

## THE DISTRICT OF COLUMBIA HOUSING AUTHORITY

## NOTICE OF PROPOSED RULEMAKING

The Board of Commissioners of the District of Columbia Housing Authority (DCHA) hereby gives notice, pursuant to D.C. Code Section 6-203 (2007 Ed.), of its intent to adopt the following proposed amendments of Section 9311.4 of Chapter 93 of Title 14 of the District of Columbia Municipal Regulations in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. The proposed amendments contain the rules governing the term of a Housing Assistance Payment Contract under DCHA's Partnership Program for Affordable Housing.

Amendment: amend Chapter 93, Partnership Program for Affordable Housing, Housing Assistance Payment Contract, Section 9311.4, to read in its entirety as follows:

9311.4 Once the Partnership Program units are occupied, DCHA will enter into a HAP Contract with the Owner based on the FMRs in place at the time the HAP Contract is executed. Upon commencement of the contract term, DCHA will make monthly Housing Assistance Payments in accordance with the HAP Contract for each unit occupied by an eligible family. The initial term of the HAP Contract is up to fifteen (15) years, subject to future availability of appropriations, and the HAP Contract may be extended for an indefinite period thereafter. To obtain the current FMRs, see Section 9303.5 of this Title.

All persons desiring to comment on the subject matter of this rulemaking should file comments in writing no later than thirty (30) days after the publication of this Notice in the D.C. Register. Comments should be filed with the Office of the General Counsel, DCHA, 1133 North Capitol Street, NE, Suite 210, Washington, DC 20002-7599; copies of these rules may be obtained from DCHA at that same address. Alternatively, copies of the rules can be requested from and comments can be sent to Mashanda Y. Mosley, Assistant General Counsel, Office of the General Counsel, District of Columbia Housing Authority, at [MMosley@dchousing.org](mailto:MMosley@dchousing.org).

## D.C. OFFICE OF HUMAN RIGHTS

NOTICE OF PROPOSED RULEMAKING

The Director of the Office of Human Rights and the Commission on Human Rights, pursuant to section 301(c) of the Human Rights Act of 1977 (Act), effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1403.01(c)), hereby give notice of the intent to amend Title 4 (Human Rights), Chapter 5 (Employment Guidelines) of the District of Columbia Municipal Regulations (DCMR). The principal purpose of this amendment is to provide guidelines for the protected category of genetic information and the rights of breastfeeding mothers under the protected category of sex or gender. A number of technical amendments to other provisions of this chapter are also proposed.

Notice is also given of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**Chapter 5 of Title 4 DCMR is deleted in its entirety and amended to read as follows:**

**CHAPTER 5    EMPLOYMENT GUIDELINES**

500	Purpose
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502	Specifications in Advertisements
503	Prehire Inquiries
504	Employment Testing
505	Compensation
506	Terms, Conditions, Rights, and Privileges of Employment
507	Age Guidelines
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510	Marital Status Guidelines
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**500 PURPOSE**

- 500.1 In order to meet the obligations set forth in the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*) (Act), the District of Columbia Office of Human Rights (Office) and the District of Columbia Commission on Human Rights (Commission) have adopted this chapter for the following purposes:
- (a) To resolve a number of issues which have been or may be raised before them;
  - (b) To provide advice to interested parties as to how they intend to interpret the law in cases which arise before them; and
  - (c) To assist in the internal processing of cases through Office and Commission procedures with respect to discrimination against any individual in employment because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation.
- 500.2 In general, the Office and the Commission adopt and incorporate by reference current regulations of the federal Equal Employment Opportunity Commission (EEOC) and shall follow general principles of Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*) wherever applicable in interpreting the Act, unless specific regulations in this chapter state the contrary.
- 500.3 Each employer shall provide an employment atmosphere free from discrimination.

**501 FAIR RECRUITMENT**

- 501.1. Each employer shall conduct recruitment and institute hiring practices in such a way as to assure that members of the protected classes as defined in § 599 are given fair notice of job vacancies, are given opportunities to apply for vacancies, and are given consideration for employment in all vacancies on bases which do not discriminate on grounds prohibited by law.
- 501.2 Hiring and job assignment practices shall include steps designed to assure that the effects of past exclusion of minorities, women, disabled persons, or other protected classes from all or part of the employer's work force are not carried forward into the future.

**502 SPECIFICATIONS IN ADVERTISEMENTS**

- 502.1 The prohibition on discriminatory employment advertising pursuant to D.C. Official Code § 2-1402.11(a)(4)(B) shall apply not only to the content of individual advertisements, but also to the placement of advertisements in columns classified

according to race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, family responsibilities, genetic information, disability, matriculation, or political affiliation.

- 502.2 No advertisement, notice, or publication form shall set forth any *prima facie* discriminatory specification. The general test of whether the advertisement, notice, or publication form is lawful is whether it contains, either explicitly or implicitly, a barrier to applicants of a particular protected class. For example, a help-wanted ad for a “stenographer under 35,” or for a “bellboy,” or for a “young man,” or for a “young woman” is unlawful.
- 502.3 A newspaper or other advertising medium may rely on an employer’s written certification that the job is not covered by Title I of the Act, or is exempt from D.C. Official Code § 2-1402.11(a)(4)(B), because of business necessity.
- 502.4 Job titles which indicate a sex preference shall not be used unless based on a business necessity. When a substitute, non-discriminatory job title is not available, the body of the ad, notice, or form, shall specify that both males and females will be considered for employment, for example, Male/Female, M/F, M-F, Man/Woman or M/W.
- 502.5 An employer may lawfully fail or refuse to hire an individual who does not meet the *bona fide* physical requirements of a job. However, this action shall be based on the individual’s actual failure to meet the requirement and not on the employer’s assumption that persons of a certain protected class cannot meet the requirements.

### **503 PREHIRE INQUIRIES**

- 503.1 All aspects of prehire inquiries shall be free of discrimination on the basis of grounds protected by Title I of the Act. The term “prehire inquiries” includes questions asked on application forms, questions asked in employee interviews, or any other kind of inquiries before selection, including medical examinations.
- 503.2 The absence of any reasonable explanation for questions that identify an applicant’s membership in a protected class may be viewed as evidence of discrimination since the inquiries have nothing to do with job performance.
- 503.3 Inquiries necessary for compliance with affirmative action requirements of the federal or District of Columbia governments, or when taking remedial action to correct the effects of past discrimination, or when taking voluntary action to overcome the effects of conditions that resulted in limited employment opportunities for a protected group, are legal, in accordance with D.C. Official Code § 2-1402.53(a).
- 503.4 Inquiries as to age shall be limited to whether an applicant is between eighteen (18) and sixty-five (65) years of age, unless otherwise provided by law. No applicants shall be required to provide evidence of age or date of birth except in circumstances in which age is a business necessity.
- 503.5 An employer shall not require information of a member of one class which he or she would not require of a member of another class. For example, an employer shall not

ask an older applicant questions regarding health, if the employer does not question younger applicants in the same way.

503.6 Pre-employment medical inquiries, or inquiries as to whether an applicant is disabled or to the severity of the disability, shall not be allowed except as provided in § 513.

503.7 It shall be unlawful to request from an applicant, at his or her expense, his or her record of arrests.

503.8 Processing and retention of applications and the information in the applications shall be done equally without regard to a person's membership in a protected class. Processing and retention of applications and the information in the applications for other lawful purposes, such as the purposes noted in § 503.3, shall be legal, in accordance with D.C. Official Code § 2-1402.53(a).

#### **504 EMPLOYMENT TESTING**

504.1 The Office and the Commission adopt and incorporate by reference the *Uniform Guidelines on Employee Selection Procedures* adopted by the EEOC and published at 29 CFR § 1607.

504.2 Any testing for disability shall be done in accordance with § 513.

#### **505 COMPENSATION**

505.1 It is unlawful to discriminate in compensation on the basis of membership in any class protected by Title I of the Act. This prohibition shall apply to practices supported by a union contract providing for discriminatory compensation.

505.2 For the purposes of this chapter, "compensation" is defined as all types and methods of remuneration paid to or on behalf of an employee for employment, including wages, uniforms, overtime pay, paid vacations and holidays, paid leaves of absence (except as otherwise herein provided under guidelines for specific protected classes), paid lunch periods, and paid rest or coffee breaks. Commissions, draws, advances, and guarantees are also compensation.

505.3 Insurance, retirement, and benefit plans shall be considered a form of compensation if an employer contributes to them. Any differential in these forms of compensation shall be unlawful if the differential determined on the basis of membership in a class protected by Title I of the Act. In order to justify a differential in compensation, an employer shall have a non-discriminatory basis for the differential.

505.4 Differentials in compensation that flow from the effects of unlawful past discrimination and which are based on membership in the classes protected by Title I of the Act, shall be unlawful, including those resulting in some disadvantage in a merit, incentive, or seniority plan.

505.5 The Office and the Commission shall make a determination as to whether discrimination exists in compensation by weighing the following criteria:

- (a) The type of job; and
- (b) The skill, effort, and responsibility involved in performing the job.

505.6 Insurance, retirement, and welfare plans shall not discriminate on the basis of membership in any class protected by Title I of the Act, except as in the following:

- (a) Any *bona fide* employment benefit plan, such as a retirement pension or insurance plan which is specifically exempt under the provisions of the Age Discrimination in Employment Act of 1967 (29 U.S.C. § 621 *et seq.*); and
- (b) Insurance plans which are otherwise lawful and which are based on actuarial tables that limit or deny coverage to certain types of disability.

505.7 If an employer contributes to an employee benefit plan, the employer shall furnish equal benefits for all protected classes even if the employer's contribution is greater for one class than for another.

505.8 Employees in protected classes shall not be required to make greater contributions in order to receive equal benefits. If family insurance is provided, that insurance shall provide the coverage for all protected classes and cannot provide only individual coverage for certain protected classes, for example, women or divorced persons.

505.9 Employee benefit plans shall be illegal if they favor survivors of male employees over those of female employees, or vice versa. Nothing in this subsection shall be considered to preclude the operation of a *bona fide* waiting period clause.

## **506 TERMS, CONDITIONS, RIGHTS, AND PRIVILEGES OF EMPLOYMENT**

506.1 An employee is entitled to equal treatment in all those aspects of employment protected under Title I of the Act. The following are examples of terms, conditions, rights, and privileges:

- (a) Rotation of shifts;
- (b) Dress and appearance;
- (c) Use of company facilities;
- (d) Trial periods on jobs;
- (e) Hours of work;
- (f) Office sponsored or endorsed social functions;
- (g) Rest or lunch periods and other breaks; and
- (h) Leaves-of-absence, vacations, other benefits.

- 506.2 A discriminatory practice shall include, but is not limited to, any practice or policy used by an employer to distinguish, set apart, or show a difference in treatment or which operates to the disadvantage of a protected group without a valid business necessity.
- 506.3 It shall be a discriminatory practice to require employees to use only the English language while on the employer's premises.
- 506.4 It shall be viewed as a discriminatory practice to allow employees of one class to be addressed only by the titles of "Mr.," "Mrs.," "Miss," or "Ms." while allowing employees of another class to be addressed by their first names.
- 506.5 An employer shall be responsible for the discriminatory actions of its supervisory personnel. An employer shall also be responsible for the discriminatory actions of its other employees of which it knew or should have known.
- 506.6 Codes for dress and appearance shall be applied equally to all employees performing the same kind of work. Any restriction or limitation on dress or appearance shall be a result of a reasonable business purpose. In the absence of a reasonable business purpose, an employer shall not refuse to allow an employee to wear a hair or dress style symbolic of national origin, religion, or race.
- 506.7 All facilities shall be available to all employees on a non-discriminatory basis. This includes lunchrooms, snackbars, recreation areas, and off-site facilities provided by an employer, such as employee social clubs, health clubs, swimming pools, etc. Locker rooms, restrooms, and shower rooms may be lawfully segregated based on sex.
- 506.8 It shall be a discriminatory practice for an employer to seek to evade responsibility for discrimination by transferring the use or control of facilities to employees or employee groups.
- 506.9 It shall be the responsibility of the employer to use all reasonable means to assure the full and equal participation of a member of a protected class in a work unit in which members of that protected class were not previously employed.
- 506.10 Employers shall secure all personnel files and other documents which contain information which is susceptible to use for a discriminatory purpose and shall allow access to the files only on a "need to know" basis.
- 506.11 Post-hiring inquiries shall not be used for discriminatory purposes.

## **507 AGE GUIDELINES**

- 507.1 The Office and the Commission adopt and incorporate by reference the guidelines on age discrimination promulgated by the EEOC and published at 29 CFR § 1625.

## **508 FAMILY RESPONSIBILITIES GUIDELINES**

- 508.1 Family responsibilities are not job-related and shall be impermissible considerations

for employment decisions. The fact that an employee or applicant has to support a person or persons in a dependent relationship, irrespective of the age of the individual in the dependent relationship or the reasons for the dependency, shall not be used as a reason to fail to hire the applicant or fail to retain or promote the employee, nor shall that fact be otherwise used to discriminate against the employee or applicant with respect to the terms and conditions of employment.

508.2 A dependent relationship includes the relationship of a caregiver who:

- (a) Contributes to the ongoing support and care of a child for whom the employee or applicant assumes parental responsibility; or
- (b) Contributes to the ongoing support and care of an individual who is related by blood, legal custody, or marriage; or
- (c) Contributes to the ongoing support and care of a person with whom the employee or applicant shares a residence and maintains a domestic partnership as defined in D.C. Official Code § 32-701(4).

508.3 An employee or applicant who is a caregiver for a person in a dependent relationship is entitled to equal treatment in the terms, conditions, and privileges of employment, including those benefits listed in § 506.1.

## **509 GENETIC INFORMATION**

509.1 The Office and Commission adopt and incorporate by reference any guidelines adopted by the EEOC pursuant to the Genetic Information Nondiscrimination Act of 2008 (Pub. L. No. 110-233; 122 Stat. 881).

509.2 The following actions or practices shall be prohibited:

- (a) It is a discriminatory practice for an employer, employment agency, or labor organization to do the following:
  - (1) Requesting or requiring a genetic test of, or administering a genetic test to, an employee or applicant for employment or membership; and
  - (2) Seeking to obtain, obtaining, or using genetic information of an employee or applicant for employment.
- (b) It is a discriminatory practice for an employment agency to fail or refuse to refer any individual for employment or otherwise discriminate against any individual because of genetic information of the individual.
- (c) It is a discriminatory practice for a labor organization to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any member because of genetic information with respect to the member.
- (d) It is a discriminatory practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training



or retraining programs, including on-the-job training programs, to discriminate against any individual because of the individual's genetic information in admission to, or employment in, any program established to provide apprenticeship or other training or retraining.

- (e) It is a discriminatory practice for an employer to use family medical history in making employment decisions.
- (f) It is a discriminatory practice for an employer to request information about family medical history pre-employment or post-employment, including through any type of medical examination required of employees for the purpose of determining continuing fitness for duty.

509.3 An employer, employment agency, or labor organization may use genetic testing or information for the following reasons:

- (a) With the written and informed consent of the employee or applicant for employment, to determine the existence of a *bona fide* occupational qualification; or
- (b) To investigate a workers' compensation or disability compensation claim, or determine an employee's susceptibility or exposure to potentially toxic substances in the workplace.

509.4 If determining an employee's susceptibility or level of exposure to potentially toxic substances in the workplace, the employee shall provide, in writing, his or her informed consent. The genetic information shall be provided to the employee in writing as soon as it is available, and the genetic information shall not be disclosed to any other person.

509.5 A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, may request, but not require, that a participant or beneficiary undergo a genetic test if each of the following requirements is met:

- (a) The request is made in writing, and complies with local or federal law with respect to the protection of human subjects;
- (b) The plan or issuer clearly indicates to each participant or beneficiary, or in the case of a minor child, to the parent or legal guardian of such beneficiary, to whom the request is made that:
  - 1. Compliance is voluntary; and
  - 2. Non-compliance will have no effect on enrollment status or premium or contribution amounts; and
- (c) No genetic information collected or acquired for these purposes shall be used for eligibility purposes.

509.6 The following are not considered genetic information for purposes of this chapter:

- (a) Information about an applicant's or employee's current health status, which includes information about sex, age, physical exams, and chemical, blood, or urine analyses;
- (b) Genetic services or health services provided by the employer, including genetic tests, provided to obtain or interpret genetic information for diagnostic or therapeutic purposes, or for purposes of genetic education or counseling; and
- (c) Results obtained from tests for abuse of alcohol or drugs.

509.7 If an employer, employment agency, or labor organization obtains protected genetic information when seeking current health status information, the genetic information will be subject to the same restrictions that apply to genetic information generally.

509.8 If genetic information is obtained for any lawful reason, it shall be stored in a separate confidential file, not in the employee's general personnel file.

## **510 MARITAL STATUS GUIDELINES**

510.1 Recruiting methods for all job classifications shall not include a preference for a specific marital status. For example, an employer shall not advertise, "Excellent opportunity for a single person who enjoys travel" or "Stable, married person preferred."

510.2 Questions pertaining solely to marital status shall be eliminated from applications for employment, unless the employer can show a business necessity for the inquiry.

510.3 Decisions on hiring, promotion, compensation, lay-off, and other terms and conditions of employment shall not be related to marital status.

## **511 MATRICULATION GUIDELINES**

511.1 An employer shall not use different pay scales for students performing the same work duties as other employees with the same experience, skills, work schedule, hours, and the like, unless those differences are made pursuant to either of the following:

- (a) A federal government or District government approved summer job program; or
- (b) "Student certificate" programs issued by the U.S. Department of Labor under the Fair Labor Standards Act (29 U.S.C. § 201 *et seq.*).

511.2 An employer shall not set aside specific job classifications for students in order to give low compensation to all persons in such job classification; provided, that an employer shall not be prohibited from creating jobs for the purpose of providing financial assistance to students. For example, a school may provide research or teaching assistantships to students while compensating researchers or instructors, hired solely for the purpose of their contribution to the school, at a higher scale.

511.3 An employer shall not refuse to hire or discharge a person because he or she is a part-time student if the matriculation status does not interfere with that person's ability to efficiently and effectively perform the duties of the job. An employer shall not assume that an applicant will be unable to work full-time and be a matriculant in a school or college.

511.4 An employer shall grant reasonable periods of leave to an employee for the purpose of registration in a school or college when reasonable accommodation can be made.

## **512 NATIONAL ORIGIN GUIDELINES**

512.1 The Office and Commission adopt and incorporate by reference the guidelines on National Origin Discrimination promulgated by the EEOC and published at 29 CFR § 1606.

## **513 PERSONAL APPEARANCE GUIDELINES**

513.1 It shall be considered a violation of Title I of the Act to discriminate against any individual on the basis of outward appearance for purposes of recruitment, hiring, or promotion. However, an employer may prescribe standards of appearance or dress for personnel which serve a reasonable business purpose; for example, to identify its employees to the public by means of a distinctive uniform, or to maintain a neat and clean appearance.

513.2 An employer may also prescribe standards of appearance or dress for personnel in order to prevent a danger to the health, welfare, or safety of employees or customers; for example, requiring head or hand coverings in food service jobs, or prohibiting loose items of clothing in jobs where the items become caught in machinery.

513.3 Characteristics such as hair or dress style may be symbolic of race, national origin, or religion, and action to limit or prevent their use shall constitute a form of discrimination, unless the employer can show a reasonable business purpose.

## **514 DISABILITY**

514.1 Except as otherwise provided in this chapter, the Office and the Commission adopt and incorporate by reference the provisions promulgated by the EEOC and published at 29 CFR § 1613.701 *et seq.*

514.2 Employment agencies which fail to accept applications, refer equally, or provide placement services for persons with disabilities shall be engaging in a discriminatory practice.

514.3 Pre-employment inquiries may allow inquiry into the physical condition or past medical history of an individual for purposes allowed by § 503.3 or based on a business necessity. Where general characteristics of a physical condition would disqualify an applicant for a job, for example, where a person with a minor visual impairment or history of seizures applies for a driver position, the employer shall ascertain whether the

individual's specific condition prohibits him or her from meeting a necessary standard for safety or job performance.

- 514.4 No employer shall refuse to hire a person with a disability when lack of such disability is required for a secondary portion of the job and when reasonable accommodation can be made through minor job restructuring.
- 514.5 Tests offered applicants and employees shall be related to the job. For example, it shall be a discriminatory practice to give a blind person a vision test when sight is not required for the job.
- 514.6 If health and insurance benefits are provided to employees for some disabilities, they shall be provided for all disabilities having a similar anticipated cost. This shall not prevent exclusions based on the cost of service to the individual, but it does prevent exclusions based on the number of individuals to be serviced.
- 514.7 Excessive absenteeism, even if caused by injury or illness, may be grounds for termination if it interferes significantly with or causes an undue hardship upon the performance of duty.
- 514.8 The use of non-discriminatory selection procedures shall not relieve employers, unions, or employment agencies of other legal obligations to take positive action in affording employment and training to persons with disabilities.
- 514.9 Before a business necessity may excuse discrimination against a person with a disability, it shall be found that there is no alternative to the particular practice, or that a reasonable accommodation cannot be made.
- 514.10 Where an employee's specific physical or mental disability precludes the normal operation of a business or particular activity in existing structures, reasonable accommodation shall be made, where possible, through modifications in job description, workplace design, or physical renovation. In determining whether a modification is a reasonable accommodation, the Office and Commission shall consider factors such as the following:
- (a) The nature and cost of the modification;
  - (b) The number of people, both those with and without disabilities, who would benefit by the modification;
  - (c) The benefits or detriments resulting from the modification with regard to the type and composition of the business and the physical structure and layout of the workplace; and
  - (d) When new construction, substantial redesign or remodeling, etc., occurs, whether the modification should provide for increased physical accessibility.

514.11 Preferences of employees, tenants, patrons, clients, or other individuals that exclude persons with disabilities shall not be considered within the purview of business necessity.

514.12 Employers shall retain employees who have become disabled while on the job so long as reasonable accommodation can be made.

## **515 POLITICAL AFFILIATION GUIDELINES**

515.1 An employer, other than a political organization, shall not discharge, refuse to hire, or otherwise discriminate against an employee with respect to employment because of the employee's present or past political affiliation or lack of political affiliation.

515.2 Mere membership in a political party having unlawful goals shall not suffice to justify discrimination in employment unless that prohibition is required by federal or District law.

515.3 An employer shall not retaliate against an employee for failure to vote for a designated candidate. This shall not prevent an employer or employee from expressing support for any candidate unless prohibited under federal or District civil service laws.

515.4 An employer shall not require employees to contribute to fundraising campaigns of any political party or candidate or to provide any type of support for any political party or candidate.

## **516 RELIGION GUIDELINES**

516.1 The Office and Commission adopt and incorporate by reference the guidelines on religious discrimination promulgated by the EEOC and published at 29 CFR § 1605.

## **517 SEX GUIDELINES**

517.1 The Office and Commission adopt and incorporate by reference the guidelines on sex discrimination promulgated by the EEOC and published at 29 CFR § 1604.

517.2 Recruiting methods for all job classifications shall be without regard to sex, except where sex is a business necessity.

517.3 Hiring, assignment, promotion, compensation, lay-off, and all terms, conditions, and privileges of employment shall not be based on the sex of an individual, unless sex is a business necessity. Employers shall not permit creation of a working environment which is hostile, intimidating, or offensive, or otherwise allows harassment related to sex.

517.4 Women shall not be rejected for employment, suspended or discharged from employment, or required to take leave involuntarily solely on account of pregnancy.

517.5 Medically verifiable disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery from those disabilities are, for all job-related

purposes, to be treated as temporary disabilities under any health or temporary disability insurance policies or sick leave plans available in connection with employment.

- 517.6 Written and unwritten employment policies and practices involving matters such as the commencement and duration of leave, the availability of extensions, the accrual of seniority and other benefits and privileges, reinstatement, and payment under any health or temporary disability insurance policies or sick leave plans, formal or informal, shall be applied to disability due to pregnancy or childbirth on the same terms and conditions as they are applied to other temporary disabilities.
- 517.7 Sick leave plans shall not exclude illness connected with pregnancy.
- 517.8 It shall be considered a discriminatory practice for a person in an employment relationship to overtly threaten or adversely affect another person's employment status for failure to engage in sexually-related activity on or off the job.
- 517.9 It shall be a discriminatory practice for an employer to discriminate between men and women with regard to fringe benefits.
- 517.10 Fringe benefits for the purpose of this section, shall include, but not be limited to, such items as medical, hospital, accident, and life insurance, retirement benefits, profit-sharing and bonus plans, and leave.
- 517.11 No employer shall condition fringe benefits to employees and their spouses and families on whether the employee is the "head of the household" or "principal wage earner" in the family unit, since such a practice discriminatorily affects the rights of women employees, and "head of household" or "principal wage earner" status bears no relationship to job performance. Any such practice shall be viewed as a *prima facie* violation of the prohibitions against sex discrimination contained in Title I of the Act.
- 517.12 It shall be a discriminatory practice for an employer to make available fringe benefits for the spouses and families of employees of one sex, where the same benefits are not made available for the spouses and families of another sex. An example of such an employment practice is a situation in which the spouses of female employees receive benefits for all temporary disabilities, but the spouses of male employees receive benefits for all disabilities but pregnancy.
- 517.13 It shall not be a defense under Title I of the Act to a charge of sex discrimination in fringe benefits that the cost of the benefits is greater with respect to one sex than the other.
- 517.14 It shall be a discriminatory practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or which differentiates in benefits on the basis of sex.
- 517.15 Insurance plans, including, but not limited to, endowment policies and annuity contracts, shall provide for equal benefits for members of both sexes, even if the employer's contribution is greater for one sex than it is for another. Employees in

protected classes shall not be required to make greater contributions in order to receive equal benefits.

## **518 BREASTFEEDING GUIDELINES**

518.1 The Office and the Commission adopt this section for the following purposes:

- (a) To implement the provisions of the Act regarding discrimination based on breastfeeding in employment, housing, public accommodations, or educational institutions, including all agencies of the District of Columbia government and its contractors or grantees;
- (b) To provide guidance with regard to the requirements of the law to all employers, housing providers, businesses, organizations, educational institutions, and District government agencies and contractors seeking compliance with the law;
- (c) To educate the public on the behaviors, conduct, and actions that constitute unlawful discrimination based on breastfeeding;
- (d) To ensure that breastfeeding mothers and their children are treated with dignity and respect; and
- (e) To guide the internal processing of complaints filed with the Office.

518.2 The Office shall provide information to employers and employees regarding their rights and obligations under this section. Employers shall conspicuously post and maintain in the workplace a notice containing this information.

518.3 Each employer shall create a policy with respect to its employees who are breastfeeding mothers; provided, that such policy shall not contain any rules or guidelines which dictate whether the mother's breast, or any part of it, is uncovered during or incidental to the breastfeeding of her child. The policy shall be posted along with the notice required by § 518.2.

518.4 A breastfeeding mother shall have rights to include, but not be limited to, the following:

- (a) The right to breastfeed her child in any location, public or private, where she has the right to be with her child;
- (b) The right to breastfeed or express breast milk in accordance with this section, notwithstanding any other provision of District of Columbia law governing indecent exposure or the definition of the private or intimate parts of a female person, including that portion of the breast that is below the top of the areola;
- (c) The right to be free from any workplace disciplinary action because of the exposure of any part of her breast during breastfeeding or while expressing

breast milk;

- (d) The right to be free from harassment or ridicule in the workplace because of her breastfeeding or expressing breast milk; and
- (e) The right to workplace accommodations while breastfeeding or expressing breast milk.

518.5 Employers shall accommodate breastfeeding employees by taking steps including, but not limited to, the following:

- (a) Affording reasonable daily break periods, paid or unpaid, so that the employee may breastfeed her child or express breast milk to maintain milk supply or relieve physical discomfort; provided, that an employer may require that such break periods run concurrently with any break periods already afforded; provided further, that an employer shall not be required to provide breastfeeding-related break periods if doing so would create an undue hardship;
- (b) Affording flexible schedule, job-sharing, or telecommuting arrangements, if none are already afforded, unless doing so would create an undue hardship; and
- (c) Making reasonable efforts to provide a sanitary room or other location in close proximity to the work area, other than a bathroom or toilet stall, where an employee can breastfeed or express breast milk in privacy and security. The location:
  - (1) May include a childcare facility in close proximity to the work area; or
  - (2) If at the work area, shall have adequate lighting, ventilation, and an electrical outlet (if necessary for a pumping device), and may, but not be required to have, a lock for privacy, a sink with a safe water source, a comfortable chair, a small table, and a clock; and
- (d) Allowing the employee to bring into the workplace a small refrigerator or freezer to store breast milk.

518.6 It shall be a discriminatory practice:

- (a) For a childcare facility to discriminate based on whether a child is on breast milk or formula; and
- (b) For an employer, employment agency, or labor organization to refuse to hire or employ, to bar or discharge from employment, to withhold pay, demote, or penalize a breastfeeding employee because the employee breastfeeds or expresses milk in the workplace, or otherwise to deny the employee any right provided under this section.

518.7 The procedure for resolving cases involving breastfeeding shall include the following:



- (a) An aggrieved person shall file a written complaint with the Office alleging a violation of this section within one (1) year of the occurrence or the discovery of the occurrence;
- (b) The Office shall docket the complaint within five (5) days of its receipt of the complaint and shall complete the investigation within thirty (30) days of its commencement or as soon as practicable thereafter;
- (c) The complaint shall be considered dismissed if no probable cause is found, and the complainant may seek judicial review in the Superior Court for the District of Columbia;
- (d) If the Office determines that probable cause exists that discrimination based on a breastfeeding, the matter shall be sent to conciliation to determine if the parties wish to conciliate; and
- (e) If the parties do not conciliate, or do not reach an agreement within thirty (30) days of the commencement of conciliation, the case will be sent to the Commission for adjudication under its policies and procedures. The Commission will seek to expedite the proceedings, when practicable.

518.8 When used in this section, the following terms shall have the following meaning:

- (a) Reasonable efforts - any effort that would not impose an undue hardship on the operation of an employer's business.
- (b) Undue hardship - any action that requires significant difficulty or expense when considered in relation to factors such as the size of an employer's business, its financial resources, and the nature and structure of its operation.

## **519 SEXUAL ORIENTATION GUIDELINES**

519.1 No employer shall discharge, suspend, refuse to hire or promote an individual, or subject an individual to different terms, conditions, and privileges of employment because of his or her sexual orientation.

519.2 Employers shall not dismiss, suspend, refuse to hire or promote any person on the basis of an employee's open or suspected sexual orientation and nonconformity to the stereotyped characterization of masculine or feminine behavior.

519.3 Employers shall apply the same standards of acceptable on-the-job conduct to all employees regardless of sexual orientation, and the same procedures and standards for discipline and dismissal employed shall be applied equally to all, regardless of sexual orientation.

519.4 Questions by an employer which compel answers concerning the sexual orientation of an employee shall be considered *prima facie* evidence of discrimination.

- 519.5 Employers or employment agencies shall not collect or disseminate information about the sexual orientation or practices of employees.
- 519.6 The use of derogatory or insulting language about or directed at an employee on the premises by the employer and other employees because of an employee's open or suspected sexual orientation shall be considered *prima facie* evidence of discrimination.

## **520 EXCEPTIONS**

- 520.1 An employer may observe the conditions of a *bona fide* seniority system or a *bona fide* employee benefit system such as a retirement, pension, or insurance plan which is not a subterfuge to evade the purposes of Title I of the Act; provided, that no employee seniority system or benefit plan shall excuse the failure to hire any individual.
- 520.2 An employer may hire and employ employees on the basis of their membership in a class protected by Title I of the Act in special instances where sex, national origin, religion, disability, or other protected status is a business necessity for the normal operation of the particular business or enterprise.
- 520.3 Any religious or political organization, or any organization for charitable or educational purposes which is operated, supervised, or controlled by, or is operated in connection with, a religious or political organization may limit employment or give preferences to persons of the same religion or political persuasion as is calculated by such organization to promote the religious or political principles for which it is established or maintained.
- 520.4 Any practice which has a discriminatory effect and which would otherwise be prohibited by Title I of the Act shall not be deemed unlawful if it can be established that:
- (a) The practice is not intentionally devised or operated to contravene the prohibitions of Title I of the Act; and
  - (b) The practice can be justified as a business necessity.
- 520.5 For purposes of this chapter, a "business necessity" exception shall be applicable only in the individual case where it can be proved that, without such exception, the business cannot be conducted. A "business necessity" exception shall not be justified by the factors of increased cost to business, business efficiency, the comparative characteristics of one group as opposed to another, the stereotyped characterization of one group as opposed to another, and the preferences of co-workers, customers, or any other persons.

## **599 DEFINITIONS**

- 599.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

**Act** - the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*).

**Age** - between the ages of eighteen (18) and sixty-five (65), unless otherwise prohibited by law.

**Breastfeed** - to provide breast milk from a mother's breast or to express breast milk into a container or bottle.

**Child care facility** - any establishment or business providing supervision and care of minors during the day or evening, with the exception of public or privately regulated schools. The term child care facility also includes child development centers as defined in D.C. Official Code § 4-401(2).

**Color** - skin pigmentation, including variations in skin pigmentation.

**Disability**- as defined in section 3 of the Americans with Disabilities Act of 1990, approved July 26, 1990 (104 Stat. 329; 42 U.S.C. § 12102).

**Discrimination** - the act of distinguishing, or setting apart, or showing a difference in treatment which operates to the disadvantage of a protected group without a valid business necessity.

**Discriminatory practice** - any direct or indirect exclusion, segregation, limitation, refusal, denial, or any other distinction or preference in the treatment of a person or persons because of race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, family responsibilities, disability, matriculation, or political affiliation.

**Employee** - any individual employed by, in the past or present, or seeking employment from, an employer, including, but not limited to, an individual seeking membership in any professional association and a person seeking employment through an employment agency or labor organization.

**Employer** - any person who, for compensation, employs an individual, except for the employer's parents, spouse, children or domestic servants engaged in work in and about the employer's household; any person acting in the interest of such employer, directly or indirectly; and any professional association. The term employer also includes the District of Columbia government and its boards, commissions, departments, agencies, including the public school system.

**Employment agency** - any person regularly undertaking or attempting, with or without compensation, to procure employees for an employer or to procure for employees, opportunities to work for an employer, and includes an agent of such a person.

**Family responsibilities** - the state of being, or the potential to become, a contributor to the support of a person or persons in a dependent relationship, irrespective of their number or age.

**Gender identity or expression** - a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth.

**Genetic information**- information about the presence of any gene, chromosome, protein, or certain metabolites that indicate or confirm that an individual or an individual's family member has a mutation or other genotype that is scientifically or medically believed to cause a disease, disorder, or syndrome, if the information is obtained from a genetic test.

**Genetic test** - an analysis of human chromosomes, genes, gene products, or genetic information that is used to identify the presence or absence of inherited or congenital alterations in genetic material that are associated with disease or illness. A genetic test shall not include a test for the presence of illegal drugs, routine physical measurements, or chemical, blood or urine analysis, unless conducted purposefully to obtain genetic information. A genetic test also does not include an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes, or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could be reasonably detected by a health care professional with appropriate training and expertise in the field of medicine involved.

**Health benefit plan** - any accident and health insurance policy or certificate, hospital and medical services corporation contract, health maintenance organization subscriber contract, plan provided by a multiple employer welfare arrangement, or plan provided by another benefit arrangement. The term health care benefit plan does not mean accident only, credit, or disability insurance; coverage of Medicare services or federal employee benefit plans, pursuant to contracts with the United States government; Medicare supplemental or long-term care insurance; dental only or vision only insurance; specified disease insurance; hospital confinement indemnity coverage; limited benefit health coverage; coverage issued as supplemental to liability insurance; insurance arising out of workers compensation or similar law; automobile medical payment insurance; medical expense and loss of income benefits; insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance; or life insurance.

**Health insurer** - any person that provides one or more health benefit plans or insurance in the District of Columbia, including an insurer, a hospital, a medical services corporation, a fraternal benefits society, a health maintenance organization, a multiple employer welfare arrangement, or any other person providing a plan of health insurance subject to the authority of the Commissioner of the Department of Insurance, Securities, and Banking.

**Labor organization** - any organization, agency, employee representation committee, group, association, or plan in which employees participate directly or indirectly; and which exists for the purpose, in whole or in part, of dealing with employers or any agent thereof, concerning grievances, labor disputes, wages, rates of pay, hours, or other terms, conditions, or privileges of employment; any conference, general committee, joint or system board, or joint council that is subordinate to a national or international organization.

**Marital status** - the state of being married, in a domestic partnership, single, divorced, separated or widowed, and the usual conditions associated therewith, including pregnancy or parenthood.

**Matriculation** - the condition of being in a college or university; in a business, nursing, professional, secretarial, technical or vocational school; or in an adult educational program on a full- or part-time basis.

**National origin** - the state, country, or nation in which a person or his or her ancestors were born.

**Person** - any individual, firm, partnership, mutual company, joint stock company, corporation, association, organization, unincorporated organization, labor union, government agency, incorporated society, statutory or common law trust, estate, executor, administrator, receiver, trustee, conservator, liquidator, trustee in bankruptcy, committee, assignee, officer, employee,

principal or agent, legal or personal representative, real estate broker or salesman, or any agent or representative of any of the foregoing.

**Personal appearance** - the outward appearance of any person, irrespective of sex, with regard to bodily condition or characteristics, manner or style of dress, and manner or style of personal grooming, including, but not limited to, hair style and beards. Personal appearance shall not relate, however, to the requirement of cleanliness, uniforms, or prescribed standards, when uniformly applied to a class of employees for a reasonable business purpose; or when such bodily conditions or characteristics, or style or manner of dress or personal grooming presents a danger to the health, welfare, or safety of any individual.

**Political affiliation** - the state of belonging to, or endorsing, any political party.

**Protected classes** - bases of unlawful discrimination prohibited by Title I of the Act.

**Race** - for the purpose of Title I of the Act, race is not limited to the state of being a member of a particular race, but also includes relationships with members of a different race, such as the race of a spouse or associate, where such relationship is the basis for discrimination.

**Religion** - a personal set or institutionalized system of attitudes, beliefs, and practices relating to a supernatural force or being, or its equivalent in secular faiths, including the presence or absence of commitment or devotion to any faith. Religion includes moral or ethical beliefs as to what is right and wrong, which beliefs are sincerely held with the strength of traditional religious views.

**Sex** - the state of being male or female and conditions associated therewith. Sex includes the state of being a member of a sub-group of one sex, such as a pregnant female.

**Sexual orientation** - male or female homosexuality, heterosexuality, and bisexuality, by preference or practice.

**Underwriting** - with respect to a group health plan or health insurance coverage offered in connection with a group health plan, rules for, or determination of, eligibility (including enrollment and continued eligibility) for the benefits under the plan or coverage; the computation of premium or contribution amounts under the plan or coverage; the application of any pre-existing condition exclusion under the plan or coverage; and other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits.

Persons desiring to comment on these proposed rules should submit comments in writing to the Office of Human Rights, Office of the General Counsel, 441 4<sup>th</sup> Street, N.W., Suite 570N, Washington, D.C. 20001, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of these proposed rules may be obtained between 8:30 a.m. and 5:00 p.m. at the address stated above.

**D.C. DEPARTMENT OF HUMAN RESOURCES****NOTICE OF PROPOSED RULEMAKING**

The Director, D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008, and in accordance with Title XIX of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-619.01 *et seq.*) (2006 Repl.), hereby gives notice of the intent to adopt the following proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*. The main purpose of this Notice of Proposed Rulemaking is to amend subsection 1904.3 (e) of Chapter 19, Incentive Awards, of Title 6 of the District of Columbia Municipal regulations (DCMR), to specify that a *Special Act or Service Award* may be given to an employee with a satisfactory performance rating. Subsection 1904.3 (b) is also being amended. Upon adoption, these rules will amend Chapter 19, Incentive Awards, of Title 6 of the DCMR, published at 29 DCR 1517 (April 9, 1982) and amended at 31 DCR 993 (March 2, 1984), 47 DCR 8102 (October 6, 2000), 50 DCR 2244 (March 14, 2003), 52 DCR 4430 (May 6, 2005), and 55 DCR 4352 (April 18, 2008).

**CHAPTER 19****INCENTIVE AWARDS**

*Chapter 19, Incentive Awards, of Title 6 of the District of Columbia Municipal Regulations, is amended as follows:*

*Subsections 1904.3 (b) and (e) are amended to read as follows:*

- (b) Such special act or service may include but is not necessarily limited to the performance of a temporary assignment of the duties of a position, in addition to the employee's position, and with a performance level of the duties of both positions within prescribed criteria in this chapter; performance of unusual duties for limited periods; exemplary or courageous handling of an emergency situation in connection with the performance of assigned duties; and any such other special acts or services as may be specified in criteria established by the personnel authority. This award category shall not be used to reward year round exemplary performance, which is covered under the Exemplary Performance Awards in section 1904.2 of this section.
- (e) For the purpose of determining the amount of a Special Act or Service Award for an employee, the amount of the award shall be calculated using the employee's rate of basic pay during the performance rating period in which the performance contribution was made. The amount of this award may be in the range between 1% and 10% of the employee's rate of basic pay; the exact percentage to be determined by the agency, with the approval of the appropriate Agency Incentive Awards Committee as specified in section 1903.2 of this

chapter. The performance rating of an employee considered for a Special Act or Service Award shall be at least satisfactory.

Comments on these proposed regulations should be submitted, in writing, to Ms. Brender L. Gregory, Director, D.C. Department of Human Resources, 441 4<sup>th</sup> Street, N.W., Suite 300S, Washington, D.C. 20001, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these proposed regulations are available from the above address.