



COMMUNITY JUSTICE PROJECT

May 9, 2022

Pennsylvania Human Relations Commission
333 Market Street, 8th Floor
Harrisburg, PA 17101-2210

Sent via email: HRREGSCOMMENT@pa.gov

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**Independent Regulatory
Review Commission**

Re: Comment on PHRC's proposed regulations to define class protections under the PHRA and PFEOA

Dear Members of the Pennsylvania Human Relations Commission,

Thank you for the opportunity to comment on the Commission's proposed rulemaking on definitions under the PHRA and the PFEOA. We write on behalf of a coalition of community leaders, advocates, and lawyers from across the state who are committed to ensuring that Pennsylvania takes the necessary steps to ensure equity, safety, and stability for survivors of domestic violence (DV).

We would first like to commend the Commission on their decision to establish clear definitions for the terms religious creed, sex, and race under these statutes. We believe the proposed definitions will not only promote clarity and consistency in PHRC enforcement actions, but will also ensure that these terms are construed in a manner that will further the Commission's objective of stamping out illegal discrimination across the commonwealth. However, we write to encourage the Commission to draft a definition of "sex" that will also protect individuals who face discrimination based on their status as survivors of domestic violence.

As you know, under the law, the term "sex" is defined broadly. Sex discrimination is not limited solely to discrimination based on biology, but also encompasses discrimination that occurs "because of sex" or "on the basis of sex." Thus, where a specific group is disproportionately likely to be female, federal courts and agencies have found that discrimination against that group may constitute discrimination because of or on the basis of sex. Such has been the case with discrimination against survivors of domestic violence.

It is undisputed that a disproportionate number of DV survivors are female. HUD described this disproportionality in its guidance, *Assessing Claims of Housing Discrimination against Victims of Domestic Violence*:

Statistics show that women are overwhelmingly the victims of domestic violence. An estimated 1.3 million women are the victims of assault by an intimate partner each year, and about 1 in 4 women will experience intimate partner violence in their lifetimes. The U.S. Bureau of Justice Statistics found that 85% of victims of domestic violence are women. In 2009, women were about five times as likely as men to experience domestic

violence. These statistics show that discrimination against victims of domestic violence is almost always discrimination against women.ⁱ

These statistics also hold true in Pennsylvania. One report conducted for the Pennsylvania General Assembly found that, on average, approximately 90% of the individuals served by domestic violence shelters in Pennsylvania are female.ⁱⁱ According to this report, in Pennsylvania “women used emergency shelter, PFAs, transitional housing, long-term housing, and transportation more than men in both rural and urban counties . . .”ⁱⁱⁱ

Because domestic violence disproportionately affects women, federal courts across the country have found that policies and practices that are prejudicial towards DV survivors can constitute unlawful sex discrimination.^{iv} Both HUD and the EEOC have also found that discrimination against survivors of domestic violence can constitute sex discrimination under federal civil rights laws.^v

This past September, a federal court in Pennsylvania likewise found discrimination based on or because of domestic violence could give rise to a claim of sex discrimination. This court found that Ashley Butler, who is a signatory of this letter, was a member of a protected class under the Fair Housing Act, due to her status as a survivor of domestic violence. In coming to this decision the court stated that discrimination against DV survivors can constitute sex discrimination “because domestic violence victims tend to overwhelmingly be women . . . So, essentially, discrimination against domestic violence victims is likely to be discrimination against women.”^{vi}

We commend the Commission for following the lead of the federal judiciary and expanding the definition of “sex” to include gender identity, gender expression, and sexual orientation. We urge the Commission to similarly follow the lead of the federal judiciary when it comes to eradicating discrimination against survivors of domestic violence by adopting a definition of sex that includes “survivors of domestic violence.” Doing so would protect survivors from the very real harms they face as a result of policies and practices that place discriminatory barriers on survivors in the workplace, in housing, and in public accommodations. At least ten other states, as well as multiple cities within Pennsylvania, already ensure DV survivors are protected against discrimination. We believe that now is the time for the Commission to clearly and definitively affirm that all survivors of domestic violence across Pennsylvania deserve to be free of discrimination and we believe that defining sex, as this term is used in the PHRA and PFOA, to include discrimination based on domestic violence is a powerful and meaningful way to safeguard this freedom.

Thank you for your time and consideration.

Sincerely,

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ⁱ HUD, *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence against Women Act (VAWA)*, available at <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.pdf>

ⁱⁱ Devi, Gayatri, et. al, *Analysis of Domestic Violence Services in Rural Pennsylvania*, The Center for Rural Pennsylvania, Lock Haven University of Pennsylvania, at 10 (2016), available at https://www.rural.palegislature.us/documents/reports/Domestic_Violence_Services_Devi_2016.pdf.

ⁱⁱⁱ *Id.* at 11.

^{iv} See, e.g., *Wilson v. Guardian Mgmt., LLC*, 383 F. Supp. 3d 1105, 1109 (D. Or. 2019) (stating that “substantial case law and scholarship . . . suggest that domestic violence victims may bring a claim for housing discrimination under the FHA through a theory of sex . . . discrimination.”); *Dickinson v. Zanesville Metro. Hous. Auth.*, 975 F. Supp. 2d 863, 872 (S.D. Ohio 2013) (finding that evicting a plaintiff and sending negative reference letters to other landlords when defendant “was aware, or should have been aware, that Plaintiff was the victim of longstanding and continuing domestic violence” could support a claim for sex discrimination); *Creason v. Singh*, 2013 WL 6185596, at *1, *4 (N.D. Cal. Nov. 26, 2013) (finding that “the eviction of a tenant because she is a victim of domestic violence might constitute unlawful [sex] discrimination under the [FHA]”); *Meister v. Kansas City*, 2011 WL 765887, at *6 (D. Kan. February 25, 2011) (allowing a claim to proceed to trial under a sex discrimination theory where the plaintiff provided evidence giving rise to an inference that she was targeted due to her experiences with domestic violence); *Bouley v. Young-Sabourin*, 394 F.Supp. 2d 675, 678 (D. Vt. 2005) (finding plaintiff had “demonstrated a prima facie case” for sex discrimination under the FHA where landlord took adverse action against plaintiff after learning that she had experienced domestic violence).

^v “Title VII and the ADA may apply to employment situations involving applicants and employees who experience domestic or dating violence, sexual assault, or stalking” because “Title VII prohibits disparate treatment based on sex, which may include treatment based on sex-based stereotypes.” EEOC, *Questions and Answers: The Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence, Sexual Assault, or Stalking*, available at <https://www.eeoc.gov/laws/guidance/questions-and-answers-application-title-vii-and-ada-applicants-or-employees-who>; “[D]omestic violence survivors who are denied housing, evicted, or deprived of assistance based on the violence in their homes may have a cause of action for sex discrimination under the Fair Housing Act.” HUD, *Assessing Claims of Housing Discrimination against Victims of Domestic Violence under the Fair Housing Act (FHA) and the Violence against Women Act (VAWA)*, available at <https://www.hud.gov/sites/documents/FHEODOMESTICVIOLGUIDENG.pdf>

^{vi} *Butler v. Sundo Cap., LLC*, No. 2:20-CV-1607-NR, 2021 WL 4134034, at *3 (W.D. Pa. Sept. 10, 2021)