

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-5.008

TITLE Petition for Relief from an Unlawful Employment Practice

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

LAW IMPLEMENTED 760.01-.11 FS.

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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-5.008 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 ~~30~~ days of the Date service of a Notice of Failure of Conciliation, a Notice of Determination of Reasonable Cause, No Reasonable Cause, a Notice of Determination of No Jurisdiction or a Notice of Determination of Untimeliness; or where redetermination has been requested, a Notice of Redetermination of No Reasonable Cause, a Notice of Redetermination of No Jurisdiction or a Notice of Redetermination of Untimeliness. Notwithstanding the provisions of subsection 60Y-4.004(2) and Rule 60Y-4.005, F.A.C., a 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 ~~30~~-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, Florida Administrative Code, 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.

~~(5) Answer.~~

~~(a) Each respondent shall file an answer with the Commission within 20 days of service of the petition.~~

~~(b) The answer shall include a specific admission, denial, or explanation of each allegation of the petition; or if the respondent is without knowledge thereof, it shall so state, in which case such statement shall operate as a denial. Admissions or denials may be made to all or part of a particular allegation.~~

~~(c) The answer shall include a specific, detailed statement of any affirmative defense. Failure to plead an affirmative defense shall constitute a waiver of that defense.~~

~~(d) If a respondent fails to file a timely answer, such failure shall be deemed to constitute an admission of the material facts alleged in the petition. Any allegation within the petition which is not denied in the answer shall be deemed admitted.~~

~~(e) The filing of a motion to dismiss shall not toll the time for filing an answer.~~

~~(6) Notice to Commissioners or Members of a Panel. The Clerk shall serve notice of the petition upon all Commissioners unless a Panel has been designated by the Chairperson. If a Panel has been designated, the Clerk shall serve notice upon the members of that Panel.~~

~~(b) (7) Certification of Class.~~ If the petition contains class allegations, the administrative law judge hearing officer, on motion of a party, may include in the recommended order a proposed certification of the class if (a) the class is so numerous that joinder of all members is impractical, (b) there are questions of law or fact common to the class, (c) the claims of the petitioner are typical of the claims of the class, and (d) the petitioner will fairly and adequately protect

the interests of the class. If the hearing officer proposes that a class be certified, the hearing officer may also include in the recommended order proposed findings and conclusions concerning the respondent's liability to the class. However, the hearing officer 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)(8)~~ 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 hearing officer 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 hearing officer.

~~(6)(9)~~ Proceedings After Remand. An order of remand, pursuant to subsection ~~(5)(7)~~, or a subsequent order of the hearing officer, 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)(10)~~ Voluntary Dismissal. A Petition for Relief may be dismissed by the Petitioner without order of the hearing officer, 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 ~~Commission takes final action~~ 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.

Specific Authority 760.06(13) 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 _____.