



**Division of
Human Rights**

Discrimination Based on Disability

Under the New York State Human Rights Law

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NYS Division of Human Rights

The New York State Division of Human Rights (Division) enforces the New York State Human Rights Law (NYSHRL).

The Division has 12 offices throughout the State of New York and received close to 6,000 complaints last year alleging discrimination.

Over one-third of those complaints allege discrimination on the basis of disability.

Definition of Disability

The New York State Human Rights Law defines “disability” as:

- a 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 techniques, or

Definition of Disability

- a record of such an impairment, or
- a condition regarded by others as such an impairment.

NYSHRL vs. Americans with Disabilities Act

- The ADA requires a “substantial limitation of one or more major life activities” for an individual to be considered disabled and protected under the law.
- No such qualifier under the NYSHRL, and no mention of “major life activities.”

Employment

Covered Employer

The NYSHRL covers employers with four (4) or more employees and applies to employment agencies, labor organizations and apprentice programs.

The NYSHRL provides broader coverage than the Americans with Disabilities Act (ADA), which applies to employers with fifteen (15) or more employees.

Requisite Qualifications

- New York State regulations require that the disabled individual have the requisite job qualifications as well as be able to satisfactorily perform the essential functions of the job with or without reasonable accommodation.

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.

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.

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 do NOT include:
 - providing non-work related aids, such as a personal hearing aid or wheelchair, which are the employee's own responsibility;
 - the creation of a completely unique position with either qualifications or functions tailored to the disabled individual's abilities.
 - modifying one's commute to and from work.

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 with regard to 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.”

Housing

Housing

- The New York State Human Rights Law covers both private and public housing, including rentals, cooperatives and condominiums.

Housing

- Similar to the distinction with the ADA, the definition of disability under the NYSHRL is more generous than said definition under the Federal Fair Housing Act (FHA).

Housing

- The definition of disability under the FHA requires that it be a physical or mental impairment that *substantially limits a major life activity*.
- No such qualifier under the NYSHRL, or mention of “major life activities.”

Prohibited Discriminatory Conduct

- Housing providers may not refuse to sell or rent housing accommodations on account of a person's disability.
- Housing providers can not discriminate in the terms, conditions or privileges in the sale, lease or ownership of a housing accommodation on account of a person's disability.

Prohibited Discriminatory Conduct

- Housing providers are prohibited from printing, circulating, advertising or using any form of application, or making any record or inquiry that expresses directly or indirectly any limitation, specification or discrimination as to disability.

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.

Reasonable Modifications

- 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.



2010 Amendment

- The NYSHRL was amended in 2010 to require covered housing providers to pay for reasonable modifications in common areas.

2010 Amendment

- 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.

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.

Attorney Fees

- In cases of housing discrimination only, attorney's fees may be awarded to the prevailing party. In order for respondent attorneys to collect fees they must prove that the action brought by the complainant was frivolous.

Places of Public Accommodation

Places of Public Accommodation

- Places of public accommodation are prohibited from discriminating against persons with disabilities and are obligated to ensure access to goods, services and facilities by making reasonable accommodations.

Places 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
 - Public parking garages



Exceptions

- Places of Public Accommodation under the NYSHRL do not include:
 - Schools, colleges or universities;
 - Religious Institutions;
 - Institution, club, or place of accommodation that proves itself “distinctly private”.

Reasonable Modifications of Rules, Practices or Procedures

- Places of public accommodation must make reasonable modifications to policies, practices or procedures to make their goods, services and facilities accessible to persons with disabilities, unless it fundamentally alters the nature of the public accommodation.

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;



2015 Amendment – Public Entities

- The NYS Human Rights Law was amended in 2015 to adopt certain provisions of Title II of the ADA.
- The amendment becomes effective on November 22, 2015.

2015 Amendment – Public Entities

- The amendment states that “places of public accommodation” are subject to the Human Rights Law “regardless of whether the owner or operator of such place is a state or local government entity or a private individual or entity.”
- the public accommodation provisions apply to government entities when they are acting in their capacities as owners or operators of places of public accommodation.



2015 Amendment – Public Entities

- The amendment clarifies that all places where the public is generally invited to go are public accommodations under the HRL. The definition at § 292.9 now explicitly includes the following: “public halls, public rooms, and any public areas of any building or structure.”

2015 Amendment – Public Entities

The exclusion of public libraries has been removed. The exclusions clause now applies only to educational institutions under the supervision of the Regents, public educational institutions, and distinctly private clubs.

2015 Amendment – Public Entities

The amendment adds a new paragraph to the law regarding accommodations for persons with disabilities. **Where the owner of a public accommodation is a state or local governmental entity,** discriminatory practices include:

a refusal to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals, where such removal does not constitute an undue burden.

Transportation Barrier Exceptions

Does not require the removal of barriers through retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift.

Does not cover: air carriers, the National Railroad Passenger Corporation, or public transportation facilities, vehicles or services owned, leased or operated by the state, a county, city, town or village, or any agency thereof, or by any public benefit corporation or authority.

2015 Amendment – Public Entities

Title II “Program Access” requirement adopted, meaning covered public entities do not necessarily have to make each of its existing facilities accessible, but that when looked at in its entirety must be accessible.

Does not require structural changes in existing facilities where other methods are effective in achieving compliance.

Does not require taking any action that would threaten or destroy the historical significance of an historic property.

2015 Amendment – Public Entities

It should be noted that non-governmental public accommodations are also required to remove architectural, communication, and transportation barriers where such removal is ***readily achievable***. “Readily achievable” is a de minimis standard. The provisions of the new paragraph, which apply to government entities applies an “undue burden,” analysis, which is a higher standard than readily achievable.

2014 Amendment – Guide, Hearing & Service Dogs

The **definitions** of guide dog, hearing dog, and service dogs that previously appeared in the Human Rights Law have been removed.

The law continues to provide the same protection to persons who use a professionally trained guide dog, hearing dog or service dog. Persons accompanied by their professionally trained guide, hearing or service dog may not be discriminated against in any area of DHR’s jurisdiction, including employment, housing, and public accommodations. This is not a “reasonable accommodation” standard. There is no undue hardship analysis.

2014 Amendment – Guide, Hearing & Service Dogs

The law is amended to provide **new coverage for persons engaged in the professional training** of a guide dog, hearing dog or service dog.

The law was amended to make clear that the protections of that subdivision are in addition to rights provided elsewhere in the Human Rights Law.

The law's effective date was December 29, 2014.

2014 Amendment – Guide, Hearing & Service Dogs

The amended law now states that in addition to reasonable accommodations for persons with disabilities, including the use of an animal as a reasonable accommodation, it shall be an unlawful discriminatory practice for any covered person to deny access or otherwise discriminate against a blind person, a hearing impaired person or a person with another disability because he or she is accompanied by a dog that has been trained to work or perform specific tasks for the benefit of such person by a professional guide dog, hearing dog or service dog training center or professional guide dog, hearing dog or service dog trainer.

2014 Amendment – Guide, Hearing & Service Dogs

In addition, it is unlawful to discriminate against a professional guide dog, hearing dog or service dog trainer engaged in such training of a dog for use by a person with a disability, whether or not accompanied by the person for whom the dog is being trained.



2014 Amendment – Guide, Hearing & Service Dogs

When dealing with a service animal case, the first issue to resolve is whether or not the dog is a professionally trained guide, hearing or service dog. If it is, no discrimination permitted. No reasonable accommodation analysis required.

2014 Amendment – Guide, Hearing & Service Dogs

If the animal has not been professionally trained, in the area of public accommodation, a new section of the law has been added...

2014 Amendment – Guide, Hearing & Service Dogs

With regard to places of public accommodation, "Reasonable modifications in policies, practices, procedures" now also includes modifications to permit the use of a service animal by a person with a disability, consistent with federal regulations implementing the Americans with Disabilities Act, Title III, at 28 CFR 36.302(c).

2014 Amendment – Guide, Hearing & Service Dogs

The ADA regs define a service animal as a **dog** that is individually trained to do work or perform tasks for a person with a disability, or a **miniature horse** that is individually trained to do work or perform tasks for a person with a disability.

2014 Amendment – Guide, Hearing & Service Dogs

Public accommodations are required to accommodate **only** service animals that are dogs or miniature horses, as described. Cats, ferrets, monkeys, snakes, and other exotic animals, regardless of their function for the individual, are excluded from the definition of service animal. Also, an animal whose sole function is to provide **comfort or emotional support** is **not** a service animal.

This does not apply to housing cases, where all types of assistive or companion animals may be considered as reasonable accommodations for persons with disabilities where necessary for the use and enjoyment of the premises.

2014 Amendment – Guide, Hearing & Service Dogs

The person using a service animal has the right to take the animal with them into all areas normally open to the public. Individuals using a service animal may not be isolated, seated in a segregated area, or otherwise less favorably treated.

Establishments that sell or prepare food must allow service animals in public areas even if state or local health codes prohibit animals. Allergies and fear of dogs are not valid reasons for denying access or refusing service to people using service animals.

2014 Amendment – Guide, Hearing & Service Dogs

A service animal may be required to be removed from the premises if the animal is out of control and the animal's handler does not take effective action to control it. Furthermore, the care and control of the animal is entirely the responsibility of the handler, and the public accommodation is not responsible for any care or supervision of a service animal.



2014 Amendment – Guide, Hearing & Service Dogs

The regulations state specifically, with regard to control of the service animal that the “service animal shall have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control.

2014 Amendment – Guide, Hearing & Service Dogs

The individual using a service animal has the right to be free from inquiries regarding his or her disability. The public accommodation may make limited inquiries, specifically, **if the animal is required because of a disability and what work or task the animal has been trained to perform.** A public accommodation shall not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.

2014 Amendment – Guide, Hearing & Service Dogs

Generally, a public accommodation may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability.

A fee cannot be charged for the presence of a service animal, even if the public accommodation normally charges a fee for the presence of a pet. Likewise, it is unlawful to impose any other requirement because of the presence of the animal, such as a deposit in case of damage.

Enforcement

Persons who believe they have been discriminated against can download a complaint form from www.dhr.ny.gov. Complaint forms are available in alternative format, including Braille. Contact the Division's ADA Coordinator, John Herrion, should you need material in alternative format.

Persons may also contact their nearest DHR regional office to ask for the complaint form to be mailed to them, or to file a complaint in person.

Enforcement

DHR regional office contact info can be found at www.dhr.ny.gov.

All complaints must be notarized.

Enforcement

Complaints must be filed within one year after the discriminatory action occurred with the New York State Division of Human Rights.

Enforcement

Any person claiming to be aggrieved by unlawful discriminatory conduct may bring a cause of action in any court of appropriate jurisdiction within three years of the alleged discriminatory conduct. The individual, however, must choose between an administrative complaint with the Division or filing in court, and may not do both.

Enforcement – Division Initiated Investigation (DII)

The Division may on its own initiate an investigation of discrimination and file a complaint.

The Division's DII unit undertakes said investigations where the discrimination is pervasive, and/or there is a pattern or practice of discrimination.

Remedies

The following remedies are available under the NYSHRL:

requiring respondent to cease and desist from such unlawful discriminatory practice;

requiring respondent to take such affirmative action, including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay;

Remedies

the extension of full, equal and unsegregated accommodations, advantages, facilities and privileges to all persons;

awarding of compensatory damages to the person aggrieved by such practice.