

DIVISION 3

CIVIL RIGHTS COMPLAINT PROCEDURES

839-003-0000

Purpose and Scope

- (1) The policy of the State of Oregon guarantees all citizens of the state the right to employment, housing, public accommodation and private vocational, professional or trade schools without unlawful discrimination.
- (2) These rules govern the Civil Rights Division procedures for processing all complaints filed with the division.
- (3) In any matter not governed by these rules, the Commissioner of the Bureau of Labor and Industries will exercise discretion under the law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.003; [&] 659A.805

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) 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
 - (b) A person who files a complaint **personally or through an attorney** under ORS 659A.825.
- (3) "Bureau" means the Bureau of Labor and Industries.
- (4) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or a designee of the commissioner.
- (5) "Complaint" means for the purpose of ORS [C]chapter 659A, except complaints under [OSEA,] **the Oregon Safe Employment Act, ORS 654.001 to 654.295, 654.412 TO 654.423, 654.750 TO 654.780 AND 654.991**; ORS 659A.145 or 659A.421 or [federal housing law] **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)**, a written, verified statement that:
 - (a) Gives the name and address of the [complainant] **aggrieved person** and the respondent;
 - (b) Identifies the protected class basis of the complaint;
 - (c) Is signed by the **aggrieved person** [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.
- [(6)] **"Complainant" means a person filing a complaint personally or through an attorney.**
- [(7)] **"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.
- [(8)] **"Division" means the Civil Rights Division of the Bureau of Labor and Industries.**
- [(9)] **"EEOC" means the Equal Employment Opportunity Commission of the federal government.**
- [(10)] **"Federal [H]ousing [L]aw" 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.**
- [(11)] **"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.**
- [(12)] **"OSEA" means the Oregon Safe Employment Act, ORS 654.001 [et seq] to 654.295, 654.412 TO 654.423, 654.750 TO 654.780 AND 654.991.**
- [(13)] **"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.**
- [(14)] **"Person" has the meaning given in ORS 659A.001(9).**
- [(15)] **"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).**
- [(16)] **"Formal Charges" are formal charges drafted and issued by the bureau's Hearings Unit.**
- [(17)] **"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.
- [(18)] **"Substantial Evidence Determination" means the division's written findings of substantial evidence.**
- [(19)] **"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

839-003-0010

Who May File a Complaint

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or *[federal housing law]* the federal Fair Housing Act (42 U.S.C. 3601 – 3614a). Complaints of housing discrimination must be filed in accordance with OAR 839-003-0200.

- (1) Any person claiming to be *[harmed]* aggrieved by an act prohibited by statutes enforced by the Civil Rights Division may file a complaint with the division personally or through an attorney.
- (2) Any employee, or a representative authorized to do so by ORS 654.062(2), may file a complaint with the division alleging discrimination by an employer against the employee for raising issues of employee safety or health in the workplace.
- (3) The Commissioner of the Bureau of Labor and Industries *[commissioner]* or Attorney General of Oregon may file a complaint whenever there is reason to believe that a person *[or entity]* has violated statutes enforced by the division.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.820; & 659A.825

839-003-0015

Equal Employment Opportunity Commission

If an *[complainant]* aggrieved person wants to file a complaint alleging facts that would also violate federal discrimination statutes administered by the federal Equal Employment Opportunity Commission (EEOC) and the complaint meets federal filing requirements, the division may accept it on behalf of EEOC and co-file the complaint with EEOC. Under a work-sharing agreement between the division and EEOC the division, in most instances, will process the complaint for both agencies.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.820; 42 USC [Sec.] §706 (c) & and (d) (Title VII of the Civil Rights Act of 1964, as amended); 42 USC [Sec.] §101-108 (Title I of the Americans with Disabilities Act, as amended); & 29 USC § [Sec.] 621-634 (The Age Discrimination in Employment Act of 1967)

839-003-0020

Civil Action

As used in enforcing ORS *[C]*chapter 659A, including housing discrimination under 659A.145 or 659A.421 or *[federal housing law]* the federal Fair Housing Act (42 U.S.C. 3601 – 3614a), except as provided below.

- (1) A person alleging unlawful discrimination under state law may file a civil action as provided in ORS 659A.870 to 659A.885.
 - (a) A person is not required to file a complaint of a violation of state law with the division before filing a civil action.
 - (b) A person filing a civil 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 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, an *[complainant]* aggrieved person may file a civil 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 action. When the division receives notice from the *[complainant]* aggrieved person or *[complainant's]* aggrieved person's attorney, or court documents indicating that such a civil action has been filed, the division will dismiss the complaint. The division will notify the *[complainant]* aggrieved person 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]* aggrieved person in writing of the right to file 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]* aggrieved person will have 90 days from the notice mailing date to file a civil action. A *[complainant]* aggrieved person filing a civil action against a public body must also file a tort claim notice as required by 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 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 659A.800 - 659A.890

839-003-0025

Filing a Complaint

This section does not apply to complaints under **the Oregon Safe Employment Act, ORS 654.001 to 654.295, 654.412 TO 654.423, 654.750 TO 654.780 AND 654.991 (OSEA)**, ORS 659A.145 or 659A.421 or *[federal housing law]* **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)**. Complaints under OSEA must be filed in accordance with OAR 839-003-0031. Complaints of housing discrimination must be filed in accordance with **OAR** 839-003-0200.

(1) A person or the person's attorney may file a complaint, in person or by mail, with the division at any bureau office in the state of Oregon. The complaint must meet the standards provided in OAR 839-003-0005(4).

(2) The filing date is the date the division receives a complaint that meets the standards contained in OAR 839-003-0005(4).

(3) Except as provided in OAR 839-003-0031, a person must file a complaint with the division no later than one year after the alleged unlawful practice. If the alleged unlawful practice is of a continuing nature, the right to file a complaint exists so long as the person files the complaint within one year of the most recent date the unlawful practice occurred.

(4) An **aggrieved** person alleging constructive discharge **from employment** must file a discrimination complaint with the division within one year of the date the discharge occurred.

(5) The procedures for filing a complaint are as follows:

(a) An **aggrieved** person or the **aggrieved** person's attorney makes an inquiry to the division;

(b) The division may provide the **aggrieved** person or the **aggrieved** person's attorney with a letter of information and/or questionnaire to assist in determining **whether [if]** there is a basis for filing a complaint;

(c) If the division determines the **aggrieved** person has a basis for filing a complaint, the division will draft a complaint based upon the information provided by the **aggrieved** person and send or give the complaint to the **aggrieved** person or the **aggrieved** person's attorney for verification. The **aggrieved** person or the **aggrieved** person's attorney will request any necessary changes to the complaint.

(d) The **aggrieved** person will verify and sign the complaint. The complaint will then be submitted to the division.

(e) If the **aggrieved** person is an unemancipated minor the complaint must be signed by the minor and the parent or legal guardian of the minor.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 654.062; [&] **ORS chapter** 659A

839-003-0031

Filing a Complaint [U]nder the Oregon Safe Employment Act

(1) An **aggrieved** person or the **aggrieved** person's attorney may file a complaint under the Oregon Safe Employment Act, **ORS 654.001 to 654.295, 654.412 TO 654.423, 654.750 TO 654.780 AND 654.991 (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*] **aggrieved person** that:

(a) Gives the name and address of the [*complainant*] **aggrieved person** and the respondent;

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

(c) Is signed by the [*complainant*] **aggrieved person**;

(d) Describes the actions complained of, including:

(A) The date(s) of occurrence;

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

(C) The causal connection between the 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 - 659A.865

839-003-0040

Amendment of Complaints

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)** [*federal housing law*]. Complaints of housing discrimination must be amended in accordance with **OAR 839-003-0205**.

(1) The division may amend a complaint to correct technical defects and to add additional persons as respondents. The division may amend a complaint on its own initiative or at the [*complainant's*]**aggrieved person's** request (with the division's agreement) at any time prior to the issuance of Formal Charges, except that respondents may only be added during the course of investigation. Examples of technical defects include: clerical errors, additions or deletions, name and address corrections, and statute citation errors.

(2) A complaint may be amended to add a protected class only if the addition is supported by facts already alleged. New facts may not be added. If new facts are alleged, the [*complainant*] **aggrieved person** must file a new complaint meeting the standards provided in OAR 839-003-0005(5)(4).

(3) Amended complaints need not be verified or signed by the [*complainant*]**aggrieved person**.

(4) The division will send a copy of the amended complaint to the [*complainant*] **aggrieved person** and all respondents.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.820

839-003-0045

Withdrawal of Complaint

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)** [*federal housing law*]. The withdrawal of a housing discrimination complaint is addressed in **OAR 839-003-0210**. An [*complainant*] **aggrieved person** may voluntarily withdraw a complaint at any time by giving the division written notice of the [*complainant's*] **aggrieved person's** decision to withdraw. If the [*complainant*]**aggrieved person** wants a federal "right to sue letter," the [*complainant*]**aggrieved person** must provide a written request to EEOC or to the division. If the [*complainant*]**aggrieved person** makes the request to the division, the division will forward the request to EEOC.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS **chapter** 659A

839-003-0050

Administrative Dismissal

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)** [*federal housing law*]. Administrative dismissal of a housing discrimination complaint is addressed in **OAR 839-003-0215**.

(1) The division will dismiss the complaint if it determines that the bureau has no jurisdiction over the allegations of the complaint.

(2) The division may dismiss the complaint if the [*complainant*]**aggrieved person** files a proceeding, based on the same set of facts, with another agency having the authority to provide remedy to the [*complainant*]**aggrieved person** for the alleged discrimination.

(3) If a [*complainant*]**aggrieved person** or the [*complainant's*] **aggrieved person's** attorney fails to cooperate with the division, the division may dismiss the complaint.

(4) The [*complainant*]**aggrieved person** must notify the division in writing of address and telephone number changes. When an **aggrieved person** [*complainant*] cannot be located by reasonable efforts, the division may dismiss the complaint.

(5) The division will dismiss a complaint unless substantial evidence of unlawful discrimination is found. Such dismissal notice will include a statement that the complaint has been dismissed and a notice of **aggrieved person's** [*complainant's*] right to file a civil [*suit*] **action**, if such right exists.

(6) The division will dismiss complaints alleging violation of federal discrimination statutes administered by EEOC (**see** OAR 839-003-0015) in accordance with federal requirements.

(7) The division may elect to administratively dismiss a complaint without investigation. In such instances, the division will notify the **aggrieved person** [complainant] and respondent of the dismissal and issue notice of the complainant's right to file a civil **action** [suit], if such right exists.

(8) The division will dismiss a complaint if it learns that the **aggrieved person** [complainant] has filed a civil [suit] **action** alleging the same matters, as provided in OAR 839-003-0020.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 30.680, 659A.835, 659A.850, [&] 659A.870 - 659A.885

839-003-0055

Conciliation Agreements Prior to Completion of the Investigation

As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)** [federal housing law].

(1) The division encourages **aggrieved persons** [complainants] and respondents to resolve complaints by mutual agreement at any time. The division will facilitate settlement negotiations between the **aggrieved person** [complainant] and respondent, as provided in this rule, at any time during the investigation.

(2) If the **aggrieved person** [complainant] and respondent agree upon settlement, the division will draft a settlement agreement that states:

(a) That a "no fault" settlement has been reached;

(b) That the **aggrieved person** [complainant], the respondent and the Civil Rights Division accept the terms of the agreement as a resolution of the complaint;

(c) The specific action(s) the **aggrieved person** [complainant] and respondent will take as a result of the complaint settlement and the time within which the action(s) will be taken; and

(d) That the division may investigate any alleged breach of the agreement.

(3) The settlement agreement will not include release language that applies to any forum other than the Civil Rights Division.

(4) The **aggrieved person** [complainant], the respondent and a representative of the division will sign the division's settlement agreement. The **aggrieved person** [complainant] and respondent will receive copies of the signed agreement. Upon execution of this agreement, the division will notify the **aggrieved person** [complainant] and respondent that the complaint is dismissed.

(5) The division may allow the **aggrieved person** [complainant] and the respondent to enter into a private agreement with release language in addition to the division's agreement. The division will not be a party to nor enforce private agreements **and they do not become part of the agency record**.

(6) Nothing in these rules is intended to preclude private settlement between the **aggrieved person** [complainant] and the respondent.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.835; [,] 659A.840; [&] 659A.850

839-003-0060

Fact-Finding Conference

As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)** [federal housing law].

(1) At its discretion, the division may hold a fact-finding conference. This conference may encompass part or all of the division's investigation of the complaint. The **aggrieved person** [complainant] and the respondent will attend the conference and a division representative will conduct the conference. The purposes of the conference will be to:

(a) Review evidence regarding the complaint;

(b) Identify the undisputed elements of the complaint;

(c) Define and, if possible, resolve the disputed elements of the complaint; and

(d) Attempt to settle the complaint.

(2) The division will schedule the conference, notifying the **aggrieved person** [complainant] and the respondent of the time and place. The division may require the **aggrieved person** [complainant] and the respondent to provide information and documents relevant to the complaint. The division may issue subpoenas ad testificandum to compel the respondent's representatives to attend the conference and issue subpoenas duces tecum to compel the production of documents at the conference.

(3) The conference may be rescheduled, subject to the division's approval, at the request of the **aggrieved person** [complainant] or the respondent, or at the division's discretion.

(4) The **aggrieved person's** [complainant's] failure to attend the conference may cause the complaint to be administratively dismissed if the division determines that the **aggrieved person** [complainant] has failed to cooperate pursuant to OAR 839-003-0050(3).

(5) If the **aggrieved person** [complainant] attends the conference but the respondent's representatives fail to attend, the division representative may proceed based on the information in the division's possession.

(6) The respondent's representatives at a fact-finding conference should include persons with:

(a) Knowledge of the facts bearing on the complaint; and

- (b) Authority to negotiate a settlement agreement.
 - (7) The **aggrieved person** [*complainant*] and the respondent may be accompanied by legal counsel, but counsel's role is strictly limited to providing legal advice to the counsel's client.
 - (8) The division's representative conducting the conference may:
 - (a) Question the participants about their knowledge of the situation;
 - (b) Ask for additional statements and documentation from the **aggrieved person** [*complainant*] and the respondent;
 - (c) Terminate discussion of a particular point when further discussion would be irrelevant or repetitive;
 - (d) Exclude witnesses with the exception of the **aggrieved** person [*complainant*], the respondent and counsel;
 - (e) Order unruly participants to leave the conference;
 - (f) [*Tape*]**Audio**-record the conference with the knowledge of the participants;
 - (g) Attempt to negotiate a settlement agreement between the parties; and
 - (h) Recess or terminate the conference at any time.
 - (9) If the conference does not result in settlement, the division will either continue the investigation or dismiss the complaint. This subsection does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or federal housing law.
- Stat. Auth.: ORS 659A.805
 Stats. Implemented: ORS 659A.800, 659A.850, [&] 659A.860

839-003-0065
Investigations

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)** [federal housing law]. Investigation of housing discrimination complaints is addressed in **OAR 839-003-0220**.

- (1) The division may investigate the allegations contained in a complaint to determine objectively whether there is substantial evidence of unlawful discrimination. The division will determine the method by which complaints will be investigated or otherwise processed. The division will not investigate allegations occurring more than one year prior to the date the complaint was filed unless the allegations constitute a continuing violation or the circumstances occurring more than one year prior to the date the complaint was filed pertain to timely allegations.
- (2) The investigation may include interviews with the **aggrieved person** [*complainant*], the respondent representatives, and any other persons whom the division chooses to interview. The investigation may also involve the examination and analysis of written documents.
- (3) The investigator may [*tape*]**audio**-record statements with the knowledge of the participants.
- (4) The respondent has the right to have a representative present during interviews of current supervisory employees.
- (5) The respondent's current, non-supervisory, or former employees, may request that a representative for the respondent be present during interviews by a division representative.
- (6) **An aggrieved person** [*complainant*], respondent or witness interviewed by the division may request a copy of the summary report of the individual's own interview. The division may request that the **aggrieved person** [*complainant*], respondent or witness confirm by signature that the summary report is an accurate representation of the interview. The **aggrieved person** [*complainant*], respondent or witness may submit to the division additional comments regarding the interview.
- (7) The division representative may make written request to the respondent for documents, records, files or other sources of evidence. The respondent will provide such information within 21 days of the date of the division's written request. The division may grant the respondent additional time in which to respond.
- (8) The division may issue subpoenas compelling division access to premises, records and witnesses. Failure to respond to a subpoena may result in the division making a determination based on available information.
- (9) Upon conclusion of the investigation, the division will either issue a Substantial Evidence Determination or will dismiss the complaint. The division will mail a copy of the Substantial Evidence Determination or dismissal notice to the **aggrieved person** [*complainant*] and respondent.
- (10) If the division does not find substantial evidence of unlawful discrimination, the division will dismiss the complaint, notify the **aggrieved person** [*complainant*] and respondent of the dismissal and notify the **aggrieved person** [*complainant*] of the right to file a civil [*suit*] **action**, if such right exists.
- (11) If the division finds substantial evidence of unlawful discrimination, the complaint may be assigned to a division representative for settlement. However, the commissioner may proceed directly to a contested case hearing if the interests of justice so require.
- (12) A Substantial Evidence Determination or dismissal may not be appealed to the division.
- (13) The division may reopen a case at its own discretion.

Stat. Auth.: ORS 659A.805
 Stats. Implemented: ORS 659A.800, 659A.805, 659A.835, 659A.870 - 659A.885

839-003-0070

Settlement Process After Substantial Evidence Determination

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)** [federal housing law]. The settlement process after a substantial evidence determination in housing discrimination complaints is addressed in **OAR 839-003-0225**.

(1) If the division finds substantial evidence of unlawful discrimination, the division may seek to eliminate the effects of the unlawful discriminatory act(s) by conference, settlement and persuasion. The division will facilitate settlement negotiations between the **aggrieved person** [complainant] and respondent as provided in OAR 839-003-0055.

(2) If no settlement agreement is reached in the period of time set aside for settlement after a Substantial Evidence Determination, the division retains the discretion to further negotiate settlement, administratively dismiss the complaint, or proceed to a contested case hearing.

(3) The **aggrieved person** [complainant] may withdraw the **aggrieved person's** [complainant's] own complaint at any time.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.835, [&] 659A.840

839-003-0080

Access to Records in Investigative Files [/**Confidentiality**]

[As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law]

(1) Investigatory information relating to any complaint filed under ORS 659A.820 or 659A.825, until such time as the complaint is resolved under ORS 659A.835, or a final order is issued under ORS 659A.850, is exempt from disclosure under Oregon Public Records Law (ORS 192.410 to 192.505) unless the public interest requires disclosure in the particular instance, as determined by the division.

[(1)] **(2) Section (1) of this rule applies to** [During an investigation, the contents of] **all records in** the investigative file **of a complaint** [and related records,] other than the complaint **document**, [are confidential].

(3) Notwithstanding sections (1) and (2) of this rule, [However,] **an aggrieved person, respondent or witness interviewed by the division may request a copy of the summary report of the individual's own interview, and may request to inspect [and] or receive [copy] copies of records [information or statements]** that the individual has given to the division.

[(2)] **(4) After the complaint is closed, any person may request to inspect or obtain a copy of the [closed] file as provided under Oregon Public Records Law by following the procedures set out by the division in the case closing letter, or by following the procedures for requesting public records as set out on the Bureau of Labor and Industries's web site at <http://www.oregon.gov/boli/Pages/Public-Records-Requests/Landing.aspx>.**

[will be available for a fee. To obtain a copy of a closed file a person must make a written request to the division. The request must include the person's name, address and telephone number, the complainant's and the respondent's names and payment of the fee, as determined by the division.]

[(3)] **(5) The division will not [at any time] disclose [any] information prohibited from disclosure [that is required to be kept confidential]** by ORS 659A.840(6) or **by** any other state or federal law or under any contractual agreement between the bureau and federal, state and local agencies.

[(4)] **(6) An aggrieved person's** [complainant's] or respondent's designation of information as confidential will not [supercede] **supersede** the [State of] Oregon Public Records Law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS [192.440(3) &] 192.501(8), **ORS 659A.840(6)**

839-003-0085

Subpoenas

As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)** [federal housing law].

(1) The commissioner or the commissioner's designee may issue a subpoena to require:

- (a) The presence and testimony of witnesses;
- (b) The production of evidence, including but not limited to books, records, correspondence or documents in the possession or under the control of the person subpoenaed; and
- (c) Access to evidence to be examined or copied.

(2) If any person fails to comply with a subpoena issued under this rule, the commissioner may initiate the legal procedures necessary to enforce compliance.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.800(4)

839-003-0090

Remedy

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or the federal Fair Housing Act (42 U.S.C. 3601 – 3614a) [federal housing law]. Remedies in complaints of housing discrimination are 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 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 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 aggrieved person of the offer. If the aggrieved person 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 action [suit] in equity to compel specific performance.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.800 - 659A.865

839-003-0095

Enforcement of Settlement Agreements and Orders

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or the federal Fair Housing Act (42 U.S.C. 3601 – 3614a) [federal housing law]. Enforcement of settlement agreements and orders is addressed in OAR 839-003-0240.

(1) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by [suit] action in equity to compel specific performance, as provided in ORS 659A.860.

(2) If the aggrieved person [complainant] believes the terms of a bureau settlement agreement have been breached, the aggrieved person [complainant] may file a complaint with the division alleging retaliation, or file a new complaint re-alleging the original violation if it is still occurring. The division may review the provisions of the settlement agreement and investigate.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.850, 659A.860, [&] 659A.865

839-003-0100

Commissioner's Complaint

This section does not apply to housing discrimination complaints under ORS 659A.145 or 659A.421 or the federal Fair Housing Act (42 U.S.C. 3601 – 3614a) [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 or persons 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 or persons.
- (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) 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
- (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 - 659A.865

Complaints of Housing Discrimination

839-003-0200

Filing a Complaint [*Under*] under State and Federal Housing Discrimination Laws

- (1) A person claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)** [*federal housing law*] includes a person who believes that the person has been injured by an unlawful practice or discriminatory housing practice or will be injured by an unlawful practice or discriminatory housing practice that is about to occur.
- (2) A person claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law or the person’s attorney, or the commissioner may file a complaint, 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 **aggrieved person** [*complainant*] that:
- (a) Gives the name and address of the **aggrieved person** [*complainant*] and the respondent;
- (b) Describes the acts or omissions alleged to be an unlawful practice, including those acts or omissions the **aggrieved person** believes are about to occur and;
- (c) Describes how the **aggrieved person** was harmed or will be harmed by such actions.
- (3) The filing date is the date the division receives a complaint that meets the standards contained in OAR 839-003-0200(2).
- (4) An **aggrieved person** must file a complaint with the division no later than one year after the alleged unlawful practice. If the alleged unlawful practice is of a continuing nature, the right to file a complaint exists so long as the **aggrieved person** files the complaint within one year of the most recent date the unlawful practice occurred.
- (5) The procedures for filing a complaint are as follows:
- (a) An **aggrieved person** or the **aggrieved person’s** attorney makes an inquiry to the division;
- (b) The division may provide the **aggrieved person** or the **aggrieved person’s** attorney with a letter of information and/or questionnaire;
- (c) If the division determines the **aggrieved person** has a basis for filing a complaint, the division will draft a complaint based upon the information provided by the **aggrieved person** and send or give the complaint to the **aggrieved person** or the **aggrieved person’s** attorney for verification. The **aggrieved person** or the **aggrieved person’s** attorney will request any necessary changes to the complaint.
- (d) The **aggrieved person** will verify and sign the complaint. The complaint will then be submitted to the division.
- (e) If the **aggrieved person** is an unemancipated minor, the complaint must be signed on behalf of the minor by the parent or legal guardian of the minor.
- (6) The [*D*]division will serve notice upon the **aggrieved person** [*complainant*] acknowledging the filing of the complaint and advising the **aggrieved person** [*complainant*] of the time limits and choice of forums provided under ORS chapter 659A and federal housing law.
- (7) Within 10 days after the filing of a complaint, the division will serve the respondent with a copy of the original complaint that identifies the alleged discriminatory housing practice and a notice that advises the respondent of the procedural rights and obligations of the [*R*]respondent, including the respondent’s right to file an answer to the complaint.

(8) Each respondent may file, not later than 10 days after receipt of notice from the division, an answer to such complaint.

Stat. Auth.: ORS 659A.805

Stats. Implemented: 659A.145, 659A.421, 659A.820, **42 U.S.C. 3601 – 3614a** [42 U.S.C. 3601 et seq.]

839-003-0205

Amending a Housing Discrimination Complaint

(1) The division may amend a complaint to correct technical defects, to add additional persons as respondents and to add additional information found during the investigation of a complaint, including new factual allegations. The division may amend a complaint on its own initiative or at the **aggrieved person's** [complainant's] request (with the division's agreement) at any time prior to the issuance of Formal Charges, except that respondents may only be added during the course of investigation. Examples of technical defects include: clerical errors, additions or deletions, name and address corrections, and statute citation errors.

(2) Within 10 days after identifying an additional person who will named as a respondent, the division will serve the person with a copy of the complaint that identifies the alleged discriminatory housing practice and a notice that advises the person of the procedural rights and obligations of the person, including the person's right to file an answer to the complaint.

(a) Such notice, in addition to meeting the requirements of subsection (1)(a), will explain the basis for the division's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) Each respondent may file, not later than 10 days after receipt of notice from the division, an answer to such complaint.

(3) The division will send a copy of the amended complaint to the **aggrieved person** [complainant] and all respondents.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, 659A.421, 659A.820

839-003-0210

Withdrawal of a Housing Discrimination Complaint

An **aggrieved person** [complainant] may voluntarily withdraw a complaint at any time by giving the division written notice of the **aggrieved person's** [complainant's] decision to withdraw.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, 659A.421

839-003-0215

Administrative Dismissal of a Housing Discrimination Complaint

(1) The division will dismiss the complaint if it determines that the bureau has no jurisdiction over the allegations of the complaint.

(2) If an **aggrieved person** [complainant] or the **aggrieved person's** [complainant's] attorney fails to cooperate with the division, the division may dismiss the complaint.

(3) The **aggrieved person** [complainant] will notify the division in writing of address and telephone number changes. When an **aggrieved person** [complainant] cannot be located by reasonable efforts, the division may dismiss the complaint.

(4) The division will dismiss a complaint unless substantial evidence of unlawful discrimination is found. The division will provide written notice of such dismissal to **aggrieved person** [complainant] and respondent.

(5) The division cannot issue a finding of substantial evidence of discrimination [once] **after an aggrieved person** [complainant] has filed a civil [suit] **action** alleging the same matters as provided in OAR 839-003-0235, and the trial for the civil [suit] **action** has commenced.

(6) The division will dismiss complaints alleging discrimination under **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)** [federal housing law] statutes administered by **the U.S. Department of Housing and Urban Development** in accordance with federal requirements.

(7) The division will notify the **aggrieved person** [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. An **aggrieved person** [complainant] filing [suit] **a civil action** against a public body must also file a tort claim notice as required by ORS 30.275.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 30.680, 659A.145, 659A.421, 659A.835, 659A.850, [&] 659A.870 - 659A.885

839-003-0220

Housing Discrimination Investigations

(1) The division will investigate the allegations contained in any complaint filed under ORS 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)** [federal housing law] to determine [objectively] whether there is substantial evidence of

unlawful discrimination. The division will determine the method by which complaints will be investigated or otherwise processed. The division will not investigate allegations occurring more than one year prior to the date the complaint was filed unless the allegations constitute a continuing violation or the circumstances occurring more than one year prior to the date the complaint was filed pertain to timely allegations.

(2) The division will commence an investigation of any complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law within 30 days after the timely filing of the complaint.

(3)(a) At the end of each investigation of a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law the division will prepare a final investigative report containing:

(A) The names and dates of the contacts with witnesses;

(B) A summary and the dates of correspondence and other contacts with the **aggrieved person** [complainant] and the respondent;

(C) A summary description of other pertinent records;

(D) A summary of witness statements; and

(E) Answers to interrogatories.

(b) A final investigative report under this section may be amended if additional evidence is later discovered.

(c) The division will make the final investigative report available, upon request, to both the **aggrieved person** [complainant] and the respondent.

(4) The division will complete an investigation of any complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law within 100 days after the filing of the complaint, unless it is impracticable to do so. If the division is unable to complete the investigation of the complaint within 100 days after the filing of the complaint the division will notify the **aggrieved person** [complainant] and respondent in writing of the reasons for not doing so.

(5) The division will make final disposition of any complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law within one year after the filing of the complaint, unless it is impracticable to do so. If the division is unable to make final disposition of the complaint within one year the division will notify the **aggrieved person** [complainant] and respondent in writing of the reasons for not doing so.

(6) If the division determines that it is impracticable to complete an investigation and make final disposition of any complaint within one year the commissioner's authority to conduct investigations or other proceedings to resolve a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law does not cease within the one year period under ORS 659A.830(3).

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, 659A.421, 659A.800, 659A.805, 659A.835, [&] 659A.870 - 659A.885

839-003-0225

Settlement Process [After Substantial Evidence Determination] in Housing Discrimination Complaints

(1) During the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the division, the division will, to the extent feasible, seek to eliminate the effects of the unlawful discriminatory act(s) by engaging in conciliation, settlement and persuasion. The division will facilitate any settlement negotiations between the **aggrieved person** [complainant] and respondent as provided in OAR 839-003-0055.

(2) Nothing said or done in the course of settlement discussions concerning a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)** [federal housing law] may be disclosed under ORS 192.410 to 192.505 or in any other manner, or used as evidence in a subsequent proceeding under this chapter or federal housing law, without the written consent of the persons concerned.

(3) If no settlement agreement is reached [in the period of time set aside for settlement after a Substantial Evidence Determination], the division will proceed to a contested case hearing.

(4) The **aggrieved person** [complainant] may withdraw the **aggrieved person's** [complainant's own] complaint at any time.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, 659A.421, 659A.835, 659A.840

839-003-0230

Remedies in Housing Discrimination Complaints

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

(a) Rental, lease or sale of real property;

(b) Service lost;

(c) Expenses or lost benefits attributable to the practice;

(d) Compensation for emotional distress and for impaired personal dignity; and

(e) Interest.

(2) Settlements of complaints and the awards in commissioner's Final Orders do not necessarily include all possible remedies named in sections (1) 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 **aggrieved person** [complainant] or to order the performance of an act or a series of acts designed to eliminate the effect of any unlawful practice found.

(3) The commissioner may order the respondent to eliminate the effects of any unlawful practice found and may require respondent to do one or more of the following:

(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.

(4) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by **civil action** [suit] in equity to compel specific performance.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, 659A.421, 659A.800, 659A.850, 659A.860, 659A.865, [&] 659A.885

839-003-0235

Civil Action

(1) A person alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)** [federal housing law] may file a civil action as provided in 659A.870 to 659A.885, or 30.680. A person is not required to file a complaint of a violation of state law with the division before filing a civil action.

(2) A civil 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, an **aggrieved person** [complainant] may file a civil action in state or federal court alleging the same matters as those alleged in the complaint filed with the division. The **aggrieved person** [complainant] should notify the division of the civil action. When the division receives notice from the **aggrieved person** [complainant] or **aggrieved person's** [complainant's] attorney, or court documents indicating that such a civil action has been filed the division will not dismiss the complaint until the civil trial commences. The division will notify the **aggrieved person** [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 [C]chapter 659A, the **aggrieved person** [complainant] may not commence a civil action in court that alleges the same matters.

(5) When the **commissioner of the Bureau of Labor and Industries** [commissioner] or the [A]attorney [G]general **of Oregon** 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 [A]attorney [G]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 659A.885.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.800 - 659A.890

839-003-0240

Enforcement of Settlement Agreements and Orders in Housing Discrimination Complaints

(1) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by **action** [suit] in equity to compel specific performance, as provided in ORS 659A.860.

(2) If the **aggrieved person** [complainant] believes the terms of a bureau settlement agreement have been breached, the **aggrieved person** [complainant] may file a complaint with the division alleging retaliation, or file a new complaint re-alleging the original violation if it is still occurring. The division will review the provisions of the settlement agreement and investigate.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, 659A.421, 659A.850, 659A.860, 659A.865

839-003-0245

Commissioner's Complaint

(1) The [C]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 **the federal Fair Housing Act (42 U.S.C. 3601 – 3614a)** [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 or persons 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 or persons.
 - (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 659A.805
Stats. Implemented: ORS 659A.800 - 659A.885