

End of the Year Rule-Making Impacting Protected Classes

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On December 8, 2022, a state panel approved changes to regulations which define protected classes under the Pennsylvania Human Relations Act. These changes, which were made through the Pennsylvania Human Relations Commission's rule-making authority, expand the definitions of sex, religious creed and race. The new definitions are partially consistent with Title VII of the Civil Rights Act and court rulings interpreting the same, but in some instances intentionally expand the scope of protection for particular groups.

The new regulations promulgated by the Pennsylvania Human Relations Commission define "sex" when used in connection with the unlawful discriminatory practices to include 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; (6) affectional or sexual orientation, including heterosexuality, homosexuality, bisexuality and asexuality; and (7) differences of sex development, variations of sex characteristics or other intersex characteristics. There is no definition of the phrase "differences of sex development, variations of sex characteristics or other intersex characteristics."

Religious creed is defined to include all aspects of religious observance, practice and belief. Religious beliefs are further defined to 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 these beliefs, or the fact that the religious group to which the individual professes to belong may not accept this belief, will not determine whether the belief is a religious belief of a complainant.

Under the new regulations, race is defined to include: (1) ancestry, national origin or ethnic characteristics; (2) interracial marriage or association; (3) traits historically associated with race, including, but not limited to hair texture and 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; and (5) persons of any other national origin or ancestry as specified by a Complainant.

These regulations likely require updating of municipal policies which prohibit discrimination and harassment in the workplace. Corresponding training should be provided to employees and supervisors so it is clear what type of conduct is prohibited in the workplace. These regulations become effective within sixty (60) days of publication of the final form regulation in the PA Bulletin. Campbell Durrant attorneys are available to assist municipalities in updating their policies and providing training regarding the expanded "protected classes."

On another note, President Biden signed into law the Respect for Marriage Act on December 13, 2022. The Act prohibits persons operating under the cover of state law (like public sector employers) from refusing to recognize the marriage of interracial or same-sex marriages

that occur in other states where such marriages were legally entered into even if those marriages are now prohibited under that state's current law.