

Text of Proposed Rule: A new Section 466.13 is added to read as follows:

466.13 Discrimination on the basis of gender identity.

(a) Statutory Authority. Pursuant to N.Y. Executive Law § 295.5, it is a power and a duty of the Division to adopt, promulgate, amend and rescind suitable rules and regulations to carry out the provisions of the N.Y. Executive Law, article 15 (Human Rights Law).

(b) Definitions.

(1) Gender identity means having or being perceived as having a gender identity, self-image, appearance, behavior or expression whether or not that gender identity, self-image, appearance, behavior or expression is different from that traditionally associated with the sex assigned to that person at birth.

(2) A transgender person is an individual who has a gender identity different from the sex assigned to him or her at birth.

(3) Gender dysphoria is a recognized medical condition related to an individual having a gender identity different from the sex assigned to him or her at birth.

(c) Discrimination on the basis of gender identity is sex discrimination.

(1) The term “sex” when used in the Human Rights Law includes gender identity and the status of being transgender.

(2) The prohibitions contained in the Human Rights Law against discrimination on the basis of sex, in all areas of jurisdiction where sex is a protected category, also prohibit discrimination on the basis of gender identity or the status of being transgender.

(3) Harassment on the basis of a person’s gender identity or the status of being transgender is sexual harassment.

(d) Discrimination on the basis of gender dysphoria is disability discrimination.

(1) The term “disability” as defined in Human Rights Law § 292.21, means (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the

exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques or (b) a record of such an impairment or (c) a condition regarded by others as such an impairment, provided, however, that in all provisions of this article dealing with employment, the term shall be limited to disabilities which, upon the provision of reasonable accommodations, do not prevent the complainant from performing in a reasonable manner the activities involved in the job or occupation sought or held.

(2) The term “disability” when used in the Human Rights Law includes gender dysphoria.

(3) The prohibitions contained in the Human Rights Law against discrimination on the basis of disability, in all areas of jurisdiction where disability is a protected category, also prohibit discrimination on the basis of gender dysphoria.

(4) Refusal to provide reasonable accommodation for persons with gender dysphoria, where requested and necessary, and in accordance with the Divisions regulations on reasonable accommodation found at 9 NYCRR § 466.11, is disability discrimination.

(5) Harassment on the basis of a person’s gender dysphoria is harassment on the basis of disability.