

LAW AND PUBLIC SAFETY

DIVISION ON CIVIL RIGHTS

Display of Official Posters of the Division on Civil Rights

Proposed Readoption: N.J.A.C. 13:8

Authorized By: Chinh Q. Le, Director, Division on Civil Rights.

Authority: N.J.S.A. 10:5-6, 10:5-8(g) and 10:5-12; and 34:11B-6 and 16.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2011-096.

Submit comments by June 17, 2011 to:

Gary LoCassio, Deputy Director

New Jersey Division on Civil Rights

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The agency proposal follows:

Summary

The New Jersey Division on Civil Rights (Division), in the Department of Law and Public Safety, enforces the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 to 49, and the New Jersey Family Leave Act (FLA), N.J.S.A. 34:11B-1 to 16. Pursuant to N.J.S.A. 52:14B-5.1c, the Division's rules concerning Display of Official Posters of the Division on Civil Rights, N.J.A.C. 13:8, is set to expire on September 13, 2011. The Division has reviewed these

rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated. Accordingly, the Division proposes to readopt the rules.

The LAD prohibits employers, housing providers and owners of places of public accommodation from discriminating against individuals on the basis of certain protected characteristics, including, but not limited to, race, creed, color, national origin and disability. The LAD also provides that it is unlawful for an entity whose activities are included within the scope of the act to refuse to post or display notices concerning the rights or responsibilities of persons affected by the act as the Attorney General, through the Division, may by regulation require. N.J.S.A. 10:5-12j. In fulfillment of this statutory requirement, the Division has since prior to 1969 maintained official posters to provide notice to the public regarding unlawful discrimination in the areas of employment, housing and public accommodations under the LAD, which entities covered by the LAD have been required to display.

In order to make it easier for covered entities to comply with the rules, the rules were amended in 2006 to provide that the official posters are to be made available for downloading and printing from the Division's website. Posters also remain available at any office of the Division. Consistent with the effort to make compliance less burdensome, the 2006 amendments also reduced the required size of the posters from legal size to letter size. Consequently, covered entities are now able to print the posters themselves on letter size paper for display.

The 2006 amendments also set forth rules for covered employers to post the Division's FLA poster. Like the LAD, the FLA provides that employers covered by the FLA shall display conspicuous notice of its employees' rights and obligations under the FLA. N.J.S.A. 34:11B-6. The rules for displaying the FLA poster parallel those for displaying the LAD posters.

A summary of the rules proposed for readoption follows.

Subchapter 1 of the rules is entitled "Law Against Discrimination Posters." N.J.A.C. 13:8-1.1 provides that the definitions set forth in the LAD apply to this subchapter. N.J.A.C. 13:8-1.2 sets forth the rule for employers, employment agencies and labor organizations to display the official Division poster that governs discrimination in employment. N.J.A.C. 13:8-1.3 sets forth the rule for individuals or entities engaged in the business of selling or renting real estate to display the official Division poster that governs discrimination in housing. N.J.A.C. 13:8-1.4 sets forth the rule for owners and operators of places of public accommodation to display the official Division poster that governs discrimination in places of public accommodation. N.J.A.C. 13:8-1.5 provides that the failure to comply with this subchapter will constitute a violation of the LAD.

Subchapter 2 of the rules is entitled "Family Leave Act Poster." N.J.A.C. 13:8-2.1 provides that the definitions set forth in the FLA shall apply to this subchapter. N.J.A.C. 13:8-2.2 sets forth the rule that all employers covered by the FLA shall display the FLA poster. N.J.A.C. 13:8-2.3 provides that failure to comply with the subchapter would constitute a violation of N.J.S.A. 34:11B-6.

As the Division has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The Division believes that the rules proposed for readoption will have a positive social impact. The posters required to be displayed under the rules are a simple and economical means of reaching large segments of the population to promote public awareness of and compliance with the provisions of the LAD and FLA. By highlighting, for both the public and the regulated community, the rights and responsibilities associated with the two laws, the poster requirements

will enhance the Division's prevention and enforcement efforts and foster the primary goal of the LAD, which is to prevent and eradicate unlawful discrimination. Further, the contact information for the Division's offices contained on the posters will help to facilitate inquiries to the Division by the regulated community and by members of the general public. For these reasons, the rules proposed for readoption will further the public interest.

Economic Impact

The Division does not anticipate that the rules proposed for readoption will have any economic impact on covered employers and labor organizations, covered persons selling, leasing or financing real property or covered owners and operators of places of public accommodation. Since the Division will assume the cost of formulating, printing and distributing the posters, and since the posters are available free-of-charge from the Division's website or its offices, covered individuals and entities will be able to comply with the rules proposed for readoption without incurring any out-of-pocket costs and with only an incidental administrative expenditure of time.

Federal Standards Statement

The rules proposed for readoption relate to compliance with the notice posting requirements in the LAD and FLA. Accordingly, the rules proposed for readoption are not intended to implement or comply with any program established under Federal law or under a State statute that incorporates or refers to Federal law, standards or requirements. However, the Division's rules are similar to Federal regulations that require the posting of different notices under various Federal laws. Accordingly, some persons and entities covered by the LAD's and FLA's posting requirements are also required to post notices regarding unlawful discrimination or family leave under various Federal laws.

Specifically, 29 CFR 1601.30(a) requires employers and labor organizations, as defined

by Title VII of the Civil Rights Act and by the Americans With Disabilities Act (ADA), to display posters which advise the public of the pertinent provisions of these Federal laws. Similarly, 24 CFR 110.10 and 110.25, promulgated pursuant to the Fair Housing Act, impose an obligation on persons who rent or sell real estate to display posters advising that it is a violation of Federal law to engage in unlawful housing discrimination based on race, color, religion, sex, national origin, handicap or familial status. Moreover, Federal regulations require certain state and local entities to disseminate information about the ADA. These regulations include the posting of notices as one of several suggested means of meeting this requirement. 28 CFR 35.106. Further, the Federal Family and Medical Leave Act (FMLA) and its implementing regulations require that employers covered by the FMLA post notices explaining the act's provisions and providing information concerning the filing of complaints. 29 U.S.C. §2619; 29 CFR 825.300.

The rules proposed for readoption do not unnecessarily exceed or duplicate such Federal regulations. Instead, the rules articulate requirements to display posters that explain provisions of the LAD and FLA. Accordingly, the Division's rules regarding the display of official Division posters continue to be necessary to further the statutory mandate to prevent and eliminate unlawful discrimination that violates the LAD and to fulfill the statutory notice requirements of the FLA. Although the requirement to display Division posters may reach some individuals and entities that are also covered by corresponding Federal notice requirements described above, the LAD and FLA cover more individuals and entities under their respective definitions of "employer" than their Federal counterparts. Moreover, there are significant differences in the coverage of Federal and State laws that are reflected in the contents of the Division's official posters.

For example, the LAD proscribes discrimination on bases not covered by Federal discrimination laws, such as marital status, sexual orientation and gender identity or expression. Likewise, the LAD's definition of "disability" is significantly broader than the ADA's definition of "disability." In light of these distinctions, the contents of the Division's LAD posters do not duplicate Federal posters. Similarly, there are significant differences between the FMLA and FLA, including the definition of covered employers and the permitted reasons for taking leave, that call for the posting of notices under each law. Therefore, the notice provided by the Division's posters is not a superfluous reiteration of Federal civil rights laws and do not unnecessarily exceed or duplicate Federal regulation of the same activities. Instead, the notice requirements serve purposes unique to the LAD and FLA.

Jobs Impact

The Division does not anticipate that the rules proposed for re-adoption will have any impact on the number of jobs in this State.

Agriculture Industry Impact

The Division does not anticipate that the rules proposed for re-adoption will have any impact on the agriculture industry.

Regulatory Flexibility Analysis

The rules proposed for re-adoption will not impose any reporting or recordkeeping requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are small businesses that are employers, housing providers or owners of places of public accommodation that would be required to comply with these rules by posting the required posters. However, since the Division assumes the cost of formulating, printing and distributing the posters, and since the posters are available for downloading free-of-

charge from the Division's website, small businesses will be able to comply with the rules proposed for readoption without incurring any out-of-pocket costs and only a minimal expenditure of time.

Smart Growth Impact

The Division does not anticipate that the rules proposed for readoption will have any impact on the achievement of smart growth or implementation of the State Development and Redevelopment Plan, otherwise known as the State Plan.

Housing Affordability Impact

The rules proposed for readoption will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the rules concern only the display of posters by employers, those in the business of selling or renting real estate and owners of places of public accommodation.

Smart Growth Development Impact

The rules proposed for readoption will have an insignificant impact on smart growth development and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the rules concern only the display of posters by employers, those in the business of selling or renting real estate and owners of places of public accommodation.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:8.