

Chapter 40

HUMAN RELATIONS COMMITTEE

GENERAL REFERENCES

Officers and employees — See Ch. 52.

ARTICLE I
General Provisions

§ 40-1. Purpose.

To ensure all individuals, regardless of genuine or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial or marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids be given equal opportunities for employment, housing and the use of public accommodations, it is essential that appropriate legislation be adopted.

§ 40-2. Statement of policy.

It is hereby confirmed to be the public policy of the Borough of Downingtown to promote and uphold the fair and equal employment for all individuals in accordance with their utmost abilities regardless of genuine or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial or marital status, age, veteran status, mental or physical disability, use of guide or support animals and/or mechanical aids, and to protect their right to obtain and hold employment without discrimination, and to declare equal opportunities for all persons and to protect their rights to secure housing accommodation, public accommodation and commercial property regardless of genuine or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial or marital status, age, mental or physical disability, use of guide or support animals and/or mechanical aids.

§ 40-3. Definitions.

As used in this chapter, the words and phrases herein defined shall have the following meaning unless the context otherwise requires:

BOROUGH — The Borough of Downingtown.

DISCRIMINATION — Any discriminatory act(s) taken by any person, employer, landlord, employment agency, labor organization or public accommodation on the basis of genuine or perceived race, color, sex, religion, ancestry, genetic information, national origin, sexual orientation, gender identity or expression, familial or 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 Act¹ 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 genuine or perceived sexual orientation, gender identity or expression, genetic information, familial or marital status shall not exempt such practice from being considered a discriminatory act under this chapter.

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

EMPLOYER — Any person or entity who employs one or more employees, including but not limited to the Borough, its departments, boards and commissions, and any other government agency within its jurisdiction.

1. Editor's Note: See 43 P.S. § 951 et seq.

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, are transgender or gender variant.

GENETIC INFORMATION — That information which is defined as genetic information in the Genetic Information Nondiscrimination Act of 2008, 42 U.S.C. § 2000ff.

ORDINANCE — This chapter will also be known as the "Anti-Discrimination Ordinance."

PERSON — Any natural person, fraternal, civic or other membership organization, corporation, general or limited partnership, proprietorship, limited liability company, or similar business organization, including but not limited to 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(1) of the Pennsylvania Human Relations Act, 43 P.S. § 954(1), but shall not include any accommodations which are in their nature distinctly private.

SEXUAL ORIENTATION — Genuine or perceived homosexuality, heterosexuality and/or bisexuality.

§ 40-4. 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.

§ 40-5. Exceptions.

- A. Nothing in this chapter shall be construed as supporting or advocating any particular doctrine, position, point of view, lifestyle 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 of Downingtown.
- B. This chapter shall be deemed an exercise of the police power of the Borough of Downingtown for the protection of the public welfare, prosperity, health and peace of the Borough.
- C. 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.

- D. Nothing in this chapter shall be interpreted to prohibit a religious organization, religious denomination, or association of religious organizations or denominations that is exempt from federal taxation under Section 501(c)(3) of the Internal Revenue Code, or any organization affiliated with that religious organization, religious denomination, or association of religious organizations or denominations, from engaging in any conduct or activity that is required by, or that implements or expresses its religious beliefs or tenets of faith. Nor shall anything in this chapter be interpreted to require any such religious organization, religious denomination, or association of religious organizations or denominations, or any organization affiliated with that religious organization, religious denomination, or association of religious organizations or denominations to engage in any conduct or activity that is prohibited by its religious beliefs or tenets of faith. Nor shall any such religious organization, religious denomination, or association of religious organizations or denominations be required to engage in any conduct or activity that would violate its religious beliefs or tenets, as a condition of entering into any contract with any agency of this Borough.

§ 40-6. Downingtown Human Relations Commission.

- A. Pursuant to 43 P.S. § 962.1 of the Pennsylvania Human Relations Act, there is hereby established a Human Relations Commission in and for Downingtown (hereinafter referred to as the "Downingtown Human Relations Commission" or the "Commission").
- B. The Downingtown Human Relations Commission shall consist of no fewer than three and no more than five voting members, who shall serve overlapping terms of four years each. At all times there shall be an odd number of members. The Commission members shall be appointed by and with the approval of Borough Council. The Commission may elect up to three nonvoting, ex officio members to broaden the diversity that serves on the Commission. Members shall be residents of the Borough or business owners who operate within the Borough or own property that dwells within the Borough limits. No voting member of the Downingtown Human Relations Commission shall hold any office in any political party. Members of the Downingtown Human Relations Commission shall serve without salary but may be paid expenses incurred in the performance of their duties, as approved by Borough Council.
- C. The Commission shall select one of its members as the Chairperson of the Commission. The Chairperson will be responsible for setting Commission meetings, coordinating with the Borough Administration 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. Borough Council hereby grants to the Downingtown Human Relations Commission all of the powers necessary to the execution of 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.

§ 40-7. Commission roles and responsibilities.

The Commission Roles and Responsibilities shall entail:

- A. Promote mutual understanding, respect and cooperation among all racial, cultural, religious, ethnic, nationality and other groups within the Borough.
- B. Make studies into the status of human relations in the Borough.
- C. Cooperate with and assist other organizations, public or private, to improve relationships among the citizens of the Borough.
- D. Conduct an educational program for furtherance of the improvement of human relations in the Borough.
- E. Act as a referral group for complaints of alleged discrimination within the Borough and, wherever possible, the Commission shall refer the complainants to appropriate social, civic or government agencies for further action.

§ 40-8. Procedures.

- A. Filing a complaint.
 - (1) Any person(s) claiming to be aggrieved by an unlawful practice 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 on request by the Borough/Human Relations Commission.
 - (2) Complaints may be filed in person at the Borough Administration office or by mailing such complaints to the Borough Administration office or to the Chairperson of the Human Relations Commission. All complaints must be received by the Borough Administration office or by the Human Relations Commission within 180 days of the alleged act of discrimination to be considered timely.
 - (3) The Borough Administration 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:

- (a) Send a copy of the complaint to the person(s) charged with a discriminatory practice [the "respondent(s)"]; and
 - (b) Send a notice to the person(s) aggrieved, informing them that the complaint has been received. If the complaint alleges discrimination on a basis prescribed under federal or state law, the notice sent to the person(s) aggrieved shall also inform them of the 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 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 Administration 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. Fact finding conference.
 - (1) After the answer has been received, the Commission shall, within 60 days, invite the parties to voluntarily participate in a fact finding conference concerning the dispute. The parties shall respond to the invitation to participate in a fact finding conference within 30 days of being invited to participate.
 - (2) If the parties agree to participate in a fact finding conference, the parties shall meet with a Commission member at a location mutually agreeable to the parties within 30 days of the agreement to participate. Each party will be invited at the fact finding conference to present evidence and documents relevant to the complaint. The fact finding conference will not be a public event, and no record of the conference will be created, excepting the findings of fact detailed in Subsection C(3) of this Section.
 - (3) The parties shall notify the Commission of whether the fact finding conference resulted in a resolution of the complaint. In the event the complaint is resolved, the Commission shall notify the parties that the complaint has been dismissed. In the event the complaint is not resolved through the fact finding conference, then the Commissioner, within 30 days, shall prepare findings of fact and a conclusion as to whether the Commissioner finds probable cause that an unlawful practice has occurred.
- D. Disposition of the complaint. Provided the Commission has not elected under Subsection E of this section to use expanded procedures, and if the complaint is not resolved through the fact finding conference, the Commission shall, at the second Commission meeting following the fact finding conference, consider the findings prepared by the Commissioner who conducted the fact finding conference. The Commission shall accept or reject the findings by public vote. The Commission shall provide the parties with the findings of fact and conclusion, shall notify the parties of the outcome of the vote, and 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. The Commission shall have the authority to elect to adopt expanded procedures as set forth in Subsection F of this section subject to approval by Borough Council and appropriation of funding by Borough

Council for such procedures. 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 a fact finding conference. If the Commission has adopted expanded procedures, it may also, by majority vote and in its sole discretion, eliminate such procedures.

F. Expanded procedures:

- (1) Dismissal or nondismissal of the complaint. If the fact finding conference was successful in resolving the complaint, the Commission shall follow the procedures set forth in Subsection C(3) of this section.
- (2) 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, or to give sworn testimony, as necessary to assist in its investigation. The Commission may seek enforcement of its subpoena by Petition to the Court of Common Pleas of Chester County as appropriate.
- (3) 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 he/she has the right to pursue the matter in court by filing a lawsuit.
- (4) 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.
- (5) Public hearing.
 - (a) If the Commission, in its discretion, finds it is not possible to eliminate the unlawful practices by persuasion, conference or conciliation, the Commission shall cause to be issued and served a written notice, together with a copy of the complaint, which informs the respondent that the respondent must answer the charges of such complaint at a hearing before the Commission at a time and place to be specified in such notice.
 - (b) 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 with a panel of either two or three Commissioners.
 - (c) 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.

- (6) Findings. If upon all the evidence at the hearing the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice 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.
- (7) Finding of no discrimination. If upon all the evidence the Commission shall find that a respondent has not engaged in any unlawful discriminatory practice, 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.

§ 40-9. Right to privacy action and nonlimitation of remedies.

- A. Any person(s) aggrieved by a violation of this chapter shall have a right of action in the appropriate Court of Common Pleas any other court of competent jurisdiction and may recover for each violation the following remedies:
 - (1) Back pay, front pay and other actual damages, as those remedies are defined in the Pennsylvania Human Relations Act and case law interpreting the same;
 - (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.

§ 40-10. Annual report.

The Downingtown Human Relations Commission shall keep records of its meetings and activities. The Downingtown Human Relations Commission shall provide advisory reports on a quarterly basis which shall be forwarded to Downingtown Borough Council and the Borough of Downingtown Administration.

§ 40-11. Review of chapter.

Borough Council retains the right to review the provisions of this chapter.