



August 5, 2022

Re: Pennsylvania Human Relations Commission Proposed Regulation #52-13 (IRRC #3339) – Protected Classes Under the PHRA and the PFEOA

Dear Residents and Businesses of Pennsylvania:

This correspondence is a request for input from you and your constituents regarding the Pennsylvania Human Relations Commission’s (“PHRC”) Proposed Regulation #52-13 (IRRC #3339), 16 Pa. Code, Chapter 41, subchapter D, §§41.201 – 41.207 (“Proposed Regulation”) – Protected Classes Under the PHRA and the PFEOA. A copy of the Proposed Regulation is enclosed. The Proposed Regulation can also be found on IRRC’s website at <http://www.irrc.state.pa.us/regulations/RegSrchRslts.cfm?ID=3350>.

The PHRC enforces the Pennsylvania Human Relations Act (“PHRA”) and the Pennsylvania Fair Educational Opportunities Act (“PFEOA”). The PHRA prohibits discrimination in employment, housing, commercial property, public accommodations, and educational institutions on the basis of race, color, religious creed, ancestry, age (40 and over), sex, national origin, familial status (only in housing), disability, the use, handling, or training of support or guide animals for disability, and retaliation. The PFEOA prohibits discriminations in certain educational institutions on the basis of race, color, religious creed, ancestry, sex, national origin, disability, the use, handling, or training of support or guide animals for disability, and retaliation. The PHRC has the power and duty to receive, investigate, and adjudicate complaints of discrimination. The PHRC also has the power and duty to adopt, promulgate, amend, and rescind rules and regulations to effectuate the policies and provisions of the PHRA. The PHRC also formulates policies to effectuate the purposes of the PHRA.

The PHRC published the Proposed Regulation in the PA Bulletin on April 9, 2022 with a public comment period from April 9, 2022 until May 9, 2022. Based upon the comments the PHRC received during the public comment period, the PHRC is seeking feedback from the regulated community regarding the Proposed Regulation. To facilitate receipt of this feedback, the PHRC is hosting six listening sessions. The PHRC welcomes additional insight from you and your constituents regarding the potential impact the Proposed Regulation may have on you and your constituents.

The scheduled sessions are as follows:

1) **Pittsburgh** –

Location: Carnegie Library of Pittsburgh – Homewood
7101 Hamilton Avenue, Pittsburgh, PA 15208

Date: August 24, 2022
Times: 12:00 p.m. – 2:30 p.m. and 4:30 p.m. – 6:30 p.m.

2) **Harrisburg** –

Location: Hilton Harrisburg
One North Second Street, Harrisburg, PA 17101
Date: August 30, 2022
Times: 12:00 p.m. – 2:30 p.m. and 5:00 p.m. – 7:30 p.m.

3) **Philadelphia** –

Location: DoubleTree by Hilton Philadelphia Center City
237 South Broad Street
Philadelphia, PA 19107
Date: September 8, 2022
Times: 12:00 p.m. – 2:30 p.m. and 5:00 p.m. – 7:30 p.m.

Please feel free to share this information with your constituents and other residents. Residents, businesses, and organizations are encouraged to attend any forum that is convenient for them. We look forward to seeing you at one of these sessions and receiving your input.

If you have any questions or need further assistance, please contact Lisa Knight, Esquire, at liknight@pa.gov or (215) 965-7702. Thank you for your time and attention to this matter.

Sincerely,

Samuel Rivera, Esquire
Chief Counsel

Enclosure

ANNEX A
TITLE 16. COMMUNITY AFFAIRS
PART II. GOVERNOR'S OFFICE
Subpart A. HUMAN RELATIONS COMMISSION
CHAPTER 41. PRELIMINARY PROVISIONS
Subchapter D. PROTECTED CLASSES

§ 41.201 Purpose.

This subpart ensures that all unlawful discriminatory practices proscribed by the Pennsylvania Human Relations Act and all unfair educational practices proscribed by the Pennsylvania Fair Educational Opportunities Act are interpreted and applied consistently. This subpart also ensures that all complaints filed with the Pennsylvania Human Relations Commission are investigated consistent with the rules outlined herein.

§ 41.202 Construction.

(a) This subpart shall be construed liberally for the accomplishment of the purposes of the Pennsylvania Human Relations Act and the Pennsylvania Fair Educational Opportunities Act.

(b) This subpart shall be interpreted consistently with other Federal and State laws and regulations except when to do so would result in a narrow interpretation of the Pennsylvania Human Relations Act or the Pennsylvania Fair Educational Opportunities Act.

§ 41.203. Enforcement.

This subpart shall be subject to and enforced in accordance with the Pennsylvania Human Relations Act, the Pennsylvania Fair Educational Opportunities Act, 16 Pa. Code Chapter 42 (relating to special rules of administrative practice and procedure) and 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

§ 41.204. Definitions.

The following words and terms, when used in this subpart, have the following meanings, unless the context clearly indicates otherwise:

Complaint – a complaint filed with the Pennsylvania Human Relations Commission pursuant to the PHRA or the PFEOA.

Complainant – any person, including the PHRC or the Attorney General, who files a complaint with the PHRC pursuant to the PHRA or the PFEOA.

Person – has the same meaning as Section 4(a) of the PHRA (43 P.S. § 954(a)).

PFEOA – the Pennsylvania Fair Educational Opportunities Act (24 P.S. §§ 5001-5010).

PHRA – the Pennsylvania Human Relations Act (43 P.S. §§ 951-963).

PHRC – the Pennsylvania Human Relations Commission.

Respondent – the person against whom a complaint was filed with the PHRC pursuant to the PHRA or the PFEOA.

§ 41.205. Religious creed discrimination.

- (a) The term religious creed, as used in the PHRA and the PFEOA, includes all aspects of religious observance and practice, as well as belief.**
- (b) Religious beliefs include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views. The fact that no group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of a complainant.**
- (c) This section is not intended to be exhaustive. However, the term religious creed, as used in the PHRA and the PFEOA, should be interpreted consistent with this section.**

§ 41.206. Sex discrimination.

- (a) The term sex, when used in connection with the unlawful discriminatory practices proscribed by the PHRA, includes, but is not limited to, the following:**
 - (1) Pregnancy, including medical conditions related to pregnancy.**
 - (2) Childbirth, including medical conditions related to childbirth.**
 - (3) Breastfeeding, including medical conditions related to breastfeeding.**

- (4) Sex assigned at birth, including, but not limited to, male, female, or intersex.
- (5) A person's gender, including a person's gender identity or gender expression.
- (i) Gender identity or expression means having or being perceived as having a gender-related identity, appearance, expression, or behavior, which may or may not be stereotypically associated with the person's sex assigned at birth.
- (ii) Gender identity or expression may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person's core identity.
- (6) Affectional or sexual orientation, including heterosexuality, homosexuality, bisexuality, and asexuality.
- (i) Affectional or sexual orientation means male, female, or nonbinary heterosexuality, homosexuality, bisexuality, or asexuality by inclination, practice, identity, or expression, having a history thereof, or being perceived, presumed, or identified by others as having such an orientation.
- (ii) Heterosexuality means affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the other gender.
- (iii) Homosexuality means affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the same gender.
- (iv) Bisexuality means affectional, emotional, or physical attraction or behavior which is directed towards persons of either gender.
- (v) Asexuality means the lack of sexual attraction to others, or low or absent interest in or desire for sexual or romantic activity.
- (7) Differences of sex development, variations of sex characteristics, or other intersex characteristics.
- (b) The term sex, when used in connection with the unfair educational practices proscribed by the PFEOA, includes, but is not limited to, the following:
- (1) Pregnancy, including medical conditions related to pregnancy.

- (2) Childbirth, including medical conditions related to childbirth.**
- (3) Breastfeeding, including medical conditions related to breastfeeding.**
- (4) Sex assigned at birth, including, but not limited to, male, female, or intersex.**
- (5) A person's gender, including a person's gender identity or gender expression.**

 - (i) Gender identity or expression means having or being perceived as having a gender-related identity, appearance, expression, or behavior, which may or may not be stereotypically associated with the person's sex assigned at birth.**
 - (ii) Gender identity or expression may be demonstrated by consistent and uniform assertion of the gender identity or any other evidence that the gender identity is sincerely held as part of a person's core identity.**
- (6) Affectional or sexual orientation, including heterosexuality, homosexuality, bisexuality, and asexuality.**

 - (i) Affectional or sexual orientation means male, female, or nonbinary heterosexuality, homosexuality, bisexuality, or asexuality by inclination, practice, identity, or expression, having a history thereof, or being perceived, presumed, or identified by others as having such an orientation.**
 - (ii) Heterosexuality means affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the other gender.**
 - (iii) Homosexuality means affectional, emotional, or physical attraction or behavior which is primarily directed towards persons of the same gender.**
 - (iv) Bisexuality means affectional, emotional, or physical attraction or behavior which is directed towards persons of either gender.**
 - (v) Asexuality means the lack of sexual attraction to others, or low or absent interest in or desire for sexual or romantic activity.**
- (7) Differences of sex development, variations of sex characteristics, or other intersex characteristics.**

- (c) This section is not intended to be exhaustive. However, the term sex, as used in the PHRA and the PFEOA, should be interpreted consistent with this section.**

§ 41.207. Race discrimination.

- (a) The term race, when used in connection with the unlawful discriminatory practices proscribed by the PHRA, includes, but is not limited to, the following:**

(1) Ancestry, national origin, or ethnic characteristics;

(2) Interracial marriage or association;

(3) Traits historically associated with race, including, but not limited to:

(i) Hair texture;

(ii) Protective hairstyles, such as braids, locks, and twists;

(4) Persons of Hispanic national origin or ancestry, including, but not limited to, persons of Mexican, Puerto Rican, Central or South American, or other Spanish origin or culture.

(5) Persons of any other national origin or ancestry as specified by a complainant in a complaint.

- (b) The term race, when used in connection with the unfair educational practices proscribed by the Pennsylvania Fair Educational Opportunities Act, includes, but is not limited to, the following:**

(1) Ancestry, national origin, or ethnic characteristics;

(2) Interracial marriage or association;

(3) Traits historically associated with race, including, but not limited to:

(i) Hair texture;

(ii) Protective hairstyles, such as braids, locks, and twists;

(4) Persons of Hispanic national origin or ancestry, including, but not limited to, persons of Mexican, Puerto Rican, Central or South American, or other Spanish origin or culture.

(5) Persons of any other national origin or ancestry as specified by a complainant in a complaint.

(c) This section is not intended to be exhaustive. However, the term race, as used in the PHRA and the PFEOA, should be interpreted consistent with this section.