

29 FAR 35 | 8/29/2003 | NOTICE OF PROPOSED RULES

DEPARTMENT DEPARTMENT OF MANAGEMENT SERVICES

AGENCY FLORIDA COMMISSION ON HUMAN RELATIONS

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MEETING DATE Wednesday, September 24, 2003

MEETING TIME 9:00:00

RULE NO 60Y-5.003

TITLE Investigation of Complaints

**SPECIFIC
AUTHORITY** 120.54, 760.06(12), 760.11(14) FS.

**LAW
IMPLEMENTED** 760.01-.11 FS.

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ORIGINATOR William James Tait, Jr., General Counsel

APPROVER Cecil Howard, Executive Director

PROPOSAL DATE 8/18/2003

PUBLISH DATE 8/1/2003

Purpose

The rule chapter provides for Commission proceedings to receive, investigate and act upon complaints of unlawful employment practice.

Summary

Amendments have updated rule sections to conform to current procedures and statutory requirements, including the adoption of the Uniform Rules of Procedure, and clarifying when a complaint is filed, and under what conditions, amendments, withdrawals and dismissals of complaints may be made.

Regulatory Costs

None. Any person who wishes to provide information regarding the statement of estimated regulatory cost, or to provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

Notification

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE TIME, DATE AND PLACE SHOWN BELOW:

FULL TEXT OF THE PROPOSED RULE

60Y-5.003 Investigation of Complaints.

(1) By Whom. The investigation of the complaint shall be made by the Office of Employment Investigations or by any other person designated by the Executive Director. The Executive Director may utilize services of other public agencies, state, local or federal, which are charged with the administration of fair employment practice laws, and may utilize the information gathered by such.

(2) Statement of Complainant. During the course of an investigation, the complainant may be required to provide a statement which includes:

- (a) A statement of each particular harm which the aggrieved person has suffered and the date on which each harm occurred;
- (b) For each harm, a statement specifying the act, policy or practice which is alleged to be unlawful;
- (c) For each act, policy, or practice alleged to have harmed the aggrieved person, a statement of the facts

which lead the complainant to believe that the act, policy or practice is discriminatory.

(3) Requests for Information. During the course of an investigation, the Office of Employment Investigations may request of any person information concerning the facts and circumstances of the complaint. Requests for information may be made in the following manner:

- (a) Oral interviews;
- (b) Written interrogatories;
- (c) Requests for production of documents;
- (d) Requests for entry upon land for inspection and other purposes;
- (e) Requests for a written statement or affidavit.

(4) Failure to Provide Information - Respondent. In the event a respondent fails to provide information within that person's control, which is requested pursuant to subsection (3), and reasonable notice and opportunity to cure have been given, an inference may be drawn, in a determination of reasonable cause pursuant to Rule 60Y-5.004, F.A.C., that such information is adverse to the respondent's interest.

(5) Failure to Cooperate - Complainant.

(a) Where the complainant fails to provide a necessary statement, fails or refuses to appear or be available for interview or meetings, fails or refuses to provide necessary information requested by the Office of Employment Investigations pursuant to this section or otherwise refuses to cooperate to the extent that the Office of Employment Investigations is unable to resolve the complaint, and after notice the complainant has failed to duly respond to the Office of Employment Investigations within 30 days, the Executive Director may dismiss the complaint, which shall constitute final Agency action.

(b) In the event a complainant fails to appear at or fails or refuses to participate in a fact-finding conference scheduled in the complainant's area of residence or at the place most convenient to all parties as determined by the Office of Employment Investigations, and after being provided at least fourteen days notice of such conference, which notice shall advise complainant of the provisions of this rule, the Executive Director may dismiss the complaint; provided, however, that no complaint may be dismissed pursuant to this rule where within fourteen days of the scheduled conference the complainant has filed with the Commission information establishing good cause for complainant's nonappearance or nonparticipation. Such

information should include sworn statements of those individuals having direct knowledge of pertinent events causing the nonappearance or nonparticipation, as well as any other relevant evidence.

(6) Subpoena. In the event any person fails to provide requested information, the Executive Director may issue and sign a subpoena on behalf of the Commission. The subpoena shall state the name and address of the issuer, identify the person subpoenaed, the person to whom and the place, date, and time at which it is returnable. A subpoena may be returnable to a representative of the Commission.

(7) Enforcement of Subpoena. In the event the person to whom the subpoena is directed fails to obey the subpoena, the Executive Director may direct the General Counsel to apply to a circuit court for an order of compliance.

(8) Suspension of Investigation. Upon the request of the complainant or respondent, the Executive Director or his designee ~~Administrator of Employment Investigations~~ may suspend an investigation during the pendency of a grievance proceeding, on the same subject, to which the complainant and respondent are parties. This suspension shall normally be granted for not more than 45 days and only if there is reason to believe that the pending proceeding will fully resolve the matters raised by the complaint.

(9) Access to Files During Investigation. Information obtained during the investigation of a complaint shall be disclosed only to the complainant, respondent or their authorized representative, or to a witness, only when disclosure is deemed necessary for the investigation or for securing appropriate disposition of the complaint.

(10) Negotiated Settlement. During the mediation and/or investigation processes, the Commission ~~Office of Employment Investigations~~ shall endeavor to encourage the complainant and the respondent to settle the complaint on mutually agreeable terms. If the settlement is achieved by a Negotiated Settlement Agreement, its terms shall be reduced to writing and signed and dated by the complainant and respondent. If a settlement is achieved as a Withdrawal with Settlement, only the complainant need sign and date. A copy of the agreement shall be filed with the Clerk. A complaint which has been settled may be dismissed by the Executive Director upon such terms and at such time as may be provided in the written agreement subject to compliance.

Specific Authority 760.06(13), 760.11(14) FS. Law Implemented 760.03(7), 760.06, 760.10, 760.11(2), (12) FS. History-New 11-2-

78, Amended 8-12-85, Formerly 22T-9.03, Amended 8-11-86, Formerly 22T-4.003, Amended _____.