IDAPA 45 – IDAHO HUMAN RIGHTS COMMISSION

45.01.01 – Rules of the Idaho Human Rights Commission

Who does this rule apply to?
The following entities and individuals (67-5902, Idaho Code):

- Employers;
- Employment Agencies;
- Labor Organizations;
- Places of Public Accommodation;
- Educational Institutions;
- Individuals or entities involved in real estate transactions or housing accommodations; and
- Individuals filing claims of discrimination or retaliation under Section 67-59 or 44-17, Idaho Code

What is the purpose of this rule?
These rules cover practice before the Idaho Human Rights Commission regarding alleged discrimination or harassment as prohibited by the Idaho Human Rights Act (67-59, Idaho Code), and the Discriminatory Wage Rates Based Upon Sex Act (44-17, Idaho Code). This rule explains the scope of the Idaho Human Rights Commission, as well as the details of a complaint of discrimination: the parties involved, contents, issues of timing, and process. It describes reasons for dismissal, options for mediation, and potential outcomes of complainants of discrimination.

What is the legal authority for the agency to promulgate this rule?
This rule implements the following statutes passed by the Idaho Legislature:

State Government and State Affairs -
Commission on Human Rights:
- 67-5906(02), Idaho Code – Powers and Duties of Commission

Labor -
Discriminatory Wage Rates Based Upon Sex:
- 44-1701(6), Idaho Code – Definitions
- 44-1703(2), Idaho Code – Powers and Duties of the Director with Respect to Unlawful Pay Practices

Who do I contact for more information on this rule?

Idaho Human Rights Commission
317 W. Main Street
Boise, ID 83735
Phone: (208) 334-2873
Fax: (208) 334-2664
Email: RulesReview@ihrc.idaho.gov
https://humanrights.idaho.gov/

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IDAPA 45 – IDAHO HUMAN RIGHTS COMMISSION

45.01.01 – RULES OF THE IDAHO HUMAN RIGHTS COMMISSION

000. LEGAL AUTHORITY.
These rules are promulgated under Sections 67-5906(12) and 44-1703(2), Idaho Code. (3-20-20)

001. TITLE AND SCOPE.

01. Title. IDAPA 45.01.01, "Rules of the Idaho Human Rights Commission." (3-20-20)

02. Scope. These rules cover practice before the Idaho Human Rights Commission ("Commission") pertaining to alleged violations of the Idaho Human Rights Act, Title 67, Chapter 59, Idaho Code, and the Discriminatory Wage Rates Based Upon Sex Act, Title 44, Chapter 17, Idaho Code. (3-20-20)

002. ADMINISTRATIVE APPEAL.
There is no administrative appeal from any proceedings brought pursuant to this chapter. (3-20-20)

003. LIBERAL CONSTRUCTION – NO CONTESTED CASES.
These rules will be liberally construed to secure just, speedy and economical determination of all issues presented to the 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 Commission specifically does not adopt the Attorney General's rules regarding Contested Case Proceedings. By statutory authority, the Commission does not conduct contested case proceedings. (3-20-20)

004. DECLARATORY RULINGS.
Any individual who petitions for a declaratory ruling on the applicability of a statute or rule administered by the Commission must substantially comply with this rule. The petition addressed to the Administrator will: (3-20-20)

01. Identify. Identify the petitioner and state the petitioner's interest in the matter; (3-20-20)

02. State. State the declaratory ruling that the petitioner seeks; and (3-20-20)

03. Cite. Cite the statute, rule, or other controlling law and the factual allegations upon which the petitioner relies to support the petition. (3-20-20)

005. -- 009. (RESERVED)

010. DEFINITIONS.

01. Act. The Idaho Human Rights Act, Title 67, Chapter 59, Idaho Code. (3-20-20)

02. Commission. The Idaho Human Rights Commission. (3-20-20)

03. Complainant. Any individual who files a complaint with the Commission pursuant to the Act. (3-20-20)

04. Complaint. A written statement signed under oath and filed with the Commission alleging an unlawful practice under the Act. (3-20-20)

05. EEOC. The United States Equal Employment Opportunity Commission or any of its designated representatives. (3-20-20)

06. Party or Parties. The Complainant, the Respondent, the Commission, and any other individual or entity authorized by the Commission to intervene in any proceeding. (3-20-20)

07. Respondent. The party against whom a complaint is filed in accordance with the Act and these rules. (3-20-20)

011. REPRESENTATION OF PARTIES.
In proceedings before the Commission, Complainants, Respondents, witnesses and any other individuals or entities authorized by the Commission to intervene must be represented as follows: (3-20-20)

01. **An Individual**. By himself or herself, an attorney, or a family member. (3-20-20)

02. **A Partnership or limited liability company**. By a partner, member, a duly authorized employee, or an attorney. (3-20-20)

03. **A Corporation**. By an officer, a duly authorized employee, or an attorney. (3-20-20)

04. **Other Entity**. A municipal corporation, state, or local government agency, or entity, incorporated association, or non-profit organization must be represented by an officer, a duly authorized employee or an attorney. (3-20-20)

012. INTERPRETATION OF STATE LAW.
The Commission will interpret and construe the Act in a manner consistent with its stated purposes, Section 67-5901, Idaho Code, and the federal anti-discrimination laws described in those purposes. (3-20-20)

013. -- 299. (RESERVED)

300. COMPLAINTS.

01. **Who May File**. A complaint may be filed under the Act by a person as defined by the Act or a member of the Commission alleging an act, pattern, or practice of unlawful discrimination, or an unlawful reprisal. (3-20-20)

02. **Commission Assistance**. A Commissioner, the Administrator, or staff member may assist any Complainant in filing a complaint. The Commission reserves the right to refuse to accept a complaint for filing if, in the opinion of the Administrator, 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. (3-20-20)

03. **Contents of Complaint**. A complaint should contain the following: (3-20-20)

a. The full name, mailing address, and telephone number (if any and if known) of the Complainant or Complainants and Respondent or Respondents; (3-20-20)

b. A brief written statement sufficiently clear to identify the practices and describe generally the action or practice alleged to be unlawful; (3-20-20)

c. 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; (3-20-20)

d. 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. (3-20-20)

04. **Medical Documentation**. Individuals filing disability discrimination complaints may need 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. Failure to provide medical reports within a reasonable period of time may be cause for dismissal of a complaint. (3-20-20)

05. **Method of Filing**. A complaint may be filed by personal delivery, mail, email, or facsimile delivered to the Commission office in Boise. (3-20-20)

06. **Time for Filing**. A complaint must be filed within one (1) year of the alleged unlawful discrimination. If the alleged unlawful practice is of a continuing nature, the date of the occurrence of said unlawful practice will be deemed to be any date subsequent to the commencement of the unlawful practice up to and including the date on which the complaint is filed if the alleged unlawful discrimination continues. (3-20-20)

a. The date a signed complaint is received at the Commission's office will be noted on the complaint.

For purposes of compliance with Section 67-5908(4), Idaho Code, the date of notation will be the date of filing. (3-20-20)

07. Complaints Deferred by EEOC. Any complaint deferred to the Commission by the EEOC will be treated, for purposes of filing requirements, according to the rules stated above. (3-20-20)

08. Amended Complaints. A complaint may be amended, before the determination by the Commission and at the discretion of the Administrator, to cure technical defects or omissions, or to clarify or amplify allegations by the Complainant. (3-20-20)

09. Supplemental Complaint. The Complainant may file a supplemental complaint setting forth actions that 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. (3-20-20)

10. Withdrawal of Complaint. Using a form provided by the Administrator, the Complainant may request that a complaint, or any part thereof, be withdrawn. A withdrawal may be granted at the Administrator's discretion, and both parties will be notified in writing. (3-20-20)

11. Initial Actions. When filed, a complaint will be docketed, assigned a complaint number, and assigned to the staff for mediation or investigation. (3-20-20)

12. Service on Respondent. The Commission will promptly serve a copy of the complaint on the Respondent by personal delivery, mail, email, or facsimile. (3-20-20)

13. Mediation. Upon the filing of a complaint, the Commission or its delegated staff member will endeavor to resolve the matter by informal means. Such informal means may include a mediation conference at a time and place acceptable to all participants, to clarify the positions of the parties to the complaint and explore any bases for no-fault settlement. A mediation conference is not a contested case hearing under Section 67-5209, Idaho Code. (3-20-20)

14. Settlement. Terms of any settlement agreed to by the parties at any time prior to a determination by the Commission on the merits of the charge will be reduced to writing in a Settlement Agreement. Upon the signing of a Settlement Agreement by all parties, the Administrator will close the case. (3-20-20)

15. Answers. The Respondent must answer or otherwise respond to the complaint in writing within thirty (30) days of service. A copy of Respondent's answer, including any attachments submitted, will be sent by the Commission staff to the Complainant. Upon application, the Commission may for good cause extend the time within which the answer may be filed. The answer should be fully responsive to the allegation contained in the complaint, and may provide supporting documentation and witness statements. The Commission may act on the complaint based on the information provided by the Complainant and other evidence before it if the Respondent fails to timely answer or otherwise respond. 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, will be served upon the Respondent as promptly as possible. Answers to amended or supplemental complaints, if necessary, must be submitted within ten (10) working days of service. Time for submitting such answers may be extended by the Commission to thirty (30) days for good cause. (3-20-20)

16. Requests for Information, Answers, and Narrative Statements. At any time after the filing of a complaint, the Commission staff may issue to either party requests for information regarding any matter that is not privileged and that is relevant to the subject matter involved. Commission staff will determine the time allotted for answers to request for information. (3-20-20)

17. File Briefs. Any party to a complaint filed with the Commission may file briefs or other written memoranda setting out their position or interpretation of the law. (3-20-20)

18. Summary of Investigation. At the completion of the investigation, Commission staff will prepare a report containing a summary of the investigation and submit it to the Administrator to review. (3-20-20)

19. **Administrative Closure**. At any point during the handling of a particular case, the Administrator may close the case for administrative reasons that include, but are not limited to: (3-20-20)

a. Failure of the Complainant to accept a full relief settlement offer; (3-20-20)

b. Failure of the Complainant to cooperate with the Commission in the processing of the case, including failure to answer requests for information or failure to provide medical information as requested; (3-20-20)

c. Inability to locate the Complainant; (3-20-20)

d. Lack of Commission jurisdiction; (3-20-20)

e. Filing of suit by Complainant in either state or federal court alleging the same unlawful practices as the complaint. (3-20-20)

20. **Notification of Closure**. The Administrator will notify the parties of an administrative closure, including the grounds for the decision, as promptly as possible. (3-20-20)

21. **Decision on the Merits**. Following approval of the summary by the Administrator, the Commission or a designated panel of at least three (3) Commissioners will determine whether probable cause (reasonable grounds) exist to believe that the Respondent has been or continues to be engaged in any unlawful discrimination as defined in the Act. (3-20-20)

22. **No Probable Cause**. If the Commission or designated panel finds no probable cause supporting the allegations of the complaint, the investigative summary, written decision, and order of dismissal will be issued by the Administrator and sent to Complainant and Respondent, thereby closing the case. (3-20-20)

23. **Probable Cause**. If the Commission or designated panel finds probable cause to believe unlawful discrimination has occurred, its written decision and investigative summary will be issued and served upon Complainant and Respondent. (3-20-20)

24. **Conciliation**. After a Commission finding of probable cause, the Commission staff will endeavor through conference with the parties to redress and eliminate the possible unlawful discrimination by conciliation. (3-20-20)

25. **Conciliation Agreement**. If conciliation is successful, a written Conciliation Agreement will be prepared that states all measures to be taken by any party, and, if appropriate, compliance provisions. When a Conciliation Agreement signed by the parties is received, the Administrator will close the case. (3-20-20)

26. **Failure of Conciliation; Commission Court Actions**. If a Conciliation Agreement cannot be reached, the Commission, at its discretion, will determine whether to file a court action in the name of the Commission on behalf of Complainant. If it determines not to file such an action, the Administrator will close the case and notify Complainant and Respondent. (3-20-20)

27. **Notice of Right to Sue**. When a case is closed, the Administrator will issue a notice of administrative dismissal notifying the Complainant of such dismissal and of their right to file a court action within ninety (90) days. (3-20-20)

28. **Confidentiality of Records**. The records of the Commission are confidential according to Section 74-105(8), Idaho Code. 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 as required by law. All filings will be recorded at the Commission office where records are kept. The Administrator is the custodian of records for the Commission. (3-20-20)

29. **Document Destruction**. The Commission may 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 Administrator. (3-20-20)

301. -- 999. **(RESERVED)**

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