

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, access to places of 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:
 - (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;
 - (b) A person who files a complaint personally or through an attorney under ORS 659A.825; or
 - (c) A person on whose behalf the commissioner files a complaint as provided in OAR 839-003-0100 or -0245.
- (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 purposes of ORS chapter 659A, (except complaints under the Oregon Safe Employment Act (OSEA) in ORS chapter 654, housing discrimination complaints under ORS 659A.145, 659A.421 or the federal Fair Housing Act, or a commissioner's complaint under ORS 659A.825) a written, verified statement that:
 - (a) Gives the name and address of the aggrieved person and the respondent;
 - (b) Identifies the protected class basis of the complaint;
 - (c) Is signed by the 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.
- (6) "Days," unless otherwise stated in the text of a document, means calendar days.
- (7) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.
- (8) "EEOC" means the federal Equal Employment Opportunity Commission.
- (9) "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.
- (10) "OSEA" means the Oregon Safe Employment Act, ORS 654.001 to 654.295, 654.412 to 654.423, 654.750 to 654.780 and 654.991.
- (11) "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.
- (12) "Person" has the meaning given in ORS 659A.001 (9).
- (13) "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).
- (14) "Formal charges" are charges drafted and issued by the bureau's Administrative Prosecution Unit.
- (15) "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 the federal Fair Housing Act (42 U.S.C. 3601 – 3614a),
 - (b) Under ORS 659A.145 or 659A.421 or the federal Fair Housing Act (42 U.S.C. 3601 – 3614a), reasonable cause for the commissioner to believe the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of an administrative action or a civil action in circuit court.
- (16) "Substantial evidence determination" means the division's written findings of substantial evidence.
- (17) "Written verified complaint" means a complaint that is in writing or print; and under oath or affirmation by the aggrieved person or the parent or legal guardian of an aggrieved person who is an unemancipated minor.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS chapter 659A

839-003-0010

Who May File a Complaint

(1) 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). Complaints of housing discrimination must be filed in accordance with OAR 839-003-0200.

(2) Any person claiming to be aggrieved by an unlawful practice may file a complaint with the division personally or through an attorney.

(3) 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.

(4) The commissioner of the Bureau of Labor and Industries or attorney general of the State of Oregon may file a complaint whenever there is reason to believe that a person has committed unlawful practices.

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

839-003-0015

Equal Employment Opportunity Commission

If an 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 §706 (c) and (d) (Title VII of the Civil Rights Act of 1964, as amended); 42 USC §101-108 (Title I of the Americans with Disabilities Act, as amended); 29 USC §621-634 (The Age Discrimination in Employment Act of 1967)

839-003-0020

Civil Actions alleging Unlawful Practices

(1) Civil actions in state or federal court alleging unlawful practices under 659A.145 or 659A.421 or the federal Fair Housing Act (42 U.S.C. 3601 – 3614a) are covered under OAR 839-003-0235 and not under this rule.

(2) An aggrieved person alleging unlawful practices may file a civil action in state or federal court as provided in ORS 659A.870 to 659A.885.

(a) An aggrieved person is not required to file a complaint of unlawful practices with the division before filing a civil action alleging the unlawful practices.

(b) An aggrieved person filing a civil action alleging unlawful practices waives the right to file a complaint with the division with respect to those matters alleged in the civil action.

(3) After filing a complaint with the division, an aggrieved person may file a civil action in state or federal court alleging the same matters as those alleged in the complaint. The aggrieved person should notify the division of the civil action. When the division receives notice from the aggrieved person or 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 aggrieved person and respondent that the division has dismissed the complaint.

(4) The commissioner will notify the aggrieved person in writing of the right to file a civil action 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. Except as provided in section (5) of this rule, the aggrieved person has 90 days from the notice mailing date to file a civil action.

(5) A civil action under ORS 659A.885 alleging an unlawful practice in violation of ORS 659A.403 or 659A.406 (public accommodation) must be commenced within one year of the occurrence of the unlawful practice, whether or not the aggrieved person first files a complaint with the division.

(6) An aggrieved person filing a complaint with the division alleging unlawful practices by a public body or any officer, employee or agent of a public body, as defined in ORS 30.260, need not file a tort claim notice with the public body. However, ORS 30.275 requires a tort claim notice be sent by the aggrieved person to the public body within 180 days of the alleged unlawful practice if: the aggrieved person files a civil action in court instead of filing a complaint with the division; or a complaint is dismissed by or withdrawn from the division, and the aggrieved person then files a civil action. The division encourages aggrieved persons filing complaints against public bodies to file a tort claim notice at the same time they file the complaint.

(7) A civil action or an action for a writ of mandamus alleging breach of a settlement agreement to which the division is a party may be filed as provided by ORS 659A.840 and 659A.860 in the manner provided by ORS 659A.885(3). An aggrieved person may instead file a complaint with the commissioner to seek enforcement of a settlement agreement

to which the division is a party, within one year after the act or omission alleged to be a violation of the agreement. The commissioner will process the complaint in the same manner as provided for a complaint filed under ORS 659A.820.

Stat. Auth.: ORS 659A.805

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

839-003-0025

Filing a Complaint

(1) Complaints under the Oregon Safe Employment Act (OSEA), which includes ORS 654.001 to 654.295, 654.412 to 654.423, 654.750 to 654.780 and 654.991, must be filed in accordance with OAR 839-003-0031.

(2) Complaints under ORS 659A.145 or 659A.421 or the federal Fair Housing Act (42 U.S.C. 3601 – 3614a) must be filed in accordance with OAR 839-003-0200, or OAR 839-003-0245 (Commissioner's Housing Complaint).

(3) Commissioner's complaints other than commissioner's housing complaints must be filed in accordance with OAR 839-003-0100.

(4) An aggrieved person or the aggrieved person's attorney may file a complaint alleging unlawful practices, 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).

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

(6) A complaint must be filed with the division no later than one year after the alleged unlawful practice occurred. 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.

(7) 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.

(8) 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 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 review. 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 under the Oregon Safe Employment Act (OSEA)

(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.

(2) "Complaint" means a written statement signed by the aggrieved person that:

(a) Gives the name and address of the aggrieved person and the respondent;

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

(c) Is signed by the 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.

(3) A person alleging discrimination or retaliation 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

(1) 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). Complaints of housing discrimination must be amended in accordance with OAR 839-003-0205.

(2) 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 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 or rule citation errors.

(3) 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 aggrieved person must file a new complaint meeting the standards provided in OAR 839-003-0005(5).

(4) Amended complaints need not be verified or signed by the aggrieved person.

(5) The division will send a copy of the amended complaint to the aggrieved person and all respondents.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.820

839-003-0045

Withdrawal of Complaint

(1) This rule 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). The withdrawal of a housing discrimination complaint is addressed in OAR 839-003-0210.

(2) An aggrieved person may voluntarily withdraw a complaint at any time by giving the division written notice of the aggrieved person's decision to withdraw. If the aggrieved person wants a federal "right to sue letter," the aggrieved person must provide a written request to EEOC or to the division. If the 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

(1) 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). Administrative dismissal of a housing discrimination complaint is addressed in OAR 839-003-0215.

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

(3) The division may dismiss the complaint if the aggrieved person files a proceeding, based on the same set of facts, with another state or federal agency having the authority to provide remedy to the aggrieved person for the alleged discrimination.

(4) If an aggrieved person or the aggrieved person's attorney fails to cooperate with the division, the division may dismiss the complaint.

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

(6) 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 the aggrieved person's right to file a civil action, if such right exists.

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

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

(9) The division will dismiss a complaint if it learns that the aggrieved person has filed a civil 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):

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

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

(5) The division may allow the aggrieved person 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 and the respondent.

(7) Nothing said or done in the course of settlement discussions concerning a complaint alleging an unlawful practice may be disclosed in any manner, including but not limited to disclosure under ORS 192.410 to 192.505 (public records law), or be used as evidence in a subsequent proceeding without the written consent of the persons concerned.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.835; 659A.840; 659A.850

839-003-0060

Fact-Finding Conference

(1) This rule applies to complaints of unlawful practices, including housing discrimination under ORS 659A.145 or 659A.421 or the federal Fair Housing Act (42 U.S.C. 3601 – 3614a).

(2) 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 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.

(3) The division will schedule the conference, notifying the aggrieved person and the respondent of the time and place. The division may require the aggrieved person 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.

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

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

(6) If the aggrieved person 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.

(7) 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.

- (8) The aggrieved person 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.
- (9) The division's representative conducting the conference may:
- (a) Question the participants about facts alleged in the complaint, or the response;
 - (b) Ask for additional statements and documentation from the aggrieved person 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, the respondent and counsel;
 - (e) Order unruly participants to leave the conference;
 - (f) 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.
- (10) 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 the federal Fair Housing Act (42 U.S.C. 3601 – 3614a).
- Stat. Auth.: ORS 659A.805
 Stats. Implemented: ORS 659A.800, 659A.850, [&] 659A.860

839-003-0065
Investigations

- (1) This rule 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). Investigation of housing discrimination complaints is addressed in OAR 839-003-0220.
- (2) 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.
- (3) The investigation may include interviews with the aggrieved person, the respondent's representatives, and any other persons whom the division chooses to interview. The investigation may also involve the examination and analysis of written documents.
- (4) The investigator may audio-record statements with the knowledge of the participants.
- (5) The respondent has the right to have a representative present during interviews of current supervisory employees.
- (6) 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.
- (7) An aggrieved person, 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, respondent or witness confirm by signature that the summary report is an accurate representation of the interview. The aggrieved person, respondent or witness may submit to the division additional comments regarding the interview.
- (8) 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.
- (9) 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.
- (10) 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 and respondent.
- (11) If the division does not find substantial evidence of unlawful discrimination, the division will dismiss the complaint, notify the aggrieved person and respondent of the dismissal and notify the aggrieved person of the right to file a civil action, if such right exists.
- (12) 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.
- (13) A substantial evidence determination or dismissal may not be appealed to the division.
- (14) 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

(1) 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). The settlement process after a substantial evidence determination in housing discrimination complaints is addressed in OAR 839-003-0225.

(2) If the division finds substantial evidence of unlawful practices, 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 and respondent as provided in OAR 839-003-0055.

(3) 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.

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

(5) Nothing said or done in the course of settlement discussions concerning a complaint alleging an unlawful practice may be disclosed in any manner, including but not limited to disclosure under ORS 192.410 to 192.505 (public records law), or be used as evidence in a subsequent proceeding, without the written consent of the persons concerned.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.835; 659A.840

839-003-0080

Access to Records in Investigative Files

(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.

(2) Section (1) of this rule applies to all records in the investigative file of a complaint other than the complaint document.

(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 or receive copies of records that the individual has given to the division.

(4) After a complaint is closed, any person may request to inspect or obtain a copy of the 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>.

(5) The division will not disclose information prohibited from disclosure 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.

(6) An aggrieved person's or respondent's designation of information as confidential will not supersede the Oregon Public Records Law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: 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):

(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

(1) 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). Remedies in complaints of housing discrimination are addressed in OAR 839-003-0230.

(2) In cases of unlawful employment practices, remedy includes, but is not limited to:

(a) Employment or reemployment;

(b) Wages or other benefits lost due to the unlawful practice;

(c) Out-of-pocket expenses attributable to the unlawful practice;

- (d) Compensation for emotional distress and impaired personal dignity; and
 - (e) Interest.
 - (3) 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 (2) and (3) 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 settlement agreement signed by the division or order issued by the commissioner may be enforced by mandamus or injunction or by civil action 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

- (1) 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). Enforcement of settlement agreements and orders in housing cases is addressed in OAR 839-003-0240.
 - (2) The commissioner or any person aggrieved by the violation of the terms and conditions of any settlement agreement may file a civil action or an action for a writ of mandamus alleging breach of a settlement agreement to which the division is a party as provided under ORS 659A.840 and 659A.860 in the manner provided by ORS 659A.885(3) for unlawful practices.
 - (3) The commissioner and any person aggrieved by the violation of the terms and conditions of a cease and desist order issued by the commissioner whether by a respondent or by any agent or successor in interest of the respondent, may bring a civil action in the manner provided by ORS 659A.885 (3) and recover the same relief as provided by ORS 659A.885 (3) for unlawful practices.
 - (4) An aggrieved person may also file a complaint with the commissioner to seek enforcement of a settlement agreement to which the division is a party, within one year after the act or omission alleged to be a violation of the agreement. The commissioner will process the complaint in the same manner as provided for a complaint filed under ORS 659A.820.
- Stat. Auth.: ORS 659A.805
 Stats. Implemented: ORS 659A.850; 659A.860; 659A.865

839-003-0100

Commissioner's Complaint

- (1) 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). Commissioner's complaints of housing discrimination are addressed in OAR 839-003-0245.
- (2) 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.
- (3) The commissioner may identify an aggrieved person or persons in a commissioner's complaint, by name, pseudonym or by general description as being aggrieved 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.865

Complaints of Housing Discrimination

839-003-0200

Filing a Complaint under State and Federal Housing Discrimination Laws

(1) An aggrieved 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) includes a person alleging they have 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) An aggrieved person alleging unlawful practices under ORS 659A.145 or 659A.421 or discrimination under the federal Fair Housing Act (42 U.S.C. 3601 – 3614a), 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 that:

(a) Gives the name and address of the aggrieved person 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 alleged 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 division will serve notice upon the aggrieved person acknowledging the filing of the complaint and advising the aggrieved person of the time limits and choice of forums provided under ORS chapter 659A and the federal Fair Housing Act (42 U.S.C. 3601 – 3614a).

(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 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

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 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 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 may voluntarily withdraw a complaint at any time by giving the division written notice of the aggrieved person's decision to withdraw. The division will then close the case.

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 or the aggrieved person's attorney fails to cooperate with the division, the division may dismiss the complaint.

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

(4) The division will dismiss a complaint unless substantial evidence of unlawful practices is found. The division will provide written notice of such dismissal to the aggrieved person and respondent.

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

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

(7) The division will notify the 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. An aggrieved person filing 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) to determine 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 the federal Fair Housing Act (42 U.S.C. 3601 – 3614a) 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 the federal Fair Housing Act (42 U.S.C. 3601 – 3614a) 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 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 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 the federal Fair Housing Act (42 U.S.C. 3601 – 3614a) 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 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 the federal Fair Housing Act (42 U.S.C. 3601 – 3614a) 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 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 the federal Fair Housing Act (42 U.S.C. 3601 – 3614a) does not cease after 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 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 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) may be disclosed under ORS 192.410 to 192.505 (the Oregon Public Records Act) or in any other manner, or used as evidence in a subsequent proceeding under this chapter or the federal Fair Housing Act (42 U.S.C. 3601 – 3614a) without the written consent of the persons concerned.
- (3) If no settlement agreement is reached, the division retains the discretion to further negotiate settlement, administratively dismiss the complaint, or proceed to a contested case hearing.
- (4) The aggrieved person may withdraw the aggrieved person's 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 unlawful practices in housing, 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 unlawful 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 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 person aggrieved by the violation of terms of a settlement agreement signed by a representative of the division, or the commissioner, may file an action for mandamus or injunction or civil action to compel specific performance.

(5) Any person aggrieved by a violation of an order issued by the commissioner, or the commissioner, may file an action for mandamus or injunction or civil action to compel compliance.

(6) Any person aggrieved by violation of a settlement agreement to which the division is a party, may file a complaint with the commissioner to seek enforcement of the settlement agreement within one year after the act or omission alleged to be a violation of the agreement. The commissioner will process the complaint in the same manner as provided for a complaint filed under ORS 659A.820.

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 under State and Federal Housing Law

(1) An aggrieved 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) may file a civil action as provided in ORS 659A.870 to 659A.885, or ORS 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 the federal Fair Housing Act (42 U.S.C. 3601 – 3614a), 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 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 should notify the division of the civil action. When the division receives notice from the aggrieved person or aggrieved person's attorney, or court documents indicating that 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 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 aggrieved person may not commence a civil action in court that alleges the same matters.

(5) When the commissioner of the Bureau of Labor and Industries or the attorney general of the State 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 the federal Fair Housing Act (42 U.S.C. 3601 – 3614a), 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 659A.800 - 659A.890

839-003-0240

Enforcement of Settlement Agreements and Orders in Housing Discrimination Complaints

(1) The commissioner or any person aggrieved by violation of the terms of a settlement agreement to which the division is a party, may file a civil action or an action for a writ of mandamus as provided under ORS 659A.840 and 659A.860 in the manner provided by ORS 659A.885(3).

(2) Any person aggrieved by the violation of terms of a settlement agreement to which the division is a party, may file a complaint with the commissioner to seek enforcement within one year after the act or omission alleged to be a violation of the agreement. The commissioner will process the complaint in the same manner as provided for a complaint filed under ORS 659A.820.

(3) The commissioner or any person aggrieved by violation of an order issued by the commissioner, may file a civil action or an action for a writ of mandamus as provided under ORS 659A.840 and 659A.860.

Stat. Auth.: ORS 659A.805

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

839-003-0245

Commissioner's Complaint in Housing Discrimination Cases

(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 the federal Fair Housing Act (42 U.S.C. 3601 – 3614a). The complaint will be processed in the same manner as any other complaint filed under OAR 839-003-0200.

(2) 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.

(3) 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.

(4) 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