

**Public Labor Law—Recent  
Developments and Defending  
Claims in the N.Y.  
Division of Human Rights**

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Developments and Defending Claims  
in the NY Division of Human Rights**

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Public Sector Labor Law

## RECENT DEVELOPMENTS



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### CSL 54: Age & Educational Requirements

- Age Requirements
  - Those within 12 months of age requirement must be allowed to take exam
- Education Requirements
  - Those within 12 months of educational requirement must be allowed to take exam



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## CSL 72: Leave for Ordinary Disability

- Section 72 provide a means for an employer to try to force an employee out on leave if the employer believes the employee is unfit to perform job duties due to disability.
- The amendments to the law impose upon the employer greater obligations to share information about the process with the employee and the employee's authorized representative re:
  - All communications to the medical officer;
  - Copies of all documentation relied upon by the medical officer; and
  - If placed on leave, all documents, reports and correspondence sent to the appointing authority after the exam.



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## CSL 80: Reductions in Force

- Section addresses layoffs and other reductions in force (RIF).
- Previously only addressed RIFs in competitive class.
- Amended effective 2/19/2024 to now also include noncompetitive and labor classes.
- Impacts:
  - Reductions in force
  - Bumping rights
  - Retreat rights
  - Preferred list rights



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## FLSA & Exempt Salary Threshold

- Fair Labor Standards Act establishes requirements for “exempt” salaried positions that are exempt from overtime pay requirements.
- Tests have been salary level and duties.
- April 2024, USDOL increased levels well above prior levels. First increase July 2024, second scheduled for January 2025, and then automatic increases thereafter.
- November 2024: Texas District Court vacated the rule nationwide.
- Leaves 2019 salary levels in place *for the time being*.



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## Paid COVID Sick Leave

- Enacted March 2020 to provide paid leave to those who were under orders of quarantine or isolation due to COVID.
- Set to expire July 31, 2025.
- Still in effect until then.



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## Labor Law 206-c: Paid Lactation Breaks

- Law requires employers to allow employees to take reasonable breaks to express breast milk. (Also requires employer to provide suitable locations.)
- Law amended June 19, 2024 to change breaks from unpaid to paid.
- Paid breaks of up to 30 minutes. (Each break)



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## NYS Clean Slate Act

- New law November 15, 2024.
- Automatically seals certain convictions after a specified period of time.
- Prohibits employers from:
  - Asking about sealed convictions
  - Making adverse employment decisions based upon such convictions
- Some limited exceptions:
  - If required to consider under federal law
  - Jobs involving employment with children, elderly, vulnerable populations
  - Police & peace officers



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## Workers' Compensation & Mental Health Injuries

- Effective 1/1/2025, all employees are eligible for workers' compensation benefits for some mental health injuries incurred on the job.
- Available to workers who experience "extraordinary" work-related stress.
- Previously, benefits only available to first responders.
- Benefits cannot be denied because the stress is the kind that usually occurs in the normal work environment.



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## Pending Legislation

- S6108: Include public employment within the definition of "employer" for NYS wage & hour law.
- S5828: Prohibits employers from asking applicants about salary expectations; allows applicants to request benefit information.
- S4424: "Anti-waiver of employment rights act."
- S0515: Allows parents and legal guardians to work from home.
- S1193: Requires public employees who opt out of paid family leave benefits to provide parental leave.



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## Laws NOT Applicable to Public Sector

- Paid Prenatal Leave (Labor Law 196-b)
- NYS Minimum Wage Increases.
- NYS Overtime Exemption Salary Threshold Increases.



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New York State Division of Human Rights

## DEFENDING CLAIMS



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## New York State Division of Human Rights

- The New York State Division of Human Rights ("NYSDHR") has multiple regions
- Administrative complaint that will be served either via mail or email
  - Complaint often does not reach the right person at first
  - Train supervisors
- Complaint must allege violations of the New York State Human Rights Law ("NYSHRL")
  - This also encompasses public accommodation claims under the NYSHRL
- If the Complaint was originally filed with the NYSDHR, it will be dual-filed with the Equal Employment Opportunity Commission ("EEOC").
- Complainants can be pro se or represented by private counsel



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## You Received a Complaint

- Proceedings at the NYSDHR are broken into two stages: (1) the investigative stage; and (2) the hearing stage
- Upon receipt of a NYSDHR Complaint, the Respondent is given an opportunity to submit a response to the Complaint
  - Not the same as an Answer that would be filed in court (at least not in this first stage of the NYSDHR process)
  - Extension requests
  - Possibility that others may be individually named in the Complaint
- Currently, an investigator is usually not assigned to a case right away. An investigator is usually assigned months after the Respondent submits the Response to the Complaint.



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## Responding to a Complaint

- Again, not a formal Answer at the investigative stage, but important to address the Complaint thoroughly
  - No magic template
  - Notwithstanding that it is not a formal Answer, want to ensure that there is language stating: (1) that to the extent an allegation is not addressed, it is denied; and (2) reserving the right to submit formal Answer should the matter move forward.
- The Response is an opportunity to provide documentation that supports your position
  - Often recommend including relevant employment policies or other applicable policies
  - As far as the documentation that is provided, there is an opportunity here to be strategic about timing



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## The Waiting Game

- The NYSDHR is currently backlogged
- It could be months before you hear from an investigator after you submit the Response
- Once an investigator is assigned, it is possible that the investigator may request additional information that the investigator believes will aid the NYSDHR in the agency's investigation
- The Complainant will be provided with a copy of the Response and will be provided an opportunity to submit a Rebuttal



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## Fact-Finding Conference

- The NYSDHR has discretion in deciding whether to hold a fact-finding conference – a fact-finding (or investigative, investigatory, etc.) conference is not mandatory
- If a fact-finding conference is scheduled, request any Rebuttal submitted by the Complainant – the NYSDHR will not automatically provide a Rebuttal
- Two party-conference held via telephone
- Carefully read the Notice of Conference – production of certain materials and/or witnesses may be included in the Notice of Conference
- Prepare witnesses for the fact-finding conference
- Investigator will remind any counsel of the role of lawyers in the conference, which is limited



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## Fact-Finding Conference

- Do not create more issues in the fact-finding conference
- After the fact-finding conference, the Complainant and Respondent(s) will be afforded an opportunity to submit post-conference submissions
- Post-conference submissions are again informal, but should outline information learned in the conference which support your position and provide any additional documentation that is either useful and/or was requested by the investigator



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## Initial Determination

- The NYSDHR will then issue an initial Determination as it relates to the Complaint.
- The NYSDHR will issue either a "No Probable Cause Determination," or a "Probable Cause Determination."
  - If the NYSDHR issued a No Probable Cause Determination, the Complaint is dismissed
    - If the Complaint is dismissed, the Complainant has the ability to appeal the dismissal
  - If the NYSDHR issues a Probable Cause Determination it means the case moves into the next stage of the process
- Probable Cause findings are not a finding of liability, but mean the case moves forward
- The point where the NYSDHR is making this initial determination is where the lower standard to establish of the NYSHRL is "tricky."



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## Initial Determination

- There is a mechanism to challenge a Probable Cause Determination (9 N.Y.C.R.R. § 465.20), but the NYSDHR is afforded an extraordinary amount of discretion in issuing a Probable Cause Determination.
- If the NYSDHR issues a Probable Cause Determination and the Complainant is not represented by private counsel, the NYSDHR will then assign a NYSDHR attorney to the case who represents the NYSDHR in the process and not the Complainant individually
- If the NYSDHR issues a Probable Cause Determination, submit FOIL request for Division's investigation file.
- Side note: The Complainant has the ability to withdraw the Complaint for administrative convenience. The NYSDHR *prefers* that such a request be made within 20 days of the Probable Cause Determination



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## Settling a NYSDHR Complaint

- If the NYSDHR issues a Probable Cause Determination, the parties may only enter into a settlement agreement with the consent of the NYSDHR.
  - Private settlements for cases filed after October 12, 2021 are not permitted once a Probable Cause Determination has been issued, even if the Complainant is represented by private counsel.
- Depending on the case, the timing of settlement is at least important to consider in light of the above.
- If the NYSDHR issues a Probable Cause Determination, the Determination will include language about required, optional and prohibited language in settlement agreements post-Probable Cause Determination



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## Pre-Hearing Settlement Conference

- If a case receives a Probable Cause Determination, the case will automatically be scheduled for a Pre-Hearing Settlement Conference (although the scheduling of the conference is currently months after receiving a Probable Cause Determination)
- Pre-hearing settlement conferences are held via telephone
- All parties must participate
- Scheduled for an hour and will be conducted by NYSDHR Administrative Law Judge ("ALJ") who will be different than the ALJ assigned to hear the case if the case is not settled
- Settlements could involve non-monetary terms, such as training



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## Preliminary Conference

- Parties will receive a Notice of Preliminary Conference if the case is not settled.
- The Preliminary Conference is scheduled before the ALJ assigned to hear the case and is held via telephone
- Technically the Preliminary Conference treated as the first day of the hearing as is noted in the NYSDHR Rules of Practice.
- Five days prior to the Preliminary Conference, the parties must submit their pre-hearing submissions to the ALJ (a copy of which must be served on other parties).
  - The pre-hearing submissions must include: (a) a brief statement the issue(s) in the case; (b) a detailed description of each proposed exhibit and its relevance; and (c) a list of proposed witnesses, with an explanation of their identity and the scope of their knowledge of the facts of the case.



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## Preliminary Conference

- More on pre-hearing submissions:
  - The parties must exchange copies of proposed exhibits, or images of physical evidence.
  - Do not send exhibits to the ALJ
  - Does not include evidence that may be used solely for impeachment (but recommend noting this in the pre-hearing submissions)
  - *There is no formal discovery in a NYSDHR proceeding*
- Respondent(s) must submit a formal and verified Answer to the Complaint at least two business days before the Preliminary Conference (note: the timing of submitting the Answer is different than in past years)
  - Similar to Answer filed in court



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## Preliminary Conference

- If represented by private counsel, representative from Respondent will attend Preliminary Conference via phone as well
- During the Preliminary Conference, the ALJ will review the parties' pre-hearing submissions, the Answer, relevant issues in case, concerns related to hearing exhibits and may propose stipulations of fact
- The other purpose of the Preliminary Conference is to select hearing dates. The ALJ typically picks two consecutive dates for the hearing.
- If there are any issues with Complainant's pre-hearing submissions, this is the opportunity to raise the issue(s), but be mindful that such issues may not be resolved and may require additional follow up after the Preliminary Conference.



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## NYSDHR Hearings

- The NYSDHR will issue a Notice of Hearing after the Preliminary Conference
- Even if Complainant is represented by private counsel, a NYSDHR attorney will attend the hearing as the NYSDHR attorney represents the agency
- Hearings are public and there is a court reporter
- Currently hearings are being held via Zoom
- Rules of evidence
  - Hearsay evidence is permissible
    - Along with evidence via affidavit where permitted by the ALJ (9 N.Y.C.R.R. § 465.12(e)(5)).



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## Post-Hearing Submissions

- Following a hearing, the parties *may* have the opportunity to submit post-hearing submissions to the ALJ. Typically, these take the form of Proposed Findings of Fact and Conclusions of Law.
  - All proposed factual findings should contain record citations to the hearing transcript and/or exhibits
  - All proposed conclusions of law should contain citations to relevant legal authority
  - The Proposed Findings of Fact and Conclusions of Law may serve as the starting point for the ALJ's Proposed Order
- The ALJ recommends a Proposed Order that is sent to the parties for comment.
  - Objections to the Proposed Order must be filed within twenty-one days
  - Potential for an alternative Proposed Order to be issued



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## Post-Hearing Submissions

- After comments are received, the Commissioner issues a Final Order. The Commissioner will either: (a) dismiss the Complaint or; (b) find that a violation of the NYSHRL occurred.
- If the Commissioner finds the Respondent(s) violated the NYSHRL, the Commissioner will order the Respondent(s) to stop the discriminatory practice, take appropriate corrective action (e.g., reinstatement, training, reasonable accommodation, etc.), award monetary damages and, in certain cases, assess civil penalties, fines, punitive damages and/or attorneys' fees.
  - Fines and penalties are payable to New York State
- Either party may appeal the Commissioner's Order in New York State Supreme Court within 60 days.



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## Thank You! Questions?



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## Disclaimer

This presentation is for informational purposes and is not intended as legal advice.



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# Public Labor Law – Recent Developments and Defending Claims In the NY Division of Human Rights

## Supplemental Materials

### Civil Service Law § 54 Age and Educational Requirements

Amended effective 9/4/2024

<< NY CIV SERV § 54 >>

#### **§ 54. Age and educational requirements**

**1.** Notwithstanding any provision of law to the contrary, except as herein provided, neither the state civil service department nor the state civil service commission, nor any municipal civil service commission shall prohibit, prevent, disqualify, or discriminate against, any person who is physically and mentally qualified, from participating in a civil service examination or from qualifying for a position in the classified civil service, or penalize any such person in a final rating by reason of his or her age; and any such rule, requirement, resolution, regulation or penalization shall be void. Nothing herein contained, however, shall prevent the adoption of reasonable minimum or maximum age requirements for open competitive examinations for positions where it is determined by the department and approved by the commission that such age requirements would be reasonable minimum qualification for such position. Minimum age requirements shall in no case prohibit an applicant who is within ~~six~~ **twelve** months of the minimum age requirement from taking any competitive examination. Nothing herein contained shall be construed to prohibit the disqualification, on account of age, of any applicant for a position who has reached the mandatory retirement age applicable by law to such position.

**2. Minimum education requirements shall in no case prohibit an applicant who is within twelve months of obtaining the minimum education requirements from taking any competitive examination.**

§ 2. This act shall take effect immediately.

### Civil Service Law 72: Leave for Ordinary Disability

Amended effective January 1, 2025

<< NY CIV SERV § 72 >>

1. When in the judgment of an appointing authority an employee is unable to perform the duties of ~~his or her~~ **such employee's** position by reason of a disability, other than a disability resulting from occupational injury or disease as defined in the workers' compensation law, the appointing authority may require such employee to undergo a medical examination to be conducted by a medical officer selected by the civil service department or municipal commission having jurisdiction. Written notice of the facts providing the basis for the judgment of the appointing authority that the employee is not fit to perform the duties of ~~his or her~~ **such employee's** position, **and copies of any written, electronic or other communication by the appointing authority to a medical officer or any other entity regarding the claim that such employee is unable to perform their duties pursuant to this section,** shall be provided to the employee, **the authorized representative of such employee** and the civil service department or commission having jurisdiction prior to the conduct of the medical examination. If, upon such medical examination, such medical officer shall certify that such employee is not physically or mentally fit to perform the duties of ~~his or her~~ **such employee's** position, the appointing authority shall notify such employee that ~~he or she~~ **they** may be

placed on leave of absence. An employee placed on leave of absence pursuant to this section shall be given a written statement of the reasons therefor and complete copies of all of the documentation, reports and records relied upon by the medical officer during their examination, including any documents, reports and correspondence sent to the appointing authority at the conclusion of the examination. Such notice shall contain the reason for the proposed leave and the proposed date on which such leave is to commence, shall be made in writing and served in person or by first class, registered or certified mail, return receipt requested, upon the employee. Such notice shall also inform the employee of ~~his or her~~ their rights under this procedure. An employee shall be allowed ten working days from service of the notice to object to the imposition of the proposed leave of absence and to request a hearing. The request for such hearing shall be filed by the employee personally or by first class, certified or registered mail, return receipt requested. Upon receipt of such request, the appointing authority shall supply to the employee, ~~his or her~~ such employee's personal physician or authorized representative, copies of all diagnoses, test results, observations and other data supporting the certification, and imposition of the proposed leave of absence shall be held in abeyance until a final determination is made by the appointing authority as provided in this section. The appointing authority will afford the employee a hearing within thirty days of the date of a request by the employee to be held by an independent hearing officer agreed to by the appointing authority and the employee except that where the employer is a city of over one million in population such hearing may be held by a hearing officer employed by the office of administrative trials and hearings. If the parties are unable to agree upon a hearing officer, ~~he or she~~ such hearing officer shall be selected by lot from a list of persons maintained by the state department of civil service. The hearing officer shall not be an employee of the same appointing authority as the employee alleged to be disabled. ~~He or she~~ The hearing officer shall be vested with all of the powers of the appointing authority, and shall make a record of the hearing which shall, with ~~his or her~~ such hearing officer's recommendation, be referred to the appointing authority for review and decision and which shall be provided to the affected employee free of charge. A copy of the transcript of the hearing shall, upon request of the employee affected, be transmitted to ~~him~~ such employee without charge. The employee may be represented at any hearing by counsel or a representative of a certified or recognized employee organization and may present medical experts and other witnesses or evidence. The employee shall be entitled to a reasonable period of time to obtain such representation. The burden of proving mental or physical unfitness shall be upon the person alleging it. Compliance with technical rules of evidence shall not be required. The appointing authority will render a final determination within ten working days of the date of receipt of the hearing officer's report and recommendation. The appointing authority may either uphold the original proposed notice of leave of absence, withdraw such notice or modify the notice as appropriate. In any event, a final determination of an employee's contest of a notice of leave shall be rendered within seventy-five days of the receipt of the request for review. An employee on such leave of absence shall be entitled to draw all accumulated, unused sick leave, vacation, overtime and other time allowances standing to ~~his or her~~ such employee's credit. The appointing authority in the final determination shall notify the employee of ~~his or her~~ such employee's right to appeal from such determination to the civil service commission having jurisdiction in accordance with subdivision three of this section.

§ 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.

## **Civil Service Law 80: Suspension or Demotion Upon the Abolition or Reduction of Positions**

Amended effective February 19, 2024

<< NY CIV SERV § 80 >>

1. Suspension or demotion. Where, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, positions in the competitive, **noncompetitive or labor** class are abolished or reduced in rank or salary grade, suspension or demotion, as the case may be, among incumbents holding the same or similar positions **in the same jurisdictional class** shall be made in the inverse order of original appointment on a permanent basis in the classified service in the service of the governmental jurisdiction in which such abolition or reduction of positions occurs, subject to the provisions of subdivision seven of section eighty-five of this chapter; provided, however, that the date of original appointment of any such incumbent who was transferred to such governmental jurisdiction from another governmental jurisdiction upon the transfer of functions shall be the date of original appointment on a permanent basis in the classified service in the service of the governmental jurisdiction from which such transfer was made. Notwithstanding the provisions of this subdivision, however, upon the abolition or reduction of positions in the competitive, **noncompetitive or labor** class, incumbents holding the same or similar positions **in the same jurisdictional class** who have not completed their probationary service shall be suspended or demoted, as the case may be, before any permanent incumbents, and among such probationary employees the order of suspension or demotion shall be determined as if such employees were permanent incumbents.

1-a. Notwithstanding the provisions of subdivision one of this section, the members of a police or paid fire department in the city of Buffalo shall be subject to the following procedure. Where, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, positions in the competitive, **noncompetitive or labor** class are abolished or reduced in rank or salary grade, suspension or demotion, as the case may be, among incumbents holding the same or similar positions **in the same jurisdictional class** shall be made in the inverse order of original appointment on a permanent basis in the grade or title in the service of the governmental jurisdiction in which such abolition or reduction of positions occurs, subject to the provisions of subdivision seven of section eighty-five of this chapter. Notwithstanding the provisions of this subdivision, however, upon the abolition or reduction of positions in the competitive, **noncompetitive or labor** class, incumbents holding the same or similar positions **in the same jurisdictional** who have not completed their probationary service shall be suspended or demoted, as the case may be, before any permanent incumbents, and among such probationary employees the order of suspension or demotion shall be determined as if such employees were permanent incumbents.

1-b. Notwithstanding the provisions of subdivision one of this section, employees of secure detention facilities in the city of New York and of the alternatives to secure detention facilities program in such city who are performing functions which were assumed by the department of social services of the city of New York on the tenth day of November, nineteen hundred seventy-one and who, upon such assumption were transferred to said department, shall be subject to the following procedure. Where, because of economy, consolidation or abolition of function, curtailment of activities or otherwise, positions in the competitive, **noncompetitive or labor** class are abolished, or reduced in rank or salary grade, suspension or demotion, as the case may be, among incumbents holding the same or similar positions **in the same jurisdictional class** shall be made in the inverse order of original appointment on a permanent basis in the classified service in the service of the governmental jurisdiction in which such abolition or reduction of positions occurs, subject to the provisions of subdivision seven of section eighty-five of this chapter; provided, however, that if any person so employed and so transferred was employed on a permanent basis in such a facility or such program prior to the thirtieth day of December, nineteen hundred sixty-seven, for purposes of this subdivision regarding priority of retention and for no other purpose, the date of original appointment of any such person shall be deemed to be the date such permanent employment commenced prior to the said thirtieth day of December, nineteen hundred sixty-seven.

1-c. Notwithstanding the provisions of subdivision one of this section, sworn employees of the Monroe county sheriff's department shall be subject to the following procedure. Where, because of economy, consolidation or abolition of function, curtailment of activities or otherwise, positions in the competitive, noncompetitive or labor class are abolished, or reduced in rank or salary grade, suspension or demotion, as the case may be, among incumbents holding the same or similar positions in the same jurisdictional class shall be made in the inverse order of original appointment on a permanent basis in the grade or title in the service of the governmental jurisdiction in which such abolition or reduction of positions occurs, subject to the provisions of subdivision seven of section eighty-five of this chapter; provided, however, that if any person so employed was employed in such person's current title prior to the first day of April, nineteen hundred ninety-three, for purposes of this subdivision regarding priority of retention and for no other purpose, the date of original appointment of any such person shall be deemed to be the date such employment commenced prior to the said first day of April, nineteen hundred ninety-three.

1-d. Notwithstanding the provisions of subdivision one of this section, the sworn members of the police force of the county of Nassau shall be subject to the following procedure. Where, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, positions in the competitive, noncompetitive or labor class are abolished or reduced in rank or salary grade, suspension or demotion, as the case may be, among incumbents holding the same or similar positions in the same jurisdictional class shall be made in the inverse order of original appointment on a permanent basis in the grade or title in the service of the governmental jurisdiction in which such abolition or reduction of positions occurs, subject to the provisions of subdivision seven of section eighty-five of this chapter. Notwithstanding the provisions of this subdivision, however, upon the abolition or reduction of positions, those employees who have not completed their probationary service shall be suspended or demoted, as the case may be, before any permanent incumbents, and among such probationary employees the order of suspension or demotion shall be determined as if such employees were permanent incumbents.

2. Continuous service. Except as otherwise provided herein, for the purposes of this section the original appointment of an incumbent shall mean the date of his their first appointment on a permanent basis in the classified service followed by continuous service in the classified service on a permanent basis up to the time of the abolition or reduction of the competitive, noncompetitive or labor class positions. An employee who has resigned and who has been reinstated or reappointed in the service within one year thereafter shall, for the purposes of this section, be deemed to have continuous service. An employee who has been terminated because of a disability resulting from occupational injury or disease as defined in the workmen's workers' compensation law and who has been reinstated or reappointed in the service thereafter shall be deemed to have continuous service. A period of employment on a temporary or provisional basis, or in the unclassified service, immediately preceded and followed by permanent service in the classified service, shall not constitute an interruption of continuous service for the purposes of this section; nor shall a period of leave of absence without pay pursuant to law or the rules of the civil service commission having jurisdiction, or any period during which an employee is suspended from his their position pursuant to this section, constitute an interruption of continuous service for the purposes of this section.

4. Units for suspension or demotion in civil divisions. Upon the abolition or reduction of positions in the service of a civil division, suspension or demotion shall be made from among employees holding the same or similar positions in the same jurisdictional class in the entire department or agency within which such abolition or reduction of positions occurs. In a city having a population of one million or more, the municipal civil service commission may, by rule, designate as separate units for suspension and demotion under the provisions of this section any hospital or institution or any division of any department or agency under its jurisdiction. Upon the abolition or reduction of positions in such service, suspension or demotion, as the case may be, shall be made from among employees holding the same or similar positions in the same jurisdictional class in the department wherein such abolition or reduction occurs, except that where such abolition or reduction occurs in such hospital or institution or division of a department designated as a separate unit for suspension



or demotion, suspension or demotion shall be made from among incumbents holding the same or similar positions **in the same jurisdictional class** in such separate unit.

5. Units for suspension or demotion in the state service. The president may, by regulation, designate as separate units for suspension or demotion under the provisions of this section any state hospital, institution or facility or any division of any state department or agency or specified hospitals, institutions and facilities of a single state department or agency within a particular geographic area as determined by the president. Upon the abolition or reduction of positions **in the same jurisdictional class** in the state service, suspension or demotion, as the case may be, shall be made from among employees holding the same or similar positions in the department wherein such abolition or reduction occurs, except that where such abolition or reduction occurs in a separate unit for suspension or demotion designated by regulation of the president, suspension or demotion shall be made from among incumbents holding the same or similar positions in such separate unit.

6. Displacement in civil divisions. A permanent incumbent of a position in a civil division in a specific title to which there is a direct line of promotion who is suspended or displaced pursuant to this section, together with all other such incumbents suspended or displaced at the same time, shall displace, in the inverse order of the order of suspension or demotion prescribed in subdivisions one and two of this section, incumbents serving in positions in the same **lay-off layoff** unit in the next lower occupied title in direct line of promotion who shall be displaced in the order of suspension or demotion prescribed in subdivisions one and two of this section; provided, however, that no incumbent shall displace any other incumbent having greater retention standing **in the same jurisdictional class**. If a permanent incumbent of a position in a civil division is suspended or displaced from a position in a title for which there are no lower level occupied positions in direct line of promotion, ~~he~~ **they** shall displace the incumbent with the least retention right pursuant to subdivisions one and two of this section who is serving in a position in the title in which the displacing incumbent last served on a permanent basis prior to service in one or more positions in the title from which ~~he is~~ **they are** suspended or displaced, if: (1) the service of the displacing incumbent while in such former title was satisfactory and (2) the position of the junior incumbent is in (a) the competitive, **noncompetitive or labor** class, (b) the layoff unit from which the displacing incumbent was suspended or displaced, and (c) a lower salary grade than the position from which the displacing incumbent is suspended or displaced; provided, however, that no incumbent shall displace any other incumbent having greater retention standing **in the same jurisdictional class**. Refusal of appointment to a position afforded by this subdivision constitutes waiver of rights under this subdivision with respect to the suspension or displacement on account of which the refused appointment is afforded. The municipal civil service commission shall promulgate rules to implement this subdivision including rules which may provide adjunctive opportunities for displacement either to positions in direct line of promotion or to formerly held positions; provided, however, that no such rule shall permit an incumbent to displace any other incumbent having greater retention standing **in the same jurisdictional class**. For the purpose of acquiring preferred list rights, displacement pursuant to this subdivision is the equivalent of suspension or demotion pursuant to subdivision one of this section.

7. Displacement in the state service. A permanent incumbent of a position in the state service in a specific title to which there is a direct line of promotion who is suspended or displaced pursuant to this section, together with all other such incumbents suspended or displaced at the same time, shall displace, in the inverse order of the order of suspension or demotion prescribed in subdivisions one and two of this section, incumbents serving in positions in the same layoff unit in the next lower occupied title in direct line of promotion who shall be displaced in the order of suspension or demotion prescribed in subdivisions one and two of this section; provided, however, that no incumbent shall displace any other incumbent having greater retention standing **in the same jurisdictional class**. If a permanent incumbent of a position in the state service is suspended or displaced from a position in a title for which there are no lower level occupied positions in direct line of promotion, ~~he~~ **they** shall displace the incumbent with the least retention right pursuant to subdivisions one and two of this section who is serving in a position in the title in which the displacing incumbent last served on a permanent basis prior to service in one or more positions in

the title from which ~~he is~~ **they are** suspended or displaced, if: (1) the service of the displacing incumbent while in such former title was satisfactory and (2) the position of the junior incumbent is in (a) the competitive, **noncompetitive or labor** class, (b) the layoff unit from which the displacing incumbent was suspended or displaced, and (c) a lower salary grade than the position from which the displacing incumbent is suspended or displaced; provided, however, that no incumbent shall displace any other incumbent having greater retention standing **in the same jurisdictional class**. Refusal of appointment to a position afforded by this subdivision constitutes waiver of rights under this subdivision with respect to the suspension or displacement on account of which the refused appointment is afforded. The state civil service commission shall promulgate rules to implement this subdivision including rules which may provide adjunctive opportunities for displacement either to positions in direct line of promotion or to formerly held positions; provided, however, that no such rule shall permit an incumbent to displace any other incumbent having greater retention standing **in the same jurisdictional class**. For the purpose of acquiring preferred list rights, displacement pursuant to this subdivision is the equivalent of suspension or demotion pursuant to subdivision one of this section.

(1) Pursuant to such method of payment, such member shall pay, as additional member contributions payable besides the ordinary member contributions due for ~~his~~ **their** current service:

(A) the ordinary member contributions which would have been done for such period of suspension if ~~he or she~~ **they** had actually been in service during such period; and

(B) (if such member has elected the twenty-year retirement program provided for by section six hundred four-a of the retirement and social security law), the additional member contributions which ~~he~~ **they** would have been required to make under the provisions of that section for the period from the starting date of such program to the date next preceding the date on which such member became a participant in such retirement program, if ~~he~~ **they** had become such a participant on such starting date; and

(C) additional member contributions of two per centum of ~~his or her~~ **their** compensation for the period beginning with the first full payroll period which includes the date of enactment of this subdivision and ending on the earlier of his or her date of retirement or ~~his or her~~ **their** completion of thirty years of service.

9. Certain suspensions or demotions in the city of Niagara Falls. Notwithstanding the provisions of subdivision one of this section, the members of a paid fire department in the city of Niagara Falls shall be subject to the following procedure. Where, because of economy, consolidation or abolition of functions, curtailment of activities or otherwise, positions in the competitive class are, **noncompetitive or labor** abolished or reduced in rank or salary grade, suspension or demotion, as the case may be, among incumbents holding the same or similar positions **in the same jurisdictional class** shall be made in the inverse order of original appointment on a permanent basis in the grade or title in the service of the governmental jurisdiction in which such abolition or reduction of positions occurs, subject to the provisions of subdivision seven of section eighty-five of this chapter. Notwithstanding the provisions of this subdivision, however, upon the abolition or reduction of positions in the competitive, **noncompetitive or labor** class, incumbents holding the same or similar positions **in the same jurisdictional class** who have not completed their probationary service shall be suspended or demoted, as the case may be, before any permanent incumbents, and among such probationary employees the order of suspension or demotion shall be determined as if such employees were permanent incumbents.



## **Labor Law 206-c: Right of Nursing Employees to Express Breast Milk**

Amended June 19, 2024

<< NY LABOR § 206-c >>

1. An employer shall provide ~~reasonable unpaid~~ **paid** break time ~~or~~ **for thirty minutes, and** permit an employee to use **existing** paid break time or meal time **for time in excess of thirty minutes,** to allow an employee to express breast milk for ~~her~~ **such employee's** nursing child each time such employee has reasonable need to express breast milk for up to three years following child birth. No employer shall discriminate in any way against an employee who chooses to express breast milk in the work place.

§ 2. This act shall take effect on the sixtieth day after it shall have become a law.

## **Clean Slate Act**

Effective November 16, 2024

§ 5. Subdivision 16 of section 296 of the executive law, as amended by section 2 of subpart O of part II of chapter 55 of the laws of 2019, is amended to read as follows:

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by an order adjourning the criminal action in contemplation of dismissal, pursuant to section 170.55, 170.56, 210.46, 210.47, or 215.10 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law or by a conviction which is sealed pursuant to section 160.59 or 160.58 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.57 of the criminal procedure law, except where such conviction record is accessed pursuant to subparagraph (vii), (viii), or (xvi) of paragraph (d) of

subdivision one of section 160.57 of the criminal procedure law, in connection with the licensing, housing, employment, including volunteer positions, or providing of credit or insurance to such individual; provided, further, that no person shall be required to divulge information pertaining to any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by an order adjourning the criminal action in contemplation of dismissal, pursuant to section 170.55 or 170.56, 210.46, 210.47 or 215.10 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.57 of the criminal procedure law, except where such conviction record is accessed pursuant to subparagraph (vii), (viii), or (xvi) of paragraph (d) of subdivision one of section 160.57 of the criminal procedure law. An individual required or requested to provide information in violation of this subdivision may respond as if the arrest, criminal accusation, or disposition of such arrest or criminal accusation did not occur. The provisions of this subdivision shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.58 or 160.59 of the criminal procedure law, or by a conviction which is sealed pursuant to section 160.57 of the criminal procedure law. For purposes of this subdivision, an action which has been adjourned in contemplation of dismissal, pursuant to section 170.55 or 170.56, 210.46, 210.47 or 215.10 of the criminal procedure law, shall not be considered a pending action, unless the order to adjourn in contemplation of dismissal is revoked and the case is restored to the calendar for further prosecution.



## Workers' Compensation and Mental Health Injuries

# STATE OF NEW YORK

5745

2023-2024 Regular Sessions

## IN ASSEMBLY

March 23, 2023

Introduced by M. of A. REYES, DINOWITZ, EPSTEIN, DeSTEFANO, SIMON, JEAN-PIERRE, COLTON, DARLING, FORREST, CRUZ, BURGOS -- Multi-Sponsored by -- M. of A. COOK -- read once and referred to the Committee on Labor

AN ACT to amend the workers' compensation law, in relation to claims for mental injury premised upon extraordinary work-related stress

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Paragraph (b) of subdivision 3 of section 10 of the work-  
2 ers' compensation law, as added by section 1 of subpart I of part NNN of  
3 chapter 59 of the laws of 2017, is amended to read as follows:  
4 (b) Where a [~~police officer or firefighter subject to section thirty~~  
5 ~~of this article, or emergency medical technician, paramedic, or other~~  
6 ~~person certified to provide medical care in emergencies, or emergency~~  
7 ~~dispatcher]~~ worker files a claim for mental injury premised upon  
8 extraordinary work-related stress incurred [~~in a work-related emergency]~~  
9 at work, the board may not disallow the claim[~~7~~] upon a factual finding  
0 that the stress was not greater than that which usually occurs in the  
1 normal work environment.  
2 § 2. This act shall take effect on the first of January next succeed-  
3 ing the date on which it shall have become a law.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [~~-~~] is old law to be omitted.

LBD08319-01-3

**Information to the Parties**  
**Following Determination of Probable Cause**

The New York State Division of Human Rights ("Division") is the administrative agency charged with enforcing the New York State Human Rights Law. The Division investigates complaints of discrimination, determines whether there is probable cause to believe that discrimination has occurred, and conducts a public hearing of the complaint where probable cause is found. Probable cause has been found in this case, and the matter will now proceed to a public hearing before an Administrative Law Judge.

If a Complainant does not have a private attorney, the Division will assign an attorney to present the case in support of the complaint. The Division attorney at all times represents the Division, not the Complainant personally. Substitutions and reassignments of Division attorneys and Administrative Law Judges are within the Division's discretion.

The hearing process will start with the preliminary conference conducted by telephone, at which time the hearing dates for the taking of testimony will be agreed upon. There is no formal discovery. Parties must exchange document and witness lists prior to the preliminary conference.

The preliminary conference will include an opportunity for the parties to discuss possible settlement of the case. If Respondent wishes to make an offer of settlement prior to that time, Respondent should contact the Director of Prosecutions at (718) 741-8396.

The parties have a continuing obligation to keep the Division advised as to all changes in the case including:

1. Changes in name, address, email address and/or telephone number of the parties and successors in interest. **The Division continues to conduct public hearings by video conference. Therefore, an email address must be provided if you have not already provided one.** See further information below in the FAQs.
2. Commencement of proceedings in another forum.
3. Settlement of the case.

Any of the above information should be timely provided to the Division, IN WRITING on the attached form to the following by mail, email or fax:

**New York State Division of Human Rights**  
**Attn: Chief Administrative Law Judge**  
**One Fordham Plaza, 4th Floor**  
**Bronx, NY 10458**  
**Fax: (718) 741-8333**  
**Email: [hearings@dhr.ny.gov](mailto:hearings@dhr.ny.gov)**

If the Complainant wishes to seek dismissal of this matter to proceed in an alternate forum, an application should be filed with the Chief Administrative Law Judge at the above listed address, preferably within twenty (20) days of the date of this determination.

The parties also have a continuing obligation to maintain certain information and records such as:

1. Parties must keep track of the whereabouts of their witnesses.
2. Parties are obligated to identify and preserve all evidence relating to the case, including evidence relating to any incidents which relate to the case that occur after the Division makes a finding of probable cause, and including all evidence whether for or against that party's interests.
3. Parties are responsible for recording and keeping evidence relating to any increase or reduction in damages.

If you would like to request a copy of the investigation file, please do so promptly. Put your request in writing to:

**New York State Division of Human Rights**  
**Attn: FOIL Officer**  
**One Fordham Plaza, 4th Floor**  
**Bronx, NY 10458**  
**Fax: (718) 741-8256**  
**Email: [foil@dhr.ny.gov](mailto:foil@dhr.ny.gov)**

Please note that your request for documents, or the Division's response or date of response thereto, will not affect the date of the hearing, and cannot be used to request a postponement or rescheduling of the hearing. Costs for copying, established by statute, will apply.

If you have questions regarding your case, **please contact the Calendar Clerk via email at [hearings@dhr.ny.gov](mailto:hearings@dhr.ny.gov) or by telephone at (718) 741-8261.** *Please do not contact your regional office; they do not have any information on the hearing process.*

Under Rule 465.20 (9 N.Y.C.R.R. § 465.20), the Respondent may seek review of probable cause to review the finding of probable cause within 60 days of the finding. Such application should be sent to the General Counsel of the Division and to the Complainant, and Complainant's attorney, if any. Please submit by email if possible, and serve the Complainant by regular mail if no email for the Complainant is available.

**New York State Division of Human Rights**  
**Attn: General Counsel**  
**One Fordham Plaza, 4th Floor**  
**Bronx, NY 10458**  
**Fax: (718) 613-3478**  
**Email: [Edith.Allen@dhr.ny.gov](mailto:Edith.Allen@dhr.ny.gov)**

## **INFORMATION ABOUT THE HEARING PROCESS**

The following are general responses to frequently asked questions. The responses are not legal advice and should be used for informational purposes only.

### **WHAT LAWS GOVERN THE HEARING PROCESS?**

The New York State Human Rights Law (N.Y. Exec. Law, art. 15), and the Division's Rules of Practice (9 N.Y.C.R.R. § 465) outline the policies and procedures that govern the hearing process held at the New York State Division of Human Rights. The Human Rights Law and the Division's Rules of Practice are available on the Division's website at [dhr.ny.gov](http://dhr.ny.gov). The New York Civil Practice Law and Rules and the Federal Rules of Procedure and Evidence are inapplicable to Division proceedings, although they are relied upon as a guide for the orderly introduction and acceptance of evidence. Please cite to New York State case law wherever possible in all submissions to the Division.

### **WHAT IS A PUBLIC HEARING?**

Where the Division finds probable cause after investigation, the Human Rights Law requires that the entire case be heard at a public hearing before an administrative law judge, where all relevant evidence is presented and the testimony of witnesses is taken under oath and subject to cross-examination.

A public hearing is a trial-like proceeding at which relevant evidence is placed in the hearing record. It is a hearing *de novo*, which means that the Commissioner's final decision on the case is based solely on the content of the hearing record. The public hearing is presided over by an Administrative Law Judge (ALJ), and a verbatim transcript is made of the proceedings.

The hearing may last one or more full days. The hearing sessions are generally scheduled on consecutive days. Parties are notified of all hearing sessions in advance, and the case may be adjourned to a later date only for good cause.

Respondent can retain private counsel for the hearing. If Respondent is a corporation, it is required to be represented by legal counsel. Complainant can retain private counsel for the hearing but is not required to do so. If Complainant is not represented by private counsel, the Division's counsel prosecutes the case in support of the complaint. Attorneys for the parties or for the Division may issue subpoenas for documents and/or to compel the presence of witnesses.

After the public hearing is concluded, the ALJ prepares a recommended order that is sent to the parties for comment.

After comments are received, the Commissioner issues a final order. The Commissioner either dismisses the complaint or finds that discrimination occurred. If the Commissioner finds that discrimination occurred, Respondent will be ordered to cease and desist and take appropriate action, such as reinstatement, training of staff, or provision of reasonable accommodation to a known disability. The Commissioner may award money damages to Complainant, including back pay and compensatory damages for mental pain and suffering, and in certain instances,

punitive damages and attorney fees. The Commissioner may also order Respondent to pay civil fines and penalties to the State of New York. Either party may appeal the Commissioner's Order to the State Supreme Court within 60 days. Orders after hearing are transferred by the State Supreme Court to the Appellate Division for review.

### **IMPORTANT**

If you have questions regarding your case, please contact the Calendar Clerk via email at [hearings@dhr.ny.gov](mailto:hearings@dhr.ny.gov) or by telephone at (718) 741-8261. *Please do not contact your regional office; they do not have any information on the hearing process.*

## **FREQUENTLY ASKED QUESTIONS**

**1. How is the Division currently conducting public hearings?**

All public hearings are conducted via videoconferencing, Zoom. The Division has suspended all in-person public hearings until further notice.

**2. Will my hearing be a public hearing, although it is conducted via Zoom?**

Yes. All scheduled public hearings will be posted on the Division's website, with instructions to the public about how to gain access to the public hearings by sending an email to: [hearings@dhr.ny.gov](mailto:hearings@dhr.ny.gov).

**3. When should an answer to the complaint be filed?**

At least two business days prior to the scheduled preliminary conference, Respondent and any necessary party, must file a written answer to the complaint, sworn to and subject to the penalties of perjury. The written answer must be filed with the assigned ALJ and served upon each of the other parties to the proceeding. The answer must contain all affirmative defenses.

**4. When should the preliminary conference statement be filed?**

At least five days before the scheduled preliminary conference date, the parties must submit the following information to the assigned Administrative Law Judge, a copy of which must be served upon each of the other parties: (a) a brief statement of each issue in the case; (b) a detailed description of each proposed exhibit and its relevance to the issues identified; and (c) a list of proposed witnesses, with an explanation of their identity and the scope of their knowledge of the facts of the case.

**5. When should the parties exchange exhibits?**

The parties must exchange their proposed exhibits at least five days before the scheduled preliminary conference.



**6. How do I communicate with the ALJ?**

All formal papers, including, but not limited to the answer, must be submitted via personal service, mail or fax (with an original to follow), with a copy to all parties, for proper docketing and timely filing. Formal papers submitted via electronic mail ([hearings@dhr.ny.gov](mailto:hearings@dhr.ny.gov)) are deemed courtesy copies and do not constitute proper service.

**7. Can I speak with the ALJ?**

Ex-parte communication (i.e., by only one party) with the ALJ assigned to the case is strictly prohibited. The parties may jointly request a conference with the ALJ through the Office of Administrative Law Judges.

**8. What do I bring to the public hearing, such as documents, witnesses, etc.?**

You should bring all documents and witnesses relevant to your claims and/or defenses. You should also bring proper identification.

**9. What if I need interpretation services?**

Interpretation services will be provided at no charge. Please alert your Division representative and the Office of Administrative Law Judges at (718) 741-8255 if an interpreter is required.

**10. What should I do if I have a conflict with the hearing date that is scheduled?**

You should submit, as soon as possible, a written request for an adjournment of the hearing, stating the basis for your request, to the ALJ assigned and all parties.

**11. On what basis will the ALJ grant an adjournment?**

No adjournment of the hearing shall be granted except for actual engagement before a higher tribunal or for other good cause shown. **Settlement discussions or settlement in principle do not constitute good cause.**

**12. What is the proper attire?**

Please dress in a manner that shows respect for these important proceedings.

**13. Am I allowed to eat during the public hearing?**

No. But you are allowed to bring water.

**14. May I enter into a private settlement?**

Private settlements will not be accepted for cases filed after October 12, 2021. If you reach a settlement, you must use the Division's Stipulation of Settlement. The language contained in the Division's Stipulation of Settlement has been approved by the Commissioner and must be strictly followed by the parties. You may request a copy of the Division's Stipulation of Settlement by contacting the Office of Administrative Law Judges

by telephone at (718) 741-8255 or via email at [hearings@dhr.ny.gov](mailto:hearings@dhr.ny.gov). Find more information below in the attached document, Settlements After a Probable Cause Determination.

**15. What do I do with my cellphone or other electronic device?**

All cellphones and other electronic devices must be turned off or placed in silent mode during the hearing, unless you are participating by telephone or videoconferencing.

Attorneys, parties, witnesses, and any other persons attending the hearing are prohibited from taking photographs, making video or audio recordings, broadcasting or telecasting the public hearing, at any time, whether or not the public hearing is in session.

**16. What happens if I do not appear for the public hearing?**

Complainant's failure to appear at a public hearing may result in a dismissal of the complaint. Respondent's failure to appear may result in a default finding against that Respondent.

**17. How long is the public hearing?**

Public hearings are generally scheduled for two (2) days. Each scheduled date starts at 9:30 a.m. and ends at 5:00 p.m. Be prepared to be present until the end of the day.

**18. Can I bring my child(ren) to the public hearing?**

No. You must make childcare arrangements.

**19. Are electronic signatures accepted?**

No. Please refer to the New York Technology Law § 304 and the New York Electronic Signatures and Records Act for more information.

**20. May an attorney not admitted in New York State represent a party at a public hearing?**

Please see 22 N.Y.C.R.R. § 523.2 and guide yourself accordingly.

**21. May a law student admitted to the practice of law pursuant to an Appellate Division Order and under the supervision of a licensed attorney appear at a public hearing?**

Please see 22 N.Y.C.R.R. § 805.5, Judiciary Law § 478 and § 484, and relevant Appellate Division rules.



## Division of Human Rights

KATHY HOCHUL  
Governor

DENISE M. MIRANDA, ESQ.  
Acting Commissioner

### **Settlements After a Probable Cause Determination**

Once a complaint has received a probable cause determination, the parties may only enter into a settlement agreement with the consent of the Division.

If accepted, stipulations of settlement will be made part of a final order of the Division consenting to the termination of the proceeding. Private settlements between the parties will not be permitted.

All settlement agreements must comport with the requirements detailed below. Failure to adhere to the requirements below will result in the settlement not being approved and the complaint proceeding to a public hearing.

#### 1. Required clauses

The following terms must be included in every stipulation of settlement

- a. Both parties agree that they are entering into this stipulation willingly, without any coercion or duress, and that this stipulation, upon approval by the Commissioner, completely resolves and terminates the complaint pending before the Division.
- b. Respondent(s) agree to adhere to the Human Rights Law.
- c. Both parties agree that this stipulation contains all of the agreed-upon terms and no other promises have been made outside of this stipulation (see section 2d below).
- d. Alternatively, if there are other currently pending matters between the parties that the parties wish to settle separately, the following clause may be included instead of the above:

Both parties agree that this stipulation contains all of the agreed-upon terms

relating to the claims of unlawful discrimination in violation of the Human Rights Law. Other matters pending between the parties, not directly related to claims of discrimination in violation of the Human Rights Law, may be addressed in a separate agreement. Such separate agreement is not a part of this Stipulation. Such separate agreement does not change, expand or limit any of the terms of this stipulation as it pertains to claims of discrimination in violation of the Human Rights Law.

- e. An electronic copy of this Stipulation, transmitted by facsimile, email or other electronic means, shall have the same force and effect as the original.

- f. Older Workers' Benefits Protection Act (OWBPA)

This clause shall be included in employment cases that are dual-filed with the Equal Employment Opportunities Commission under the federal Age Discrimination in Employment Act, and is optional in other employment cases.

The following is the acceptable clause for this purpose:

By signing this Stipulation of Settlement, Complainant knowingly and voluntarily waives all rights and claims arising under the Age Discrimination in Employment Act of 1967 (ADEA) which Complainant has asserted or could have asserted for events occurring through the date of his or her signing this Stipulation of Settlement. Pursuant to the ADEA, Complainant has been given twenty-one (21) days from receipt of this Stipulation of Settlement to review and consider it before signing it. Complainant is advised to consult with an attorney before signing this Stipulation of Settlement. Complainant may revoke this Stipulation of Settlement within seven (7) days of Complainant signing the Stipulation of Settlement. Such revocation must be submitted in writing to the Division within the seven (7) days. This Stipulation of Settlement shall not become effective or enforceable prior to the expiration of the seven-day revocation period.

2. Approved language for optional clauses

- a. Non-disparagement

This clause is optional, however, if desired, the only acceptable non-disparagement clause shall be as follows:

The parties agree that neither they nor their representatives will disparage the other party. Disparage as used herein shall mean any communication of false information or the communication of information with reckless disregard to its truth or falsity.

b. Confidentiality

This clause is optional, however, if desired, the acceptable confidentiality clause shall be as follows:

Except as may be required or specifically permitted by law, the parties agree that they shall keep the monetary amount and other terms of this settlement confidential and promise that neither they nor their representatives will disclose, either directly or indirectly, any such information to anyone, including but not limited to past, present, or future employees of the respondent who do not have a need to know about the amount and terms of the settlement, with the exception that disclosure is permitted to a party's immediate family, accountant, attorney, or medical or counseling professional. With regard to the fact of settlement, the parties shall state only that the matter has been resolved. Confidentiality does not extend to disclosure of the underlying facts at issue in the complaint. It is understood by the Complainant and Respondent that the Division of Human Rights is not, and by law cannot be, bound by the confidentiality provisions of this Stipulation, and that this Stipulation of Settlement, once confirmed by the Commissioner, is a public document.

c. Release of claims

The acceptable release of claims clause is as follows:

The Complainant consents to the termination of the complaint before the Division, {and before the United States Equal Employment Opportunity Commission, EEOC case number 16GB000000,} and releases and discharges the Respondent, [and Respondent's directors, shareholders, officers, employees, attorneys, and successors and assigns,] from any and all claims arising under local, state or federal statute, regulation, or ordinance relating to {jurisdiction} discrimination, or any other claim related to or arising out of the Complainant's employment by the Respondent, which the Complainant has asserted or could have asserted for events occurring through the date of this agreement.

d. Medicare disclosure clause

The following optional clause may be included.

The complainant agrees to complete a Medicare questionnaire approved by the Division in order to assist the respondent in meeting its mandatory reporting obligation under Section 111 of the federal Medicare, Medicaid and SCHIP Extension Act of 2007.

3. Prohibited clauses

The following terms are prohibited in the Stipulation:

- a. a complainant's agreement not to reapply for employment, housing, or entry into an education institution, or to stay away from a public accommodation;
- b. liquidated damages;
- c. an agreement to sign a separate general release;
- d. provisions that prevent the parties from talking about the underlying facts and circumstances of the claim (unless a complainant in an employment-related case prefers nondisclosure. See N.Y. Gen Oblig. Law § 5-336. A sample non-disclosure agreement can be requested from the from [hearings@dhr.ny.gov](mailto:hearings@dhr.ny.gov)).
- e. agreements regarding matters not directly related to the discrimination claims (but see section 1d above).