

839-003-0005

Definitions

For purposes of these rules:

(1) "Administrator" means the Administrator of the Civil Rights Division of the Bureau of Labor and Industries or a designee of the administrator.

(2) "Aggrieved Person" means either a person who is, or was at any time, eligible to file a complaint under ORS 659A.820 or who is otherwise similarly situated or it means a person who files a complaint under ORS 659A.825.

(2) "Bureau" means the Bureau of Labor and Industries.

(3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or a designee of the commissioner.

(4) "Complaint" means for the purpose of ORS Chapter 659A, except complaints under OSEA, ORS 659A.145 or 659A.421 or federal housing law, a written, verified statement that:

(a) Gives the name and address of the complainant and the respondent;

(b) Identifies the protected class basis of the complaint;

(c) Is signed by the complainant;

(d) Describes the actions complained of, including:

(A) The date(s) of occurrence;

(B) What the action was and how it harmed the complainant; and

(C) The causal connection between the complainant's protected class and the alleged harm.

(5) "Complainant" means a person filing a complaint personally or through an attorney.

(6) "Days," unless otherwise stated in the text of a document, means calendar days.

"Work days" means Monday through Friday, except holidays officially recognized by the State of Oregon or the federal government.

(7) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(8) "EEOC" means the Equal Employment Opportunity Commission of the federal government.

(9) "Federal Housing Law" means The Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing And Urban Development ("HUD") has jurisdiction.

(10) "Notice" means written information delivered personally or sent by mail to the person's last known personal or business address or business address of the person's designated representative.

(11) "OSEA" means the Oregon Safe Employment Act, ORS 654.001 et seq.

(12) "Protected class" means a group of people protected by law from discrimination on the basis of a shared characteristic, or a perception of that characteristic, such as race, sex, age, disability or other.

(13) "Person" has the meaning given in ORS 659A.001(9).

(14) "Respondent" includes any person or other entity against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(15) "Formal Charges" are formal charges drafted and issued by the bureau's Hearings Unit.

(16) "Substantial evidence" means:

(a) Proof that a reasonable person would accept as sufficient to support the allegations of the complaint, except complaints under ORS 659A.145 or 659A.421 or federal housing law.

(b) Under ORS 659A.145 or 659A.421, reasonable cause for the Commissioner to believe the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in circuit court.

(17) "Substantial Evidence Determination" means the division's written findings of substantial evidence.

(18) "Written verified complaint" means a complaint that is:

(a) In writing; and

(b) Under oath or affirmation.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS chapter 659A

839-003-0020

Civil [*Suit*] Action

As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law, except as provided below.

(1) A person alleging unlawful discrimination under state law may file a civil [*suit*] **action** as provided in ORS 659A.870 to 659A.885[, *or 30.680*].

(a) A person is not required to file a complaint of a violation of state law with the division before filing a civil **action** [*suit*].

(b) A person filing a civil [*suit*] **action** in state or federal court waives the right to file a complaint with the division with respect to those matters alleged in the civil [*suit*] **action**. This subsection does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law.

(2) After filing a complaint with the division, a complainant may file a civil [*suit*] **action** in state or federal court alleging the same matters as those alleged in the complaint filed with the division. The complainant should notify the division of the civil [*suit*] **action**. When the division receives notice from the complainant or complainant's attorney, or court documents indicating that such [*a suit*] **a civil action** has been filed, the division will dismiss the complaint. The division will notify the complainant and respondent that the division has dismissed the complaint and will take no further action. This subsection does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law.

(3) The commissioner will notify the complainant in writing of the right to file [*suit*] **a civil action** in state court, as provided in ORS 659A.870 to 659A.885, when a complaint is dismissed by the division or on the one-year anniversary of the complaint filing, whichever occurs first. The complainant will have 90 days from the notice mailing date to file a civil [*suit*] **action**. A complainant filing [*suit*] **a civil action** against a public body must also file a tort claim notice as required by ORS 30.275. This subsection does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law.

(4) A civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a public body as defined in ORS 30.260, based on an unlawful employment practice must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

(5) An action alleging breach of a division settlement agreement, entered into under ORS 659A.001 to 659A.030, 659A.233, 659A.303, 659A.145, 659A.409, 659A.420, 659A.421, 659A.150 to 659A.224 and 659A.800 to 659A.890, may be filed under 659A.860 in accordance with the applicable statute of limitations.

Stat. Auth.: ORS 659A.805

Stats. Implemented: [*ORS 30.275, 30.680, 659A.001-659A.030, 659A.233, 659A.303, 659A.409, 659A.420, 659A.421, 659A.150-659A.224* &] **ORS** 659A.800- 659A.890

839-003-0031

Filing a Complaint Under the Oregon Safe Employment Act

(1) A person or the person's attorney may file a complaint under **the Oregon Safe Employment Act (OSEA)**, in person or by mail, with the division at any bureau office in the state of Oregon. Complaint means a written statement signed by the complainant that:

- (a) Gives the name and address of the complainant and the respondent;
- (b) Identifies the protected class basis of the complaint;
- (c) Is signed by the complainant;
- (d) Describes the actions complained of, including:
 - (A) The date(s) of occurrence;
 - (B) What the action was and how it harmed the [*complainant*] **aggrieved person**; and
 - (C) The causal connection between the [*complainant's*] **aggrieved person's** protected class and the alleged harm.

(2) A person alleging discrimination for reporting or opposing unsafe or unhealthy work conditions under ORS 654.062 must contact the division within 90 days of having reasonable cause to believe that such violation has occurred. An employee would have reasonable cause to believe a violation has occurred on the earliest date that the employee:

- (a) Believed retaliation had occurred against the employee for opposing employee health and safety hazards; and
- (b) Knew or should have known of the right to file a complaint with the division and of the requirement that the complaint be filed within 90 days of the alleged retaliation.
 - (A) If a notice required by OSEA, as provided in OAR 437-001-0275(2)(a), was properly posted in the employee's workplace, continuously on and following the date of the alleged retaliation, the division will find that the employee knew or should have known of the 90-day filing requirement.
 - (B) If the employer failed to post the required OSEA poster, the 90-day filing requirement will begin on the date the employee learned of the right to file a complaint and of the 90-day filing requirement. The employee may establish this date based on the employee's own statement or other evidence offered by the employee.

(C) If the employer disagrees with the employee's presented date as the date the employee learned of the right to file a complaint, the burden is on the employer to show that the employee knew or should have known on an earlier date.

(D) If extenuating circumstances exist, the division may extend the 90-day period as provided in 29 CFR 1977.15(3).

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 654.062;[&] ORS 659A.800-865

839-003-0090

Remedy

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law. Remedies in complaints of housing discrimination are [*in*] addressed in OAR 839-003-0230.

(1) In cases of employment discrimination remedy includes, but is not limited to:

- (a) Employment or reemployment;
- (b) Wages or other benefits lost due to the practice;
- (c) Out-of-pocket expenses attributable to the practice;
- (d) Compensation for emotional distress and impaired personal dignity; and
- (e) Interest.

(2) Consideration of all acts alleged to comprise a hostile work environment in a complaint, including alleged acts occurring outside the one year statute of limitations for filing a complaint, is permissible for the purposes of assessing liability, so long as any act contributing to that hostile work environment takes place within the statutory period.

(3) In order to recover damages for lost wages, the [~~*complainant*~~] **aggrieved person** will generally be required to mitigate damages by seeking employment.

(a) Earned income from employment may be deducted from lost wage damages.

(b) In most cases, unearned income such as unemployment or public assistance benefits will not be deducted from lost wage damages.

(4) Settlements of complaints and the awards in commissioner's Final Orders do not necessarily include all possible remedies named in sections (1) and (2) of this rule.

Nothing in this rule will be construed to limit or alter the statutory powers of the commissioner to protect the rights of persons similarly situated to the [~~*complainant*~~] **aggrieved person** or to order the performance of an act or a series of acts designed to eliminate the effect of any unlawful practice found.

(5) The commissioner may order the respondent to eliminate the effects of any unlawful practice found and may require respondent to:

(a) Perform a designated act or series of acts that are calculated to carry out the policy of these rules in order to eliminate the effects of an unlawful practice and to protect the rights of those affected;

(b) Take action and submit reports to the commissioner on the manner of compliance with the terms and conditions specified in the commissioner's order or agreement;

(c) Refrain from any action prohibited by the order or agreement that would jeopardize the rights of the individuals or groups named in the complaint or would frustrate the purpose and the policy of these rules and relevant statutes.

(6) When the respondent makes an offer of remedy, the division will inform the [complainant] **aggrieved person** of the offer. If the [complainant] does not accept an offer that the division has determined will eliminate the effects of the unlawful practice, the division may dismiss the complaint.

(7) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.800-~~865~~, 659A.850, 659A.860, 659A.865, 659A.885]

839-003-0100

Commissioner's Complaint

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law. Commissioner's complaints of housing discrimination are addressed in OAR 839-003-0245.

(1) The Commissioner of the Bureau of Labor and Industries may make, sign and file a complaint whenever the commissioner has reason to believe that any person or group of persons has been denied rights due to an unlawful practice or employment practice. The complaint will be processed in the same manner as any other complaint filed under OAR 839-003-0025.

(2) The commissioner is the "complainant" in a commissioner's complaint.

(3) The commissioner may identify an aggrieved person in a commissioner's complaint, by name, pseudonym or by general description as being injured by an alleged unlawful practice or otherwise similarly situated to a person eligible to file a complaint under ORS 659A.820.

(4) Any cease and desist order issued in a proceeding in which the commissioner filed a complaint may, in addition to any other action authorized by law, include remedies for an aggrieved person.

~~(2)~~**(5)** In the matter of concurrent complaints, nothing in these rules will be construed to:

(a) Require or prohibit the filing of a commissioner's complaint involving the same or similar issues or allegations stated in any other complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885;

(b) Require or prohibit the continued processing or initiation of a commissioner's complaint in the event that a complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885, is resolved or dismissed, with or without remedy to the individual; or

~~(b)~~**(c)** Require or prohibit the continued processing or initiation of a commissioner's complaint in the event that a complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885, is resolved or dismissed, with or without remedy to the individual; or ~~(e)~~**(d)** Alter or limit an individual's private right of

action provided under ORS 659A.870 to 659A.885 [;].

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.~~800-865~~[820, 659A.825 & 659A.870 - 659A.885]

839-003-0235

Civil [*Suit*] Action

(1) A person alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law may file a civil [*suit*] action as provided in ORS 659A.870 to 659A.885, or 30.680.

(a) A person is not required to file a complaint of a violation of state law with the division before filing a civil [*suit*] action.

(2) A civil [*suit*] action alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, may be filed no later than two years after the occurrence or termination of an alleged discriminatory housing practice, or within two years after the breach of any settlement agreement entered into under ORS 659A.840, whichever occurs last. The two-year period may not include any time during which an administrative proceeding was pending with respect to the housing practice.

(3) After filing a complaint with the division, a complainant may file a civil [*suit*] action in state or federal court alleging the same matters as those alleged in the complaint filed with the division. The complainant should notify the division of the civil [*suit*] action. When the division receives notice from the complainant or complainant's attorney, or court documents indicating that such a [*suit*] civil action has been filed the division will not dismiss the complaint until the civil trial commences. The division will notify the complainant and respondent that the division has dismissed the complaint and will take no further action.

(4) If Formal Charges have been issued with respect to a housing discrimination complaint, and an administrative law judge has commenced a hearing on the record under ORS chapter 659A, the complainant may not commence a civil action in court that alleges the same matters.

(5) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved individuals in the same manner as an individual or group of individuals may file a civil action under ORS 659A.885.

Stat. Auth.: ORS 659A.805

Stats. Implemented: [*ORS 30.275, 30.680,*] **ORS** [*659A.001 - 659A.030, 659A.145, 659A.150 - 659A.224, 659A.233, 659A.303, 659A.409, 659A.420, 659A.421, &*] 659A.800 - 659A.890

839-003-0245

Commissioner's Complaint

(1) The Commissioner of the Bureau of Labor and Industries may make, sign and file a complaint whenever the commissioner has reason to believe that any person or group of persons has been denied rights or is about to be denied rights due to an unlawful practice

under ORS 659A.145 or 659A.421 or federal housing law. The complaint will be processed in the same manner as any other complaint filed under OAR 839-003-0200.

(2) The commissioner is the “complainant” in a commissioner’s complaint.

(3) The commissioner may identify an aggrieved person in a commissioner’s complaint, by name, pseudonym or by general description as being affected by an alleged unlawful practice or otherwise similarly situated to a person eligible to file a complaint under ORS 659A.820.

(4) Any cease and desist order issued in a proceeding in which the commissioner filed a complaint may, in addition to any other action authorized by law, include remedies for an aggrieved person.

~~(2)~~**(5)** In the matter of concurrent complaints, nothing in these rules will be construed to:

(a) Require or prohibit the filing of a commissioner's complaint involving the same or similar issues or allegations stated in any other complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885;

(b) Require or prohibit the continued processing or initiation of a commissioner's complaint in the event that a complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885, is resolved or dismissed, with or without remedy to the individual; or

(c) Alter or limit an individual's private right of action provided under ORS 659A.870 to 659A.885.

Stat. Auth.: [ORS 183,] **ORS** 659A.805

Stats. Implemented: ORS 659A.**800**-[145, 659A.421, 659A.820, 659A.825, 659A.870 -] 659A.885