

47 FAR 221 | 11/15/2021 | 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-5.001

TITLE Complaints

**RULEMAKING
AUTHORITY** 760.06(12)

**LAW
IMPLEMENTED** 760.03

CONTACT Casey Snipes

EMAIL Casey.Snipes@FCHR.MyFlorida.com

PHONE (850) 488-7082

ORIGINATOR

APPROVER

PROPOSAL DATE

PUBLISH DATE



Purpose

The proposed rules seek to amend the complaint amendment period and to emphasize the importance of having complaints be both signed & verified before the Commission proceeds with the next stage of investigations.

Subject Area to be Addressed

The proposed rules clarify and amend the complaint process within the Florida Commission on Human Relations.

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-5.001 Complaints.

(1) Who May File. A complaint may be filed by any person aggrieved by an unlawful employment practice. A complaint may also be filed by the Attorney General, a Commissioner, or the Commission. When a complaint is filed by a Commissioner, that Commissioner is the complainant, and shall not participate as a Commissioner in any subsequent proceeding upon that complaint.

(2) Time for Filing. A complaint may be filed at any time within 365 days of the occurrence of the alleged unlawful employment practice. If the alleged unlawful employment practice is of a continuing nature, the date of the occurrence may be any date subsequent to the commencement of the unlawful employment practice up to and including the date on which it shall have ceased.

(3) Place and Date of Filing. A **written** complaint may be filed at the office of the Commission. The date of filing shall be the date of actual receipt of the **signed and verified** complaint by the Clerk or other agent of the Commission. Any document received by the Clerk or other agent of the Commission after 5:00 p.m. (Eastern Time) shall be filed as of 8:00 a.m. on the next regular business day.



(4) Relation Back of Certain Complaints. A complaint which would not otherwise be timely may be filed if it:

(a) States that another complaint naming the same respondent is properly before the Commission and identifies that other complaint, and

(b) Alleges the same or additional facts which describe an unlawful employment practice related to or growing out of the subject matter of the other, identified complaint, and

(c) Would have been timely if filed at the time of, or other time subsequent to, the filing of the other, identified complaint. A complaint under this subsection may be filed by a new complainant and shall relate back to the date the other, identified complaint was first received.

(5) Form. The complaint must be in writing and shall be signed by the complainant. The complaint shall be verified.

(6) Contents.

(a) The complaint should contain the following information:

1. The name, address and telephone number of the person filing the complaint;

2. The name, address and telephone number of the respondent;

3. A clear and concise statement of the facts, including pertinent dates, constituting the unlawful employment practice;

4. If known, the approximate number of employees of a respondent employer;

5. If known, a statement disclosing whether proceedings involving the alleged unlawful employment practice have been commenced before a Federal, State or local agency charged with the enforcement of fair employment practice laws and, if so, the date of such commencement and the name of the agency.

(b) Notwithstanding the provision of paragraph (a) of this subsection, a complaint is sufficient if it is in writing, signed by the Complainant, verified, and is sufficiently precise to identify the parties and to describe generally the action or practice complained of.



(7) Amendments.

(a) A complaint may be reasonably and fairly amended within 60 days after filing and, thereafter, for good cause with the consent of the Executive Director **upon discovery of new facts or upon a finding that information previously provided by the respondent was misrepresented.**

(b) A complaint may be amended to cure technical defects, or omissions, **including other than a missing signature or** verification, or to clarify and amplify allegations made therein. Such amendments ~~and amendments~~ which describe an additional unlawful employment practice related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

(c) An amendment adding or changing a respondent will relate back to the date the complaint was first received if, within the period provided by subsection (2), the new respondent (i) has received such notice of the filing of the complaint as is sufficient to avoid prejudice in a defense on the merits, and (ii) knew or should have known that, but for a mistake concerning identity of the proper respondent, the complaint would have been filed against the new respondent.

(8) Withdrawal. A complaint may be withdrawn by a complainant at any time; however, following the issuance of a Notice of Determination, withdrawal may be made only with the consent of the Executive Director.

(9) Notice to Respondent. When it is determined that a complaint is complete and has been timely filed. The Executive Director shall cause notice of the filing and a copy of the complaint to be served upon the respondent. Notice shall be served within 5 days of the date of filing. An amendment likewise shall be served upon the respondent.

(10) Maintenance of Records. Once a complaint has been served on a respondent, the respondent shall preserve all records and other evidence which may pertain to the complaint until the matter has been finally determined.

Rulemaking Authority 760.06(12), 760.11(14) FS. Law Implemented 760.06, 760.10, 760.11(1) FS.
History-New 11-2-78, Amended 10-4-82, Formerly 22T-9.01, 22T-9.001, Amended 1-28-99, 2-23-00, 2-5-04.

