

News



New Jersey
Office of the Attorney General

NEW JERSEY DEPARTMENT OF LAW & PUBLIC SAFETY

Office of the Attorney General

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Division on Civil Rights Proposes Changes to its Proposed Disparate Impact Discrimination Rules

TRENTON – Attorney General Matthew J. Platkin and the Division on Civil Rights (DCR) announced that DCR is proposing two changes to its proposed rules governing disparate impact discrimination under the New Jersey Law Against Discrimination (LAD).

On June 3, 2024, DCR proposed to adopt new rules pertaining to disparate impact discrimination, at 56 N.J.R. 969(a). The proposed rulemaking clarifies that the LAD prohibits policies or practices resulting in disproportionately negative effects on members of a protected class – even if these practices or policies are not intended to discriminate or are not discriminatory on their face – unless there is no less discriminatory alternative that is equally effective in achieving a substantial, legitimate, nondiscriminatory interest. The comment period closed on August 2, 2024.

The Notice of Proposed Substantial Changes provides notice of, and an opportunity for the public to comment on, two proposed changes to the proposed rules.

First, DCR proposes to remove the phrase “equally effective” from the proposed rules’ articulation of the legal requirements related to less discriminatory alternatives. As the Notice explains, DCR is proposing this change to align the proposed rules with case law and ensure consistency with the purposes of the LAD and the rulemaking.

Second, DCR proposes to define the term “complainant” to mean “any person filing a complaint alleging unlawful discrimination pursuant to the Act.” As the Notice explains, DCR is proposing this change to make clear that this term includes all people who file complaints that allege LAD violations, including those who file complaints in court or arbitration.

The Notice of Proposed Substantial Changes was published in the New Jersey Register on November 18, 2024. A copy is available at: <https://www.njoag.gov/wp-content/uploads/2024/11/Notice-of-Subst.-Change-13-16-1.3-56-N.J.R.-2218a-002.pdf>. The proposal is subject to a notice and comment period, which will remain open until January 17, 2025. Comments on the two proposed rule changes can be submitted electronically at regulations@njcivilrights.gov with the email subject “Disparate Impact Notice of Proposed Substantial Changes Public Comment.”

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The New Jersey Division on Civil Rights enforces the New Jersey Law Against Discrimination, the New Jersey Family Leave Act, and the Fair Chance in Housing Act, and works to prevent, eliminate, and remedy discrimination and bias-based harassment in employment, housing, and places of public accommodation throughout New Jersey.

To find out more information or to file a complaint, go to www.njcivilrights.gov.