

WHAT TO DO WHEN THE NEW JERSEY DIVISION ON CIVIL RIGHTS (DCR) COMES KNOCKING: 10 PRACTICAL TIPS FOR N.J. EMPLOYERS¹

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1. When you are served with a DCR Verified Complaint, immediately consider using our **free mediation** program—especially for those “troublesome” cases. DCR mediation is free, confidential, non-mandatory, and very successful because **you** help to decide the results. However, you must agree to mediation as soon as you receive our Verified Complaint.

 2. **Disability discrimination** is now one of the most common forms of discrimination in New Jersey and nationwide. If you operate a business in New Jersey and are served with a Complaint claiming disability discrimination, be sure to evaluate your case under **both** the Americans with Disabilities Act (ADA), **and** under the **New Jersey Law Against Discrimination (LAD)**. New Jersey’s LAD is generally more expansive in extending protections to people than the ADA. If you only analyze the situation under the ADA, you may be creating liability for your company.

 3. When an employee requests a “reasonable accommodation” due to an assertion that (s)he has a disability, be certain to **engage in the “interactive process”** to evaluate the request. Failure to engage in an interactive process is a common reason for a probable cause finding in disability cases. Under the LAD the process must be truly “interactive”, which means that the employer must discuss possible options with the employee in a format and language the employee can understand. The more interactive the process, the greater protection the employer may have if a challenge arises over the “reasonableness” of an accommodation request.

 4. The New Jersey **Family Leave Act (FLA)** protects **not only pregnant women, but also fathers and legal guardians**. The law allows coverage for both the birth and adoption of children. The FLA applies to employers who have a total of 50 or more employees regardless of location, not just within New Jersey’s borders.

 5. All your employees and supervisors should know that **unlawful harassment is not just based on “sex”** but may also be based on race, religion, age, disability, national origin, sexual orientation, or any other protected category under the LAD. Be sure that your policies and training recognize a prohibition of not only “sexual harassment,” but all forms of harassment in the workplace.
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¹ These tips are meant to serve as guidance and are in no way meant to serve as formal legal advice. It is recommended that employers consult with attorneys who are expert in the areas of employment discrimination law.

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6. An employer's obligation to prevent a **hostile work environment** also extends to a school district's obligations to protect students from a "hostile school environment" created by severe or pervasive harassment by staff or student peers (bullying). Schools can be forced to pay substantial penalties and monetary awards for not effectively addressing harassment or discriminatory conduct about which they know or should have known.²

 7. **Do not ignore DCR subpoenas** or other deadlines, or the agency will enforce the subpoena and seek attorney fees.

 8. Conduct an annual assessment of employer anti-discrimination policies and practices to ensure that they reference **all** protected groups included in the LAD. They should include prohibitions of discrimination on the basis of **disability, sexual orientation, and domestic partnership status**. Having and using a thorough, understandable, up to date and accessible policy could help an employer defend claims that its policies permit unlawful discrimination in the workplace.

 9. Be sure that you actually **follow your anti-discrimination and discipline policies**—and meaningfully discipline all staff that engage in discriminatory conduct, harassment, or retaliation (including officers and directors of the organizations). The employer may have to terminate an individual's employment if the employer knowingly permits that individual to repeatedly engage in unlawful harassment or discrimination. Management could also be held individually liable for participating in the unlawful discrimination.

 10. Ensure that all worksites properly **post the Employment, Family Leave Act, and Public Accommodations posters** as required under New Jersey law. Failure to do so will subject an employer to a fine of up to \$10,000 for a first offense. The posters may now be downloaded free at www.NJCivilRights.org.

BONUS TIP:

We invite you to consult with our expert staff at any time. Visit us at one of our offices in Newark, Paterson, Trenton, Camden or Atlantic City or check our web site at www.NJCivilRights.org.

² This issue is under review by the New Jersey Supreme Court in the case of *L.W. v. Toms River Regional Schools Board of Education*.
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