

47 FAR 49 | 3/12/2021 | NOTICE OF NEGOTIATED RULEMAKING

DEPARTMENT DEPARTMENT OF MANAGEMENT SERVICES

AGENCY FLORIDA COMMISSION ON HUMAN RELATIONS

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MEETING DATE

MEETING TIME

RULE NO 60Y-5.008

TITLE Petition for Relief from an Unlawful Employment Practice

RULEMAKING AUTHORITY 760.06(12), FS.

LAW IMPLEMENTED 760.03(7), 760.06, 760.10, 760.11, FS.

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ORIGINATOR

APPROVER

PROPOSAL DATE

PUBLISH DATE



Purpose

The proposed rule amendments seek to clarify and delete obsolete, unnecessary, or redundant rules.

Subject Area to be Addressed

The proposed rules clarify proceedings upon complaints of unlawful employment practice.

Notification

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE NOTICED IN THE NEXT AVAILABLE FLORIDA ADMINISTRATIVE REGISTER.

PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT

60Y-5.008 Petition for Relief from an Unlawful Employment Practice.

(1) Petition. A complainant may file a Petition for Relief from an Unlawful Employment Practice within 35 days of the Date of Determination of Reasonable Cause, No Reasonable Cause, No Jurisdiction or Untimeliness. In the event that the Commission does not issue a determination within 180 days after the complaint was filed, a complainant may also file a Petition for Relief from an Unlawful Employment Practice within 35 days of the date the Commission certifies mailing the notice required under section 760.11(8)(b), Florida Statutes. A complainant who is not represented by an attorney may file a Petition for Relief without copies or proof of service, and the Clerk shall prepare copies and serve them upon all other parties.

(2) For good cause shown, the Chairperson may grant an extension of time to file the Petition for Relief from an Unlawful Employment Practice, provided the motion for extension of time is filed within the 35-day period prescribed by subsection 60Y-5.008(1), F.A.C.

(3) Procedures. Petitions for Relief, and proceedings thereupon, are governed by the provisions of Chapters 28-106 and 60Y-4, F.A.C., except as otherwise provided by this section.

(4) Class Allegations.

(a) The petition may include an allegation that the respondent has acted or refused to act on grounds generally applicable to a class, in which case the



petition shall also include a description of the class of persons allegedly affected.

(b) If the petition contains class allegations, the administrative law judge, on motion of a party, may include in the recommended order a proposed certification of the class if:

1. The class is so numerous that joinder of all members is impractical,
2. There are questions of law or fact common to the class,
3. The claims of the petitioner are typical of the claims of the class, and
4. The petitioner will fairly and adequately protect the interests of the class.

If the administrative law judge proposes that a class be certified, the administrative law judge may also include in the recommended order proposed findings and conclusions concerning the respondent's liability to the class. However, the administrative law judge shall not initially consider other class issues unless it is determined that such consideration will not cause undue delay to the completion of the hearing.

(5) Final Orders; Relief; Remand. Upon consideration of a recommended order, the Commission or Panel may order that the petition and complaint be dismissed or may determine that an unlawful employment practice has occurred. In the event the Commission or Panel determines that an unlawful employment practice has occurred, it shall issue an order prohibiting the practice and providing relief from the effects of the practice. If the Commission or Panel finds that the proceeding is properly maintained as a class proceeding, the order of the Commission or Panel may direct a remand to the administrative law judge of any class issue which the Commission or Panel has not determined. The order of the Commission or Panel shall constitute final agency action as to all matters except those which are remanded to the administrative law judge.

(6) Proceedings After Remand. An order of remand, pursuant to subsection (5), or a subsequent order of the administrative law judge, may direct that notice of pendency of the proceeding be served upon members of the class. Such an order shall specify the manner of service of the notice and the person responsible for service. Any member of the class who does not, within 15 days of service of the notice of pendency or within such other time as the order may provide, file with the Commission an election of non-participation in the class

shall be bound by an order of the Commission or Panel made subsequent to the giving of such notice.

(7) Voluntary Dismissal. A Petition for Relief may be dismissed by the Petitioner without order of the administrative law judge, Panel of Commissioners or Commission (i) by serving, or during hearing by stating on the record, a notice of dismissal at any time before the issuance of a recommended order or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. The dismissal operates with prejudice with respect to Petitioner's Chapter 760, F.S., administrative remedies and constitutes final agency action.

Rulemaking Authority 760.06(~~13~~2) FS. Law Implemented 760.06, 760.10 FS. History-New 11-2-78, Amended 2-4-82, 6-16-83, 8-29-84, 8-12-85, Formerly 22T-9.08, 22T-9.008, Amended 2-5-04, Amended xx-xx-xx.

