Title 47: Commission on Human Rights

Chapter 1: Practice and Procedure*

*** Editor's note:** Chapter 1 was repealed and replaced in its entirety. SeeCity Record 8/6/2019, eff. 9/5/2019.

Subchapter A: General

§ 1-01 Scope of Rules.

These rules are intended to carry out the provisions of the Human Rights Law ("NYCHRL"), Title 8 of the Administrative Code of the City of New York ("the Code"), and the policies and procedures of the Commission on Human Rights in connection therewith, as authorized by Chapter 40 of the Charter and § 8-117 of the Code.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-02 Organization of Commission.

In order to carry out its various statutory responsibilities in a fair and impartial fashion, the Commission has separated its functions into discrete bureaus and offices, which, among other things, separate the Chair from the investigatory and prosecutorial functions of the agency. In addition to the Chair and the Commissioners, the following components of the Commission are directly involved in the enforcement of the NYCHRL:

(a) *Law Enforcement Bureau.* The Law Enforcement Bureau is charged with the Commission's investigatory and prosecutorial functions. Where an action is authorized or required to be taken by the Law Enforcement Bureau, such action must be taken by the Deputy Commissioner for Law Enforcement, such Law Enforcement Bureau staff as the Deputy Commissioner may designate, or such person as may be appointed by the Chair of the Commission.

(b) *Office of General Counsel.* The Office of General Counsel serves as counsel to the Chair and to the Commissioners. Where an action is authorized or required to be taken by the Office of General Counsel, such action must be taken by the General Counsel, such staff of the Office of General Counsel as the General Counsel may designate, or such person as may be appointed by the Chair of the Commission.

(c) *Office of Mediation and Conflict Resolution.* The Office of Mediation and Conflict Resolution provides mediation services in connection with complaints that have been filed at the Commission. The Office of Mediation and Conflict Resolution operates independently from any other office within the Commission. Where an action is authorized or required to be taken by the Office of Mediation and Conflict Resolution, such action must be taken by the Director of the Office of Mediation and Conflict Resolution, such staff of the Office of Mediation and Conflict Resolution as the Director may designate, or such person as may be appointed by the Chair of the Commission.

(d) *Office of the Chair.* The Office of the Chair is charged with the Commission's adjudicatory functions. Where an action is authorized or required to be taken by the Office of the Chair, such action must be taken by the Chair or such person as may be appointed by the Chair of the Commission, except such person may not include the Deputy Commissioner or staff of the Law Enforcement Bureau.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-03 Definitions and Construction.

Amended pleadings. For purposes of this chapter, amended complaints must be treated the same as complaints, and amended answers must be treated the same as answers, except as otherwise specifically provided.

Administrative cause. For purposes of this chapter, the term "administrative cause" has the same meaning as "administrative convenience" as set forth in § 8-113 of the Code.

Calculation of dates and deadlines. For purposes of this chapter, where a deadline is specified in the Code, these rules, a Commission subpoena, or a Commission order by the expiration of a specified number of days, the deadline is calculated in calendar days, exclusive of the starting calendar day from which the calculation is made. If the expiration of a time requirement falls on a weekend or a legal holiday of the State of New York, the expiration date is the next business day following the expiration date.

Complaint. For purposes of this chapter, the term "complaint" means a formal, written complaint filed pursuant to Subchapter B of these rules.

Complainant. For purposes of this chapter, the term "complainant" means a person who has filed a formal, written complaint pursuant to Subchapter B of these rules.

Conciliation. For purposes of this chapter, the term "conciliation" refers to an agreement among persons including the Law Enforcement Bureau to resolve all or part of a case before the Commission.

Necessary party. For purposes of this chapter, the term "necessary party" means any person determined by the Law Enforcement Bureau or by an Administrative Law Judge to be a person who might be inequitably affected by a decision of the Commission, or any person whose absence would preclude complete relief between the complainant and the respondent.

Party. For purposes of this chapter, the term "party" means the Law Enforcement Bureau when acting as petitioner; respondents; complainants who intervene pursuant to § 2-25 of the Rules of Practice of the Office of Administrative Trials and Hearings (hereinafter "OATH") (48 RCNY § 2-25); or any necessary parties.

Person. For purposes of this chapter, the term "person" includes one or more natural persons, proprietorships, partnerships, associations, group associations, organizations, governmental bodies or agencies, corporations, legal representatives, trustees, trustees in bankruptcy, receivers, and associations, organizations, or groups that assert the civil rights of protected classes.

Respondent. For purposes of this chapter, the term "respondent" means a person who has been charged in a complaint filed pursuant to these rules with having committed an unlawful discriminatory practice, an act of discriminatory harassment or violence, or an act of bias-based profiling.

Rule. For purposes of this chapter, the term "rule" has the meaning set forth in § 1041 of the City Administrative Procedure Act.

Rules. For purposes of this chapter, unless otherwise apparent from the context, the term "rules" means the provisions of chapter 1 of title 47 of the Rules of the City of New York.

Settlement. For purposes of this chapter, the term "settlement" refers to an agreement among persons not including the Law Enforcement Bureau to resolve all or part of a case before the Commission.

Singular and plural usage. For purposes of this chapter, words in the singular include the plural and words in the plural include the singular, as the context may require.

(Added City Record 8/6/2019, eff. 9/5/2019; amended City Record 8/4/2022, eff. 9/3/2022)

§ 1-04 Service of Papers.

(a) *Who can serve papers.* Except where otherwise prescribed by law or an order of the Commission or of a court, papers may be served by any person of the age of eighteen years or over.

(b) *Parties to be Served.* Each paper served on any party must be served on every other party who has appeared.

(c) *Service on persons represented by counsel.* Whenever a person required to be served with a paper pursuant to these rules has duly informed the Commission pursuant to 47 RCNY § 1-15 that such person is represented by counsel, service must be made on the person's counsel in lieu of service on the person unless, consistent with the New York Rules of Professional Conduct, the person seeking to make service has reason to conclude that the person to be served is not in fact represented by counsel. Notwithstanding the foregoing, in addition to serving administrative notices on a represented person's counsel, the Commission may also serve such notices the on the person.

(d) *Methods of service.*

(1) *Papers other than subpoenas.* A paper other than a subpoena is served under this rule by:

(i) handing it to the person;

(ii) mailing it to the person's last known address, unless the serving party has reason to know that the person to be served no longer resides there. Service by mail is effective:

i. five days from the date of mailing, if sent by first class mail.

ii. one day from the date of mailing, if sent by overnight delivery.

iii. for purposes of calculating deadlines for filing in state court, on the date of mailing. For example, the deadline for filing an appeal in state court should be calculated from the date of mailing of the decision that is the subject of the appeal.

(iii) leaving it:

i. at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

ii. if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(iv) sending it by email or facsimile, provided that either the person is represented by counsel and the papers are served on the attorney, or the person has provided written consent to such service pursuant to 47 RCNY § 1-04(f). Service by email or facsimile is complete at the time of transmission, but is not effective if the serving party learns that it did not reach the person to be served;

(v) for service on corporations or other business entities, mailing it to the person registered with the New York State Department of State to receive service on behalf of the corporation or business entity or by serving the New York Department of State in accordance with applicable law; or

(vi) if no other method of service is effective, as specified in an order by the Chair.

(2) *Subpoenas.* A subpoena must be served in the manner provided for in the New York Civil Practice Law and Rules ("CPLR").

(e) *Proof of Service.* For purposes of this chapter, proof of service may include a written declaration, affidavit, affirmation, certification, or other statement made under penalty of perjury, specifying the papers served, the person who was served and the date, address, or, in the event there is no address, place and manner of service, and setting forth facts showing that the service was made by an authorized person and in an authorized manner.

(f) *Consent to email or facsimile service.* An unrepresented party who consents to service by email or facsimile must provide written notice to all other parties, including the case name, case number, and the email address or facsimile number through which the party consents to accept service. Written consent to service by email or facsimile will remain in effect unless the consenting party provides unambiguous notice that consent is being withdrawn. Counsel appearing on behalf of a party are presumed to have consented to service by email, absent an express statement to the contrary.

(g) *Service by email.*

(1) *File format.* Papers served by email, other than materials produced in response to investigatory demands and subpoenas, should be sent in PDF format. Text-searchable PDF format is strongly encouraged.

(2) *Email subject lines.* When service of papers is made by email, the subject line of the email must contain the case name and complaint number(s).

(h) *Parties' obligation to provide notice of changes in contact information and changes in counsel.* All parties have a continuing obligation to promptly advise the Commission of any changes in contact information or in representation by counsel. Notice of changes in contact information or in representation must also be promptly provided to all other parties.

(i) *Time for service of complaints.* A complaint must be served on each respondent within 120 days after it is filed. Claims against a respondent who is not timely served must be dismissed without prejudice, unless the Law Enforcement Bureau determines that good cause exists for an extension of the service deadline.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-05 Power Delegated to the Chair of the Commission to Propose Rules.

The Commission delegates to the Chair of the Commission authority to propose rules prior to their final adoption by the Commission, pursuant to Chapter 1 of Title 8 of the Code and Section 905 of the Charter.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-06 General Procedure for Requesting Orders by the Chair, Except as Otherwise Specified.

Except as otherwise specifically provided in this chapter, when an application for an order from the Chair is authorized pursuant to the Code or this chapter, such application may be made by promptly filing a letter motion with the Office of the Chair, copies of which must also be served on all parties. The letter motion should set forth the nature of the request and the procedural stance of the case and should include any relevant supporting documentation. After the motion is served, the Office of the Chair will set deadlines for opposition and reply to the letter motion.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-07 Courtesy Paper Copies.

Courtesy paper copies of submissions exceeding 10 pages in length must be provided to the agency, even if service is made by electronic means.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-08 Recusal of the Chair of the Commission.

The Chair may recuse themself from a case if the Chair determines that recusal is appropriate based on considerations of fairness and applicable law. If the Chair recuses themself, General Counsel must appoint a panel of at least three other Commissioners to serve in place of the Chair for that matter.

(Added City Record 8/6/2019, eff. 9/5/2019)

Subchapter B: Complaints, Answers, and Notification of Obligations

§ 1-11 Complaints Generally.

(a) *Who may file a complaint.*

(1) *The Law Enforcement Bureau.* The Law Enforcement Bureau may make, sign, and file a verified complaint alleging that a person has committed an unlawful discriminatory practice, an act of discriminatory harassment or violence, or an act of bias-based profiling.

(2) *Complainants.* Any person aggrieved by an unlawful discriminatory practice, an act of discriminatory harassment or violence, or an act of bias-based profiling may individually or by such person's attorney or representative acting with appropriate legal authority make, sign, and file a written verified complaint with the Law Enforcement Bureau in accordance with these rules. However, the Law Enforcement Bureau must decline to accept a complaint for filing in the following circumstances:

(i) *Statute of limitations.* The Law Enforcement Bureau must decline to file a complaint if the date of filing of the complaint would fall outside the statute of limitations set forth in § 8-109(e) of the Code. The Law Enforcement Bureau should determine whether tolling doctrines such as the continuing violation doctrine may apply and must honor valid tolling agreements.

(ii) *Election of remedies.* The Law Enforcement Bureau must decline to file a complaint if the alleged unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling arises from the same grievance as in:

(A) a civil action previously initiated by complainant in a court of competent jurisdiction, unless such civil action has been dismissed without prejudice or withdrawn without prejudice.

(B) an action or proceeding previously filed by the complainant before any administrative agency under any other law of the state.

(C) a complaint previously filed by the complainant with the State Division of Human Rights, on which a final determination has been made.

(b) *Form of complaints.*

(1) *Format.* All complaints must be typewritten or written legibly in ink and must be signed and verified by the person making the complaint or, in the case of a Commission-initiated complaint, by the Law Enforcement Bureau.

(2) *Caption.* Each complaint must recite the name of each complainant and respondent in a caption in the following form:

CITY OF NEW YORK

COMMISSION ON HUMAN RIGHTS

----------x

In the Matter of the Complaint of: Verified Complaint

Complainant, Case No.

-against-

Respondent.

----------x

(c) *Contents of complaint.* A complaint must contain the following:

(1) the full name and address of the person or persons making the complaint or such other designation as appropriate. Each such person is denominated a complainant. If a complaint is prepared by a complainant's attorney, the attorney's name, address, telephone number, email address, and facsimile number, if any, should also appear on the complaint;

(2) the full name and address, where known, of the person or persons alleged to have committed an unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling. Each such person is denominated a respondent;

(3) a plain and concise statement of the specific facts constituting the alleged violation of the Code, set forth in consecutively numbered paragraphs. The statement of facts must contain, to the extent known to the complainant, the exact or approximate date or dates of the alleged discriminatory practices and, if the alleged violation of the Code is of a continuing nature, the dates between which that violation is alleged to have occurred; and the addresses or approximate locations of any places where the acts complained of are alleged to have occurred; and

(4) whether complainant has previously filed any other civil or administrative action alleging an unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling with respect to the allegations that are the subject of the complaint. In the event of a prior filing, a statement of the title, docket number, or similar identifying number, and forum before which such other claim was filed, and a statement of the status or disposition of such other action or proceeding should be included.

(d) *What constitutes filing of a complaint or answer.* A signed, verified complaint or answer is filed when it is mailed to or personally served on the Law Enforcement Bureau.

(e) *Procedure following receipt of complaint.* Consistent with 47 RCNY § 1-11(a)(1), when a complaint is filed, the Law Enforcement Bureau must record the date of filing and assign a complaint number to the complaint. The Law Enforcement Bureau must thereafter serve a copy of the filed complaint to each respondent and necessary party and must advise the respondents of their procedural rights and obligations.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-12 Commission-Initiated Complaints.

(a) *Procedure following the filing of a Commission-initiated complaint.* At the time that a Commission-initiated complaint is filed, the Law Enforcement Bureau must record the date of filing and assign a complaint number to the complaint. The Law Enforcement Bureau must thereafter serve a copy of the filed complaint on each respondent and advise the respondents of their procedural rights and obligations.

(b) *Probable cause.* Commission-initiated complaints do not require a determination of probable cause.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-13 Amendments to Complaints.

(a) *General.* A complaint may be amended as of right at any time before the referral of the complaint to OATH. While a case is pending before OATH, amendments must be made in accordance with OATH rules. An amended complaint supersedes all prior complaints. Amending a complaint does not necessitate a reevaluation of the initial probable cause determination.

(b) *Statute of limitations.* With respect to respondents named in the original complaint, the date of filing an amended complaint relates back to the date the original complaint was filed. With respect to respondents named for the first time in an amended complaint, the statute of limitations must be assessed in accordance with the relation-back doctrine under New York law.

(c) *Additions or substitutions of the Commission.* The Law Enforcement Bureau may amend a complaint to add the Commission to a complaint or substitute the Commission for a complainant at any time after a complaint has been filed but before a final determination on the complaint has been made.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-14 Answer.

(a) *Time for filing.* A respondent must file an answer with the Law Enforcement Bureau within 30 days of having been served with a complaint.

(b) *Extension of time to answer.* A respondent may, for good cause, apply to the Law Enforcement Bureau for additional time to file an answer.

(c) *Form and content of answer.* The answer must be verified as to the truth of the statements therein and must, in consecutively numbered paragraphs that correspond to those in the complaint, specifically admit, deny, or explain each allegation, unless the respondent is without knowledge or information sufficient to form a belief about the allegation, in which case the respondent must so state, and such statement will operate as a denial. Any allegation in the complaint not specifically denied or explained will be deemed admitted unless good cause to the contrary is shown. To the extent that the respondent denies only part of an allegation, the respondent must state the extent of its denial and also state its response to the remaining portions of the allegation. All affirmative defenses and all mitigating factors recognized under the NYCHRL must be stated separately in the answer, or will be deemed waived, unless good cause to the contrary is shown.

(d) *Prohibition on counterclaims and cross-claims.* The respondent may not interpose counterclaims or cross-claims in the answer, but is not precluded from filing a complaint under 47 RCNY § 1-11.

(e) *Position statements.* A respondent should include a position statement to be filed with its answer, which may facilitate efficient and early resolution of a matter. A position statement will be shared with complainants and should detail the respondent's account of events relevant to the allegations in the complaint, and may include, if applicable:

(1) A description of, and supporting evidence related to, the respondent's policies, trainings, workshops, or other practices that are aimed at preventing or combating discrimination, harassment, and retaliation; and

(2) An explanation of the rationale behind the respondents' alleged conduct, and examples of the respondents' similar conduct toward persons other than the complainant(s) that may be relevant to the legal analysis of discrimination.

(f) *Amendment of answer.* A respondent may amend its answer at any time prior to the referral of a complaint to OATH. An amendment to an answer subsequent to the referral of a complaint to OATH may be made in accordance with OATH rules. An amended answer supersedes all prior answers.

(g) *Procedure following receipt of an answer and position statement.* The Law Enforcement Bureau must serve a copy of each answer and position statement on the complainant.

(h) *Failure to answer.* Failure to file a timely answer may result in a finding of default, in which case the allegations in the complaint will be deemed admitted.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-15 Notice of Representation by Counsel.

Complainants and respondents may be represented by counsel. Prior to issuance of a report and recommendation by OATH, counsel appearing for the first time must notify the Law Enforcement Bureau of the following: the person or persons for whom the attorney appears and the attorney's name, address, telephone number, email address, and fax number. After a report and recommendation has been issued by OATH, counsel appearing for the first time must file a similar notice of appearance with the Office of the Chair. If applicable, counsel appearing for the first time should also provide notice of consent to service by email pursuant to 47 RCNY § 1-04(f).

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-16 Rebuttal Statements.

Upon request from the Law Enforcement Bureau, a complainant may submit a rebuttal to a respondent's answer and position statement.

(Added City Record 8/6/2019, eff. 9/5/2019)

Subchapter C: Withdrawals and Dismissals

§ 1-21 Withdrawal of Complaints.

(a) *Legal effect of withdrawal.*

(1) *Effect on the Law Enforcement Bureau.* Unless a complaint is withdrawn pursuant to a conciliation agreement, the withdrawal of a complaint will be without prejudice to (i) the continued prosecution of the complaint by the Law Enforcement Bureau in accordance with these rules; (ii) the initiation of a complaint by the Law Enforcement Bureau based on the same facts; or (iii) the commencement of a civil action by the Corporation Counsel based on the same facts, pursuant to Title 1, Chapter 4 of the Code.

(2) *Effect on complainant.*

(i) Prior to withdrawal, complainants are cautioned to seek independent legal advice concerning whether the right to sue in another forum is preserved following the withdrawal of a complaint pursuant to § 8-112 of the Code.

(ii) *Refiling at the Commission.* Following a withdrawal, a complainant may refile with the Commission at the discretion of the Law Enforcement Bureau.

(iii) *Refiling in other venues.* A complainant's ability to refile in a venue other than the Commission is determined by the venue itself.

(b) *Procedure for withdrawals.*

(1) *Prior to referral to OATH.* A complainant may withdraw a complaint as of right at any time prior to being served by the Law Enforcement Bureau with a notice of referral to OATH. The complainant must provide signed, written notice to the Law Enforcement Bureau of the complainant's desire to withdraw a complaint. The Law Enforcement Bureau must promptly provide written notice to all parties of a withdrawal and the status of the case.

(2) *While pending before OATH.* While a case is pending before OATH, a complaint may be withdrawn in accordance with OATH rules of practice (48 RCNY § 2-26).

(3) *After proceedings at OATH.* After a case is returned to the Commission from OATH, a complainant seeking to withdraw a complaint must file a letter motion with the Office of the Chair. The Chair may, in its discretion, grant a motion to withdraw.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-22 Dismissal of Complaints.

(a) *Dismissals for administrative cause.* The Law Enforcement Bureau may, in its discretion, dismiss a complaint for administrative cause in accordance with § 8-113(a) of the Code at any time prior to the taking of testimony at a hearing. Administrative cause includes, but is not limited to, the following circumstances:

(1) The Law Enforcement Bureau has been unable to locate the complainant after diligent efforts to do so;

(2) Absent good cause, the complainant has repeatedly failed to appear at mutually agreed-upon appointments with the Law Enforcement Bureau or is unwilling to meet with the Law Enforcement Bureau, to provide requested documentation that is available to the complainant and that may be necessary for the case, or to attend a hearing;

(3) The complainant has repeatedly engaged in conduct which is disruptive to the orderly functioning of the Law Enforcement Bureau;

(4) The complainant is unwilling to accept any reasonable conciliation agreement, where the Law Enforcement Bureau's determination of reasonableness includes consideration of the nature of the alleged violation, the value of similar cases, the impact of the proposed agreement on the parties and the public, and potential litigation risks;

(5) Prosecution of the complaint will not serve the public interest. Without limitation, this includes those circumstances:

1. Where the evidence collected by the Law Enforcement Bureau indicates that further investigation is unlikely to result in a finding of probable cause;

2. Where, upon further investigation or discovery after a determination of probable cause, the evidence considered as a whole is no longer sufficient to warrant further prosecution;

3. Where the Law Enforcement Bureau determines that further investigation or prosecution of a case is likely to require a disproportionate investment of public resources relative to: the claims in the case, the potential remedies that may be available, or enforcement priorities identified by the Commission in a publicly-available strategic enforcement plan;

4. Where the complainant has previously filed a complaint or charge with any administrative agency under any federal law alleging an unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling with respect to the same grievance that is the subject of the complaint;

5. Where the passage of time or other factors have materially impaired the ability of one or more parties to prove claims or defenses; or

6. Where further prosecution of the complaint at the Commission poses an unavoidable risk of actual, potential, or perceived prejudice.

(6) The complainant requests dismissal, 180 days have elapsed since the filing of the complaint with the Law Enforcement Bureau, and the Law Enforcement Bureau finds that (i) the complaint has not been actively investigated and (ii) the respondent will not be unduly prejudiced thereby.

(b) *Mandatory dismissal for administrative cause.* The Law Enforcement Bureau must dismiss a complaint for administrative cause at any time prior to the filing of an answer by the respondent if the complainant requests such dismissal, unless the Law Enforcement Bureau has conducted an investigation of the complaint or has engaged the parties in conciliation after the time the complaint was filed.

(c) *Legal effect of dismissal for administrative cause.* A dismissal for administrative cause is without prejudice to filing a claim under § 8-502 of the Code.

(d) *Dismissal because the complaint is not within the jurisdiction of the Commission.* The Law Enforcement Bureau must dismiss a complaint in whole or in part where it concludes that the complaint or a portion thereof is not within the Commission's jurisdiction.

(e) *Dismissal for lack of probable cause.* If, after investigation, the Law Enforcement Bureau determines that probable cause does not exist to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling, the Bureau must dismiss the complaint in whole or in part as to such respondent.

(f) *Notification of dismissal.* When the Law Enforcement Bureau makes a determination pursuant to this section to dismiss a complaint, in whole or in part, it must promptly serve all parties, and OATH if the case is pending before OATH, with a formal notice of its determination, including a brief statement of the rationale for the dismissal. In addition, the Law Enforcement Bureau must simultaneously serve all parties with a notice of any preservation of claims, if applicable, and of the deadline and process for appeal.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-23 Administrative Appeal of Dismissal.

A complainant or respondent may appeal to the Office of the Chair for a review of a determination of the Law Enforcement Bureau to dismiss any portion of a complaint pursuant to 47 RCNY § 1-22.

(a) *Timing.* Within 30 days of service of the notice of dismissal, a notice of appeal must be mailed or hand delivered to the Office of the Chair and must be served on all other parties. A request for extension of the time to file a notice of appeal must be submitted in writing to the Office of the Chair, with copies to all other parties, and will only be granted for good cause. Untimely appeals will be dismissed, unless good cause for delay is shown.

(b) *Content of a notice of appeal.* A notice of appeal should clearly state that an appeal is being requested, the date of the Law Enforcement Bureau's notice of dismissal that is being appealed, and the case number. At the same time that a party files a notice of appeal, it may also state, in writing, its reasons for challenging the dismissal, or it may wait to do so in comments filed pursuant to 47 RCNY § 1-23(c).

(c) *Optional comments.* After a notice of appeal has been timely filed, the Office of the Chair must send a notice to all claimants, respondents, and necessary parties, setting a schedule for the optional submission of comments on the appeal.

(d) *Review by the Office of the Chair.* After the final deadline for the submission of comments pursuant to 47 RCNY § 1-23(c) has passed, the Office of the Chair must conduct a review of the Law Enforcement Bureau's investigation file, the Law Enforcement Bureau's notice of dismissal, and any comments submitted in a timely manner by complainants, respondents, and any other necessary parties pursuant to 47 RCNY § 1-23(c). The standard of review for an appeal is reasonableness as to findings of fact and *de novo* as to findings of law. After concluding the review, the Chair must issue an order affirming, reversing, or modifying the Law Enforcement Bureau's determination to dismiss, or remanding the matter for further investigation and action, and must, if applicable, provide notice of any right to further appeal. The Office of the Chair must serve a copy of such order on the Law Enforcement Bureau, complainant, respondent, and any other necessary parties.

(Added City Record 8/6/2019, eff. 9/5/2019)

Subchapter D: Investigatory Procedures

§ 1-31 Policy.

The Law Enforcement Bureau has discretion to use investigatory procedures that it determines will best facilitate accurate, orderly, and thorough fact-finding.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-32 Pre-complaint Investigations.

In addition to conducting investigations of allegations contained in complaints filed pursuant to 47 RCNY § 1-11 and 47 RCNY § 1-12, the Law Enforcement Bureau may investigate on its own initiative possible violations of the NYCHRL.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-33 Investigatory Demands.

(a) *General.* Except as otherwise limited by law, the Law Enforcement Bureau may (i) demand from any person or party the production of materials relevant to a Commission investigation, including but not limited to documents, electronically stored information, or other materials; (ii) conduct interviews or depositions of any person; and (iii) undertake testing and such other investigatory tasks as the Law Enforcement Bureau deems appropriate.

(b) *Demands for preservation of records.* The Law Enforcement Bureau is authorized to make demands for the preservation of records and for the continuation of the practice of making and keeping records as permitted by § 8-114(b) of the Code. Such demand for preservation of records is effective immediately at the time of service of the demand and will remain in effect until the termination of all proceedings relating to any complaint or civil action commenced, including after the time for appeal has expired, or if no complaint or civil action is filed, will expire two years after the date of service of the preservation demand. A demand for preservation must require that records preserved pursuant to the demand be made available for inspection by the Law Enforcement Bureau and/or be filed with the Law Enforcement Bureau.

For purposes of this provision, the term "records" means any form of recorded information, regardless of form or characteristics, including but not limited to books, papers, electronically-stored information, photographs, spreadsheets, graphs, maps, charts, drawings, audio recordings, video recordings, and machine-readable materials.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-34 Subpoenas.

(a) *General.* The Law Enforcement Bureau may issue and serve subpoenas ad testificandum and subpoenas duces tecum on any person. Subpoenas must be served in a manner prescribed by the CPLR.

(b) *Contents of a subpoena.* A subpoena must state with specificity (i) the form of evidence to be produced, including but not limited to testimony, documents, electronically stored information, or other materials; (ii) where applicable, the date ranges for which such evidence is sought; (iii) the deadline for production, which should be no less than 20 days from the date of service; (iv) where applicable, the format and manner in which evidence should be produced; and (v) information concerning whom to contact in the Law Enforcement Bureau with requests for extensions, inquiries, objections to a subpoena, and related matters. Where a subpoena demands the production of testimony, it must state the name of the subpoenaed person and the date, time, and location at which the person must appear.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-35 Objections to Investigatory Demands and Subpoenas.

(a) *Effect of Failing to Object.* Objections to an investigatory demand or subpoena that are not raised in accordance with this section, including by first raising objections with the Law Enforcement Bureau, may be deemed waived, absent a showing of good cause.

(b) *Initial Application to the Law Enforcement Bureau.* A person objecting to an investigatory demand or subpoena must confer in good faith with the Law Enforcement Bureau as soon as practicable and no later than 30 days after service of the investigatory demand or subpoena. The Law Enforcement Bureau may, in its discretion, extend the deadline for such objections.

(c) *Motion to the Office of the Chair.* If a conference with the Law Enforcement Bureau pursuant to 47 RCNY § 1-35(b) does not resolve a person's objections to an investigatory demand or subpoena, the person may file a letter motion with the Office of the Chair for a protective order within 14 days after the Law Enforcement Bureau provides notice of its decision on the movant's objections. Applications for an extension of the deadline for a motion for a protective order must be submitted to the Office of the Chair in writing and may be granted for good cause.

A motion for protective order must be served simultaneously on the Office of the Chair and the Law Enforcement Bureau and must include (i) a copy of the full investigatory demand or subpoena, (ii) confirmation that the movant conferred in good faith with the Law Enforcement Bureau pursuant to 47 RCNY § 1-35(b); and (iii) a statement of the specific portion or portions of the investigatory demand or subpoena to which the movant objects and the grounds for objection.

The filing of a motion with the Office of the Chair will stay the deadline for production of only those materials that are the subject of the motion for a protective order, until the motion is decided. The Law Enforcement Bureau has 14 days from service of the motion to file and serve its opposition on the movant and the Office of the Chair. The movant may file a reply within 7 days after the Law Enforcement Bureau's opposition is filed. The Chair must promptly issue an order on the motion. A protective order may deny, limit, or condition the use of any disclosure device and should be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person.

(d) *Judicial review of subpoenas.* Consistent with CPLR § 2304, after the Chair issues an order deciding a motion challenging a subpoena, the movant may seek review in state Supreme Court.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-36 Extensions of the Time to Comply With an Investigatory Demand or Subpoena.

A person seeking an extension of the time to comply with an investigatory demand or subpoena may, as soon as reasonably practicable prior to the expiration of the deadline to comply, submit a written request to the Law Enforcement Bureau stating the reasons that an extension is sought and the length of extension that is being requested. The Law Enforcement Bureau must promptly advise the person seeking an extension of its determination.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-37 Enforcement of Investigatory Demands and Subpoenas.

(a) *Investigatory Demands.* The Law Enforcement Bureau may file a letter motion to compel compliance with an investigatory demand with the Office of the Chair. Such motion must include a copy of the full investigatory demand and an affirmation stating efforts taken by the Law Enforcement Bureau to procure compliance with the demand, including efforts to confer with the subject of the demand. Opposition to a motion to compel compliance with an investigatory demand must be filed and served on the Law Enforcement Bureau and the Office of the Chair within 14 days of service of the motion. The Law Enforcement Bureau may file and serve a reply within 7 days of service after the opposition is filed. The Chair must promptly issue an order on the motion to compel.

In the event that a person fails to comply with an order compelling testimony or the production of evidence pursuant to an investigatory demand, the Chair may, on its own motion or at the request of the Law Enforcement Bureau, issue such order as may be just with regard to the non-compliance, including but not limited to: (i) holding that the issues to which the testimony or evidence are relevant will be resolved against the non-compliant person; (ii) prohibiting the non-compliant person from supporting or opposing designated claims or defenses or from introducing designated evidence or testimony into the record; or (iii) striking out claims, affirmative defenses, or pleadings or parts thereof.

(b) *Subpoena enforcement.* Proceedings to enforce subpoenas are governed by article 23 of the CPLR. The Law Enforcement Bureau may, in its discretion, file a letter motion to compel compliance with a subpoena with the Office of the Chair, or in state Supreme Court pursuant to CPLR § 2308(b). A motion to the Office of the Chair to compel compliance with a subpoena are governed by 47 RCNY § 1-37(a).

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-38 Injunctions and Temporary Restraining Orders.

Consistent with § 8-122 of the Code, if the Law Enforcement Bureau finds that a respondent or a person acting in concert with a respondent is acting in a manner tending to render ineffectual relief that the Commission could order after a hearing, the Commission may commence a special proceeding in state Supreme Court for an order to show cause to enjoin such conduct pursuant to CPLR article 63.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-39 Redactions.

In response to an investigatory demand or subpoena, unless otherwise ordered by the Law Enforcement Bureau, all documents produced in connection with an investigation or case at the Commission that contain an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, a financial-account number, immigration status, or employer ID number, must be redacted to include only (i) the last four digits of the social-security number, taxpayer-identification number, financial-account number, or employer ID number; (ii) the year of the individual's birth; and (iii) the minor's initials.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-40 Availability of Investigatory Materials Following Dismissal of the Complaint.

Within 30 days of the issuance of an order of the Law Enforcement Bureau dismissing the complaint, the complainant and respondent may examine certain materials and documentation from the Law Enforcement Bureau's investigation of the complaint. Such materials and documentation are limited to the factual information uncovered during the investigation that led to the determination and may include, among other things: (i) intake forms and documents submitted by a complainant during intake of a case; (ii) complaints, answers, position statements, and rebuttals filed by the parties; (iii) motions and other administrative case filings; (iv) requests for information, investigatory demands, document requests, and subpoenas, unless prohibited by law or an order of the Commission or a court; (v) responses to requests for information, investigatory demands, document requests, and subpoenas, unless prohibited by law or an order of the Chair or a court; (vi) notes and recordings of interviews with witnesses; (vii) notes pertaining to investigative work such as site visits; (viii) correspondence pre-dating a finding of probable cause (see 48 RCNY § 2-29(b)(1)); (ix) call logs; (x) the results of electronic and internet searches; (xi) photographs, audio recordings, and video recordings; and (xii) documents pertaining to proceedings in other administrative or court proceedings involving any party to the case.

Notwithstanding the foregoing, the following materials are not subject to disclosure absent an order from a court or tribunal of competent jurisdiction: (i) materials that are protected by privilege under the CPLR, including attorney work product and attorney-client communications; (ii) any information about witnesses who request anonymity, unless the Law Enforcement Bureau relies on such witnesses in issuing a finding of probable cause or in prosecuting a case before OATH; (iii) materials that are not material or necessary, within the meaning of CPLR article 31; (iv) correspondence post-dating a finding of probable cause (see 48 RCNY § 2-29(b)(1)); and (v) notes and correspondence related to settlement negotiations.

The Law Enforcement Bureau assesses whether production of sensitive information is appropriate, including production of financial information, medical information, and correspondence with treatment providers. Redactions are made where required by law and to prevent harassment.

(Added City Record 8/6/2019, eff. 9/5/2019)

Subchapter E: Determination of Whether Probable Cause Exists

§ 1-41 Basis of Determination.

The Law Enforcement Bureau must find probable cause exists to credit the allegations of a complaint that an unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling has been or is being committed by a respondent where a reasonable person, looking at the evidence as a whole, could reach the conclusion that it is more likely than not that the unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling was committed.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-42 Notice of Determination.

The Law Enforcement Bureau must serve the complainant and respondent with written notice of its determination as to whether probable cause exists. A determination to dismiss the complaint upon a finding of no probable cause must state the reasons for the Law Enforcement Bureau's conclusion.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-43 Review of Determination.

(a) *No review of probable cause determination.* A determination that probable cause exists to credit some or all of the allegations of a complaint is not subject to interlocutory review or appeal.

(b) *Review of determination of no probable cause.* A determination that dismisses a complaint, in whole or in part, on a finding of no probable cause is reviewable in accordance with 47 RCNY § 1-23.

(c) *Withdrawal of a determination of probable cause.* Prior to a hearing before OATH, the Law Enforcement Bureau may withdraw a probable cause determination if it determines a reasonable person looking at the evidence as a whole could no longer reach the conclusion that it is more likely than not that the unlawful discriminatory practice, act of discriminatory harassment or violence, or act of bias-based profiling was committed.

(Added City Record 8/6/2019, eff. 9/5/2019)

Subchapter F: Settlement and Conciliation

§ 1-51 Settlement.

(a) *General.* A complainant, respondent, or any other necessary party may, at any time, enter into an agreement to settle a case.

(b) *Mediation.* The Law Enforcement Bureau may, in its discretion, refer a case to the Office of Mediation and Conflict Resolution for mediation of a settlement agreement as provided in Subchapter H of this chapter.

(c) *Legal effect of settlement agreement.* Where a complainant agrees pursuant to a settlement agreement to withdraw a complaint, the legal effect of such withdrawal is governed by 47 RCNY § 1-21(a).

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-52 Conciliation.

(a) *General.* The Law Enforcement Bureau, complainant, respondent and any other necessary parties may, at any time after the filing of a complaint, agree to a conciliated resolution of a case.

(b) *Mediation.* The Law Enforcement Bureau may, in its discretion, refer a case to the Office of Mediation and Conflict Resolution for mediation of a conciliation agreement as provided in Subchapter H of this chapter.

(c) *Conciliation agreements.*

1. *Form and content.* Every conciliation agreement must contain an acknowledgement of the execution of the agreement by the Law Enforcement Bureau and each complainant, respondent, and other necessary party who is party to the agreement. The provisions of the conciliation agreement may be such as are agreed to by the parties to the agreement.

2. *Entry of order by Commission.* When a conciliation agreement has been fully executed, the Law Enforcement Bureau must promptly forward such agreement to the Chair. The signature of the Chair on a conciliation agreement with the notation "SO ORDERED" will be construed to be an order of the Commission pursuant to § 8-115(d) of the Code, directing the parties to such agreement to perform each and every obligation under such conciliation agreement in the time and manner set forth in the agreement. The Chair must deliver the order of the Commission to the Law Enforcement Bureau for service on the parties to the agreement.

3. *Effective date.* A conciliation agreement is binding at the time that it is so-ordered by the Chair, after it has been executed by the parties to the agreement.

(d) *Legal effect of conciliation.* Where a complaint is withdrawn pursuant to a conciliation agreement, the legal effect of such withdrawal is governed by 47 RCNY § 1-21(a).

(Added City Record 8/6/2019, eff. 9/5/2019)

Subchapter G: Adjudication Procedures

§ 1-61 Referral of Complaints to OATH.

(a) *Filing a notice of referral to OATH.* When the Law Enforcement Bureau determines that a case is ready for adjudication, the Bureau must refer the case to OATH by serving a notice of referral on the complainant, the respondent, and any necessary party, and filing it, along with copies of the pleadings, with OATH.

(b) *Contents of a notice of referral.* The notice of referral must include the last known address and telephone number of each complainant, respondent, and necessary party and must state whether the respondent has complied with the requirement of 47 RCNY § 1-14 concerning the filing of an answer and, if not, whether the Law Enforcement Bureau seeks to have respondent held in default. The notice of referral must also inform the complainant of its right to intervene pursuant to OATH rules (see 48 RCNY § 2-25). No material relating to the investigation, the reasoning supporting a finding of probable cause, or the substance of conciliation efforts may be filed with OATH.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-62 Incorporation of OATH Rules of Practice for Cases Pending Before OATH.

Except as otherwise provided pursuant to these rules, the Commission adopts OATH's rules of practice relating to hearing and pre-hearing procedures (48 RCNY Chapter 1 and 48 RCNY Chapter 2, Subchapter C), which apply to all cases during the period that they are pending before OATH.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-63 Interlocutory Review of Administrative Law Judge Decisions and Orders.

(a) *General.* A party may seek interlocutory review by the Office of the Chair of a decision or order of an Administrative Law Judge, when the presiding Administrative Law Judge has certified a question for review. Any question not certified by the presiding Administrative Law Judge may be raised by a party in comments responding to a report and recommendation pursuant to 47 RCNY § 1-66. Any challenge that is certified by the Administrative Law Judge and entertained by the Office of the Chair will preclude further review of that issue by the Commission. The failure of a party to challenge a decision or order of an Administrative Law Judge, other than a report and recommendation, will not preclude that party from making such challenge in comments responding to the report and recommendation pursuant to 47 RCNY § 1-66, provided that the party timely made its objection known to the Administrative Law Judge and that the grounds for such challenge are limited to those set forth to the Administrative Law Judge.

(b) *Review of motions for protective orders filed at OATH.* Within seven days of being served with a decision by an Administrative Law Judge to grant or deny any portion of a motion for a protective order pursuant to 47 RCNY § 1-65, the person seeking the protective order may, as of right, seek review of such decision by the Office of the Chair. A motion for interlocutory review of an OATH decision on a motion for a protective order must include (i) copies of all original motion papers filed with OATH, (ii) a copy of the decision issued by the Administrative Law Judge on the original motion, and (iii) a statement of the prejudice that would result if the requested relief is denied. After the motion is served, the Office of the Chair will set deadlines for opposition and reply papers.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-64 Redacted Filings at OATH.

Unless otherwise ordered by an Administrative Law Judge or the Chair, all documents filed in connection with the adjudication of a case and that contain an individual's social-security number, taxpayer-identification number, or birth date, the name of an individual known to be a minor, a financial-account number, or employer ID number, must be redacted to include only (i) the last four digits of the social-security number, taxpayer-identification number, financial-account number, or employer ID number; (ii) the year of the individual's birth; and (iii) the minor's initials.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-65 Protective Orders.

(a) *General.* An Administrative Law Judge may at any time on his or her own initiative, or on the motion of any party or any person from whom or about whom a disclosure is sought, make a protective order denying, limiting, or conditioning the use of any disclosure device. Such order should be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person.

(b) *Interlocutory review.* Interlocutory review of a decision to grant or deny a motion for a protective order, in whole or in part, is governed by 47 RCNY § 1-63(b).

(c) *Suspension of disclosure obligations while a motion for protective order is pending.* Service of a motion for a protective order will stay the obligation to disclose the particular materials in dispute until the date specified in an order on the motion issued by an Administrative Law Judge pursuant to 47 RCNY § 1-65(a), or where interlocutory review of such order is sought pursuant to 47 RCNY § 1-63(b), by the Chair on the motion for interlocutory review.

(d) *Materials related to immigration status.* Materials related to immigration status are not subject to disclosure or discovery absent an order to compel issued by the Chair. A party seeking production of such materials may move the Administrative Law Judge for a recommendation to the Chair for an order to compel. When deciding a motion for an order to compel the production of such materials, the Chair must consider the following factors: whether the materials are relevant and necessary to a claim or defense, and whether production of the materials will subject a party to annoyance, embarrassment, oppression, undue burden, or prejudice (including in terrorem effect). Notwithstanding the foregoing, an individual may voluntarily produce or authorize the production of information about the individual's own immigration status.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-66 Post-hearing Comments.

(a) *Notice of right to file comments.* After receiving a report and recommendation from OATH, the Office of the Chair must promptly issue a notice to all parties advising of the deadline to file written comments with the Office of the Chair.

(b) *Timing, content, and service of written comments.* All written comments concerning a report and recommendation must be submitted within 30 days of service of the notice of the right to file such comments, unless an extension of time is granted pursuant to 47 RCNY § 1-66(c). A party's written comments concerning a report and recommendation should raise any objections and should not exceed the scope of issues reflected in the OATH hearing record. Objections not raised in the comments may be deemed waived in any further proceedings. Comments must be served on all other parties and the Office of the Chair. Reply comments are not permitted, unless ordered by the Office of the Chair.

(c) *Extensions of the time to file comments.* A party seeking an extension of the time to file comments to a report and recommendation should promptly file with the Office of the Chair a written application for an extension, stating the date to which an extension is sought and the basis for the extension request. The Office of the Chair may grant a request for extension for good cause.

(d) *Notice of application for attorney's fees.* A complainant must clearly provide notice of its intent to seek attorney's fees in comments to a report and recommendation. Fee applications are governed by Subchapter I of this chapter.

(e) *Amicus comments.* Within 30 days after a report and recommendation is issued by OATH, a non-party may submit a written request to the Office of the Chair for leave to file comments as amicus curiae. A request to file amicus comments may not exceed 3 pages and should include a concise statement of the identity of the amicus curiae, its interest in the case, and the reasons why amicus comments would serve the public interest and aid the Commission's resolution of a case. The Office of the Chair has discretion to grant or deny a request to file amicus comments. Where a request to file amicus comments is granted, the comments must be submitted within 30 days and may not exceed 8 pages.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-67 Review of a Report and Recommendation by the Office of the Chair.

(a) *General.* The Office of the Chair will commence consideration of a report and recommendation after it receives the report and recommendation and hearing record from OATH.

(b) *Recommended decisions and orders not completely disposing of a complaint.* The Chair may not issue a decision and order that is the subject of a report and recommendation which, if adopted, would not resolve the complaint in its entirety, unless the Administrative Law Judge certifies the portion of the case proposed to be decided by the report and recommendation to the Chair for immediate consideration. Dismissal of all or part of a case by an Administrative Law Judge has the effect of a report and recommendation for the purpose of this section.

(c) *Decisions and orders.*

1. *Decisions involving no attorney's fees.* Where there is no finding of liability or where notice of an application for attorney's fees has not been properly filed, the Chair will issue a decision and order based on a review of the report and recommendation; the hearing record from OATH; comments on the report and recommendation; any motion papers filed at OATH and OATH decisions bearing on the merits of the case; and any supplemental evidence gathered by the Office of the Chair pursuant to 47 RCNY § 1-69.

2. *Decisions involving attorney's fees.* Where a complainant has properly filed notice of an application for attorney's fees and where there is a finding of liability, the Chair will issue a memorandum decision based on a review of the report and recommendation; the hearing record from OATH; comments on the report and recommendation; any motion papers filed at OATH and OATH decisions bearing on the merits of the case; and any supplemental evidence gathered by the Office of the Chair pursuant to 47 RCNY § 1-69. In addition, after briefing on attorney's fees has closed, the Chair must issue a decision and order resolving all issues of liability, damages, civil penalties, and attorney's fees.

3. *Orders for relief.* Upon a finding of liability, the Chair must order the respondent to cease and desist violating the NYCHRL. The Chair may also impose such additional relief as the Chair deems appropriate, in accordance with § 8-120 of the Code. The decision and order must be served on the

Law Enforcement Bureau, complainant, respondent, and any necessary parties.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-68 Relief from Default After Issuance of a Report and Recommendation.

A respondent against whom a default has been entered pursuant to § 2-27(a) of OATH's rules (48 RCNY § 2-27(a)) and who has not already moved for relief from default pursuant to § 2-27(b) of OATH's rules (48 RCNY § 2-27(b)), may file a letter motion with the Office of the Chair to open the default at any time after the issuance of a report and recommendation and prior to the issuance by the Commission of a final decision and order. A motion to reopen must show either (a) lack of service or (b) both a showing of good cause for the default and a potentially meritorious defense to the complaint. The Office of the Chair will set deadlines for opposition and reply to a motion to open a default. In granting a motion to open a default, the Chair may impose such terms and conditions as the Chair deems to be just and equitable.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-69 Reopening of Proceeding.

Prior to the commencement of a judicial proceeding under § 8-123 of Code, the Chair may, on its own or on the motion of any party, order any proceeding reopened or vacate or modify any order or determination, whenever justice so requires.

In addition, the Office of the Chair may order supplemental briefing or hold a supplemental hearing after the issuance of a report and recommendation and a hearing at OATH. A request from a party seeking leave to file supplemental briefing or for a supplemental hearing must be included in any written comments filed under 47 RCNY § 1-66.

(Added City Record 8/6/2019, eff. 9/5/2019)

Subchapter H: Mediation

§ 1-71 Referrals for Mediation.

The Law Enforcement Bureau may suggest or a respondent, complainant, or necessary party may request that a case be referred to the Office of Mediation and Conflict Resolution for mediation of a settlement or conciliation agreement. If complainant, respondent, and all other necessary parties agree to enter into mediation, the Law Enforcement Bureau may, in its discretion, refer a case to the Office of Mediation and Conflict Resolution.

(Added City Record 8/6/2019, eff. 9/5/2019)

Subchapter I: Attorney's Fees

§ 1-81 Applications for Attorney's Fees.

A complainant may apply to the Office of the Chair for an award of attorney's fees within 14 days of service of a memorandum decision holding a respondent liable for an unlawful discriminatory practice, act of discriminatory harassment, or act of bias-based profiling. An application for attorney's fees must include a memorandum and copies of time records, accompanied by an affidavit or affirmation. A respondent may file an opposition to an application for an award of attorney's fees within 14 days of service of the complainant's application for attorney's fees. The fee applicant's reply, if any, must be filed within 7 days of service of the respondent's opposition. In addition to filing with the Office of the Chair, copies of all papers relating to an application for an award of attorney's fees must also be served on the opposing party and the Law Enforcement Bureau. The Chair or the Chair's designee will decide an application for attorney's fees in a supplemental decision and order.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-82 Assessment of an Award of Attorney's Fees.

Attorney's fees will generally be calculated under the lodestar method, multiplying the number of hours reasonably expended on the case by a reasonable hourly rate. In assessing the amount of time reasonably spent on a matter, the Commission may consider, among other things, the novelty and difficulty of the issues presented in the case and the degree of success ultimately achieved, including whether the litigation acted as a catalyst to effect policy change on the part of the respondent, regardless of whether that change has been implemented voluntarily. In assessing a reasonable hourly rate, the Commission may consider, among other things, the skill and experience of the attorney, and the hourly rate typically charged by attorneys of similar skill and experience litigating similar cases in New York county.

(a) *Billing judgment.* An applicant seeking attorney's fees should make a good faith effort to exclude from its fee request time for work that is excessive, redundant, or otherwise unnecessary. Regardless of who performs the work, tasks which are clerical or secretarial in nature should be billed at an administrative rate and tasks which could be performed by a paralegal should be billed as such.

(b) *Time records.* Time records should be set forth with sufficient particularity to enable an assessment of the accuracy of the records and whether the amount of time expended was reasonable. The Commission may reduce a fee award where time records do not adequately describe the nature of the work performed.

(Added City Record 8/6/2019, eff. 9/5/2019)

§ 1-83 Input from the Law Enforcement Bureau.

On its own accord or at the request of the Office of the Chair, the Law Enforcement Bureau may respond to a complainant's application for attorney's fees. The deadline for the Law Enforcement Bureau to file such a response is 20 days after the deadline for the complainant's reply papers, unless otherwise specified by the Office of the Chair.

(Added City Record 8/6/2019, eff. 9/5/2019)

Subchapter J: Judicial Review

§ 1-91 Judicial Review of Final Orders of the Commission.

Any complainant, respondent or other person aggrieved by a final order issued pursuant to § 8-120 or § 8-126 of the Code or an order issued pursuant to § 8-113(f) may obtain judicial review in accordance with § 8-123.

(Added City Record 8/6/2019, eff. 9/5/2019)

Subchapter K: Petitions for Agency Rulemaking

§ 1-101 Procedure for Submitting Petitions.

(a) *Content of petitions.* Any person may petition the Commission to consider the adoption of a rule. The petition should be typewritten and must include the following information:

(1) A short statement of the purpose of the proposed rule, including an explanation of the problem or issue that the rule is intended to address and an explanation of how the proposed rule would serve to address the identified problem or issue;

(2) Proposed language for the rule;

(3) Notice of any local, state, or federal law or regulations of which the person is aware that may implicate the rule, including any laws or regulations that may necessitate such a rule, create potential issues of preemption, or could otherwise impact the application of the rule;

(4) A short statement of any additional considerations that the person believes are relevant to the Commission's determination on the petition;

(5) The name, address, telephone number, and email address of the person filing the petition or the person's authorized representative;

(6) The signature of the person filing the petition, or their representative.

(b) *Submission of petitions.* All petitions must be submitted to the Office of the Chair at the email address identified on the Commission's website or by mailing or delivering the petition to the Office of the Chair.

(c) *Notice of change of contact information.* The person filing the petition must promptly notify the Commission of any change to their name, address, or telephone number during the period that the petition is under consideration by the Commission.

(Added City Record 8/4/2022, eff. 9/3/2022)

§ 1-102 Commission Procedures for Considering and Responding to Petitions for Rulemaking.

(a) *Requests for supplemental information.* The Commission will determine whether additional information is required that would assist the Commission in assessing the petition and will promptly contact the person for any additional information that it determines may be helpful to its determination.

(b) *Timing of determinations.* If a petition is submitted in proper form, as required by 47 RCNY § 1-101, the Commission will provide written notice of its determination on the petition within 60 days from the date of receipt of the petition, or within 60 days of the receipt of supplemental information from the petitioner if the Commission requests such information pursuant to subdivision (a) of this section.

(c) *Determinations.* The Commission has full discretion to grant or deny any portion of a petition for proposed rulemaking and may amend or modify the petition's proposed language. If any portion of a petition is approved by the Commission for future rulemaking, the Commission will provide the petitioner with a non-binding estimate of the timeframe for the proposed rule's publication. If a petition is denied in full, the Commission will take no further action.

(Added City Record 8/4/2022, eff. 9/3/2022)

Chapter 2: Unlawful Discriminatory Practices

§ 2-01 Definitions.

For purposes of this chapter,

Adverse employment action. "Adverse employment action" refers to any action that negatively affects the terms and conditions of employment.

Applicant. "Applicant" refers to persons seeking initial employment, and current employees who are seeking or being considered for promotions or transfers.

Article 23-A analysis. "Article 23-A analysis" refers to the process required under subdivisions 9, 10, 11, and 11-a of § 8-107 of the Administrative Code to comply with Article 23-A of the New York Correction Law.

Article 23-A factors. "Article 23-A factors" refers to the factors that employers must consider concerning applicants' and employees' conviction histories under Section 753 of Article 23-A of the New York Correction Law.

Business day. "Business day" means any day except for Saturdays, Sundays, and all legal holidays of the City of New York.

Childbirth. "Childbirth" refers to labor or childbirth, whether or not it results in a live birth.

Cisgender. "Cisgender" is a term used to describe a person whose gender identity conforms with their sex assigned at birth.

Commission. "Commission" means the New York City Commission on Human Rights.

Conditional offer of employment. "Conditional offer of employment," as used in § 8-107(11-a) of the Administrative Code and 47 RCNY § 2-04 for purposes of establishing when an applicant's criminal history can be considered by an employer, refers to an offer of employment, promotion or transfer. A conditional offer of employment can only be revoked based on one of the following:

1. The results of a criminal background check, and only after the "Fair Chance Process," as defined in this section, has been followed.

2. The results of a medical exam as permitted by the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101 et seq.

3. Other information the employer could not have reasonably known before making the conditional offer if, based on the information, the employer would not have made the offer and the employer can show the information is material.

For temporary help firms, a conditional offer is the offer to place an applicant in the firm's labor pool, which is the group of individuals from which the firm selects candidates to send for job opportunities.

Consumer credit history. "Consumer credit history" is an individual's credit worthiness, credit standing, credit capacity, or payment history, as indicated by (i) a consumer credit report, which shall include any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, credit capacity or credit history; (ii) a consumer's credit score; or (iii) information an employer obtains directly from the individual regarding (a) details about credit accounts, including the individual's number of credit accounts, late or missed payments, charged-off debts, debt collection lawsuits, nonpayment lawsuits, items in collections, credit limit, prior credit report inquiries, or (b) bankruptcies, judgments, or liens.

Consumer reporting agency. "Consumer reporting agency" is a person or entity that provides reports containing information about an individual's

credit worthiness, credit standing, credit capacity, or payment history. A consumer reporting agency includes any person or entity that, for monetary fees, dues, or on a cooperative nonprofit basis, engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information about consumers for the purpose of furnishing consumer reports or investigative consumer reports to third parties. A person or entity need not regularly engage in assembling and evaluating consumer credit history to be considered a consumer reporting agency.

Conviction history. "Conviction history" refers to records of an individual's conviction of a felony, misdemeanor, or unsealed violation as defined by New York law or federal law, or the law of the state in which the individual was convicted.

Cooperative dialogue. "Cooperative dialogue" refers to the process by which a covered entity and a person entitled to an accommodation, or who may be entitled to an accommodation under the law, engage in good faith in a written or oral dialogue concerning the person's accommodation needs; potential accommodations that may address the person's accommodation needs, including alternatives to a requested accommodation; and the difficulties that such potential accommodations may pose for the covered entity.

Criminal background check. "Criminal background check" refers to when an employer, employment agency or agent thereof orally or in writing:

1. Asks a person whether or not they have a criminal record; or

2. Searches for publicly available records, including through a third party, such as a consumer reporting agency, the Internet, or private databases, for a person's criminal history.

Criminal history. "Criminal history" refers to records of an individual's convictions, unsealed violations, non-convictions, and/or currently pending criminal case(s).

Direct relationship. "Direct relationship" refers to a finding that the nature of the criminal conduct underlying a conviction has a direct bearing on the fitness or ability of an applicant or employee to perform one or more of the duties or responsibilities necessarily related to the license, registration, permit, employment opportunity, or terms and conditions of employment in question.

Domestic partners. "Domestic partners" means persons who have a registered domestic partnership, which shall include any partnership registered pursuant to Chapter 2 of Title 3 of the Administrative Code, any partnership registered in accordance with executive order number 123, dated August 7, 1989, and any partnership registered in accordance with executive order number 48, dated January 7, 1993, and persons who are members of a marriage that is not recognized by the state of New York, a domestic partnership, or a civil union, lawfully entered into in another jurisdiction.

Employer. "Employer" refers to an employer as defined by § 8-102(5) of the Administrative Code.

Fair Chance Process. "Fair Chance Process" refers to the postconditional offer process mandated by § 8-107(11-a) of the Administrative Code when employers elect to withdraw a conditional offer of employment or deny a promotion or transfer based on an applicant's conviction history.

Gender. "Gender" includes actual or perceived sex, gender identity, and gender expression including a person's actual or perceived gender-related self-image, appearance, behavior, expression, or other gender-related characteristic, regardless of the sex assigned to that person at birth.

Gender expression. "Gender expression" is the representation of gender as expressed through one's name, pronouns, clothing, hairstyle, behavior, voice, or similar characteristics. Gender expression may or may not conform to gender stereotypes, norms, and expectations in a given culture or historical period. Terms associated with gender expression include, but are not limited to, androgynous, butch, female/woman/feminine, femme, gender non-conforming, male/man/masculine, or non-binary.

Gender identity. "Gender identity" is the internal deeply-held sense of one's gender which may be the same as or different from one's sex assigned at birth. A person's gender identity may be male, female, neither or both, i.e., non-binary. Terms associated with gender identity include, but are not limited to, agender, bigender, female/woman/womxn/feminine, female to male (FTM), gender diverse, gender fluid, gender queer, male/man/masculine, male to female (MTF), man of trans experience, pangender, or woman of trans experience.

Gender non-conforming. "Gender non-conforming" is a term used to describe a person whose gender expression differs from gender stereotypes, norms, and expectations in a given culture and historical period. Terms associated with gender non-conforming include, but are not limited to, androgynous, gender expansive, gender variant, or gender diverse.

High degree of public trust. "High degree of public trust" as used in 47 RCNY § 2-05 refers only to the following City agency positions: (i) agency heads and directors; (ii) Commissioner titles, including Assistant, Associate, and Deputy Commissioners; (iii) Counsel titles, including General Counsel, Special Counsel, Deputy General Counsel, and Assistant General Counsel, that involve high-level decision-making authority; (iv) Chief Information Officer and Chief Technology Officer titles; and (v) any position reporting directly to the head of an agency.

Human Rights Law. "Human Rights Law" refers to Title 8 of the Administrative Code.

Intelligence information. "Intelligence information" means records and data compiled for the purpose of criminal investigation or counterterrorism, including records and data relating to the order or security of a correctional facility, reports of informants, investigators or other persons, or from any type of surveillance associated with an identifiable individual, or investigation or analysis of potential terrorist threats.

Inquiry. "Inquiry," when used in connection with criminal history, refers to any oral or written question asked for the purpose of obtaining a person's criminal history, including without limitation, questions in a job interview about an applicant's criminal history, and any search for a person's criminal history, including through the services of a third party, such as a consumer reporting agency.

Intersex. "Intersex" is a term used to refer to a person whose sex characteristics (chromosomes, hormones, gonads, genitalia, etc.) do not conform with a binary construction of sex as either male or female.

Lactation room. "Lactation room" refers to a sanitary place, other than a restroom, that can be used to express breast milk shielded from view and free from intrusion and that includes at minimum an electrical outlet, a chair, a surface on which to place a breast pump and other personal items, and nearby access to running water.

Licensing agency. "Licensing agency" refers to any agency or employee thereof that is authorized to issue any certificate, license, registration, permit or grant of permission required by the law of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business or profession.

Members. "Members" means individuals belonging to any class of membership offered by the institution, club, or place of accommodation including, but not limited to, full membership, resident membership, nonresident membership, temporary membership, family membership, honorary membership, associate membership, membership limited to use of dining or athletic facilities, and membership of members' minor children or spouses or domestic partners.

National security information. "National security information" means any knowledge relating to the national defense or foreign relations of the United States, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States government and is defined as such by the United States government and its agencies and departments.

Non-binary. "Non-binary" is a term used to describe a person whose gender identity is not exclusively male or female. For example, some people have a gender identity that blends elements of being a man or a woman or a gender identity that is neither male nor female.

Non-conviction. "Non-conviction" means any arrest or criminal accusation, not currently pending, that was concluded in one of the following ways:

1. Termination in favor of the individual, as defined by New York Criminal Procedure Law ("CPL") Section 160.50, even if not sealed;
2. Adjudication as a youthful offender, as defined by CPL Section 720.35, even if not sealed;
3. Conviction of a non-criminal offense that has been sealed under CPL Section 160.55; or
4. Convictions that have been sealed under CPL Section 160.58.

"Non-conviction" includes a disposition of a criminal matter under federal law or the law of another state that results in a status comparable to a "non-conviction" under New York law as defined in this section.

Payment directly from a nonmember. "Payment directly from a nonmember" means payment made to an institution, club or place of accommodation by a nonmember for expenses incurred by a member or nonmember for dues, fees, use of space, facilities, services, meals or beverages.

Payment for the furtherance of trade or business. "Payment for the furtherance of trade or business" means payment made by or on behalf of a trade or business organization, payment made by an individual from an account which the individual uses primarily for trade or business purposes, payment made by an individual who is reimbursed for the payment by the individual's employer or by a trade or business organization, or other payment made in connection with an individual's trade or business, including entertaining clients or business associates, holding meetings or other business-related events.

Payment indirectly from a nonmember. "Payment indirectly from a nonmember" means payment made to a member or nonmember by another nonmember as reimbursement for payment made to an institution, club or place of accommodation for expenses incurred for dues, fees, use of space, facilities, meals or beverages.

Payment on behalf of a nonmember. "Payment on behalf of a nonmember" means payment by a member or nonmember for expenses incurred for dues, fees, use of space, facilities, services, meals or beverages by or for a nonmember.

Per se violation. "Per se violation" refers to an action or inaction that, standing alone, without reference to additional facts, constitutes a violation of Title 8 of the Administrative Code, regardless of whether any adverse employment action was taken or any actual injury was incurred.

Pregnancy. "Pregnancy" refers to being pregnant, and symptoms of pregnancy, including, without limitation, nausea, morning sickness, dehydration, increased appetite, swelling of extremities, and increased body temperature.

Regular meal service. "Regular meal service" means the provision, either directly or under a contract with another person, of breakfast, lunch, or dinner on three or more days per week during two or more weeks per month during six or more months per year.

Regularly receives payment. An institution, club or place of accommodation "regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages directly or indirectly from or on behalf of nonmembers for the furtherance of trade or business" if it receives as many such payments during the course of a year as the number of weeks any part of which the institution, club or place of accommodation is available for use by members or non members per year.

Related medical condition. "Related medical condition" refers to any medical condition that is related to or caused by pregnancy or childbirth or the state of seeking to become pregnant, including, without limitation, infertility, gestational diabetes, pregnancy-induced hypertension, hyperemesis, preeclampsia, depression, miscarriage, lactation, and recovery from childbirth, miscarriage, and termination of pregnancy.

Sex. "Sex" is a combination of several characteristics, including but not limited to, chromosomes, hormones, internal and external reproductive organs, facial hair, vocal pitch, development of breasts, and gender identity.

Sexual or reproductive health decisions. "Sexual or reproductive health decisions" refers to any decision by an individual to receive or not to receive services, which are arranged for or offered or provided to individuals relating to sexual or reproductive health, including the reproductive system and its functions. Such services include, but are not limited to, fertility-related medical procedures, sexually transmitted disease prevention, testing, and treatment, and family planning services and counseling, such as birth control drugs and supplies, emergency contraception, sterilization procedures, pregnancy testing, and abortion.

Statement. "Statement," when used in connection with criminal history, refers to any communications made, orally or in writing, to a person for the purpose of obtaining criminal history, including, without limitation, stating that a background check is required for a position.

Stop Credit Discrimination in Employment Act. "Stop Credit Discrimination in Employment Act" refers to Local Law No. 37 of 2015, codified in §§ 8-102(29) and 8-107(9)(d), (24) of the Administrative Code of the City of New York.

Temporary help firms. "Temporary help firms" are businesses that recruit, hire, and assign their own employees to perform work or services for other organizations, to support or supplement the other organization's workforce, or to provide assistance in special work situations such as, without limitation, employee absences, skill shortages, seasonal workloads, or special assignments or projects.

Terms and conditions. "Terms and conditions" means conditions of employment, including but not limited to hiring, termination, transfers, promotions, privileges, compensation, benefits, professional development and training opportunities, and job duties.

Trade secret. "Trade secret" means information that: (i) derives significant independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy, both within the workplace and in the public; and (iii) can reasonably be said to be the end product of significant innovation. The term "trade secret" does not include general proprietary company information such as the information contained in handbooks and policies. The term "regular access to trade secrets" does not include access to or the use of client, customer, or mailing lists or other information regularly collected in the course of business. In considering whether information constitutes a trade secret for the purposes of an exemption under § 8-107(24)(b)(2)(E) of the Administrative Code, the Commission will consider various factors, including: (1) efforts made by the employer to protect and develop such information for the purpose of increasing competitive advantage; (2) whether the information was regularly shared with entry level and non-salaried employees and supervisors or managers of such employees; (3) what efforts would be required to replicate such information by someone knowledgeable within the field; (4) the value of the information to competitors; and (5) the amount of money and effort expended by the employer to develop the information.

Transgender. "Transgender" – sometimes shortened to "trans" – is a term used to describe a person whose gender identity does not conform with the sex assigned at birth.

(Amended City Record 7/6/2017, eff. 8/5/2017; amended City Record 11/24/2017, eff. 12/24/2017; amended City Record 2/7/2019, eff. 3/9/2019; amended City Record 3/3/2021, eff. 4/2/2021)

§ 2-02 Severability.

If any provision of these Regulations or the application thereof is held invalid, the remainder of these Regulations shall not be affected by such holding and shall remain in full force and effect.

§ 2-03 Exemption of Certain Places of Public Accommodations in Relation to Sex Discrimination.

(a) Dressing rooms, toilets and shower rooms containing multiple facilities, and appurtenant rooms and facilities, and turkish baths and saunas, shall be exempt from the provisions of § 8-107, Paragraph 2 of the Administrative Code insofar as the use of such accommodations is restricted to one sex. This exemption shall not apply to swimming pools and other facilities for swimming.

(b) Rooming houses or residence hotels in which rental is restricted to one sex shall be exempt from the provisions of § 8-107, Paragraph 2 of the Administrative Code if such accommodation is regularly occupied on a permanent, as opposed to transient, basis by the majority of its guests.

(c) Lodging facilities in which the sleeping rooms and/or bathrooms are used in common, such as missions or dormitories designed for occupancy by members of the same sex, shall be exempt from the provisions of § 8-107, Paragraph 2 of the Administrative Code insofar as members of one sex are excluded from such accommodations.

§ 2-04 Prohibitions on Discrimination Based on Criminal History.

47 RCNY § 2-04(a) through 2-04(g) relate to prohibitions on discrimination in employment only. 47 RCNY § 2-04(h) relates to prohibitions on discrimination in licensing only. 47 RCNY § 2-04(i) relates to enforcement of violations of the Human Rights Law under this section in employment and licensing.

(a) *Per Se Violations.* The Commission has determined that the following are per se violations of §§ 8-107(10), (11) or (11-a) of the Human Rights Law (regardless of whether any adverse employment action is taken against an individual applicant or employee), unless an exemption listed under subdivision (g) of this section applies:

(1) Declaring, printing, or circulating, or causing the declaration, printing, or circulation of, any solicitation, advertisement, policy or publication that expresses, directly or indirectly, orally or in writing, any limitation or specification in employment regarding criminal history. This includes, but is not limited to, advertisements and employment applications containing phrases such as: "no felonies," "background check required," and "must have clean record."

(2) Using applications for employment that require applicants to either grant employers permission to run a background check or provide information regarding criminal history prior to a conditional offer.

(3) Making any statement or inquiry relating to the applicant's pending arrest or criminal conviction before a conditional offer of employment is extended.

(4) Using within the City a standard form, such as a boilerplate job application, intended to be used across multiple jurisdictions, that requests or refers to criminal history. Disclaimers or other language indicating that applicants should not answer specific questions if applying for a position that is subject to the Human Rights Law do not shield an employer from liability.

(5) Failing to comply with requirements of § 8-107(11-a) of the Human Rights Law, when they are applicable: (1) to provide the applicant a written copy of any inquiry an employer conducted into the applicant's criminal history; (2) to share with the applicant a written copy of the employer's Article 23-A analysis; or (3) to hold the prospective position open for at least three business days from the date of an applicant's receipt of both the inquiry and analysis.

(6) Requiring applicants or employees to disclose an arrest that, at the time disclosure is required, has resulted in a non-conviction as defined in 47 RCNY § 2-01.

(b) *Criminal Background Check Process.* An employer, employment agency, or agent thereof may not inquire about an applicant's criminal history or request permission to run a criminal background check until after the employer, employment agency, or agent thereof makes the applicant a conditional offer. At no point may an employer, employment agency, or agent thereof seek or consider information pertaining to a non-conviction.

(1) Employers, employment agencies, or agents thereof may not engage in any of the following actions prior to making a conditional offer to an applicant, unless otherwise exempt pursuant to 47 RCNY § 2-04(f):

(i) Seeking to discover, obtain, or consider the criminal history of an applicant before a conditional offer of employment is made.

(ii) Expressing any limitation or specifications based on criminal history in job advertisements. This includes, but is not limited to, any language that states or implies "no felonies," "background check required," or "clean records only." Solicitations, advertisements, and publications encompass a broad variety of items, including, but not limited to, employment applications, fliers, hand-outs, online job postings, and materials distributed at employment fairs and by temporary help firms and job readiness programs.

(iii) Using an application that contains a question about an applicant's criminal history or pending criminal case or requests authorization to perform a background check.

(iv) Making any inquiry or statement related to an applicant's criminal history, whether written or oral, during a job interview.

(v) Asserting, whether orally or in writing, that individuals with a criminal history, or individuals with certain convictions, will not be hired or considered.

(vi) Conducting investigations into an applicant's criminal history, including the use of publicly available records or the Internet for the purpose of learning about the applicant's criminal history, whether such investigations are conducted by an employer or for an employer by a third party.

(vii) Disqualifying an applicant for refusing to respond to any prohibited inquiry or statement about criminal history.

(viii) In connection with an applicant, searching for terms such as, "arrest," "mugshot," "warrant," "criminal," "conviction," "jail," or "prison" or searching websites that purport to provide information regarding arrests, warrants, convictions or incarceration information for the purpose of obtaining criminal history.

(c) *Inadvertent Discovery or Unsolicited Disclosure of Criminal History Prior to Conditional Offer.* Inadvertent discovery by an employer, employment agency, or agent thereof or unsolicited disclosure by an applicant of criminal history prior to a conditional offer of employment does not automatically create employer liability. Liability is created when an employer, employment agency, or agent thereof uses the discovery or disclosure to further explore an applicant's criminal history before having made a conditional offer or uses the information in determining whether to make a conditional offer.

(d) *Information Regarding Conviction History Obtained After a Conditional Offer.* After an employer, employment agency, or agent thereof extends a conditional offer to an applicant, an employer, employment agency, or agent thereof may make inquiries into or statements about the applicant's conviction history. An employer, employment agency, or agent thereof may (1) ask, either orally or in writing, whether an applicant has a criminal conviction history; (2) run a background check or, after receiving the applicant's permission and providing notice, use a consumer reporting agency to do so; and (3) once an employer, employment agency, or agent thereof knows about an applicant's conviction history, ask them about the circumstances that led to the conviction and gather information relevant to the Article 23-A factors. Upon receipt of an applicant's conviction history, an employer, employment agency, or agent thereof may elect to hire the individual. If the employer, employment agency, or agent thereof does not wish to withdraw the conditional offer, the employer, employment agency, or agent thereof does not need to engage in the Article 23-A analysis.

(e) *Withdrawing a Conditional Offer of Employment or Taking an Adverse Employment Action.* Should an employer, employment agency, or agent thereof wish to withdraw its conditional offer of employment or take an adverse employment action based on an applicant's or employee's conviction

history, the employer, employment agency, or agent thereof must (1) engage in an Article 23-A analysis, and (2) follow the Fair Chance Process. Employers, employment agencies, or agents thereof must affirmatively request information concerning clarification, rehabilitation, or good conduct while engaging in the Article 23-A analysis.

(1) *Article 23-A analysis.*

(i) An employer, employment agency, or agent thereof must consider the following factors in evaluating an applicant or employee under the Article 23-A analysis:

(A) That New York public policy encourages the licensure and employment of people with criminal records;

(B) The specific duties and responsibilities necessarily related to the prospective job;

(C) The bearing, if any, of the conviction history on the applicant's or employee's fitness or ability to perform one or more of the job's duties or responsibilities;

(D) The time that has elapsed since the occurrence of the criminal offense that led to the applicant or employee's criminal conviction, not the time since arrest or conviction;

(E) The age of the applicant or employee when the criminal offense that led to their conviction occurred;

(F) The seriousness of the applicant's or employee's conviction;

(G) Any information produced by the applicant or employee, or produced on the applicant's or employee's behalf, regarding their rehabilitation and good conduct;

(H) The legitimate interest of the employer in protecting property, and the safety and welfare of specific individuals or the general public.

(ii) When considering the factors outlined above, a presumption of rehabilitation exists when an applicant or employee produces a certificate of relief from disabilities or a certificate of good conduct.

(iii) An employer, employment agency, or agent thereof may not change the duties and responsibilities of a position because it learned of an applicant's or employee's conviction history, except as provided in subdivision (e)(2)(v) of this section.

(iv) After evaluating the factors in subdivision(e)(1)(i) of this section, an employer, employment agency, or agent thereof must then determine whether (1) there is a "direct relationship" between the applicant's or employee's conviction history and the prospective or current job, or (2) employing or continuing to employ the applicant would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

(A) To claim the "direct relationship exception," an employer, employment agency, or agent thereof must first draw some connection between the nature of the conduct that led to the conviction(s) and the position. If a direct relationship exists, the employer must evaluate the Article 23-A factors to determine whether the concerns presented by the relationship have been mitigated.

(B) To claim the "unreasonable risk exception," an employer, employment agency, or agent thereof must consider and apply the Article 23-A factors to determine if an unreasonable risk exists.

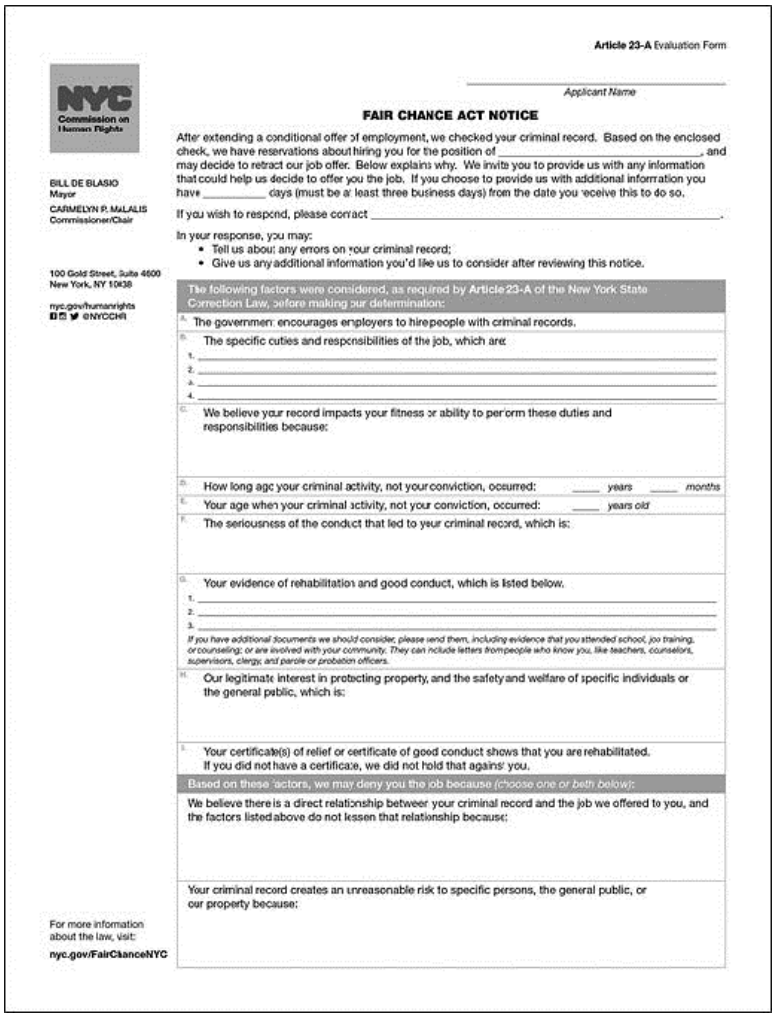
(v) If an employer, employment agency, or agent thereof, after weighing the required factors, cannot determine that either the direct relationship exemption or the unreasonable risk exemption applies, then the employer, employment agency, or agent thereof may not revoke the conditional offer or take any adverse employment action.

(2) *The Fair Chance Process:* If, after an employer, employment agency, or agent thereof determines that either the direct relationship or unreasonable risk exemption applies, the employer, employment agency, or agent thereof wishes to revoke the conditional offer or take an adverse employment action, the employer, employment agency, or agent thereof must first (1) provide a written copy of any inquiry made to collect information about criminal history to the applicant, (2) provide a written copy of the Article 23-A analysis to the applicant, (3) inform the applicant that they will be given a reasonable time to respond to the employer's concerns, and (4) consider any additional information provided by the applicant during this period.

(i) *Providing a written copy of the inquiry.* The employer, employment agency, or agent thereof must provide a complete and accurate copy of each and every piece of information relied on to determine that the applicant has a conviction history. This includes, but is not limited to, copies of consumer reporting agency reports, print outs from the Internet, records available publicly, and written summaries of any oral conversations, specifying if the oral information relied upon came from the applicant.

(ii) *Providing a written copy of the Article 23-A analysis performed by the employer, employment agency, or agent thereof.*

(A) Employers, employment agencies, or agents thereof who seek to revoke an applicant's conditional offer or take an adverse employment action on the basis of an applicant's criminal history must provide the applicant with the Fair Chance Notice below, which is available on the Commission's website, or a comparable notice.



Article 23-A Evaluation Form

NYC Commission on Human Rights

BILL DE BLASIO
Mayor

CARMELYN P. MALALIS
Commissioner/Chair

100 Gold Street, Suite 4600
New York, NY 10038

nyc.gov/humanrights
@NYCCHR

_____
Applicant Name

FAIR CHANCE ACT NOTICE

After extending a conditional offer of employment, we checked your criminal record. Based on the enclosed check, we have reservations about hiring you for the position of _____, and may decide to retract our job offer. Below explains why. We invite you to provide us with any information that could help us decide to offer you the job. If you choose to provide us with additional information you have _____ days (must be at least three business days) from the date you receive this to do so.

If you wish to respond, please contact _____.

In your response, you may:

- Tell us about any errors on your criminal record;
- Give us any additional information you'd like us to consider after reviewing this notice.

The following factors were considered, as required by Article 23-A of the New York State Correction Law, before making our determination:

A. The government encourages employers to hire people with criminal records.

B. The specific duties and responsibilities of the job, which are:
1. _____
2. _____
3. _____
4. _____

C. We believe your record impacts your fitness or ability to perform these duties and responsibilities because:

D. How long ago your criminal activity, not your conviction, occurred: ____ *years* ____ *months*

E. Your age when your criminal activity, not your conviction, occurred: ____ *years old*

F. The seriousness of the conduct that led to your criminal record, which is:

G. Your evidence of rehabilitation and good conduct, which is listed below.
1. _____
2. _____
3. _____

If you have additional documents we should consider, please send them, including evidence that you attended school, job training, or counseling; or are involved with your community. They can include letters from people who know you, like teachers, counselors, supervisors, clergy, and parole or probation officers.

H. Our legitimate interest in protecting property, and the safety and welfare of specific individuals or the general public, which is:

I. Your certificate(s) of relief or certificate of good conduct shows that you are rehabilitated. If you did not have a certificate, we did not hold that against you.

Based on these factors, we may deny you the job because *(choose one or both below):*

We believe there is a direct relationship between your criminal record and the job we offered to you, and the factors listed above do not lessen that relationship because:

Your criminal record creates an unreasonable risk to specific persons, the general public, or our property because:

For more information about the law, visit:
nyc.gov/FairChanceNYC

[Click here to view the Fair Chance Notice]

(B) So long as the material substance does not change, the notice may be adapted to a format preferred by the employer, employment agency, or agent thereof to account for the specific circumstances involving the applicant and the adverse employment action or denial of employment. A Fair Chance Notice must (1) include specific facts that were considered pursuant to the Article 23-A analysis and the outcome, (2) articulate the employer's, employment agency's, or agent's concerns and basis for determining that there is a direct relationship or an unreasonable risk, and (3) inform the applicant of their rights upon receipt of the notice, including how they can respond to the notice and the time frame within which they must respond.

(iii) The employer, employment agency, or agent thereof must allow the applicant a reasonable time to respond to the employer's concerns.

(A) An employer, employment agency, or agent thereof must consider the following information when determining how much time is reasonable: (1) what additional information the applicant is purporting to gather and whether that additional information would change the outcome of the Article 23-A analysis; (2) why the applicant needs more time to gather the information; (3) how quickly the employer needs to fill the position; and (4) any other relevant information. A reasonable time shall be no less than 3 business days.

(B) During this time, an employer, employment agency, or agent thereof may not permanently place another person in the applicant's prospective or current position.

(C) The applicant may provide oral or written evidence of rehabilitation, which, if provided, the employer, employment agency or agent thereof must consider in applying the Article 23-A factors.

(D) The time period begins when the applicant receives both the Fair Chance Notice and a written copy of the inquiry.

(iv) *Response of employer, employment agency, or agent thereof to additional information.*

(A) If, within the reasonable time allowed by the employer as required by this subdivision, the applicant provides additional information related to the concerns identified by the employer, the employer, employment agency, or agent thereof must consider whether the additional information changes the Article 23-A analysis.

(B) If the employer, employment agency, or agent thereof reviews the additional information and makes a determination not to hire the applicant or take an adverse employment action, the employer, employment agency, or agent thereof must relay that decision to the applicant in writing.

(v) If an employer, employment agency, or agent thereof determines after conclusion of the Fair Chance Process to revoke the conditional offer of employment, the employer, employment agency, or agent thereof may consider whether any alternate positions are vacant and available to the applicant that would alleviate the concerns identified by the Article 23-A analysis, provided that failure to consider or provide an offer to fill an alternative position shall not be considered a violation of this section.

(3) *Errors, Discrepancies, and Misrepresentations.*

(i) If an applicant realizes that there is an error on a criminal background check, they must inform the employer, employment agency, or agent thereof of the error and request the necessary time to provide supporting documentation.

(A) If the applicant demonstrates within the reasonable time allowed by the employer pursuant to this subdivision that the information is incorrect and the applicant has no conviction history, the employer, employment agency, or agent thereof may not withdraw the conditional offer or take any adverse employment action on the basis of the applicant's criminal history.

(B) If the applicant demonstrates that the criminal history resulted in a non-conviction, the employer, employment agency, or agent thereof may

not withdraw the conditional offer or take any adverse employment action on the basis of the applicant's criminal history.

(C) If the applicant demonstrates that the conviction history is different than what is reflected in the background check, the employer, employment agency, or agent thereof must conduct the Article 23-A analysis based on the correct and current conviction history and must follow the Fair Chance Process.

(ii) If a background check reveals that an applicant has intentionally failed to answer a legitimate question about their conviction history, the employer, employment agency, or agent thereof may revoke the conditional offer or take an adverse employment action.

(f) *Temporary Help Firms.*

(1) A temporary help firm is bound by the same pre-conditional offer requirements as other employers and must follow the Fair Chance Process if it wishes to withdraw a conditional offer based on the conviction history of an applicant. A "conditional offer" from a temporary help firm is an offer to place an applicant in the firm's labor pool, from which the applicant may be sent on job assignments to the firm's clients.

(2) In order to evaluate job duties relevant to the conviction history under the Article 23-A analysis, a temporary help firm may only consider the minimum skill requirements and basic qualifications necessary for placement in its applicant pool.

(3) Any employer who utilizes a temporary help firm to find applicants for employment must follow the Fair Chance Process and may not make any statements or inquiries about an applicant's criminal history until after the applicant has been assigned to the employer by the temporary help firm.

(4) A temporary help firm may not aid or abet an employer's discriminatory hiring practices. A temporary help firm may not determine which candidates to refer to an employer based on an employer's preference not to employ persons with a specific type of conviction or criminal history generally. A temporary help firm may not provide the applicant's criminal history to prospective employers until after the employer has made a conditional offer to the applicant.

(g) *Exemptions.*

(1) The Fair Chance Process mandated by § 8-107(11-a) of the Human Rights Law shall not apply to any actions taken by an employer or agent thereof with regard to an applicant for employment:

(i) In a position where federal, state, or local law requires criminal background checks.

(A) This exemption does not apply to an employer authorized, but not required, to check for criminal backgrounds.

(B) This exemption does not exempt an employer from the requirements of § 8-107(10) of the Human Rights Law.

(ii) In a position where Federal, State, or Local law bars employment of individuals based on criminal history.

(A) This exemption applies to particular positions where the Federal, State or Local law bars employment with respect to a particular type of conviction. In such cases, an employer or agent thereof may: (1) notify applicants of the specific mandatory bar to employment prior to a conditional offer; (2) inquire at any time during the application process whether an applicant has been convicted of the specific crime that is subject to the mandatory bar to employment; and (3) disqualify any applicant or employee with such criminal history without following the Fair Chance Process.

(B) This exemption does not apply where the employer's decision about whether to hire or promote an applicant based on their criminal history is discretionary. The fact that a position requires licensure or approval by a government agency does not by itself exempt the employer, employment agency, or agent thereof from the Fair Chance Process. When hiring for such a position, if the exemption in subdivision (g)(1)(i) or (g)(1)(ii)(A) does not apply, before making a conditional offer the employer may only ask whether the applicant has the necessary license or approval or whether they can obtain it within a reasonable period of time.

(iii) In positions regulated by self-regulatory organizations as defined in Section 3(a)(26) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. § 78a, where the rules or regulations promulgated by such organizations require criminal background checks or bar employment based on criminal history. This exemption includes positions for which applicants are not required to be registered with a self-regulatory organization, when the applicant nevertheless either chooses to become registered while in the position or elects to maintain their prior registration.

(iv) In positions as police and peace officers, working for law enforcement agencies, and for other exempted city agencies, specifically:

(A) As a police officer or peace officer, as those terms are defined in subdivisions thirty-three and thirty-four of Section 1.20 of the criminal procedure law;

(B) At a New York City law enforcement agency, including but not limited to the City Police Department, Fire Department, Department of Correction, Department of Investigation, Department of Probation, the Division of Youth and Family Services, the Business Integrity Commission, and the District Attorneys' offices in each borough; or

(C) In a position listed in the determinations of personnel published as a Commissioner's calendar item and listed on the website of the Department of Citywide Administrative Services as exempt because the Commissioner of Citywide Administrative Services has determined that the position involves law enforcement; is susceptible to bribery, or corruption; or entails the provision of services to or the safeguarding of people who, because of age, disability, infirmity or other condition, are vulnerable to abuse. Once the Department of Citywide Administrative Services exempts a position, an applicant may be asked about their conviction history at any time; however, applicants who are denied employment because of their conviction history must receive a written copy of the Article 23-A analysis.

(2) Standard of Proof: It shall be an affirmative defense that any action taken by an employer or agent thereof is permissible pursuant to paragraph 1 of this subdivision.

(h) *Licenses, Registrations, and Permits.*

(1) Licensing agencies may not deny any license, registration or permit to any applicant, or act adversely upon any holder of a license, registration or permit, based on criminal history in violation of Article 23-A of the New York Corrections Law.

(2) Prior to denying or taking any adverse action against an individual applying for a license, registration or permit based on their conviction history, the licensing agency must evaluate the candidate using the Article 23-A analysis.

(3) A finding that an applicant lacks "good moral character" cannot be based on an individual's criminal history when such an action is in violation of Article 23-A of the Correction Law.

(4) Under no circumstances may an individual applying for a license, registration or permit, be questioned about nonconvictions, nor can any adverse actions or denials be made based on non-convictions.

(5) *Exemption as to licenses, registrations, and permits:*

(i) Paragraphs (1) through (4) of this subdivision do not apply to licensing activities in relation to the regulation of explosives, pistols, handguns, rifles, shotguns, or other firearms and deadly weapons.

(ii) Any agency authorized to issue a license, registration, or permit may consider age, disability, or criminal history as a criterion for determining eligibility or continuing fitness for a license, registration or permit, when specifically required to do so pursuant to Federal, State, or Local law.

(i) *Enforcement and Penalties.*

(1) There is a rebuttable presumption that an employer, employment agency, or agent thereof was motivated by an applicant's criminal history if it revokes a conditional offer of employment without following the Fair Chance Process. This presumption can be rebutted by demonstrating that the conditional offer was revoked based on: (1) the results of a medical exam in situations in which such exams are permitted by the American with Disabilities Act; (2) information the employer, employment agency, or agent thereof could not have reasonably known before the conditional offer if, based on the information, the employer, employment agency, or agent thereof would not have made the offer and the employer, employment agency, or agent thereof can show that the information is material; or (3) evidence that the employer, employment agency, or agent thereof did not have knowledge of the applicant's criminal history before revoking the conditional offer.

(2) *Early Resolution for Commission-initiated complaints regarding certain per se violations.*

(i) Early Resolution is an expedited settlement option that is available to respondents in certain circumstances that allows them to immediately admit liability and comply with a penalty in lieu of litigating the matter.

(ii) Except as provided in subparagraph (iii) below, the Law Enforcement Bureau will offer Early Resolution for Commission-initiated complaints of per se violations under the following circumstances: (1) the respondent has committed a per se violation as defined in 47 RCNY § 2-04(a); (2) there are no other pending or current allegations against the respondent concerning violations of the Human Rights Law; (3) the respondent has 50 or fewer employees at the time of the alleged violation; and (4) the respondent has had no more than one violation of the Human Rights Law in the past three years.

(iii) Notwithstanding any other provision of this section, the Commission retains discretion to proceed with a full investigation and a referral to the Office of Administrative Trials and Hearings when the offer of Early Resolution will not serve the public interest. Factors that indicate that an Early Resolution is not in the public interest include, without limitation: (1) the respondent has had prior contact with the Commission from which an inference of willfulness regarding the violation may be inferred; (2) the respondent works with vulnerable communities; or (3) the Commission has reason to believe discrimination is rampant in respondent's industry. For purposes of this section, a violation of any provision of the Human Rights Law that resulted in an admission pursuant to Early Resolution, conciliation or other settlement agreement, or a finding of liability issued after a hearing or trial pursuant to a complaint filed with or by the Commission shall be considered a past violation.

(iv) *Early Resolution: Notice, Penalties and Procedure.*

(A) A respondent shall be served with a copy of the Early Resolution Notice simultaneously with service of the complaint.

(B) The Notice shall state that the respondent has 90 days to answer a complaint in which the respondent has been offered the option of Early Resolution, and that there will be no extensions of time granted.

(C) The Notice shall inform the respondent of their right to either: (1) admit liability and agree to the affirmative relief and penalty, or (2) file an answer to the complaint in compliance with 47 RCNY § 1-14, except that the time to respond shall be 90 days instead of 30.

(D) An Early Resolution penalty shall include: (1) a mandatory and free training provided by the Commission; (2) a requirement that the respondent post a notice of rights under the Human Rights Law; and (3) a monetary fine as determined by the penalty schedule outlined in paragraph (E) of this subdivision. The Notice shall inform the respondent that a private individual aggrieved by the same violation may also file an independent complaint with the Commission or may bring a court action.

(E) Fines will be assessed according to the following penalty schedule:

Employer Size ***(at the time of the violation)***	***1st Violation***	***2nd Violation*** ***(within 3 years of the resolution date of the first violation)***
4 - 9 employees	$500.00	$1,000.00
10 - 20 employees	$1,000.00	$5,000.00
21 - 50 employees	$3,500.00	$10,000.00
** Distinct and contemporaneous violations will be counted separately for the purpose of calculating a monetary penalty. For example, an employer who has between four and nine employees and is using a discriminatory advertisement in violation of 47 RCNY § 2-04(a)(1) and an application that references criminal history in violation of 47 RCNY § 2-04(a)(2) will be charged with two separate violations of $500.00 each. However, multiple violations of one section, for example, posting a discriminatory advertisement on three different websites, will be counted as one violation for the purpose of assessing a penalty under this section.		

(F) If the employer believes that the employer size used to assess the imposed penalty is incorrect, the employer may call the number listed on the Early Resolution Notice.

(v) *Admission of Liability.* An admission of liability must be returned to the Commission in the manner prescribed in the Early Resolution Notice. Once the admission is received, the Law Enforcement Bureau shall promptly forward such agreement to the Chair. The signature of the Chair with the notation "SO ORDERED" shall be construed to be a final order of the Commission. A copy of such order shall be served upon the respondent.

(vi) *Contesting Liability and Filing an Answer.*

(A) Notwithstanding any provision of 47 RCNY § 1-61 or 47 RCNY § 1-62, if a respondent elects to deny liability and contest the allegations in the complaint, the respondent shall file an answer and upon receipt of the answer, the Law Enforcement Bureau shall refer the case to the Office of Administrative Trials and Hearings for a hearing pursuant to 47 RCNY § 1-71.

(B) For purposes of a hearing, the case will proceed in accordance with 48 RCNY Chapter 2, Subchapter C.

(vii) *Failure to Respond.*

(A) If a respondent fails to respond within 90 days to a complaint accompanied by an Early Resolution Notice, all allegations in the complaint will be deemed admitted unless good cause to the contrary is shown pursuant to § 8-111(c) of the Human Rights Law.

(B) Upon default, the Law Enforcement Bureau may refer the case to the Office of Administrative Trials and Hearings pursuant to 47 RCNY § 1-71 and, in a written motion pursuant to 48 RCNY Chapter 1, seek an expedited trial and issuance of a report and recommendation that finds respondent in default and recommend the affirmative relief and penalties requested by the Law Enforcement Bureau. The motion papers will include: all supporting evidence; a copy of the complaint and any additional documentation sent to the respondent; the Early Resolution Notice; and proof of service of the motion.

(viii) *Relief from Default in an Early Resolution Case.* At any time prior to the issuance of a decision and order, the respondent may move for relief from default.

(j) *Criminal Record Discrimination in Obtaining Credit.* No person may ask about or take any adverse action based on the nonconviction history of an individual in connection with an application or evaluation for credit.

(k) *Employers Seeking the Work Opportunity Tax Credit ("WOTC").* Employers who wish to claim the WOTC credit are not exempt from this chapter or the Fair Chance Act. Employers may, however, require an applicant to complete IRS form 8850 and U.S. Department of Labor Form 9061 before a conditional offer is made so long as the information gathered is used solely for the purpose of applying for the WOTC.

(Added City Record 7/6/2017, eff. 8/5/2017; amended City Record 11/24/2017, eff. 12/24/2017)

§ 2-05 Prohibitions on Discrimination Based on Credit by Employers, Labor Organizations, Employment Agencies, and Agencies Authorized To Issue Licenses, Registrations, or Permits.

(a) *Per Se Violations.* The following are per se violations of §§ 8-107(9)(d) and 8-107(24) of the Administrative Code (regardless of whether any adverse employment or licensing action is taken against an individual applicant, licensee, or permittee), except where an exemption applies pursuant to subdivision (c) of this section:

(1) Requesting consumer credit history from an applicant, licensee, or permittee.

(2) Requesting consumer credit history regarding applicants, licensees, or permittees from a consumer reporting agency.

(3) Using consumer credit history for employment, licensing, or permitting purposes.

(4) Requesting or requiring applicants for employment, licenses, or permits to consent to the disclosure of their consumer credit history to the employer.

(b) *Presumptive Violations.* It shall be a rebuttable presumption that posting or circulating any solicitation indicating that the employer, labor organization, employment agency, or licensing agency will use consumer credit history for employment, licensing, or permitting purposes constitutes a violation of §§ 8-107(9)(d) and 8-107(24) of the Administrative Code of the City of New York, except where an exemption applies pursuant to subdivision (c) of this section.

(c) *Exemptions Under the Stop Credit Discrimination in Employment Act.*

(1) Employers may require or use for employment purposes an applicant's or employee's consumer credit history when required to do so for specific positions or titles under state or Federal law or regulations, or rules or regulations promulgated by self-regulatory organizations as defined in Section 3(a)(26) of the Securities Exchange Act of 1934. This exemption includes positions in which applicants or employees are not required to be registered with a self-regulatory organization but where the applicant or employee nevertheless either chooses to become registered while in the position or elects to maintain their prior registration.

(2) Agencies may request and use an applicant's, licensee's, or permittee's consumer credit history for licensing or permitting purposes when required to do so under State or Federal law or regulations.

(3) The following positions are exempt from the Stop Credit Discrimination in Employment Act:

(i) Police officers or peace officers, as those terms are defined in subdivisions thirty-three and thirty-four of Section 1.20 of the criminal procedure law, respectively.

(ii) Positions with a law enforcement or investigative function at the Department of Investigation.

(iii) Positions subject to background investigation by the Department of Investigation, provided however that the appointing agency may not use consumer credit history obtained by the Department of Investigation for employment purposes unless the position is an appointed position and a high degree of public trust, as defined in 47 RCNY § 2-01, has been reposed in the position.

(iv) Positions requiring bonding under City, State, or Federal law or regulation. An exemption will not apply where bonding is simply permitted, but not required, by City, State, or Federal law or regulation. Only positions where bonding is required by law are exempt.

(v) Positions requiring security clearance under Federal or State law. This exemption is applicable only when such security clearance is legally required for the person to fulfill the duties of the position in question.

(vi) Non-Clerical positions having regular access to trade secrets, intelligence information, or national security information as defined in 47 RCNY § 2-01.

(vii) Positions in which the individual regularly has: (A) signatory authority over third-party funds or third-party assets that are valued at $10,000 or more; or (B) fiduciary responsibility to an employer who has granted the employee signatory authority to enter into financial agreements valued at $10,000 or more on behalf of the employer. Signatory authority shall mean final authority, not subject to approval, delegated by an employer or third party to commit the employer or third party to a binding agreement. This exemption does not apply to positions for which the $10,000 threshold can be met only by aggregating the value for multiple assets or agreements over which the position holds signatory authority or fiduciary responsibility.

(viii) Positions with regular duties that allow the employee to modify digital security systems established to prevent the unauthorized use of the employer's or client's networks. For purposes of this provision, a digital security system refers to an organization's security program that is designed to ensure information, assets, and technologies are not accessible by unauthorized parties outside of the employer or its clients.

(4) *Evaluation of exemptions and burdens of proof.*

(i) All exemptions to the prohibitions on credit discrimination must be construed narrowly.

(ii) It shall be an affirmative defense that any action taken by an employer or agent thereof is permissible pursuant to this subdivision, and the burden shall be on the employer, labor organization, employment agency, or licensing agency to prove the exemption's applicability by a preponderance of the evidence.

(iii) Exemptions apply only to individual positions.

(d) *Early Resolution for Commission-Initiated Complaints Regarding Certain Per Se Violations.*

(1) Early Resolution is an expedited settlement option that is available to respondents in certain circumstances that allows them to immediately admit liability and accept a penalty in lieu of litigating the matter.

(2) Except as provided in paragraph (3) below, the Law Enforcement Bureau will offer Early Resolution for Commission-initiated complaints of per se violations under the following circumstances:

(i) The respondent has committed a per se violation pursuant to subdivision (a) of this section;

(ii) There are no other pending or current allegations against the respondent concerning violations of Title 8 of the Administrative Code;

(iii) The respondent has 50 or fewer employees at the time of the alleged violation; and

(iv) The respondent has been held liable for no more than one violation of Title 8 of the Administrative Code in the 3 years preceding the filing of the complaint. For purposes of this provision, a violation of any provision of Title 8 of the Administrative Code that resulted in an admission pursuant to Early Resolution, conciliation, or other settlement agreement, or a finding of liability issued after a hearing or trial pursuant to a complaint filed with or by the Commission, shall be considered a past violation.

(3) Notwithstanding any other provision of this section, the Commission retains discretion to proceed with a full investigation and a referral to the Office of Administrative Trials and Hearings when the Law Enforcement Bureau determines that an offer of Early Resolution will not serve the public interest. Factors that indicate that an Early Resolution is not in the public interest include, without limitation:

(i) The respondent has had prior contact with the Commission, including without limitation, formal and informal complaints, investigations, and trainings, and workshops conducted by the Commission, from which an inference may be made that the alleged violation was willful.

(ii) The respondent works with vulnerable communities.

(iii) The Commission has reason to believe discrimination is significant in respondent's industry.

(4) *Early Resolution Notice.*

(i) A respondent will be served with a copy of the Early Resolution Notice simultaneously with service of the complaint.

(ii) The Early Resolution Notice will state that the respondent has 90 days to answer a complaint in which the respondent has been offered the option of Early Resolution, and that there will be no extensions of time granted.

(iii) The Early Resolution Notice will inform the respondent of its right to either: (A) admit liability and agree to the proposed affirmative relief and penalty, or (B) file an answer to the complaint in compliance with 47 RCNY § 1-14, except that the time to respond will be 90 days instead of 30 days.

(5) *Early Resolution Penalties.*

(i) An Early Resolution penalty includes: (A) a mandatory and free training provided by the Commission; (B) a requirement that the respondent post a notice of rights under Title 8 of the Administrative Code; and (C) a monetary fine as determined by the penalty schedule outlined in Subparagraph (ii) of this paragraph. The Early Resolution Notice will inform the respondent that a private individual aggrieved by the same violation may also file an independent complaint with the Commission or may bring a court action.

(ii) Early Resolution fines will be assessed according to the following penalty schedule:

Employer Size ***(at the time of the violation)***	***1st Violation***	***2nd Violation (within 3 years of the resolution date of the first violation)***
4 - 9	$500.00	$1,000.00
10 - 20	$1,000.00	$5,000.00
21 - 50	$3,500.00	$10,000.00
** Distinct and contemporaneous violations will be counted separately for the purpose of calculating a monetary penalty. For example, an employer who has 4 - 9 employees who requests consumer credit history from an applicant orally in violation of 47 RCNY § 2-05(a)(1) and requires that same applicant to sign a waiver authorizing a credit check in violation of 47 RCNY § 2-05(a)(4) will be charged with two separate violations of $500.00 each. However, multiple violations of one section, for example, posting a discriminatory advertisement on three different websites, will be counted as one violation for the purpose of assessing a penalty under this section.		

(iii) If the employer believes that the employer size used to assess the imposed penalty is incorrect, the employer may call the number listed on the Early Resolution Notice.

(6) *Admission of Liability in an Early Resolution Case.* An admission of liability must be returned to the Commission in the manner prescribed in the Early Resolution Notice. Once the admission is received, the Law Enforcement Bureau will promptly forward it to the Chair. The signature of the Chair with the notation "SO ORDERED" constitutes the final order of the Commission. A copy of such order will be served upon the respondent.

(7) *Contesting Liability and Filing an Answer in an Early Resolution Case.* Notwithstanding any provision of 47 RCNY § 1-61 or 47 RCNY § 1-62, if a respondent elects to deny liability and contest the allegations in the complaint, the respondent shall file an answer and, upon receipt of the answer, the Law Enforcement Bureau will refer the case to the Office of Administrative Trials and Hearings for a hearing pursuant to 47 RCNY § 1-71. The hearing will be conducted in accordance with Subchapter C of 48 RCNY Chapter 2.

(8) *Failure to Respond in an Early Resolution Case.*

(i) If a respondent fails to respond to a complaint accompanied by an Early Resolution Notice within 90 days, all allegations in the complaint will be deemed admitted unless good cause to the contrary is shown, pursuant to § 8-111(c) of the Administrative Code.

(ii) If a respondent fails to respond to a complaint accompanied by an Early Resolution Notice within 90 days, the Law Enforcement Bureau may refer the case to the Office of Administrative Trials and Hearings pursuant to 47 RCNY § 1-71 and, in a written motion pursuant to 48 RCNY § 1-50, seek an expedited trial and issuance of a report and recommendation that finds respondent in default and recommends the affirmative relief and penalties requested by the Law Enforcement Bureau. The motion papers will include all supporting evidence, a copy of the complaint, the Early Resolution Notice, and proof of service.

(9) *Relief From Default in an Early Resolution Case.* At any time prior to the issuance of a decision and order, the respondent may move for relief from default.

(Added City Record 11/24/2017, eff. 12/24/2017)

§ 2-06 Prohibition on Discrimination Based on Gender.

The following requirements apply with respect to Title 8 of the Administrative Code's prohibition on unlawful discriminatory practices based on gender:

(a) *Deliberate Refusal to Use an Individual's Self-Identified Name, Pronoun or Title.* A covered entity's deliberate refusal to use an individual's self-identified name, pronoun and gendered title constitutes a violation of § 8-107 of the Administrative Code where the refusal is motivated by the individual's gender. This is the case regardless of the individual's sex assigned at birth, anatomy, gender, medical history, appearance, or the sex indicated on the individual's identification except in the limited circumstance where Federal, State, or Local law requires otherwise (e.g., for purposes of employment eligibility verification with the Federal government). Asking someone in good faith their name or which pronoun they use is not a violation of the Human Rights Law.

a. *Examples of violations.*

i. Deliberately calling a transgender woman "Mr." after she has made clear that she uses female titles. Deliberately using the pronoun "he" for a non-binary person who is perceived as male but has indicated that they identify as non-binary and use the pronouns "they," "them," and "theirs."

ii. Conditioning an individual's use of their self-identified name on obtaining a court-ordered name change or providing identification in that name. For example, a covered entity may not refuse to call a transgender student by her self-identified name because her self-identified name does not appear on her birth certificate.

iii. Asking or requiring an individual to provide information about their medical history or proof of having undergone medical procedures to use their self-identified name, pronoun, or title.

iv. Refusing to use an employee's self-identified name in their email account.

v. Failing or refusing to include a patient's self-identified name and self-reported gender in their medical record, resulting in the patient being misgendered by staff, even if a patient's sex assigned at birth or gender transition may be recorded for the purpose of providing medical care.

(b) *Refusing to Allow Individuals to Use Single-Gender Facilities or Participate in Single-Gender Programs Consistent with their Gender Identity.* Covered entities must allow individuals to use single-gender facilities – such as bathrooms, locker rooms, or hospital rooms – and participate in single-gender programs consistent with their gender identity, regardless of their sex assigned at birth, anatomy, medical history, appearance, or the sex indicated on their identification.

a. It is not a defense to a charge of violating the Human Rights Law that some people, including, for example, customers, other program participants, tenants, or employees, may object to sharing a facility or participating in a program with a transgender, non-binary, or gender non-conforming person. Such objections are not a lawful reason to deny access to that transgender, non-binary, or gender non-conforming individual.

b. *Examples of violations.*

i. Prohibiting a person from participating in the single-gender program consistent with their gender identity or expression because they do not conform to gender stereotypes.

ii. Requiring a gender non-conforming person to provide proof of their gender to access the single-gender program or facility corresponding to their gender.

iii. Requiring a non-binary person to use a single-occupancy restroom instead of a shared bathroom.

iv. Barring a transgender girl from participating in a single-gender after-school program out of concern that she will make other students uncomfortable.

v. Forbidding a transgender person from sharing a room with people of the same gender in a residential treatment facility with single-gender shared rooms.

(c) *Imposing Different Dress or Grooming Standards Based on Gender.* Covered entities may not require dress codes or uniforms, or apply grooming or appearance standards, that impose different requirements for individuals based on their gender.

a. It is not a defense to a charge of discrimination that a covered entity has a violative dress code because it is catering to the preferences of its customers or clients.

b. *Examples of violations.*

i. Requiring different uniforms for men and women. While covered entities may provide different uniform options that are typically associated with men and women, it is unlawful to require an employee to wear one style instead of the other.

ii. Permitting only female students to wear makeup or jewelry to school.

iii. Requiring only men to wear ties to dine at a restaurant.

c. Actors may be required to wear gender-specific costumes if required by a role.

(d) *Covered Entities Must Provide Equal Employee Benefits Regardless of Gender.* Subject to § 8-107(1)(e), covered entities offering benefit plans must offer benefits equally to all employees regardless of gender and may not provide health benefit plans that deny, limit or exclude services based on gender. To be nondiscriminatory with respect to gender, health benefit plans may not exclude coverage for transgender care, also known as transition-related care or gender-affirming care.

a. *Examples of violations.*

i. Offering health benefits that exclude coverage for procedures based on gender. For example, offering health benefits that cover prostate cancer screening for cisgender men but not for transgender women or nonbinary individuals.

ii. Offering health benefits that exclude from coverage, or limit coverage for, health care related to gender transition, including, but not limited to, hormone replacement therapy, psychological or psychiatric treatment, hormone suppressers, voice training, or surgery.

iii. Giving twelve weeks of paid parental leave to mothers but only two weeks to fathers. While a differential in parental leave may be permissible if based on physical recovery from childbirth, it may not be premised on a parent's gender.

iv. Employers selected benefit plan offering health benefits that deem certain medical procedures available to only one sex, thereby excluding intersex people who may be registered under another.

(e) *Gender May Not Be the Basis for Refusing a Request for Accommodation.* Gender may not be the basis for a covered entity to refuse, withhold, or deny a request for accommodation for disability or other request for changes to the terms and conditions of an individual's employment, participation in a program, or use of a public accommodation, which may include additional medical or personal leave or schedule changes. Covered entities must treat leave requests to address medical or health care needs related to an individual's gender identity in the same manner as requests for all other medical conditions. Covered entities must provide reasonable accommodations to individuals undergoing gender transition, including medical leave for medical and counseling appointments, surgery and recovery from gender affirming procedures, surgeries and treatments as they would for any other medical condition.

a. *Examples of violations.*

i. Providing a reasonable accommodation for a cisgender woman undergoing medically necessary reconstructive breast surgery but refusing to provide the same accommodation to a transgender woman undergoing the same medically necessary surgery.

ii. Requesting medical documentation to verify leave time from transgender or non-binary employees or participants, but not cisgender employees or participants.

(f) Places or providers of public accommodation may be granted an exemption to the provisions of this subdivision relating to unlawful discriminatory practices based on gender under § 8-107(4)(b) of the Administrative Code.

(Added City Record 2/7/2019, eff. 3/9/2019)

§ 2-07 Exceptions to the General Prohibition on Preemployment Testing for Tetrahydrocannabinols or Marijuana.

(a) *Exceptions Based on Significant Impact to Health or Safety:* A position is deemed to significantly impact the health or safety of employees or members of the public and to be exempt from the prohibition on preemployment testing for tetrahydrocannabinols or marijuana under § 8-107(31) of the Administrative Code if:

(1) The position requires that an employee regularly, or within one week of beginning employment, work on an active construction site;

(2) The position requires that an employee regularly operate heavy machinery;

(3) The position requires that an employee regularly work on or near power or gas utility lines;

(4) The position requires that an employee operate a motor vehicle on most work shifts;

(5) The position requires work relating to fueling an aircraft, providing information regarding aircraft weight and balance, or maintaining or operating aircraft support equipment; or

(6) Impairment would interfere with the employee's ability to take adequate care in the carrying out of his or her job duties and would pose an immediate risk of death or serious physical harm to the employee or to other people.

(b) For purposes of this section, a "significant impact on health and safety" does not include concerns that a positive test for tetrahydrocannabinols or marijuana indicates a lack of trustworthiness or lack of moral character.

(Added City Record 6/24/2020, eff. 7/24/2020)

§ 2-08 Prohibition on Hair Discrimination Based on Race and Religion.

(a) *Disparate Treatment Based on Race with Respect to Hair Textures, Hairstyles or Hair Length.*

(1) A covered entity that restricts or prohibits hair texture, hairstyles, including the use of headcoverings, or hair length associated with a racial or ethnic group or that engages in unequal treatment, including harassment, on the basis of an individual's hair texture, hairstyle, including the use of a headcovering, or hair length associated with a racial or ethnic group, is engaging in race discrimination in violation of § 8-107 of the Administrative Code, unless the restriction or prohibition addresses a legitimate health or safety concern. It is not a defense that a restriction or prohibition is based on customer preference or based on a perception that a person's hair is "unprofessional," a "distraction," or inconsistent with a covered entity's image.

Speculative health or safety concerns may not be used as a pretext for racial discrimination. In assessing whether a restriction or prohibition constitutes pretext for discrimination or is based on legitimate health or safety concerns, the Commission will consider, among other factors, the nature of the articulated health or safety concern; whether the restriction or prohibition is narrowly tailored to address the concern; the availability of alternatives to the restriction or prohibition; and whether the restriction or prohibition has been applied in a discriminatory manner. Where a restriction or prohibition is premised on legitimate health or safety concerns, covered entities must consider, in good faith, alternatives including hair ties, hair nets, other headcoverings, and alternative safety equipment that can accommodate different hair textures, hairstyles, headcoverings, or hair lengths.

(2) Examples of violations include:

i. An employer's appearance and grooming policy prohibiting twists, locs, braids, cornrows, Afros, Bantu knots, or fades, which are commonly associated with Black people, or requiring employees to change their hair to conform to the company's appearance standards, including having to straighten or relax hair.

ii. A supervisor telling a Black employee that she cannot be promoted unless she straightens her natural hair.

iii. Co-workers taunting an Afro-Caribbean woman as being "unkempt" and "dirty" because she wears her hair in cornrows, and the employer failing to intervene to stop the harassment.

iv. An appearance code at a school banning students' hair that extends a certain number of inches above the scalp, thereby negatively impacting students who wear hairstyles such as Afros.

v. Requiring a Native American employee to cut his long, braided hair, which he wears as part of his Navajo identity, or risk losing his job.

vi. Denying a Black employee with locs the opportunity to work in a customer-facing role unless he changes his hairstyle or hides his locs.

vii. Refusing to hire a Black applicant with box braids because her hairstyle does not fit the image the employer is trying to project.

viii. A school policy prohibiting braids, locs, and head wraps.

ix. An athletic association prohibiting a Black student athlete with locs from participating in an athletic competition because his hair is below his shoulders, but allowing white student athletes with long hair to tie their hair up.

x. A restaurant that refuses to seat a Black customer who wears a headscarf over her Afro because it violates the restaurant's dress code.

(b) *Disparate Treatment Based on Religion With Respect to Hair Textures, Hairstyles, Hair, or Length.*

(1) A covered entity that restricts or prohibits hair textures, hairstyles, including the use of headcoverings, or hair length associated with an

individual's religious beliefs, observance, or practice or that engages in unequal treatment, including harassment, on the basis of an individual's hair texture, hairstyle, including headcoverings, or hair length associated with an individual's religious beliefs, observance, or practice is engaging in discrimination in violation of § 8-107 of the Administrative Code, unless the restriction or prohibition addresses a legitimate health or safety concern. It is not a defense that a restriction or prohibition is based on customer preference or based on a perception that a person's hair is "unprofessional," a "distraction," or inconsistent with a covered entity's image.

Speculative health or safety concerns may not be used as a pretext for religious discrimination. In assessing whether a restriction or prohibition constitutes pretext for discrimination or is based on legitimate health or safety concerns, the Commission will consider, among other factors, the nature of the articulated health or safety concern; whether the restriction or prohibition is narrowly tailored to address the concern; the availability of alternatives to the restriction or prohibition; and whether the restriction or prohibition has been applied in a discriminatory manner. Where a restriction or prohibition is premised on legitimate health or safety concerns in employment, covered entities must engage in the cooperative dialogue process and provide reasonable religious accommodations, in accordance with subdivision (c). Where a restriction or prohibition is premised on legitimate health or safety concerns in housing or public accommodations, covered entities must consider, in good faith, alternatives including hair ties, hair nets, other headcoverings, and alternative safety equipment that can accommodate different hair textures, hairstyles, headcoverings, or hair lengths.

(2) Examples of violations include:

i. An employer refusing to retain an employee who converts to or adopts a different faith and begins to wear religious headwear, such as a turban, hijab, or yarmulke, to partly cover or completely cover their hair.

ii. A landlord who refuses to rent to a tenant because her hair is styled into locs, worn as part of her Rastafarian religious beliefs.

iii. A school that rejects students who wear religious turbans, yarmulkes, or hijabs.

iv. A customer service company that orders an employee to cut, restrict, change, or conceal their hairstyle or facial hair, in violation of their religious beliefs, to remain in a public-facing position.

v. An employer who fails to take appropriate action when an employee who maintains unshorn facial or body hair in observance of their religious beliefs is repeatedly harassed by co-workers.

vi. A store that refuses to serve a customer who covers her hair with a religious headcovering such as a hijab or sheitel.

vii. A bouncer at a bar who tells a turban-wearing patron that he looks like a "terrorist" and denies him admission based on the bar's "no headwear" policy.

viii. A healthcare provider that shaves a patient's religious beard without the patient's consent or the consent of the patient's designated representative, in non-emergency cases.

ix. A public school that fails to take adequate corrective action when a student who wears a turban over his uncut hair for religious reasons is bullied by other students for his religious appearance and repeatedly told that he looks like "Osama Bin Laden" and to "get out of this country."

(c) *Failure to Provide Reasonable Accommodations in Employment for Religious Hair Textures, Hairstyles, and Hair Length.*

(1) It is religious discrimination in violation of § 8-107(3) of the Administrative Code for an employer to fail to provide a reasonable accommodation to an applicant or employee to maintain a particular hairstyle associated with the person's sincerely-held religious beliefs, observance, or practice, when providing such an accommodation would not constitute an undue hardship. Pursuant to § 8-107(28) of the Administrative Code, an employer is required to engage in a cooperative dialogue with any applicant or employee who has requested a religious accommodation or who the employer has notice may require a religious accommodation, and to provide a written decision to the person at the conclusion of the cooperative dialogue process. As part of the cooperative dialogue process, where there are legitimate health or safety concerns, covered entities must consider, in good faith, alternatives including hair ties, hair nets, other headcoverings, and alternative safety equipment that can accommodate different hair textures, hairstyles, headcoverings, or hair length.

(2) Undue Hardship: Employers must accommodate employees' religious beliefs unless doing so constitutes a significant difficulty or expense to the employer, which includes an assessment of the identifiable cost of the accommodation, including costs of loss of productivity. Employers may not deny a religious accommodation for a particular hairstyle because of: customer preference; concerns that these styles are a distraction or unprofessional; concerns about company image or reputation; trivial or minor losses of efficiency; or speculative health or safety concerns.

The employer is responsible for covering the cost of the accommodation if that does not impose significant difficulty or expense. If the cost of the requested accommodation constitutes a significant difficulty or expense, the employer may not deny an employee the accommodation before offering the employee the option to share the cost, and if still an undue hardship to the employer, to cover the cost of the accommodation themselves.

(3) Examples of violations include:

i. An employer refusing to grant an exception to the company's grooming policy to a job applicant who maintains uncut hair for religious reasons, despite the absence of an undue hardship.

ii. An employer rejects a job applicant who wears a beard for religious reasons because the job requires use of a gas mask or other personal protective equipment ("P.P.E.") that does not provide adequate protection for persons wearing beards. However, the employer, without incurring undue hardship, could have provided an effective alternative for the gas mask or P.P.E.

iii. An employer or agent of an employer who, despite the absence of an undue hardship, fails to provide or to consider providing alternatives to a required hair-based drug test as a reasonable accommodation for employees who are unable to provide a live hair sample for religious reasons.

iv. An employer or agent of an employer who submits an individual's name to an employment or licensing database as a drug screening failure based on the individual's refusal to submit to hair-based drug testing for religious reasons.

v. An employer refusing to allow a Muslim employee to grow a beard during Ramadan, as an exception to a general grooming policy, despite the absence of an undue hardship.

vi. An employer conditioning permission for an employee to wear religious headwear at work on the employee adding the company logo to the religious headwear, despite the employee's religious objections and the absence of an undue hardship on the employer.

(Added City Record 12/31/2020, eff. 1/30/2021)

§ 2-09 Prohibition on Discrimination Based on Pregnancy, Childbirth, and Related Medical Conditions, and Requirement for Employers to Accommodate Lactation Needs.

(a) *Disparate Treatment Based on Pregnancy, Childbirth, or Related Medical Conditions.* It is a violation of § 8-107 of the Administrative Code for any covered entity to treat a person less well based on their actual or perceived pregnancy, childbirth, or related medical condition. Disparate treatment includes adverse treatment of pregnant individuals based on assumptions and stereotypes about the ability, reliability, or professional commitment of pregnant employees. Assumptions about how pregnant individuals should behave, their physical capabilities, and what is or is not healthy for a fetus cannot be used as pretext for unlawful discrimination.

(1) *Examples of violations.*

(i) An employer refuses to hire someone otherwise qualified for a job because the applicant is pregnant and the employer assumes they will likely miss too much work after childbirth.

(ii) A landlord refuses a housing application from a person based in part on their pregnancy.

(iii) A hospital repeatedly drug tests pregnant people without their consent but does not test nonpregnant patients without their consent.

(iv) An employer makes offensive jokes and comments on the basis of an individual's pregnancy, such as talking about weight gain or stating that pregnancy is making the individual overly sensitive.

(v) A hotel worker refuses to let a pregnant guest use the hotel hot tub.

(vi) A restaurant manager tells a patron to leave the restaurant because the patron is breastfeeding their child and exposing their breast.

(vii) A manager fails to intervene after overhearing several employees call their coworker a "cow" after the coworker uses the office lactation room.

(viii) A bouncer refuses to let a pregnant person into a bar because the bouncer believes pregnant people should not go to bars.

(ix) An employer decides not to assign an employee to a new project after learning they are pregnant because the employer is concerned that the worker will be distracted by the pregnancy.

(x) A student at school is bullied for being pregnant. They tell one of their teachers about the bullying, and the teacher does nothing.

(xi) Because of their pregnancy, an employee begins receiving negative performance reviews and fewer work assignments.

(b) *Policies that Facially Discriminate Against People Based on Pregnancy, Childbirth, or Related Medical Conditions.* A covered entity's policy that targets individuals for disparate treatment based on their actual or perceived pregnancy, childbirth, or related medical condition is unlawful under the NYCHRL. A covered entity cannot use its concerns about maternal or fetal safety as a reason for discrimination.

(1) *Examples of violations.*

(i) An employer has a policy of refusing to hire pregnant individuals for, or place current employees in, specific positions because the positions involve working with hazardous chemicals.

(ii) A restaurant policy prohibits staff from serving pregnant people raw fish or coffee.

(iii) A hospital has a blanket rule prohibiting any pregnant person from participating in drug detoxification programs.

(iv) An employer requires all pregnant employees to take leave at a certain month in their pregnancy.

(v) An employer's policy requires medical clearance from pregnant employees to perform certain job duties when medical clearance is not required for other employees.

(vi) A hospital policy allows medical providers to override the informed consent of a patient with capacity to provide consent only when the patient is pregnant.

(vii) An employer has a policy of not hiring female job applicants of childbearing age out of fear that they may be or will become pregnant.

(c) *Facially Neutral Policies or Practices that Have a Disparate Impact on People Based on Pregnancy, Childbirth, or Related Medical Conditions.* A covered entity's neutral policy or practice may have a disparate impact on individuals who are pregnant or perceived to be pregnant. An entity may be liable for disparate impact discrimination if it fails to plead and prove that: (1) the policy or practice or a group of policies or practices bears a significant relationship to a significant business objective of the covered entity; or (2) does not contribute to the disparate impact. An entity may also be liable for disparate impact discrimination if there is substantial evidence that an alternative policy or practice with less disparate impact is available to the covered entity and the covered entity fails to prove that such alternative policy or practice would not serve the covered entity as well.

(1) *Examples of violations.*

(i) A policy that permits light duty assignments only for on-the-job injuries fails to provide pregnant employees such light duty assignments as a reasonable accommodation.

(ii) An employer with a policy that limits all employees to three 15-minute breaks without any exceptions does not give employees who need to express breast milk enough time to express their milk.

(d) *Requirement for Employers to Provide Written Notice About Employees' Right to be Free from Discrimination Based on Pregnancy, Childbirth, or a Related Medical Condition.* An employer must provide employees with written notice of their right to be free from discrimination based on pregnancy, childbirth, or related medical condition. The employer may comply with this requirement by: (1) conspicuously posting the notice in its place of business in an area accessible to employees, which may include on a company intranet; or (2) providing the notice to new employees at the start of employment and to all other employees who have not otherwise received notice. Employers may use the notice of rights available on the Commission website to satisfy their obligation to provide notice. The notice should be available to employees at all times during their employment.

(e) *Failure to Provide Reasonable Accommodations in Employment Based on Pregnancy, Childbirth, or a Related Medical Condition.* It is a violation of the law for an employer to fail to provide a reasonable accommodation for an employee's pregnancy, childbirth, or a related medical condition, if the employer knew or should have known of the employee's pregnancy, childbirth, or related medical condition, and providing the accommodation would not create an undue hardship. Requested accommodations are reasonable unless the employer meets the burden of showing they pose an undue hardship. The employer need not provide the specific accommodation sought by the employee so long as the employer proposes reasonable alternatives that meet the specific needs of the individual or that specifically address the condition at issue.

An employee's right to receive a reasonable accommodation based on pregnancy, childbirth, or a related medical condition does not depend on whether the medical condition amounts to a disability under the City Human Rights Law.

(1) Some accommodations for pregnancy, childbirth, or a related medical condition that generally will not pose an undue hardship on an employer, include, without limitation: minor or temporary modifications to work schedules; adjustments to uniform requirements or dress codes; additional food, drink, bathroom, or rest breaks; being permitted to sit or eat at locations where eating and drinking is not typically allowed; moving a work station to permit movement or stretching of extremities, or to be closer to the bathroom; limits on lifting; minor physical modifications to a work station, including the addition of a fan or a seat; periodic rest; assistance with manual labor; light duty or desk duty assignments; temporary transfers to less strenuous or hazardous work; and other such accommodations consistent with the spirit of the above examples.

(2) An employer's first obligation is to provide a reasonable accommodation to an employee so that they may remain in their current position. When that is not possible because of an undue hardship, an employer may consider whether the employee could be reassigned to a vacant position with equivalent pay, status, and benefits. Only when a comparable position is unavailable, may an employer then explore alternative positions that are not comparable. As a last resort, when no other accommodation can be made, a paid or unpaid leave of absence may be offered as a temporary

accommodation. A temporary modification of duties, reassignment to another position, or period of leave that the employer is able to provide as a reasonable accommodation for pregnancy, childbirth, or a related medical condition shall not be treated as evidence that the employee cannot return to performing the essential requisites of their job when their need for a reasonable accommodation has ended. An employer shall not adopt categorical exclusions of comparable positions that pregnant employees are not permitted to fill.

(3) *Examples.*

(i) An employer refuses to grant requests for temporary shift assignments to a pregnant employee even though doing so would not pose an undue hardship. This violates the City Human Rights Law.

(ii) A store refuses to provide a stool to a pregnant employee who works as a cashier and needs to take breaks from standing as an accommodation, even though providing the stool does not pose an undue hardship on the store. This violates the City Human Rights Law.

(iii) An employer denies an accommodation to a pregnant Muslim employee to work through their lunch hour during Ramadan because the employer does not think the employee should fast while pregnant. (The employer's conduct is also discrimination for failing to accommodate the employee's religious observance pursuant to § 8-107(3) of the Administrative Code.)

(iv) An employee who terminated a pregnancy requested several days off for the procedure and recovery. The employer reasonably accommodates the employee by allowing them to use available leave time.

(v) A post-partum employee who needs physical therapy to address a complication of childbirth may be reasonably accommodated by letting them adjust their lunch hour so that they may attend treatment appointments.

(f) *Employers Must Engage in a Cooperative Dialogue When They Know or Should Know that an Employee Requires an Accommodation Because of Pregnancy, Childbirth, or a Related Medical Condition, Including Lactation.* When an employer knows or should know that an employee needs an accommodation due to pregnancy, childbirth, or a related medical condition, an employer must engage in a cooperative dialogue with the employee. Where an employee has not requested an accommodation, the employer has an affirmative obligation to initiate a cooperative dialogue if the employer: (1) has knowledge that an employee's performance at work has been affected or that their behavior at work could lead to an adverse employment action; and (2) has a reasonable basis to believe that the issue is related to pregnancy, childbirth, or related medical condition. The employer should be cautious in initiating the cooperative dialogue in a way to open the conversation and invite the employee to feel comfortable in making a request, such as asking if there is anything going on with the employee, or reminding the employee of the various types of support available, including accommodations. If an employer approaches an employee to initiate a cooperative dialogue and the employee does not reveal that they are pregnant or have a related medical condition in that conversation, the employee does not waive their opportunity to reveal their pregnancy or related medical condition and initiate a cooperative dialogue with their employer at a later time.

(1) An employer's obligation to engage in the cooperative dialogue when they "should know" about an employee's pregnancy, childbirth, or related medical condition is not a permissible basis for an employer to act on speculation based on stereotypes or assumptions about pregnancy. The obligation to initiate a cooperative dialogue can be met simply by reminding the employee of the employer's accommodations policy.

(2) In determining whether or not an employer has engaged in a cooperative dialogue in good faith with an employee, the Commission will consider various factors, including, without limitation: (i) whether the employer has a written policy for employees about how to request accommodations based on pregnancy, childbirth, or a related medical condition; (ii) whether the employer responded to the request in a timely manner in light of the urgency of the request; (iii) whether the employer tried to explore the existence and feasibility of alternative accommodations or alternative work assignments; and (iv) whether the employer tried to block or delay the cooperative dialogue or in any way intimidate or deter the employee from requesting the accommodation.

(3) A cooperative dialogue should continue until one of the following occurs: (i) an agreement on a reasonable accommodation is reached; or (ii) the employer reasonably concludes that (A) all potential accommodations will cause an undue hardship to the employer, or (B) no accommodation exists that will allow the employee to perform the essential requisites of the job. Once the employer reaches a conclusion, either to offer an accommodation or decides it cannot make an accommodation, the employer must promptly notify the employee of the determination in writing.

(4) An employer must provide employees who need lactation accommodations with a lactation room, as defined in § 8-102 of the Administrative Code, and reasonable time to express breast milk pursuant to §§ 8-107(22)(b) and 8-107(22)(c) of the Administrative Code. If an employer is unable to provide one or more of the required components of a lactation room because of an undue hardship, the employer must engage in a cooperative dialogue with the employee to determine alternative accommodations that meet the employee's needs for each component that cannot be provided. Section 8-107(22) does not excuse employers from their obligation to provide additional reasonable accommodations beyond those explicitly enumerated in the definition of lactation room in § 8-102 and § 8-107(22) of the Administrative Code, as further discussed below in 47 RCNY § 2-09(h)(3).

(5) It is unlawful for an employer to maintain a policy, in writing or in practice, or utilize a system or procedure, that categorically excludes workers in need of accommodations based on pregnancy, childbirth, or related medical conditions from certain types of accommodations. Accommodation requests must be assessed on an individualized basis.

(g) *Medical Documentation.*

(1) Under no circumstances shall an employer request unnecessary medical documentation of the need for minor accommodations, including, without limitation: minor or temporary modifications to work schedules; adjustments to uniform requirements or dress codes; additional or longer food, drink, bathroom, or rest breaks; being permitted to sit or eat at locations where eating and drinking is not typically allowed; moving a work station to permit movement or stretching of extremities, or to be closer to a bathroom; limits on lifting; minor physical modifications to a work station, including the addition of a fan or seat; periodic rest; assistance with manual labor; light duty or desk duty assignments; temporary transfers to less strenuous or hazardous work; and other accommodations consistent with the spirit of the above examples.

(2) For other accommodations, including but not limited to time away from the worksite to attend medical appointments, working from home, or a leave of absence, an employer may request medical documentation. During the time period in which an employee is making good faith efforts to obtain documentation, however, the employer shall provide reasonable accommodation(s), absent undue hardship. An employer shall not take adverse action against an employee related to their need for accommodation while the employee is engaging in good faith efforts to obtain documentation.

(3) *Examples.*

(i) An employee experiences a miscarriage and requests time off for recovery, providing a medical note to their employer. The employer refuses, though doing so would not pose an undue hardship.

(ii) A pregnant employee tasked with lifting boxes in a supermarket requests lighter duty. The employer reasonably accommodates them with a temporary assignment to a position at the bakery counter. A medical note is not necessary to evaluate the accommodation request, and so the employer cannot ask the employee to provide a medical note for this accommodation.

(iii) An employee who is undergoing infertility treatment requests time off to attend medical appointments related to the treatment. While an employer must reasonably accommodate these requests, the employer may also request medical documentation to confirm that the time off is for a medical-related condition.

(iv) An employee's doctor advises them to stay on bed rest due to a medical condition related to pregnancy. The employee asks their employer for permission to work remotely and provides a medical note confirming the need to work from home. The employer allows the employee to work remotely

while on bed rest.

(h) *Accommodations Related to Lactation/Expressing Breast Milk.* An employer must provide the following for any employee needing an accommodation to express breast milk unless the employer can show that doing so would pose an undue hardship: a lactation room in close proximity to the employee's work area; a refrigerator suitable for breast milk in close proximity to the employee's work area; and access to running water nearby the lactation room.

(1) *Lactation room.*

(i) If there is a room that is exclusively used for lactation, the employer must ensure that the room is shielded from view and that the door of the room has a lock. If the door cannot have a lock, a "Do Not Disturb" sign or other appropriate signage should be placed on the door or entrance of the space.

(ii) If there is no dedicated lactation room, the employer must make a multi-purpose space available for lactation unless doing so poses an undue hardship. If the multi-purpose room designated as a lactation room is also used for another purpose, it must only be used as a lactation room while an employee is using the room to express breast milk. The employer must communicate to other employees, through appropriate signage or other means of communication that when the room is being used as a lactation room the room may only be used for expressing breast milk during that time. The employer should also ensure that individuals expressing breast milk in the multi-purpose space can express milk without intrusion.

(iii) If there is no dedicated lactation room and no multi-purpose room available because it poses an undue hardship, the employer must engage in a cooperative dialogue with the employee and discuss options to ensure employees are able to express breast milk at work.

(2) *Lactation time.* The employer must give employees a reasonable amount of break time to express breast milk pursuant to section 206-c of the labor law. An employer may not limit the amount of time that an employee uses to express breast milk. There is no cap on the number of breaks an employee can take and the travel time to the lactation space must be provided.

(3) *Other lactation accommodations.*

(i) If an employer is unable to provide one or more of the required components of a lactation room because of an undue hardship, the employer must engage in a cooperative dialogue with the employee to determine alternative accommodations that meet the employee's needs for each component that cannot be provided.

(ii) Employers may need to provide additional or different lactation accommodations in order to meet additional or different needs of an employee beyond those indicated in the statutorily required lactation accommodation in §§ 8-107(22)(b) and 8-107(22)(c) of the Administrative Code.

(iii) Employees may need lactation accommodations, in addition to a lactation room and reasonable time to express breast milk, which may include, but are not limited to, a modified uniform or temporary modified job duties.

(iv) If an employee wishes to pump at their usual workspace and it does not impose an undue hardship, then the employer shall allow this as an alternative to the lactation room. Discomfort expressed by a coworker, client, or customer generally does not rise to the level of undue hardship.

(v) If the nature of the employee's job is mobile such that they do not have daily access to the employer's lactation room, the employer must ensure that the employee is aware of their right to express breast milk at work. The employer must also engage in a cooperative dialogue with the employee to determine how to accommodate the employee's need to express milk, such as ensuring the employee has adequate equipment, space, and time for pumping while mobile.

(vi) *Examples of alternative lactation accommodations.*

A. An employer cannot provide a lactation room with an electrical outlet. Instead, an employer may offer to provide an extension cord or other alternative power source for the designated lactation room.

B. Due to the mobile nature of the employee's work, an employer cannot provide a lactation room for its employee. Instead, the employer gives the employee portable privacy screens, agrees to allow the employee to pump in the employer-provided vehicle between site visits, and provides sanitizing wipes and a cooler to store breast milk.

C. An employer's office space does not have infrastructure to provide a lactation room nearby running water. An employer may offer sanitizing wipes and towels in the lactation room, and instruct its employees where the closest source of running water is, such as an office kitchen or bathroom.

D. An employee's work uniform interferes with their ability to express breast milk during pumping breaks. As a reasonable accommodation, their employer provides a modified uniform.

E. An employee has been using their employer's lactation room for their pumping needs since recently returning from pregnancy leave. However, the employee has noticed that their work on some projects is disrupted by the time it takes to go to and come back from the lactation room. The employee requests a privacy screen from the employer so that they can pump from their desk. There is no undue hardship on the employer, and the employer provides the privacy screen for the employee to use while pumping.

(4) *Notice and lactation policy.*

(i) An employer must develop and implement a written policy stating that employees have a right to request a lactation accommodation and explaining the process for making such request. The process must: (A) specify how an employee may submit a request for a lactation room; (B) require that the employer respond to a request for a lactation room as quickly as possible, but, under no circumstances, no later than five business days; (C) provide a procedure to follow when two or more employees need to use the lactation room at the same time; (D) explain that the employer shall provide reasonable break time for an employee to express breast milk pursuant to section 206-c of the labor law; and (E) state that if providing any aspects of the lactation room required by law would create an undue hardship for the employer, the employer shall engage in a cooperative dialogue with the employee.

(ii) Employers must distribute the policy to all employees at the start of their employment. Employers should also give the policy to employees when they return from parental leave. Employers may comply with this requirement by customizing one of the model policies available on the Commission's website.

(5) *Examples of violations.*

(i) An employer prohibits employees who need to express breast milk from pumping at their normal work stations, even if the employees prefer to pump at their work stations and it does not pose an undue hardship on the employer.

(ii) An employer tells an employee needing to express breast milk to use the restroom, even though providing a legally-mandated lactation room would not pose an undue hardship.

(Added City Record 3/3/2021, eff. 4/2/2021; amended City Record 6/1/2021, eff. 7/1/2021)

§ 2-10 Prohibition on Discrimination Based on Sexual or Reproductive Health Decisions.

The following requirements apply with respect to Title 8 of the Administrative Code's prohibition on unlawful discriminatory practices based on sexual or

reproductive health decisions.

(a) *Disparate Treatment Based on a Person's Sexual or Reproductive Health Decisions.* It is a violation of § 8-107 of the Administrative Code for an employer to treat a person less well based on their sexual or reproductive health decisions. An employer's adverse treatment of employees because of their decision to receive services related to sexual or reproductive health, based on assumptions or stereotypes related to ability, behavior, or what is or is not healthy for an individual is unlawful.

(1) *Examples of violations.*

(i) An employer repeatedly chastises an employee for pursuing in vitro fertilization treatment, which the employer believes is not "natural."

(ii) An employer repeatedly denigrates an employee who is undergoing treatment related to his infertility, joking about how the employee cannot get his wife pregnant.

(iii) A supervisor avoids meetings with one of the employees on their team after learning the employee sought preventative treatment for the human immunodeficiency virus (HIV).

(iv) An employer fires an employee after learning that the employee had an abortion.

(v) An employee openly treats their coworker with disgust after learning that the coworker is receiving treatment for a sexually transmitted infection. The employer is aware of this conduct but does nothing to address it.

(vi) An employee advises a supervisor that their partner is pregnant with their fourth child. The supervisor begins to routinely tell the employee they should have had a vasectomy, emailing them links to doctors who specialize in the surgery.

(b) *Employment Policies that Facially Discriminate Against People Based on Their Sexual or Reproductive Health Decisions.* Under the NYCHRL, employer policies may not target people for unequal treatment based on their sexual or reproductive health decisions.

(1) *Examples of violations.*

(i) A doctor's office requires all staff to undergo testing for HIV. An employee refuses to get tested and is fired for their decision.

(ii) An employer requires new hires to sign a pledge that they have not used and will not use birth control.

(Added City Record 3/3/2021, eff. 4/2/2021; amended City Record 6/1/2021, eff. 7/1/2021)

Chapter 3: Age Discrimination Exemptions for Public Accommodations

§ 3-01 Definitions.

Advantages. "Advantages" shall include but not be limited to priority services, discounts in pricing or anything of monetary value extended on the basis of a person's age.

Restrictions. "Restrictions" shall be construed to mean any limitation in access or services on the basis of a person's age.

§ 3-02 Age-Based Extension of Advantages in Public Accommodations.

Any and all reasonable advantages extended in access to services provided by a place or provider of public accommodation on the basis of a person's age shall be exempt from the provisions of § 8-107(4)(a) of the Administrative Code of the City of New York.

§ 3-03 Age-Based Restrictions in Public Accommodations.

(a) Any and all restrictions in access to public accommodations on the basis of a person's age which are mandated by federal, state or local law shall be exempt from the provisions of § 8-107(4)(a) of the Administrative Code of the City of New York.

(b) Any and all restrictions on the basis of a person's age in access to public accommodations displaying motion pictures with ratings by the Motion Picture Association of America, Inc. shall be exempt from the provisions of § 8-107(4)(a) of the Administrative Code of the City of New York.

(c) Any and all reasonable restrictions in access to public accommodations imposed upon minors to prevent physical harm to such persons shall be exempt from the provisions of § 8-107(4)(a) of the Administrative Code of the City of New York.

(d) Any restrictions in access to or services provided by a place or provider of public accommodation based on age which allows the owner, lessee, proprietor, manager, superintendent, agent or employee of a place or provider of public accommodation to refuse to enter into a contract which under the laws of the State of New York may be disaffirmed on the ground of infancy shall be exempt from the provisions of § 8-107(4)(a) of the Administrative Code.

§ 3-04 Applications for Exemption from § 8-107(4)(a) Administrative Code.

The owner, lessee, proprietor, manager, superintendent or agent of a place or provider of public accommodation may make an application for exemption of an age-based restriction on access to or services provided by such public accommodation which would otherwise be prohibited pursuant to § 8-107(4)(a) of the Administrative Code of the City of New York and 47 RCNY § 3-03. Such application shall be made in writing to the office of the chairperson of the New York City Commission on Human Rights. The application shall set forth the specific basis for the exemption sought together with any supporting evidence. The chairperson may grant such exemption if he or she determines that the exemption promotes the health, safety or well-being of the public, or prevents physical harm to the property or premises of a place of public accommodation, or undue disruption of the quiet enjoyment of a place of public accommodation and is not inconsistent with the goals and policies of the City Human Rights Law. The decision of the Chairperson shall be final.

§ 3-05 Effective Date. [Repealed]