

Avoiding Unlawful Housing Discrimination in New York State: Part 1 [Podcast]

Article By:

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Landlords, property managers, realtors, and others in residential real estate strive to avoid inadvertently discriminating against individuals renting or leasing residential properties. Despite best intentions, discrimination can occur against protected classes covered under the New York State Human Rights Law.

Jackson Lewis P.C. · Avoiding Unlawful Housing Discrimination in New York State: Part 1

Transcript

Alitia Faccone:

Welcome to Jackson Lewis's podcast, *We get work*[™], focused solely on workplace issues. It is our job to help employers develop proactive strategies, strong policies, and business-oriented solutions to cultivate an engaged, stable and inclusive workforce. Our podcast identifies issues that influence and impact the workplace, and its continuing evolution and helps answer the question on every employer's mind. How will my business be impacted? A more inclusive workplace culture is evolving to support parents in creating fulfilling and sustainable careers while being present for their families. Fathers have been perceived historically as having less interest in both career achievement and parenting. However, employers acknowledge parents of all genders, face challenges providing for their families while simultaneously being involved in their children's day-to-day lives. In part one of this two-part episode of *We get work*[™], four fathers discuss why it's essential to create a safe space for parents to address these issues in the workplace, while providing practical takeaways on what employers can do to help.

In part one of this three-part episode of We get work™, we discuss how housing discrimination can occur under the New York State Human Rights Law.

Our hosts today are Diane Krebs, principal in Jackson Lewis' Long Island office and member of the Real Estate Industry group, and special guest Chelsea L. John, Director of Housing Investigations with the New York State Division of Human Rights.

With experience in housing, civil rights, labor, and employment discrimination matters, Diane provides comprehensive counseling, advice, and litigation defense to employers and real estate professionals.

Chelsea, whose prior experience includes positions at the New York City Commission on Human Rights and New York City nonprofit organizations, is well-versed in employment law, public accommodations, and housing discrimination, as well as bias-based policing.

Diane and Chelsea, the question on everyone's mind today is, what protected classes are impacted by New York State Human Rights Law, and how does this impact my business?

Diane Krebs:

Hello all you listeners out there, and thank you for joining us today. I'm Diane Krebs, a principal in the Long Island Office of Jackson Lewis. It is my pleasure to have with me Ms. Chelsea John, the Director of Housing Investigations with the New York State Division of Human Rights, the agency tasked with enforcing New York State's anti-discrimination laws. In that capacity, Chelsea oversees the investigations of housing discrimination complaints for the state as well as those duly filed with the Department of Housing and Urban Development, also known as HUD. Chelsea, thanks so much for joining today.

Chelsea John:

Thanks for having me.

Diane Krebs:

So glad to have you. So let's just jump right in because we've got a lot to cover. I wanted to start with some general questions because I often find that people need clarity about what the human rights law really covers and requires when it comes to housing discrimination. So let's start with the one general question. Can you talk about the kinds of protected classes that are covered by the housing provisions of the New York State human rights law?

Chelsea John:

Yeah, so there are many, and I would point our listeners to our website, but just to name a few. So there's gender, race, lawful source of income, disability, citizenship or immigration status. That's the newest protected class under the human rights law. Arrest record, creed, marital status, protected classes like that.

Diane Krebs:

Okay, great. And so is it fair to say that for people that are more familiar with the employment

discrimination side of things, that the subject matters are almost, maybe not entirely, but for the most part, overlapping, that the same kind of list covers both types of discrimination?

Chelsea John:

Yeah. For the most part, lawful source of income is a major difference, obviously employment versus housing, and there are some nuances in the differences like accommodations for domestic violence victims versus employment versus in housing where we would be looking more at differential treatment.

Diane Krebs:

Got it. And you've mentioned source of income discrimination. Can you just explain what that means? Because I think we're going to come back to talk about that a little bit more in a bit.

Chelsea John:

Yeah. So source of income discrimination, it's newer to New York State. It was just passed in law in 2019, but folks in New York City probably heard about this. It's been around since 2008. It's essentially public sources of income like rental subsidies or vouchers, but it can also include sources of income like alimony or child support.

Diane Krebs:

And so the idea being that a real estate professional in a housing setting cannot discriminate against an applicant or somebody in that process based on where their money is coming from as long as it's a lawful source.

Chelsea John:

That's right.

Diane Krebs:

Got it. Okay. Now as another general question, I think there's a lot of confusion about what the process is if somebody makes a complaint in front of the division. Can you explain the process that your office undertakes when they get a housing discrimination complaint from the very beginning through conclusion, however those conclusions might be?

Chelsea John:

Yeah, absolutely. So our agency is tasked with investigating, prosecuting and adjudicating complaints of unlawful discrimination, and we receive complaints from the public, but we also have the authority to initiate, called division initiated complaints. Most of the complaints we receive are obviously from the public. We receive those complaints by fax, email, mail, in person. We really made it very easy for people to file complaints. And we dual file those complaints with HUD when appropriate. And we also engage in joint investigations with the New York State Department of State Division of Licensing. So that's something that is unique to our agency, and that's for complaints involving real estate professionals like brokers and real estate agents.

Diane Krebs:

And is that because those individuals are required to have licenses by the state and therefore a potential violation could impact both discrimination in this sense, but also based on their conduct could have an impact on a person's license?

Chelsea John:

That's right. Got it.

Diane Krebs:

Yup. Okay.

Chelsea John:

So when we receive this complaint, we file it. We don't make changes to the complaint. The respondents have an opportunity to respond and then complainants have an opportunity to rebut that response. So that's kind of the pleading stage. We assign these cases to neutral fact finder investigators within our office, which is the office that I oversee as a director. We're located in the Bronx, the centralized location for all of the state. And each investigator is tasked with investigating that case. They will engage in things like interviews, they might do site visits, they will collect documentary evidence. So it's a pretty robust investigation that happens. We then reach a finding of typically probable cause or no probable cause. If we find no probable cause, we will be dismissing the complaint. If we find probable cause, then we'll refer to hearings, and that's outside of my department. But I will share, the case will then be scheduled for a hearing, the attorneys assigned would engage in conciliation, and the parties also have the option to elect to take that case to Supreme Court, which is different than most administrative forums.

Diane Krebs:

So during this process, when you say your office is doing the investigation phase of it, what are some of the typical pitfalls that you and your investigators see in the course of investigating a complaint that could help enlighten some of our listeners as to where problems may lie?

Chelsea John:

Yeah. So I should also share before I get into that, that we also engage in conciliation. We at least attempt it. So at this stage, that sometimes comes as a surprise to especially respondents. "I haven't done anything wrong. You haven't found probable cause against me. Why are you asking me to settle the case?" So that's one thing I want to highlight is it's just part of our process to engage in conciliation and see if we can resolve whatever issue might've come before us. So that's one piece.

For the investigation itself, I would say a big pitfall from respondents that we see is really a lack of cooperation. This should not be an adversarial process. We are neutral fact finders. It is our job to collect a robust amount of information, and sometimes that is off-putting to some of the parties. So I just want to stress that respondents should really cooperate fully with our office, they should produce information when asked, and they should be honest throughout the investigation. Lying or withholding information, it can carry consequences in our office and can ultimately result in additional penalties if probable cause is found.

Diane Krebs:

Okay. Talking about penalties, segueing into my next general question, what are typical types of either penalties or fines or even conciliation terms depending on whether it's a resolution or a probable cause or finding or finding at the end of the day? What are those types of things that respondents can expect to be put out there as part of that process?

Chelsea John:

Yeah, so in the predetermination posture, we typically settle with parties for monetary damages, and those are going to be lower monetary damages, and affirmative relief like training, policy changes, postings, et cetera. We've had more creative outcomes since I've come on board where we have apologies that are issued, statements on websites, setting aside apartments for people with lawful source of income, for example. But post-hearing, the division may award very high monetary damages depending on the discovery that happened related to mental pain and suffering. They could award penalties like civil penalties, attorney's fees, and they would also still engage in that kind of affirmative relief. What's in the interest of the New York State, New Yorkers across the state, and that would be policy, anti-discrimination policies and things like that.

Diane Krebs:

When you said that it could also include attorney's fees, is that only if the individual has their own private attorney that's assisting them? What if they're just utilizing the individuals at the division to help press their claim post probable cause finding?

Chelsea John:

That's if a complainant has their own private attorney.

Diane Krebs:

Okay. Got it. Thank you. Now, stepping back for a second, you've mentioned a lot of different types of categories of discrimination that can exist within the housing sphere. Are there any particular trends that you're seeing these days at the division, for example, the types of claims that are most common, or if you're seeing things on the rise and other things on the decline? Tell us what you're seeing these days.

Chelsea John:

Most claims that we receive are disability claims. That's about half of the claims that we are investigating as an office. The fastest growing protected category that is filed with our office is lawful source of income. And then the next kind of largest amount of complaints we're receiving is based on race and color discrimination.

Diane Krebs:

And any thoughts as to why you're seeing these particular categories at such high rates?

Chelsea John:

Well, I think for disability claims, these have always been prevalent in fair housing. In New York State in particular, there's lots of barriers for people who use mobility assisted devices. Think about New York City alone, very few kind of housing opportunities for people who might use a wheelchair or a walker for mobility. But for a lawful source of income, I think that it's a newer protected class under our law, folks are just being educated on what it looks like to have these protections. And during the COVID-19 pandemic, we saw a lot of new voucher holders enter the market. A lot of people lost their jobs, lost their housing, and they were awarded with these subsidies to help them pay their rent.

Diane Krebs:

Okay. That makes a lot of sense. So now that you've explained what the trends and commonalities that you're seeing, I'm also curious about the priorities that your division is going to have for next year. Are there any particular issues or types of respondents that the division is going to be prioritizing in 2024?

Chelsea John:

So our agency is prioritizing lawful source of income claims, given that it's a newer protected class under the human rights law. And also, as I mentioned, it's one of the fastest growing complaints that we receive.

Diane Krebs:

Got it. So let's talk about lawful source of income. I said before we were going to come back to it, and here we are, because you've identified that not only as a very common trend, but also a priority for the division. So I want to talk a little bit about issues surrounding that kind of discrimination and in particular, you mentioned vouchers. So I want to talk a little bit specifically about issues pertaining to source of income where there's a voucher, which I guess that would be, for example, something like Section Eight, what most people would know of. Is that fair to say?

Chelsea John:

Yep, that's right.

Diane Krebs:

Okay, so ...

Alitia Faccone:

Thank you for joining us on We get work™. Please tune into our next program where we will continue to tell you not only what's legal, but what is effective.

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National Law Review, Volume XIV, Number 5

Source URL: <https://natlawreview.com/article/avoiding-unlawful-housing-discrimination-new-york-state-part-1>