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**IDAPA 45
TITLE 01
Chapter 01**

IDAPA 45 - HUMAN RIGHTS COMMISSION

45.01.01 - IDAHO HUMAN RIGHTS COMMISSION RULES

000. LEGAL AUTHORITY.

These rules are adopted under the legal authority of Sections 67-5906(12) and 44-1703(2), Idaho Code. (7-1-93)

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 45.01.01, "Rules of the Idaho Human Rights Commission". These rules cover practice before the Idaho Human Rights Commission pertaining to alleged violations of the Idaho Human Rights Commission Act, Title 67, Chapter 59 of the Idaho Code, and the Discriminatory Wage Rates Based Upon Sex Act, Title 44, Chapter 17 of the Idaho Code. (7-1-93)

002. WRITTEN INTERPRETATIONS.

Explanations for rule changes are available for public inspection in the Office of the Human Rights Commission, 1109 Main St., Ste. 400, Boise, Idaho 83720-0040. Brochures explaining various provisions of anti-discrimination laws are also available at the address given above. (7-1-97)

003. ADMINISTRATIVE APPEAL.

The two statutes covered under these rules, Title 67, Chapter 59 of the Idaho Code, and Title 44, Chapter 17 of the Idaho Code, do not provide for administrative appeals. (7-1-93)

004. LIBERAL CONSTRUCTION - RULEMAKING - NO CONTESTED CASES.

These rules will be liberally construed to secure just, speedy and economical determination of all issues presented to the Idaho Human Rights Commission. Unless prohibited by statute, the Commission may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. The Idaho Human Rights Commission hereby adopts by reference the Rules of Practice and Procedure adopted by the Attorney General's Office on Rulemaking. The Idaho Human Rights Commission specifically does not adopt the Attorney General's rules regarding Contested Case Proceedings. By statutory authority, the Idaho Human Rights Commission does not conduct contested case proceedings. (7-1-93)

005. DECLARATORY RULINGS.

Any person petitioning for a declaratory ruling on the applicability of a statute or rule administered by the Human Rights Commission must substantially comply with this rule. The petition shall be addressed to the director and shall: (7-1-93)

01. Identification. Identify the petitioner and state the petitioner's interest in the matter; (7-1-93)

02. State Ruling. State the declaratory ruling that the petitioner seeks; and (7-1-93)

03. Other. Indicate the statute, rule, or other controlling law and the factual allegations upon which the petitioner relies to support the petition. (7-1-93)

04. Legal Assertions. Legal assertions in the petition should be accompanied by citations of cases or statutory provisions. (7-1-93)

006. OFFICE - OFFICE HOURS - ADDRESS - RECORDS.

The office of the Idaho Human Rights Commission is located at 1109 Main St., Ste. 400, Boise, Idaho 83720-0040. Office hours are from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday, and legal holidays. This is the office where all filings must be made and where records are kept. The director of the agency is the custodian of records. (7-1-97)

007. -- 009. (RESERVED).

010. DEFINITIONS.

- 01. Commission.** The Idaho Human Rights Commission as created by the Human Rights Act. (7-1-93)
- 02. Commissioner.** A duly appointed member of the Idaho Human Rights Commission. (7-1-93)
- 03. Complainant.** Any person who files a complaint with the Commission pursuant to the Human Rights Act. (7-1-93)
- 04. Complaint.** A statement filed with the Commission pursuant to these Rules alleging an unlawful practice within the meaning of the Human Rights Act. The complaint may be in the form of a letter but, whenever timely possible, should be written on a complaint form provided by the Commission or on the complaint form used by the Equal Employment Opportunity Commission, and signed by the Complainant or their legal representative. (7-1-97)
- 05. Conciliation Agreement.** A written agreement settling the issues raised by the complaint and signed by the parties after a determination on the merits of the complaint by the Commission. (7-1-93)
- 06. Covered Entity.** Those persons and organizations within the jurisdiction of the Human Rights Act, as set forth in Idaho Code, Sections 65-5901 and 67-5902. (7-1-98)
- 07. Discriminatory Wage Act.** The Act set forth in Idaho Code, Title 44, Chapter 17, "Discriminatory Wage Rates Based Upon Sex". (7-1-93)
- 08. E.E.O.C.** The United States Equal Employment Opportunity Commission or any of its designated representatives. (7-1-93)
- 09. Federal Civil Rights Act Terms.** Religion shall have the meaning set forth in the Civil Rights Act of 1964, as codified in 42 U.S.C.A. 2000e(j). The term "because of sex" shall have the meaning set forth in the Civil Rights Act of 1964, as codified in 42 U.S.C.A. 2000e(k). The term "substantially limits" shall have the meaning set forth in the Americans With Disabilities Act, as codified in 29 CFR 1630.2. (7-1-98)
- 10. Human Rights Act.** As used herein, the term "Human Rights Act" shall mean the Human Rights Commission Act of 1969, as amended and codified as Idaho Code, Title 67, Chapter 59. (7-1-93)
- 11. Mental Condition.** Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and learning disabilities. (7-1-93)
- 12. Party Or Parties.** The Complainant, the Respondent, the Commission, and any other person authorized by the Commission to intervene in any proceeding. (7-1-93)
- 13. Physical Condition.** Any physiological disorder, condition, cosmetic disfigurement, anatomical loss, or abnormality affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine. (7-1-93)
- 14. Record Of Such A Disability.** A person may have "a record of such a disability" when he/she has a history of or has been misclassified as having a physical or mental condition that substantially limits one or more major life activities. (7-1-97)
- 15. Regarded As Having Such A Disability.** A person may be "regarded as having such a disability" when he/she: (7-1-97)
- a. Has a physical or mental impairment that does not substantially limit a major life activity but is treated by a covered entity as constituting such a limitation; (7-1-98)

b. Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others towards such an impairment; or (7-1-93)

c. Has none of the impairments listed above but is treated by a covered entity as having such an impairment. (7-1-98)

16. Respondent. Any person against whom a complaint is filed in accordance with the Human Rights Act and these Rules. (7-1-93)

17. Settlement Agreement. A written agreement settling the issues raised by the complaint and signed by the parties prior to the Commission's making a determination on the merits of the complaint. (7-1-93)

18. Staff Director. The Staff Director appointed by the Commission pursuant to the Human Rights Act. (7-1-93)

19. Substantial Disability. A physical or mental condition constitutes a "substantial disability" when it interferes with or affects, over a significant period of time, one or more of a person's major life activities, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. (7-1-93)

011. -- 099. (RESERVED).

100. TEMPORARY DISABILITIES.

Minor illnesses or conditions which are only temporarily disabling will not be considered to be disabilities under this act. Examples of such conditions include, but are not limited to: broken bones, sprains, or colds. (7-1-97)

101. DISABILITIES.

01. Contagious Diseases. A person suffering from a chronic contagious disease is a person with a disability if he/she meets the requirement of Section 67-5902(15), Idaho Code. That person is entitled to an individualized medical inquiry to determine if he/she is qualified for the job in question. Factors to be considered include the nature, duration and severity of the risk of infection, and the probability that the disease would be transmitted and would cause varying degrees of harm. (7-1-97)

02. Alcoholism. Alcoholism is a disability if the requirements of Section 67-5902(15), Idaho Code, are met. No accommodation is necessary if the disability creates a health or safety threat. (See I.C. 67-5910(d).) Whenever alcoholism includes current use of alcohol, an employer may condition job retention upon the employee's successful completion of a treatment program and documented participation in an aftercare program. (7-1-97)

03. Drug Addiction. Drug addiction is a disability if the requirements of Section 67-5902(15), Idaho Code, are met. No accommodation is necessary if the disability creates a health or safety threat. (See I.C. 67-5910.) No accommodation is necessary for drug addiction which includes current illegal use, possession, or selling of a controlled substance. An employer may condition job retention upon the employee's successful completion of a treatment program and documented participation in an aftercare program. (7-1-97)

04. Reasonable Accommodations. Reasonable accommodations are adjustments or modifications to the work assignment or work environment to enable a person with a disability to fulfill employment responsibilities. They may include, but are not limited to: (7-1-97)

- a. Making the worksite accessible to and usable by persons with a disability; (7-1-97)
- b. Modification of equipment or tools so they can be used by a person with a disability; (7-1-97)
- c. Job restructuring; (7-1-93)
- d. Modified work schedules, particularly as they may be necessary for the person to receive treatment

for a disability; (7-1-93)

e. Acquisition of adaptive aids or devices; (7-1-93)

f. Reassignment to a vacant position. (7-1-93)

05. Accommodations Of A Personal Nature. Employers shall not be required to provide accommodations of a personal nature, such as wheelchairs and hearing aids. Nor shall they be required to hire two (2) full-time employees to fill one (1) position. (7-1-93)

06. Cooperation. A person with a disability who seeks an accommodation must cooperate in the consideration of various accommodation options. An employer is not required to provide the "best" accommodation or the one most desired by the employee or applicant. The determination of "reasonableness" will be made on a case-by-case basis. (7-1-97)

07. Pre-Employment Inquiry. An employer, labor organization, or employment agency shall not make pre-employment inquiry of an applicant as to whether the applicant has a physical or mental impairment or as to the nature or severity of such impairment. A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions, or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. (7-1-93)

102. -- 199. (RESERVED).

200. MEDICAL ISSUES.

01. Medical Examinations And Inquiries. Medical examinations and inquiries are permitted as follows: (7-1-97)

a. A covered entity may require a medical examination or inquiry after making an offer of employment to an applicant and before he/she begins employment duties, and may condition an offer of employment on the results of such examination or inquiry, if all entering employees in the same job category are subjected to such an examination or inquiry regardless of disability. Medical inquiries or examinations conducted in accordance with this section do not have to be job-related and consistent with business necessity. If certain criteria are used to screen out an applicant, however, the exclusionary criteria must be job-related and consistent with business necessity. (7-1-97)

b. A covered entity may require a medical examination or make an inquiry of an employee that is job-related and consistent with business necessity. Inquires may be made into the ability of an employee to perform job-related functions. (7-1-93)

c. A covered entity may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program. (7-1-93)

02. Disabilities Not Presently Job-Related. An employer shall not discriminate against an applicant or employee because of a disability which is not presently job-related but which may worsen and become job-related in the future. A narrow exception to this rule exists when, in light of the individual's work history and medical history, employment of that person would pose a reasonable probability of substantial harm. See *Mantolite v. Bolger*, 767 F.2d 1416 (9th Cir. 1985). (7-1-93)

03. Confidentiality; Exceptions. Information about the medical condition or history of an applicant or employee should be considered confidential except that: (7-1-93)

a. Supervisors and managers may be informed regarding restrictions on the work or duties of persons with a disability and regarding any accommodations or health or safety precautions; (7-1-97)

b. First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and (7-1-93)

c. Enforcement agencies shall be provided relevant information upon request when investigating complaints under state or federal law. (7-1-93)

201. -- 299. (RESERVED).

300. COMPLAINTS.

01. Who May File. A complaint may be filed by any of the following: (7-1-93)

a. Any person for himself/herself or also on behalf of himself/herself and other similarly situated individuals claiming to be aggrieved by an alleged unlawful discriminatory practice as defined in the Act; (7-1-97)

b. A Commissioner or Staff Director requesting the Commission to initiate a complaint, provided he/she has sufficient reason to believe that an unlawful discriminatory practice as defined in the Act has occurred or is occurring. Upon such request the Commission shall review the reasons provided by the initiating Commissioner or Staff Director and may initiate a complaint if satisfied that there is reason to believe that an unlawful discriminatory practice as defined in the Act has occurred or is occurring; (7-1-97)

c. Any person claiming that he/she has been discharged, expelled, or otherwise discriminated against by an employer, labor organization, or employment agency because he/she opposed practices forbidden under the Human Rights Act, or because he/she has filed a complaint, testified, assisted or participated in any manner in an investigation, hearing or other procedure before the Commission. (7-1-97)

02. Commission Assistance. Assistance in filing complaints shall be available to any Complainant by a Commissioner, the Staff Director, or staff member. The Commission reserves the right to refuse to accept a complaint for filing if, in the opinion of the Staff Director, there is no reason to suspect that illegal discrimination may have occurred, or if the action is barred by the terms of Subsection 300.06.a. (7-1-97)

03. Contents Of Complaint. A complaint should contain the following: (7-1-93)

a. The full name, mailing address, and telephone number (if any) of the Complainant or Complainants; (7-1-93)

b. The full name, mailing address, and telephone number (if any and if known) of the Respondent or Respondents; (7-1-93)

c. A brief written statement sufficiently clear to identify the practices and to describe generally the action or practice alleged to be unlawful; (7-1-98)

d. The date or dates on which the alleged unlawful discriminatory practices occurred and, if the alleged unlawful practice is of a continuous nature, the dates between which said continuing practices are alleged to have occurred; (7-1-93)

e. A statement as to any other action which has been instituted in any other forum or agency based on the same grievance as is alleged in the complaint. (7-1-93)

04. Medical Documentation. Persons filing disability discrimination complaints may be required to furnish the Commission with opinions or records from duly licensed health professionals regarding (a) the nature of their disabilities, and (b) any limitations, including work restrictions, caused by the disability. Medical reports from the following sources will be accepted: physicians and osteopathic physicians, nurse practitioners, counselors, psychologists, occupational therapists, clinical social workers, dentists, audiologists, speech pathologists, podiatrists, optometrists, chiropractors, physical therapists, and substance abuse treatment providers, insofar as any opinion or evaluation within the scope of the relevant license applies to the individual's physical or mental impairment. Failure to provide medical reports within a reasonable period of time may be cause for dismissal of a complaint. (7-1-97)

05. Method Of Filing. A complaint may be filed: by personal delivery, mail, or facsimile delivered to

the Commission office in Boise. (7-1-97)

06. Time For Filing. The following time limitations apply to the filing of complaints with the Commission: (7-1-93)

a. A complaint must be filed within one (1) year after the alleged unlawful practice occurs. If the alleged unlawful practice is of a continuing nature, the date of the occurrence of said unlawful practice shall be deemed to be any date subsequent to the commencement of the unlawful practice up to and including the date on which the complaint shall have been filed if the alleged unlawful practice continues. (7-1-93)

b. Upon receipt of a complaint at the Commission's office, the date of such receipt shall be noted thereon. For purposes of compliance with Idaho Code 67-5908(4), the date of notation shall be the date of filing. (7-1-93)

c. Notwithstanding any other provisions of these rules, a complaint shall be deemed to have met the timelines requirement of Subsection 300.06.a. when the Commission receives, in any manner described in Subsection 300.05.a., a written statement sufficiently precise to identify the practices and to describe generally the action or practice alleged to be unlawful. (7-1-97)

07. Complaints Deferred By E.E.O.C. Any complaint deferred to the Commission by the E.E.O.C. shall be treated, for purposes of filing requirements, according to the rules as stated above. (7-1-93)

08. Amended Complaints. A complaint may be amended, before the determination by the Commission and at the discretion of the Staff Director, to cure technical defects or omissions, or to clarify and/or amplify allegations by the Complainant. (7-1-97)

09. Supplemental Complaint. The Complainant may file a supplemental complaint setting forth actions which have allegedly occurred subsequent to the date of the original or amended complaint, and said supplemental complaint, if timely filed, will be considered together in the same proceeding with the original or amended complaint whenever practicable. (7-1-93)

10. Withdrawal Of Complaint. Upon the request of the Complainant, on a form provided by the Staff Director stating the reasons for such request, a complaint, or any part thereof, may be withdrawn upon the written consent of the Staff Director. If a complaint is withdrawn pursuant to the provision of these Rules, the Staff Director shall close the case and notify the parties. (7-1-93)

11. Initial Actions. Upon the filing of a complaint, said complaint shall be docketed, assigned a complaint number, and assigned to the staff for settlement or investigation and conciliation. (7-1-93)

12. Service On Respondent. As promptly as possible, the Commission shall cause a copy of said complaint to be personally delivered, or sent by certified mail to the Respondent. (7-1-93)

13. Mediation. Upon the filing of a complaint, the Commission or its delegated staff member shall endeavor to resolve the matter by informal means. Such informal means may include, at the discretion of the Commission staff, the holding of a mediation conference at a time and place acceptable to all participants. If held, a mediation conference shall be for the purposes of clarifying the positions of the parties to the complaint and of exploring any bases for no-fault settlement. A mediation conference is not, and shall not be considered for any purposes to be, a contested case hearing under Idaho Code 67-5209. (7-1-97)

14. Settlement. If terms of settlement are agreed to by the parties at any time prior to a determination by the Commission as to the merits of the charge, said terms shall be reduced to writing in a Settlement Agreement. Upon the signing of a Settlement Agreement by all parties, the Staff Director will cause the case to be closed. (7-1-93)

15. Answers. The Respondent shall answer or otherwise respond to the complaint in writing within thirty (30) days of receiving it. A copy of said answer, including any attachments thereto, will be sent by the Commission staff to the Complainant. Upon application, the Commission may for good cause shown extend the time

within which the answer may be filed. The answer shall be fully responsive to each allegation contained in the complaint. Any allegation in the complaint which is not denied or admitted in the answer shall be deemed admitted unless the Respondent shall state in the answer he/she is without knowledge or information sufficient to form a belief. If the Respondent fails to answer or otherwise respond to the complaint within thirty (30) days of receipt or such time as may be extended by the Commission, the Commission may act on the complaint based on the information provided by the Complainant. Upon application, the Commission may for good cause shown permit the Respondent to amend its answer to the complaint. Any amendments to the complaint, or any supplemental complaint, shall be served upon the Respondent as promptly as possible. Answers to amended or supplemental complaints, if necessary, shall be submitted within ten (10) working days. Time for submitting such answers may be extended by the Commission to thirty (30) days for good cause shown. (7-1-97)

16. Interrogatories. At any time after the filing of a complaint the Commission staff may issue to either the Complainant or the Respondent interrogatories regarding any matter, not privileged, which is relevant to the subject matter involved. It is not ground for objection that the information sought will be inadmissible in court if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. (7-1-93)

17. Interrogatory Answers Returned. Answers to the interrogatories shall be returned to the Commission office within thirty (30) days from the date of service of said interrogatories. (7-1-93)

18. Extension. Upon application by a party, for good cause shown, the Staff Director may grant one extension of time for filing answers to interrogatories, said extension not to exceed an additional fifteen (15) days. (7-1-93)

19. Orders. In the event that a party objects to certain interrogatories, and after an attempt has been made to resolve any difference between the Commission and the party, the Commission may issue an order compelling the party to answer the interrogatories. This order must be signed by at least two (2) Commissioners. An order issued under this rule shall be enforceable by application to the District Court. (7-1-93)

20. Narrative Statement. The Commission staff may, in specific cases, seek from a party a narrative statement of response in addition to or rather than answers to interrogatories. In such cases, the narrative statement should include all information which the party desires considered by the Commission, in determining whether to credit the allegations of the complaint. (7-1-93)

21. File Briefs. Any party to a complaint filed with the Commission may file briefs or other written memoranda setting out his or her position or interpretation of the law. (7-1-97)

22. Summary Of Investigation. At the completion of the investigation, the staff member to whom the case is assigned shall prepare a report containing a summary of the investigation and submit it to the Staff Director to review. (7-1-93)

23. Administrative Closure. At any point during the handling of a particular case the Staff Director may close the case for administrative reasons. Such reasons shall include, but are not limited to: (7-1-99)

- a. Failure of the Complainant to accept a full relief settlement offer; (7-1-93)
- b. Failure of the Complainant to cooperate with the Commission in the processing of the case, including failure to answer interrogatories or failure to provide medical information as requested; (7-1-93)
- c. Inability to locate the Complainant; (7-1-93)
- d. It appearing upon investigation that the case is not jurisdictional with the Commission; (7-1-93)
- e. The Complainant's filing of a suit in either state or federal court alleging the same unlawful practices as complained of to the Commission. (7-1-93)

24. Notification Of Closure. The Staff Director shall notify the parties of such administrative closure, including the grounds therefor, as promptly as possible. (7-1-93)

25. Decision On The Merits. At the completion of the investigation and approval of the summary by the Staff Director, the Commission or a designated panel of at least three (3) Commissioners shall determine whether there is probable cause to believe that the Respondent has been or continues to be engaged in any unlawful discriminatory practices defined in the Act. (7-1-93)

26. No Probable Cause. If the Commission or designated panel finds no probable cause to credit the allegations of the complaint, a statement of no probable cause and order of dismissal will be issued for the Commission by the Staff Director. The summary of investigation, statement, and order shall be sent to Complainant and Respondent by certified mail, thereby closing the case. (7-1-97)

27. Probable Cause. If the Commission or designated panel finds probable cause to credit the allegations of the complaint, a statement of probable cause shall be issued. The summary of investigation and statement shall be sent to the Complainant and the Respondent by certified mail. (7-1-97)

28. Conciliation. If the Commission finds probable cause to credit the allegations of the complaint, the Commission staff shall endeavor through conference with the parties to redress and eliminate the possible unlawful discriminatory practice by conciliation. (7-1-93)

29. Conciliation Agreement. If the Commission staff shall succeed in endeavors to conciliate, a written Conciliation Agreement shall be prepared which shall set forth all measures to be taken by any party, and if appropriate, compliance provisions. The Conciliation Agreement shall be signed by the parties, and the Staff Director shall cause the case to be closed. (7-1-93)

30. Failure Of Agreement. In the event of failure to reach terms of conciliation agreeable to all parties, the Staff Director shall so certify and assign the case to the Commission's legal counsel. The Commission, after review by its legal counsel, shall determine whether or not to pursue the case in the District Court. (7-1-93)

31. No Action. If the Commission determines not to pursue the case in District Court, the Staff Director shall so notify Complainant and Respondent, close the case, and advise Complainant of his or her right to pursue the case through a private cause of action. (7-1-93)

32. Action. If the Commission decides to pursue a case, it shall direct its legal counsel to file an action in District Court in the name of the Commission for the use of the person or persons alleging discrimination. (7-1-93)

33. Confidentiality Of Records. In order to protect the interests of all parties in reaching successful settlements of discrimination charges without resorting to court action, the Commission and its employees will not reveal information about a case to nonparties except as may be necessary to conduct a full and fair investigation or to cooperate with other government law enforcement agencies. (7-1-93)

34. Federal Compliance. In the interest of consistency and to avoid confusion on the part of persons governed by both the State and Federal anti discrimination laws, the Commission will generally follow the interpretations of the Federal anti discrimination laws in examining the merits of a complaint filed with it under this Act. If a person files a complaint under Title 67, Chapter 59, Idaho Code, and Title 44, Chapter 17, Idaho Code, the Commission will attempt to avoid duplication in investigation and settlement efforts, whenever possible. (7-1-97)

35. Document Destruction. The Commission will retain closed investigatory files for three (3) years from the date of closure at which time these documents may be destroyed at the discretion of the Staff Director. (7-1-97)

36. Notice Of Right To Sue. At the time of case closure the director will issue a notice of administrative dismissal notifying the complainant of his or her right to file a civil action in District Court. Any such suit must be filed within ninety (90) days of the date of this notice. (7-1-99)

301. -- 999. (RESERVED).

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