



CHILD CARE LAW CENTER

221 PINE STREET | 3RD FLOOR | SAN FRANCISCO, CA 94104 | V 415.394.7144 | F 415.394.7140
WWW.CHILDCARELAW.ORG | INFO@CHILDCARELAW.ORG

FACT SHEET: NEW MEXICO HUMAN RIGHTS ACT

1. What is the New Mexico Human Rights Act?

The New Mexico Human Rights Act is a state civil rights law that, among other things, guarantees full and equal services and accommodations to all people regardless of race, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, spousal affiliation or physical or mental handicap.ⁱ This relates to child care because, like the ADA, it prevents all public accommodations, including child care providers, from discriminating on the basis of “physical or mental handicap.”ⁱⁱ

2. Who is protected by the New Mexico Human Rights Act? What does it mean to have a “physical or mental handicap?”

The definition of “physical or mental handicap” under the New Mexico Human Rights Act is the very similar to the definition of “disability” under the ADA.

What this means is that, for the most part, the same categories of people protected by the ADA are also protected by the New Mexico Human Rights Act (Human Rights Act). Under New Mexico law, the following groups of people are protected from discrimination: (1) People with a **physical or mental impairment** which **substantially limits** one or more major life activities; (2) People with a **history of** a physical or mental impairment which substantially limits one or more major life activities; and (3) People who are **regarded as** having a physical or mental impairment which substantially limits one or more major life activities.

However, unlike the ADA, the following group is **not** protected under the New Mexico Human Rights Act: (4) People who are **associated with individuals** who have a physical or mental impairment which substantially limits one or more major life activities.ⁱⁱⁱ

3. What are examples of major life activities?

The New Mexico Human Rights Act specifically mentions the following as major life activities: caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.^{iv}

4. Why is the New Mexico Human Rights Act important? Doesn't the ADA already protect persons with disabilities?

The New Mexico Human Rights Act and the Americans with Disabilities Act (ADA) are both laws that protect individuals from discrimination. Specifically, the Human Rights Act and the ADA protect children from discrimination in the child care setting.^v However, the Human Rights Act is a *state* law, whereas the ADA is a *federal* law. The Human Rights Act is enforced by the New Mexico Human Rights Division at the Department of Labor, whereas the ADA is enforced by the United States Department of Justice. These laws are both

important tools in protecting the rights of individuals with disabilities in the state of New Mexico.

The New Mexico Human Rights Act is important because it is a law passed by the state of New Mexico declaring that its citizens will not be discriminated against on the basis of their physical or mental handicap. It echoes the sentiments of the ADA, which state that persons with disabilities should be treated equally and fairly like all other citizens.

5. Do tribes have to comply with the New Mexico Human Rights Act?

As of the date of this publication, there has been no case or legal opinion indicating that tribes are required to comply with the Human Rights Act.

6. What can individuals do if they feel they have been discriminated against?

As described in the attached document, “Q & A about the Americans with Disabilities Act in Child Care,” an individual who feels they have been discriminated against under the ADA can file a complaint with the United States Department of Justice. That individual can simultaneously file a formal complaint alleging discrimination with the New Mexico Human Rights Division at the Department of Labor. Please call them at (505) 827-6838 or toll-free at 1-800-566-9471 if you feel you have been discriminated against. The instructions for the complaint process are available at: http://www.dol.state.nm.us/dol_qhrd.html. All complaints must be made **300 days after the last act of alleged discrimination.**^{vi}

7. What happens after I file a complaint with the New Mexico Human Rights Division?

After filing the complaint, the New Mexico Human Rights Division (Division) will send a copy of the complaint to the party who is named in the complaint as having allegedly engaged in an unlawful discriminatory practice.^{vii} The Division will then investigate the alleged discrimination, and may also attempt the following means of resolving the matter: mediation, conciliation, or a hearing before the New Mexico Human Rights Commission.

The Division *may* award monetary damages to victims of discrimination under this law.^{viii} Additionally, the Division offers education and training to the public on discrimination and how to prevent it.

This document is intended to provide general information about the topic covered. It is believed to be current and accurate as of 8/24/06, but the law changes often. This document is made available with the understanding that it does not render legal or other professional advice. If you need legal advice, you should seek the services of a competent attorney.

ⁱ New Mexico Human Rights Act, N.M.S.A. § 28-1-7(F).

ⁱⁱ N.M.S.A. § 28-1-7(F); § 28-1-2(H) (2006).

ⁱⁱⁱ Remember the ADA still protects this group from discrimination on the basis of disability in New Mexico.

^{iv} N.M.S.A. 1978 § 28-1-2 (N) (2006).

^v The ADA definition of public accommodation lists a number of examples of places, stating they will be considered public, if the operations of such entities affect commerce. The ADA definition of “public accommodation” explicitly includes day care centers and child care settings. 42 U.S.C. 12181(7); Code of Federal Regulations, T. 28, Ch. I, Pt. 36.104. The New Mexico Human Rights Act has a similar definition of “public accommodation,” specifically “any establishment that provides or offers its services, facilities, accommodations or goods to the public, but does not include a bona fide private club or other place or establishment that is by its nature and use distinctly private.” N.M.S.A. § 28-1-2 (H). Because the two laws contain similar intent language, and similar definitions for the term public accommodation, it is likely that a child care facility would be covered by the New Mexico Human Rights Act.

^{vi} New Mexico Human Rights Act, codified at N.M.S.A. §28-1-10 (A).

^{vii} New Mexico Human Rights Act, codified at N.M.S.A. §28-1-10 (B).

^{viii} Note, however, that punitive damages are not recoverable under the Human Rights Act. *Trujillo v. Northern Rio Arriba Elec. Co-op, Inc.*, 41 P.3d 333 (2001); *Gandy v. Wal-Mart Stores, Inc.* 872 P.2d 859, 861 (1994).