

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Equal Employment Opportunity and Affirmative Action

Proposed Amendment: N.J.A.C. 4A:7-3.1

Authorized By: Civil Service Commission, Diedre Webster Cobb, Chairperson.

Authority: N.J.S.A. 11A:2-6(d) and 11A:7-1 — 11A:7-13.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN

A **public hearing** concerning the proposed amendment will be held on:

September 10, 2019, at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Walker Ristau at (609) 777-0910 if you wish to be included on the list of speakers.

Submit written comments by to:

Christopher Myers, Director

Division of Appeals and Regulatory Affairs

Civil Service Commission

P.O. Box 312

Trenton, New Jersey 08625-0312

Rule.comments@csc.nj.gov

The agency proposal follows:

Summary

N.J.A.C. 4A:7-3.1(j) currently provides that an employee may be subject to administrative and disciplinary action, where he or she fails to honor the confidentiality directive during an investigation of a complaint made upon the State Policy Prohibiting Discrimination in the Workplace (State Policy). Recently proposed amendments to subsection (j) which would have required administrative or disciplinary action for violating confidentiality directives were not adopted to allow for further review. The purpose of the confidentiality directive is to protect the integrity of

investigation of discrimination/harassment complaints and, more importantly, the privacy of all parties and reduce the risk of retaliation against individuals participating in the investigative process. Thus, subsection (j), as proposed, will request, rather than direct, employees to keep all aspects of an investigation confidential and highlight the importance of confidentiality during the investigative process. The purpose of this subsection is to ensure the personal and/or privacy interests of the complainant and/or witnesses are not thwarted during the investigative process and to maintain the integrity of the investigation. Therefore, all persons interviewed during the course of an investigation would be advised by the EEO/AA Officer or investigator of why it is important not to disclose any aspect of the investigation to other persons without a legitimate and substantial business justification. Additionally, the final sentence in subsection (j), which states that administrative action and/or discipline may be imposed for violating the confidentiality directive, is proposed for deletion as the imposition of a penalty could have a chilling effect on potential claimants.

Social Impact

The proposed amendment to N.J.A.C. 4A:7-3.1 is expected to have a positive social impact by fostering a more welcoming and transparent workplace.

Economic Impact

No economic impact is expected from the proposed amendments.

Federal Standards Statement

The proposed amendments are not subject to any Federal requirements or standards. Therefore, a Federal standards analysis is not necessary.

Jobs Impact

It is not anticipated that any jobs will be generated or lost if the proposed amendments are adopted. The proposed amendments concern the existing procedures for internal complaints alleging discrimination in the workplace in the civil service system.

Agriculture Industry Impact

The proposed amendments concern the existing procedures for internal complaints alleging discrimination in the workplace in in the civil service system.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendments will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules will regulate employment in the public sector.

Housing Affordability Impact Analysis

Since the rules proposed amendments concern procedures for internal

complaints alleging discrimination in the workplace under the civil service, they would have no impact on the number of housing units or the average cost of housing in New Jersey.

Smart Growth Development Impact Analysis

Since the rules proposed amendments concern procedures for internal complaints alleging discrimination in the workplace in the civil service, they would have no impact on smart growth or on new construction within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commission has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 7

EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION
SUBCHAPTER 3. POLICY PROHIBITING DISCRIMINATION IN THE
WORKPLACE; COMPLAINT PROCEDURES, AND APPEALS

4A:7-3.1 State Policy Prohibiting Discrimination in the Workplace (State Policy)

(a) –(i) (No change.)

(j) All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigative process. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. [The EEO/AA Officer/investigator shall request that all persons interviewed, including witnesses, shall be directed not discuss any aspect of the investigation with others, in light of the the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment.]

In order to protect the integrity of the investigation, minimize the risk of retaliation against individuals participating in the investigative process, and protect the important privacy interests of all concerned, the EEO/AA Officer/investigator shall request that all persons interviewed, including witnesses, not discuss any aspect of

the investigation with others, unless there is a legitimate business reason to disclose such information.

(k)-(l) (No change.)