

pursuant to Executive Order No. 244 (2021), and P.L. 2021, c. 104, this notice of readoption is timely filed.

The rules at N.J.A.C. 13:11 prohibit discrimination in employment advertising and are designed to provide guidance to employers and others who are impacted by the application of the New Jersey Law Against Discrimination (LAD), N.J.S.A. 10:5-1 through 49.

Subchapter 1 sets forth the general rules prohibiting discriminatory employment advertising. Subchapter 2 sets forth an exception to the rules for advertising offered by the Director of the Division on Civil Rights (Division). Subchapter 3 addresses the use of gender-neutral job titles in advertisements and prohibits use of any language in advertisements expressing a limitation or preference based on a LAD-protected characteristic, except where the protected characteristic is a bona fide occupational qualification (BFOQ). This subchapter ensures that limitations or preferences in headings, titles, and categories in publications or advertisements are deemed LAD violations.

Subchapter 4 defines the scope of a narrow exception to the LAD, permitting advertisements to solicit applicants of a particular protected characteristic when that characteristic is a BFOQ for a specific job or employment-related opportunity. Subchapter 5 sets forth the process by which an employer or publisher may request a ruling from the Division on a request for a BFOQ exception. Subchapter 6 provides that the failure to comply with this chapter shall be deemed a violation of the LAD.

The Division on Civil Rights, in the Department of Law and Public Safety, enforces the LAD. The Division is developing a rulemaking to revise and update existing N.J.A.C. 13:11 and anticipates filing this rulemaking with the Office of Administrative Law for processing in the ordinary course. However, that rulemaking could not be proposed prior to the expiration of existing N.J.A.C. 13:11. The Division has reviewed N.J.A.C. 13:11 and determined that, pending the finalization of the anticipated rulemaking described above, the existing chapter remains necessary, reasonable, and proper for the purpose for which it was originally promulgated, as amended and supplemented over time. Therefore, pursuant to N.J.S.A. 52:14B-5.1.c(1), these rules are readopted without change and shall continue in effect for a seven-year period.

TREASURY—GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS

Alternate Benefit Program

Readoption with Amendments: N.J.A.C. 17:7

Proposed: September 8, 2020, at 52 N.J.R. 1669(a).

Notice of Proposed Substantial Changes upon Adoption to Proposed

Amendments: April 19, 2021, at 53 N.J.R. 617(b).

Adopted: June 21, 2021, John D. Megariotis, Acting Director,
Division of Pensions and Benefits.

Filed: June 24, 2021, as R.2021 d.075, **with substantial changes**,
after additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 52:18A-107 et seq., specifically, 18A:66-192.

Effective Dates: June 24, 2021, Readoption;
July 19, 2021, Amendments.

Expiration Date: June 24, 2028.

Summary of Public Comments and Agency Responses:

No comments were received.

Summary of Agency-Initiated Changes:

The Division of Pensions and Benefits (Division) published a notice of substantial change to the original notice of proposal making a few changes to N.J.A.C. 17:7-8.11. There were no comments received on this notice either. The substantial changes made upon adoption after opportunity for public comment added new N.J.A.C. 17:7-8.11(a)3v to state that participating faculty shall also include retirees providing assistance to their former employer to further the process of any existing patent

application and working with graduate students to finalize post-graduate education and post-doctorate research.

Federal Standards Statement

The rules readopted with amendments meet the applicable Federal standards, that is, 26 U.S.C. § 403(b). There are no other Federal standards applicable to the subject matter of these rules and, therefore, a Federal standards analysis is not necessary.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 17:7.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks ***[thus]***):

SUBCHAPTER 8. DISTRIBUTIONS AND MINIMUM DISTRIBUTION REQUIREMENTS—ABP RETIREMENT PLAN

17:7-8.11 Transition to retirement programs

(a) Members will be permitted to file for retirement from the ABP, and receive benefits under the ABP, if the member participates in a transition to retirement program (TTRP) adopted by the employer that meets the following minimum requirements:

1. Members must meet the eligibility requirements for transition to retirement programs provided below:

i. Members must be full-time tenured faculty who are at least 59 1/2 years of age;

ii. iii. (No change.)

2. Members who meet all of the requirements of the TTRP and are approved by their employer shall be permitted to participate for a maximum of three years.

i. Members whose employer's current transition to retirement program allows for participation for up to a maximum of three years may participate in the employer's program through September 21, 2020.

ii. A member who already is participating in an employer's one-year transition plan may enter into a new TTRP for an additional period, up to a maximum of three years total, counting time in both the one-year and the extended program;

3. Program minimum requirements must include:

i. Participating faculty must officially retire from the college or university and then seek re-employment under the terms of this section. Incentives to retire are not permitted. Employers shall submit a document to the Division certifying that the member's participation in the TTRP is not an incentive by the employer;

ii. (No change.)

iii. In no event shall the total assignment exceed 50 percent of a full-time faculty load; ***[and]***

iv. Participating faculty shall receive compensation proportional to the assignment approved by the college or university which shall not exceed 50 percent of their final year's salary ***[.]****; **and**

v. Participating faculty shall also include retirees providing assistance to the employer to further the process of any existing patent application. Additionally, it shall include participating faculty working with graduate students to finalize post-graduate education and post-doctorate research. All retirees within this subgroup are providing their services on a voluntary, unpaid basis and are subject to the same limitations as set forth in this section.*

(b) An employer shall submit evidence to the Division demonstrating the employer's actions to ensure that all TTRPs are compliant with the three-year requirement at (a)2 above.

(c) ABP employers shall provide to the Division an annual listing of all ABP members at their location who are participants in their TTRP, along with a certification evidencing compliance with the limitation of up to 50 percent of the full-time faculty load, as well as 50 percent of the final year's salary.