

The Civil Rights Division

The Civil Rights Division of the Bureau of Labor and Industries (BOLI) enforces Oregon's civil rights laws. Civil rights laws ban discrimination against individuals because of characteristics that make them part of a protected class. Anyone claiming to have been discriminated against at work, in a place where the public is served such as a restaurant or a hotel, when buying or renting housing, or when applying for or attending a career school can file a complaint with BOLI's Civil Rights Division.

The Division conducts fair and impartial investigations of complaints. The investigator's job is to find out if discrimination occurred. Investigators do not represent any party involved in the complaint.

Discrimination

Webster's dictionary defines discrimination as "to make a difference in treatment on the basis of other than personal merit." Simply said, it means treating people differently. Not all discrimination is illegal. For example, an employer can choose to hire one person instead of another or a restaurant can turn people away for reasons that may not be unlawful.

Protected Classes

Discrimination is unlawful when carried out because of an individual's race, color, gender or other characteristic protected by law. Such characteristics place people into "protected classes." Everyone belongs to a number of protected classes. For example, we all have a race, color and gender.

There are federal, state, city and county discrimination laws banning discrimination because of an individual's protected class. A list of protected classes is included at the end of this publication.

Making a Discrimination Complaint

There are many ways to make a complaint about discrimination. You can:

- Use your employer's internal grievance procedure.
- File a complaint with BOLI's Civil Rights Division,
- File a complaint with the federal Equal Employment Opportunity Commission (EEOC),
- File a civil suit in State Circuit Court,
- File a federal civil suit in Federal District Court.

This book explains the process for filing a complaint with BOLI's Civil Rights Division.

BOLI's Civil Rights Complaint Process

There are several steps involved in the complaint process. The steps vary depending on the findings of the intake officer and the investigator. The entire investigative process generally takes about six months, but may take up to one year.

Filing a Complaint

Filing a complaint begins with a call or e-mail to BOLI's Civil Rights Division. See page 8 for a list of BOLI

offices. Leave your name and a phone number where you can be reached.

An intake officer returns your call within three days to get information about your complaint. The intake officer uses the information you provide to decide if you have a basis for filing a complaint with the Civil Rights Division.

If you do not have a basis for filing a discrimination complaint, the intake officer tells you immediately and if possible refers you to someone who might give you other assistance.

If the intake officer finds that you do have a basis for filing a complaint, we will send you a questionnaire to complete and return to the Division.

After you return the questionnaire to the Division, your questionnaire is assigned to an intake officer who drafts your discrimination complaint. In most cases, the intake officer will need more information from you to draft the complaint. The intake officer will call or write you. If the intake officer requests additional information, you must respond promptly or your complaint will not be processed further.

The complaint that is drafted by the intake officer will be mailed to you for verification. It is important that you review the complaint, request any necessary changes, verify the complaint by signing it and return it to the Division. Please note: The Civil Rights Division requires all complaints to be notarized. The Division provides notarization services free of charge, when you come in person. The day the Division receives a signed and properly verified complaint is the official **filing date**.

If the basis for filing your complaint is covered by both state and federal law, a complaint filed with BOLI (state) is automatically filed with the EEOC (federal) if

it meets jurisdictional guidelines. This is called a **dual filing**.

Since you initiated the complaint, you are referred to as the **Complainant**. The person or organization you made the complaint against is referred to as the **Respondent**.

Investigation

After your case is filed, it is assigned to a civil rights senior investigator. The investigator sends a notice to the Respondent and to you. The Respondent is asked to respond to the allegations contained in your complaint. The investigator will schedule an appointment for your initial interview. If you cannot be available at your scheduled time, you must contact your investigator immediately to reschedule your interview. If you do not complete the interview or cooperate in rescheduling, your complaint will be dismissed.

Generally, **an investigator interviews you within 40 days from the date your case is filed with the Division.** This interview is very important because the information you provide determines how the investigator proceeds with your case. The interview covers each discriminatory act stated in your complaint and its date of occurrence. You must be able to tell the investigator how each discriminatory act is linked to your protected class(es).

Among other things, the investigator asks you to identify **witnesses and comparators**. Comparators are other employees or individuals who, in a situation similar to yours, were either treated the same as you or differently by the Respondent.

To prove that discrimination occurred, **you must provide substantial evidence.** After your interview, the

investigator analyzes the information you provided and the information provided by the Respondent.

Your case will proceed to further investigation if additional information is needed to determine whether substantial evidence exists to support your allegations. **If substantial evidence is found through additional investigation,** a Substantial Evidence Determination is issued. If no violation is found, the Division dismisses the case and notifies you and the Respondent of the dismissal.

You can withdraw your complaint at any time during the investigative process. If you want to withdraw your complaint, contact the investigator. The division dismisses your complaint following your withdrawal.

Conciliation

If the investigator makes a **Substantial Evidence Determination** in your case, the Division will suggest that you and the Respondent try to reach an agreement or conciliation. **A conciliation is a voluntary, no-fault settlement of a complaint.**

If you and the Respondent are able to come to agreement on a settlement, a conciliation agreement is drafted for the parties to sign. This resolves the complaint. When the conciliation agreement is signed, the complaint is closed.

If the conciliation fails, Division management reviews the case to decide if BOLI will forward it to a case presenter in BOLI's Hearing Unit for further action. If the case is assigned, a case presenter reviews the file and decides if the evidence meets the **higher standard required for an administrative hearing**. Not all Substantial Evidence Determinations meet this standard.

If the case presenter decides that the case should

receive an administrative hearing, the Division will represent you at the hearing without charge.

If either Division management or the case presenter decides against an administrative hearing, the case is closed and you are issued a **Notice of Complainant's Right to File a Civil Suit**, if not previously issued.

Administrative Hearing

An administrative hearing is similar to a court trial and is conducted by an administrative law judge.

The Commissioner of the Bureau of Labor and Industries will issue a final order based on the record of the hearing. If the Commissioner decides in your favor, the final order specifies a remedy.

A **remedy** is an award of money or an order to the Respondent to compensate you for the effects of the unlawful practice(s).

In cases of discrimination in employment, potential remedies include employment or reemployment, back pay or other benefits lost due to the discriminatory practice, out-of-pocket expenses having to do with the discriminatory practice, and compensation for emotional distress.

In cases of discrimination in housing or in places of public accommodation, remedies may include the rental, lease or sale of real property, the provision of services, out-of-pocket expenses or benefits lost because of the discriminatory practice, and compensation for emotional distress.

If, during the processing of a complaint, the Division finds that the Respondent has made a settlement offer

that provides an effective remedy to the unlawful practice, the Division will tell you about the offer. If you do not accept it, the Division will close the complaint. In cases where a complaint has been co-filed with the EEOC, the EEOC will determine whether the offer constitutes a full settlement of the federal charge.

Complainant Responsibilities

As a Complainant, you have several responsibilities:

- **You must file your complaint within one year of the date the discrimination occurred.**
- If your complaint is about **unsafe work practices**, in most cases you must file your complaint **within 90 days** of the occurrence of discrimination.
- **You should keep careful records** of the dates, names, addresses and phone numbers of any witnesses to the discriminatory act(s).
- **You must tell the investigator if you change your address or telephone number.** If the investigator cannot locate you, your case may be dismissed.
- **You have an obligation to mitigate your damages and keep records of your mitigation.**
- **Your cooperation is important!** You must give the intake officer or the investigator the information requested so your complaint can be processed and investigated. If you cannot do this, the Division may not accept your complaint, or may dismiss a complaint that has been filed.
- You have the burden of proving your case by substantial evidence.

Civil Rights Division Limitations

The Civil Rights Division cannot process your complaint if there is not enough evidence to show that you were discriminated against on the basis of protected class status.

An investigator cannot give you legal advice or act as a lawyer for you or for the Respondent. The investigator's role is to investigate the facts of your case in an unbiased manner and to help resolve the complaint.

Reaching an Intake Officer

Intake officers are located in BOLI's Portland office on the 10th floor of the Portland State Office Building. If you live outside of the Portland area, you can call or drop by a BOLI field office, and ask to be placed a call-back list. Field staff will forward your name and phone number to the BOLI's Portland office and your name will be forwarded to an Intake Officer for further follow up.

Portland Office

800 NE Oregon Street
Suite 1045
Portland, OR 97232-2180
Phone: 971-673-0761
971-673-0766 TTY
Fax: 971-673-0765

Eugene

1400 Executive Parkway
Suite 200
Eugene OR 97401
Phone: 541-686-7623
Fax: 541-686-7980

Salem

3865 Wolverine St., NE, Bldg. E-1
Salem, OR 97305

Phone: 503-378-3292
Fax: 503-373-7636

Medford
119 N. Oakdale Ave.
Medford, OR 97501
Phone: 541-776-6270
Fax: 541-276-5767

Pendleton
1327 SE 3rd St.
Pendleton, OR 97801
Phone: 541-276-7884
Fax: 541-276-5767

BOLI web site address: <http://egov.oregon.gov/BOLI/>

Laws Prohibiting Discrimination

Federal Protected Classes

Title VII of the Civil Rights Act of 1968

In order to be protected by this law, workers must be employed by a company with 15 or more employees.

- Race/color
- National origin
- Sex (includes gender, pregnancy and sexual harassment)
- Religion
- Retaliation on the basis of a person opposing an unlawful employment practice

Age Discrimination in Employment Act

This law covers workers in companies of 20 or more employees.

- Age (40 or older)

The American with Disabilities Act of 1990

Workers in companies with 15 or more employees are covered by this law

- Disability

The Family and Medical Leave Act

This law covers workers in companies with 50 or more employees.

- Family and medical leave

Federal discrimination complaints must be filed within 300 days of the date the discrimination occurred, except a person has two years (three years for a willful violation) to file under the Federal Medical Leave Act.

**State Protected Classes
(Oregon Revised Statutes,
Chapter 659A and 654)****Protected Classes in Employment**

In order to be protected by state laws, workers must be employed by a company with one or more employees, except where noted.

- Race/color
- National origin
- Sex (includes gender, pregnancy and sexual harassment)
- Sexual Orientation/Gender Identity (effective Jan. 1, 2008)
- Religion
- Retaliation
- Association with a protected class

- Age (18 or older)
- Marital status
- Physical/mental disability (6 or more employees)
- Injured workers (6 or more employees)
- Family relationship.

Oregon employees also have civil rights protections related to the following:

- Opposition to health/safety conditions
- Expunged juvenile record
- Polygraph/blood alcohol tests
- Genetic screening/brain wave tests
- Consumption of lawful tobacco products during non-work hours
- Child care garnishment
- Volunteer firefighter leave
- Organized militia leave
- Payment of medical examinations as a condition of continued employment
- Family leave (in companies with 25 or more employees)
- Leave for victims of domestic violence
- Leave to donate bone marrow
- Right of access to employer owned housing
- Reporting health care violations in nursing homes
- Leave for members of legislative assembly
- Legislative testimony
- Testifying at employment hearings
- Whistleblower law
- Reporting criminal activities

- Retaliation for reporting hospital health and safety violations
- Academic degree in theology or religious occupation
- Retaliation for nursing staff reporting certain violations

Protected Classes in Housing

State law prohibits a person from refusing to sell, lease or rent any real property because of an individual's race, color, sex (including pregnancy), sexual orientation/gender identity (effective Jan. 1, 2008), national origin, religion, marital status, physical or mental disability, or source of income and familial status.

Protected Classes in Places of Public Accommodation

A place of public accommodation is defined in state law as any place that offers the public accommodations, advantages, facilities or privileges, whether in the nature of goods, services, lodging, amusements or otherwise. It is illegal to discriminate in places of public accommodation on the basis of race, color, sex (including pregnancy), sexual orientation /gender identity (effective Jan. 1, 2008), national origin, religion, marital status, physical or mental disability, or age.

Protected Classes in Career Schools

No career school (private vocational, professional or trade) licensed to operate in Oregon may discriminate in its admission or instruction practices because of an individual's race, sex (including pregnancy), sexual orientation/gender identity (effective Jan. 1, 2008), marital status, religion, national origin, age, physical or mental disabilities.

