NY CLS Exec § 291

Current through 2019 released Chapters 1-23

New York Consolidated Laws Service > Executive Law (Arts. 1 — 50) > Article 15 Human Rights Law (§§ 290 — 301)

§ 291. Equality of opportunity a civil right

1.The opportunity to obtain employment without discrimination because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, marital status, or disability, is hereby recognized as and declared to be a civil right.

2.The opportunity to obtain education, the use of places of public accommodation and the ownership, use and occupancy of housing accommodations and commercial space without discrimination because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, marital status, or disability, as specified in section two hundred ninety-six of this article, is hereby recognized as and declared to be a civil right.

3.The opportunity to obtain medical treatment of an infant prematurely born alive in the course of an abortion shall be the same as the rights of an infant born spontaneously.

History

Add, L 1951, ch 800, § 1, with substance transferred from § 126; amd, L 1964, ch 239, § 1; L 1965, ch 851, § 1, eff Sept 1, 1965; L 1975, ch 803, § 1, eff Oct 8, 1975; L 1977, ch 765, § 1, eff August 5, 1977; *L 2002, ch 2, § 2*, eff Jan 16, 2003 (see 2002 note below); *L 2003, ch 106, § 10*, eff July 1, 2003 (see 2003 note below); *L 2010, ch 196, § 1*, eff July 15, 2010; *L 2019, ch 8, § 2*, eff Feb 24, 2019.

Annotations

Notes

Editor's Notes

***Laws 2002, ch 2, § 1*,** eff Jan 16, 2003, provides as follows:

Section 1. Legislative findings and intent. The legislature reaffirms that the state has the responsibility to act to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life, and that the failure to provide such equal opportunity, whether because of discrimination, prejudice, intolerance or inadequate education, training, housing or health care not only threatens the rights and proper privileges of its inhabitants, but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants.

The legislature further finds that many residents of this state have encountered prejudice on account of their sexual orientation, and that this prejudice has severely limited or actually prevented access to employment, housing and other basic necessities of life, leading to deprivation and suffering. The legislature further recognizes that this prejudice has fostered a general climate of hostility and distrust, leading in some instances to physical violence against those perceived to be homosexual or bisexual.

In so doing, the legislature makes clear its action is not intended to promote any particular attitude, course of conduct or way of life. Rather its purpose is to ensure that individuals who live in our free society have the capacity to make their own choices, follow their own beliefs and conduct their own lives as they see fit, consistent with existing law.

Nothing in this legislation should be construed to create, add, alter or abolish any right to marry that may exist under the constitution of the United States, or this state and/or the laws of this state.

Laws 2003, ch 106, §§ 1 **and 1-a,** eff July 1, 2003, provide as follows:

Section 1. Legislative findings and intent. The legislature recognizes that the individuals who are members of the military make a tremendous sacrifice, especially in times like these when our military personnel are in many locations throughout the world and here in New York fighting against terrorism. This sacrifice is just as real for the men and women who comprise our reserve armed forces and state organized militia. For those who are not full-time active duty in the military, but instead are called to active duty as a member of the reserve armed forces or state organized militia, the rest of their lives must be put on hold to accommodate that service. However, such military personnel continue to be responsible for their own well-being and the well-being of their families and they must still face the obligations that exist in their everyday lives. Steps have been taken to ease some of the burdens that these brave men and women encounter, to allow them to focus their full energy on defending our country; however, the legislature recognizes that more must be done to ensure that military personnel engaged in active duty are not troubled by their obligations at home. In addition, the legislature recognizes that members of the military should not be discriminated against based upon their military status in areas such as housing, employment and education.

§ 1-a. Short title. This act shall be known as the “Patriot Plan”.

Laws 2019, ch 8, §§ 1, **25,** provide:

Section 1. The legislature reaffirms that the state has the responsibility to act to assure that every individual within this state is afforded an equal opportunity to enjoy a full and productive life, and that the failure to provide such equal opportunity, whether because of discrimination, prejudice, intolerance or inadequate education, training, housing or health care not only threatens the rights and proper privileges of its inhabitants, but menaces the institutions and foundation of a free democratic state and threatens the peace, order, health, safety and general welfare of the state and its inhabitants.

The legislature further finds that many residents of this state have encountered prejudice on account of their gender identity or expression, and that this prejudice has severely limited or actually prevented access to employment, housing and other basic necessities of life, leading to deprivation and suffering. The legislature further recognizes that this prejudice has fostered a general climate of hostility and distrust, leading in some instances to physical violence against those perceived to live in a gender identity or expression which is different from that traditionally associated with the sex assigned to that person at birth.

In so doing, the legislature makes clear its action is not intended to promote any particular attitude, course of conduct or way of life. Rather its purpose is to ensure that individuals who live in our free society have the capacity to make their own choices, follow their own beliefs and conduct their own lives as they see fit, consistent with existing law.

The legislature further finds that, as court decisions have properly held, New York’s sex discrimination laws prohibit discrimination based on gender stereotypes or because an individual has transitioned or intends to transition from one gender to another. This legislation is intended to codify this principle and to ensure that the public understands that discrimination on the basis of gender identity and expression is prohibited.

§ 25. This act shall take effect on the thirtieth day after it shall have become a law; provided, however, that sections nineteen through twenty-four of this act shall take effect on the first of November next succeeding the date on which it shall have become a law.

Amendment Notes:

2010. Chapter 196, § 1 amended:

Sub 1 by deleting at fig 1 “or”, and adding the matter in italics.

Sub 2 by deleting at fig 1 “or”, and adding the matter in italics.

The 2019 amendment by ch 8, § 2, added “gender identity or expression” in 1 and 2.

Notes to Decisions

1. In general

If the constitutional interdiction of discrimination in civil rights by the state or any state agency or subdivision is read in conjunction with the provisions of this section, it is clear that the general jurisdiction and power of the commission to eliminate and prevent discrimination in employment attaches to all public agencies. *Board of Higher Education v Carter, 14 N.Y.2d 138, 250 N.Y.S.2d 33, 199 N.E.2d 141, 1964 N.Y. LEXIS 1228 (N.Y. 1964)*.

Federal Airline Deregulation Act of 1978 (*49 USCS § 41713*) does not preempt employees’ state discrimination claims against airline under Human Rights Law, because Congress intended only to restrict state regulation of airline fares, routes and services, not state regulation of employment practices. *Delta Air Lines v New York State Div. of Human Rights, 91 N.Y.2d 65, 666 N.Y.S.2d 1004, 689 N.E.2d 898, 1997 N.Y. LEXIS 3710 (N.Y. 1997)*.

The Court of Appeals of New York refused to adopt a rule that predetermination interest must be awarded as a matter of law in every case where the Commissioner of the New York State Division of Human Rights finds a violation of New York’s Human Rights Law, but held that the Commissioner abused his discretion by not providing justification for his decision to deny predetermination interest to a female employee after he found that she had been subjected to employment discrimination and was entitled to back pay. *Aurecchione v N.Y. State Div. of Human Rights, 98 N.Y.2d 21, 744 N.Y.S.2d 349, 771 N.E.2d 231, 2002 N.Y. LEXIS 898 (N.Y. 2002)*.

Where petitioner was employed by an airline, resigned, was married, and then applied for reinstatement, the time to file the complaint alleging discrimination ran from the refusal to reinstate. *Munger v State Div. of Human Rights, 32 A.D.2d 502, 304 N.Y.S.2d 407, 1969 N.Y. App. Div. LEXIS 3134 (N.Y. App. Div. 1st Dep't 1969)*.

School boards’ complaints challenging state’s public school financing scheme as violative of proscription against discrimination in civil rights “because of race, color, creed or religion” (CLS *NY Const Art 1 § 11)* did not state cause of action. *Campaign for Fiscal Equity v State, 205 A.D.2d 272, 619 N.Y.S.2d 699, 1994 N.Y. App. Div. LEXIS 11329 (N.Y. App. Div. 1st Dep't 1994)*, aff'd sub. nom., *City of New York v State, 86 N.Y.2d 286, 631 N.Y.S.2d 553, 655 N.E.2d 649, 1995 N.Y. LEXIS 1144 (N.Y. 1995)*, aff'd, modified, *86 N.Y.2d 307, 631 N.Y.S.2d 565, 655 N.E.2d 661, 1995 N.Y. LEXIS 1145 (N.Y. 1995)*.

Court should have dismissed cause of action alleging that state's school financing system violates civil rights under CLS *NY Const Art I § 11* by discriminating against certain minority students in New York City school district, notwithstanding guarantee of equal opportunity to education as civil right under CLS *Exec § 291*, since that statute merely assures every student "the opportunity to obtain education," and there was nothing in funding allocation scheme that discriminated against any of individual students and thus deprived them of such educational opportunity. *Campaign for Fiscal Equity v State, 205 A.D.2d 272, 619 N.Y.S.2d 699, 1994 N.Y. App. Div. LEXIS 11329 (N.Y. App. Div. 1st Dep't 1994)*, aff'd sub. nom., *City of New York v State, 86 N.Y.2d 286, 631 N.Y.S.2d 553, 655 N.E.2d 649, 1995 N.Y. LEXIS 1144 (N.Y. 1995)*, aff'd, modified, *86 N.Y.2d 307, 631 N.Y.S.2d 565, 655 N.E.2d 661, 1995 N.Y. LEXIS 1145 (N.Y. 1995)*.

In action under Human Rights Law by member of New York Air National Guard whose application for position of medical pararescue technician was denied, allegedly due to his age, complaint was properly dismissed under CLS *CPLR § 3211* as regulation of personnel criteria for National Guard has been preempted by federal regulation; state antidiscrimination laws of general application do not apply to National Guard. *Kolomick v New York Air Nat'l Guard, 219 A.D.2d 367, 642 N.Y.S.2d 915, 1996 N.Y. App. Div. LEXIS 5119 (N.Y. App. Div. 2d Dep't)*, app. dismissed, *88 N.Y.2d 1064, 651 N.Y.S.2d 407, 674 N.E.2d 337, 1996 N.Y. LEXIS 3257 (N.Y. 1996)*.

In an action to punish a landlord for contempt of court for wilful failure to obey the provisions of a court order enforcing an order of the Civil Rights Commission, it was held that an intervenor was relegated to a plenary action pursuant to *Executive Law § 297(9)* and that any award for compensatory or punitive damages would have to be made by the court having jurisdiction of that action. *State Com. for Human Rights v Kennelly, 59 Misc. 2d 278, 299 N.Y.S.2d 342, 1969 N.Y. Misc. LEXIS 1651 (N.Y. Sup. Ct. 1969)*.

Education department and Division of Human Rights had concurrent jurisdiction to pass on complaint alleging that student applicant was denied admission to medical school on basis of discriminatory practices of school; thus school was not entitled to extraordinary remedy of writ to prohibit student applicant and Division from conducting discrimination complaint hearing on grounds they were proceeding in excess of jurisdiction. *New York University v New York State Div. of Human Rights, 84 Misc. 2d 702, 378 N.Y.S.2d 842, 1975 N.Y. Misc. LEXIS 3202 (N.Y. Sup. Ct.)*, aff'd, *49 A.D.2d 821, 373 N.Y.S.2d 719, 1975 N.Y. App. Div. LEXIS 10940 (N.Y. App. Div. 1st Dep't 1975)*.

As respects statute prohibiting any educational corporation or association that holds itself out to public to be nonsectarian and exempt from taxation from denying "use of its facilities" to any person otherwise qualified, by reason of race, color, religion or national origin, attempt to distinguish between "denial of use of facilities" and "denial of admission" is a strained and tenuous construction not consonant with plain meaning in language; "use of facilities" covers admission of qualified students. *New York University v New York State Div. of Human Rights, 84 Misc. 2d 702, 378 N.Y.S.2d 842, 1975 N.Y. Misc. LEXIS 3202 (N.Y. Sup. Ct.)*, aff'd, *49 A.D.2d 821, 373 N.Y.S.2d 719, 1975 N.Y. App. Div. LEXIS 10940 (N.Y. App. Div. 1st Dep't 1975)*.

Rehabilitation Act of 1973 (*29 USCS §§ 701* et seq.) preempted claim against federal employer for alleged violation of Human Rights Law asserted by federal employee with Human Immunodeficiency Virus. *Rivera v Heyman, 982 F. Supp. 932, 1997 U.S. Dist. LEXIS 15524 (S.D.N.Y. 1997)*, aff'd, *1998 U.S. App. LEXIS 20859 (2d Cir. N.Y. Aug. 26, 1998)*, aff'd in part and rev'd in part, *157 F.3d 101, 1998 U.S. App. LEXIS 22598 (2d Cir. N.Y. 1998)*.

Because a complaint, that was grounded on claims of discrimination due to political party affiliation, did not allege that defendant city and officials discriminated against plaintiff employee on the basis of age, race, creed, color, national origin, sexual orientation, sex, marital status, or disability, the claims brought pursuant to *N.Y. Civ. Rights Law § 40-C(2)* and *N.Y. Exec. Law § 291(1)* were dismissed. *Hennessy v City of Long Beach, 258 F. Supp. 2d 200, 2003 U.S. Dist. LEXIS 6955 (E.D.N.Y. 2003)*.

Former university employee's state law claims under *N.Y. Exec. Law § 291* were dismissed; because she chose to proceed with her discrimination complaint before the New York State Division of Human Rights (NYSDHR) and the NYSDHR did not dismiss her claim for administrative convenience, the claims were barred under *N.Y. Exec. Law § 297(9)*. *Forbes v State Univ. of N.Y., 259 F. Supp. 2d 227, 2003 U.S. Dist. LEXIS 7391 (E.D.N.Y. 2003)*.

Tenant's claims that a property rental agency violated *N.Y. Exec. Law § 291(2)* in its treatment of the tenant's wheelchair-bound daughter failed because disability is not the basis of a protected class by the terms of § 291. *Reyes v Fairfield Props., 661 F. Supp. 2d 249, 2009 U.S. Dist. LEXIS 88328 (E.D.N.Y. 2009)*.

2. Age discrimination

Former airline flight attendants who were not hired by successor airline because of its use of weight standards in hiring decisions failed to establish that they were victims of age discrimination on ground that weight charts did not make appropriate adjustments for age, where there was no evidence establishing disparate treatment of relatively older flight attendants, airline submitted substantial evidence that it relied heavily on seniority in employing former flight attendants, and its flight attendants averaged over 40 years of age. *Delta Air Lines v New York State Div. of Human Rights, 91 N.Y.2d 65, 666 N.Y.S.2d 1004, 689 N.E.2d 898, 1997 N.Y. LEXIS 3710 (N.Y. 1997)*.

The Legislature did not intend to repeal subdivision e of *section 381-b of the Retirement and Social Security L*aw, providing for mandatory retirement of uniformed State Police at age 55, by its subsequent definition of "civil right" in subdivision 1 of *section 291 of the Executive Law* to include freedom from age discrimination, since it had expressly excepted qualified retirement plans from "unlawful discriminatory practices" relating to age discrimination ever since the enactment of subdivision 3-a of *section 296 of the Executive Law*, prior to the adoption of section 381-b. *State Div. of Human Rights ex rel. Kozlowski v State, 62 A.D.2d 617, 406 N.Y.S.2d 401, 1978 N.Y. App. Div. LEXIS 10885 (N.Y. App. Div. 4th Dep't 1978)*, app. dismissed, *46 N.Y.2d 939, 415 N.Y.S.2d 1028, 1979 N.Y. LEXIS 3035 (N.Y. 1979)*.

Court properly dismissed age discrimination claims under CLS *Exec § 296* alleging that employer's severance pay plan (following closure of its plant in 1982 due to economic hardship) discriminated against employees who qualified for retirement by requiring them to choose between severance pay and enhanced retirement benefits, as employer's severance plan constituted employee welfare benefit plan covered by Employee Retirement Income Security Act (ERISA) and thus it was governed by federal Age Discrimination in Employment Act (ADEA), not state anti-discrimination laws; moreover, petitioners did not state grounds for relief under ADEA, as severance plan that denies severance pay to laid-off employees who are eligible for retirement does not violate ADEA. *Brayley v Doehler-Jarvis Castings Div., 218 A.D.2d 393, 637 N.Y.S.2d 909, 1996 N.Y. App. Div. LEXIS 1565 (N.Y. App. Div. 4th Dep't 1996)*.

3. Marital status

University's policy of limiting cohabitational housing eligibility to students, their spouses and dependent children did not facially discriminate against lesbians and gay men based on marital status, and thus action alleging such discrimination in violation of state and city Human Rights Laws was properly dismissed. *Levin v Yeshiva Univ., 96 N.Y.2d 484, 730 N.Y.S.2d 15, 754 N.E.2d 1099, 2001 N.Y. LEXIS 2016 (N.Y. 2001)*.

Termination of petitioner's employment as correction officer did not violate CLS *Exec §§ 291* and *296*, which prohibit discharge of employee due to marital status, although petitioner's undisclosed marriage to inmate and parolee was mentioned in notice of discipline, where basis for her termination was violation of Employees' Manual rules prohibiting employees from engaging in relationship with any inmate in manner or form not necessary or proper for discharge of duties, and requiring that any such relationship be reported. *Vega v Department of Correctional Services, 186 A.D.2d 340, 588 N.Y.S.2d 202, 1992 N.Y. App. Div. LEXIS 10816 (N.Y. App. Div. 3d Dep't 1992)*, app. dismissed, *81 N.Y.2d 782, 594 N.Y.S.2d 718, 610 N.E.2d 391 (N.Y. 1993)*.

University's housing policy, which required proof of marriage in order for nonstudent spouses to reside in apartments, did not violate provisions of state and city Human Rights Law prohibiting discrimination on basis of marital status, notwithstanding alleged disparate impact on homosexuals who (unlike heterosexual couples) are not allowed to marry their same-sex partners. *Levin v Yeshiva Univ., 180 Misc. 2d 829, 691 N.Y.S.2d 280, 1999 N.Y. Misc. LEXIS 205 (N.Y. Sup. Ct. 1999)*.

4. Pregnancy

School board's regulation requiring pregnant teachers to begin unpaid leaves of absence no later than the 4th month of pregnancy and to continue such leaves at least 6 months after confinement was a violation of Executive L Art 15 and discriminated against the complainants and others similarly situated. *Board of Education v New York State Div. of Human Rights, 42 A.D.2d 600, 345 N.Y.S.2d 101, 1973 N.Y. App. Div. LEXIS 4066 (N.Y. App. Div. 2d Dep't 1973)*, aff'd, *35 N.Y.2d 677, 360 N.Y.S.2d 888, 319 N.E.2d 203, 1974 N.Y. LEXIS 1328 (N.Y. 1974)*.

5. Racial discrimination

Numerous inquiries by library trustee as to librarian's race, religion and maiden name, by constant harassment of her while she was performing her duties, and the incorporation by him in his charges of a gratuitous, baseless, irrelevant and insulting statement concerning her religious sect and "language background", notwithstanding her extensive educational background and vocational excellence, when examined in aggregate, evidenced a prejudicial and biased attitude and a pattern of discrimination which the Human Rights Law was designed to combat. *State Div. of Human Rights v Gorton, 32 A.D.2d 933, 302 N.Y.S.2d 966, 1969 N.Y. App. Div. LEXIS 3409 (N.Y. App. Div. 2d Dep't 1969)*.

Development corporation, which was found to have discriminated against employee because of his race, was required to comply with nondiscriminatory standards of employment as directed by Commissioner of Human Rights. *State Div. of Human Rights ex rel. Falleder v Massive Economic Neighborhood Development, Inc., 47 A.D.2d 187, 366 N.Y.S.2d 23, 1975 N.Y. App. Div. LEXIS 9136 (N.Y. App. Div. 1st Dep't 1975)*.

Offer of $6,000 per month renewal lease to operator of small grocery store in New York City was within realm of commercial reasonableness and thus economically rather than racially motivated; accordingly, New York Human Rights Law was inapplicable to action. *In re Owens, 30 B.R. 399, 1983 Bankr. LEXIS 6043 (Bankr. S.D.N.Y. 1983)*.

Plaintiff's allegation that he was terminated by his former employer for being married to black woman stated claim under Human Rights Law. *Rosenblatt v Bivona & Cohen, P.C., 946 F. Supp. 298, 1996 U.S. Dist. LEXIS 17576 (S.D.N.Y. 1996)*.

Where a former employee alleged that that the employee was harassed, shunned, and subjected to an intimidating work environment, which allegedly included efforts to undermine the employee's authority and to exclude the employee from meetings which the employee had attended in the past, the employee's generalized claims of such treatment did not create a genuine issue of material fact concerning the employee's claim of retaliation for complaining of racial discrimination in view of the employee's failure to identify any specific actions by the employers which materially changed the terms or conditions of employment. *Quarless v Bronx-Lebanon Hosp. Ctr., 228 F. Supp. 2d 377, 2002 U.S. Dist. LEXIS 23315 (S.D.N.Y. 2002)*, aff'd, *75 Fed. Appx. 846, 2003 U.S. App. LEXIS 22034 (2d Cir. N.Y. 2003)*.

Former minority employee failed to show actionable discrimination based on disparate pay where the employee failed to identify the white managers who allegedly received larger salary increases and made no attempt to establish that the managers who allegedly received such pay raises were in positions similar to that of the employee. *Quarless v Bronx-Lebanon Hosp. Ctr., 228 F. Supp. 2d 377, 2002 U.S. Dist. LEXIS 23315 (S.D.N.Y. 2002)*, aff'd, *75 Fed. Appx. 846, 2003 U.S. App. LEXIS 22034 (2d Cir. N.Y. 2003)*.

Where a former employee alleging a retaliation claim presented sufficient evidence to demonstrate that the employee complained that minority employees were subjected to disparate pay, and that the employee had a reasonable belief that the employers' conduct in this regard constituted racial discrimination, the employee produced enough evidence to create a genuine issue of material fact regarding his participation in a protected activity, regardless of whether the employee filed an Equal Employment Opportunity Commission charge. *Quarless v Bronx-Lebanon Hosp. Ctr., 228 F. Supp. 2d 377, 2002 U.S. Dist. LEXIS 23315 (S.D.N.Y. 2002)*, aff'd, *75 Fed. Appx. 846, 2003 U.S. App. LEXIS 22034 (2d Cir. N.Y. 2003)*.

In an action in which an employee filed suit against his employer alleging that he was denied a post assignment because he was African-American, the court found that the employee's evidence of discrimination, whether direct or indirect, was not

sufficiently compelling; the employer satisfied its burden by suggesting non-discriminatory grounds for the selection. *Fullard v City of New York, 274 F. Supp. 2d 347, 2003 U.S. Dist. LEXIS 10283 (S.D.N.Y. 2003)*.

6. Religious discrimination

Numerous inquiries by library trustee as to librarian's race, religion and maiden name, by constant harassment of her while she was performing her duties, and the incorporation by him in his charges of a gratuitous, baseless, irrelevant and insulting statement concerning her religious sect and "language background", notwithstanding her extensive educational background and vocational excellence, when examined in aggregate, evidenced a prejudicial and biased attitude and a pattern of discrimination which the Human Rights Law was designed to combat. *State Div. of Human Rights v Gorton, 32 A.D.2d 933, 302 N.Y.S.2d 966, 1969 N.Y. App. Div. LEXIS 3409 (N.Y. App. Div. 2d Dep't 1969)*.

Court erred in determining that the employee failed to raise triable issues of fact regarding discrimination and retaliation because the employee referred to his good disciplinary record for the first three years of his employment, followed by frequent citations for disciplinary issues which commenced only after he allegedly began complaining of discriminatory treatment on the basis of association, ancestry, and religion. *Macchio v Michaels Elec. Supply Corp., 149 A.D.3d 716, 51 N.Y.S.3d 134, 2017 N.Y. App. Div. LEXIS 2575 (N.Y. App. Div. 2d Dep't 2017)*.

7. Sex discrimination

Former airline flight attendants who were not hired by successor airline due to its use of weight standards in hiring decisions failed to establish that they were victims of sex discrimination because weight charts permitted male applicants of given height and age to weigh more than female applicants of same height and age, given real physiological differences between males and females; airline's standards recognized statistically established norms that males tend to weigh more than females of same height, and there was no disparate impact therefrom in that approximately 90 percent of its flight attendants were female. *Delta Air Lines v New York State Div. of Human Rights, 91 N.Y.2d 65, 666 N.Y.S.2d 1004, 689 N.E.2d 898, 1997 N.Y. LEXIS 3710 (N.Y. 1997)*.

In view of evidence that, in 27 nepotism cases involving husbands and wives at university, none of the husbands was required to accept temporary appointment while wife was either given temporary appointment or had nepotism rule waived permitting her to receive term appointment and that rule was waived when university sought to attract a "star" professor whose wife also wanted to work, rule resulted in discrimination against women and female faculty member, whose husband had a term appointment and who was denied a term appointment for herself on basis of nepotism rule, was discriminated against on basis of her sex. *Sanbonmatsu v Boyer, 45 A.D.2d 249, 357 N.Y.S.2d 245, 1974 N.Y. App. Div. LEXIS 4466 (N.Y. App. Div. 4th Dep't 1974)*, app. dismissed, *36 N.Y.2d 871, 370 N.Y.S.2d 926, 331 N.E.2d 701, 1975 N.Y. LEXIS 1917 (N.Y. 1975)*, app. denied, *37 N.Y.2d 705, 1975 N.Y. LEXIS 2779 (N.Y. 1975)*.

The requirement of defendants that plaintiff, an accomplished male tennis player who underwent a sex reassignment operation at the age of 41, pass the Barr body sex determination test which determines the presence of a second "x" chromosome in the "normal female", in order to be eligible to participate in the women's singles of the United States Open tennis championships, is grossly unfair, discriminatory and inequitable, and violative of plaintiff's rights under the State Human Rights Law (*Executive Law, § 290 et seq.)* since, by all other known indicators of sex, plaintiff is a female in that her external genital appearance is that of a female, her internal sex is that of a female who has been hysterectomized and ovariectomized, she is psychologically a woman, and, as the result of the administration of female hormones, she has the muscular and fat composition of a female. While the Barr body test is a recognized and acceptable tool for determining sex in athletic competition in order to prevent men masquerading as women from competing against women, it should not be the sole criterion where the overwhelming medical evidence indicates that the person in question is female. *Richards v United States Tennis Ass'n, 93 Misc. 2d 713, 400 N.Y.S.2d 267, 1977 N.Y. Misc. LEXIS 2670 (N.Y. Sup. Ct. 1977)*.

Gender identity disorder of a minor child, a biological male, was a disability, and a children's services agency had to make a reasonable accommodation to this disability by allowing the child to wear skirts and dresses at its foster care facility. *Doe v Bell, 194 Misc. 2d 774, 754 N.Y.S.2d 846, 2003 N.Y. Misc. LEXIS 95 (N.Y. Sup. Ct. 2003)*.

9. Aiding and abetting

Employee's claim of aiding and abetting discrimination survived his supervisor's motion to dismiss because the bankruptcy court did not find that the debtor did or did not discriminate against the employee or address the merits of his aiding and abetting claim. *Mohammed v Great Atl. & Pac. Tea Co., Inc., 986 N.Y.S.2d 796, 44 Misc. 3d 396, 2014 N.Y. Misc. LEXIS 2356 (N.Y. Sup. Ct. 2014)*.

Opinion Notes

Agency Opinions

1. Abortions

Legislation on the subject of abortion has been preempted by the State of New York and the County of Rensselaer has no authority to enact rules or regulations concerning abortions. 1979 NY Ops Atty Gen Apr 9 (Informal), *1979 N.Y. AG LEXIS 134*.

2. Age discrimination

The Board of Commissioners of Pilots may decline to renew the license of a Long Island Sound-Block Island Sound pilot, who had not reached his sixtieth birthday on January 1, 1972, solely on the ground that he has now reached the age of sixty-five. *1980 N.Y. Op. Att'y Gen. No. 55, 1980 N.Y. AG LEXIS 53*.

Research References & Practice Aids

Codes, Rules and Regulations:

Rules of Practice, Division of Human Rights. *9 NYCRR §§ 465.1*–465.20 (CLS Exec Appx, Human R Rules §§ 465.1–465.20).

General Regulations, Division of Human Rights. *9 NYCRR §§ 466.1*–466.10 (CLS Exec Appx, Human R Rules §§ 466.1–466.10).

Jurisprudences:

18 NY Jur 2d Civil Rights §§ 4, 8, 25–27, 60.

18A NY Jur 2d Civil Rights §§ 94, 107, 129, 135.

25 NY Jur 2d Counties, Towns, and Municipal Corporations § 84.

27 NY Jur 2d Counties, Towns, and Municipal Corporations § 1195.

7 Medina's Bostwick Practice Manual (Matthew Bender), Forms HR 101 et seq. (actions and proceedings relating to the Human Rights Law).

Causes of Action:

Cause of Action Against an Employer for Discrimination Because of Mental Illness, Pursuant to the Americans with Disabilities Act, 13 COA2d 177.

Law Reviews:

Sex discrimination: the pregnancy-disability exclusion. 49 St. John's L Rev 684.

Annotations:

Construction and operation of "equal opportunities clause" requiring pledge against racial discrimination in hiring under construction contract. 44 ALR3d 1283.

What constitutes employment discrimination on basis of "marital status" for purposes of state civil rights laws. 44 ALR4th 1044.

Medical malpractice in performance of legal abortions. 69 ALR4th 875.

Construction and application of provisions of Title VII of Civil Rights Act of 1964 (*42 USCS §§ 2000e* et seq.) making sex discrimination in employment unlawful. 12 ALR Fed 15.

"Redlining," consisting of denial of home loans or insurance coverage in certain neighborhoods, as discrimination in violation of §§ 804 and 805 of Fair Housing Act (*42 USCS §§ 3604*, *3605*). 73 ALR Fed 899.

Sex discrimination–Supreme Court cases. *27 L Ed 2d 935*.

Racial discrimination in labor and employment–Supreme Court cases. *28 L Ed 2d 928*.

Supreme Court's views as to validity, under Federal Constitution, of abortion laws. *111 L Ed 2d 879*.

Texts:

New York Employee Discrimination Handbook (1998 ed, Matthew Bender).

Hierarchy Notes:

NY CLS Exec, Art. 15