

BUREAU OF LABOR AND INDUSTRIES

DIVISION 3

CIVIL RIGHTS COMPLAINT PROCEDURES

839-003-0005

Definitions

Except where otherwise required by ORS 654.005 and except as provided below, definitions for terms used in these rules are found in ORS 659A.001 and 659A.100:

- (1) "Administrator" means the Administrator of the Civil Rights Division of the Bureau of Labor and Industries or a designee of the administrator.
- (2) "Bureau" means the Bureau of Labor and Industries.
- (3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or a designee of the commissioner.
- (4) "Complaint" means for the purpose of ORS chapter 659A, except housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law, a written, verified statement signed by the complainant [*or the complainant's attorney*] that:
 - (a) Gives the name and address of the complainant and the respondent;
 - (b) Identifies the protected class basis of the complaint;
 - (c) Describes the actions complained of, including:
 - (A) The date(s) of occurrence;
 - (B) What the action was and how it harmed the complainant; and
 - (C) The causal connection between the complainant's protected class and the alleged harm.
- (5) "Complainant" means a person filing a complaint personally or through an attorney.
- (6) "Days," unless otherwise stated in the text of a document, means calendar days. "Work days" means Monday through Friday, except holidays officially recognized by the State of Oregon or the federal government.
- (7) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.
- (8) "EEOC" means the Equal Employment Opportunity Commission of the federal government.

(9) "Federal Housing Law" means The Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing And Urban Development ("HUD") has jurisdiction.

(10) "Notice" means written information delivered personally or sent by mail to the person's last known personal or business address or business address of the person's designated representative.

(11) "OSEA" means the Oregon Safe Employment Act, ORS 654.001 et seq.

(12) "Protected class" means a group of people protected by law from discrimination on the basis of a shared characteristic, or a perception of that characteristic, such as race, sex, age, disability or other.

(13) "Person" has the meaning given in ORS 659A.001(9).

(14) "Respondent" includes any person or other entity against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(15) "Formal Charges" are formal charges drafted and issued by the bureau's Hearings Unit.

(16) "Substantial evidence" means proof that a reasonable person would accept as sufficient to support the allegations of the complaint.

(17) "Substantial Evidence Determination" means the division's written findings of substantial evidence.

(18) "Written verified complaint" means a complaint that is:

(a) In writing; and

(b) Under oath or affirmation.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 654.001 et seq., ORS chapter 659A and 42 U.S.C. 3601 et seq.

839-003-0025

Filing a Complaint

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law. Complaints of housing discrimination must be filed in accordance with 839-003-0200.

(1) A person or the person's attorney may file a complaint, in person or by mail, with the division at any bureau office in the state of Oregon. The complaint must meet the standards provided in OAR 839-003-0005(4).

(2) The filing date is the date the division receives a complaint that meets the standards contained in OAR 839-003-0005(4).

(3) Except as provided in section (5) of this rule, a person must file a complaint with the division no later than one year after the alleged unlawful practice. If the alleged unlawful practice is of a continuing nature, the right to file a complaint exists so long as the person files the complaint within one year of the most recent date the unlawful practice occurred.

(4) A person alleging constructive discharge must file a discrimination complaint with the division within one year of the date the discharge occurred.

(5) A person alleging discrimination for reporting or opposing unsafe or unhealthy work conditions under ORS 654.062 must contact the division within 90 days of having reasonable cause to believe that such violation has occurred. An employee would have reasonable cause to believe a violation has occurred on the earliest date that the employee:

(a) Believed retaliation had occurred against the employee for opposing employee health and safety hazards; and

(b) Knew or should have known of the right to file a complaint with the division and of the requirement that the complaint be filed within 90 days of the alleged retaliation.

(A) If a notice required by OSEA, as provided in OAR 437-001-0275(2)(a), was properly posted in the employee's workplace, continuously on and following the date of the alleged retaliation, the division will find that the employee knew or should have known of the 90-day filing requirement.

(B) If the employer failed to post the required OSEA poster, the 90-day filing requirement will begin on the date the employee learned of the right to file a complaint and of the 90-day filing requirement. The employee may establish this date based on the employee's own statement or other evidence offered by the employee.

(C) If the employer disagrees with the employee's presented date as the date the employee learned of the right to file a complaint, the burden is on the employer to show that the employee knew or should have known on an earlier date.

(D) If extenuating circumstances exist, the division may extend the 90-day period as provided in 29 CFR Part 15(d)(3).

(6) The procedures for filing a complaint are as follows:

(a) A person or the person's attorney makes an inquiry to the division;

(b) The division may provide the person or the person's attorney with a letter of information and/or questionnaire to assist in determining if there is a basis for filing a complaint;

(c) If the division determines the person has a basis for filing a complaint, the division will draft a complaint based upon the information provided by the person and send or give the complaint to the person or the person's attorney for verification. The person or the person's attorney will request any necessary changes to the complaint.

(d) The person [*or the person's attorney*] will verify and sign the complaint. The complaint will then be submitted to the division.

(e) If the person is an unemancipated minor the complaint must be signed by the minor and the parent or legal guardian of the minor.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 654.062, ORS chapter 659A, 29 CFR Part 15(d)(3)

839-003-0040

Amendment of Complaints

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law. Complaints of housing discrimination must be amended in accordance with 839-003-0205.

(1) The division may amend a complaint to correct technical defects and to add additional persons as respondents. The division may amend a complaint on its own initiative or at the complainant's request (with the division's agreement) at any time prior to the issuance of Formal Charges, except that respondents may only be added during the course of investigation. Examples of technical defects include: clerical errors, additions or deletions, name and address corrections, and statute citation errors.

(2) A complaint may be amended to add a protected class only if the addition is supported by facts already alleged. New facts may not be added. If new facts are alleged, the complainant must file a new complaint meeting the standards provided in OAR 839-003-0005(4).

(3) Amended complaints need not be verified or signed by the complainant [*or the complainant's attorney*].

(4) The division will send a copy of the amended complaint to the complainant and all respondents.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.820

839-003-0200

Filing a Complaint Under State and Federal Housing Discrimination Laws

(1) A person claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law includes a person who believes that the person has been injured by an unlawful practice or discriminatory housing practice or will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(2) A person claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law or the person's attorney, or the commissioner may file a complaint, in person or by mail, with the division at any bureau office in the state of Oregon. Complaint means a written, verified statement signed by the complainant [*or the complainant's attorney*] that:

(a) Gives the name and address of the complainant and the respondent;

(b) Describes the acts or omissions alleged to be an unlawful practice, including those acts or omissions the person believes are about to occur and;

(c) Describes how the person was harmed or will be harmed by such actions.

(3) The filing date is the date the division receives a complaint that meets the standards contained in OAR 839-003-0200(2).

(4) A person must file a complaint with the division no later than one year after the alleged unlawful practice. If the alleged unlawful practice is of a continuing nature, the right to file a complaint exists so long as the person files the complaint within one year of the most recent date the unlawful practice occurred.

(5) The procedures for filing a complaint are as follows:

(a) A person or the person's attorney makes an inquiry to the division;

(b) The division may provide the person or the person's attorney with a letter of information and/or questionnaire;

(c) If the division determines the person has a basis for filing a complaint, the division will draft a complaint based upon the information provided by the person and send or give the complaint to the person or the person's attorney for verification. The person or the person's attorney will request any necessary changes to the complaint.

(d) The person [*or the person's attorney*] will verify and sign the complaint. The complaint will then be submitted to the division.

(e) If the person is an unemancipated minor the complaint must be signed by the minor and the parent or legal guardian of the minor.

(6) The Division will serve notice upon the complainant acknowledging the filing of the complaint and advising the complainant of the time limits and choice of forums provided under ORS chapter 659A and federal housing law.

(7) Within 10 days after the filing of a complaint, the division will serve the respondent with a copy of the original complaint that identifies the alleged discriminatory housing practice and a notice that advises the respondent of the procedural rights and obligations of the Respondent, including the respondent's right to file an answer to the complaint.

(8) Each respondent may file, not later than 10 days after receipt of notice from the division, an answer to such complaint.

Stat. Auth.: ORS 659A.805

Stats. Implemented: 659A.145, 659A.421, 659A.820 and 42 U.S.C. 3601 et seq.