

**Effective 5/10/2016**

**34A-5-107 Procedure for aggrieved person to file claim -- Investigations -- Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

- (1)
  - (a) A person claiming to be aggrieved by a discriminatory or prohibited employment practice may, or that person's attorney or agent may, make, sign, and file with the division a request for agency action.
  - (b) A request for agency action shall be verified under oath or affirmation.
  - (c) A request for agency action made under this section shall be filed within 180 days after the alleged discriminatory or prohibited employment practice occurs.
  - (d) The division may transfer a request for agency action filed with the division pursuant to this section to the federal Equal Employment Opportunity Commission in accordance with a work-share agreement that is:
    - (i) between the division and the Equal Employment Opportunity Commission; and
    - (ii) in effect on the day on which the request for agency action is transferred.
- (2) An employer, labor organization, joint apprenticeship committee, or vocational school who has an employee or member who refuses or threatens to refuse to comply with this chapter may file with the division a request for agency action asking the division for assistance to obtain the employee's or member's compliance by conciliation or other remedial action.
- (3)
  - (a) Before a hearing is set or held as part of any adjudicative proceeding, the division shall promptly assign an investigator to attempt a settlement between the parties by conference, conciliation, or persuasion.
  - (b) If no settlement is reached, the investigator shall make a prompt impartial investigation of all allegations made in the request for agency action.
  - (c) The division and its staff, agents, and employees:
    - (i) shall conduct every investigation in fairness to all parties and agencies involved; and
    - (ii) may not attempt a settlement between the parties if it is clear that no discriminatory or prohibited employment practice has occurred.
  - (d) An aggrieved party may withdraw the request for agency action prior to the issuance of a final order.
- (4)
  - (a) If the initial attempts at settlement are unsuccessful, and the investigator uncovers insufficient evidence during the investigation to support the allegations of a discriminatory or prohibited employment practice set out in the request for agency action, the investigator shall formally report these findings to the director or the director's designee.
  - (b) Upon receipt of the investigator's report described in Subsection (4)(a), the director or the director's designee may issue a determination and order for dismissal of the adjudicative proceeding.
  - (c) A party may make a written request to the Division of Adjudication for an evidentiary hearing to review de novo the director's or the director's designee's determination and order within 30 days of the date the determination and order for dismissal is issued.
  - (d) If the director or the director's designee receives no timely request for a hearing, the determination and order issued by the director or the director's designee becomes the final order of the commission.
- (5)
  - (a) If the initial attempts at settlement are unsuccessful and the investigator uncovers sufficient evidence during the investigation to support the allegations of a discriminatory or prohibited

employment practice set out in the request for agency action, the investigator shall formally report these findings to the director or the director's designee.

- (b)
    - (i) Upon receipt of the investigator's report described in Subsection (5)(a), the director or the director's designee may issue a determination and order based on the investigator's report.
    - (ii) A determination and order issued under this Subsection (5)(b) shall:
      - (A) direct the respondent to cease any discriminatory or prohibited employment practice; and
      - (B) provide relief to the aggrieved party as the director or the director's designee determines is appropriate.
  - (c) A party may file a written request to the Division of Adjudication for an evidentiary hearing to review de novo the director's or the director's designee's determination and order within 30 days of the date the determination and order is issued.
  - (d) If the director or the director's designee receives no timely request for a hearing, the determination and order issued by the director or the director's designee in accordance with Subsection (5)(b) becomes the final order of the commission.
- (6) In an adjudicative proceeding to review the director's or the director's designee's determination that a prohibited employment practice has occurred, the division shall present the factual and legal basis of the determination or order issued under Subsection (5).
- (7)
  - (a) Before the commencement of an evidentiary hearing:
    - (i) the party filing the request for agency action may reasonably and fairly amend any allegation; and
    - (ii) the respondent may amend its answer.
  - (b) An amendment permitted under this Subsection (7) may be made:
    - (i) during or after a hearing; and
    - (ii) only with permission of the presiding officer.
- (8)
  - (a) If, upon reviewing all the evidence at a hearing, the presiding officer finds that a respondent has not engaged in a discriminatory or prohibited employment practice, the presiding officer shall issue an order dismissing the request for agency action containing the allegation of a discriminatory or prohibited employment practice.
  - (b) The presiding officer may order that the respondent be reimbursed by the complaining party for the respondent's attorneys' fees and costs.
- (9) If, upon reviewing all the evidence at the hearing, the presiding officer finds that a respondent has engaged in a discriminatory or prohibited employment practice, the presiding officer shall issue an order requiring the respondent to:
  - (a) cease any discriminatory or prohibited employment practice;
  - (b) provide relief to the complaining party, including:
    - (i) reinstatement;
    - (ii) back pay and benefits;
    - (iii) attorney fees; and
    - (iv) costs.
- (10) If a discriminatory practice described in Subsection (9) includes discrimination in matters of compensation, the presiding officer may provide, to the complaining party, in addition to the amount available to the complaining party under Subsection (9)(b), an additional amount equal to the amount of back pay available to the complaining party under Subsection (9)(b)(ii) unless a respondent shows that:
  - (a) the act or omission that gave rise to the order was in good faith; and

- (b) the respondent had reasonable grounds to believe that the act or omission was not discrimination in matters of compensation under this chapter.
- (11) Conciliation between the parties is to be urged and facilitated at all stages of the adjudicative process.
- (12)
  - (a) Either party may file with the Division of Adjudication a written request for review before the commissioner or Appeals Board of the order issued by the presiding officer in accordance with:
    - (i) Section 63G-4-301; and
    - (ii) Chapter 1, Part 3, Adjudicative Proceedings.
  - (b) If there is no timely request for review, the order issued by the presiding officer becomes the final order of the commission.
- (13) An order of the commission under Subsection (12)(a) is subject to judicial review as provided in:
  - (a) Section 63G-4-403; and
  - (b) Chapter 1, Part 3, Adjudicative Proceedings.
- (14) The commission may make rules concerning procedures under this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- (15) The commission and its staff may not divulge or make public information gained from an investigation, settlement negotiation, or proceeding before the commission except as provided in Subsections (15)(a) through (d).
  - (a) Information used by the director or the director's designee in making a determination may be provided to all interested parties for the purpose of preparation for and participation in proceedings before the commission.
  - (b) General statistical information may be disclosed provided the identities of the individuals or parties are not disclosed.
  - (c) Information may be disclosed for inspection by the attorney general or other legal representatives of the state or the commission.
  - (d) Information may be disclosed for information and reporting requirements of the federal government.
- (16) The procedures contained in this section are the exclusive remedy under state law for employment discrimination based upon:
  - (a) race;
  - (b) color;
  - (c) sex;
  - (d) retaliation;
  - (e) pregnancy, childbirth, or pregnancy-related conditions;
  - (f) age;
  - (g) religion;
  - (h) national origin;
  - (i) disability;
  - (j) sexual orientation; or
  - (k) gender identity.
- (17)
  - (a) The commencement of an action under federal law for relief based upon an act prohibited by this chapter bars the commencement or continuation of an adjudicative proceeding before the commission in connection with the same claim under this chapter.

- (b) The transfer of a request for agency action to the Equal Employment Opportunity Commission in accordance with Subsection (1)(d) is considered the commencement of an action under federal law for purposes of Subsection (17)(a).
- (c) Nothing in this Subsection (17) is intended to alter, amend, modify, or impair the exclusive remedy provision set forth in Subsection (16).

Amended by Chapter 132, 2016 General Session