

CAPA REGULATORY AGENDA FY 2018
NEW YORK CITY COMMISSION ON HUMAN RIGHTS

Pursuant to Sections 905(9) and 1043 of the New York City Charter, the New York City Commission on Human Rights sets forth below its regulatory agenda for the City's fiscal year of 2018:

Office of the Chair

1. **SUBJECT:** Fair Chance Rules. These proposed rules regulate the provisions of the City Human Rights Law ("HRL") that prohibit discrimination in employment against employees or applicants for employment based on criminal conviction history.
 - A. **Reason:** The Fair Chance Act amended the HRL to provide protections in the employment context for applicants and employees from discrimination based on criminal history. The law went into effect in the fall of 2015. The Commission has prioritized enforcement of this new areas of our law and is working to ensure that it has maximum impact and deters discriminatory behavior that disproportionately impacts low income communities. The Commission is engaging in rulemaking to ensure that this very important law is clearly understood.
 - B. **Anticipated contents:** These proposed rules would amend title 47 of the Rules of the City of New York by amending section 2-01 to define terms used in the Human Rights Law and update the definition of "domestic partners" to reflect the definition contained in the Administrative Code. The rules will also add a new section, section 2-04, to specify chargeable violations under the Human Rights Law as amended by the FCA; define terms and requirements in furtherance of the intent of the FCA, establish guidelines and procedures for enforcement; outline obligations of employers and those evaluating individuals for licenses, registrations, permits and credit; and clarify when and under what circumstances an employer can withdraw a conditional offer or take an adverse employment action against an applicant or employee based on their criminal history. The proposed rules will also create a discretionary mechanism for the Commission to resolve Commission-initiated charges of certain per se violations under the FCA by offering eligible respondents an option for expedited resolution. This process, called Early Resolution will allow a respondent to bypass a full investigation and a hearing, by admitting liability and complying with a penalty. The monetary fine associated with the penalty is based on the penalty schedule set forth in the rules. By assessing penalties based upon employer size, the penalty schedule recognizes the impact of the discriminatory action on the public and is designed to ensure that the penalty will incentivize compliance with this program, deter future violations, and educate employers about their obligations under the law. The monetary fines are proportional to the civil penalties awarded in cases of per se violations that come before the Commission.

- C. Objectives: The objective of these proposed rules is for the Commission to be transparent in its policies and ensure that the rights and obligations under the HRL are clearly laid out and accessible to those individuals who are protected by the law or who have legal obligations pursuant to the law. The Commission is dedicated to ensuring that it serves as a venue for justice, especially for historically underserved communities that face high rates of discrimination in NYC and are often without the resources to hire an attorney to represent them when they face discrimination. The Commission believes that to do this well, the law must be clear and easy to understand and that any ambiguities be resolved so that the public can adequately understand the law.
- D. Legal Basis: Authority to engage in rulemaking is vested in the Commission on Human Rights by section 905(e)(9) of the New York City Charter and Section 1043 of the Charter.
- E. Types of individuals and entities likely to be affected: The Fair Chance Rules will impact employers and licensing agencies and applies to applicants for employment and current employees.
- F. Other relevant laws: The Fair Chance Amendment cites to the N.Y. Correct. Law Art. 23-a
- G. Approximate schedule: Anticipated adoption date first quarter of FY 2018.

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2. **SUBJECT**: Stop Credit Discrimination in Employment Act Rule. These proposed rules regulate the provisions of the HRL that prohibit discrimination in employment against applicants and employees based on credit history.
 - A. Reason: The Stop Credit Discrimination in Employment Act amended the HRL to provide protections for employees and applicants for employment from discrimination based on credit history. The law went into effect in the fall of 2015. The Commission has prioritized enforcement of this new area of our law and is working to ensure that it has maximum impact and deters discriminatory behavior that disproportionately impacts low income communities. The Commission is engaging in rulemaking to ensure that this very important law is clearly understood.
 - B. Anticipated contents: These proposed rules will add a new section 2-05 to the Commission’s rules to: specify chargeable violations under the SCDEA; clarify that employers are prohibited from requesting or requiring waivers authorizing credit checks; clarify that exemptions to coverage under the SCDEA are to be construed narrowly; define positions involving a “high

degree of public trust” and provide detail regarding certain exemptions under the SCDEA; establish recordkeeping requirements for employers; set penalties for administrative actions under the SCDEA; and provide notice that the Early Resolution process will be used for certain per se violations of the SCDEA.

- C. Objectives: The objective of these proposed rules is for the Commission to be transparent in its policies and ensure that the rights and obligations under the HRL are clearly laid out and accessible to those individuals who are protected by the law or who have legal obligations pursuant to the law. The Commission is dedicated to ensuring that it serves as a venue for justice, especially for historically underserved communities that face high rates of discrimination in NYC and are often without the resources to hire an attorney to represent them when they face discrimination. The Commission believes that to do this well, the law must be clear and easy to understand and that any ambiguities must be resolved so that the public can adequately understand the law.
- D. Legal Basis: Authority to engage in rulemaking is vested in the Commission on Human Rights by section 905(e)(9) of the New York City Charter and Section 1043 of the Charter.
- E. Types of individuals and entities likely to be affected: The Stop Credit Discrimination in Employment Rules will impact employers and licensing agencies and applies to applicants for employment and current employees.
- F. Other relevant laws: Fair Credit Reporting Act, 15 U.S.C.A §1681 *et seq.*
- G. Approximate schedule: Anticipated adoption date first quarter of FY 2018.

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3. SUBJECT: Rules of Practice Rule. These proposed rules amend the current rules of practice and seek to further clarify the provisions of the HRL that relate to procedure and process.

- A. Reason: The Commission is amending its Rules of Practice to provide clear guidance to the public about how to navigate claims being investigated by the Commission and ensure that individuals understand important procedural requirements. The majority of complainants that appear before the Commission do not have the benefit of an attorney and the Commission seeks to ensure fairness and consistency across the board, at all stages of the process.

- B. Anticipated contents: These proposed rules will amend Chapter 1 of Title 47 of the Rules of the City of New York to define key terms, clarify existing definitions and procedures, and improve on overall readability so that Commission procedure and practice is more accessible to the public and individuals litigating claims before the Commission.
- C. Objectives: The objective of these proposed rules is for the Commission to be transparent in its policies and ensure that the rights and obligations under the HRL are clearly laid out and accessible to those individuals who are protected by the law or who have legal obligations pursuant to the law. The Commission is dedicated to ensuring that it serves as a venue for justice, especially for historically underserved communities that face high rates of discrimination in NYC and are often without the resources to hire an attorney to represent them when they face discrimination. The Commission believes that to do this well, the law must be clear and easy to understand and that any ambiguities must be resolved so that the public can adequately understand the law.
- D. Legal Basis: Authority to engage in rulemaking is vested in the Commission on Human Rights by section 905(e)(9) of the New York City Charter and Section 1043 of the Charter.
- E. Types of individuals and entities likely to be affected: Rules of Practice provide clarity to the public on how the Commission is structured and how it functions. The rules will also provide guidance to individuals who are being investigated by the Commission and all those involved in cases pending before the Commission.
- F. Other relevant laws: C.P.L.R.
- G. Approximate schedule: Anticipated adoption date third quarter of FY 2018.

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