

# **NEW JERSEY DIVISION ON CIVIL RIGHTS**

**The New Jersey Law Against Discrimination**

- **The Law Against Discrimination prohibits discrimination in the areas of:**
- **Employment**
- **Housing**
- **Public Accommodations**
- **Credit**

# **PROTECTED CATEGORIES:**

## **housing**

- **Race**
- **Creed (Religion)**
- **Color**
- **Sex**
- **National Origin**
- **Ancestry**
- **Marital Status**
- **Affectional or Sexual Orientation**
- **Domestic Partnership Status ...**

- **Nationality**
- **Disability (including HIV/AIDS status)**
- **Familial Status**
- **Source of Lawful Income for Rent or Mortgage Payments**
- **Does NOT include: age, blood trait, armed services, genetic information**
- **ADDS: Familial Status and Source of Lawful Income**

## **PROTECTION ALSO APPLIES TO:**

- **Perceived membership in a class, even if false**
- **Being associated with a person in a protected class.**

# DISPARATE IMPACT

- Employment practice that is facially neutral in its treatment of different groups, but has harsher effects on certain groups (example: firefighters must be six feet tall).
- No showing of discriminatory motive necessary.
- *Prima facie* case is established through showing the effects on a protected class; employer has the burden of proving valid business purpose.

# DISPARATE TREATMENT

- **Employer treats some less favorably than others because of membership in a protected class.**
- **Proof of discriminatory motive necessary, but can be inferred from difference in treatment.**

# PROVING DISCRIMINATION

- **A complainant may prove unlawful discrimination using either:**
  - **Direct evidence, or**
  - **Circumstantial evidence.**



# **THE *PRIMA FACIE* CASE ADAPTS FOR VARIOUS TYPES OF CLAIMS**

**While basically the same for all kinds of discrimination, the *prima facie* case is flexible to suit the type of claim. For example, for an employment termination case, the elements are:**

- 1. Plaintiff belongs to a protected class;**
- 2. Plaintiff is performing the job at a level that meets the employer's legitimate expectations;**
- 3. Plaintiff was terminated;**
- 4. The need remained for someone to perform the Plaintiff's job responsibilities.**

# BURDENS OF PROOF USING CIRCUMSTANTIAL EVIDENCE

1. Complainant must establish a *prima facie* case, which creates the presumption that discrimination occurred,

↓ THEN

2. Respondent must then articulate – not prove – a legitimate business reason for the action. This removes the presumption,

↓ THEN

3. Complainant must show that the articulated reason is a “pretext” for discrimination.

# PROVING PRETEXT

**Examples of pretext include:**

- **The reason given is false**
- **There was differential treatment**
- **Defendant gave contradictory or changing reasons for the action**
- **The standards/qualifications for the job changed mid-stream**
- **A hostile working environment existed**
- **The employer violated his/her own policies**

# PROCEDURE

The LAD does not require exhaustion of administrative remedies before filing a complaint.

At any time within two years of the act of alleged discrimination, a Plaintiff may file a complaint in Superior Court.

The benefits of Superior Court include the opportunity to have a jury trial and to seek punitive damages, neither of which is available in the administrative forum.

# **FILING WITH DCR**

- **Plaintiffs also have the option of filing a complaint with the Division on Civil Rights (DCR), as long as it is done within 180 days of the alleged discrimination.**
- **Upon the filing of the complaint, DCR begins an investigation of the allegations, during which both parties have the opportunity to offer evidence and suggest witnesses to the investigator.**