

STATE OF NEW YORK

376

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. STECK -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to the state employees equal employment opportunity act

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The executive law is amended by adding a new article 14-A
2 to read as follows:

ARTICLE 14-A

STATE EMPLOYEES EQUAL EMPLOYMENT OPPORTUNITY ACT

Section 280. Purposes of article.

280-a. Definitions.

280-b. Policies.

280-c. Agency program.

280-d. Agency processing.

280-e. Pre-complaint processing.

280-f. Individual complaints.

280-g. Dismissals of complaints.

280-h. Investigation of complaints.

280-i. Hearings.

280-j. Class complaints.

280-k. Relationship to negotiated grievance procedure.

280-l. Appeals to the commission.

280-m. Decisions on appeals.

280-n. Remedies and relief.

280-o. Compliance with final decisions.

280-p. Enforcement of final decisions.

280-q. Interim relief.

280-r. Joint processing and consolidation of complaints.

280-s. Appeals of decisions of the commission.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD03607-01-9

1 280-t. EEO group statistics.

2 § 280. Purposes of article. It is the policy of the state of New York
3 to provide equal opportunity in employment for all employees of the
4 state with the same protections provided to employees in the private
5 sector as set forth in article fifteen of this chapter, constituting the
6 human rights law. This act shall be known as the "state employees equal
7 employment opportunity act."

8 § 280-a. Definitions. 1. For purposes of this article, the term
9 "discrimination" shall include sexual harassment and pregnancy discrimi-
10 nation as forms of prohibited discrimination.

11 2. The term "EEO" shall mean equal employment opportunity.

12 § 280-b. Policies. 1. No state employee or person acting in support of
13 such employee, whether pre-investigation or during the processing of a
14 complaint, shall be subject to retaliation for opposing any practice
15 made unlawful by virtue of the New York state human rights law.

16 2. Every state employee accused of discrimination covered under arti-
17 cle fifteen of this chapter may use the procedures set forth herein to
18 challenge the validity of such accusations and any adverse employment
19 action imposed as a result of such accusations. Provided, however, that
20 any relief granted herein for an employee wrongfully accused of discrim-
21 ination shall be limited to the affected employee, as no employee making
22 an accusation of discrimination shall be retaliated against in any way.

23 3. (a) This article applies to the state, all agencies, branches, or
24 departments or divisions thereof, the executive and legislative branches
25 at all levels of government, a county, city, town, village or any other
26 municipal corporation, a school district or any governmental entity
27 operating a public school, college or university, a public improvement
28 or special district, a public authority, commission, or public benefit
29 corporation, or any other public corporation, agency or instrumentality
30 or unit of government which exercises governmental powers under the laws
31 of the state. The word "agency" as used in this article shall embrace
32 all of the aforementioned governmental entities.

33 (b) This article applies to all class and individual complaints of
34 discrimination cognizable under article fifteen of this chapter, the
35 equal pay act set forth in article six of the labor law, and article
36 twenty-three-A of the correction law.

37 4. All notices required in this chapter to be given to an individual
38 employee shall be in writing and shall be signed by the aggrieved or
39 affected individual.

40 § 280-c. Agency program. 1. Every agency shall maintain a continuing
41 affirmative action program to promote equal opportunity and to identify
42 and eliminate discriminatory practices and policies. In support of such
43 program, which shall be submitted to the New York state commission on
44 human rights for review and approval, the agency shall:

45 (a) provide sufficient resources to its equal employment opportunity
46 program to ensure efficient and successful operation;

47 (b) provide for the prompt, fair and impartial processing of
48 complaints in accordance with this article;

49 (c) conduct a continuing campaign to eradicate every form of prejudice
50 or discrimination from the agency's personnel policies, practices and
51 working conditions;

52 (d) communicate the agency's equal employment opportunity policy and
53 program and its employment needs to all sources of job candidates with-
54 out regard to any prohibited characteristic set forth in the human
55 rights law, the equal pay act, and article twenty-three-A of the
56 correction law and provide recruitment assistance on a continuing basis;

1 (e) review, evaluate, and control managerial and supervisory perform-
2 ance in such a manner as to ensure continuing affirmative application
3 and vigorous enforcement of the policy of equal opportunity as set forth
4 in this article, and provide orientation, training and advice to manag-
5 ers and supervisors to assure their understanding and implementation of
6 the equal employment opportunity policy and program;

7 (f) take appropriate disciplinary action against employees who engage
8 in discriminatory practices;

9 (g) make reasonable accommodation to the religious needs of applicants
10 and employees when those accommodations can be made without undue hard-
11 ship on the business of the agency;

12 (h) make reasonable accommodation to the known physical or mental
13 limitations of qualified applicants and employees with disabilities
14 unless the accommodation would impose an undue hardship on the operation
15 of the agency's program. In this regard, an unpaid leave of absence to
16 enable an employee to recover from an episodic manifestation of a disa-
17 bility shall constitute reasonable accommodation;

18 (i) provide recognition to employees, supervisors, managers and units
19 demonstrating superior accomplishment in equal employment opportunity;

20 (j) establish a system for periodically evaluating the effectiveness
21 of the agency's overall equal employment opportunity effort;

22 (k) provide the maximum feasible opportunity to employees to enhance
23 their skills through on-the-job training, work-study programs, and other
24 training measures so that they may perform at their highest potential
25 and advance in accordance with their abilities;

26 (l) inform its employees and recognized labor organizations of the
27 affirmative equal employment opportunity policy and program and enlist
28 their cooperation; and

29 (m) participate at the community level with other employers, with
30 schools and universities, and with other public and private groups in
31 cooperative action to improve employment opportunities and community
32 conditions that affect employability.

33 2. In order to implement its program, each agency shall, subject to
34 review and approval by the New York state commission on human rights:

35 (a) develop the plans, procedures and regulations necessary to carry
36 out its program;

37 (b) establish or make available an alternative dispute resolution
38 program. Such program must be available for both the pre-complaint proc-
39 ess and the formal complaint process;

40 (c) appraise its personnel operations at regular intervals to assure
41 their conformity with its program and this statute;

42 (d) designate: a director of EEO; EEO officer or officers; such
43 special emphasis program managers, including, but not limited to, people
44 with disabilities program, women's program, minority employment program;
45 and clerical and administrative support as may be necessary to carry out
46 the functions described in this chapter in all organizational units of
47 the agency and at all agency installations. The EEO director shall be
48 under the immediate supervision of the agency head, provided, however,
49 that no agency shall be required to hire additional personnel to effec-
50 tuate this mandate unless this mandate cannot be complied with unless
51 additional personnel are hired. The functions in this paragraph may be
52 consolidated in one existing employee for appropriate sized agencies;

53 (e) make written materials available to all employees and applicants
54 informing them of the variety of equal employment opportunity programs
55 and administrative and judicial remedial procedures available to them

1 and prominently post such written materials in all personnel and EEO
2 offices and throughout the workplace;

3 (f) ensure that full cooperation is provided by all agency employees
4 to EEO counselors, agency EEO personnel, and EEO investigators in the
5 processing and resolution of pre-complaint matters and complaints
6 involving the agency and that full cooperation is provided to the
7 commission in the course of appeals, including granting investigators
8 and the commission routine access to personnel, email, and other records
9 of the agency when required in connection with an investigation; and

10 (g) publicize to all employees and post at all times the names, busi-
11 ness telephone numbers and business addresses of the EEO counselors
12 (unless the counseling function is centralized, in which case only one
13 telephone number and address need be publicized and posted), a notice of
14 the time limits and the necessity of contacting a counselor before
15 filing a complaint, and the telephone numbers and addresses of the EEO
16 director, EEO officer or officers and special emphasis program managers,
17 or other person responsible for EEO matters.

18 3. Under each agency program, the EEO director shall be responsible
19 for:

20 (a) advising the head of the agency with respect to the preparation of
21 equal employment opportunity plans, procedures, regulations, reports and
22 other matters pertaining to the policy set forth in section two hundred
23 eighty of this article and the agency program;

24 (b) evaluating from time to time the sufficiency of the total agency
25 program for EEO and reporting to the head of the agency with recommenda-
26 tions as to any improvement or correction needed, including remedial or
27 disciplinary action with respect to managerial, supervisory or other
28 employees who have failed in their responsibilities;

29 (c) when authorized by the head of the agency, making changes in
30 programs and procedures designed to eliminate discriminatory practices
31 and to improve the agency's program for equal employment opportunity;

32 (d) providing for counseling of aggrieved individuals and for the
33 receipt and processing of individual and class complaints of discrimi-
34 nation; and

35 (e) assuring that individual complaints are fairly and thoroughly
36 investigated and that the agency cooperates with the investigation in a
37 timely manner in accordance with this article.

38 4. The commission shall provide directives, instructions, forms and
39 other materials as needed to carry out the commands and objectives of
40 this article.

41 § 280-d. Agency processing. 1. Each agency shall adopt procedures for
42 processing individual and class complaints of discrimination that are
43 consistent with the requirements of this article and with the
44 instructions for complaint processing as set forth in directives of the
45 New York state commission on human rights.

46 2. The commission shall periodically review agency resources and
47 procedures to ensure compliance with this article.

48 § 280-e. Pre-complaint processing. 1. Aggrieved persons who believe
49 they have suffered discrimination or retaliation prohibited in the New
50 York state human rights law must consult an EEO counselor prior to
51 filing a complaint in order to try to informally resolve the matter.

52 2. Each agency shall make such a counselor available to such person,
53 provided, however, that such EEO counselor must notify such person in a
54 writing signed by that person or his or her representative the right to
55 utilize as an alternative an EEO counselor provided by the New York
56 state commission on human rights.

1 3. An aggrieved person must initiate contact with a counselor within
2 ninety days of the date of the matter alleged to be discriminatory. The
3 ninety days shall run from the time when the aggrieved person knew or
4 should have known through information readily available to him or her
5 that the discriminatory act or challenged personnel action had occurred.

6 4. The agency or the commission shall extend the ninety day time limit
7 in subdivision three of this section when the individual shows that he
8 or she was not notified of the time limits, that despite due diligence
9 he or she was prevented by circumstances beyond his or her control from
10 contacting the counselor within the time limits, or for other reasons
11 considered sufficient by the agency or the commission.

12 5. At the initial counseling session, counselors must advise individ-
13 uals in writing of their rights and responsibilities, including the
14 right to request an investigation, the right to request a hearing, the
15 duty to mitigate damages, administrative and court time frames, and that
16 only the claims raised in pre-complaint counseling, or issues or claims
17 like, or related to, issues or claims raised in pre-complaint coun-
18 seling, may be alleged in a subsequent complaint filed with the agency,
19 except as provided herein. Counselors must advise individuals of their
20 duty to keep the agency and commission informed of their current address
21 and, where applicable, to serve copies of relevant papers on the agency.
22 The notice shall include a notice of the right to file a class
23 complaint. If the aggrieved person informs the counselor that he or she
24 wishes to file a class complaint, the counselor shall explain the class
25 complaint procedures and the responsibilities of a class agent.

26 6. Counselors shall advise aggrieved persons that, where the agency
27 agrees to offer alternative dispute resolution in the particular case,
28 they may choose between participation in the alternative dispute resol-
29 ution program and the counseling activities provided for herein.

30 7. Counselors shall conduct counseling activities in accordance with
31 the directives of the commission.

32 8. When advised that a complaint has been filed by an aggrieved
33 person, the counselor shall submit a written report within fifteen days
34 to the agency office that has been designated to accept complaints and
35 the aggrieved person concerning the issues discussed and actions taken
36 during counseling. The aggrieved person may respond with any objections
37 that the counselor's report does not fairly express the issues discussed
38 and the actions taken during counseling.

39 9. Unless the aggrieved person agrees in writing to a longer coun-
40 seling period, or the aggrieved person chooses an alternative dispute
41 resolution procedure provided by the agency, the counselor shall conduct
42 the final interview with the aggrieved person within thirty days of the
43 date the aggrieved person contacted the EEO office to request coun-
44 seling. If the matter has not been resolved, the aggrieved person shall
45 be informed in writing by the counselor, not later than the thirtieth
46 day after contacting the counselor, of the right to file a discrimi-
47 nation complaint. The notice shall inform the complainant of the right
48 to file a discrimination complaint within thirty days of receipt of the
49 notice, of the appropriate official with whom to file a complaint, and
50 of the complainant's duty to assure that the agency is informed imme-
51 diately if the complainant retains counsel or a representative.

52 10. Prior to the end of the thirty day counseling period, the
53 aggrieved person may agree in writing with the agency to postpone the
54 final interview and extend the counseling period for an additional peri-
55 od of no more than sixty days, which shall extend the time by like
56 amount for any other notices called for in this section.

11. Where the aggrieved person chooses to participate in an alternative dispute resolution procedure in accordance with this section, the pre-complaint processing period shall be ninety days. If the claim has not been resolved before the ninetieth day, the notice of right to file a complaint shall be issued.

12. The counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint. The counselor shall not reveal the identity of an aggrieved person who consulted the counselor, except when authorized to do so by the aggrieved person, or until the agency has received a discrimination complaint under this section from that person involving that same matter.

§ 280-f. Individual complaints. 1. A complaint must be filed with the agency that allegedly discriminated against the complainant. Such agency shall file a copy of the complaint with the commission with notice to the complainant. Should the agency fail to file a copy of the complaint to the commission, all deadlines set forth herein shall be extended until the time of such transmission. An individual complainant may also file a copy of the complaint with the commission.

2. A complaint must be filed within thirty days of receipt of the notice required by subdivision nine of section two hundred eighty-e of this article.

3. A complaint must contain a signed statement from the person claiming to be aggrieved or of an attorney representing that he or she is the attorney for the aggrieved person. This statement must be sufficiently precise to identify the aggrieved individual and the agency and to describe generally the action or actions or practice or practices that form the basis of the complaint. The complaint must also contain a telephone number and address where the complainant or the representative can be contacted. The complaint should also include a list of witnesses to be contacted during the investigation and a brief description of the relevant information known to each.

4. A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. After requesting a hearing, a complainant may file a motion with the administrative judge to amend a complaint to include issues or claims like or related to those raised in the complaint.

5. The agency shall acknowledge receipt of a complaint or an amendment to a complaint in writing and inform the complainant of the date on which the complaint or amendment was filed. The agency shall advise the complainant in the acknowledgment of his or her right to a hearing and the commission's address where a request for a hearing shall be sent. Such acknowledgment shall also advise the complainant that:

(a) The complainant has the right to appeal the final action on or dismissal of a complaint to the commission; and

(b) The agency is required to initiate an impartial and appropriate investigation of the complaint within one hundred eighty days of the filing of the complaint unless the parties agree in writing to extend the time period. When a complaint has been amended, the investigator shall complete his or her investigation within one hundred eighty days after the last amendment to the complaint or three hundred sixty days after the filing of the original complaint, whichever is earlier, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after one hundred eighty days from the date of the first filed complaint.

1 § 280-g. Dismissals of complaints. 1. Prior to a request for a hearing
2 in a case, the agency shall dismiss an entire complaint that:

3 (a) fails to allege facts asserting a claim of discrimination that is
4 cognizable under the human rights law, the equal pay act, or article
5 twenty-three-A of the correction law, or states the same claim that is
6 pending before or has already been decided by the agency or commission;

7 (b) fails to comply with applicable time limits, as extended, or that
8 raises a matter that has not been brought to the attention of a counse-
9 lor and is not like or related to a matter that has been brought to the
10 attention of a counselor;

11 (c) is the basis of a pending civil action in the New York state
12 supreme court in which the complainant is a party, or that was the basis
13 of a prior civil action decided by the New York state supreme court in
14 which the complainant was a party. An aggrieved individual shall retain
15 the right to bring a civil action in New York state supreme court
16 concerning the subject matter of the complaint if the investigation of
17 the complaint is not completed within one hundred eighty days of the
18 complaint, if the complaint is not amended, or, if the complaint is
19 amended, within the earlier of one hundred eighty days after the last
20 amendment to the complaint or three hundred sixty days after the filing
21 of the original complaint, or a hearing has not been commenced within
22 one hundred eighty days of the request for same;

23 (d) raises the matter in a negotiated grievance procedure that permits
24 allegations of discrimination as described in this article;

25 (e) is moot on the ground that the remedy requested by the complainant
26 has already been adopted by the agency;

27 (f) cannot be pursued because the complainant cannot be located,
28 provided that reasonable efforts have been made to locate the complain-
29 ant and the complainant has not responded within thirty days to a notice
30 of proposed dismissal sent to his or her last known address;

31 (g) the agency has provided the complainant with a written request to
32 provide relevant information or otherwise proceed with the complaint,
33 and the complainant has failed to respond within thirty days of its
34 receipt. A complaint may be dismissed for failure to cooperate, but must
35 be adjudicated if sufficient information for that purpose is already
36 available notwithstanding the complainant's failure to respond to
37 further requests for information; or

38 (h) alleges dissatisfaction with the processing of a previously filed
39 complaint to which the procedures of this article are applicable.

40 2. Where the agency believes that some but not all of the claims in a
41 complaint should be dismissed for the reasons contained in paragraph (a)
42 of subdivision one of this section, the agency shall notify the
43 complainant in writing of its determination, the rationale for that
44 determination, and that those claims will not be investigated, and shall
45 place a copy of the notice in the investigative file.

46 3. An aggrieved person may request review of a determination under
47 subdivision two of this section by an administrative judge if the
48 complaint is dismissed in its entirety. If a portion of a complaint is
49 dismissed, the remainder shall proceed to investigation and the dismiss-
50 al of a portion of the complaint shall be reviewable by an administra-
51 tive judge when a hearing is requested on the remainder of the complaint
52 after the investigation is complete.

53 § 280-h. Investigation of complaints. 1. The investigation of
54 complaints shall be conducted by an investigator approved by the commis-
55 sion. Such investigator may be an employee of the agency but in no

1 event may the agency appoint an investigator not approved by the commis-
2 sion.

3 2. The commission shall promulgate regulations to assure that the
4 investigation is conducted in an independent manner not subject to
5 influence by the agency. In accordance with such regulations, the inves-
6 tigator shall develop an impartial and appropriate factual record upon
7 which to make findings on the claims raised by the written complaint. An
8 appropriate factual record is one that allows a reasonable fact finder
9 to draw conclusions as to whether discrimination occurred. Investi-
10 gators may use interviews, an exchange of letters or memoranda, interro-
11 gatories, fact-finding conferences or any other fact-finding methods
12 that efficiently and thoroughly address the matters at issue.

13 3. Investigators may not rely on statements from witnesses without
14 obtaining the witness's signature on the statement under oath from a
15 notary public. Any such statement must include an acknowledgement by
16 the witness that the statement is the witness's own words, that the
17 witness has not been threatened or coerced into making the statement,
18 and that the witness has been advised that a witness cannot be retali-
19 ated against for participating in an EEO investigation.

20 4. When the complainant, or the agency against which a complaint is
21 filed, or its employees fail without good cause shown to respond fully
22 and in timely fashion to requests by the investigator for documents,
23 records, comparative data, statistics, affidavits, or the attendance of
24 witness or witnesses, the investigator must note that fact.

25 5. The investigator, the administrative judge, or the commission shall
26 on appeal, in appropriate circumstances:

27 (a) draw an adverse inference that the requested information, or the
28 testimony of the requested witness, would have reflected unfavorably on
29 the party refusing to provide the requested information;

30 (b) consider the matters to which the requested information or testi-
31 mony pertains to be established in favor of the opposing party;

32 (c) exclude other evidence offered by the party failing to produce the
33 requested information or witness;

34 (d) issue a decision fully or partially in favor of the opposing
35 party, or;

36 (e) take such other actions as it deems appropriate.

37 6. No person shall investigate any claim unless such person has appro-
38 priate qualifications meeting criteria established by the commission and
39 is on a list of approved investigators established by the commission.

40 7. The investigator shall complete his or her investigation within one
41 hundred eighty days of the date of filing of an individual complaint. By
42 written agreement within such time period, the complainant and the
43 respondent agency may voluntarily extend the time period for not more
44 than an additional ninety days.

45 8. Within one hundred eighty days from the filing of the complaint, or
46 where a complaint was amended, within the earlier of one hundred eighty
47 days after the last amendment to the complaint or three hundred sixty
48 days after the filing of the original complaint, the investigator shall
49 provide the complainant and the agency with a copy of his or her deci-
50 sion and a complete unsanitized copy of the investigative file, and
51 shall notify the complainant that, within thirty days of receipt of the
52 investigative file, the complainant has the right to request a hearing
53 and decision from an administrative judge of the commission who shall
54 consider the matter de novo on the record compiled by the investigator
55 together with all evidence offered by the parties at the hearing.

1 9. The investigator shall state whether or not there is probable cause
2 to believe discrimination or retaliation occurred.

3 10. Either the agency or the complainant may request an administrative
4 hearing concerning the matter. If there is a finding of no probable
5 cause, and the complainant does not request a hearing, then the
6 complaint shall be dismissed, and such dismissal shall not be appealable.
7 If there is a finding of probable cause, and the agency chooses to
8 adopt that finding as final agency action, then the agency must provide
9 a remedy to the complainant. If the complainant is dissatisfied with the
10 remedy, the complainant may request a hearing at which only the remedy
11 will be at issue.

12 11. Where the complainant has received the notice required in subdivi-
13 sion eight of this section or at any time after one hundred eighty days
14 have elapsed from the filing of the complaint, or, if an amended
15 complaint has been filed, within the earlier of one hundred eighty days
16 after the last amendment to the complaint or three hundred sixty days
17 after the filing of the original complaint, the complainant may request
18 a hearing by submitting a written request for a hearing directly to the
19 commission's office indicated in the investigator's decision. The
20 commission shall notify the agency that a hearing has been requested.
21 Within fifteen days of receipt of a copy of the request for a hearing,
22 the agency shall provide a copy of the complaint file to the commission.

23 § 280-i. Hearings. 1. When a complainant or the agency requests a
24 hearing, the commission shall appoint an administrative judge to conduct
25 a hearing in accordance with this section. Upon appointment, the admin-
26 istrative judge shall assume full responsibility for the adjudication of
27 the complaint, including overseeing the development of the record. The
28 administrative judge shall decide the matters raised in the complaint de
29 novo without regard to any findings of the investigator, provided,
30 however, that all materials in the investigative file shall be consid-
31 ered to determine whether such materials constitute admissible evidence.

32 2. When a party is represented by counsel, the agency may make an
33 offer of resolution to a complainant and such offer may be accepted
34 without involvement of the administrative judge. When a party is not
35 represented by counsel, the agency may make an offer of resolution to a
36 complainant, but the administrative judge must review and approve the
37 offer for fairness under all the circumstances including the estimated
38 likelihood that the complainant or the agency may or may not prevail at
39 a hearing. Any resultant settlement may be confidential if the complain-
40 ant and the agency agree and the administrative judge, on application by
41 the parties, finds that confidentiality is in the reasonable interest of
42 the complainant.

43 3. The administrative judge shall notify the parties of the right to
44 seek discovery prior to the hearing and may issue such discovery orders
45 as are appropriate. Unless the parties agree in writing concerning the
46 methods and scope of discovery, the party seeking discovery shall
47 request authorization from the administrative judge prior to commencing
48 discovery on the ground that the requested information was not suffi-
49 ciently developed in the investigative file or to confirm facts that
50 were contested in the investigation. The administrative judge may limit
51 discovery to matters not sufficiently developed in the investigative
52 file or to facts that remain contested following the investigation.
53 Evidence may be developed through interrogatories, depositions, and
54 requests for admissions, stipulations, or production of documents. It
55 shall be grounds for objection to producing evidence that the informa-
56 tion sought by either party is irrelevant, unduly burdensome, repeti-

1 tious, or privileged. Agencies may not assert as privileged internal
2 decision-making processes, except that consultations with counsel are
3 privileged.

4 4. Agencies shall provide for the attendance at a hearing of all
5 employees approved as witnesses by an administrative judge. Attendance
6 at hearings will be limited to persons determined by the administrative
7 judge to have direct, personal knowledge relating to the complaint. The
8 administrative judge shall have the power to regulate the conduct of a
9 hearing, limit the number of witnesses where testimony would be repeti-
10 tious, and exclude any person from the hearing for contumacious conduct
11 or misbehavior that obstructs the hearing. The administrative judge
12 shall receive into evidence information or documents relevant to the
13 complaint. Rules of evidence shall not be applied strictly, and hearsay
14 shall be permitted as to background and incidental matters but not to
15 avoid the testimony of witnesses having a central or important role in
16 the matter. An agency witness shall not be permitted to testify as to
17 complaints about an employee unless such complaints were put in writing
18 contemporaneously with the alleged complaint. The administrative judge
19 shall exclude irrelevant or repetitious evidence.

20 5. The complainant, an agency, and any employee of an agency shall
21 produce such documentary and testimonial evidence as the administrative
22 judge deems necessary. The administrative judge shall serve all orders
23 to produce evidence on both parties.

24 6. Administrative judges are authorized to administer oaths. Testimony
25 of witnesses shall be made under oath or affirmation or, alternatively,
26 by written statement under penalty of perjury if the parties agree to
27 accept such witness's testimony in that manner or if the administrative
28 judge determines that the witness is unavailable and his or her testimo-
29 ny could not be taken by deposition.

30 7. If a party believes that some or all material facts are not in
31 genuine dispute and there is no genuine issue as to credibility, the
32 party may, at least fifteen days prior to the date of the hearing or at
33 such earlier time as required by the administrative judge, file a state-
34 ment with the administrative judge prior to the hearing setting forth
35 the fact or facts and referring to the parts of the record relied on to
36 support the statement. The statement must demonstrate that there is no
37 genuine issue as to any such material fact. The party shall serve the
38 statement on the opposing party.

39 8. The opposing party may file an opposition within fifteen days of
40 receipt of the statement in subdivision seven of this section. The oppo-
41 sition may refer to the record in the case to rebut the statement that a
42 fact is not in dispute or may file an affidavit stating that the party
43 cannot, for reasons stated, present facts to oppose the request. After
44 considering the submissions, the administrative judge may order that
45 discovery be permitted on the fact or facts involved, limit the hearing
46 to the issues remaining in dispute, issue a decision without a hearing,
47 or make such other ruling as is appropriate.

48 9. The hearing shall be recorded and the agency shall arrange and pay
49 for verbatim transcripts. All documents submitted to, and accepted by,
50 the administrative judge at the hearing shall be made part of the record
51 of the hearing. The administrative judge shall provide the parties with
52 a list of all documents he or she has admitted into evidence at the
53 hearing and a list of all documents that were proposed for admission but
54 not accepted into evidence. Such lists shall form part of the record of
55 the case. Either party may request reproduction of a document it does
56 not have in its possession.

10. Unless the administrative judge makes a written determination that necessary cause exists for extending the time for issuing a decision, an administrative judge shall issue a decision on the complaint, and shall order appropriate remedies and relief where discrimination is found, within ninety days of receipt by the administrative judge of the record of the hearing. The administrative judge shall send copies of the hearing record, including the transcript, and ultimately the decision, to the parties. The parties shall be permitted to submit briefs on the matter within thirty days of receipt by the administrative judge of the record of the hearing.

11. Any party advancing a proposition shall bear the burden of proof by a preponderance of the evidence. If the discipline or discharge of an employee is at issue, and the employee has proven that discrimination was a substantial factor in the adverse employment action, then such discipline or discharge shall be set aside and appropriate remedies provided as set forth in this article.

12. Any decision must contain notice of both parties' right to appeal to the commission.

§ 280-j. Class complaints. 1. A complainant may file with the agency a class complaint at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in an individual complaint.

2. Within thirty days of an agency's receipt of a class complaint, the agency shall forward the complaint, along with a copy of the counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the complaint, to the commission. The complainant shall be sent notification of filing with the commission.

3. Within forty-five days after filing such complaint, a complainant shall move before the commission for class certification, which shall appoint an administrative judge to hear the motion, unless an administrative judge had already been appointed.

4. If a complainant moves for class certification after completing the counseling process contained in section two hundred eighty-e of this article, no additional counseling is required.

5. The administrative judge shall deny class certification when the complainant does not meet the criteria established in law for acting as an agent for the class or the complainant has unduly delayed in moving for certification, such as when the class implications to the claim were reasonably apparent but no action was taken by the complainant during counseling or investigation of the matter. If, however, the class implications become apparent only during or after receipt of the investigative file, the class complaint should be referred back to the investigator for further investigation only as to the class-related issue and a determination as to probable cause or no probable cause concerning the issue involving the class.

6. Filing and presentation of a class complaint:

(a) A class complaint must be signed by the agent or representative and must identify the policy or practice adversely affecting the class as well as the specific action or matter affecting the class agent and why the agent qualifies under law to represent the class as agent for the class.

(b) The complaint shall be investigated in the same manner as provided with respect to individual complaints, except as provided in subdivision five of this section.

(c) The administrative judge may dismiss the complaint, or any portion, for any of the reasons listed in section two hundred eighty-g

1 of this article or because it does not meet the prerequisites of a class
2 complaint as described herein.

3 7. When appropriate, the administrative judge may decide that a class
4 be divided into subclasses and that each subclass be treated as a class,
5 and the provisions of this section then shall be construed and applied
6 accordingly.

7 8. The administrative judge shall transmit his or her decision to
8 accept or dismiss a class complaint to the agency and the agent. The
9 decision shall inform the agency or the agent of the right to appeal the
10 decision to the commission in the same manner as any other appeal. Proc-
11 essing of the individual complaint shall continue while the appeal is
12 pending. Should the commission reverse a decision not to certify a
13 class, a hearing on class-related issues may be held separately.

14 9. Within fifteen days of receiving notice that the administrative
15 judge has accepted a class complaint or a reasonable time frame speci-
16 fied by the administrative judge, the agency shall use reasonable means,
17 such as mailing to last known address or distribution, to notify all
18 class members of the acceptance of the class complaint. Such notices
19 shall contain:

20 (a) the name of the agency or organizational segment, its location,
21 and the date of certification of the class complaint;

22 (b) a description of the issues accepted as part of the class
23 complaint;

24 (c) an explanation of the binding nature of the final decision or
25 resolution of the complaint on class members; and

26 (d) the name, address and telephone number of the attorney for the
27 class representative, if any, and of the class representative.

28 10. The administrative judge shall notify the agent and the agency
29 representative of the time period that will be allowed both parties to
30 prepare their cases as to the class-related issues but in no case less
31 than ninety days. Reasonable extensions of time should be granted.

32 11. Both parties are entitled to reasonable development of evidence on
33 matters relevant to the issues raised in the complaint. The same rules
34 relating to discovery and to evidence in individual complaints shall
35 apply. Provided, however, that the administrative judge shall take into
36 account the class nature of the complaint in granting a request for
37 additional discovery.

38 12. The process for voluntary resolution of a class complaint shall be
39 the same as for an individual complaint. Provided, however, that notice
40 of a resolution agreed upon by the parties shall be given to all class
41 members in the same manner as notification of the acceptance of the
42 class complaint and to the administrative judge. It shall state the
43 relief, if any, to be granted by the agency and the name and address of
44 the administrative judge assigned to the case. It shall state that with-
45 in thirty days of the date of the notice of resolution, any member of
46 the class may petition the administrative judge to vacate the resolution
47 because it benefits only the class agent, or is otherwise not fair,
48 adequate and reasonable to the class as a whole. The administrative
49 judge shall review the notice of resolution and consider any petitions
50 to vacate filed. If the administrative judge finds that the proposed
51 resolution is not fair, adequate and reasonable to the class as a whole,
52 the administrative judge shall issue a decision vacating the agreement
53 and may, but is not required to, replace the original class agent with a
54 different petitioner or some other class member who is eligible to be
55 the class agent during further processing of the class complaint. The
56 decision shall inform the agency, the class agent, former class agent,

1 or the petitioner of the right to appeal the decision to the commission.
2 If the administrative judge finds that the resolution is fair, adequate
3 and reasonable to the class as a whole, the administrative judge shall
4 so order and the resolution shall bind all members of the class.

5 13. On expiration of the period allowed for preparation of the case,
6 the administrative judge shall set a date for hearing. The hearing may
7 be set for the same date as on the individual complaint or on a differ-
8 ent date as appropriate. The hearing shall be conducted in the same
9 manner as a hearing on an individual complaint.

10 14. (a) The administrative judge shall decide whether systemic relief
11 for the class is appropriate with regard to the personnel action or
12 matter that gave rise to the complaint, and the relevant time period in
13 which such personnel action or matter adversely affected the class.

14 (b) If the administrative judge finds no class relief appropriate, he
15 or she shall determine if a finding of individual discrimination is
16 warranted and, if so, shall determine appropriate relief.

17 (c) The administrative judge shall notify the agency and the complain-
18 ant and/or agent of the decision and of the right to appeal to the
19 commission.

20 (d) The agency shall, within thirty days of the decision, notify class
21 members of the final decision and relief awarded, if any, through the
22 same media employed to give notice of the existence of the class
23 complaint. The notice, where appropriate, shall include information
24 concerning the rights of class members to seek individual relief, and of
25 the procedures to be followed, and of the right to appeal to the commis-
26 sion.

27 (e) When discrimination is found, an agency must eliminate or modify
28 the employment policy or practice out of which the complaint arose and
29 provide individual relief for class members, including an award of
30 attorney's fees and costs, to the agent.

31 (f) When class-wide discrimination is not found, but it is found that
32 the class agent is a victim of discrimination against him or her as an
33 individual, the administrative judge shall award all appropriate relief
34 to the individual complainant.

35 (g) When class discrimination is found in the final decision and a
36 class member believes that he or she is entitled to individual relief,
37 the class member may file a written claim with the head of the agency or
38 its EEO director within thirty days of receipt of notification by the
39 agency of its final decision. Administrative judges shall retain juris-
40 diction over the complaint in order to resolve any disputed claims made
41 by class members that they are entitled to individual relief. To be
42 entitled to individual relief, the claim must include a specific,
43 detailed showing that the claimant is a class member who was affected by
44 the discriminatory policy or practice, and that this discriminatory
45 action took place within the period of time for which the administrative
46 judge found class-wide discrimination in his or her final decision.
47 Where a finding of discrimination against a class has been made, there
48 shall be a presumption of discrimination as to each member of the class.
49 The agency must show by clear and convincing evidence that any class
50 member is not entitled to relief. The administrative judge may hold a
51 hearing or otherwise supplement the record on a claim filed by a class
52 member. Any decision by the administrative judge shall be appealable
53 under the same procedures applicable to any individual complaint.

54 § 280-k. Relationship to negotiated grievance procedure. 1. When a
55 person is employed by an agency and is a member of a bargaining unit
56 covered by a collective bargaining agreement that permits allegations of

1 discrimination to be raised in a negotiated grievance procedure, a
2 person wishing to file a complaint or a grievance on a matter of alleged
3 employment discrimination must elect to raise the matter under this
4 chapter or in the negotiated grievance procedure, but not both. An
5 election to proceed under this part is indicated only by the filing of a
6 written complaint; use of the pre-complaint process as described in
7 section two hundred eighty-e of this article does not constitute an
8 election for purposes of this section. An aggrieved employee who files a
9 complaint under this part may not thereafter file a grievance on the
10 same matter. An election to proceed under a negotiated grievance proce-
11 dure is indicated by the filing of a timely written grievance, the
12 denial of such grievance by the agency, and the pursuit of such griev-
13 ance to the next stage of the grievance process. An aggrieved employee
14 who files a grievance with an agency whose negotiated agreement permits
15 the acceptance of grievances which allege discrimination may not there-
16 after file a complaint on the same matter under this chapter irrespec-
17 tive of whether the agency has informed the individual of the need to
18 elect. Any such complaint filed after a grievance has been filed on the
19 same matter shall be dismissed without prejudice to the complainant's
20 right to proceed through the negotiated grievance procedure. Upon such
21 dismissal, which shall include notice of the right to seek a hearing
22 before an administrative judge, the complainant may seek a hearing on
23 the dismissal before an administrative law judge in the same manner as
24 in any individual complaint, including the ultimate right to appeal to
25 the commission.

26 2. When a person is not covered by a collective bargaining agreement
27 that permits allegations of discrimination to be raised in a negotiated
28 grievance procedure, allegations of discrimination shall be processed as
29 complaints under this chapter. The erroneous filing of a grievance under
30 a collective bargaining agreement that does not permit allegations of
31 discrimination to be raised in the course of the negotiated grievance
32 procedure shall not prejudice a person from filing a complaint under
33 this chapter.

34 3. If an administrative judge determines that the filing of a griev-
35 ance resulted in noncompliance with the time limits set forth in this
36 article, that the agency had notice of the allegations of discrimination
37 through the grievance process, and that the complainant has some basis
38 for failing to timely file under this article, including that the indi-
39 vidual was operating under erroneous advice provided by someone with
40 management authority at the agency, or an EEO counselor, or did not have
41 the benefit of counsel, then the administrative judge shall grant relief
42 from the time limits set forth in this article.

43 § 280-1. Appeals to the commission. 1. All appeals to the commission
44 referred to in this article must be filed within thirty days of receipt
45 of the dismissal, final action, or decision. An appeal is taken by
46 filing a notice of appeal with the commission.

47 2. The appellant shall furnish a copy of the notice of appeal to the
48 opposing party at the same time it is filed with the commission. In or
49 attached to the appeal to the commission, the appellant must certify the
50 date and method by which service was made on the opposing party.

51 3. If an appellant does not file an appeal within the time limits of
52 this subpart, the appeal shall be dismissed by the commission as untime-
53 ly, though the commission, upon application, may extend the time for
54 good cause shown.

55 4. The commission shall set a schedule for the briefing of an appeal.

1 5. The parties shall not be responsible for preparation of the record
2 on appeal, though the commission may require a party to provide an
3 appendix containing the most pertinent portions of the record.

4 6. The record shall consist of the file of the administrative law
5 judge, any matters admitted into evidence, or offered as evidence,
6 before the administrative judge, and the transcript of the hearing. Any
7 party may examine the record at his or her request for purposes of
8 preparing a brief on the appeal.

9 7. The commission shall hear arguments on an appeal in the same manner
10 as an appellate court.

11 8. The commission may hear appeals in a panel consisting of three
12 commissioners designated in random fashion.

13 § 280-m. Decisions on appeals. 1. The decision shall be based on the
14 preponderance of the evidence. The decision on an appeal from the deci-
15 sion of the administrative judge shall be de novo, except that the find-
16 ings of the administrative judge as to the credibility of witnesses
17 shall be based on a substantial evidence standard of review.

18 2. The decision shall advise the parties of their right to appeal to
19 the appellate division.

20 3. A party may request reconsideration within thirty days of receipt
21 of a decision of the commission, which the commission in its discretion
22 may grant, if the party demonstrates that:

23 (a) the appellate decision involved a clearly erroneous interpretation
24 of material fact or law; or

25 (b) the decision will have a substantial impact on the policies, prac-
26 tices or operations of the agency in which case the commission shall
27 consider only the question of how to mitigate the impact on the poli-
28 cies, procedures or operations of the agency.

29 § 280-n. Remedies and relief. 1. When an administrative judge, or the
30 commission, in an individual case of discrimination, finds that an
31 applicant or an employee has been discriminated against, the administra-
32 tive judge shall provide full relief which shall include the following
33 elements in appropriate circumstances:

34 (a) notification to all employees of the agency in the affected facil-
35 ity of their right to be free of unlawful discrimination and assurance
36 that the particular types of discrimination found will not recur;

37 (b) commitment that corrective, curative, or preventive action will be
38 taken, or measures adopted, to ensure that violations of the law similar
39 to those found will not recur;

40 (c) an unconditional offer to each identified victim of discrimination
41 of placement in the position the person would have occupied but for the
42 discrimination suffered by that person, or a substantially equivalent
43 position;

44 (d) payment to each identified victim of discrimination on a make
45 whole basis for any loss of earnings the person may have suffered as a
46 result of the discrimination together with interest on such lost earn-
47 ings; and

48 (e) commitment that the agency shall cease from engaging in the
49 specific unlawful employment practice found in the case.

50 2. (a) When an agency, or the commission, finds that an applicant for
51 employment has been discriminated against, the agency shall offer the
52 applicant the position that the applicant would have occupied absent
53 discrimination or, if justified by the circumstances, a substantially
54 equivalent position. The offer shall be made in writing. The individual
55 shall have thirty days from receipt of the offer within which to accept
56 or decline the offer. Failure to accept the offer within the thirty day

1 period will be considered a declination of the offer, unless the indi-
2 vidual can show that circumstances beyond his or her control prevented a
3 response within the time limit.

4 (b) If the offer is accepted, appointment shall be retroactive to the
5 date the applicant would have been hired. Back pay with interest shall
6 be awarded from the date the individual would have entered on duty until
7 the date the individual actually enters on duty. The individual shall be
8 deemed to have performed service for the agency during this period for
9 all purposes except for meeting service requirements for completion of a
10 required probationary or trial period.

11 (c) If the offer of employment is declined, the agency shall award the
12 individual a sum equal to the back pay he or she would have received
13 from the date he or she would have been hired until the date the offer
14 was declined. Interest on back pay shall be included in the back pay
15 computation. The agency shall inform the applicant, in its offer of
16 employment, of the right to this award in the event the offer is
17 declined.

18 3. When an administrative judge, or the commission, finds that an
19 employee of the agency was discriminated against, the agency shall
20 provide relief, which shall include, but need not be limited to, one or
21 more of the following actions:

22 (a) nondiscriminatory placement, with back pay and interest;

23 (b) cancellation of an unwarranted personnel action and restoration of
24 the employee to his or her former position or a substantially equivalent
25 position;

26 (c) expunction from the agency's records of any adverse materials
27 relating to the discriminatory employment practice; and

28 (d) full opportunity to participate in the employee benefit denied,
29 including, but not limited to, training, preferential work assignments,
30 and overtime scheduling.

31 4. The agency has the burden of proving by a preponderance of the
32 evidence that the complainant has failed to mitigate his or her damages.
33 Failure to mitigate must be raised at the hearing before the administra-
34 tive judge or is waived.

35 5. (a) Notwithstanding any provision of law to the contrary, the
36 provisions of this subdivision relating to the award of attorney's fees
37 or costs shall apply to all allegations of discrimination covered under
38 this article and to all allegations of discrimination covered with
39 respect to private employees under article fifteen of this chapter,
40 constituting the human rights law. In a decision of an administrative
41 judge, or the commission, or of a court in a case involving a private
42 employee covered under the human rights law, or a public employee
43 covered under this chapter, the administrative judge, the commission, or
44 the court, as applicable, shall award the applicant or employee reason-
45 able attorney's fees (including expert witness and paralegal fees) and
46 other costs and disbursements incurred in the investigation and process-
47 ing of the complaint, from the first involvement of counsel through all
48 appeals. Any award of attorney's fees or costs shall be paid by the
49 agency.

50 (b) When the administrative judge, the commission, or a court, as
51 appropriate, determines an entitlement to attorney's fees or costs, the
52 complainant's attorney shall submit a verified statement of attorney's
53 fees, including but not limited to, expert witness fees and paralegal
54 fees, and other costs and disbursements, as appropriate, to the adminis-
55 trative judge, the commission, or the court within thirty days of
56 receipt of the decision and shall submit a copy of the statement to the

1 agency. A statement of attorney's fees and costs shall be accompanied by
2 an affidavit executed by the attorney of record itemizing the attorney's
3 charges for legal services using the attorney's ordinary and customary
4 recordkeeping process for accounting for his or her time. The agency may
5 object in whole or in part to a statement of attorney's fees and costs
6 within thirty days of its receipt.

7 (c) The administrative judge, the commission, or the court shall issue
8 a decision determining the amount of attorney's fees or costs due within
9 sixty days of receipt of the statement and affidavit. The decision shall
10 include the specific reasons for determining the amount of the award.

11 (d) The amount of attorney's fees shall be calculated using the
12 following standards: the starting point shall be the number of hours
13 reasonably expended multiplied by a reasonable hourly rate. The reason-
14 able hourly rate shall be the same as the lodestar rate then prevailing
15 in federal court for attorneys of like experience in the particular part
16 of the state where the case arose. There is a strong presumption that
17 this amount represents the reasonable fee.

18 § 280-o. Compliance with final decisions. 1. Relief ordered in a
19 final decision of an administrative judge, if not appealed, or of the
20 commission, is mandatory and binding on the agency except as otherwise
21 provided in this section. Failure to implement ordered relief shall be
22 subject to judicial enforcement as set forth in this chapter.

23 2. Notwithstanding subdivision one of this section, when the agency
24 requests reconsideration or appeals and the case involves removal, sepa-
25 ration, or suspension continuing beyond the date of the request for
26 reconsideration, and when the decision orders retroactive restoration,
27 the agency shall comply with the decision to the extent of the temporary
28 or conditional restoration of the employee to duty status in the posi-
29 tion specified by the administrative judge of the commission, pending
30 the outcome of the agency request for reconsideration.

31 3. Service under the temporary or conditional restoration provisions
32 of subdivision two of this section shall be credited toward the
33 completion of a probationary or trial period, or shall count for
34 promotion as appropriate.

35 4. When the agency requests reconsideration, or appeals it may delay
36 the payment of any amounts ordered to be paid to the complainant until
37 after the request for reconsideration or the appeal is resolved. If the
38 agency delays payment of any amount pending the outcome of the request
39 to reconsider or the appeal, and the resolution of the request or appeal
40 requires the agency to make the payment, then the agency shall pay
41 interest from the date of the original decision it had appealed or asked
42 to be reconsidered until payment is made, as well as all interest
43 required prior to the request for reconsideration or appeal.

44 5. The agency shall notify the administrative judge or the commission,
45 as appropriate, and the employee in writing at the same time it requests
46 reconsideration or appeals that the relief it provides is temporary or
47 conditional and, if applicable, that it will delay the payment of any
48 amounts owed but will pay interest as set forth above in the event its
49 application or appeal is unsuccessful. Failure of the agency to provide
50 notification will result in the dismissal of the agency's request or
51 appeal.

52 6. When no appeal is taken, or no request for reconsideration is filed
53 or when a request for reconsideration is denied, the agency shall
54 provide the relief ordered and there is no further right to delay imple-
55 mentation of the ordered relief. The relief shall be provided in full

1 not later than sixty days after receipt of the final decision unless
2 otherwise ordered in the decision.

3 § 280-p. Enforcement of final decisions. A complainant may petition
4 the supreme court of the state of New York pursuant to article seventy-
5 eight of the civil practice law and rules for enforcement of a decision
6 issued by an administrative judge that is not appealed to the commis-
7 sion, that is issued under the commission's appellate jurisdiction, or
8 of any settlement agreement executed in the course of the administrative
9 process. A settlement agreement is binding even if not executed by all
10 parties if the essential terms were clearly entered into the record or
11 if the exchange of correspondence clearly indicates agreement on the
12 essential terms. The court may supply any additional non-essential terms
13 based on the submissions of the parties.

14 § 280-q. Interim relief. 1. When the agency appeals and the case
15 involves removal, separation, or suspension continuing beyond the date
16 of the appeal, and when the administrative judge's decision orders
17 retroactive restoration, the agency shall comply with the decision to
18 the extent of the temporary or conditional restoration of the employee
19 to duty status in the position specified in the decision, pending the
20 outcome of the agency appeal.

21 2. Service under the temporary or conditional restoration provisions
22 of subdivision one of this section shall be credited toward the
23 completion of a probationary or trial period, or eligibility for
24 promotion, if the commission upholds the decision on appeal. Such
25 service shall not be credited toward the completion of any applicable
26 probationary or trial period or toward promotion if the commission
27 reverses the decision on appeal.

28 3. When the agency appeals, it may delay the payment of any amount,
29 other than pay and benefits accruing under temporary or conditional
30 restoration, which had been ordered to be paid to the complainant until
31 after the appeal is resolved. Such delay shall be administered in
32 accordance with section two hundred eighty-o of this article.

33 § 280-r. Joint processing and consolidation of complaints. Complaints
34 of discrimination filed by two or more complainants consisting of
35 substantially similar allegations of discrimination or relating to the
36 same matter may be consolidated by the agency, the administrative judge,
37 or the commission for joint processing after appropriate notification to
38 the parties. Two or more complaints of discrimination filed by the same
39 complainant shall be consolidated by the agency, by the administrative
40 judge, or by the commission for joint processing after appropriate
41 notification to the complainant. When a complaint has been consolidated
42 with one or more earlier filed complaints, the agency shall complete its
43 investigation within one hundred eighty days after the filing of the
44 last complaint or three hundred sixty days after the filing of the
45 original complaint, except that the complainant may request a hearing
46 from an administrative judge on the consolidated complaints any time
47 after one hundred eighty days from the date of the first filed
48 complaint. An aggrieved individual shall retain the right to bring a
49 civil action in New York state supreme court concerning the subject
50 matter of the consolidated complaints if the investigation of the
51 consolidated complaints is not completed within one hundred eighty days
52 of consolidation or three hundred sixty days after the filing of the
53 first complaint, whichever is earlier, or a hearing has not been
54 commenced within one hundred eighty days of the request for same.

55 § 280-s. Appeals of decisions of the commission. Decisions of the
56 commission shall be appealable to the appellate division of the supreme

1 court in the particular department where the employee acting in his or
2 her individual capacity or acting as the agent of a class was employed
3 at the time he or she filed the complaint. Decisions of the commission
4 shall notify the complainant or class agent and the agency of their
5 right to appeal to the appellate division. Notice of appeal shall be
6 filed with the commission, which shall then notify the appropriate
7 appellate division of the pendency of an appeal. The time to file a
8 notice of appeal shall be thirty days from the date of the commission's
9 issuance of its decision and mailing of that decision by the commission
10 to both parties.

11 § 280-t. EEO group statistics. 1. Each agency, subject to review and
12 approval by the commission, under a timeline set by the commission,
13 shall establish:

14 (a) a system to collect and maintain accurate employment information
15 on the race, national origin, sex and disabilities of its employees; and

16 (b) a system for reporting the number of EEO complaints filed under
17 this article, and the disposition of such complaints.

18 2. The data gathered shall be reported in pdf format on an EEO section
19 of such agency's website and shall be collected statewide and reported
20 in pdf format on the commission's website.

21 3. Data on race, national origin, and sex shall be collected by volun-
22 tary self-identification. If an employee does not voluntarily provide
23 the requested information, the agency shall advise the employee of the
24 importance of the data and of the agency's obligation to report it. If
25 the employee still refuses to provide the information, the agency must
26 make visual identification and inform the employee of the data it will
27 be reporting. If an agency believes that information provided by an
28 employee is inaccurate, the agency shall advise the employee about the
29 solely statistical purpose for which the data is being collected, the
30 need for accuracy, the agency's recognition of the sensitivity of the
31 information, and the existence of procedures to prevent its unauthorized
32 disclosure. If, thereafter, the employee declines to change the appar-
33 ently inaccurate self-identification, the agency must accept it.

34 4. The information collected under subdivision two of this section
35 shall be disclosed only in the form of gross statistics. An agency shall
36 not collect or maintain any information on the race, national origin or
37 sex of individual employees except when an automated data processing
38 system is used in accordance with standards and requirements prescribed
39 by the commission to insure individual privacy and the separation of
40 that information from the employee's personnel record.

41 5. Each system is subject to the following controls:

42 (a) only those categories of race and national origin prescribed by
43 the commission, or categories concerning the processing of EEO
44 complaints, may be used;

45 (b) only the specific procedures for the collection and maintenance of
46 data that are prescribed or approved by the commission may be used;

47 (c) the commission shall review the operation of the agency system to
48 insure adherence to commission procedures and requirements. An agency
49 may make an exception to the prescribed procedures and requirements only
50 with the advance written approval of the commission;

51 (d) the agency may use the data only in studies and analyses which
52 contribute affirmatively to achieving the objectives of the equal
53 employment opportunity program. An agency shall not establish a quota
54 for the employment of persons on the basis of race, color, religion,
55 sex, or national origin;

(e) data on disabilities shall also be collected by voluntary self-identification. If an employee does not voluntarily provide the requested information, the agency shall advise the employee of the importance of the data and of the agency's obligation to report it. If an employee who has been appointed pursuant to special appointment authority for hiring individuals with disabilities, or who has requested reasonable accommodation for a disability, still refuses to provide the requested information, the agency must identify the employee's disability based upon the records supporting the appointment or the request for reasonable accommodation. If any other employee still refuses to provide the requested information or provides information that the agency believes to be inaccurate, the agency should report the employee's disability status as unknown;

(f) an agency shall report to the commission on employment by race, national origin, sex and disability in the form and at such times as the commission may require.

§ 2. Section 293 of the executive law, as amended by chapter 958 of the laws of 1968, subdivisions 1 and 2 as amended by chapter 166 of the laws of 2000, is amended to read as follows:

§ 293. ~~[Division of]~~ New York state commission on human rights. 1. There is hereby created in the executive department a ~~[division of]~~ New York state commission on human rights hereinafter in this article called the ~~[division]~~ commission. The commission shall consist of five members with four year terms. The governor shall appoint each of the five members. The initial term of each member shall be one year, two years, three years, four years, and five years, so that the terms are staggered to guarantee the independence of the commission. The head of such ~~[division]~~ commission shall be ~~[a commissioner hereinafter in this article called the commissioner]~~ an executive director, who shall be ~~[appointed]~~ elected by the ~~[governor, by and with the advice and consent of the senate and shall hold office at the pleasure of the governor]~~ members of the commission. The commissioner shall be entitled to his or her expenses actually and necessarily incurred by him or her in the performance of his or her duties.

2. The commissioner may establish, consolidate, reorganize or abolish such bureaus and other organizational units within the division as he or she determines to be necessary for efficient operation.

§ 3. (a) Wherever the term "state division of human rights" appears in the consolidated or unconsolidated laws of this state, such term is hereby changed to the "New York state commission on human rights".

(b) Wherever the term "commissioner of the division of human rights" appears in the consolidated or unconsolidated laws of this state, such term is hereby changed to the "executive director of the New York state commission on human rights".

(c) The legislative bill drafting commission is hereby directed to effectuate this provision, and shall be guided by a memorandum of instruction setting forth the specific provisions of law to be amended. Such memorandum shall be transmitted to the legislative bill drafting commission within sixty days of enactment of this provision. Such memorandum shall be issued jointly by the governor, the temporary president of the senate and the speaker of the assembly, or by the delegate of each.

§ 4. This act shall take effect on January 1, 2021.