

The Sexual Orientation Non-Discrimination Act ("SONDA")

What is the Sexual Orientation Non-Discrimination Act?

The Sexual Orientation Non-Discrimination Act, typically known by its acronym "SONDA," prohibits discrimination on the basis of actual or perceived sexual orientation in employment, housing, public accommodations, education, credit, and the exercise of civil rights. New York has long prohibited discrimination on the basis of certain characteristics, such as race, sex, and religion. SONDA added the term "sexual orientation" to the list of specifically protected characteristics in various State laws, including the Human Rights Law, the Civil Rights Law, and the Education Law.

When did SONDA take effect?

SONDA, which was passed by the State Legislature and signed into law by the Governor in late 2002, became effective on January 16, 2003, and protects individuals who are discriminated against on the basis of sexual orientation from that date forward.

What is the meaning of the term "sexual orientation" as used in the law?

SONDA defines sexual orientation as "heterosexuality, homosexuality, bisexuality, or asexuality, whether actual or perceived." Thus, the law affords protection where individuals are targeted either based on their actual sexual orientation, or based on what the discriminator believes their orientation to be.

What legal protections does SONDA provide?

SONDA prohibits discrimination on the basis of actual or perceived sexual orientation in various areas, including:

- In employment;
- In the admission to and use of places of public accommodation, resort, or amusement;
- In the admission to and use of educational institutions;
- In publicly assisted housing;
- In private housing accommodations and commercial space; and
- In relation to credit.

SONDA also prohibits discrimination and/or harassment on the basis of actual or perceived sexual orientation in the exercise of an individual's civil rights. Civil rights are those rights guaranteed by State law, including the right to vote, to serve on a jury, and to be free from discrimination in the areas listed above.

Are there any exceptions to SONDA?

Some exemptions that preexisted SONDA – and apply to discrimination on any of the grounds listed in the law, not only sexual orientation – affect SONDA's application. A "religious or denominational institution," or an "organization

operated for charitable or educational purposes" that is "operated, supervised or controlled by or in connection with a religious organization," may:

1. Limit employment, sales or rental of housing accommodations, and admission to persons of the same religion;
2. Give preferences to persons of the same religion or denomination; and
3. Take "such action as is calculated by such organization to promote the religious principles for which it is established or maintained."

In addition, the prohibition on discrimination in private housing does not apply to the rental of single-family and owner-occupied two-family homes.

Does SONDA protect transgender persons?

SONDA protects everyone in the State from discrimination on the basis of sexual orientation. Therefore, SONDA applies when a transgender person is discriminated against based upon his or her actual or perceived sexual orientation. In addition, courts in the State have held that transgender people are protected under other provisions of the Human Rights Law, including prohibitions against discrimination on the basis of sex and/or disability.

What can I do if I believe I have been discriminated against?

If you feel you have been the victim of discrimination, you may file EITHER:

1. A charge of discrimination with the New York State Division of Human Rights ("State Division"), or a local human rights agency, within one (1) year of the most recent act of discrimination; **OR**
2. A complaint directly in State court within three (3) years of the most recent act of discrimination.

Regardless of which of the above options you choose, you may also file a complaint with the New York State Attorney General's Civil Rights Bureau. However, filing a complaint with the Attorney General does not relieve you of the obligation to meet the filing deadlines described in #1 and #2 above.

What will happen if I file a charge with the State Division?

The State Division will investigate the charge. If it determines that the charge has merit, the State Division will hold a hearing before an administrative law judge who can provide relief. There is no fee for filing a charge with the State Division, and you do not need to have an attorney, though you may choose to retain one.

How do I choose where to file?

Each of the options has different consequences and deadlines. Thus, your decision about where to file may depend on, among other things, the outcome sought and the amount of time that has elapsed since the discrimination occurred. You should consider each option prior to acting. It is best to consult with an attorney to determine the best option. Your local bar association can provide attorney referrals.

What relief is available under SONDA?

Various remedies are available if an individual can show discrimination.

The victim may be awarded, among other things, compensatory damages for pain and suffering and the monetary value of any lost wages or benefits. Neither punitive damages (which are used to punish particularly egregious conduct) nor attorneys' fees are generally available. However, in housing discrimination cases only, up to \$10,000 in punitive damages (paid to the victim) and up to \$100,000 in fines (paid to the State) may be ordered.

The discriminator may be ordered to take certain affirmative steps, including: hiring, reinstating, or promoting an employee; providing full, equal, and unsegregated accommodations and facilities to all persons; granting an application for credit; or evaluating applications for membership or admission on a nondiscriminatory basis.

The type of relief that is actually ordered will depend on the facts of each case. An individual will not necessarily receive all types of damages in every case, and the discriminator will not necessarily be ordered to take all of the affirmative steps listed above.

Are there any other legal protections against discrimination on the basis of sexual orientation in New York State?

Many localities within New York State have laws that prohibit discrimination based on sexual orientation. These laws typically prohibit the same conduct as SONDA, though they may contain additional filing or jurisdictional requirements and may allow for damages not available under State law. Under New York City's Human Rights Law, for example, an individual may be entitled to punitive damages and attorneys' fees in addition to the relief available under SONDA.

In addition, the New York Hate Crimes Act of 2000 enhances criminal penalties for perpetrators who commit specific crimes against individuals because of various protected characteristics, including sexual orientation. This type of crime is called a "hate crime." Those who commit a crime because of their victim's actual or perceived sexual orientation may be punished more severely than if that bias motive was not present.

Contact Information:

Office of the NYS Attorney General:

*Civil Rights Bureau
28 Liberty Street, 15th Floor*

New York, NY 10005

(212) 416-8250

NYS Division of Human Rights:

Albany:

Empire State Plaza

Agency Building 1, 2nd Floor

Albany, NY 12220

(518) 474-2705

New York City:

State Office Building

20 Exchange Place, 2nd Floor

New York, NY 10005

(212) 480-2522

(other regional offices available)

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