



# Allegheny County Council

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## Legislation Text

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An Ordinance of the County of Allegheny, Commonwealth of Pennsylvania, amending the Allegheny County Code of Ordinances, Division 2, entitled "County Government Operations," Chapter 215, entitled "Boards, Commissions and Committees," Article V, entitled "Human Relations Commission," in order to establish a Countywide nondiscrimination requirement in medical treatment settings.

**WHEREAS**, Allegheny County has had a longstanding policy against discrimination, and this policy is incorporated into the Administrative Code of Allegheny County insofar as it relates to County employment, contract, and other activities;

**WHEREAS**, human relations commissions or their equivalents exist throughout the Commonwealth of Pennsylvania, including those established by the City of Allentown, the City of Harrisburg, the City and County of Lancaster, the City of Philadelphia, the City of Pittsburgh, the City of Reading and Berks County, and the City of York, in order to provide local administration of local antidiscrimination laws and dispute mediation in cases of alleged discrimination; and

**WHEREAS**, the Pennsylvania Commonwealth Court and Supreme Court have both explicitly found that local antidiscrimination ordinances are not preempted by the terms of the Pennsylvania Human Relations Act, 43 P.S. §§951-953; and

**WHEREAS**, the Pennsylvania Commonwealth Court has explicitly found that local antidiscrimination ordinances are permissible exercises of local authority, and are not prohibited under the terms of the Home Rule Charter and Optional Plans Law, 53 P.S. §§2901-3171; and

**WHEREAS**, on July 6, 2009, former Chief Executive Onorato signed Bill. No. 4201-08 into law; and

**WHEREAS**, the provisions of 4201-08, enacted at 26-09-OR and codified in Chapter 215, Article V of the Administrative Code of Allegheny County, prohibit discrimination based upon race, color, religion, national origin or ancestry, sex, gender identity or expression, sexual orientation, disability, marital status, familial status, age or use of a guide or support animal because of blindness, deafness or physical disability of any individual or independent contractor or because of the disability of an individual with whom the person is known to have an association, in employment, housing, real estate, and public accommodations/amusements, and provide for dispute resolution and/or criminal penalties in cases involving violations;

**WHEREAS**, while the federal government expanded antidiscrimination protection to transgendered individuals in healthcare settings in 2016, these protections were eliminated on June 13, 2020, with the Department of Health and Human Services asserting that the new federal rule final rule is based on "the plain meaning of the word 'sex' as male or female and as determined by biology"; and

**WHEREAS**, the new federal rule tacitly permits discrimination against individuals solely on the basis of their gender identity or expression by medical providers in a fashion that is expressly forbidden when based on race, national origin, age, or other factors; and

**WHEREAS**, this is expressly at odds with the stated positions of the American Academy of Physician Assistants, the American Medical Association, the American Medical Student Association, the American College of Obstetricians and Gynecologists, the American Association of Family Physicians, the American College of Healthcare Executives, and the American Academy of Pediatrics; and

**WHEREAS**, a quarter of the 28,000 individuals who took part in the U.S. Transgender Survey (James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality) reported that they have experienced an insurance issue because of their gender identity; and

**WHEREAS**, 33% of respondents reported that they had a negative experience when seeing a healthcare provider in the past year, including incidents of verbal harassment, refusal of treatment, having a health care provider who did not know how to properly treat transgender individuals, and physical assaults by either healthcare employees or others waiting to be seen at a healthcare facility; and

**WHEREAS**, thousands of survey participants also reported they were denied routine health and sexual health screenings; and

**WHEREAS**, it is the judgment of Council that disparate treatment of individuals in healthcare settings solely based upon their gender identity or expression is inherently pernicious, and functions to both marginalize and adversely impact the health, safety and well-being of a population that is no less inherently deserving of competent medical care than any other population; and

**WHEREAS**, it is further the judgment of Council that there is no competent evidence that an individual's gender identity or expression somehow renders it impossible to provide them with competent medical care by adequately trained individuals;

***The Council of the County of Allegheny hereby enacts as follows:***

**SECTION 1. Incorporation of the Preamble.**

The provisions set forth in the preamble to this Ordinance are incorporated by reference in their entirety herein.

***SECTION 2. Amendment of the Code.***

The Allegheny County Code of Ordinances, Division 2, entitled "County Government Operations," Chapter 215, entitled "Boards, Commissions and Committees," Article V, entitled "Human Relations Commission," is hereby amended as follows:

**§215-31. Definitions.**

The following words, terms and phrases when used in this article shall be defined as follows, unless the context clearly indicates otherwise:

- A. **Accessible** means being in compliance with the applicable standards set forth in the following:
1. The Fair Housing Act (Public Law 90-284 as amended, 42 U.S.C. §3601 et seq.);
  2. "Americans with Disabilities Act of 1990" (Public Law 101-336, 42 U.S.C. §12101, et seq.);
- B. **Age** includes any person forty years of age or older and shall also include any other person so protected by further amendment to the Federal Age Discrimination in Employment Act.
- C. **Commercial property** means:
1. Any building, structure or facility, or portion thereof, which is used, occupied or is intended, arranged or designed to be used or occupied for the purpose of operating a business, an office, a manufactory or any public accommodation; and
  2. Any vacant land offered for sale, lease or held for the purpose of constructing or locating thereon any such building, structure, facility, business concern or public accommodation.
- D. **Commission** means the Human Relations Commission of the County of Allegheny.
- E. **Disability or Handicap** herein referred to as Disability with respect to a person means:
1. Physical or mental impairment which substantially limits one or more of such person's major life activities;
  2. Record of such an impairment; or
  3. Regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance, as defined in Section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. §802).
  4. For employment, disability means a non job-related disability which does not substantially interfere with the ability to perform the essential functions of the employment which a person with a disability applies for, is engaged in or has been engaged in. Uninsurability or increased cost of insurance under a group or employee insurance plan does not render a disability job related.
- F. **Discrimination** means any exclusion, denial, intimidation, coercion, difference or segregation in treatment as defined under the terms of this Article, and shall include but not be limited to such treatment in hiring, referring for hire, promoting, training; in membership in employee or labor organizations, in the advertisement, sale, lease, rental, financing or zoning of housing; ~~or~~ in rendering service in places of public accommodation; or for the purposes of providing medical care as defined herein because of protected class based upon race, color, religion, national origin or ancestry, sex, gender identity or expression, sexual orientation, disability, marital status, familial status, age or use of a guide or support animal because of blindness, deafness or physical disability of any individual or independent contractor or because of the disability of an

individual with whom the person is known to have an association.

G. **Employee** does not include:

1. Any individuals who, as a part of their employment, reside in the personal residence of the employer; or
2. Any individual employed by said individual's parents, spouse or child;
3. Those employed by religious, fraternal, charitable or sectarian corporations or associations in the direct provision of services of the organization wherein membership is a bona fide occupational qualification, except such corporations or associations supported, in whole or in part, by County appropriations.

H. **Employer** means any person who employs four (4) or more employees, exclusive of the parents, spouse or children of such person, including the County of Allegheny, its departments, boards, commissions and authorities, any other governmental agency within its jurisdiction, but excluding any religious, fraternal, charitable or sectarian organization.

I. **Employment Agency** includes any person regularly undertaking with or without compensation to procure opportunities to work or to procure, recruit, refer or place employees.

J. **Fair Housing Act** means Public Law 90-284, 42 U.S.C. §3601 et seq.

K. **Familial status** means one or more individuals who have not attained the age of 18 years being domiciled with:

1. A Parent or other person having legal custody of such individual or individuals; or
2. The designee of such parent or other person having such custody, with the written permission of such parent or other person.

The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years.

L. **Gender Identity or expression** means self-perception, or perception by others whether accurate or not, as male or female, including a person'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.

M. **Housing accommodations** include:

1. Any building, structure, mobile home site or facility, or portion thereof, which is used or occupied or is intended, arranged or designed to be used or occupied as the home residence or sleeping place of one or more individuals, groups or families whether or not living independently of each other; and

2. Any vacant land offered for sale, lease or held for the purpose of constructing or locating thereon any such building, structure, mobile home site or facility. The term "housing accommodation" shall not include any personal residence offered for rent by the owner thereof.

N. **Housing for older persons** means housing:

1. Provided under any State or Federal program that the Secretary of Housing and Urban Development determines is specifically designed and operated to assist elderly persons as defined in the State or Federal program; or,
2. That is intended for, and solely occupied by persons sixty-two (62) years of age or older; or,
3. That is intended and operated for occupancy by at least one person fifty-five (55) years of age or older per unit.

In determining whether housing qualifies as housing for older persons under the terms of this Article, the Commission's requirements shall include but not be limited to the following:

1. That at least eighty percent (80%) of the units are occupied by at least one (1) person fifty-five (55) years of age or older per unit; and
2. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five (55) years of age or older.

Housing shall not fail to meet the requirements for housing for older persons by reason of unoccupied units provided, that such units are reserved for occupancy by persons who meet the age requirements of this Article.

- O. **Independent contractor** includes any person who is subject to the provisions governing any of the professions and occupations regulated by state licensing laws enforced by the Bureau of Professional and Occupational Affairs in the Department of State, or is included in the Fair Housing Act (Public Law 90-284, as amended, 42 U.S.C. §3601, et seq.,).
- P. **Labor organization** includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in relation to employment.
- Q. **Lending institution** means any bank, insurance company, savings and loan association or any other person or organization regularly engaged in the business of lending money or guaranteeing loans.
- R. **Owner** includes lessee, sublessee, assignee, manager, agent, or any other person having the right of ownership or possession or the authority to sell, rent or lease any housing accommodation, including the County and its departments, authorities, boards and commissions.

- S. **Pennsylvania Human Relations Act** means Public Law 744, No. 322 as amended.
- T. **Person** includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees in bankruptcy or receivers. It also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesman, agent, employee, independent contractor, lending institution and all authorities, boards and commissions thereof.
- U. **Personal residence** means a building or structure containing living quarters occupied or intended to be occupied by no more than two (2) individuals, two (2) groups or two (2) families living independently of each other and used by the owner thereof as a bona fide residence for himself and any members of his family forming his household.
- V. **Protected class** means any categorization, classification, or other grouping of one or more person(s) legally protected from discrimination under the terms of this Article based upon race, color, religion, national origin, ancestry or place of birth, sex, gender identity or expression, sexual orientation, disability, marital status, familial status, age or use of a guide or support animal because of blindness, deafness or physical disability of any individual or independent contractor, or because of the disability of an individual with whom the person is known to have an association.
- W. **Public accommodation resort or amusement** means any place which is open to, accepts or solicits the patronage of the general public or offers goods or services to the general public, including loans, or is listed in the Pennsylvania Human Relations Act, Section 4I, but shall not include any personal or professional services which are in their nature distinctly private, personal or confidential.
- X. **Real estate-related transaction** means any of the following:
1. The making or purchasing of loans or providing other financial assistance for purchasing, constructing, improving, repairing or maintaining a housing accommodation or commercial property; or
  2. The purchasing, constructing, improving, repairing or maintaining a housing accommodation or commercial property; or
  3. The selling, brokering, using as collateral or appraising of real property.
- Y. **Sex** means male or female, and includes the gender of a person, as perceived, presumed or assumed by others.
- Z. **Sexual Orientation** means male or female homosexuality, heterosexuality and bisexuality, by preference, practice or as perceived by others, whether or not such perception is accurate.
- AA. **Medical Care** means any care provided by an individual who is licensed, certified or registered under the laws of the Commonwealth of Pennsylvania to provide, to an individual or a group, health services, including but not limited to, treatment of physical illness or injury, rehabilitation from illness or physical injury, palliative care, nursing home or other long term care, or the assessment or improvement of physical, mental,

emotional, psychiatric, psychological, or psychosocial adjustment or functioning, regardless of whether there is a diagnosable, pre-existing disorder or disease.

**BB.** Medical Care Provider means any individual, group, practice, or other entity that provides Medical Care as defined in Subsection AA. The term shall include, but not be limited to, physicians, physician assistants, nurse practitioners, psychologists, marriage and family therapists, licensed clinical social workers, professional clinical counselors, behavioral clinicians or therapists, nurses, or any other persons offering or participating in the provision of Medical Care as defined herein as a profession.

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**§215-36. Unlawful Medical Care Practices.**

**A.** It shall be an unlawful medical care practice for any Medical Care Provider to:

1. Directly or indirectly refuse, withhold, or deny Medical Care as defined in this Article to any person solely based upon such person's membership in one or more Protected Class(es); or
2. Directly or indirectly provide less or different Medical Care than would be provided to another individual similarly situated, based solely upon a person's membership in one or more Protected Class(es); or
3. Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication notice or advertisement to the effect that any of the services, advantages, facilities and privileges offered by any Medical Care Provider shall be refused, withheld or denied to any person solely based upon Protected Class, or identifying any Protected Class(es) as objectionable, ineligible for Medical Care, unacceptable, undesired or unsolicited; or
4. Otherwise engage in any practice, action, or course of action meeting the definition of Discrimination contained within this Article, if such action is based solely upon a person's membership in one or more Protected Class(es).

**B.** It shall further be a violation of this Section for any individual, group, or other entity not defined as a Medical Care Provider in this Article to obstruct, limit, or otherwise interfere with any person's exercise or enjoyment of their rights under the terms of this Section, if such obstruction, limitation or interference is based solely upon a person's membership in one or more Protected Class(es).

**§215-36 37. Human Relations Commission.**

**A.** Establishment of Commission.

There is hereby established the Human Relations Commission of the County of Allegheny composed of seven (7) members. All members of the Commission shall be residents of the County at the time of appointment and throughout their service. In the event the requirements of the position and/or availability of volunteers cannot be found within the County then the members need not be residents of the County but must be either a County taxpayer, maintain a business, be employed or go to school in the County.

All members shall be eighteen (18) years or older and shall serve terms of four (4) years each. All appointments shall be made by the Chief Executive with the approval of County Council, provided that any seat for which the Executive does not tender a nominee to Council within 30 days of the seat becoming vacant may be filled by any individual approved by a majority of the Seated Members of Council. All nominees for initial appointments shall be tendered to Council by the Executive within thirty (30) days of the effective date of this Article, and any seats for which a nominee is not provided within that time may be filled by any individual approved by a majority of the Seated Members of Council. Three of the initial appointments shall be for terms of two years, and the remaining four initial appointments shall be for terms of four years. All future appointments shall be for terms of four years.

**B. Powers and Duties**

The Commission is hereby vested with the authority to administer and enforce this Article and shall be given the following powers and duties:

1. To meet and function at any place within the County;
2. To adopt, promulgate, amend and rescind rules and regulations to effect the policies and provisions of this Article and to make recommendations to agencies of the County and County Council to effect such policies, provided that any such rules or regulations or alterations thereto are approved by a majority of Council through enactment of an ordinance or resolution;
3. To initiate, receive, investigate, refer for investigation and pass upon complaints charging unlawful discriminatory practices in violation of this Article taking place within the County.
4. To study the problems of discrimination and foster, through community effort or otherwise, good will among the groups and elements of the population of the County;
5. To issue such publications and such results of investigations and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination.
6. From time to time, but not less than once a year, to report to the Chief Executive or his designee, and the County Council describing in detail the investigations, proceedings, hearings and studies it has conducted and their outcome, the decisions it has rendered and the other work performed by it, and make recommendations for such further legislation concerning abuses and discrimination.
7. To rely upon staff employed by the Allegheny County Law Department and Human Resources Department, to the extent necessary for the accomplishment of its powers and duties as delineated in this Section, provided that such reliance does not otherwise harm the ability of either Department to fulfill its regular functions.

C. The Department of Human Resources shall provide administrative support services to the Commission. The Commission shall function as an agency of the County.

**§215-3738. Procedure.**

- A. Filing a Complaint. Any person claiming to be aggrieved by an unlawful discriminatory practice, may make, sign and file with the Commission a verified complaint in writing which shall state the name and address of the person or persons alleged to have committed the unlawful practice and the particulars thereof. The complaint shall also contain such other information as may be required by the Commission. The Commission, upon its own initiative, may in like manner sign and file a complaint. The Commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his/her answer.
- B. Timeliness. Any complaint filed pursuant to this section must be so filed within one hundred eighty days after the alleged act of discrimination, unless otherwise required by the Fair Housing Act.
- C. Withdrawal. Any complaint may be withdrawn at any time by the party filing the complaint.
- D. Preliminary Investigation. After the filing of any complaint, if the Commission determines that an investigation is warranted, the Commission shall refer the complaint to the Allegheny County Department of Human Resources, which shall conduct an investigation in order to determine whether a factual basis for the complaint exists. The procedure governing such investigation shall be modeled after the procedure described in §5-1013.24 of the Administrative Code of Allegheny County, governing investigation of ethics complaints. The Department of Human Resources shall not hold hearings, issue findings to parties, or be empowered to undertake any final action on any complaint forwarded to it for investigation by the Human Relations Commission. At the conclusion of the preliminary investigation, the Department of Human Resources shall forward a summary report to the Human Relations Commission. The Human Relations Commission may request that the Council initiate an investigation and/or issue subpoenas to any person charged with an unlawful practice to furnish information, records or other documents, and may seek enforcement of any subpoena issued under the terms of this Section by petition to the Court of Common Pleas of Allegheny County.
- E. Allegation and Notice. If it shall be determined after such investigation that there is no basis for the allegations of the complaint, the Human Relations Commission shall, within ten (10) days from such determination, cause to be issued and served upon the complainant written notice of such determination and dismissal of the complaint. The complainant may, within ten (10) days after such service, file with the Commission, a request for a review. The Commission shall, upon request for such a review, provide the complainant an opportunity to appear before the Commission to present such additional information as may be available to support the allegations of the complaint. The Commission may reinstate the complaint within ten (10) days of the review upon a determination that the additional information presented warrants such reinstatement.
- F. Conciliation. If the Human Relations 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. The Commission and staff shall not disclose identities of the parties except as required by the Fair Housing Act.
- G. Hearing.
1. If the Human Relations Commission, in its discretion, finds it is not possible to eliminate such unlawful practices by persuasion, the Commission shall cause to be issued and served a written notice, together with a copy of such complaint as the same may have been amended requiring the party named in such complaint, hereinafter referred to as respondent, to answer the charges

of such complaint at a hearing before the Commission at a time and place to be specified in such notice. The Commission may appoint a hearing examiner or designate no fewer than three of its members to preside at such a meeting, or it may at its election conduct such hearing en banc.

2. When notice of hearing is given as set forth in subsection (e) and an election procedure is required by the Fair Housing Act, either party may elect, as an alternative to Public Hearing before the Commission, to have the claims asserted in the complaint decided in a civil action brought under the original jurisdiction of Allegheny County Court of Common Pleas. The written notice of the Commission shall be sent to all parties and will inform them of their right to take civil action. An election must be made within twenty (20) days after receipt of the notice of hearing. A party making this election shall notify the Commission and all other parties. If an election for civil action is made by either party, the Commission shall, within thirty (30) days from the date of election, commence and maintain a civil action on behalf of the Complainant. In any action brought under this subsection:
  - a. If, after a trial, the Court of Common Pleas finds that a respondent engaged in or is engaging in any unlawful discriminatory practice as defined in this Article, the Court may award attorney's fees and costs to the complainant on whose behalf the Commission commenced the action in addition to attorney's fees and costs incurred by the Commission.

H. Conduct of Hearing. The case in support of the complaint shall be presented to the Commission or before a hearing examiner designated by the Commission for the purpose of hearing said complaint by its attorney or agents, by the complainant, or by an agent or representative of the complainant. The respondent may appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The complainant may likewise appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The Commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The Commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearing shall be under oath and be transcribed.

I. Findings.

1. 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 Article, 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 affirmative action, including, but not limited to, reimbursement of certifiable travel expenses in matters involving the complaint, compensation for loss of work in matters involving the complaint, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, the making of reasonable accommodations, or selling or leasing specified housing accommodations or commercial property upon such equal terms and conditions and with such equal facilities, services and privileges or lending money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair or maintenance of housing accommodations or commercial property, upon such equal terms and conditions to any person discriminated against or all persons, any other verifiable, reasonable out-of-pocket

expenses caused by unlawful discriminatory practice, or other compensation as provided under the Pennsylvania Human Relations Act.

2. In those cases alleging a violation of Sections 215-33 or 215-34 and violations of the Fair Housing Act, the Commission may award actual damages including damages caused by humiliation and embarrassment as, in the judgment of the Commission, will effectuate the purposes of this Article, and including a requirement for report of the manner of compliance.
  - a. Such order may also assess a civil penalty against the respondent in a complaint of discrimination filed under Section 215-33 or 215-34 and violations of the Fair Housing Act:
    - i. In an amount not exceeding ten thousand dollars (\$10,000) if the respondent has not been adjudged to have committed any prior discriminatory practice;
    - ii. In an amount not exceeding twenty-five thousand dollars (\$25,000) if the respondent has been adjudged to have committed one other discriminatory practice during the five-year period ending on the date of this order; or
    - iii. In an amount not exceeding fifty thousand dollars (\$50,000) if the respondent has been adjudged to have committed more than one other discriminatory practice during the seven-year period ending on the date of this order.
  - b. If however the acts constituting the discriminatory practice that is the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory practice, then the civil penalties set forth in subparagraphs (ii) and (iii) may be imposed without regard to the period of time within which any subsequent discriminatory practice occurred.
  - c. If upon all the evidence at the hearing, in those cases alleging a violation of Section 215-33 or 215-34, the Commission finds that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this Article, the Commission may award attorney's fees and costs to prevailing complainants.
- J. Commonwealth License. When the respondent is a licensee of the Commonwealth of Pennsylvania, the Commission shall inform the appropriate State licensing authority of the order with the request that the licensing-authority take such action as it deems appropriate against such licensee.
- K. Dismissal. If, upon all the evidence, the Commission shall find that a respondent has not engaged in any such unlawful discriminatory practice, the Commission shall state its findings of fact, and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.
- L. Hearing Rules and Records. The Commission shall establish rules of practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. Three or more members of the Commission or a hearing examiner designated by the Commission shall constitute the Commission for any hearing required to be held by the Commission under this Article. The recommended findings,

conclusions and order made by said members or hearing examiner shall be reviewed and approved or reversed by the Commission before such order may be served upon the parties to the complaint. The recommended findings, conclusions and order made by said members or hearing examiner shall become a part of the permanent record of the proceeding and shall accompany any order served upon the parties to the complaint.

**§215-3839. Enforcement, Judicial Review and Penalty.**

- A. Injunction. If the Commission concludes, at any time following the filing of a complaint under this Article, that prompt judicial action is necessary to prevent immediate and irreparable harm, the Commission may commence an action in Court of Common Pleas, and that Court may grant an appropriate preliminary or special injunction pending final disposition of the complaint. Any such order or relief shall be granted in accordance with Pennsylvania Rules of Civil Procedure Section 1531.
- B. Enforcement. The complainant, or the Commission may secure enforcement of the order of the Commission or other appropriate relief. When the Commission has heard and decided any complaint brought before it, enforcement of its order shall be initiated by the filing of a petition in the Court of Common Pleas, together with a transcript of the record of the hearing before the Commission, and issuance and service of a copy of said petition as in proceedings in equity. The Commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost, and for the purpose of enforcement or judicial review of the order. Any failure to obey an order of the Court may be punishable by such Court as contempt thereof.
- C. Enforcement by Private Person.
1. In cases involving a claim of discrimination, if a complainant invokes the procedures set forth in this Article, that individual's right of action in the courts of the Commonwealth shall not be foreclosed. If within one (1) year after the filing of a complaint with the Commission, the Commission dismisses the complaint or for whatever reason, closes the complainant's case, or has not entered into a conciliation agreement to which the complainant is a party, the Commission must so notify the complainant. On receipt of such a notice the complainant shall be able to bring an action in the courts of common pleas of the Commonwealth based on the right to freedom from discrimination granted by this Article.
  2. An action under this subsection shall be filed within one hundred (100) consecutive calendar days after the date of notice from the Commission closing the complaint. Any complaint so filed shall be served on the Commission at the time the complaint is filed in court. The Commission shall notify the complainant of this requirement.
  3. If the court finds that the respondent has engaged in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative action which may include, but is not limited to, reinstatement or hiring of employees, granting of back pay, or any other legal or equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than three years prior to the filing of a complaint charging violations of this Article.
  4. The court shall serve upon the Commission any final order issued in any action brought under this subsection.

5. If, after a trial held pursuant to subsection (c), the court of common pleas finds:
- a. That a defendant engaged in or is engaging in any unlawful discriminatory practice as defined in this Article, the court may award attorney's fees and costs as provided under the Pennsylvania Human Relations Act, to the prevailing plaintiff.
- D. Penalties. Any person who shall willfully resist, prevent, impede or interfere with the Commission, its members, agents or agencies in the performance of duties pursuant to this Article, or shall willfully violate an order of the Commission, shall be guilty of a summary criminal offense and, upon conviction thereof, shall be sentenced to pay a fine of not more than five hundred dollars (\$500.00), or to undergo imprisonment not exceeding thirty (30) days, or both, in the discretion of the Court, but procedure for the review of an order shall not be deemed to be such willful conduct.
- E. Construction. The provisions of this Article shall be construed liberally for the accomplishment of the purposes thereof.
- F. Timeliness. The time limits for filing under any complaint or other pleading under this Article shall be subject to waiver, estoppel and equitable tolling.
- G. Except as otherwise provided, any order of the Commission may be reviewed under the provisions of the Act of December 2, 1968, P.L. 1133 (53 P.S. §11300) known as the "Local Agency Law", as amended.
- H. Where a provision of this Article is found to be in conflict with a provision of any other Ordinance of the County, or any regulation issued under the authority of such Ordinance, the provisions which establish the higher standard for the protection of health, safety and welfare shall prevail.

***SECTION 3. Effective Date of Ordinance.***

The provisions of this Ordinance shall become effective immediately upon final approval.

***SECTION 3. Severability. If any provision of this Ordinance shall be determined to be unlawful, invalid, void or unenforceable, then that provision shall be considered severable from the remaining provisions of this Ordinance which shall be in full force and effect.***

***SECTION 4. Repealer. Any Resolution or Ordinance or part thereof conflicting with the provisions of this Ordinance is hereby repealed so far as the same affects this Ordinance.***