



**Division of
Human Rights**

Rights for Persons with Disabilities under the New York State Human Rights Law

What will be covered?

- What types of conditions/impairments are covered as disabilities under the New York State Human Rights Law (NYSHRL)?
- How does the NYSHRL differ from the Americans with Disabilities Act (ADA) in protections for persons with disabilities?
- Who is a covered entity under the NYSHRL, i.e., employers, housing providers and places that are open to the public.

What will be covered?

- What types of discriminatory conduct are prohibited against persons with disabilities under the NYSHRL?
- How is Gender Identity covered under the NYSHRL?
- How does the New York State Division of Human Rights enforce the NYSHRL?

Definition of Disability under NYSHRL

- physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic technique, or;
- a record of such an impairment, or;
- a condition regarded by others as such an impairment.

Definition of Disability under Americans with Disabilities Act (ADA)

The ADA defines “disability” as a substantial limitation of a major life activity.

The definition of disability under the NYSHRL is more broadly construed and does not require the impairment to be substantial nor affect a major life activity.

Employers under ADA & NYSHRL

The ADA covers employers with fifteen (15) or more employees. The NYSHRL covers all employers in the State of New York.

ADA & NYSHRL Covered Entities

The provisions covering employment, government entities and places of public accommodation largely mirror one another, except for how “disability” is defined.

The NYSHRL covers housing providers, while the ADA does not, except for a limited provision.

Retaliation

It is an unlawful discriminatory practice for any person engaged in any activity to which the NYSHRL applies to retaliate against a person for:

- Filing a complaint, testifying or assisting in any proceeding brought under the Human Rights Law or
- Otherwise opposing discrimination.

Unlawful Discriminatory Practices

- Refusal to hire, interview, promote on account of disability.
- Termination on account of disability.
- Diminishing compensation, conditions, or privileges of employment on account of disability.

Unlawful Discriminatory Practices

- Refusal to reasonably accommodate the known disability of a qualified employee, or prospective employee.
- Employers can not inquire about an employee's OR job applicant's disability* UNLESS an employee has made a request for reasonable accommodation.
- * COVID-19

Reasonable Accommodations

It shall be an unlawful discriminatory practice for an employer to refuse to provide a reasonable accommodation to the known disabilities of an employee, or prospective employee in connection with a job or occupation sought, provided however, that such actions do not impose an undue hardship on the business.

Reasonable Accommodations

Reasonable accommodations include:

- provision of an accessible worksite;
- acquisition or modification of equipment;
- support services for persons with hearing or vision impairments; and
- job restructuring and modified work schedules.

Undue Hardship

Factors to be taken into consideration to determine “undue hardship” include:

- the overall size of the business and its budget;
- the benefit provided by the accommodation toward removing the impediment to performance caused by the disability;
- the hardship, costs or problems it will cause for the employer, including those that may be caused for other employees.

The Interactive Process

New York State regulations set forth the obligations of both the employer and employee to engage interactively in the reasonable accommodation process.

Interactive Process

Employer should provide information to applicants and new employees as to their rights about reasonable accommodation of disability, and as to procedures to be followed in requesting reasonable accommodation.

Interactive Process

Employer has the duty to move forward to consider accommodation once the need for accommodation is known or requested. The employer has the duty to clearly request from the applicant or employee any documentation that is needed. Once an accommodation is under consideration, the employer has the right to medical or other information that is necessary to verify the existence of the disability, or that is necessary for consideration of the accommodation. The employer must maintain the confidentiality of individuals' medical information.

Interactive Process

Employer has the right to select which reasonable accommodation will be provided, so long as it is effective in meeting the need.

Interactive Process

Employee has the duty to make the disability and need for accommodation known to the employer and has the right to request an accommodation at any time, even if his/her medical condition has not changed.

Interactive Process

Employee has the duty to:

- cooperate with the employer in the consideration and implementation of the requested reasonable accommodation; and
- cooperate in providing medical or other information that is necessary to verify the existence of the disability or what is necessary for consideration of the accommodation. The employee has a right to have his/her medical information kept confidential.

COVID-19

- Employers can inquire about viral and vaccination status.
- Employers can require employees to be vaccinated or subject to testing.
- Employers can require facial coverings.

COVID-19

Employers can require employees to be vaccinated or subject to testing. Persons who have disabilities that prevent them from being vaccinated may ask for reasonable accommodation. Employee must provide medical documentation demonstrating impairment that prevents them from being vaccinated.

COVID-19

Employers can require facial coverings. Persons who have disabilities that prevent them from wearing facial coverings may ask for reasonable accommodation. Employee must provide medical documentation demonstrating impairment prevents them from wearing a mask.

Housing Providers & Real Estate Agents

- Private Housing Providers
- Public Housing Authorities
- Rentals
- Co-ops and condos
- Real estate brokers or agents

Prohibited Discrimination

- It is unlawful for housing providers to refuse to sell, rent, lease or otherwise deny any person a housing accommodation on account of disability.
- It is unlawful for housing providers to discriminate against any person because of disability in the terms, conditions or privileges of the sale, rental or lease of any housing accommodation.

Prohibited Discrimination

It is unlawful to advertise, publish, or to use any form of application for the purchase, rental or lease of housing, or to make any inquiry in connection with the prospective purchase, rental or lease of housing which expresses any limitation, or discrimination as to disability.

Prohibited Discrimination

Housing providers are prohibited from sexually harassing their tenants under the NYSHRL.

Prohibited Discrimination

It is unlawful for housing providers to refuse reasonable accommodations to allow a person with a disability to use and enjoy their home.

Reasonable Modifications

- Housing providers must permit, at the expense of a person with a disability, for “reasonable modifications” of existing premises occupied or to be occupied by such person if the modifications may be necessary for full enjoyment of the premises.
- In the case of a rental the landlord may, where it is reasonable to do so, condition permission for a modification on the renter’s agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted.

Reasonable Modifications

Examples of reasonable modifications include:

- widening of doorways;
- adjusting kitchen / bath fixtures or counter heights;
- installation of grab bars.

Common Areas

The NYSHRL requires covered housing providers to pay for reasonable modifications in common areas.

Reasonable Accommodation

N.Y. Exec. Law §296.18(2) states that it shall be an unlawful discriminatory practice to, “refuse to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford said person with a disability equal opportunity to use and enjoy a dwelling, *including reasonable modifications to common use portions of the dwelling.*”

Reasonable Accommodations

- Examples of “reasonable accommodations” to rules, policies, practices or services include:
- installation of a ramp in a common area;
- waiving a no pet policy for a person with a disability who needs an emotional support animal;
- moving a person with a disability to the top of a waiting list to secure a handicap parking space that is close to, and on an accessible route to one’s unit.

2021 Amendment – Reasonable Accommodation Notice

In 2021, DHR promulgated regulations requiring housing providers to provide notice to all tenants and prospective tenants of their rights to request reasonable modifications and accommodations for persons with disabilities.

Guide, Hearing & Service Dogs

- Persons with disabilities that use guide, hearing or service dogs that have been professionally trained have significant protections under the NYSHRL to have the dog go where they go.

Emotional Support Animals - Housing

- Persons with disabilities that have a disability related need for an emotional support animal can ask a landlord to waive a no pet policy to allow for an emotional support animal to live with the individual.
- Landlord is entitled to medical documentation to support that the person has a disability and that the need for the animal is disability related.

Emotional Support Animals - Housing

Landlords are prohibited from making restrictions on the type of animal, breed or size of dog, and from assessing fees for someone who needs an emotional support animal because of their disability.

New Construction

- Newly constructed covered multi-family dwellings must be designed and constructed in accordance with the accessibility requirements found in the *New York State Uniform Fire Prevention and Building Code*.
- “Newly constructed” multi-family dwellings include those built for first occupancy after March 13, 1991.
- “Multi-family dwellings” are defined as, a dwelling which is occupied for permanent residence, and which is either sold, rented, or leased to be occupied as the residence of three or more families living independently of each other.

New Construction

Requirements Include:

Public use and common use portions of the dwellings are readily accessible to and usable by persons with disabilities;

All doors are designed to allow passage into and within all premises and are sufficiently wide to allow passage by persons in wheelchairs;

All premises within the units contain an accessible route into and through the dwelling;

New Construction

Requirements Include:

Light switches, electrical outlets, thermostats, and other environmental controls are in accessible locations; and

Reinforcements in the bathroom walls to allow later installation of grab bars.

Place of Public Accommodation Defined

Places of Public Accommodation as defined under the NYSHRL cover most businesses and places that are open to the public, including:

- Hotels, motels
- Restaurants, diners & bars
- Retail stores
- Health clinics & hospitals
- Movie theatres
- Amusement and recreation parks
- State and local government entities
- **Websites**

Website Accessibility – DOJ Guidance

DOJ has taken the position that the ADA's requirements apply to all the services, programs, or activities of state and local governments, including those offered on the web.

Website Accessibility – DOJ Guidance

DOJ has taken the position that the ADA's requirements apply to all the goods, services, privileges, or activities offered by public accommodations, including those offered on the web.

Website Accessibility – DOJ Guidance

Guidance found at <https://beta.ada.gov/web-guidance/>

Places of Public Accommodation

Places of public accommodation are obligated to ensure access to goods, services and facilities by making reasonable accommodations for persons with disabilities.

Reasonable Modifications of Rules, Practices or Procedures

- Examples of modifying a rule, practice or procedure to provide access include:
 - Implementing policies to ensure staff are trained to assist and accommodate persons with disabilities to access goods, services, or facilities within a place of public accommodation.
 - Provide curbside service or home delivery of goods or services where it is reasonable to do so.

Auxiliary Aids & Services

- Places of Public Accommodation must take such steps to ensure that no individual with a disability is excluded or denied services because of the absence of auxiliary aids and services, unless such person can demonstrate that taking such steps would fundamentally alter the nature of the public accommodation or would result in an undue burden.

Auxiliary Aids & Services

- Examples of auxiliary aids and services include:
- sign language interpreters;
- materials in alternative format;
- acquisition or modification of equipment or devices

Removal of Architectural Barriers under the NYSHRL

Places of public accommodation must remove architectural barriers where it is readily achievable to do so, in order to make their premises accessible to persons with disabilities.

Readily Achievable

- The NYSHRL defines “readily achievable” as, “easily accomplishable and able to be carried out without much difficulty or expense.”

Removal of Architectural Barriers under the NYSHRL

- Examples of barrier removal include:
- installation of a ramp;
- widening of doorways or check out aisles, or lowering service counters to make them accessible to a wheelchair user;
- making curb cuts in sidewalks and entrances;

What Is Gender Identity or Expression

- “Gender identity or expression” is defined in the new amendment as meaning “a person’s actual or perceived gender-related identity, appearance, behavior, expression or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender”. HRL 292.35

Personal Religious Beliefs Not a Defense – Places of Public Accommodation

- *Division of Human Rights on the Complaint of McCarthy v. Liberty Ridge Farm LLC et al*, SDHR Case No 10157963, affirmed Appellate Division, 137 A.D.3d 30 (3d Dept. 2016)
- Complainants sought to rent Respondent's property, a place of public accommodation, to hold their wedding. Respondents, who run and market a business that is not a religious corporation, and offer their property to the public for weddings, refused to rent because of their policy, based on their religious beliefs, not to provide wedding space for same-sex couples. The Commissioner found the Respondents had discriminated against the couple based on their sexual orientation, and awarded \$3,000 in damages as well as a civil penalty of \$10,000.

Unlawful discrimination on the grounds of gender identity or expression can include:

- Questions about gender identity or expression, or assigned sex at birth, such as in a job or housing interview
- Refusing to hire for a job, to rent an apartment or to allow equal access to credit, a public accommodation or a school
- Terminating employment or housing
- Denying the use of restrooms or other facilities consistent with a person's gender identity
- Forcing a transgender person to use a single-occupancy restroom because of someone else's concerns

Unlawful discrimination on the grounds of gender identity or expression can include:

- Requiring individuals to show medical or other documents in order to use facilities such as restrooms, locker rooms or residential facilities consistent with their gender identity
- Requiring grooming, uniform or appearance standards based on sex stereotypes
- Providing benefits, leave or reasonable accommodations that differ based on gender
- Refusing to use an individual's name or pronouns

Filing a Complaint

The Division of Human Rights has regional offices around the state. Contact info for DHR's regional offices is located at www.dhr.ny.gov/contact-us

Complaint forms are available at www.dhr.ny.gov/complaint.

A complaint must be filed with the Division within one year of the occurrence of the discrimination.

Complaints may be filed directly in state court, within three years of the alleged discrimination.

Complaints may not be filed in both the Division and state court.

Filing a Complaint

Complaint forms are available

at:

www.dhr.ny.gov/complaint.

Investigative Determination

- Based on all the evidence collected by the investigator, the Regional Director will decide as to whether there is probable cause to believe that discrimination occurred.
- If the Regional Director determines that there is no probable cause to believe that discrimination occurred, the complaint is dismissed, and the Complainant may appeal the dismissal to state court.
- If there is a determination of probable cause, the case is forwarded for a public hearing before an Administrative Law Judge.

Public Hearing

At the public hearing before an Administrative Law Judge, testimony is taken under oath, witnesses may be called to testify, and a full record is made.

Complainant may be represented by his or her own attorney, or a Division attorney will be appointed to present the case in support of the complaint.

The Administrative Law Judge submits a Recommended Order for the Commissioner's consideration.

Final Orders and Remedies

The Commissioner reviews all submissions, relevant evidence and the Recommended Order, and issues a Final Order either finding discrimination or dismissing the Complaint.

Where the Commissioner finds that discrimination has occurred, remedies may include:

- an order to cease the discriminatory policies;
- reinstatement to a job, with back pay;
- housing accommodation;
- access to goods and services from a public accommodation;
- reasonable accommodation or modification
- a requirement that training be conducted;
- civil fines and penalties.

Contact Info

- If you'd like connect with the Division afterwards with questions or requests, call us at **1-888-392-3644** or email us at info@dhr.ny.gov.
- DHR's Director of Disability Rights, John Herrion, can be contacted at john.herrion@dhr.ny.gov, or 718-741-8332.

Questions/Contact us



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