

*Borough of West Chester, PA
Monday, July 14, 2014*

Chapter 37A. ANTIDISCRIMINATION

[HISTORY: Adopted by the Council of the Borough of West Chester 9-20-2006 by Ord. No. 2006. Amendments noted where applicable.]

§ 37A-1. Purpose and declaration of policy.

- A. In order to ensure that all persons, regardless of actual or perceived race, color, sex, religion, ancestry, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids enjoy the full benefits of citizenship and are afforded equal opportunities for employment, housing and the use of public accommodations, it is necessary that appropriate legislation be enacted.
- B. It is hereby declared to be the public policy of the Borough to foster the employment of all individuals in accordance with their fullest capacities regardless of actual or perceived race, color, sex, religion, ancestry, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids, and to safeguard their right to obtain and hold employment without such discrimination, to assure equal opportunities to all individuals and to safeguard their rights to public accommodation and to secure housing accommodation and commercial property regardless of actual or perceived race, color, sex, religion, ancestry, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids.
- C. Nothing in this chapter shall be construed as supporting or advocating any particular doctrine, position, point of view, or religious view. To the contrary, it is the intention of this chapter that all persons be treated fairly and equally, and it is the express intent of this chapter to guarantee fair and equal treatment under the law to all people of the Borough.
- D. This chapter shall be deemed an exercise of the police power of the Borough for the protection of the public welfare, prosperity, health and peace of the West Chester community.

§ 37A-2. Definitions.

- A. The following words and phrases appearing with initial capital letters when used in this chapter shall have the meanings given to them in this subsection.

BOROUGH

The Borough of West Chester, County of Chester, Commonwealth of Pennsylvania.

BOROUGH COUNCIL

The Borough Council of the Borough of West Chester.

CHAPTER

This chapter which shall also be known as the "Antidiscrimination Ordinance."

DISCRIMINATION

Any discriminatory act(s) taken by any person, employer, employment agency, labor organization or public accommodation on the basis of actual or perceived race, color, sex, religion,

ancestry, national origin, sexual orientation, gender identity or expression, familial status, marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids.

DISCRIMINATORY ACTS

All acts defined in the Pennsylvania Human Relations Act as "unlawful discriminatory practices."

The fact that the Pennsylvania Human Relations Act would not define a practice as unlawful when that practice is taken on the basis of actual or perceived sexual orientation, gender identity or expression, or marital status shall not exempt such practice from being considered a discriminatory act under this chapter.

GENDER IDENTITY OR EXPRESSION

Self perception, or perception by others, as male or female, and shall include an individual's appearance, behavior, or physical characteristics, that may be in accord with, or opposed to, one's physical anatomy, chromosomal sex, or sex assigned at birth, and shall include, but is not limited to, persons who are undergoing or have completed sex reassignment.

EMPLOYEE

Does not include any individuals who, as a part of their employment, reside in the personal residence of the employer.

EMPLOYER

Any person who employs one or more employees, including the Borough, its departments, boards and commissions, and any other government agency within its jurisdiction.

PERSON

Any natural person, fraternal, civic or other membership organization, corporation, general or limited partnership, proprietorship, limited liability company, or similar business organization, including the Borough, its departments, boards and commissions, and other for profit and nonprofit organizations.

PUBLIC ACCOMMODATION

Any accommodation, resort or amusement which is open to, accepts or solicits the patronage of the general public or offers goods or services, including loans, to the general public or is listed in Section 4(l) of the Pennsylvania Human Relations Act, 43.P.S. § 954(l), but shall not include any accommodations which are in their nature distinctly private.

SEXUAL ORIENTATION

Actual or perceived homosexuality, heterosexuality and/or bisexuality.

- B. To the extent words and phrases appearing in this chapter are not expressly defined herein, the words and phrases shall be defined in accordance with the meaning given to such term in the Act.

§ 37A-3. Unlawful practices.

- A. Discrimination in housing, employment or public accommodations is prohibited under this chapter.
- B. Retaliation against any individual because such individual has opposed any practice forbidden by this chapter, or because such individual has made a charge, testified or assisted in any manner in any investigation, proceeding or hearing under this chapter is prohibited under this chapter.
- C. Aiding, abetting, inciting, compelling or coercing the doing of any act declared by this chapter to be an unlawful practice, or obstructing or preventing any person from complying with the provisions of this chapter is prohibited under this chapter.

§ 37A-4. Exception.

Notwithstanding any other provision of this chapter, it shall not be an unlawful employment practice for a religious corporation or association, not supported in whole or in part by governmental appropriations, to refuse to hire or employ an individual on the basis of religion.

§ 37A-5. Establishment of Human Relations Commission.

- A. Pursuant to § 962.1 of the Pennsylvania Human Relations Act, there is hereby established a Human Relations Commission in and for the Borough of West Chester (hereinafter referred to as the “West Chester Human Relations Commission” or the “Commission”).
- B. The West Chester Human Relations Commission shall consist of five members, who shall serve overlapping terms of three years each. Members of the Commission shall be appointed by Borough Council. Members shall be residents of the Borough. No member of the West Chester Human Relations Commission shall hold any office in any political party. Members of the West Chester Human Relations Commission shall serve without salary but may be paid expenses incurred in the performance of their duties as approved by the Borough Council.
- C. One of the Commission’s members shall be appointed as the Chairperson of the Commission by the Mayor. The Chairperson will be responsible for setting Commission meetings, coordinating with the West Chester Borough Manager regarding received complaints and answers, and generally ensuring that the duties of the Commission are fulfilled. The Chairperson may delegate responsibility for Commission duties to specific Commissioners or to paid staff, if applicable.
- D. The Borough Council hereby grants to the Borough Human Relations Commission all of the powers necessary to execute its duties (as set forth below), provided that those powers shall not exceed those exercised by the Pennsylvania Human Relations Commission under the Pennsylvania Human Relations Act.

§ 37A-6. Procedures.

A. Filing a complaint.

- (1) Any person(s) who claims he/she or it has been aggrieved by an unlawful practice prohibited in § **37A-3** of this chapter may make, sign and file a verified complaint alleging violations of this chapter, which shall include the following information:
 - (a) The name and address of the aggrieved person(s);
 - (b) The name and address of the person(s) alleged to have committed the prohibited practice;
 - (c) A concise statement of the facts, including pertinent dates, constituting the alleged discriminatory practice;
 - (d) If applicable, the address and a description of the dwelling unit which is involved; and
 - (e) Such other information as may be required by the Borough.
- (2) Complaints may be filed in person at the Borough Manager’s office, or by mailing such complaints to the Borough Manager’s office or to the Chairperson of the Human Relations Commission. All complaints must be received by the Borough Manager’s office or by Human Relations Commission within 300 days of the alleged act of discrimination to be considered timely.
- (3) The Borough Manager’s office shall convey all original complaints received by that Office to the Chairperson of the Human Relations Commission within 10 days of the office’s receipt of such complaints.

B. Notification and answer.

- (1) Within 30 days of its receipt of a complaint, the Human Relations Commission shall send a copy of the complaint to the person(s) charged with a discriminatory practice (the “respondent(s)”) and send a notice to the person(s) aggrieved, informing them that their complaint has been received. If the complaint alleges discrimination on a basis proscribed under federal or state law, the notice sent to the person(s) aggrieved shall also inform them of their right to file with the state Human Relations Commission and/or with the federal Equal Employment Opportunity Commission.
- (2) The respondent(s) shall file a written verified answer to the complaint within 60 days of their

receipt of the complaint. An answer to a complaint may be filed in the same manner as an original complaint. If the answer is filed with the Borough Manager's office, it shall be conveyed by the Borough Manager to the Chairperson of the Human Relations Commission within 10 days of the Borough Manager's office's receipt thereof. The Commission shall promptly send a copy of the answer to the person(s) aggrieved.

C. Mediation.

- (1) After the answer has been received, the Commission shall, within 60 days, invite the parties to voluntarily participate in the mediation of their dispute. The parties shall respond to the invitation to mediate within 30 days of being invited to mediate their dispute.
- (2) If mediation is elected by the parties, the parties may jointly select a mediation service, in which case the parties shall be financially responsible for all costs and expenses associated with mediation. If the parties do not jointly select a mediator, the Commission shall select a mediator, who may be a member of the Commission, a volunteer from the community, or a contracted mediation service. The Commission shall use cost-free volunteer mediators only, unless funds are approved for contracted mediation services by the Borough Council, or are obtained from an outside funding source.
- (3) The parties shall notify the Commission of whether the mediation was successful in resolving the complaint. Mediation proceedings shall otherwise be confidential and shall not be made public unless agreed to in writing by both parties to the dispute.

D. Dismissal of the complaint. Provided the Commission has not elected under Subsection **E** of this section to use expanded procedures, the Commission shall, following the mediation, promptly notify the parties that they have dismissed the complaint. If the complaint was not resolved through mediation, this notice shall also indicate that the person aggrieved has a right to pursue the matter in court by filing a lawsuit.

E. Option of the Commission to elect for expanded procedures. Subject to the approval of Borough Council, and provided funding is available to implement such procedures, the Commission shall have the authority to elect to adopt expanded procedures, as set forth in Subsections **F** through **L** of this section. The Commission may obtain funding for expanded procedures from any available source, including federal or state government entities, private foundations, and other funding sources. A majority of Commission members must vote in favor of adopting expanded procedures in order for such procedures to be adopted. In the event that such procedures are adopted, they must, while in effect, be applied to all complaints that are not resolved through mediation. If the Commission has adopted expanded procedures it may also by majority vote, and in its sole discretion, eliminate such procedures. Provided funds are available, it shall be solely within the discretion of the Commission and the Borough Council to decide whether to adopt or eliminate expanded procedures, and no person shall have the right to make any claim, bring any action, or otherwise contest the Commission and/or Council's decision to adopt, decline to adopt, or eliminate expanded procedures. This section does not create any private right or entitlement to have expanded procedures implemented, even if funding is available for such procedures.

F. Expanded procedures: dismissal or nondismissal of the complaint. If mediation was successful in resolving the complaint, the Commission shall follow the procedures set forth in Subsection **D** of this section for dismissing the complaint. If mediation was not successful in resolving the complaint, the Commission shall not dismiss the complaint, but shall instead undertake the procedures set out in Subsections **G** through **I** of this section.

G. Expanded procedures: investigation. The Commission shall, in a timely fashion, investigate the allegations of discrimination set forth in the complaint. The Commission may, in the conduct of such investigation, issue subpoenas to any person charged with an unlawful practice to furnish information, records or other documents, as necessary to assist in its investigation.

- H. Expanded procedures: finding of no cause. If it shall be determined after the Commission's investigation that there is no basis for the allegations of the complaint, the Commission shall cause to be issued and served upon the parties written notice of such determination. This notice shall inform the person aggrieved that they have the right to pursue the matter in court by filing a lawsuit.
- I. Expanded procedures: conciliation. If the Commission, after investigation, determines that probable cause exists for the allegations of the complaint, the Commission shall immediately endeavor to eliminate the unlawful practice complained of by persuasion, conference and conciliation.
- J. Expanded procedures: public hearing.
- (1) If the Commission, in its discretion, finds it is not possible to eliminate the unlawful practices by persuasion, the Commission shall cause to be issued and served a written notice, together with a copy of the complaint, which informs the respondent that they must answer the charges of such complaint at a hearing before the Commission at a time and place to be specified in such notice.
 - (2) The Commission may designate one or more of its members to preside at such a hearing, or it may at its election conduct such hearing en banc.
 - (3) At the public hearing, the case in support of the complaint shall be presented to the Commission by counsel for the complainant or by Commission staff. The case in support of the complaint may instead be presented by the complainant's attorney, if the complainant is represented. Both the complainant and the respondent may appear at the hearing with or without counsel, and provide testimony. In addition, both the complainant and the respondent may introduce the testimony of additional witnesses, and may submit documentary evidence. The Commission and the parties shall not be bound by the strict rules of evidence at the hearing.
- K. Expanded procedures: findings. If upon consideration of all of the evidence at the hearing, the Commission finds that a respondent has engaged in or is engaging in any unlawful discriminatory act as defined in this chapter, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such additional action as the Commission deems appropriate. The Commission shall have the authority to order any remedies available to the Pennsylvania Human Relations Commission under the Pennsylvania Human Relations Act.
- L. Expanded procedures: finding of no discrimination. If, upon consideration of all of the evidence, the Commission finds that a respondent has not engaged in any unlawful discriminatory act as defined in this chapter, the Commission shall state its findings of fact, and shall issue and cause to be served on the parties an order dismissing the complaint as to such respondent.

§ 37A-7. Private right of action and nonlimitation of remedies.

- A. Any person(s) aggrieved by a violation of this chapter shall have a right of action in the Chester Court of Common Pleas or any other court of competent jurisdiction, and may recover for each violation the following remedies:
- (1) Back pay, front pay and other actual damages;
 - (2) Emotional distress damages;
 - (3) Exemplary damages;
 - (4) Reasonable attorney's fees and court costs; and
 - (5) Such other relief, including injunctive relief, as the court may deem appropriate.
- B. The right of action created by this chapter may be brought upon receipt by the aggrieved person(s) of notice that the Commission has dismissed the complaint or if no such notice is received, after one year from the date of the filing of the complaint. If the person aggrieved has received notice

that the Commission has dismissed the complaint, an action under this chapter must be brought by the aggrieved person within one year from the date of receipt of said notice or it will be barred.

Equitable principles such as waiver, estoppel and equitable tolling shall apply to the time limitations for the filing of any complaint or other pleading under this chapter.

- C. Nothing in this chapter limits the right of an aggrieved person to recover under any other applicable law or legal theory.