proceeds with the procedure with reasonable diligence, questions of whether an accommodation has been denied or is still under consideration will not arise, and filing of unnecessary complaints will be forestalled. Taking time to consider a request may appear as a denial and generate conflict, if the steps in a procedure cannot be referenced. The following sample procedure assumes the request is from a current employee, but the procedure should be adapted for use also by an applicant who wishes to request an accommodation.

The process of accommodation starts when the employee makes his/her request in writing and returns the request to the supervisor. If the employee has difficulty with written communication, or is not sure how to explain the impediment to job performance he/she is experiencing, or is unsure of what accommodation to request, the supervisor should assist the

employee in an initial consultation. The employee's initial inquiry about accommodation or disability-related performance difficulties puts the employer on notice, and triggers the requirement to seek accommodation. Therefore, the technicality of filling out the request adequately to start the process cannot be allowed to block the employee's access to accommodation. Once the request has been submitted, adequately identifying the accommodation requested, or at least the problem to be addressed, the supervisor evaluates the request and either approves or is unable to make a decision.

If the supervisor approves the request, the accommodation is made and an approval memorandum is sent to the designated company representative, (e.g., human resources representative or EEO Coordinator). The process is ended. If the supervisor is unable to make a decision, the request, with the supervisor's comments, is sent to the designated company representative who will conduct a comprehensive review of the request. The employee should be notified of this next step by the supervisor.

It is anticipated that most requests for accommodation can be approved at the supervisory level. Some accommodation requests are very simple and can easily be accomplished by the supervisor. Some examples may include the removal of barriers from aisles for an employee who is blind, raising a desk with small blocks if an employee uses a wheelchair, or granting permission for extended break times if the employee requires a longer rest period, with the time charged, or made up, in some agreed-upon manner.

There may be times, however, when a supervisor lacks the authority or the needed information to recommend that a particular accommodation be made. For example, these accommodations may require monetary expenditures, such as when adaptive equipment needs to be purchased or when requests are made for shift changes or flextime or part-time schedules. In these instances, the supervisor may choose to defer to the designated company representative for further review.

In instances where further review is required, the designated company representative must then assess all relevant documentation. *This may include asking for additional medical and/or other documentation from the employee, meeting with the employee and/or the supervisor, contacting the Job Accommodation Network, or other source of experience and expertise, for specific accommodation information, arranging for a job analysis, or consulting with community-based organizations who provide services to people with disabilities. It is important to note that medical documentation should be received by the designated company representative and not the supervisor. This will help avoid breach of the employee's privacy.*

The designated company representative may also at times need to obtain input from the company's fiscal officer or legal counsel. In a word, all available resources should be used at this stage to resolve the accommodation request.

If the accommodation is to be provided, the designated company representative consults with the supervisor and informs the employee in writing.

If the accommodation is to be denied, the designated company representative consults with the supervisor and notifies the employee in writing. In the notification, the employee is informed

that this decision will be automatically reviewed by a compliance review committee. This committee consist of a representative from human resources, counsel's office, an employee work group or organization, or any other representative deemed to be appropriate. This review body is advisory in nature and the final decision to grant or deny the accommodation rests with the *company owner or the CEO or other highest level managing officer*.

After completion of the review, the final decisionmaker informs the employee in writing of the final decision. If the decision is to deny the accommodation, additional recourse should be delineated to the employee such as filing a discrimination complaint with state or federal agencies if the employee believes the company's denial was based on discrimination.

To summarize:

Step 1: Employee requests an accommodation by submitting the request for accommodation to the supervisor.

Step 2: Supervisor approves, and the process is completed. Or, Supervisor does not approve, and the request is forwarded to the designated company representative.

Step 3: The designated company representative conducts a comprehensive review and analysis, including gathering information from the employee (including medical certification where needed) and from other sources.

Step 4: The designated company representative approves, and the process is completed. Or, the representative does not approve, and advises the employee of the denial, and of the reasons for the denial, and informs the employee that there will be a review of this decision by the compliance review committee and the owner, CEO or other managing officer of the company.

Step 5: The compliance review committee reviews the results of designated company representative's review, analysis and decision, and reports to the owner, CEO or managing officer.

Step 6: The owner, CEO or managing officer of the employer advises the employee of the employer's final decision, and if it is to confirm the denial, the employee is advised of his/her legal rights.

The above sample procedure will of course need to be modified to suit the needs, size, and structure of particular employers.

PAYMENT OF CIVIL FINES AND PENALTIES IN INSTALLMENTS

9 New York Code of Rules and Regulations (NYCRR) §466.12

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

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.

DISCRIMINATION ON THE BASIS OF GENDER IDENTITY

9 New York Code of Rules and Regulations (NYCRR) §466.13

466.13 Discrimination on the basis of gender identity.

(a) Statutory Authority. Pursuant to N.Y. Executive Law § 295.5, it is a power and a duty of the Division to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of the N.Y. Executive Law, article 15 (Human Rights Law)

(b) Definitions.

(1) *Gender identity or expression* means a person's actual or perceived gender-related identity, appearance, behavior, expression or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender.

(2) A *transgender person* is an individual who has a gender identity or expression different from the sex assigned to that individual at birth.

(3) *Gender dysphoria* is a recognized medical condition related to an individual having a gender identity or expression different from the sex assigned at birth.

(c) Gender identity or expression is a protected category defined in the Human Rights Law, and discrimination on the basis of gender identity or expression is unlawful in all areas of jurisdiction covered by the Human Rights Law.

(d) Discrimination on the basis of gender identity or expression is also sex discrimination.

(1) The term "sex" when used in the Human Rights Law includes gender identity or expression and the status of being transgender.

(2) The prohibitions contained in the Human Rights Law against discrimination on the basis of sex, in all areas of jurisdiction where sex is a protected category, also prohibit discrimination on the basis of gender identity or expression or the status of being transgender.

(3) Harassment on the basis of a person's gender identity or expression or the status of being transgender is sexual harassment.

(e) Discrimination on the basis of gender dysphoria or other condition meeting the definition of disability in the Human Rights Law set out below is disability discrimination.

(1) The term "disability" as defined in Human Rights Law § 292.21, means (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or

neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment, provided, however, that in all provisions of this article dealing with employment, the term shall be limited to disabilities which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.

(2) The term “disability” when used in the Human Rights Law includes gender dysphoria or other condition meeting the definition of disability in the Human Rights Law set out above.

(3) The prohibitions contained in the Human Rights Law against discrimination on the basis of disability, in all areas of jurisdiction where disability is a protected category, also prohibit discrimination on the basis of gender dysphoria or other condition meeting the definition of disability in the Human Rights Law set out above.

(4) Refusal to provide reasonable accommodation for persons with gender dysphoria or other condition meeting the definition of disability in the Human Rights Law set out above, where requested and necessary, and in accordance with the Divisions regulations on reasonable accommodation found at 9 NYCRR § 466.11, is disability discrimination.

(5) Harassment on the basis of a person’s gender dysphoria or other condition meeting the definition of disability in the Human Rights Law set out above is harassment on the basis of disability.

Credits

Sec. filed Jan. 5, 2016 eff. Jan. 20, 2016; amd. filed June 3, 2020 eff. June 24, 2020.

Compilation of Codes, Rules and Regulations of the State of New York

Title 9. Executive Department

Subtitle J. Division of Human Rights

Part 466. General Regulations

9 NYCRR 466.14

Section 466.14. Discrimination based on an individual's relationship or association with members of a protected class

(a) Statutory Authority. Pursuant to N.Y. Executive Law § 295.5, it is a power and a duty of the Division to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of the N.Y. Executive Law, article 15 (Human Rights Law).

(b) The Human Rights Law Section 297.1 permits “[a]ny person claiming to be aggrieved by an unlawful discriminatory practice” to file a verified complaint.

(c) (1) Where the term “unlawful discriminatory practice” is used in the Human Rights Law, it shall be construed to prohibit discrimination against an individual because of that individual’s known relationship or association with a member or members of a protected category covered under the relevant provisions of the Human Rights Law.

(2) To prove a claim of discrimination based on a known relationship or association, complainants must establish they are aggrieved by an unlawful discriminatory practice by showing they have been subjected to an adverse action as specified in relevant provisions of the Human Rights Law because of their known relationship or association with a member or members of a protected category covered under the relevant provisions of the Human Rights Law.

Compilation of Codes, Rules and Regulations of the State of New York

Title 9. Executive Department

Subtitle J. Division of Human Rights

Part 466. General Regulations

9 NYCRR 466.15

Section 466.15. Provision of notice by housing providers of tenants' rights to reasonable modifications and accommodations for persons with disabilities

(a) Statutory Authority. Pursuant to N.Y. Executive Law section 295.5, it is a power and a duty of the Division to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of the N.Y. Executive Law, article 15 (Human Rights Law) and pursuant to New York Executive Law section 170-d, the New York State Division of Human Rights "shall promulgate regulations requiring every housing provider ... to provide notice to all tenants and prospective tenants...of their rights to request reasonable modifications and accommodations" as such rights are provided for in Human Rights Law sections 296.2-a(d) and section 296.18.

(b) Effective date. Executive Law section 170-d was effective March 2, 2021, pursuant to the Laws of 2021, chapter 82, section 4, by reference to the Laws of 2020, chapter 311.

(c) Definitions.

(1) "*Housing provider*" shall mean:

(i) "the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or employee thereof" as set forth in New York Executive Law, article 15 (hereinafter "Human Rights Law") section 296.5; or

(ii) "the owner, lessee, sub-lessee, assignee, or managing agent of publicly-assisted housing accommodations or other person having the right of ownership or possession of or the right to rent or lease such accommodations" as set forth in Human Rights Law section 296.2-a.

(2) "*Housing accommodation*" includes "any building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings" as set forth in Human Rights Law section 292.10.

(3) "*Publicly-assisted housing accommodations*" shall include:

- (i) “public housing” as set forth in Human Rights Law section 292.10(a);
 - (ii) “housing operated by housing companies under the supervision of the commissioner of housing” as set forth in Human Rights Law section 292.10(b); or
 - (iii) other publicly-assisted housing as described in Human Rights Law section 292.10(c), (d) and (e).
- (4) “*Property Manager*” as referenced in the sample notice is an individual housing provider, or such person as the housing provider designates for the purpose of receiving requests for reasonable accommodation.
- (5) “*Reasonable modifications or accommodations*” shall refer to those actions required by Human Rights Law section 296.2-a(d) and Human Rights Law section 296.18, which makes it an unlawful discriminatory practice for a housing provider or publicly-assisted housing provider:
- (i) To refuse to permit, at the expense of the person with a disability, reasonable modifications of existing premises occupied or to be occupied by the said person, if the modifications may be necessary to afford the said person full enjoyment of the premises, in conformity with the provisions of the New York state uniform fire prevention and building code, except that, in the case of a rental, the landlord may, where it is reasonable to do so, condition permission for a modification on the renter’s agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.
 - (ii) To refuse to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford a person with a disability equal opportunity to use and enjoy a dwelling, including the use of an animal as a reasonable accommodation to alleviate symptoms or effects of a disability, and including reasonable modification to common use portions of the dwelling, or
 - (iii) In connection with the design and construction of covered multi-family dwellings for first occupancy after March thirteenth, nineteen hundred ninety-one, a failure to design and construct dwellings in accordance with the accessibility requirements of the New York state uniform fire prevention and building code, to provide that:
 - (a) The public use and common use portions of the dwellings are readily accessible to and usable by disabled persons with disabilities;
 - (b) All the doors are designed in accordance with the New York state uniform fire prevention and building code to allow passage into and within all premises and are sufficiently wide to allow passage by persons in wheelchairs; and
 - (c) All premises within covered multi-family dwelling units contain an accessible route into and through the dwelling; light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; there are reinforcements in the bathroom

walls to allow later installation of grab bars; and there are usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space, in conformity with the New York state uniform fire prevention and building code.

(6) “*First substantive contact*” is a term used by real estate brokers, licensed real estate salespersons, and licensed associate brokers in New York State. For purposes of this regulation, the term shall have the same meaning as applied under N.Y. Real Prop. Law § 443 and 19 N.Y.C.R.R. § 175.28.

(d) Actions required by Executive Law section 170-d.

(1) Housing providers that are the owner, lessee, sub-lessee, assignee, or managing agent of a housing accommodation or publicly-assisted housing accommodation, must provide notice, as provided for in this regulation, to all new and current tenants in the following manner:

- (i) Within 30 days of the effective date of their tenancy;
- (ii) for current tenants, within thirty days after the effective date of Executive Law section 170-d.
- (iii) In writing, and in 12-point font or larger, or other easily legible font.
- (iv) Include telephone number(s) and e-mail of the property manager or other person responsible for accepting reasonable accommodation requests.
- (v) By email, text, electronic messaging system, facsimile, or hardcopy. An electronic communication containing a link to the notice required pursuant to this regulation shall be permissible, provided the communication also contains text to inform the prospective tenant that the link contains information regarding tenants’ rights to reasonable accommodations for persons with disabilities. The notice must be available for printing and downloading.
- (vi) Where such communication is in paper form, the notice must be included within such communication, or by providing the notice in an accompanying document.
- (vii) May be accomplished by including the notice in or with other written communications, such as a lease or other written materials routinely provided to tenants.
- (viii) Oral disclosure does not satisfy the requirements imposed by this section.
- (ix) “Posting” of the notice pursuant to paragraph (d)(3) of this subdivision, either on paper, on a bulletin board, or on an electronic bulletin board or notice area, does not satisfy the requirements imposed by this section.

(2) A real estate broker shall be responsible to ensure that each individual licensed pursuant to Article 12-A of the New York Real Property Law and associated with such broker provides notice with regard to available housing accommodations, as provided for in this regulation, to all

prospective tenants in the following manner:

- (i) Upon first substantive contact.
 - (ii) In writing, and in 12-point font or larger, or other easily legible font.
 - (iii) By email, text, electronic messaging system, facsimile, or hardcopy. An electronic communication containing a link to the notice required pursuant to this regulation shall be permissible, provided the communication also contains text to inform the prospective tenant that the link contains information regarding tenants' rights to reasonable accommodations for persons with disabilities. The notice must be available for printing and downloading.
 - (iv) Where such communication is in paper form, the notice must be included within such communication, or by providing the notice in an accompanying document.
 - (v) Oral disclosure does not satisfy the requirements imposed by this section.
 - (vi) "Posting" of the notice pursuant to paragraph (d)(3) of this subdivision, either on paper, on a bulletin board, or on an electronic bulletin board or notice area, does not satisfy the requirements imposed by this section.
- (3) In addition to the delivery of notice in paragraphs (d)(1) and (d)(2) of this subdivision, all housing providers shall post the notice in the following manner:
- (i) As required by 9 NYCRR 466.3; and
 - (ii) all websites created and maintained by housing providers shall prominently and conspicuously display on the homepage of such website a link to the Division's notice as required this regulation which shall be made available by the Division.
- (4) The notice is to advise individuals of their right to request reasonable modifications and accommodations for disability pursuant to Human Rights Law section 296.2-a(d) (publicly-assisted housing) or Human Rights Law section 296.18 (private housing).
- (e) Content of the required notice. The following shall be deemed sufficient notice when provided to the individual to be notified.

NOTICE DISCLOSING TENANTS' RIGHTS TO REASONABLE ACCOMMODATIONS FOR PERSONS WITH DISABILITIES

Reasonable Accommodations

The New York State Human Rights Law requires housing providers to make reasonable accommodations or modifications to a building or living space to meet the needs of people with disabilities. For example, if you have a physical, mental, or medical impairment, you can ask your

housing provider to make the common areas of your building accessible, or to change certain policies to meet your needs.

To request a reasonable accommodation, you should contact your property manager by calling _____ or _____, or by e-mailing _____ [FN*]. You will need to inform your housing provider that you have a disability or health problem that interferes with your use of housing, and that your request for accommodation may be necessary to provide you equal access and opportunity to use and enjoy your housing or the amenities and services normally offered by your housing provider. A housing provider may request medical information, when necessary to support that there is a covered disability and that the need for the accommodation is disability related.

If you believe that you have been denied a reasonable accommodation for your disability, or that you were denied housing or retaliated against because you requested a reasonable accommodation, you can file a complaint with the New York State Division of Human Rights as described at the end of this notice.

Specifically, if you have a physical, mental, or medical impairment, you can request: N[FN+]

Permission to change the interior of your housing unit to make it accessible (however, you are required to pay for these modifications, and in the case of a rental your housing provider may require that you restore the unit to its original condition when you move out);

Changes to your housing provider's rules, policies, practices, or services;

Changes to common areas of the building so you have an equal opportunity to use the building. The New York State Human Rights Law requires housing providers to pay for reasonable modifications to common use areas.

Examples of reasonable modifications and accommodations that may be requested under the New York State Human Rights Law include:

If you have a mobility impairment, your housing provider may be required to provide you with a ramp or other reasonable means to permit you to enter and exit the building.

If your healthcare provider provides documentation that having an animal will assist with your disability, you should be permitted to have the animal in your home despite a "no pet" rule.

If you need grab bars in your bathroom, you can request permission to install them at your own expense. If your housing was built for first occupancy after March 13, 1991 and the walls need to be reinforced for grab bars, your housing provider must pay for that to be done.

If you have an impairment that requires a parking space close to your unit, you can request your housing provider to provide you with that parking space, or place you at the top of a waiting list if no adjacent spot is available.

If you have a visual impairment and require printed notices in an alternative format such as large print font, or need notices to be made available to you electronically, you can request that accommodation from your landlord.

Required Accessibility Standards

All buildings constructed for use after March 13, 1991, are required to meet the following standards:

Public and common areas must be readily accessible to and usable by persons with disabilities;

All doors must be sufficiently wide to allow passage by persons in wheelchairs; and

All multi-family buildings must contain accessible passageways, fixtures, outlets, thermostats, bathrooms, and kitchens.

If you believe that your building does not meet the required accessibility standards, you can file a complaint with the New York State Division of Human Rights.

How to File a Complaint

A complaint must be filed with the Division within one year of the alleged discriminatory act or in court within three years of the alleged discriminatory act. You can find more information on your rights, and on the procedures for filing a complaint, by going to www.dhr.ny.gov, or by calling 1-888-392-3644. You can obtain a complaint form on the website, or one can be e-mailed or mailed to you. You can also call or e-mail a Division regional office. The regional offices are listed on the website.

Credits

Filed May 3, 2022 eff. May 18, 2022 (Register dated May 18, 2022).

[FN*]

The Notice must include contact information when being provided under 466.15(d)(1), above. However, when being provided under (d)(2) and when this information is not known, the sentence may read “To request a reasonable accommodation, you should contact your property manager.”

[FN+]

This Notice provides information about your rights under the New York State Human Rights Law, which applies to persons residing anywhere in New York State. Local laws may provide protections in addition to those described in this Notice, but local laws cannot decrease your protections.

Current with amendments included in the New York State Register, Volume XLV, Issue 5 dated February 1, 2023. Some sections may be more current, see credits for details.

N.Y. Comp. Codes R. & Regs. tit. 9, § 466.15, 9 NY ADC 466.15

End of Document

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Compilation of Codes, Rules and Regulations of the State of New York

Title 9. Executive Department

Subtitle J. Division of Human Rights (Refs & Annos)

Part 466. General Regulations (Refs & Annos)

9 NYCRR 466.16

Section 466.16. Provision of notice regarding discrimination based on lawful source of
income
Currentness

(a) Statutory Authority. Pursuant to N.Y. Executive Law section 295.5, it is a power and a duty of the Division to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of the N.Y. Executive Law, article 15 (Human Rights Law) and pursuant to New York Executive Law section 170-e, the New York State Division of Human Rights “shall promulgate regulations requiring any state, county, municipal or other governmental entity . . . or any agency or instrumentality of such an entity, and any public or private non-profit entity authorized to administer any public housing program or assistance . . . to ensure that individuals who have applied for and are eligible to receive such assistance, payment, subsidy or credit are informed, in writing, of their rights and remedies available under law, with regard to lawful source of income discrimination” as such rights are provided for in Human Rights Law sections 296.2-a and 296.5.

(b) Effective date. The regulation will be effective upon publication of a Notice of Adoption in the New York State Register.

(c) Definitions.

(1) “Public housing program or assistance” shall mean: section eight housing choice vouchers, or any form of federal, state or local government-sponsored housing assistance, payment, subsidy or credit paid to a tenant or applicant for housing, or to a housing provider on behalf of a tenant or applicant for housing. For the avoidance of doubt, this term shall not include project-based rental assistance or housing units that have income-based eligibility restrictions, such as those developed with low-income housing tax credits and public housing units.

(2) “Lawful source of income” shall include, but not be limited to: child support, alimony, foster care subsidies, income derived from social security, or any form of federal, state, or local public assistance or housing assistance including, but not limited to, section 8 vouchers, or any other form of housing assistance payment or credit whether or not such income or credit is paid or attributed directly to a landlord, and any other forms of lawful income.

(3) “Housing provider” as referenced in the sample notice shall mean:

(i) “the owner, lessee, sub-lessee, assignee, or managing agent of, or other person having the right to sell, rent or lease a housing accommodation, constructed or to be constructed, or any agent or

employee thereof” as set forth in Human Rights Law section 296.5; or

(ii) “the owner, lessee, sub-lessee, assignee, or managing agent of publicly-assisted housing accommodations or other person having the right of ownership or possession of or the right to rent or lease such accommodations” as set forth in Human Rights Law section 296.2-a.

(4) “Housing” or “housing accommodation” as referenced in the sample notice includes “any building, structure, or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings” as set forth in Human Rights Law section 292.10.

(5) “Publicly-assisted housing accommodations” as referenced in the sample notice shall include:

(i) “public housing” as set forth in Human Rights Law section 292.10(a);

(ii) “housing operated by housing companies under the supervision of the commissioner of housing” as set forth in Human Rights Law section 292.10(b); or

(iii) other publicly-assisted housing as described in Human Rights Law section 292.10(c), (d) and (e).

(d) Actions required by Executive Law section 170-e.

(1) Entities that administer any Public housing program or assistance, as defined in paragraph (1) of subdivision (c) of this section, must provide notice, as provided for in this regulation, to all recipients of Public housing vouchers or assistance in following manner:

(i) For current Public housing program or assistance recipients, within thirty days after the effective date of this regulation.

(ii) For individuals who receive Public housing program or assistance benefits after the effective date of this regulation, upon notification such individual qualifies for the voucher or assistance.

(iii) In writing, and in 14 point or other easily legible font.

(iv) By email, text, electronic messaging system, facsimile, or hardcopy. An electronic communication containing a link to the notice required pursuant to this regulation shall be permissible, provided the communication also contains text to inform the prospective tenant that the link contains information regarding lawful source of income discrimination. The notice must be available for printing and downloading.

(v) Where such communication is in paper form, the notice must be included within such communication.

(vi) May be accomplished by including the notice in or with other written communications routinely provided to voucher or assistance recipients.

(vii) Oral disclosure does not satisfy the requirements imposed by this section.

(viii) "Posting" of the notice either on paper, on a bulletin board, or on an electronic bulletin board or notice area, does not satisfy the requirements imposed by this section.

(2) In addition to the delivery of notice above, all entities that administer housing programs or assistance shall provide notice on all websites created and maintained by such entities by prominently and conspicuously displaying on the homepage of such website a link to the Division's notice as required by this regulation which shall be made available by the Division.

(3) The notice is to advise individuals of their right to non-discrimination based on lawful source of income in housing pursuant to Human Rights Law section 296.2-a (publicly-assisted housing) or Human Rights Law section 296.5 (private housing).

(e) Content of the required notice. The following shall be deemed sufficient notice when provided to the individual to be notified.

KNOW YOUR LEGAL RIGHTS AS A RECIPIENT OF HOUSING ASSISTANCE

By law, you are protected from housing discrimination.

The New York State Human Rights Law makes it unlawful to discriminate in housing on the basis of your source of income. This includes all forms of housing assistance (like Section 8 vouchers, HUD VASH vouchers, New York City FHEPS and others), as well as all other lawful sources of income including: Federal, state, or local public assistance, social security benefits, child support, alimony or spousal maintenance, foster care subsidies, or any other form of lawful income.

Housing providers who are covered by the Human Rights Law include landlords, property managers, real estate professionals like brokers, tenants seeking to sublet, and anyone working on their behalf.

Housing providers are not allowed to refuse to rent to you because you receive housing assistance. They are also not allowed to charge you higher rent, or offer you worse terms in a lease, or deny you access to facilities or services that other tenants receive.

Housing providers are not allowed to make any statement or advertisement that indicates housing assistance recipients do not qualify for the housing. For example, a housing provider cannot say they do not accept housing vouchers or that they do not participate in a program such as Section 8.

It is lawful for housing providers to ask about income, and about the source of that income, and require documentation, but only in order to determine a person's ability to pay for the housing accommodation or eligibility for a certain program. A housing provider must accept all lawful sources of income

equally. It is unlawful to use any form of screening of applicants that has the intent or result of screening out those receiving housing assistance.

If you believe that you have discriminated against by a housing provider with regard to your lawful source of income, you can file a complaint with the New York State Division of Human Rights.

How to File a Complaint

A complaint must be filed with the Division within one year of the alleged discriminatory act or in court within three years of the alleged discriminatory act. To file a complaint, download a complaint form from www.dhr.ny.gov. For more information or assistance in filing a complaint, contact one of the Division's offices, or call the Division's toll-free HOTLINE at 1(888)392-3644. Your complaint will be investigated by the Division, and if the Division finds probable cause to believe discrimination has occurred, your case will be sent to a public hearing, or the case may proceed in state court. There is no fee charged to you for these services. Remedies in successful cases may include a cease-and-desist order, provision of housing that was denied, and monetary compensation for the harm you suffered. You can obtain a complaint form on the website, or one can be e-mailed or mailed to you. You can also call or e-mail a Division regional office. The regional offices are listed on the website.

Credits

Filed Aug. 2, 2022 eff. Aug. 17, 2022 (Register dated August 17, 2022).

Current with amendments included in the New York State Register, Volume XLV, Issue 6 dated February 8, 2023. Some sections may be more current, see credits for details.

N.Y. Comp. Codes R. & Regs. tit. 9, § 466.16, 9 NY ADC 466.16

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