

May, 2020

The New York City Administrative Code Title 8: Civil Rights

Chapter 1: Commission on Human Rights

**§ 8-101 Policy.**

In the city of New York, with its great cosmopolitan population, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of their actual or perceived differences, including those based on race, color, creed, age, national origin, alienage or citizenship status, gender, sexual orientation, disability, marital status, partnership status, caregiver status, sexual and reproductive health decisions, uniformed service, any lawful source of income, status as a victim of domestic violence or status as a victim of sex offenses or stalking, whether children are, may be or would be residing with a person or conviction or arrest record. The council hereby finds and declares that prejudice, intolerance, bigotry, and discrimination, bias-related violence or harassment and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the institutions and foundation of a free democratic state. The council further finds and declares that gender-based harassment threatens the terms, conditions and privileges of employment. A city agency is hereby created with power to eliminate and prevent discrimination from playing any role in actions relating to employment, public accommodations, and housing and other real estate, and to take other actions against prejudice, intolerance, bigotry, discrimination, sexual harassment and bias-related violence or harassment as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

**§ 8-102 Definitions.**

Except as otherwise expressly provided, when used in this chapter, the following terms have the following meanings:

**Acts or threats of violence.** The term "acts or threats of violence" includes, but is not limited to, acts, which would constitute violations of the penal law.

**Alienage or citizenship status.** The term "alienage or citizenship status" means:

1. The citizenship of any person, or
2. The immigration status of any person who is not a citizen or national of the United States.

**Caregiver.** The term "caregiver" means a person who provides direct and ongoing care for a minor child or a care recipient. As used in this definition:

1. **Care recipient.** The term "care recipient" means a person with a disability who: (i) is a covered relative, or a person who resides in the caregiver's household and (ii) relies on the caregiver for medical care or to meet the needs of daily living.
2. **Covered relative.** The term "covered relative" means a caregiver's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of the caregiver's spouse or domestic partner, or any other individual in a familial relationship with the caregiver as designated by the rules of the commission.
3. **Grandchild.** The term "grandchild" means a child of a caregiver's child.

4. **Grandparent.** The term "grandparent" means a parent of a caregiver's parent.
5. **Parent.** The term "parent" means a biological, foster, step- or adoptive parent, or a legal guardian of a caregiver, or a person who stood in loco parentis when the caregiver was a minor child.
6. **Sibling.** The term "sibling" means a caregiver's brother or sister, including half-siblings, step-siblings and siblings related through adoption.
7. **Spouse.** The term "spouse" means a person to whom a caregiver is legally married under the laws of the state of New York.
8. **Child.** The term "child" means a biological, adopted or foster child, a legal ward or a child of a caregiver standing in loco parentis.
9. **Minor child.** The term "minor child" means a child under the age of 18.

**Commercial space.** The term "commercial space" means any space in a building, structure or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied for the manufacture, sale, resale, processing, reprocessing, displaying, storing, handling, garaging or distribution of personal property; and any space which is used or occupied, or is intended, arranged or designed to be used or occupied as a business or professional unit or office in any building, structure or portion thereof.

**Commission.** The term "commission," unless a different meaning clearly appears from the text, means the city commission on human rights.

**Consumer credit history.** The term "consumer credit history" means an individual's credit worthiness, credit standing, credit capacity, or payment history, as indicated by: (i) a consumer credit report; (ii) credit score; or (iii) information an employer obtains directly from the individual regarding (1) details about credit accounts, including the individual's number of credit accounts, late or missed payments, charged-off debts, items in collections, credit limit, prior credit report inquiries, or (2) bankruptcies, judgments or liens. A consumer credit report 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.

**Cooperative dialogue.** The term "cooperative dialogue" means 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.

**Covered entity.** The term "covered entity" means a person required to comply with any provision of section 8-107.

**Disability.** The term "disability" means any physical, medical, mental or psychological impairment, or a history or record of such impairment. As used in this definition:

1. Physical, medical, mental, or psychological impairment. The term "physical, medical, mental, or psychological impairment" means:
  - (a) An impairment of any system of the body; including, but not limited to, the neurological system; the musculoskeletal system; the special sense organs and respiratory organs, including, but not

limited to, speech organs; the cardiovascular system; the reproductive system; the digestive and genitourinary systems; the hemic and lymphatic systems; the immunological systems; the skin; and the endocrine system; or

(b) A mental or psychological impairment.

2. In the case of alcoholism, drug addiction or other substance abuse, the term "disability" only applies to a person who (i) is recovering or has recovered and (ii) currently is free of such abuse, and does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

**Domestic partner.** The term "domestic partner" means any person who has a registered domestic partnership pursuant to section 3-240, a domestic partnership registered in accordance with executive order number 123, dated August 7, 1989, or a domestic partnership registered in accordance with executive order number 48, dated January 7, 1993.

**Educational institution.** The term "educational institution" includes kindergartens, primary and secondary schools, academies, colleges, universities, professional schools, extension courses, and all other educational facilities.

**Employer.** For purposes of subdivisions 1, 2, 3, 11-a, and 22, subparagraph 1 of paragraph a of subdivision 21, paragraph e of subdivision 21 and subdivision 23 of section 8-107, the term "employer" does not include any employer that has fewer than four persons in the employ of such employer at all times during the period beginning twelve months before the start of an unlawful discriminatory practice and continuing through the end of such unlawful discriminatory practice, provided however, that in an action for unlawful discriminatory practice based on a claim of gender-based harassment pursuant to subdivision one of section 8-107, the term "employer" shall include any employer, including those with fewer than four persons in their employ. For purposes of this definition, (i) natural persons working as independent contractors in furtherance of an employer's business enterprise shall be counted as persons in the employ of such employer and (ii) the employer's parent, spouse, domestic partner or child if employed by the employer are included as in the employ of such employer.

**Employment agency.** The term "employment agency" includes any person undertaking to procure employees or opportunities to work.

**Family.** The term "family," as used in subparagraph (4) of paragraph a of subdivision 5 of section 8-107, means either a person occupying a dwelling and maintaining a household, with not more than four boarders, roomers or lodgers, or two or more persons occupying a dwelling, living together and maintaining a common household, with not more than four boarders, roomers or lodgers. As used in this definition, a "boarder," "roomer" or "lodger" residing with a family means a person living within the household who pays a consideration for such residence and does not occupy such space within the household as an incident of employment therein.

**Gender.** The term "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.

**Housing accommodation.** The term "housing accommodation" includes any building, structure or portion thereof that is used or occupied or is intended, arranged or designed to be used or occupied, as the home, residence or sleeping place of one or more human beings. Except as otherwise specifically provided, such term includes a publicly-assisted housing accommodation.

**Intelligence information.** The term "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.

**Intern.**

1. The term "intern" means an individual who performs work for an employer on a temporary basis whose work:

- (a) Provides training or supplements training given in an educational environment such that the employability of the individual performing the work may be enhanced;
- (b) Provides experience for the benefit of the individual performing the work; and
- (c) Is performed under the close supervision of existing staff.

2. The term includes such individuals without regard to whether the employer pays them a salary or wage.

**Labor organization.** The term "labor organization" includes any organization that exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms and conditions of employment, or of other mutual aid or protection in connection with employment.

**Lactation room.** The term "lactation room" means 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.

**Lawful source of income.** The term "lawful source of income" includes income derived from social security, or any form of federal, state or local public assistance or housing assistance including section 8 vouchers.

**Marijuana.** The term "marijuana" has the same meaning as the term "marihuana" as such term is defined in subdivision 21 of section 3302 of the public health law.

**National origin.** The term "national origin" includes "ancestry."

**National security information.** The term "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, is 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.

**Occupation.** The term "occupation" means any lawful vocation, trade, profession or field of specialization.

**Partnership status.** The term "partnership status" means the status of being in a domestic partnership, as defined by subdivision a of section 3-240.

**Person.** 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, or receivers.

**Person aggrieved.**

1. The term "person aggrieved," except as used in section 8-123, includes a person whose right created, granted or protected by this chapter is violated by a covered entity directly or through conduct of the covered entity to which the person's agent or employee is subjected while the agent or employee was acting, or as a result of the agent or employee having acted, within the scope of the agency or employment relationship. For purposes of this definition, an agent or employee's protected status is imputed to that person's principal or employer when the agent or employee acts within the scope of the agency or employment relationship. It is irrelevant whether or not the covered entity knows of the agency or employment relationship.

2. A person is aggrieved even if that person's only injury is the deprivation of a right granted or protected by this chapter.

3. This definition does not limit or exclude any other basis for a cause of action.

**Place or provider of public accommodation.** The term "place or provider of public accommodation" includes providers, whether licensed or unlicensed, of goods, services, facilities, accommodations, advantages or privileges of any kind, and places, whether licensed or unlicensed, where goods, services, facilities, accommodations, advantages or privileges of any kind are extended, offered, sold, or otherwise made available. Such term does not include any club which proves that it is in its nature distinctly private. A club is not in its nature distinctly private if it has more than 400 members, provides regular meal service and regularly receives payment for dues, fees, use of space, facilities, services, meals or beverages directly or indirectly from or on behalf of non-members for the furtherance of trade or business. For the purposes of this definition, a corporation incorporated under the benevolent orders law or described in the benevolent orders law but formed under any other law of this state, or a religious corporation incorporated under the education law or the religious corporation law is deemed to be in its nature distinctly private. No club that sponsors or conducts any amateur athletic contest or sparring exhibition and advertises or bills such contest or exhibition as a New York state championship contest or uses the words "New York state" in its announcements is a private exhibition within the meaning of this definition.

**Publicly-assisted housing accommodations.** The term "publicly-assisted housing accommodations" includes:

1. Publicly-owned or operated housing accommodations;
2. Housing accommodations operated by housing companies under the supervision of the state commissioner of housing and community renewal, or the department of housing preservation and development;
3. Housing accommodations constructed after July 1, 1950, and housing accommodations sold after July 1, 1991:
  - (a) That are exempt in whole or in part from taxes levied by the state or any of its political subdivisions;

(b) That are constructed on land sold below cost by the state or any of its political subdivisions or any agency thereof, pursuant to the federal housing act of 1949;

(c) That are constructed in whole or in part on property acquired or assembled by the state or any of its political subdivisions or any agency thereof through the power of condemnation or otherwise for the purpose of such construction; or

(d) For the acquisition, construction, repair or maintenance for which the state or any of its political subdivisions or any agency thereof supplies funds or other financial assistance; and

4. Housing accommodations, the acquisition, construction, rehabilitation, repair or maintenance of which is, after July 1, 1955, financed in whole or in part by a loan, whether or not secured by a mortgage, the repayment of which is guaranteed or insured by the federal government or any agency thereof, or the state or any of its political subdivisions or any agency thereof.

**Real estate broker.** The term "real estate broker" means any person who, for another and for a fee, commission or other valuable consideration, lists for sale, sells, at auction or otherwise, exchanges, buys or rents, or offers or attempts to negotiate a sale at auction, or otherwise, exchange, purchase or rental of an estate or interest in real estate or collects or offers or attempts to collect rent for the use of real estate, or negotiates, or offers or attempts to negotiate, a loan secured or to be secured by a mortgage or other incumbrance upon or transfer of real estate. In the sale of lots pursuant to the provisions of article nine-a of the real property law, the term "real estate broker" shall also include any person employed by or on behalf of the owner or owners of lots or other parcels of real estate, at a stated salary, or upon commission, or upon a salary and commission, or otherwise, to sell such real estate, or any parts thereof, in lots or other parcels, and who shall sell or exchange, or offer or attempt or agree to negotiate the sale or exchange of any such lot or parcel of real estate.

**Real estate salesperson.** The term "real estate salesperson" means a person employed by or authorized by a licensed real estate broker to list for sale, sell or offer for sale at auction or otherwise to buy or offer to buy or to negotiate the purchase or sale or exchange of real estate or to negotiate a loan on real estate or to lease or rent or offer to lease, rent or place for rent any real estate, or who collects or offers or attempts to collect rents for the use of real estate for or on behalf of such real estate broker.

**Reasonable accommodation.**

1. The term "reasonable accommodation" means such accommodation that can be made that does not cause undue hardship in the conduct of the covered entity's business. The covered entity has the burden of proving undue hardship. In making a determination of undue hardship with respect to claims filed under subdivisions 1, 2, 22 or 27 of section 8-107, the factors which may be considered include but are not limited to:

(a) The nature and cost of the accommodation;

(b) The overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(c) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and

(d) The type of operation or operations of the covered entity, including the composition, structure and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

2. In making a determination of undue hardship with respect to claims for reasonable accommodation to an employee's or prospective employee's religious observance filed under subdivision 3 of section 8-107, the definition of "undue hardship" set forth in paragraph b of such subdivision applies.

**Sexual and reproductive health decisions.** The term "sexual and reproductive health decisions" means any decision by an individual to receive services, which are arranged for or offered or provided to individuals relating to sexual and 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.

**Sexual orientation.** The term "sexual orientation" means an individual's actual or perceived romantic, physical or sexual attraction to other persons, or lack thereof, on the basis of gender. A continuum of sexual orientation exists and includes, but is not limited to, heterosexuality, homosexuality, bisexuality, asexuality and pansexuality.

**Tetrahydrocannabinols.** The term "tetrahydrocannabinols" has the same meaning as such term is defined in paragraph 21 of subdivision d of section 3306 of the public health law.

**Trade secrets.** The term "trade secrets" means information that (i) derives 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; and (iii) can reasonably be said to be the end product of significant innovation. The term "trade secrets" does not include general proprietary company information such as handbooks and policies. The term "regular access to trade secrets" does not include access to or the use of client, customer or mailing lists.

**Unemployed or unemployment.** The term "unemployed" or "unemployment" means not having a job, being available for work, and seeking employment.

**Uniformed service.** The term "uniformed service" means:

1. Current or prior service in:

(a) The United States army, navy, air force, marine corps, coast guard, commissioned corps of the national oceanic and atmospheric administration, commissioned corps of the United States public health services, army national guard or air national guard;

(b) The organized militia of the state of New York, as described in section 2 of the military law, or the organized militia of any other state, territory or possession of the United States; or

(c) Any other service designated as part of the "uniformed services" pursuant to subsection (16) of section 4303 of title 38 of the United States code;

2. Membership in any reserve component of the United States army, navy, air force, marine corps, or coast guard; or

3. Being listed on the state reserve list or the state retired list as described in section 2 of the military law or comparable status for any other state, territory or possession of the United States.

**Unlawful discriminatory practice.** The term "unlawful discriminatory practice" includes only those practices specified in section 8-107.

**Victim of domestic violence.** The term "victim of domestic violence" means a person who has been subjected to acts or threats of violence, not including acts of self-defense, committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim, by a person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, or by a person who is or has continually or at regular intervals lived in the same household as the victim.

**Victim of sex offenses or stalking.** The term "victim of sex offenses or stalking" means a victim of acts that would constitute violations of article 130 of the penal law or a victim of acts that would constitute violations of sections 120.45, 120.50, 120.55, or 120.60 of the penal law.

**§ 8-103 Commission on human rights. [Repealed]**

**§ 8-104 Functions. [Repealed]**

**§ 8-105 Powers and duties. [Repealed]**

**§ 8-106 Relations with city departments and agencies. [Repealed]**

**§ 8-107 Unlawful discriminatory practices.**

1. Employment. It shall be an unlawful discriminatory practice:

(a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual and reproductive health decisions, sexual orientation, uniformed service or alienage or citizenship status of any person:

(1) To represent that any employment or position is not available when in fact it is available;

(2) To refuse to hire or employ or to bar or to discharge from employment such person; or

(3) To discriminate against such person in compensation or in terms, conditions or privileges of employment.

(b) For an employment agency or an employee or agent thereof to discriminate against any person because of such person's actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual and reproductive health decisions, sexual orientation, uniformed service or alienage or citizenship status in receiving, classifying, disposing or otherwise acting upon applications for its services, including by representing to such person that any employment or position is not available when in fact it is available, or in referring an applicant or applicants for its services to an employer or employers.

(c) For a labor organization or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual and reproductive health decisions, sexual orientation, uniformed service or alienage or citizenship status of any person, to exclude or to expel from its membership such person, to represent that



membership is not available when it is in fact available, or to discriminate in any way against any of its members or against any employer or any person employed by an employer.

(d) For any employer, labor organization or employment agency or an employee or agent thereof to declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry in connection with prospective employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, race, creed, color, national origin, gender, disability, marital status, partnership status, caregiver status, sexual and reproductive health decisions, sexual orientation, uniformed service or alienage or citizenship status, or any intent to make any such limitation, specification or discrimination.

(e) The provisions of this subdivision and subdivision 2 of this section: (i) as they apply to employee benefit plans, shall not be construed to preclude an employer from observing the provisions of any plan covered by the federal employment retirement income security act of 1974 that is in compliance with applicable federal discrimination laws where the application of the provisions of such subdivisions to such plan would be preempted by such act; (ii) shall not preclude the varying of insurance coverages according to an employee's age; (iii) shall not be construed to affect any retirement policy or system that is permitted pursuant to paragraphs (e) and (f) of subdivision 3-a of section 296 of the executive law; (iv) shall not be construed to affect the retirement policy or system of an employer where such policy or system is not a subterfuge to evade the purposes of this chapter.

(f) The provisions of this subdivision do not govern the employment by an employer of the employer's parents, spouse, domestic partner, or children; provided, however, that such family members shall be counted as persons employed by an employer for the purposes of the definition of employer set forth in section 8-102.

2. Apprentice training programs. It shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs or an employee or agent thereof:

(a) To select persons for an apprentice training program registered with the state of New York on any basis other than their qualifications, as determined by objective criteria which permit review.

(b) To deny to or withhold from any person because of such person's actual or perceived race, creed, color, national origin, gender, age, disability, marital status, partnership status, sexual and reproductive health decisions, sexual orientation, uniformed service, alienage or citizenship status or status as a victim of domestic violence or as a victim of sex offenses or stalking the right to be admitted to or participate in a guidance program, an apprentice training program, on-the-job training program, or other occupational training or retraining program, or to represent that such program is not available when in fact it is available.

(c) To discriminate against any person in such person's pursuit of such program or to discriminate against such a person in the terms, conditions or privileges of such program because of actual or perceived race, creed, color, national origin, gender, age, disability, marital status, partnership status, sexual and reproductive health decisions, sexual orientation, uniformed service, alienage or citizenship status or status as a victim of domestic violence or as a victim of sex offenses or stalking.

(d) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for such program or to make any inquiry in connection with such program which expresses, directly or indirectly, any limitation, specification or

discrimination as to race, creed, color, national origin, gender, age, disability, marital status, partnership status, sexual and reproductive health decisions, sexual orientation, uniformed service, alienage or citizenship status or status as a victim of domestic violence or as a victim of sex offenses or stalking, or any intent to make any such limitation, specification or discrimination.

3. Employment; religious observance.

(a) It shall be an unlawful discriminatory practice for an employer or an employee or agent thereof to impose upon a person as a condition of obtaining or retaining employment any terms or conditions, compliance with which would require such person to violate, or forego a practice of, such person's creed or religion, including but not limited to the observance of any particular day or days or any portion thereof as a sabbath or holy day or the observance of any religious custom or usage, and the employer shall make reasonable accommodation to the religious needs of such person. Without in any way limiting the foregoing, no person shall be required to remain at such person's place of employment during any day or days or portion thereof that, as a requirement of such person's religion, such person observes as a sabbath or other holy day, including a reasonable time prior and subsequent thereto for travel between such person's place of employment and such person's home, provided, however, that any such absence from work shall, wherever practicable in the judgment of the employer, be made up by an equivalent amount of time at some other mutually convenient time.

(b) "Reasonable accommodation", as used in this subdivision, shall mean such accommodation to an employee's or prospective employee's religious observance or practice as shall not cause undue hardship in the conduct of the employer's business. The employer shall have the burden of proof to show such hardship. "Undue hardship" as used in this subdivision shall mean an accommodation requiring significant expense or difficulty (including a significant interference with the safe or efficient operation of the workplace or a violation of a bona fide seniority system). Factors to be considered in determining whether the accommodation constitutes an undue economic hardship shall include, but not be limited to:

(i) The identifiable cost of the accommodation, including the costs of loss of productivity and of retaining or hiring employees or transferring employees from one facility to another, in relation to the size and operating cost of the employer;

(ii) The number of individuals who will need the particular accommodation to a sincerely held religious observance or practice; and

(iii) For an employer with multiple facilities, the degree to which the geographic separateness or administrative or fiscal relationship of the facilities will make the accommodation more difficult or expensive.

Provided, however, an accommodation shall be considered to constitute an undue hardship, for purposes of this subdivision, if it will result in the inability of an employee who is seeking a religious accommodation to perform the essential functions of the position in which the employee is employed.

4. Public accommodations.

a. It shall be an unlawful discriminatory practice for any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation:

1. Because of any person's actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation, uniformed service or alienage or citizenship status, directly or indirectly:

(a) To refuse, withhold from or deny to such person the full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, services, facilities or privileges of the place or provider of public accommodation; or

(b) To represent to any person that any accommodation, advantage, facility or privilege of any such place or provider of public accommodation is not available when in fact it is available; or

2. Directly or indirectly to make any declaration, publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement, to the effect that:

(a) Full and equal enjoyment, on equal terms and conditions, of any of the accommodations, advantages, facilities and privileges of any such place or provider of public accommodation shall be refused, withheld from or denied to any person on account of race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation, uniformed service or alienage or citizenship status; or

(b) The patronage or custom of any person is unwelcome, objectionable, not acceptable, undesired or unsolicited because of such person's actual or perceived race, creed, color, national origin, age, gender, disability, marital status, partnership status, sexual orientation, uniformed service or alienage or citizenship status.

b. Notwithstanding the foregoing, the provisions of this subdivision shall not apply, with respect to age or gender, to places or providers of public accommodation where the commission grants an exemption based on bona fide considerations of public policy.

c. The provisions of this subdivision relating to discrimination on the basis of gender shall not prohibit any educational institution subject to this subdivision from making gender distinctions which would be permitted (i) for educational institutions which are subject to section 3201-a of the education law or any rules or regulations promulgated by the state commissioner of education relating to gender or (ii) under sections 86.32, 86.33 and 86.34 of title 45 of the code of federal regulations for educational institutions covered thereunder.

d. Nothing in this subdivision shall be construed to preclude an educational institution—other than a publicly-operated educational institution—which establishes or maintains a policy of educating persons of one gender exclusively from limiting admissions to students of that gender.

e. The provisions of this section relating to disparate impact shall not apply to the use of standardized tests as defined by section 340 of the education law by an educational institution subject to this subdivision provided that such test is used in the manner and for the purpose prescribed by the test agency which designed the test.

f. The provisions of this subdivision as they relate to unlawful discriminatory practices by educational institutions shall not apply to matters that are strictly educational or pedagogic in nature.

5. Housing accommodations, land, commercial space and lending practices.

(a) **Housing accommodations.** It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or

approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agent or employee thereof:

(1) Because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, uniformed service, marital status, partnership status, or alienage or citizenship status of any person or group of persons, or because of any lawful source of income of such person or persons, or because children are, may be or would be residing with such person or persons:

(a) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold from any such person or group of persons such a housing accommodation or an interest therein;

(b) To discriminate against any such person or persons in the terms, conditions or privileges of the sale, rental or lease of any such housing accommodation or an interest therein or in the furnishing of facilities or services in connection therewith; or

(c) To represent to such person or persons that any housing accommodation or an interest therein is not available for inspection, sale, rental or lease when in fact it is available to such person.

(2) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such a housing accommodation or an interest therein or to make any record or inquiry in conjunction with the prospective purchase, rental or lease of such a housing accommodation or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, sexual orientation, uniformed service, marital status, partnership status, or alienage or citizenship status, or any lawful source of income, or whether children are, may be, or would be residing with a person, or any intent to make such limitation, specification or discrimination.

(3) [Deleted.]

(4) The provisions of this paragraph (a) shall not apply:

(1) to the rental of a housing accommodation, other than a publicly-assisted housing accommodation, in a building which contains housing accommodations for not more than two families living independently of each other, if the owner members of the owner's family reside in one of such housing accommodations, and if the available housing accommodation has not been publicly advertised, listed, or otherwise offered to the general public; or

(2) to the rental of a room or rooms in a housing accommodation, other than a publicly-assisted housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner or members of the owner's family reside in such housing accommodation.

(b) Land and commercial space. It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, or managing agent of, or other person having the right of ownership or possession of or the right to sell, rent, or lease, or approve the sale, rental or lease of land or commercial space or an interest therein, or any agency or employee thereof:

(1) Because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, uniformed service, marital status, partnership status, or alienage or citizenship status of any person or group of persons, or because children are, may be or would be residing with any person or persons:

(A) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny or to withhold from any such person or group of persons land or commercial space or an interest therein;

(B) To discriminate against any such person or persons in the terms, conditions or privileges of the sale, rental or lease of any such land or commercial space or an interest therein or in the furnishing of facilities or services in connection therewith; or

(C) To represent to any person or persons that any land or commercial space or an interest therein is not available for inspection, sale, rental or lease when in fact it is available.

(2) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of such land or commercial space or an interest therein or to make any record or inquiry in connection with the prospective purchase, rental or lease of such land or commercial space or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, sexual orientation, uniformed service, marital status, partnership status, or alienage or citizenship status, or whether children are, may be or would be residing with such person, or any intent to make any such limitation, specification or discrimination.

(c) Real estate brokers. It shall be an unlawful discriminatory practice for any real estate broker, real estate salesperson or employee or agent thereof:

(1) To refuse to sell, rent or lease any housing accommodation, land or commercial space or an interest therein to any person or group of persons or to refuse to negotiate for the sale, rental or lease, of any housing accommodation, land or commercial space or an interest therein to any person or group of persons because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, uniformed service, marital status, partnership status, or alienage or citizenship status of such person or persons, or because of any lawful source of income of such person or persons, or because children are, may be or would be residing with such person or persons, or to represent that any housing accommodation, land or commercial space or an interest therein is not available for inspection, sale, rental or lease when in fact it is so available, or otherwise to deny or withhold any housing accommodation, land or commercial space or an interest therein or any facilities of any housing accommodation, land or commercial space or an interest therein from any person or group of persons because of the actual or perceived race, creed, color, national origin, gender, age, disability, sexual orientation, uniformed service, marital status, partnership status, or alienage or citizenship status of such person or persons, or because of any lawful source of income of such person or persons, or because children are, may be or would be residing with such person or persons.

(2) To declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for the purchase, rental or lease of any housing accommodation, land or commercial space or an interest therein or to make any record or inquiry in connection with the prospective purchase, rental or lease of any housing accommodation, land or commercial space or an interest therein which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, age, disability, sexual orientation, uniformed service, marital status, partnership status, or alienage or citizenship status, or any lawful source of income, or to whether children are, may be or would be residing with a person, or any intent to make such limitation, specification or discrimination.

(3) To induce or attempt to induce any person to sell or rent any housing accommodation, land or commercial space or an interest therein by representations, explicit or implicit, regarding the entry or

prospective entry into the neighborhood or area of a person or persons of any race, creed, color, gender, age, disability, sexual orientation, uniformed service, marital status, partnership status, national origin, alienage or citizenship status, or a person or persons with any lawful source of income, or a person or persons with whom children are, may be or would be residing.

(d) Lending practices.

(1) It shall be an unlawful discriminatory practice for any person, bank, trust company, private banker, savings bank, industrial bank, savings and loan association, credit union, investment company, mortgage company, insurance company, or other financial institution or lender, doing business in the city, including unincorporated entities and entities incorporated in any jurisdiction, or any officer, agent or employee thereof to whom application is made for a loan, mortgage or other form of financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of any housing accommodation, land or commercial space or an interest therein:

(A) To discriminate against such applicant in the granting, withholding, extending or renewing, or in the fixing of rates, terms or conditions of any such financial assistance or in the appraisal of any housing accommodation, land or commercial space or an interest therein:

(i) Because of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, age, marital status, uniformed service, partnership status, or alienage or citizenship status of such applicant, any member, stockholder, director, officer or employee of such applicant, or the occupants or tenants or prospective occupants or tenants of such housing accommodation, land or commercial space; or

(ii) Because children are, may be or would be residing with such applicant or other person.

(B) To use any form of application for a loan, mortgage, or other form of financial assistance, or to make any record or inquiry in connection with applications for such financial assistance, or in connection with the appraisal of any housing accommodation, land or commercial space or an interest therein, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, gender, disability, sexual orientation, uniformed service, age, marital status, partnership status, or alienage or citizenship status, or whether children are, may be, or would be residing with a person.

(2) It shall be an unlawful discriminatory practice for any person, bank, trust company, private banker, savings bank, industrial bank, savings and loan association, credit union, investment company, mortgage company, insurance company, or other financial institution or lender, doing business in the city, including unincorporated entities and entities incorporated in any jurisdiction, or any officer, agent or employee thereof to represent to any person that any type or term of loan, mortgage or other form of financial assistance for the purchase, acquisition, construction, rehabilitation, repair or maintenance of such housing accommodation, land or commercial space or an interest therein is not available when in fact it is available:

(A) Because of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, uniformed service, age, marital status, partnership status, or alienage or citizenship status of such person, any member, stockholder, director, officer or employee of such person, or the occupants or tenants or prospective occupants or tenants of such housing accommodation, land or commercial space; or

(B) Because children are, may be or would be residing with a person.

(e) Real estate services. It shall be an unlawful discriminatory practice, because of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, uniformed service, age, marital status, partnership status, or alienage or citizenship status of any person or because children are, may be or would be residing with such person:

(1) To deny such person access to, membership in or participation in a multiple listing service, real estate brokers' organization, or other service; or

(2) To represent to such person that access to or membership in such service or organization is not available, when in fact it is available.

(f) Real estate related transactions. It shall be an unlawful discriminatory practice for any person whose business includes the appraisal of housing accommodations, land or commercial space or interest therein or an employee or agent thereof to discriminate in making available or in the terms or conditions of such appraisal on the basis of the actual or perceived race, creed, color, national origin, gender, disability, sexual orientation, uniformed service, age, marital status, partnership status, or alienage or citizenship status of any person or because children are, may be or would be residing with such person.

(g) Applicability; persons under 18 years of age. The provisions of this subdivision, as they relate to unlawful discriminatory practices in housing accommodations, land and commercial space or an interest therein and lending practices on the basis of age, shall not apply to unemancipated persons under the age of 18 years.

(h) Applicability; discrimination against persons with children. The provisions of this subdivision with respect to discrimination against persons with whom children are, may be or would be residing shall not apply to housing for older persons as defined in paragraphs 2 and 3 of subdivision (b) of section 3607 of title 42 of the United States code and any regulations promulgated thereunder.

(i) Applicability; senior citizen housing. The provisions of this subdivision with respect to discrimination on the basis of age shall not apply to the restriction of the sale, rental or lease of any housing accommodation, land or commercial space or an interest therein exclusively to persons 55 years of age or older. This paragraph shall not be construed to permit discrimination against such persons 55 years of age or older on the basis of whether children are, may be or would be residing in such housing accommodation or land or an interest therein unless such discrimination is otherwise permitted pursuant to paragraph (h) of this subdivision.

(j) Applicability; dormitory residence operated by educational institution. The provisions of this subdivision relating to discrimination on the basis of gender in housing accommodations shall not prohibit any educational institution from making gender distinctions in dormitory residences which would be permitted under sections 86.32 and 86.33 of title 45 of the code of federal regulations for educational institutions covered thereunder.

(k) Applicability; dormitory-type housing accommodations. The provisions of this subdivision which prohibit distinctions on the basis of gender and whether children are, may be or would be residing with a person shall not apply to dormitory-type housing accommodations including, but not limited to, shelters for the homeless where such distinctions are intended to recognize generally accepted values of personal modesty and privacy or to protect the health, safety or welfare of families with children.

(l) Exemption for special needs of particular age group in publicly-assisted housing accommodations. Nothing in this subdivision shall restrict the consideration of age in the rental of publicly-assisted housing accommodations if the state division of human rights grants an exemption pursuant to section 296 of the executive law based on bona fide considerations of public policy for the purpose of providing for the special needs of a particular age group without the intent of prejudicing other age groups; provided however, that this paragraph shall not be construed to permit discrimination on the basis of whether children are, may be or would be residing in such housing accommodations unless such discrimination is otherwise permitted pursuant to paragraph (h) of this subdivision.

(m) Applicability; use of criteria or qualifications in publicly-assisted housing accommodations. The provisions of this subdivision shall not be construed to prohibit the use of criteria or qualifications of eligibility for the sale, rental, leasing or occupancy of publicly-assisted housing accommodations where such criteria or qualifications are required to comply with federal or state law, or are necessary to obtain the benefits of a federal or state program, or to prohibit the use of statements, advertisements, publications, applications or inquiries to the extent that they state such criteria or qualifications or request information necessary to determine or verify the eligibility of an applicant, tenant, purchaser, lessee or occupant.

(n) Discrimination on the basis of occupation prohibited in housing accommodations. Where a housing accommodation or an interest therein is sought or occupied exclusively for residential purposes, the provisions of this subdivision shall be construed to prohibit discrimination on account of a person's occupation in:

- (1) The sale, rental, or leasing of such housing accommodation or interest therein;
- (2) The terms, conditions and privileges of the sale, rental or leasing of such housing accommodation or interest therein;
- (3) Furnishing facilities or services in connection therewith; and
- (4) Representing whether or not such housing accommodation or interest therein is available for sale, rental, or leasing.

(o) Applicability; lawful source of income. The provisions of this subdivision, as they relate to unlawful discriminatory practices on the basis of lawful source of income, shall not apply to housing accommodations that contain a total of five or fewer housing units, provided, however:

(i) the provisions of this subdivision shall apply to tenants subject to rent control laws who reside in housing accommodations that contain a total of five or fewer units at the time of the enactment of this local law; and provided, however

(ii) the provisions of this subdivision shall apply to all housing accommodations, regardless of the number of units contained in each, of any person who has the right to sell, rent or lease or approve the sale, rental or lease of at least one housing accommodation within New York City that contains six or more housing units, constructed or to be constructed, or an interest therein.

6. Aiding and abetting. It shall be an unlawful discriminatory practice for any person to aid, abet, incite, compel or coerce the doing of any of the acts forbidden under this chapter, or to attempt to do so.

7. Retaliation. It shall be an unlawful discriminatory practice for any person engaged in any activity to which this chapter applies to retaliate or discriminate in any manner against any person because such



person has (i) opposed any practice forbidden under this chapter, (ii) filed a complaint, testified or assisted in any proceeding under this chapter, (iii) commenced a civil action alleging the commission of an act which would be an unlawful discriminatory practice under this chapter, (iv) assisted the commission or the corporation counsel in an investigation commenced pursuant to this title, (v) requested a reasonable accommodation under this chapter, or (vi) provided any information to the commission pursuant to the terms of a conciliation agreement made pursuant to section 8-115 of this chapter. The retaliation or discrimination complained of under this subdivision need not result in an ultimate action with respect to employment, housing or a public accommodation or in a materially adverse change in the terms and conditions of employment, housing, or a public accommodation, provided, however, that the retaliatory or discriminatory act or acts complained of must be reasonably likely to deter a person from engaging in protected activity.

8. Violation of conciliation agreement. It shall be an unlawful discriminatory practice for any party to a conciliation agreement made pursuant to section 8-115 of this chapter to violate the terms of such agreement.

9. Licenses, registrations and permits.

(a) It shall be an unlawful discriminatory practice:

(1) Except as otherwise provided in paragraph c of this subdivision, for an agency authorized to issue a license, registration or permit or an employee thereof to falsely deny the availability of such license, registration or permit, or otherwise discriminate against an applicant, or a putative or prospective applicant for a license, registration or permit because of the actual or perceived race, creed, color, national origin, age, gender, marital status, partnership status, disability, sexual orientation, uniformed service or alienage or citizenship status of such applicant.

(2) Except as otherwise provided in paragraph (c) of this subdivision, for an agency authorized to issue a license, registration or permit or an employee thereof to declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application for a license, registration or permit or to make any inquiry in connection with any such application, which expresses, directly or indirectly, any limitation, specification or discrimination as to race, creed, color, national origin, age, gender, marital status, partnership status, disability, sexual orientation, uniformed service or alienage or citizenship status, or any intent to make any such limitation, specification or discrimination.

(3) For any person to deny any license, registration or permit to any applicant, or act adversely upon any holder of a license, registration or permit by reason of such applicant or holder having been convicted of one or more criminal offenses, or by reason of a finding of a lack of "good moral character" which is based on such applicant or holder having been convicted of one or more criminal offenses, when such denial or adverse action is in violation of the provisions of article 23-a of the correction law.

(4) For any person to deny any license, registration or permit to any applicant, or act adversely upon any holder of a license, registration or permit by reason of such applicant or holder having been arrested or accused of committing a crime when such denial or adverse action is in violation of subdivision 16 of section 296 of article 15 of the executive law.

(5) For any person to make any inquiry, in writing or otherwise, regarding any arrest or criminal accusation of an applicant for any license, registration or permit when such inquiry is in violation of subdivision 16 of section 296 of article 15 of the executive law.

(b) (1) Except as otherwise provided in this paragraph, it shall be an unlawful discriminatory practice for an agency to request or use for licensing, registration or permitting purposes information contained in the consumer credit history of an applicant, licensee, registrant or permittee for licensing or permitting purposes.

(2) Subparagraph (1) of this paragraph shall not apply to an agency required by state or federal law or regulations to use an individual's consumer credit history for licensing, registration or permitting purposes.

(3) Subparagraph (1) of this paragraph shall not be construed to affect the ability of an agency to consider an applicant's, licensee's, registrant's or permittee's failure to pay any tax, fine, penalty, or fee for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction, or any tax for which a government agency has issued a warrant, or a lien or levy on property.

(4) Nothing in this paragraph shall preclude a licensing agency from requesting, receiving, or using consumer credit history information obtained pursuant to a lawful subpoena, court order or law enforcement investigation.

(c) The prohibition of this subdivision relating to inquiries, denials or other adverse action related to a person's record of arrests or convictions shall not apply to licensing activities in relation to the regulation of explosives, pistols, handguns, rifles, shotguns, or other firearms and deadly weapons. Nothing contained in this subdivision shall be construed to bar an agency authorized to issue a license, registration or permit from using age, disability, criminal conviction or arrest record as a criterion for determining eligibility or continuing fitness for a license, registration or permit when specifically required to do so by any other provision of law.

(d) (1) Except as otherwise provided in this paragraph, it shall be an unlawful discriminatory practice for an agency to request or use for licensing or permitting purposes information contained in the consumer credit history of an applicant, licensee or permittee.

(2) Subparagraph (1) of this paragraph shall not apply to an agency required by state or federal law or regulations to use an individual's consumer credit history for licensing or permitting purposes.

(3) Subparagraph (1) of this paragraph shall not be construed to affect the ability of an agency to consider an applicant's, licensee's, registrant's or permittee's failure to pay any tax, fine, penalty, or fee for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction, or any tax for which a government agency has issued a warrant, or a lien or levy on property.

(4) Nothing in this paragraph shall preclude a licensing agency from requesting, receiving, or using consumer credit history information obtained pursuant to a lawful subpoena, court order or law enforcement investigation.

(e) The provisions of this subdivision shall be enforceable against public agencies and employees thereof by a proceeding brought pursuant to article 78 of the civil practice law and rules.

#### 10. Criminal conviction; employment.

(a) It shall be an unlawful discriminatory practice for any employer, employment agency or agent thereof to deny employment to any person or take adverse action against any employee by reason of such

person or employee having been convicted of one or more criminal offenses, or by reason of a finding of a lack of "good moral character" which is based on such person or employee having been convicted of one or more criminal offenses, when such denial or adverse action is in violation of the provisions of article 23-a of the correction law.

(b) For purposes of this subdivision, "employment" shall not include membership in any law enforcement agency.

(c) Pursuant to section 755 of the correction law, the provisions of this subdivision shall be enforceable against public agencies by a proceeding brought pursuant to article 78 of the civil practice law and rules, and the provisions of this subdivision shall be enforceable against private employers by the commission through the administrative procedure provided for in this chapter or as provided in chapter 5 of this title. For purposes of this paragraph only, the terms "public agency" and "private employer" have the meaning given such terms in section 750 of the correction law.

11. Arrest record; employment. It shall be an unlawful discriminatory practice, unless specifically required or permitted by any other law, for any person to:

(a) Deny employment to any applicant or act adversely upon any employee by reason of an arrest or criminal accusation of such applicant or employee when such denial or adverse action is in violation of subdivision 16 of section 296 of article 15 of the executive law; or

(b) Make any inquiry in writing or otherwise, regarding any arrest or criminal accusation of an applicant or employee when such inquiry is in violation of subdivision 16 of section 296 of article 15 of the executive law.

11-a. Arrest and conviction records; employer inquiries.

(a) In addition to the restrictions in subdivision 11 of this section, it shall be an unlawful discriminatory practice for any employer, employment agency or agent thereof to:

(1) Declare, print or circulate or cause to be declared, printed or circulated any solicitation, advertisement or publication, which expresses, directly or indirectly, any limitation, or specification in employment based on a person's arrest or criminal conviction;

(2) Because of any person's arrest or criminal conviction, represent that any employment or position is not available, when in fact it is available to such person; or

(3) Make any inquiry or statement related to the pending arrest or criminal conviction record of any person who is in the process of applying for employment with such employer or agent thereof until after such employer or agent thereof has extended a conditional offer of employment to the applicant. For purposes of this subdivision, with respect to an applicant for temporary employment at a temporary help firm as such term is defined by subdivision 5 of section 916 of article 31 of the labor law, an offer to be placed in the temporary help firm's general candidate pool shall constitute a conditional offer of employment. For purposes of this subdivision, "any inquiry" means any question communicated to an applicant in writing or otherwise, or any searches of publicly available records or consumer reports that are conducted for the purpose of obtaining an applicant's criminal background information, and "any statement" means a statement communicated in writing or otherwise to the applicant for purposes of obtaining an applicant's criminal background information regarding: (i) an arrest record; (ii) a conviction record; or (iii) a criminal background check.

(b) After extending an applicant a conditional offer of employment, an employer, employment agency or agent thereof may inquire about the applicant's arrest or conviction record if before taking any adverse employment action based on such inquiry, the employer, employment agency or agent thereof:

(i) Provides a written copy of the inquiry to the applicant in a manner to be determined by the commission;

(ii) Performs an analysis of the applicant under article 23-a of the correction law and provides a written copy of such analysis to the applicant in a manner to be determined by the commission, which shall include but not be limited to supporting documents that formed the basis for an adverse action based on such analysis and the employer's or employment agency's reasons for taking any adverse action against such applicant; and

(iii) After giving the applicant the inquiry and analysis in writing pursuant to subparagraphs (i) and (ii) of this paragraph, allows the applicant a reasonable time to respond, which shall be no less than three business days and during this time, holds the position open for the applicant.

(c) Nothing in this subdivision shall prevent an employer, employment agency or agent thereof from taking adverse action against any employee or denying employment to any applicant for reasons other than such employee or applicant's arrest or criminal conviction record.

(d) An applicant shall not be required to respond to any inquiry or statement that violates paragraph (a) of this subdivision and any refusal to respond to such inquiry or statement shall not disqualify an applicant from the prospective employment.

(e) This subdivision shall not apply to any actions taken by an employer or agent thereof pursuant to any state, federal or local law that requires criminal background checks for employment purposes or bars employment based on criminal history. For purposes of this paragraph federal law shall include rules or regulations promulgated by a self-regulatory organization as defined in section 3(a)(26) of the securities exchange act of 1934, as amended.

(f) This subdivision shall not apply to any actions taken by an employer or agent thereof with regard to an applicant for employment:

(1) As a police officer or peace officer, as those terms are defined in subdivisions 33 and 34 of section 1.20 of the criminal procedure law, respectively, or at a law enforcement agency as that term is used in article 23-a of the correction law, including but not limited to the police department, the fire department, the department of correction, the department of investigation, the department of probation, the division of youth and family services, the business integrity commission, and the district attorneys' offices; or

(2) 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 upon a determination by the commissioner of citywide administrative services that the position involves law enforcement, is susceptible to bribery or other corruption, or entails the provision of services to or safeguarding of persons who, because of age, disability, infirmity or other condition, are vulnerable to abuse. If the department takes adverse action against any applicant based on the applicant's arrest or criminal conviction record, it shall provide a written copy of such analysis performed under article 23-a of the correction law to the applicant in a form and manner to be determined by the department.

(g) The provisions of this subdivision shall be enforceable against public agencies by a proceeding brought pursuant to article 78 of the civil practice law and rules, and the provisions of this subdivision shall be enforceable against private employers by the commission through the administrative procedure provided for in this chapter or as provided in chapter 5 of this title. For purposes of this paragraph only, the terms "public agency" and "private employer" have the meaning given such terms in section 750 of the correction law.

11-b. Arrest record; credit application. For purposes of issuing credit, it shall be an unlawful discriminatory practice, unless specifically required or permitted by any other law, to:

(a) Deny or act adversely upon any person seeking credit by reason of an arrest or criminal accusation of such person when such denial or adverse action is in violation of subdivision 16 of section 296 of article 15 of the executive law;

(b) Make any inquiry in writing or otherwise, regarding any arrest or criminal accusation of a person seeking credit when such inquiry is in violation of subdivision 16 of section 296 of article 15 of the executive law; or

(c) Because of any arrest or criminal accusation of a person seeking credit, represent to such person that credit is not available, when in fact it is available to such person.

12. Religious principles. Nothing contained in this section shall be construed to bar any religious or denominational institution or organization or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or sales or rentals of housing accommodations or admission to or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

13. Employer liability for discriminatory conduct by employee, agent or independent contractor.

a. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of any provision of this section other than subdivisions 1 and 2 of this section.

b. An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision 1 or 2 of this section only where:

(1) The employee or agent exercised managerial or supervisory responsibility; or

(2) The employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility; or

(3) The employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct.

c. An employer shall be liable for an unlawful discriminatory practice committed by a person employed as an independent contractor, other than an agent of such employer, to carry out work in furtherance of the employer's business enterprise only where such discriminatory conduct was committed in the course of such employment and the employer had actual knowledge of and acquiesced in such conduct.

d. Where liability of an employer has been established pursuant to this section and is based solely on the conduct of an employee, agent, or independent contractor, the employer shall be permitted to plead and prove to the discriminatory conduct for which it was found liable it had:

(1) Established and complied with policies, programs and procedures for the prevention and detection of unlawful discriminatory practices by employees, agents and persons employed as independent contractors, including but not limited to:

(i) A meaningful and responsive procedure for investigating complaints of discriminatory practices by employees, agents and persons employed as independent contractors and for taking appropriate action against those persons who are found to have engaged in such practices;

(ii) A firm policy against such practices which is effectively communicated to employees, agents and persons employed as independent contractors;

(iii) A program to educate employees and agents about unlawful discriminatory practices under local, state, and federal law; and

(iv) Procedures for the supervision of employees and agents and for the oversight of persons employed as independent contractors specifically directed at the prevention and detection of such practices; and

(2) A record of no, or relatively few, prior incidents of discriminatory conduct by such employee, agent or person employed as an independent contractor or other employees, agents or persons employed as independent contractors.

e. The demonstration of any or all of the factors listed above in addition to any other relevant factors shall be considered in mitigation of the amount of civil penalties to be imposed by the commission pursuant to this chapter or in mitigation of civil penalties or punitive damages which may be imposed pursuant to chapter 4 or 5 of this title and shall be among the factors considered in determining an employer's liability under subparagraph 3 of paragraph b of this subdivision.

f. The commission may establish by rule policies, programs and procedures which may be implemented by employers for the prevention and detection of unlawful discriminatory practices by employees, agents and persons employed as independent contractors. Notwithstanding any other provision of law to the contrary, an employer found to be liable for an unlawful discriminatory practice based solely on the conduct of an employee, agent or person employed as an independent contractor who pleads and proves that such policies, programs and procedures had been implemented and complied with at the time of the unlawful conduct shall not be liable for any civil penalties which may be imposed pursuant to this chapter or any civil penalties or punitive damages which may be imposed pursuant to chapter 4 or 5 of this title for such unlawful discriminatory practices.

14. Applicability; alienage or citizenship status. Notwithstanding any other provision of this section, it shall not be an unlawful discriminatory practice for any person to discriminate on the ground of alienage or citizenship status, or to make any inquiry as to a person's alienage or citizenship status, or to give preference to a person who is a citizen or national of the United States over an equally qualified person who is an alien, when such discrimination is required or when such preference is expressly permitted by any law or regulation of the United States, the state of New York or the city, and when such law or regulation does not provide that state or local law may be more protective of aliens; provided, however, that this provision shall not prohibit inquiries or determinations based on alienage or citizenship status when such actions are necessary to obtain the benefits of a federal program. An applicant for a license or

permit issued by the city may be required to be authorized to work in the United States whenever by law or regulation there is a limit on the number of such licenses or permits which may be issued.

15. Applicability; persons with disabilities.

(a) Requirement to make reasonable accommodation to the needs of persons with disabilities. Except as provided in paragraph (b), it is an unlawful discriminatory practice for any person prohibited by the provisions of this section from discriminating on the basis of disability not to provide a reasonable accommodation to enable a person with a disability to satisfy the essential requisites of a job or enjoy the right or rights in question provided that the disability is known or should have been known by the covered entity.

(b) Affirmative defense in disability cases. In any case where the need for reasonable accommodation is placed in issue, it shall be an affirmative defense that the person aggrieved by the alleged discriminatory practice could not, with reasonable accommodation, satisfy the essential requisites of the job or enjoy the right or rights in question.

(c) Use of drugs or alcohol. Nothing contained in this chapter shall be construed to prohibit a covered entity from (i) prohibiting the illegal use of drugs or the use of alcohol at the workplace or on duty impairment from the illegal use of drugs or the use of alcohol, or (ii) conducting drug testing which is otherwise lawful.

16. [Repealed.]

17. Disparate impact.

a. An unlawful discriminatory practice based upon disparate impact is established when:

(1) The commission or a person who may bring an action under chapter 4 or 5 of this title demonstrates that a policy or practice of a covered entity or a group of policies or practices of a covered entity results in a disparate impact to the detriment of any group protected by the provisions of this chapter; and

(2) The covered entity fails to plead and prove as an affirmative defense that each such policy or practice bears a significant relationship to a significant business objective of the covered entity or does not contribute to the disparate impact; provided, however, that if the commission or such person who may bring an action demonstrates that a group of policies or practices results in a disparate impact, the commission or such person shall not be required to demonstrate which specific policies or practices within the group results in such disparate impact; provided further, that a policy or practice or group of policies or practices demonstrated to result in a disparate impact shall be unlawful where the commission or such person who may bring an action produces 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. "Significant business objective" shall include, but not be limited to, successful performance of the job.

b. The mere existence of a statistical imbalance between a covered entity's challenged demographic composition and the general population is not alone sufficient to establish a prima facie case of disparate impact violation unless the general population is shown to be the relevant pool for comparison, the

imbalance is shown to be statistically significant and there is an identifiable policy or practice or group of policies or practices that allegedly causes the imbalance.

c. Nothing contained in this subdivision shall be construed to mandate or endorse the use of quotas; provided, however, that nothing contained in this subdivision shall be construed to limit the scope of the commission's authority pursuant to sections 8-115 and 8-120 of this chapter or to affect court-ordered remedies or settlements that are otherwise in accordance with law.

18. Unlawful boycott or blacklist. It shall be an unlawful discriminatory practice (i) for any person to discriminate against, boycott or blacklist or to refuse to buy from, sell to or trade with, any person, because of such person's actual or perceived race, creed, color, national origin, gender, disability, age, marital status, partnership status, sexual orientation, uniformed service or alienage or citizenship status or of such person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers or customers, or (ii) for any person willfully to do any act or refrain from doing any act which enables any such person to take such action. This subdivision shall not apply to:

- (a) Boycotts connected with labor disputes;
- (b) Boycotts to protest unlawful discriminatory practices; or
- (c) Any form of expression that is protected by the First Amendment.

19. Interference with protected rights. It shall be an unlawful discriminatory practice for any person to coerce, intimidate, threaten or interfere with, or attempt to coerce, intimidate, threaten or interfere with, any person in the exercise or enjoyment of, or on account of such person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected pursuant to this section.

20. Relationship or association. The provisions of this section set forth as unlawful discriminatory practices shall be construed to prohibit such discrimination against a person because of the actual or perceived race, creed, color, national origin, disability, age, sexual orientation, uniformed service or alienage or citizenship status of a person with whom such person has a known relationship or association.

21. Employment; an individual's unemployment.

a. Prohibition of discrimination based on an individual's unemployment.

(1) Except as provided in paragraphs b and c of this subdivision, an employer, employment agency, or agent thereof shall not:

(a) Because of a person's unemployment, represent that any employment or position is not available when in fact it is available; or

(b) Base an employment decision with regard to hiring, compensation or the terms, conditions or privileges of employment on an applicant's unemployment.

(2) Unless otherwise permitted by city, state or federal law, no employer, employment agency, or agent thereof shall publish, in print or in any other medium, an advertisement for any job vacancy in this city that contains one or more of the following:

(a) Any provision stating or indicating that being currently employed is a requirement or qualification for the job;



(b) Any provision stating or indicating that an employer, employment agency, or agent thereof will not consider individuals for employment based on their unemployment.

b. Effect of subdivision.

(1) Paragraph a of this subdivision shall not be construed to prohibit an employer, employment agency, or agent thereof from (a) considering an applicant's unemployment, where there is a substantially job-related reason for doing so; or (b) inquiring into the circumstances surrounding an applicant's separation from prior employment.

(2) Nothing set forth in this subdivision shall be construed as prohibiting an employer, employment agency, or agent thereof, when making employment decisions with regard to hiring, compensation, or the terms, conditions or privileges of employment, from considering any substantially job-related qualifications, including but not limited to: a current and valid professional or occupational license; a certificate, registration, permit, or other credential; a minimum level of education or training; or a minimum level of professional, occupational, or field experience.

(3) Nothing set forth in this subdivision shall be construed as prohibiting an employer, employment agency, or agent thereof from publishing, in print or in any other medium, an advertisement for any job vacancy in this city that contains any provision setting forth any substantially job-related qualifications, including but not limited to: a current and valid professional or occupational license; a certificate, registration, permit, or other credential; a minimum level of education or training; or a minimum level of professional, occupational, or field experience.

(4) (a) Nothing set forth in this subdivision shall be construed as prohibiting an employer, employment agency, or agent thereof, when making employment decisions with regard to hiring, compensation, or the terms, conditions or privileges of employment, from determining that only applicants who are currently employed by the employer will be considered for employment or given priority for employment or with respect to compensation or terms, conditions or privileges of employment. In addition, nothing set forth in this subdivision shall prevent an employer from setting compensation or terms or conditions of employment for a person based on that person's actual amount of experience.

(b) For the purposes of this subparagraph, all persons whose salary or wages are paid from the city treasury, and all persons who are employed by public agencies or entities headed by officers or boards including one or more individuals appointed or recommended by officials of the city, shall be deemed to have the same employer.

c. Applicability of subdivision.

(1) This subdivision shall not apply to:

(a) Actions taken by the department of citywide administrative services in furtherance of its responsibility for city personnel matters pursuant to chapter 35 of the charter or as a municipal civil service commission administering the civil service law and other applicable laws, or by the mayor in furtherance of the mayor's duties relating to city personnel matters pursuant to chapter 35 of the charter, including, but not limited to, the administration of competitive examinations, the establishment and administration of eligible lists, and the establishment and implementation of minimum qualifications for appointment to positions;

(b) Actions taken by officers or employees of other public agencies or entities charged with performing functions comparable to those performed by the department of citywide administrative services or the mayor as described in paragraph 1 of this subdivision;

(c) Agency appointments to competitive positions from eligible lists pursuant to subsection 1 of section 61 of the civil service law; or

(d) The exercise of any right of an employer or employee pursuant to a collective bargaining agreement.

(2) This subdivision shall apply to individual hiring decisions made by an agency or entity with respect to positions for which appointments are not required to be made from an eligible list resulting from a competitive examination.

d. Public education campaign. The commission shall develop courses of instruction and conduct ongoing public education efforts as necessary to inform employers, employment agencies, and job applicants about their rights and responsibilities under this subdivision.

e. Disparate impact. An unlawful discriminatory practice based on disparate impact under this subdivision is established when: (1) the commission or a person who may bring an action under chapter 4 or 5 of this title demonstrates that a policy or practice of an employer, employment agency, or agent thereof, or a group of policies or practices of such an entity results in a disparate impact to the detriment of any group protected by the provisions of this subdivision; and (2) such entity fails to plead and prove as an affirmative defense that each such policy or practice has as its basis a substantially job-related qualification or does not contribute to the disparate impact; provided, however, that if the commission or such person who may bring an action demonstrates that a group of policies or practices results in a disparate impact, the commission or such person shall not be required to demonstrate which specific policies or practices within the group results in such disparate impact; provided further, that a policy or practice or group of policies or practices demonstrated to result in a disparate impact shall be unlawful where the commission or such person who may bring an action produces substantial evidence that an alternative policy or practice with less disparate impact is available to such entity and such entity fails to prove that such alternative policy or practice would not serve such entity as well. A "substantially job-related qualification" shall include, but not be limited to, a current and valid professional or occupational license; a certificate, registration, permit, or other credential; a minimum level of education or training; or a minimum level of professional, occupational, or field experience.

## 22. Employment; Pregnancy, childbirth, or a related medical condition.

(a) It shall be an unlawful discriminatory practice for an employer to refuse to provide a reasonable accommodation, as defined in section 8-102, to the needs of an employee for the employee's pregnancy, childbirth, or related medical condition that will allow the employee to perform the essential requisites of the job, provided that such employee's pregnancy, childbirth, or related medical condition is known or should have been known by the employer. In any case pursuant to this subdivision where the need for reasonable accommodation is placed in issue, it shall be an affirmative defense that the person aggrieved by the alleged discriminatory practice could not, with reasonable accommodation, satisfy the essential requisites of the job.

(b) Employer lactation accommodation.

(i) Except as provided in subparagraph (iii) of this paragraph, employers shall provide the following to accommodate an employee needing to express breast milk: (1) a lactation room in reasonable

proximity to such employee's work area; and (2) a refrigerator suitable for breast milk storage in reasonable proximity to such employee's work area.

(ii) If a room designated by an employer to serve as a lactation room is also used for another purpose, the sole function of the room shall be as a lactation room while an employee is using the room to express breast milk. When an employee is using the room to express milk, the employer shall provide notice to other employees that the room is given preference for use as a lactation room.

(iii) Should the provision of a lactation room as required by this paragraph pose an undue hardship on an employer, the employer shall engage in a cooperative dialogue, as required by subdivision 28 of this section.

(iv) The presence of a lactation room pursuant to this subdivision shall not affect an individual's right to breastfeed in public pursuant to article 7 of the civil rights law.

(c) Employer lactation room accommodation policy.

(i) An employer shall develop and implement a written policy regarding the provision of a lactation room, which shall be distributed to all employees upon hiring. The policy shall include a statement that employees have a right to request a lactation room and identify a process by which employees may request a lactation room. This process shall:

(1) Specify the means by which an employee may submit a request for a lactation room;

(2) Require that the employer respond to a request for a lactation room within a reasonable amount of time not to exceed five business days;

(3) Provide a procedure to follow when two or more individuals need to use the lactation room at the same time, including contact information for any follow up required;

(4) State 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

(5) State that if the request for a lactation room poses an undue hardship on the employer, the employer shall engage in a cooperative dialogue, as required by subdivision 28 of this section.

(ii) The commission shall, in collaboration with the department of health and mental hygiene, develop a model lactation room accommodation policy that conforms to the requirements of this subdivision and a model lactation room request form. The commission shall make such model policy and request form available on its website.

(iii) The existence of a lactation room accommodation policy pursuant to this subdivision shall not affect an individual's right to breastfeed in public pursuant to article 7 of the civil rights law.

(d) Notice of rights.

(i) An employer shall provide written notice in a form and manner to be determined by the commission of the right to be free from discrimination in relation to pregnancy, childbirth, and related medical conditions pursuant to this subdivision to new employees at the commencement of employment. Such notice may also be conspicuously posted at an employer's place of business in an area accessible to employees.

(ii) The commission shall develop courses of instruction and conduct ongoing public education efforts as necessary to inform employers, employees, employment agencies, and job applicants about their rights and responsibilities under this subdivision.

(e) This subdivision shall not be construed to affect any other provision of law relating to discrimination on the basis of gender, or in any way to diminish the coverage of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth under any other provision of this section.

23. Additional provisions relating to employment. The protections of this chapter relating to employees apply to interns, freelancers and independent contractors.

24. Employment; consumer credit history.

(a) Except as provided in this subdivision, it shall be an unlawful discriminatory practice for an employer, labor organization, employment agency, or agent thereof to request or to use for employment purposes the consumer credit history of an applicant for employment or employee, or otherwise discriminate against an applicant or employee with regard to hiring, compensation, or the terms, conditions or privileges of employment based on the consumer credit history of the applicant or employee.

(b) Paragraph (a) of this subdivision shall not apply to:

(1) An employer or agent thereof, that is required by state or federal law or regulations or by a self-regulatory organization as defined in section 3(a)(26) of the securities exchange act of 1934, as amended to use an individual's consumer credit history for employment purposes;

(2) Persons applying for positions as or employed:

(A) As police officers or peace officers, as those terms are defined in subdivisions 33 and 34 of section 1.20 of the criminal procedure law, respectively, or in a position with a law enforcement or investigative function at the department of investigation;

(B) In a position that is subject to background investigation by the department of investigation, provided, however, that the appointing agency may not use consumer credit history information for employment purposes unless the position is an appointed position in which a high degree of public trust, as defined by the commission in rules, has been reposed;

(C) In a position in which an employee is required to be bonded under city, state or federal law;

(D) In a position in which an employee is required to possess security clearance under federal law or the law of any state;

(E) In a non-clerical position having regular access to trade secrets, intelligence information or national security information;

(F) In a position:

(i) having signatory authority over third party funds or assets valued at \$10,000 or more; or

(ii) that involves a fiduciary responsibility to the employer with the authority to enter financial agreements valued at \$10,000 or more on behalf of the employer; or

(G) In a position 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 or databases.

(c) Paragraph (a) of this subdivision shall not be construed to affect the obligations of persons required by section 12-110 or by mayoral executive order relating to disclosures by city employees to the conflicts of interest board to report information regarding their creditors or debts, or the use of such information by government agencies for the purposes for which such information is collected.

(d) Nothing in this subdivision precludes an employer from requesting or receiving consumer credit history information pursuant to a lawful subpoena, court order or law enforcement investigation.

25. Employment; inquiries regarding salary history.

(a) For purposes of this subdivision, “to inquire” means to communicate any question or statement to an applicant, an applicant’s current or prior employer, or a current or former employee or agent of the applicant’s current or prior employer, in writing or otherwise, for the purpose of obtaining an applicant’s salary history, or to conduct a search of publicly available records or reports for the purpose of obtaining an applicant’s salary history, but does not include informing the applicant in writing or otherwise about the position’s proposed or anticipated salary or salary range. For purposes of this subdivision, “salary history” includes the applicant’s current or prior wage, benefits or other compensation. “Salary history” does not include any objective measure of the applicant’s productivity such as revenue, sales, or other production reports.

(b) Except as otherwise provided in this subdivision, it is an unlawful discriminatory practice for an employer, employment agency, or employee or agent thereof:

1. To inquire about the salary history of an applicant for employment; or
2. To rely on the salary history of an applicant in determining the salary, benefits or other compensation for such applicant during the hiring process, including the negotiation of a contract.

(c) Notwithstanding paragraph (b) of this subdivision, an employer, employment agency, or employee or agent thereof may, without inquiring about salary history, engage in discussion with the applicant about their expectations with respect to salary, benefits and other compensation, including but not limited to unvested equity or deferred compensation that an applicant would forfeit or have cancelled by virtue of the applicant’s resignation from their current employer.

(d) Notwithstanding subparagraph 2 of paragraph (b) of this subdivision, where an applicant voluntarily and without prompting discloses salary history to an employer, employment agency, or employee or agent thereof, such employer, employment agency, or employee or agent thereof may consider salary history in determining salary, benefits and other compensation for such applicant, and may verify such applicant’s salary history.

(e) This subdivision shall not apply to:

(1) Any actions taken by an employer, employment agency, or employee or agent thereof pursuant to any federal, state or local law that specifically authorizes the disclosure or verification of salary history for employment purposes, or specifically requires knowledge of salary history to determine an employee’s compensation;

(2) Applicants for internal transfer or promotion with their current employer;

(3) Any attempt by an employer, employment agency, or employee or agent thereof, to verify an applicant’s disclosure of non-salary related information or conduct a background check, provided that if such verification or background check discloses the applicant’s salary history, such disclosure shall not be

relied upon for purposes of determining the salary, benefits or other compensation of such applicant during the hiring process, including the negotiation of a contract; or

(4) Public employee positions for which salary, benefits or other compensation are determined pursuant to procedures established by collective bargaining.

26. Applicability; uniformed service. Notwithstanding any other provision of this section and except as otherwise provided by law, it is not an unlawful discriminatory practice for any person to afford any other person a preference or privilege based on such other person's uniformed service, or to declare, print or circulate or cause to be declared, printed or circulated any statement, advertisement or publication, or to use any form of application or make any inquiry indicating any such lawful preference or privilege.

27. Victims of domestic violence, sex offenses or stalking.

a. Employment. It shall be an unlawful discriminatory practice for an employer, or an agent thereof, because of any individual's actual or perceived status as a victim of domestic violence, or as a victim of sex offenses or stalking:

(1) To represent that any employment or position is not available when in fact it is available;

(2) To refuse to hire or employ or to bar or to discharge from employment; or

(3) To discriminate against an individual in compensation or other terms, conditions, or privileges of employment.

b. Requirement to make reasonable accommodation to the needs of victims of domestic violence, sex offenses or stalking. Except as provided in paragraph d, it is an unlawful discriminatory practice for any person prohibited by paragraph a from discriminating on the basis of actual or perceived status as a victim of domestic violence or a victim of sex offenses or stalking not to provide a reasonable accommodation to enable a person who is a victim of domestic violence, or a victim of sex offenses or stalking to satisfy the essential requisites of a job provided that the status as a victim of domestic violence or a victim of sex offenses or stalking is known or should have been known by the covered entity.

c. Documentation of status. Any person required by paragraph b to make reasonable accommodation may require a person requesting reasonable accommodation pursuant to such paragraph to provide certification that the person is a victim of domestic violence, sex offenses or stalking. The person requesting reasonable accommodation pursuant to such paragraph shall provide a copy of such certification to the covered entity within a reasonable period after the request is made. A person may satisfy the certification requirement of this paragraph by providing documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider, from whom the individual seeking a reasonable accommodation or that individual's family or household member has sought assistance in addressing domestic violence, sex offenses or stalking and the effects of the violence or stalking; a police or court record; or other corroborating evidence. All information provided to the covered entity pursuant to this paragraph, including a statement of the person requesting a reasonable accommodation or any other documentation, record, or corroborating evidence, and the fact that the individual has requested or obtained a reasonable accommodation pursuant to this subdivision, shall be retained in the strictest confidence by the covered entity, except to the extent that disclosure is requested or consented to in writing by the person requesting the reasonable accommodation, or otherwise required by applicable federal, state or local law.

d. Affirmative defense in domestic violence, sex offenses or stalking cases. In any case where the need for reasonable accommodation is placed in issue, it shall be an affirmative defense that the person aggrieved by the alleged discriminatory practice could not, with reasonable accommodation, satisfy the essential requisites of the job or enjoy the right or rights in question.

e. Housing accommodations. It shall be an unlawful discriminatory practice for the owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agent or employee thereof, because of any individual's actual or perceived status as a victim of domestic violence, or as a victim of sex offenses or stalking:

(1) To refuse to sell, rent, lease, approve the sale, rental or lease or otherwise deny to or withhold from any person or group of persons such a housing accommodation or an interest therein, or to discriminate in the terms, conditions, or privileges of the sale, rental or lease of any such housing accommodation or an interest therein or in the furnishing of facilities or services in connection therewith because of an actual or perceived status of said individual as a victim of domestic violence, or as a victim of sex offenses or stalking; or

(2) To represent that such housing accommodation or an interest therein is not available when in fact it is available.

f. The provisions of paragraph e shall not apply:

(1) To the rental of a housing accommodation, other than a publicly-assisted housing accommodation, in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of the owner's family reside in one of such housing accommodations, and if the available housing accommodation has not been publicly advertised, listed, or otherwise offered to the general public; or

(2) To the rental of a room or rooms in a housing accommodation, other than a publicly-assisted housing accommodation, if such rental is by the occupant of the housing accommodation or by the owner of the housing accommodation and the owner or members of the owner's family reside in such housing accommodation.

g. For the purposes of this subdivision, practices "based on," "because of," "on account of," "as to," "on the basis of," or "motivated by" an individual's "status as a victim of domestic violence," or "status as a victim of sex offenses or stalking" include, but are not limited to, those based solely upon the actions of a person who has perpetrated acts or threats of violence against the individual.

## 28. Reasonable accommodation; cooperative dialogue.

(a) Employment. It shall be an unlawful discriminatory practice for an employer, labor organization or employment agency or an employee or agent thereof to refuse or otherwise fail to engage in a cooperative dialogue within a reasonable time with a person who has requested an accommodation or who the covered entity has notice may require such an accommodation:

(1) For religious needs as provided in subdivision 3 of this section;

(2) Related to a disability as provided in subdivision 15 of this section;

(3) Related to pregnancy, childbirth or a related medical condition as provided in subdivision 22 of this section; or

(4) For such person's needs as a victim of domestic violence, sex offenses or stalking as provided in subdivision 27 of this section.

(b) Public accommodations. It shall be an unlawful discriminatory practice for any person who is the owner, franchisor, franchisee, lessor, lessee, proprietor, manager, superintendent, agent or employee of any place or provider of public accommodation to refuse or otherwise fail to engage in a cooperative dialogue within a reasonable time with a person who has requested an accommodation or who the covered entity has notice may require an accommodation related to disability as provided in subdivision 15 of this section.

(c) Housing accommodation. It shall be an unlawful discriminatory practice for an owner, lessor, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein, or any agency or employee thereof to refuse or otherwise fail to engage in a cooperative dialogue within a reasonable time with a person who has requested an accommodation or who the covered entity has notice may require an accommodation related to disability as provided in subdivision 15 of this section.

(d) Upon reaching a final determination at the conclusion of a cooperative dialogue pursuant to paragraphs (a) and (c) of this subdivision, the covered entity shall provide any person requesting an accommodation who participated in the cooperative dialogue with a written final determination identifying any accommodation granted or denied.

(e) The determination that no reasonable accommodation would enable the person requesting an accommodation to satisfy the essential requisites of a job or enjoy the right or rights in question may only be made after the parties have engaged, or the covered entity has attempted to engage, in a cooperative dialogue.

(f) Rights and obligations set forth in this subdivision are supplemental to and independent of the rights and obligations provided by subdivisions 3, 15, 22 and 27. A covered entity's compliance with this subdivision is not a defense to a claim of not providing a reasonable accommodation under provisions of title 8 other than this subdivision.

29. Anti-sexual harassment rights and responsibilities; poster.

(a) Every employer must conspicuously display an anti-sexual harassment rights and responsibilities poster designed by the commission, in employee breakrooms or other common areas employees gather. Every employer at a minimum shall display such poster in English and in Spanish.

(b) The commission shall create a poster that sets forth in simple and understandable terms the following minimum requirements:

- (1) An explanation of sexual harassment as a form of unlawful discrimination under local law;
- (2) A statement that sexual harassment is also a form of unlawful discrimination under state and federal law;
- (3) A description of sexual harassment, using examples;
- (4) The complaint process available through, and directions on how to contact, the commission;



(5) The complaint process available through, and directions on how to contact, the state division of human rights;

(6) The complaint process available through, and directions on how to contact, the United States equal employment opportunity commission; and

(7) The prohibition against retaliation, pursuant to subdivision 7 of section 8-107.

(c) The size and style of the poster shall be at least 8 1/2 by 14 inches with a minimum 12-point type. Such poster shall be made available in English and Spanish and any other language deemed appropriate by the commission, however, any such poster shall only contain one language.

(d) Any poster required pursuant to this section shall be made available on the commission's website for employers to download for legible color reproduction in English, Spanish and any other language deemed appropriate by the commission.

(e) The commission shall develop an information sheet on sexual harassment that employers shall distribute to individual employees at the time of hire. Such information sheet may be included in an employee handbook. Such information sheet shall contain, at a minimum, the same elements of paragraph (b) of this subdivision. The information sheet shall be made available in English and Spanish and any other language deemed appropriate by the commission.

30. Anti-sexual harassment training.

(a) Definitions. For purposes of this subdivision, the following terms have the following meanings:

Interactive training. The term "interactive training" means participatory teaching whereby the trainee is engaged in a trainer-trainee interaction, use of audio-visuals, computer or online training program or other participatory forms of training as determined by the commission. However, such "interactive training" is not required to be live or facilitated by an in-person instructor in order to satisfy the provisions of this subdivision.

(b) Training. Employers with 15 or more employees shall annually conduct an anti-sexual harassment interactive training for all employees, including supervisory and managerial employees, of such employer employed within the city of New York. Such training shall be required after 90 days of initial hire for employees who work more than 80 hours in a calendar year who perform work on a full-time or part-time basis. Such training shall include, but need not be limited to, the following:

(1) An explanation of sexual harassment as a form of unlawful discrimination under local law;

(2) A statement that sexual harassment is also a form of unlawful discrimination under state and federal law;

(3) A description of what sexual harassment is, using examples;

(4) Any internal complaint process available to employees through their employer to address sexual harassment claims;

(5) The complaint process available through the commission, the division of human rights and the United States equal employment opportunity commission, including contact information;

(6) The prohibition of retaliation, pursuant to subdivision 7 of section 8-107, and examples thereof; and

(7) Information concerning bystander intervention, including but not limited to any resources that explain how to engage in bystander intervention.

(8) The specific responsibilities of supervisory and managerial employees in the prevention of sexual harassment and retaliation, and measures that such employees may take to appropriately address sexual harassment complaints.

(c) Compliance.

(1) Employers shall keep a record of all trainings, including a signed employee acknowledgement. Such acknowledgment may be electronic.

(2) Employers shall maintain such records for at least three years and such records must be made available for commission inspection upon request.

(3) The commission shall develop an online interactive training module that may be used by an employer as an option to satisfy the requirements of paragraph (b) of this subdivision, provided that an employer shall inform all employees of any internal complaint process available to employees through their employer to address sexual harassment claims. Such training module shall be made publicly available at no cost on the commission's website. Such training module shall allow for the electronic provision of certification each time any such module is accessed and completed. The commission shall update such modules as needed.

(4) The training required by this subdivision is intended to establish a minimum threshold and shall not be construed to prohibit any private employer from providing more frequent or additional anti-sexual harassment training.

(d) For purposes of this subdivision the term "employer" shall not apply to (i) the United States government; (ii) the state of New York, including any office, department, independent agency, authority, institution, association, society or other body of the state including the legislature and the judiciary; or (iii) the city of New York or any local government, municipality or county or any entity governed by section 92 of the general municipal law or section 207 of the county law.

(e) For purposes of this subdivision the term "employee" shall apply to interns.

(f) An employee who has received anti-sexual harassment training at one employer within the required training cycle shall not be required to receive additional anti-sexual harassment training at another employer until the next cycle.

(g) An employer that is subject to training requirements in multiple jurisdictions may assert that it is compliant with this subdivision provided that each provision in subparagraph b of this subdivision is fulfilled in an anti-sexual harassment training that such employer makes available to its employees on an annual basis and shall be allowed to provide proof of compliance.

31. Employment; pre-employment drug testing policy. (a) Prohibition. Except as otherwise provided by law, it shall be an unlawful discriminatory practice for an employer, labor organization, employment agency, or agent thereof to require a prospective employee to submit to testing for the presence of any tetrahydrocannabinols or marijuana in such prospective employee's system as a condition of employment.

(b) Exceptions. (1) The provisions of this subdivision shall not apply to persons applying to work:

(A) As police officers or peace officers, as those terms are defined in subdivisions 33 and 34 of section 1.20 of the criminal procedure law, respectively, or in a position with a law enforcement or investigative function at the department of investigation;

(B) In any position requiring compliance with section 3321 of the New York city building code or section 220-h of the labor law;

(C) In any position requiring a commercial driver's license;

(D) In any position requiring the supervision or care of children, medical patients or vulnerable persons as defined in paragraph 15 of section 488 of the social services law; or

(E) In any position with the potential to significantly impact the health or safety of employees or members of the public, as determined by: (i) the commissioner of citywide administrative services for the classified service of the city of New York, and identified on the website of the department of citywide administrative services or (ii) the chairperson, and identified in regulations promulgated by the commission.

(2) The provisions of this subdivision shall not apply to drug testing required pursuant to:

(A) Any regulation promulgated by the federal department of transportation that requires testing of a prospective employee in accordance with 49 CFR 40 or any rule promulgated by the departments of transportation of this state or city adopting such regulation for purposes of enforcing the requirements of that regulation with respect to intrastate commerce;

(B) Any contract entered into between the federal government and an employer or any grant of financial assistance from the federal government to an employer that requires drug testing of prospective employees as a condition of receiving the contract or grant;

(C) Any federal or state statute, regulation, or order that requires drug testing of prospective employees for purposes of safety or security; or

(D) Any applicants whose prospective employer is a party to a valid collective bargaining agreement that specifically addresses the pre-employment drug testing of such applicants.

(c) Rules. The commission shall promulgate rules for the implementation of this subdivision.

#### **§ 8-107.1 Victims of domestic violence, sex offenses or stalking. [Repealed]**

#### **§ 8-109 Complaint.**

(a) Any person aggrieved by an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in chapter 6 of this title, or such person's attorney, may make, sign and file with the commission a verified complaint in writing which shall: (i) state the name of the person alleged to have committed the unlawful discriminatory practice or act of discriminatory harassment or violence complained of, and the address of such person if known; (ii) set forth the particulars of the alleged unlawful discriminatory practice or act of discriminatory harassment or violence; and (iii) contain such other information as may be required by the commission. The commission shall acknowledge the filing of the complaint and advise the complainant of the time limits set forth in this chapter.

(b) Any employer whose employee or agent refuses or threatens to refuse to cooperate with the provisions of this chapter may file with the commission a verified complaint asking for assistance by conciliation or other remedial action.

(c) Commission-initiated complaints. The commission may itself make, sign and file a verified complaint alleging that a person has committed an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in chapter 6 of this title.

(d) The commission shall serve a copy of the complaint upon the respondent and all persons it deems to be necessary parties and shall advise the respondent of the respondent's procedural rights and obligations as set forth herein.

(e) The commission shall not have jurisdiction over any complaint that has been filed more than one year after the alleged unlawful discriminatory practice or act of discriminatory harassment or violence as set forth in chapter 6 of this title occurred; provided, however, that the commission shall have jurisdiction over a claim of gender-based harassment if such claim is filed within three years after the alleged harassing conduct occurred.

(f) The commission shall not have jurisdiction to entertain a complaint if:

(i) The complainant has previously initiated a civil action in a court of competent jurisdiction alleging an unlawful discriminatory practice as defined by this chapter or an act of discriminatory harassment or violence as set forth in chapter 6 of this title with respect to the same grievance which is the subject of the complaint under this chapter, unless such civil action has been dismissed without prejudice or withdrawn without prejudice; or

(ii) The complainant has previously filed and has an action or proceeding before any administrative agency under any other law of the state alleging an unlawful discriminatory practice as defined by this chapter or an act of discriminatory harassment or violence as set forth in chapter 6 of this title with respect to the same grievance which is the subject of the complaint under this chapter; or

(iii) The complainant has previously filed a complaint with the state division of human rights alleging an unlawful discriminatory practice as defined by this chapter or an act of discriminatory harassment or violence as set forth in chapter 6 of this title with respect to the same grievance which is the subject of the complaint under this chapter and a final determination has been made thereon.

(g) In relation to complaints filed on or after September 1, 1991, the commission shall commence proceedings with respect to the complaint, complete a thorough investigation of the allegations of the complaint and make a final disposition of the complaint promptly and within the time periods to be prescribed by rule of the commission. If the commission is unable to comply with the time periods specified for completing its investigation and for final disposition of the complaint, it shall notify the complainant, respondent, and any necessary party in writing of the reasons for not doing so.

(h) Any complaint filed pursuant to this section may be amended pursuant to procedures prescribed by rule of the commission by filing such amended complaint with the commission and serving a copy thereof upon all parties to the proceeding.

(i) Whenever a complaint is filed pursuant to paragraph (d) of subdivision 5 of section 8-107, no member of the commission nor any member of the commission staff shall make public in any manner whatsoever the name of any borrower or identify by a specific description the collateral for any loan to such borrower except when ordered to do so by a court of competent jurisdiction or where express permission has been first obtained in writing from the lender and the borrower to such publication; provided, however, that the name of any borrower and a specific description of the collateral for any loan to such borrower may, if otherwise relevant, be introduced in evidence in any hearing before the

commission or any review by a court of competent jurisdiction of any order or decision by the commission.

**§ 8-111 Answer.**

- a. Within 30 days after a copy of the complaint is served upon the respondent by the commission, the respondent shall file a written, verified answer thereto with the commission, and the commission shall cause a copy of such answer to be served upon the complainant and any necessary party.
- b. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge or information sufficient to form a belief, in which case the respondent shall so state, and such statement shall operate as a denial.
- c. Any allegation in the complaint not specifically denied or explained shall be deemed admitted and shall be so found by the commission unless good cause to the contrary is shown.
- d. All affirmative defenses shall be stated separately in the answer.
- e. Upon request of the respondent and for good cause shown, the period within which an answer is required to be filed may be extended in accordance with the rules of the commission.
- f. Any necessary party may file with the commission a written, verified answer to the complaint, and the commission shall cause a copy of such answer to be served upon the complainant, respondent and any other necessary party.
- g. Any answer filed pursuant to this section may be amended pursuant to procedures prescribed by rule of the commission by filing such amended answer with the commission and serving a copy thereof upon the complainant and any necessary party to the proceeding.

**§ 8-112 Withdrawal of complaints.**

- a. A complaint filed pursuant to section 8-109 of this chapter may be withdrawn by the complainant in accordance with rules of the commission at any time prior to the service of a notice that the complaint has been referred to an administrative law judge. Such a withdrawal shall be in writing and signed by the complainant.
- b. A complaint may be withdrawn after the service of such notice at the discretion of the commission.
- c. Unless such complaint is withdrawn pursuant to a conciliation agreement, the withdrawal of a complaint shall be without prejudice:
  1. To the continued prosecution of the complaint by the commission in accordance with rules of the commission;
  2. To the initiation of a complaint by the commission based in whole or in part upon the same facts;  
or
  3. To the commencement of a civil action by the corporation counsel based upon the same facts pursuant to chapter 4 of this title.

**§ 8-113 Dismissal of complaint.**

a. The commission may, in its discretion, dismiss a complaint for administrative convenience at any time prior to the taking of testimony at a hearing. Administrative convenience shall include, but not be limited to, the following circumstances:

1. Commission personnel have been unable to locate the complainant after diligent efforts to do so;
2. The complainant has repeatedly failed to appear at mutually agreed upon appointments with commission personnel or is unwilling to meet with commission personnel, provide requested documentation, or to attend a hearing;
3. The complainant has repeatedly engaged in conduct which is disruptive to the orderly functioning of the commission;
4. The complainant is unwilling to accept a reasonable proposed conciliation agreement;
5. Prosecution of the complaint will not serve the public interest; and
6. The complainant requests such dismissal, 180 days have elapsed since the filing of the complaint with the commission and the commission finds (a) that the complaint has not been actively investigated, and (b) that the respondent will not be unduly prejudiced thereby.

b. The commission shall dismiss a complaint for administrative convenience at any time prior to the filing of an answer by the respondent, if the complainant requests such dismissal, unless the commission has conducted an investigation of the complaint or has engaged the parties in conciliation after the filing of the complaint.

c. In accordance with the rules of the commission, the commission shall dismiss a complaint if the complaint is not within the jurisdiction of the commission.

d. If after investigation the commission determines that probable cause does not exist to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in chapter 6 of this title, the commission shall dismiss the complaint as to such respondent.

e. The commission shall promptly serve notice upon the complainant, respondent and any necessary party of any dismissal pursuant to this section.

f. The complainant or respondent may, within 30 days of such service, and in accordance with the rules of the commission, apply to the chairperson for review of any dismissal pursuant to this section. Upon such application, the chairperson shall review such action and issue an order affirming, reversing or modifying such determination or remanding the matter for further investigation and action. A copy of such order shall be served upon the complainant, respondent and any necessary party.

#### **§ 8-114 Investigations and investigative record keeping.**

a. The commission may at any time issue subpoenas requiring attendance and giving of testimony by witnesses and the production of books, papers, documents and other evidence relating to any matter under investigation or any question before the commission. The issuance of such subpoenas shall be governed by the civil practice law and rules.

b. Where the commission has initiated its own investigation or has conducted an investigation in connection with the filing of a complaint pursuant to this chapter, the commission may demand that any person or persons who are the subject of such investigation (i) preserve those records in the possession of such person or persons which are relevant to the determination of whether such person or persons have committed unlawful discriminatory practices or other acts made unlawful by this chapter or chapter 6 of this title with respect to activities in the city, and (ii) continue to make and keep the type of records made and kept by such person or persons in the ordinary course of business within the year preceding such demand which are relevant to the determination of whether such person or persons have committed unlawful discriminatory practices or other acts made unlawful by this chapter or chapter 6 of this title with respect to activities in the city. A demand made pursuant to this subdivision shall be effective immediately upon its service on the subject of an investigation and shall remain in effect until the termination of all proceedings relating to any complaint filed pursuant to this chapter or civil action commenced pursuant to chapter 4 of this title or if no complaint or civil action is filed or commenced shall expire two years after the date of such service. The commission's demand shall require that such records be made available for inspection by the commission, be filed with the commission, or both.

c. Any person upon whom a demand has been made pursuant to subdivision b of this section may, pursuant to procedures established by rule of the commission, assert an objection to such demand. Unless the commission orders otherwise, the assertion of an objection shall not stay compliance with the demand. The commission shall make a determination on an objection to a demand within 30 days after such an objection is filed with the commission, unless the party filing the objection consents to an extension of time.

d. Upon the expiration of the time set pursuant to such rules for making an objection to such demand, or upon a determination that an objection to the demand shall not be sustained, the commission shall order compliance with the demand.

e. Upon a determination that an objection to a demand shall be sustained, the commission shall order that the demand be vacated or modified.

f. A proceeding may be brought on behalf of the commission in any court of competent jurisdiction seeking an order to compel compliance with an order issued pursuant to subdivision d of this section.

#### **§ 8-115 Mediation and conciliation.**

a. If in the judgment of the commission circumstances so warrant, it may at any time after the filing of a complaint endeavor to resolve the complaint by any method of dispute resolution prescribed by rule of the commission including, but not limited to, mediation and conciliation.

b. The terms of any conciliation agreement may contain such provisions as may be agreed upon by the commission, the complaint and the respondent, including a provision for the entry in court of a consent decree embodying the terms of the conciliation agreement.

c. The members of the commission and its staff shall not publicly disclose what transpired in the course of mediation and conciliation efforts.

d. If a conciliation agreement is entered into, the commission shall embody such agreement in an order and serve a copy of such order upon all parties to the conciliation agreement. Violation of such an order may cause the imposition of civil penalties under section 8-124 of this chapter. Every conciliation agreement shall be made public unless the complainant and respondent agree otherwise and the commission determines that disclosure is not required to further the purposes of this chapter.

**§ 8-116 Determination of probable cause.**

a. Except in connection with commission-initiated complaints which shall not require a determination of probable cause, where the commission determines that probable cause exists to believe that the respondent has engaged or is engaging in an unlawful discriminatory practice or an act of discriminatory harassment or violence as set forth in chapter 6 of this title, the commission shall issue a written notice to complainant and respondent so stating. A determination of probable cause is not a final order of the commission and shall not be administratively or judicially reviewable.

b. If there is a determination of probable cause pursuant to subdivision a of this section in relation to a complaint alleging discrimination in housing accommodations, land or commercial space or an interest therein, or if a commission-initiated complaint relating to discrimination in housing accommodations, land or commercial space or an interest therein has been filed, and the property owner or the owner's duly authorized agent will not agree voluntarily to withhold from the market the subject housing accommodations, land or commercial space or an interest therein for a period of 10 days from the date of such request the commission may cause to be posted for a period of 10 days from the date of such request, in a conspicuous place on the land or on the door of such housing accommodations or commercial space, a notice stating that such accommodations, land or commercial space are the subject of a complaint before the commission and that prospective transferees will take such accommodations, land or commercial space at their peril. Any destruction, defacement, alteration or removal of such notice by the owner or the owner's agents or employees shall be a misdemeanor punishable on conviction thereof by a fine of not more than \$1,000 or by imprisonment for not more than one year or both.

c. If a determination is made pursuant to subdivision a of this section that probable cause exists, or if a commission-initiated complaint has been filed, the commission shall refer the complaint to an administrative law judge and shall serve a notice upon the complainant, respondent and any necessary party that the complaint has been so referred.

**§ 8-117 Rules of Procedure.**

The commission shall adopt rules providing for hearing and pre-hearing procedure. These rules shall include rules providing that the commission, by its prosecutorial bureau, shall be a party to all complaints and that a complainant shall be a party if the complainant has intervened in the manner set forth in the rules of the commission. These rules shall also include rules governing discovery, motion practice and the issuance of subpoenas. Wherever necessary, the commission shall issue orders compelling discovery. In accordance with the commission's discovery rules, any party from whom discovery is sought may assert an objection to such discovery based upon a claim of privilege or other defense and the commission shall rule upon such objection.

**§ 8-118 Noncompliance with discovery order or order relating to records.**

Whenever a party fails to comply with an order of the commission pursuant to section 8-117 of this chapter compelling discovery or an order pursuant to section 8-114 of this chapter relating to records the commission may, on its own motion or at the request of any part, and, after notice and opportunity for all parties to be heard in opposition or support, make such orders or take such action as may be just for the purpose of permitting the resolution of relevant issues or disposition of the complaint without unnecessary delay, including but not limited to:



- (a) An order that the matter concerning which the order compelling discovery or relating to records was issued be established adversely to the claim of the noncomplying party;
- (b) An order prohibiting the noncomplying party from introducing evidence or testimony, cross-examining witnesses or otherwise supporting or opposing designated claims or defenses;
- (c) An order striking out pleadings or parts thereof;
- (d) An order that the noncomplying party may not be heard to object to the introduction and use of secondary evidence to show what the withheld testimony, documents, other evidence or required records would have shown; and
- (e) Infer that the material or testimony is withheld or records not preserved, made, kept, produced or made available for inspection because such material, testimony or records would prove to be unfavorable to the noncomplying party and use such inference to establish facts in support of a final determination pursuant to section 8-120 of this chapter.

#### **§ 8-119 Hearing.**

- a. A hearing on the complaint shall be held before an administrative law judge designated by the commission. The place of any such hearing shall be the office of the commission or such other place as may be designated by the commission. Notice of the date, time and place of such hearing shall be served upon the complainant, respondent and any necessary party.
- b. The case in support of the complaint shall be presented before the commission by the commission's prosecutorial bureau. The complainant may present additional testimony and cross-examine witnesses, in person or by counsel, if the complainant shall have intervened pursuant to rules established by the commission.
- c. The administrative law judge may, in the administrative law judge's discretion, permit any person who has a substantial interest in the complaint to intervene as a party and may require the joinder of necessary parties.
- d. Evidence relating to endeavors at mediation or conciliation by, between or among the commission, the complainant and the respondent shall not be admissible.
- e. If the respondent has failed to answer the complaint within the time period prescribed in section 8-111 of this chapter, the administrative law judge may enter a default and the hearing shall proceed to determine the evidence in support of the complaint. Upon application, the administrative law judge may, for good cause shown, open a default in answering, upon equitable terms and conditions, including the taking of an oral answer.
- f. Except as otherwise provided in section 8-118 of this chapter, the commission by its prosecutorial bureau, a respondent who has filed an answer or whose default in answering has been set aside for good cause shown, a necessary party, and a complainant or other person who has intervened pursuant to the rules of the commission, may appear at such hearing in person or otherwise, with or without counsel, cross-examine witnesses, present testimony and offer evidence.
- g. The commission shall not be bound by the strict rules of evidence prevailing in courts of the state of New York. The testimony taken at the hearing shall be under oath and shall be transcribed.

#### **§ 8-120 Decision and order.**

a. If, upon all the evidence at the hearing, and upon the findings of fact, conclusions of law and relief recommended by an administrative law judge, the commission shall find that a respondent has engaged in any unlawful discriminatory practice or any act of discriminatory harassment or violence as set forth in chapter 6 of this title, the commission shall state its findings of fact and conclusions of law and shall issue and cause to be served on the complainant, respondent, any necessary party and any complainant who has not intervened an order requiring such respondent to cease and desist from such unlawful discriminatory practice or acts of discriminatory harassment or violence. Such order shall require the respondent to take such affirmative action as, in the judgment of the commission, will effectuate the purposes of this chapter or chapter 6 of this title, as applicable, including, but not limited to:

1. Hiring, reinstatement or upgrading of employees;
2. The award of back pay and front pay;
3. Admission to membership in any respondent labor organization;
4. Admission to or participation in a program, apprentice training program, on-the-job training program or other occupational training or retraining program;
5. The extension of full, equal and unsegregated accommodations, advantages, facilities and privileges;
6. Evaluating applications for membership in a club that is not distinctly private, without unlawful discrimination;
7. Selling, renting or leasing, or approving the sale, rental or lease of housing accommodations, land or commercial space or an interest therein, or the provision of credit with respect thereto, without unlawful discrimination;
8. Payment of compensatory damages to the person aggrieved by such practice or act;
9. Submission of reports with respect to the manner of compliance; and
10. Payment of the complainant's reasonable attorney's fees, expert fees and other costs. The commission may consider matter-specific factors when determining the complainant's attorney's fee award, including, but not limited to:
  - (i) Novelty or difficulty of the issues presented;
  - (ii) Skill and experience of the complainant's attorney; and
  - (iii) The hourly rate charged by attorneys of similar skill and experience litigating similar cases in New York county.

b. If, upon all the evidence at the hearing, and upon the findings of fact and conclusions of law recommended by the administrative law judge, the commission shall find that a respondent has not engaged in any such unlawful discriminatory practice or act of discriminatory harassment or violence as set forth in chapter 6 of this title, the commission shall state its findings of fact and conclusions of law and shall issue and cause to be served on the complainant, respondent, and any necessary party and on any complainant who has not intervened an order dismissing the complaint as to such respondent.

**§ 8-121 Reopening of proceeding by commission.**

The commission may reopen any proceeding or vacate or modify any order or determination of the commission, whenever justice so requires, in accordance with the rules of the commission.

**§ 8-122 Injunction and temporary restraining order.**

At any time after the filing of a complaint alleging an unlawful discriminatory practice under this chapter or an act of discriminatory harassment or violence as set forth in chapter 6 of this title, if the commission has reason to believe that the respondent or other person acting in concert with respondent is doing or procuring to be done any act or acts, tending to render ineffectual relief that could be ordered by the commission after a hearing as provided by section 8-120, a special proceeding may be commenced in accordance with article 63 of the civil practice law and rules on behalf of the commission in the supreme court for an order to show cause why the respondent and such other persons who are believed to be acting in concert with respondent should not be enjoined from doing or procuring to be done such acts. The special proceeding may be commenced in any county within the city where the alleged unlawful discriminatory practice or act of discriminatory harassment or violence was committed, or where the commission maintains its principal office for the transaction of business, or where any respondent resides or maintains an office for the transaction of business, or where any person aggrieved by the unlawful discriminatory practice or act of discriminatory harassment or violence resides, or, if the complaint alleges an unlawful discriminatory practice under paragraphs (a), (b) or (c) of subdivision 5 of section 8-107, where the housing accommodation, land or commercial space specified in the complaint is located. The order to show cause may contain a temporary restraining order and shall be served in the manner provided therein. On the return date of the order to show cause, and after affording the commission, the person aggrieved and the respondent and any person alleged to be acting in concert with the respondent an opportunity to be heard, the court may grant appropriate injunctive relief upon such terms and conditions as the court deems proper.

**§ 8-123 Judicial review.**

a. Any complainant, respondent or other person aggrieved by a final order of the commission issued pursuant to section 8-120 or section 8-126 of this chapter or an order of the chairperson issued pursuant to subdivision f of section 8-113 of this chapter affirming the dismissal of a complaint may obtain judicial review thereof in a proceeding as provided in this section.

b. Such proceeding shall be brought in the supreme court of the state within any county within the city wherein the unlawful discriminatory practice or act of discriminatory harassment or violence as set forth in chapter 6 of this title which is the subject of the commission's order occurs or wherein any person required in the order to cease and desist from an unlawful discriminatory practice or act of discriminatory harassment or violence or to take other affirmative action resides or transacts business.

c. Such proceeding shall be initiated by the filing of a petition in such court, together with a written transcript of the record upon the hearing, before the commission, and the issuance and service of a notice of motion returnable before such court. Thereupon the court shall have jurisdiction of the proceeding and of the questions determined therein, and shall have power to grant such relief as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript an order annulling, confirming or modifying the order of the commission in whole or in part. No objection that has not been urged before the commission shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

d. Any part may move the court to remit the case to the commission in the interests of justice for the purpose of adducing additional specified and materials evidenced and seeking findings thereon, provided such party shows reasonable grounds for the failure to adduce such evidence before the commission.

e. The findings of the commission as to the facts shall be conclusive if supported by substantial evidence on the record considered as a whole.

f. All such proceedings shall be heard and determined by the court and by any appellate court as expeditiously as possible and with lawful precedence over other matters. The jurisdiction of the supreme court shall be exclusive and its judgment and order shall be final, subject to review by the appellate division of the supreme court and the court of appeals in the same manner and form and with the same effect as provided for appeals from a judgment in a special proceeding.

g. The commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost and for the purposes of judicial review of the order of the commission. The appeal shall be heard on the record without requirement of printing.

h. A proceeding under this section must be instituted within 30 days after the service of the order of the commission.

#### **§ 8-124 Civil penalties for violating commission orders.**

Any person who fails to comply with an order issued by the commission pursuant to section 8-115 or section 8-120 shall be liable for a civil penalty of not more than \$50,000 and an additional civil penalty of not more than \$100 per day for each day that the violation continues.

#### **§ 8-125 Enforcement.**

a. Any action or proceeding that may be appropriate or necessary for the enforcement of any order issued by the commission pursuant to this chapter, including actions to secure permanent injunctions enjoining any acts or practices which constitute a violation of any such order, mandating compliance with the provisions of any such order, imposing penalties pursuant to section 8-124 of this chapter, or for such other relief as may be appropriate, may be initiated in any court of competent jurisdiction on behalf of the commission. In any such action or proceeding, application may be made for a temporary restraining order or preliminary injunction, enforcing and restraining all persons from violating any provisions of any such order, or for such other relief as may be just and proper, until hearing and determination of such action or proceeding and the entry of final judgment or order thereon. The court to which such application is made may make any or all of the orders specified, as may be required in such application, with or without notice, and may make such other or further orders or directions as may be necessary to render the same effectual.

b. In any action or proceeding brought pursuant to subdivision a of this section, no person shall be entitled to contest the terms of the order sought to be enforced unless that person has timely commenced a proceeding for review of the order pursuant to section 8-123 of this chapter.

#### **§ 8-126 Civil penalties imposed by commission for unlawful discriminatory practices or acts of discriminatory harassment or violence.**

a. Except as otherwise provided in subdivision 13 of section 8-107, in addition to any of the remedies and penalties set forth in subdivision a of section 8-120, where the commission finds that a person has engaged in an unlawful discriminatory practice, the commission may, to vindicate the public interest,

impose a civil penalty of not more than \$125,000. Where the commission finds that an unlawful discriminatory practice was the result of the respondent's willful, wanton or malicious act or where the commission finds that an act of discriminatory harassment or violence as set forth in chapter 6 of this title has occurred, the commission may, to vindicate the public interest, impose a civil penalty of not more than \$250,000.

b. A respondent that is found liable for an unlawful discriminatory practice or an act of discriminatory harassment or violence, as set forth in chapter 6 of this title, may, in relation to the determination of the appropriate amount of civil penalties to be imposed pursuant to subdivision a of this section, plead and prove any relevant mitigating factor.

c. In addition to any other penalties or sanctions which may be imposed pursuant to any other law, any person who knowingly makes a material false statement in any proceeding conducted, or document or record filed with the commission, or record required to be preserved or made and kept and subject to inspection by the commission pursuant to this chapter shall be liable for a civil penalty of not more than \$10,000.

d. An action or proceeding may be commenced in any court of competent jurisdiction on behalf of the commission for the recovery of the civil penalties provided for in this section.

#### **§ 8-127 Disposition of civil penalties.**

a. Any civil penalties recovered pursuant to this chapter shall be paid into the general fund of the city.

b. Notwithstanding the foregoing provision, where an action or proceeding is commenced against a city agency for the enforcement of a final order issued by the commission pursuant to section 8-120 of the code after a finding that such agency has engaged in an unlawful discriminatory practice and in such action or proceeding civil penalties are sought for violation of such order, any civil penalties which are imposed by the court against such agency shall be budgeted in a separate account. Such account shall be used solely to support city agencies' anti-bias education programs, activities sponsored by city agencies that are designed to eradicate discrimination or to fund remedial programs that are necessary to address the city's liability for discriminatory acts or practices. Funds in such account shall not be used to support or benefit the commission. The disposition of such funds shall be under the direction of the mayor.

#### **§ 8-128 Institution of actions or proceedings.**

Where any of the provisions of this chapter authorize an application to be made, or an action or proceeding to be commenced on behalf of the commission in a court, such application may be made or such action or proceeding may be instituted only by the corporation counsel, such attorneys employed by the commission as are designated by the corporation counsel or other persons designated by the corporation counsel.

#### **§ 8-129 Criminal penalties.**

In addition to any other penalties or sanctions which may be imposed pursuant to this chapter or any other law, any person who shall willfully resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of any duty under this chapter, or shall willfully violate an order of the commission issued pursuant to section 8-115 or section 8-120, shall be guilty of a

misdemeanor and be punishable by imprisonment for not more than one year, or by a fine of not more than \$10,000, or by both; but the procedure for the review of the order shall not be deemed to be such willful conduct.

### **§ 8-130 Construction.**

a. The provisions of this title shall be construed liberally for the accomplishment of the uniquely broad and remedial purposes thereof, regardless of whether federal or New York state civil and human rights laws, including those laws with provisions worded comparably to provisions of this title, have been so construed.

b. Exceptions to and exemptions from the provisions of this title shall be construed narrowly in order to maximize deterrence of discriminatory conduct.

c. Cases that have correctly understood and analyzed the liberal construction requirement of subdivision a of this section and that have developed legal doctrines accordingly that reflect the broad and remedial purposes of this title include *Albunio v. City of New York*, 16 N.Y.3d 472 (2011), *Bennett v. Health Management Systems, Inc.*, 92 A.D.3d 29 (1st Dep't 2011), and the majority opinion in *Williams v. New York City Housing Authority*, 61 A.D.3d 62 (1st Dep't 2009).

### **§ 8-131 Applicability.**

The provisions of this chapter which make acts of discriminatory harassment or violence as set forth in chapter 6 of this title subject to the jurisdiction of the commission shall not apply to acts committed by members of the police department in the course of performing their official duties as police officers whether the police officer is on or off duty.

### **§ 8-132 Sexual harassment information.**

a. The commission shall post conspicuously on the commission's website online resources about sexual harassment, including but not limited to:

1. Information that sets forth in simple and understandable terms:

- (a) An explanation that sexual harassment is a form of unlawful discrimination under local law;
- (b) Specific descriptions and examples of activities which may be sexual harassment;
- (c) A description of the commission's complaint process, and how to contact the commission;
- (d) A list of alternate and additional government agencies for filing complaints about sexual harassment, and the websites for such agencies, to the extent available;
- (e) An explanation that retaliation, including but not limited to retaliation for complaints concerning allegations of sexual harassment, is prohibited by subdivision 7 of section 8-107, and examples of activities which may be retaliation for such complaints; and
- (f) Bystander intervention education and the importance of taking action to prevent workplace sexual harassment.

2. An interactive tool describing each step of the complaint process available through the commission, from when a complaint is filed to when a determination is made on such complaint.

### **§ 8-133 Education and outreach regarding single-occupant toilet room requirements.**

The commission on human rights, in conjunction with the department of buildings, shall conduct outreach to the public at large regarding single-occupant toilet room requirements, which shall, at a minimum, include educational materials to inform transgender and gender non-conforming individuals of a building owner's required compliance with sections 403.2.1 and 403.4 of the New York city plumbing code and the violations and penalties that result from non-compliance with such sections. Such materials shall be available in the designated citywide languages as defined in section 23-1101 and shall include a statement that any non-compliance with such sections may be reported to 311 and shall be posted on the commission's website.

## **Chapter 2: Certain Unlawful Real Estate Practices**

### **§ 8-201 Declaration of policy.**

It is hereby declared to be the policy of the city of New York and the purpose of this chapter to promote fair dealing in real estate transactions, to maintain community stability and security, and to foster racial and social harmony.

### **§ 8-202 Definitions.**

As used in this chapter:

1. "Chairperson" means the chairperson of the New York city commission on human rights.
2. "Commission" means the New York city commission on human rights.
3. "Dwelling or real property" means one, two, three or four family residences, and any vacant land which is offered for sale or lease for the construction or location thereon of any such residence.
4. "Legal notice" means publication daily for one week in a newspaper of general circulation within the city of New York and written notice to all real estate brokers in the area.
5. "Real estate broker" means a real estate broker as defined in article twelve-A of the real property law of the state of New York.
6. "Real estate dealer" means any firm, partnership, association, corporation or person which or who has within the preceding twelve months, sold, traded or exchanged two or more dwellings other than, in the case of a person, such person's own residence.
7. "Real estate office" means an office or other place of business which is primarily engaged in the business of selling, buying, leasing, or renting real property; listing real property for sale, purchase, lease or rental; or providing brokerage services in connection with such selling, buying, leasing, renting, or listing.
8. "Solicitation" means requesting, inviting, or inducing by any means, including, but not limited to:
  - (a) going in or upon the property of the person to be solicited, except when invited by such person;
  - (b) communicating with the person to be solicited by mail, telephone, telegraph or messenger service, except when requested by such person;
  - (c) canvassing in streets or other public places;
  - (d) distributing handbills, circulars, cards or other advertising matter;

(e) using loudspeakers, soundtrucks, or other voice-amplifying equipment;

(f) displaying signs, posters, billboards, or other advertising devices other than signs placed upon a real estate office for the purpose of identifying the occupants and services provided therein, provided, however, that the term "solicitation" shall not include advertising in newspapers of general circulation, magazines, radio, television, or telephone directories.

9. "Block, neighborhood or area" means any forty square blocks within the city of New York.

### **§ 8-203 Unlawful real estate practices.**

1. It shall be unlawful for any real estate broker or dealer or any agent or employee of a real estate broker or dealer, except in honest reply to an unprompted question by a prospective buyer or seller:

(a) to represent, for the purpose of inducing or discouraging the purchase, sale, or rental, or the listing for purchase, sale, or rental, of any real property, that a change has occurred or will or may occur in the racial or religious composition of any block, neighborhood, or area.

(b) to represent, implicitly or explicitly, for the purpose of inducing or discouraging the purchase, sale, or rental or the listing for purchase, sale, or rental of any real property, that the presence of persons of any particular race, religion or ethnic background in an area will or may result in:

(1) a lowering of property values in the area;

(2) change in the racial, religious or ethnic composition of the area;

(3) an increase in criminal or anti-social behavior in the area; or

(4) a change in the racial, religious or ethnic composition of schools or other public facilities or services in the area.

2. It shall be unlawful for any real estate broker or dealer or any agent or employee of a real estate broker or dealer:

(a) to make any misrepresentation in connection with the purchase, sale, or rental of any real property, that there will or may be physical deterioration of dwellings in any block, neighborhood or area.

(b) to refer to race, color, religion or ethnic background in any advertisement offering or seeking real property for purchase, sale or rental.

3. It shall be unlawful for any person, firm, partnership, association, or corporation, to knowingly aid, abet, or coerce the commission of any act made unlawful by subdivisions one and two of this section.

### **§ 8-204 Non-solicitation areas.**

1. The commission may designate an area as a non-solicitation area for a period of up to one year upon making written findings based on substantial evidence introduced at a public hearing that:

(a) practices made unlawful by section 8-203 of this chapter, the inducement or encouragement by brokers or dealers of the use of fraudulent mortgage applications for the purchase of dwellings, or the direction based on race, creed, color or national origin by brokers or dealers of prospective purchasers or applicants to dwellings, or an unusually great incidence of solicitation are consistently occurring within the area, and that



- (b) such practices are causing, or are likely to cause, residents within the area to believe that:
  - (1) property values in the area are declining, or about to decline rapidly; or
  - (2) the area is experiencing, or is about to experience:
    - (i) a declining level of maintenance of its housing stock; or
    - (ii) an increase in criminal behavior; or
    - (iii) a change in the racial, religious or ethnic composition of the schools in the area; or
  - (3) the area is experiencing, or is about to experience, a material change in its racial, religious or ethnic composition; and
- (c) therefore, the temporary prohibition in the area of the real estate activities described in section 8-205 of this chapter is necessary to prevent a material change in the area's racial, religious or ethnic composition.

2. The commission may extend one or more times the designation of a non-solicitation area made pursuant to subdivision one of this section for a period of up to one year upon making written findings, based on substantial evidence introduced at a public hearing, that such extension is necessary to achieve the designation's purpose, as described in paragraph (c) of subdivision one of this section, provided, however, that no extension may be granted which, together with the original designation and all previous extensions, will maintain a non-solicitation area for a continuous period greater than two years. The public hearing on any extension shall be held not more than thirty days before the day on which the designation or earlier extension is scheduled to expire.

3. (a) The commission shall promptly announce by legal notice each designation made pursuant to subdivision one of this section and each extension made pursuant to subdivision two of this section, describing the area to which it applies by references to named streets and landmarks. Any designation shall take effect upon the completion of the publication required for legal notice. Any extension shall take effect at the time at which the designation or earlier extension would otherwise expire.

(b) The commission shall maintain, and make available to all interested persons, a current listing of designated non-solicitation areas.

4. The commission may, at any time, terminate the designation of a non-solicitation area made pursuant to subdivision one of this section or the extension of a designation made pursuant to subdivision two of this section upon making findings, based on substantial evidence introduced at a public hearing, that the continuation of the designation or its extension is no longer necessary to achieve the designation's purpose, as described in this section.

#### **§ 8-205 Activities prohibited with respect to non-solicitation areas.**

It shall be unlawful for any real estate broker or dealer or any agent or employee of a real estate broker or dealer to solicit, directly or indirectly, the sale, purchase, or rental of any dwelling located within a non-solicitation area.

#### **§ 8-206 Hearings; rules; enforcement.**

1. The commission may conduct investigations, studies, and hearings concerning practices and activities governed by this chapter. In conducting hearings, the commission shall have the power to subpoena witnesses, to compel their attendance, to administer oaths, to examine witnesses under oath, and to require the production of documents. A written record shall be made of every such hearing.
2. The commission shall have the authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this chapter.
3. The chairperson or his or her designated representative shall have the power to enforce the provisions of this chapter by signing criminal complaints against any person, firm, partnership, association, or corporation for violation of this chapter.
4. The chairperson shall report to the secretary of state of New York all violations of this chapter by real estate brokers and salespersons.

#### **§ 8-207 Violations.**

Any person, firm, partnership, association, or corporation convicted of violating this chapter shall be guilty of a class A misdemeanor.

#### **§ 8-208 Civil remedies.**

1. (a) Any owner of real property who is induced to sell his or her property through or to a real estate broker or real estate dealer by acts committed by such broker or dealer in violation of section 8-203 or section 8-205 of this chapter may institute a civil action against such broker or dealer.

(b) If, in an action instituted pursuant to this subdivision, judgment is rendered in favor of plaintiff, such plaintiff shall be awarded as damages

(i) the amount of any gains, whether in the form of profits, commission, or otherwise, realized by defendant as the result of the first subsequent arm's length sale, exchange, or transfer of the property, or, if defendant acted as a broker, the amount of any commissions received by defendant through the sale, exchange, or transfer of plaintiff's property, such gains in all cases to be calculated without regard to any expenses incurred by the defendant, and may in addition be awarded reasonable attorneys' fees and court costs; or

(ii) if the defendant has not realized any gains as defined in this subdivision, an amount equal to the difference between the price for which plaintiff sold his or her property and the fair market value at the time of the sale, or the fair market value of the property at the time the action is commenced, whichever difference is greater, and may in addition be awarded reasonable attorneys' fees and court costs.

2. (a) Any buyer, through or from a real estate broker or real estate dealer, of real property the last owner of which, excluding such broker or dealer, was induced to sell, exchange or transfer his or her property by acts committed by such broker or dealer in violation of section 8-203 or section 8-205 of this chapter may institute a civil action against such broker or dealer.

(b) If, in an action instituted pursuant to paragraph (a) of this subdivision, judgment is rendered in favor of plaintiff, the plaintiff shall be awarded as damages the amount of any gains, whether in the form of profits, commission, or otherwise, realized by defendant as the result of such plaintiff's purchase of the property, such gains in all cases to be calculated without regard to any expenses incurred by the defendant, and may in addition be awarded reasonable attorneys' fees and court costs.

3. With respect to the sale, exchange or transfer of any property, the liability of a broker or dealer created by subdivision two of this section shall be independent of and additional to the liability of such broker or dealer created by subdivision one of this section.

### **Chapter 3: Civil Rights Demonstration Protection**

#### **§ 8-301 Legislative declaration.**

It is hereby found that the letter and spirit of the constitution of the United States are being violated in some jurisdictions under color of law with the result that persons from this city and state, as well as from other states, are being subjected to discriminatory treatment in the exercise of their constitutional rights because of race or because they seek the removal of unconstitutional barriers to equal rights. Such persons, sometimes referred to as freedom riders and sit-ins, intent upon peaceful resistance to discrimination, segregation and the achievement of the constitutional rights of all persons in all jurisdictions of the United States, have suffered the stigma of criminal proceedings. It is hereby declared to be the policy of the city to remove or to neutralize by affording to such residents appropriate relief to the fullest extent possible, the effect upon residents of this city of such criminal proceedings, resulting from the attempted use of public transportation facilities and other places of public accommodation.

#### **§ 8-302 Removal of disability or disqualification.**

Notwithstanding any provision of this code to the contrary, no person shall be denied any license, right, benefit or privilege extended by this code, or suffer any other disability or disqualification thereunder, or be denied the right of employment by the city, solely because of any arrest, apprehension, detention, indictment or other accusation, arraignment, trial, conviction or any other aspect of conviction or adjudication of a crime had under the jurisdiction of the courts of any state or of the United States, which is founded on an act or acts arising out of any peaceful demonstration or other peaceful activity, the object of which is to resist discriminatory treatment in any place of public accommodation as defined by section 40 of the civil rights law, or to achieve equal rights for all persons regardless of race, creed, color or national origin.

### **Chapter 4: Civil Action To Eliminate Unlawful Discriminatory Practices**

#### **§ 8-401 Legislative declaration.**

The council finds that certain forms of unlawful discrimination are systemic in nature rooted in the operating conditions or policies of a business or industry. The council finds that the existence of systemic discrimination poses a substantial threat to, and inflicts significant injury upon, the city that is economic, social and moral in character, and is distinct from the injury sustained by individuals as an incident of such discrimination. The council finds that the potential for systemic discrimination exists in all areas of public life and that employment, housing and public accommodations are among the areas in which the economic effects of systemic discrimination are exemplified. The existence of systemic discrimination impedes the optimal efficiency of the labor market by, among other things, causing decisions to employ, promote or discharge persons to be based upon reasons other than qualifications and competence. Such discrimination impedes the optimal efficiency of the housing market and retards private investments in certain neighborhoods by causing decisions to lease or sell housing accommodations to be based upon discriminatory factors and not upon ability and willingness to lease or purchase property. The council finds that the reduction in the efficiency of the labor, housing and commercial markets has a detrimental effect on the city's economy, thereby reducing revenues and increasing costs to the city. The council finds that such economic injury to the city severely diminishes its capacity to meet the needs of those persons

living and working in, and visiting, the city. The council finds further that the social and moral consequences of systemic discrimination are similarly injurious to the city in that systemic discrimination polarizes the city's communities, demoralizes its inhabitants and creates disrespect for the law, thereby frustrating the city's efforts to foster mutual respect and tolerance among its inhabitants and to promote a safe and secure environment. The council finds that the potential consequences to the city of this form of discrimination requires that the corporation counsel be expressly given the authority to institute a civil action to enforce the city's human rights law so as to supplement administrative means to prevent or remedy injury to the city.

**§ 8-402 Civil action to eliminate unlawful discriminatory practices.**

a. Whenever there is reasonable cause to believe that a person or group of persons is engaged in a pattern or practice that results in the denial to any person of the full enjoyment of any right secured by chapter 1 of this title, a civil action on behalf of the commission or the city may be commenced in a court of competent jurisdiction, by filing a complaint setting forth facts pertaining to such pattern or practice and requesting such relief as may be deemed necessary to insure the full enjoyment of the rights described in such chapter, including, but not limited to, injunctive relief, damages, including punitive damages, and such other types of relief as are specified in subdivision a of section 8-120. Nothing in this section shall be construed to prohibit (i) an aggrieved person from filing a complaint pursuant to section 8-109 or from commencing a civil action pursuant to chapter 5 of this title based upon the same facts pertaining to such a pattern or practice as are alleged in the civil action, or (ii) the commission from filing a commission-initiated complaint pursuant to section 8-109 alleging a pattern or practice of discrimination, provided that a civil action pursuant to this section shall not have previously been commenced.

b. A civil action commenced under this section must be commenced within three years after the alleged discriminatory practice occurred.

c. Such action may be instituted only by the corporation counsel, such attorneys employed by the city commission on human rights as are designated by the corporation counsel or other persons designated by the corporation counsel.

**§ 8-403 Investigation.**

The corporation counsel may initiate any investigation to ascertain such facts as may be necessary for the commencement of a civil action pursuant to section 8-402, and in connection therewith shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, to administer oaths and to examine such persons as are deemed necessary.

**§ 8-404 Civil penalty.**

In any civil action commenced pursuant to section 8-402, the trier of fact may, to vindicate the public interest, impose upon any person who is found to have engaged in a pattern or practice that results in the denial to any person of the full enjoyment of any right secured by chapter 1 of this title a civil penalty of not more than \$250,000. In relation to determining the appropriate amount of civil penalties to be imposed pursuant to this section a liable party may plead and prove any relevant mitigating factor. Any civil penalties so recovered pursuant to this chapter shall be paid into the general fund of the city. Nothing in this section shall be construed to preclude the city from recovering damages, including punitive damages, and other relief pursuant to section 8-402 in addition to civil penalties.

**Chapter 5: Civil Action By Persons Aggrieved By Unlawful Discriminatory Practices**

**§ 8-502 Civil action by persons aggrieved by unlawful discriminatory practices.**

a. Except as otherwise provided by law, any person claiming to be a person aggrieved by an unlawful discriminatory practice as defined in chapter 1 of this title or by an act of discriminatory harassment or violence as set forth in chapter 6 of this title shall have a cause of action in any court of competent jurisdiction for damages, including punitive damages, and for injunctive relief and such other remedies as may be appropriate, unless such person has filed a complaint with the city commission on human rights or with the state division of human rights with respect to such alleged unlawful discriminatory practice or act of discriminatory harassment or violence. For purposes of this subdivision, the filing of a complaint with a federal agency pursuant to applicable federal law prohibiting discrimination which is subsequently referred to the city commission on human rights or to the state division of human rights pursuant to such law shall not be deemed to constitute the filing of a complaint under this subdivision.

b. Notwithstanding any inconsistent provision of subdivision a of this section, where a complaint filed with the city commission on human rights or the state division on human rights is dismissed by the city commission on human rights pursuant to subdivisions a, b or c of section 8-113, or by the state division of human rights pursuant to subdivision 9 of section 297 of the executive law either for administrative convenience or on the grounds that such person's election of an administrative remedy is annulled, an aggrieved person shall maintain all rights to commence a civil action pursuant to this chapter as if no such complaint had been filed.

c. The city commission on human rights and the corporation counsel shall each designate a representative authorized to receive copies of complaints in actions commenced in whole or in part pursuant to subdivision a of this section. Within 10 days after having commenced a civil action pursuant to subdivision a of this section, the plaintiff shall serve a copy of the complaint upon such authorized representatives.

d. A civil action commenced under this section must be commenced within three years after the alleged unlawful discriminatory practice or act of discriminatory harassment or violence as set forth in chapter 6 of this title occurred. Upon the filing of a complaint with the city commission on human rights or the state division of human rights and during the pendency of such complaint and any court proceeding for review of the dismissal of such complaint, such three-year limitations period shall be tolled.

e. Notwithstanding any inconsistent provision of this section, where a complaint filed with the city commission on human rights or state division of human rights is dismissed for administrative convenience and such dismissal is due to the complainant's malfeasance, misfeasance or recalcitrance, the three year limitation period on commencing a civil action pursuant to this section shall not be tolled. Unwillingness to accept a reasonable proposed conciliation agreement shall not be considered malfeasance, misfeasance or recalcitrance.

f. The provisions of this section which provide a cause of action to persons claiming to be persons aggrieved by an act of discriminatory harassment or violence as set forth in chapter 6 of this title shall not apply to acts committed by members of the police department in the course of performing their official duties as police officers whether the police officer is on or off duty. This subdivision shall in no way affect rights or causes of action created by section 14-151.

g. In any civil action commenced pursuant to this section, the court, in its discretion, may award the prevailing party reasonable attorney's fees, expert fees and other costs. For the purposes of this subdivision, the term "prevailing" includes a plaintiff whose commencement of litigation has acted as a catalyst to effect policy change on the part of the defendant, regardless of whether that change has been

implemented voluntarily, as a result of a settlement or as a result of a judgment in such plaintiff's favor. The court shall apply the hourly rate charged by attorneys of similar skill and experience litigating similar cases in New York county when it chooses to factor the hourly rate into the attorney's fee award.

h. 1. The term "person aggrieved" includes a person whose right created, granted or protected by chapters 1 or 6 of this title is violated by a covered entity directly or through conduct of the covered entity to which the person's agent or employee is subjected while the agent or employee was acting, or as a result of the agent or employee having acted, within the scope of the agency or employment relationship. For purposes of this subdivision, an agent or employee's protected status is imputed to that person's principal or employer when the agent or employee acts within the scope of the agency or employment relationship. It is irrelevant whether or not the covered entity knows of the agency or employment relationship.

2. A person is aggrieved even if that person's only injury is the deprivation of a right granted or protected by chapters 1 or 6 of this title.

3. This subdivision does not limit or exclude any other basis for a cause of action.

## **Chapter 6: Discriminatory Harassment Or Violence**

### **§ 8-602 Civil action to enjoin discriminatory harassment or violence; equitable remedies.**

a. Whenever a person interferes by threats, intimidation or coercion or attempts to interfere by threats, intimidation or coercion with the exercise or enjoyment by any person of rights secured by the constitution or laws of the United States, the constitution or laws of this state, or local law of the city and such interference or attempted interference is motivated in whole or in part by the victim's actual or perceived race, creed, color, national origin, gender, sexual and reproductive health decisions, sexual orientation, age, whether children are, may or would be residing with such victim, marital status, partnership status, disability, or alienage or citizenship status as defined in chapter 1 of this title, the corporation counsel, at the request of the city commission on human rights or on the corporation counsel's own initiative, may bring a civil action on behalf of the city for injunctive and other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the rights secured.

b. An action pursuant to subdivision a of this section may be brought in any court of competent jurisdiction.

c. Violation of an order issued pursuant to subdivision a of this section may be punished by a proceeding for contempt brought pursuant to article 19 of the judiciary law and, in addition to any relief thereunder, a civil penalty may be imposed not exceeding \$10,000 for each day that the violation continues.

### **§ 8-603 Discriminatory harassment; civil penalties.**

a. No person shall by force or threat of force, knowingly injure, intimidate or interfere with, oppress, or threaten any other person in the free exercise or enjoyment of any right or privilege secured to such other person by the constitution or laws of this state or by the constitution or laws of the United States or by local law of the city when such injury, intimidation, interference, oppression or threat is motivated in whole or in part by the victim's actual or perceived race, creed, color, national origin, gender, sexual and reproductive health decisions, sexual orientation, age, marital status, partnership status, disability or alienage or citizenship status, as defined in chapter 1 of this title.

b. No person shall knowingly deface, damage or destroy the real or personal property of any person for the purpose of intimidating or interfering with the free exercise or enjoyment of any right or privilege secured to the other person by the constitution or laws of this state or by the constitution or laws of the United States or by local law of the city when such defacement, damage or destruction of real or personal property is motivated in whole or in part by the victim's actual or perceived race, creed, color, national origin, gender, sexual and reproductive health decisions, sexual orientation, age, marital status, partnership status, or whether children are, may be, or would be residing with such victim, disability or alienage or citizenship status, as defined in chapter 1 of this title.

c. Any person who violates subdivision a or b of this section shall be liable for a civil penalty of not more than \$100,000 for each violation, which may be recovered by the corporation counsel in an action or proceeding in any court of competent jurisdiction.

#### **§ 8-604 Disposition of civil penalties.**

Any civil penalties recovered by the corporation counsel pursuant to this chapter shall be paid into the general fund of the city.

### **Chapter 7: Discriminatory Boycotts**

#### **§ 8-701 Legislative declaration.**

Boycotts or blacklists that are based on a person's race, color, creed, age, national origin, alienage or citizenship status, marital status, partnership status, gender, sexual orientation, or disability pose a menace to the city's foundation and institutions. In contrast to protests that are in reaction to an unlawful discriminatory practice, connected with a labor dispute or associated with other speech or activities that are protected by the first amendment discriminatory boycotts cause havoc, divide the citizenry and do not serve a legitimate purpose. The council declares that discriminatory boycotts are a dangerously insidious form of prejudice and hereby establishes a procedure for expeditiously investigating allegations of this type of prejudice, assuring that the council and mayor are duly alerted to the existence of such activity and combating discriminatory boycotts or blacklists.

#### **§ 8-702 Definitions.**

As used in this chapter, the following terms have the following meanings:

Commission. The term "commission" means the city commission on human rights.

Council. The term "council" means the council of the city of New York.

Discriminatory boycott or blacklist. The term "discriminatory boycott or blacklist" means any act that is an unlawful discriminatory practice under subdivision 18 of section 8-107.

#### **§ 8-703 Investigative reporting requirements.**

The following requirements shall apply to all complaints alleging that a discriminatory boycott or blacklist is occurring:

(1) The commission shall begin an investigation within 24 hours of the filing of a complaint which alleges that a discriminatory boycott or blacklist is occurring.

(2) Within three days after initiating such an investigation, the commission shall file a written report with the mayor. The report shall state:

- (a) The allegations contained in the complaint;
- (b) Whether the commission has reason to believe a discriminatory boycott or blacklist is taking place; and
- (c) Steps the commission has taken to resolve the dispute.

(3) If it is stated within the report described in subdivision 2 of this section that the commission has reason to believe that a discriminatory boycott or blacklist has taken place, within 30 days after filing such report, the commission shall file a second report with the mayor and the council. This second report shall contain:

- (a) A brief description of the allegations contained in the complaint;
- (b) A determination of whether probable cause exists to believe a discriminatory boycott or blacklist is taking place;
- (c) A recitation of the facts that form the basis of the commission's determination of probable cause; and
- (d) If the boycott or blacklist is continuing at the date of the report, a description of all actions the commission or other city agency has taken or will undertake to resolve the dispute.

(4) If a finding of probable cause is not contained in the report required by subdivision 3 of this section and the boycott or blacklist continues for more than 20 days subsequent to the report's release, then, upon demand of the mayor or council, the commission shall update such report. Report updates shall detail:

- (a) Whether or not the commission presently has probable cause to believe a discriminatory boycott or blacklist is taking place; and
- (b) All new activity the commission or other city agency has taken or will undertake to resolve the dispute.

(5) If the commission determines that the disclosure of any information in a report required by this section may interfere with or compromise a pending investigation or efforts to resolve the dispute by mediation or conciliation, it shall file the report without such information and state in the report the reasons for omitting such information.