



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

HUMAN RIGHTS COMMISSION

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REQUEST FOR PUBLIC COMMENT

The West Virginia Human Rights Commission (“HRC”) is hereby seeking comments from the public on the issue of whether any of the HRC’s rules (Title 77 of the Code of State Rules) is “more stringent” than its federal counterpart(s). Please submit any comments by November 30, 2017 to:

General Counsel
W.Va. Human Rights Commission
1321 Plaza East, Room 108-A
Charleston, WV 25301

or by facsimile to: (304) 558-0085, attention General Counsel

There are 10 rules under the HRC’s jurisdiction, which are found at Title 77 of the Code of State Rules (C.S.R.). The HRC has found that *none* of its rules is “more stringent” than its federal counterpart or federal counterparts. In the context of human rights legislation, a state law may provide greater or equal protection for the rights of individuals than is afforded by federal law, but a state law may not provide for less individual protection or fewer protections.

Fortunately, the HRC’s rules, when enacted, were modeled on their federal counterparts, if any, as they existed at the time.¹ Some of the HRC’s rules are purely procedural rules regarding the processing of state-law cases before the state agency, and thus have no federal counterpart.²

On the other hand, significant changes were made to the federal Americans with Disabilities Act (“ADA”) via the ADA Amendments Act, effective January 1, 2009, which were intended to provide greater protections to more individuals who suffer from “disabilities.” Of course, the West Virginia Human Rights Act provides protections for individuals with disabilities, but our state rule aimed at clarifying the definition of “disability” (Series 1, 1994) has not been updated to match the more expansive protections of the federal ADA. As such, the *federal counterparts* could be said to be “*more stringent*” in this context, and supersede our state rule. The expanded definition of “disability” under the federal ADA is found in a counterpart to our state rule at 29 C.F.R. §1630.

¹ The HRC’s rules that have federal counterparts are: Series 1, “Rules Regarding Discrimination Against Individuals With Disabilities”; Series 3, “Religious Discrimination”; Series 4, “Sexual Harassment”; Series 5, “Exemption of Private Clubs”; Series 9, “Rules Regarding Housing Discrimination Against Persons With Disabilities Who Utilize Assistance Animals”; and Series 10, “Pregnant Workers’ Fairness Act.”

² More specifically, the HRC’s procedural rules are: Series 2, “Rules of Practice and Procedure Before the West Virginia Human Rights Commission”; Series 6, “Waiver of Rights”; Series 7, “Definition of Employer Under the West Virginia Human Rights Act”; and Series 8, “Rules for the Processing of Complaints and for Administrative Proceedings Under the West Virginia Fair Housing Act.”