

515-RICR-10-00-1

TITLE 515 – COMMISSION FOR HUMAN RIGHTS

CHAPTER 10 – OPERATION

SUBCHAPTER 00 – N/A

PART 1 – Definitions and General Applicability

1.1 Authorization

The following Regulations of the Rhode Island Commission for Human Rights were adopted in accordance with the Administrative Procedures Act. The Regulations are promulgated in accordance with R.I. Gen. Laws Chapter 42-35 and in accordance with R.I. Gen. Laws § 11-24-4, 28-5-13(4), 34-37-6(j), 40-9.1-4 and 42-87-5(a).

1.2 Definitions

- A. Definitions. When used in this Part, and hereafter in this Chapter, except as otherwise indicated, the following definitions shall apply:
1. "Adjudicatory proceedings" means any proceeding conducted by the Commission, following a finding of probable cause, which may result in an award of damages or other affirmative relief.
 2. "Administrative Procedures Act" refers to R.I. Gen. Laws § 42-35-1, *et seq.*
 3. "Chairperson" means the Chairperson of the Commission duly designated by the Governor of the State of Rhode Island, pursuant to R.I. Gen. Laws § 28-5-8.
 4. "Charge" means a written statement made under oath alleging that any person has engaged in or is engaging in unlawful discriminatory practices that has been filed pursuant to § [2.4 of this Subchapter](#).
 5. "Commission" means the Rhode Island Commission for Human Rights.
 6. "Commission attorney" means the legal counsel or attorney duly appointed to represent the Commission.

7. "Commissioner" means any member of the Commission duly appointed by the Governor of the State of Rhode Island, pursuant to R.I. Gen. Laws § 28-5-8.
8. "Complainant" means an aggrieved individual(s) who, or an organization chartered for the purpose of combating discrimination, racism, or of safeguarding civil liberties, or of promoting full, free or equal employment opportunities which, files a charge with the Commission, or the Commission member(s) or staff member(s) who files a charge on behalf of the Commission.
9. "Complaint" means a formal complaint issued by the Commission pursuant to § [2.9 of this Subchapter](#).
10. "Conciliation" means a process to achieve a just resolution which assures that any unlawful discriminatory practice of respondent will be eliminated by requiring appropriate affirmative or other action.
11. "Declaratory order" means an Order issued by the Commission that:
 - a. interprets or applies a statute administered by the Commission;
 - b. clarifies whether a Regulation, guidance document or Order issued by the Commission applies to a petitioner; or
 - c. clarifies how a Regulation, guidance document or Order issued by the Commission applies to a petitioner.
12. "Director" means the duly appointed Executive Director of the Commission.
13. "Discriminate" means, but is not limited to: segregate, separate or accord different treatment, or refuse reasonable accommodation when required by law.
14. "Fair Employment Practices Act" refers to R.I. Gen. Laws § 28-5-1, *et seq.*
15. "Fair Housing Practices Act" refers to R.I. Gen. Laws § 34-37-1, *et seq.*
16. "Hearing officer" means any person designated by the Commission to conduct a hearing.
17. "Housing accommodation" means any building or structure, or portion thereof, or any parcel of land, developed or undeveloped, which is occupied, or is intended, designed or arranged to be occupied, or to be

developed for occupancy, as the home or residence of one or more persons.

18. "Owner", when used in [Part 3 of this Subchapter](#), means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, mutual companies, joint-stock companies, trusts, receivers, legal representatives, trustees, other fiduciaries, or real estate brokers or real estate salespersons having the right to sell, rent, lease, or manage a housing accommodation, including, but not limited to, property owners, property managers, real estate brokers and agents and state and municipal governments.
19. "Party" or "Parties" means the complainant or complainants, the respondent or respondents and other persons joined in the matter.
20. "Petition" means a request for an award of reasonable litigation expenses, a Declaratory Order or the promulgation of a Regulation.
21. "Petitioner" means a person requesting a Declaratory Order or the promulgation of a Regulation.
22. "Predetermination settlement" means any settlement occurring prior to a ruling by the Preliminary Investigating Commissioner.
23. "Protected class" means a group of persons afforded protection under Rhode Island anti-discrimination laws because of their membership in that statutorily-defined group.
24. "Reasonable litigation expenses", when used in § [2.18 of this Subchapter](#), means those expenses which were reasonably incurred by a respondent in adjudicatory proceedings, including, but not limited to, attorney's fees, witness fees of all necessary witnesses, and other such costs and expenses as were reasonably incurred.
25. "Respondent" means a person or entity against whom a charge has been filed, or against whom a complaint has been issued.
26. "Rule" or "Regulation" means the whole or a part of an agency statement of general applicability that implements, interprets or prescribes law or policy or the organization, procedure or practice of an agency and has the force of law. The term includes the amendment or repeal of an existing Regulation. The term does not include the exceptions listed in the Rhode Island Administrative Procedures Act.

27. "Substantial justification" means that the initial position of the Commission, as well as the Commission's position in the proceedings, has a reasonable basis in law and fact. The fact that the respondent prevailed after the final hearing on the merits does not create a presumption that the Commission's position was not substantially justified.
28. "Unlawful discriminatory practice" means any act or acts prohibited by Rhode Island anti-discrimination laws, including the continuing present effects of past unlawful discriminatory practices.

1.3 Harassment

1.3.1 Sexual Harassment.

- A. Harassment on the basis of sex is a violation of the Fair Employment Practices Act.
- B. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
 1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or,
 3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- C. In determining whether alleged conduct constitutes sexual harassment, the Commission shall look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case by case basis.
- D. Applying general Fair Employment Practices Act principles, an employer, employment agency, employee-referring source or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment, regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew of their occurrence. The Commission shall examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

- E. With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the workplace where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless it can show that it took immediate and appropriate corrective action.
- F. An employer may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the Commission shall consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.
- G. An employer is liable for sexual harassment by a supervisor that results in a tangible employment action such as termination, failure to promote or hire, or loss of wages.
- H. If a supervisor's harassment results in a hostile work environment, an employer can avoid liability for that environment if they/it can prove that:
 - 1. they/it reasonably tried to prevent and promptly correct the harassing behavior; and,
 - 2. the employee unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer.
- I. Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be held liable for other unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

1.3.2 Other Forms of Harassment

- A. Other Forms of Harassment. It is a violation of the laws enforced by the Commission for individuals protected by those laws to be harassed based on their protected class. The Commission shall apply the principles listed in § 1.3.1(B) through (I) of this Part in accepting, investigating and determining charges and complaints alleging harassment on the basis of their protected class, as adapted to the circumstances of the particular law.
- B. Result of Internal Complaint. When an employee has complained to their employer of harassment in the workplace on the basis of their protected class, the employer, upon the employee's request, must timely disclose to the employee, in writing, the disposition of the complaint. This shall include a

description of any action taken to resolve it, pursuant to R.I. Gen. Laws § 28-5-7(1)(v). No further personnel information shall be disclosed to the complaining employee.

1.4 Construction and Severability

- A. Liberal Construction. These Regulations shall be liberally construed to accomplish their purposes.
- B. Survival. If any clause, sentence, paragraph, or part of these Regulations or the application thereof to any person or circumstances, is, for any reason, adjudged by a court of competent jurisdiction to be invalid, that judgment shall not affect, impair or invalidate the remainder of these Regulations or their application to other persons or circumstances.

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