

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2003**

No. 75

Introduced by Council Members Yassky, The Speaker (Council Member Miller), Avella, Boyland, Brewer, Clarke, Comrie, DeBlasio, Felder, Fidler, Foster, Gennaro, Gerson, Jackson, Katz, Koppell, Lopez, Nelson, James, Perkins, Recchia, Jr., Quinn, Reed, Reyna, Sanders, Jr., Serrano, Weprin and the Public Advocate (Ms. Gotbaum); also Council Members Dilan, Seabrook and Moskowitz. (Passed under a Mayor's Message of Necessity).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to requiring reasonable accommodation in employment of needs of victims of domestic violence, sex offenses or stalking.

Be it enacted by the Council as follows:

Section 1. Section 8-101 of the administrative code of the city of New York is amended to read as follows:

§ 8-101 Policy. In the city of New York, with its great cosmopolitan population, there is no greater danger to the health, morals, safety and welfare of the city and its inhabitants than the existence of groups prejudiced against one another and antagonistic to each other because of their actual or perceived differences, including those based on race, color, creed, age, national origin, alienage or citizenship status, gender, sexual orientation, disability, marital status, *status as a victim of domestic violence or status as a victim of sex offenses or stalking*, whether children are, may be or would be residing with a person or conviction or arrest record. The council hereby finds and declares that prejudice, intolerance, bigotry, and discrimination, bias-related violence or harassment and disorder occasioned thereby threaten the rights and proper privileges of its inhabitants and menace the institutions and foundation of a free democratic state. A city agency is hereby created with power to eliminate and prevent discrimination from playing any role in actions relating to employment, public accommodations, and housing and other real estate, and to take other actions against prejudice, intolerance, bigotry, discrimination and bias-related violence or harassment as herein provided; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

§ 2. Subdivision four of section 8-102 of the administrative code of the city of New York is amended to read as follows:

4. The term "unlawful discriminatory practice" includes only those practices specified in [section] *sections 8-107 and 8-107.1* of this chapter.

§ 3. Subdivision 18 of section 8-102 of the administrative code of the city of New York is amended to read as follows:

18. The term "reasonable accommodation" means such accommodation that can be made that shall not cause undue hardship in the conduct of the covered entity's business. The covered entity shall have the burden of proving undue hardship. In making a determination of undue hardship with respect to claims filed under subdivisions one or two of [section] *section 8-107 or section 8-107.1* of this chapter, the factors which may be considered include but shall not be limited to:

(a) the nature and cost of the accommodations;

(b) the overall financial resources of the facility or the facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(c) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees, the number, type, and location of its facilities; and

(d) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

§ 4. Section 8-107.1 of the administrative code of the city of New York is amended to read as follows:

§ 8-107.1 Victims of Domestic Violence, *Sex offenses or Stalking*.

1. Definitions. Whenever used in this [section]chapter the following terms shall have the following meanings:

a. "Acts or threats of violence" shall include, but not be limited to, acts, which would constitute violations of the penal law.

b. "Victim of domestic violence" shall mean a person who has been subjected to acts or threats of violence, not including acts of self-defense, committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim, by a person who is or has been in a continuing social relationship of a romantic or intimate nature with the victim, or a person who is or has continually or at regular intervals lived in the same household as the victim.

c. "*Victim of sex offenses or stalking*" shall mean a victim of acts which would constitute violations of article 130 of the penal law, or a victim of acts which would constitute violations of sections 120.45, 120.50, 120.55, or 120.60 of the penal law.

d. Practices "based on," "because of," "on account of," "as to," "on the basis of," or "motivated by" an individual's "status as a victim of domestic violence," or "status as a victim of sex offenses or stalking" include, but are not limited to, those based solely upon the actions of a person who has perpetrated acts or threats of violence against the individual.

2. Unlawful discriminatory practices. It shall be an unlawful discriminatory practice for an employer, or an agent thereof, to refuse to hire or employ or to bar or to discharge from employment, or to discriminate against an individual in compensation or other terms, conditions, or privileges of employment because of the actual or perceived status of said individual as a victim of domestic violence, or as a victim of sex offenses or stalking.

3. *Applicability; actual or perceived victims of domestic violence, sex offenses or stalking.*

(a) *Requirement to make reasonable accommodation to the needs of victims of domestic violence, sex offenses or stalking. Except as provided in paragraph (c), any person prohibited by this section 8-107.1 from discriminating on the basis of actual or perceived status as a victim of domestic violence or a victim of sex offenses or stalking shall make reasonable accommodation to enable a person who is a victim of domestic violence, or a victim of sex offenses or stalking to satisfy the essential requisites of a job provided that the status as a victim of domestic violence or a victim of sex offenses or stalking is known or should have been known by the covered entity.*

(b) *Documentation of status. Any person required by paragraph (a) to make reasonable accommodation may require a person requesting reasonable accommodation pursuant to paragraph (a) to provide certification that the person is a victim of domestic violence, sex offenses or stalking. The person requesting reasonable accommodation pursuant to paragraph (a) shall provide a copy of such certification to the covered entity within a reasonable period after the request is made. A person may satisfy the certification requirement of this paragraph by providing documentation from an employee, agent, or volunteer of a victim services organization, an attorney, a member of the clergy, or a medical or other professional service provider, from whom the individual seeking a reasonable accommodation or that individual's family or household member has sought assistance in addressing domestic violence, sex offenses or stalking and the effects of the violence or stalking; a police or court record; or other corroborating evidence. All information provided to the covered entity pursuant to this paragraph, including a statement of the person requesting a reasonable accommodation or any other documentation, record, or corroborating evidence, and the fact that the individual has requested or obtained a reasonable accommodation pursuant to this section, shall be retained in the strictest confidence by the covered entity, except to the extent that disclosure is requested or consented to in writing by the person requesting the reasonable accommodation; or otherwise required by applicable federal, state or local law.*

(c) *Affirmative defense in domestic violence, sex offenses or stalking cases. In any case where the need for reasonable accommodation is placed in issue, it shall be an affirmative defense that the person aggrieved by the alleged discriminatory practice could not, with reasonable accommodation, satisfy the essential requisites of the job or enjoy the right or rights in question.*

§ 5. This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of the City of New York, passed by the Council on December 15, 2003, and approved by the Mayor on December 22, 2003.

VICTOR L. ROBLES, City Clerk, Clerk of the Council

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE LAW §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 75 of 2003, Council Int. No. 107-A) contains the correct text and:

Received the following vote at the meeting of the New York City Council on December 15, 2003: 50 for, 0 against, 0 not voting.

Was returned signed by the Mayor on December 22, 2003.

Was returned to the City Clerk on December 22, 2003.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel