

220-RICR-80-05-2

## **TITLE 220 - DEPARTMENT OF ADMINISTRATION**

### **CHAPTER 80 - DIVERSITY, EQUITY AND OPPORTUNITY**

#### **SUBCHAPTER 05 - EQUAL OPPORTUNITY**

PART 2 - State of RI Equal Opportunity Office Rules and Regulations Concerning Hearings of Discrimination Complaints

#### **2.1 Authority**

The R.I. Gen. Law § 28-5.1, regarding Equal Opportunity and Affirmative Action Policy, establishes the Rhode Island State Equal Opportunity Office and sets forth its procedures and authority.

#### **2.2 Purpose**

It is the function of the Rhode Island State Equal Opportunity Office to enforce the Law, which prohibits discrimination because of race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, or disability, in the field of employment in Rhode Island State Government.

#### **2.3 Method of Operation**

The Office accepts, from both State employees and applicants for State employment, complaints of discrimination that are based on race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, or disability. The Office will investigate the allegations and shall make every effort by informal conference, conciliation and persuasion to achieve compliance. When these methods do not resolve a charge or complaint, the Office will conduct a formal hearing.

#### **2.4 Definitions - Where Used in These Rules and Regulations**

- A. The following words and terms shall have the following meanings whenever used in these Regulations.
1. "Administrator" means the Administrator of the Rhode Island State Equal Opportunity Office.
  2. "Civil rights violation" means any discriminatory acts or practices.

3. "Complaint" means a written allegation of a Civil Rights Violation, filed with the RI State Equal Opportunity Office, by an individual stating that he/she has been discriminated against by reason of race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, disability, sexual harassment, unlawful question (arrest record, criminal conviction, or other), or retaliation.
4. "Complainant" means an individual filing a complaint of alleged discrimination in accordance with the Law or Executive Order.
5. "Department" means an agency in Rhode Island State Government.
6. "Discrimination" means:
  - a. Prejudice or prejudicial outlook, action or treatment toward individuals who are not equally considered for appointments, promotions, transfers, training and work assignments based on race, color, religion, sex, sexual orientation, gender identity or expression, age, national origin, or disability.
  - b. A violation of any state or federal nondiscrimination statute, regulation, or executive order.
7. "Executive Order" means the Governor's Executive Order on Sexual Harassment.
8. "Hearing officer" means the person authorized by the State Equal Opportunity Office to conduct formal hearings regarding alleged Civil Rights Violations, filed with the RI State Equal Opportunity Office.
9. "Law" means R.I. Gen. Law § 28-5.1 on Equal Opportunity and Affirmative Action.
10. "Office" means the Rhode Island State Equal Opportunity Office.
11. "Respondent" means a person or agency against whom an alleged charge or complaint is filed in accordance with the Law or Executive Order.

## **2.5 Practice Before the State Equal Opportunity Office**

- A. Any person may appear before the Office in his/her own behalf. Except as may otherwise be provided by law, no person may appear in a representative capacity before the Office other than:

1. Attorneys-at-law duly qualified and entitled to practice before the Supreme Court of the State of Rhode Island,
  2. Attorneys-at-law duly qualified and entitled to practice before the highest court of any other state, to appear in a representative capacity before administrative agencies of such other state,
  3. Such other persons as by law are expressly authorized to appear in representative capacities, and
  4. A bona fide officer of the agency (respondent) if the Office deems it appropriate and is not otherwise prohibited by State law.
- B. All persons appearing in proceedings before the Office in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of Rhode Island. If any such person does not conform to such standards, the Office may decline to permit such person to appear in a representative capacity in any proceeding before the Office.

## **2.6 Complaint**

- A. Who May File - State employees and applicants for state employment may file a complaint of an alleged incident of discrimination at any time.
- B. Form - A complaint shall be in writing and signed by the complainant using the form supplied by the RI State Equal Opportunity Office.
- C. Contents - A complaint shall be in such detail as to substantially apprise the Office of the time, place, and facts with respect to the alleged violation. It should contain the following:
1. The full name, address, and telephone number of the person making the charge.
  2. The name and address of the State Agency, persons against whom the charge is made.
  3. A statement of facts alleged to constitute the violation, including the date, time, and place thereof.
  4. A statement describing any other action instituted by/on behalf of the complainant in any other form.
- D. Acceptance of Complaint

1. The office shall accept for hearing any complaint, which it receives from an individual in compliance with the foregoing provisions of this article.
  2. In the event the Office receives a written statement from an individual which does not comply substantially with §§ 2.6(B) and (C) of this Part hereof, the Office may accept and docket the statement as an unperfected complaint. The Office shall notify the complainant in writing of the elements, which must be supplied to perfect the complaint. If the individual fails or refuses to perfect the complaint as specified, the complaint may be dismissed.
- E. Amendment - A complaint or any part thereof, may be amended by the complainant to cure technical defects or omissions, or to clarify or amplify allegations made therein, or to set forth additional facts of allegations related to the subject matter of the original complaint, and such amendments shall relate back to the original filing date.
- F. Withdrawal of Complaint - A complaint or any part thereof, may be withdrawn by the complainant at any time. A complainant's request to withdraw a complaint shall be in writing, signed, and witnessed. The Office shall approve the request if it is knowingly and voluntarily made, and shall promptly so notify all parties in writing.
- G. Deferral of Complaint - If a complaint has been filed, either simultaneously or at a later date, with the RI Human Rights Commission, or the Equal Employment Opportunity Commission, the State Equal Opportunity Office will defer to either Commission for investigation and answer to the complaint.

## **2.7 Procedure Upon Complaint**

- A. Docketing and Service of Complaint - Each complaint, once filed, shall be docketed and assigned a case number by the Office. The respondent shall be notified as soon as possible and in the order they are received following the date of filing.
- B. Maintenance of Records - Notwithstanding any other provision of these rules and regulations, once a complaint has been served on a respondent, the respondent shall preserve all records and other evidence which may be relevant to the case until the matter has been finally resolved.
- C. Investigation - After a complaint has been filed, the Office staff shall institute an investigation to ascertain the facts relating to the civil rights violation as alleged in the complaint and any amendments thereto. During the investigation of a complaint, the Administrator or office employee supervising the investigation may

request the attendance of witnesses or the production for examination copies of any books, records or documents.

**D. Determination After Investigation**

1. Report - After investigation of a complaint, a report inclusive of all facts, findings, and recommendations, will be prepared and submitted to the Administrator for determination of probable cause.
2. Dismissal - If there is no conclusive evidence of probable cause, a written notice dismissing the case will be sent to all interested parties.
3. Substantial Evidence - If probable cause of a civil rights violation is evident, the Office will serve notice of such determination advising both parties that conciliation efforts will take place.
4. Conciliation - The Office will proceed to conciliate the settlement of the complaint and prevent the repetition of future civil rights violations. If an agreement is not reached, a formal hearing will be scheduled.

**2.8 Conduct of Hearing**

All hearings shall be held pursuant to R.I. Gen. Laws Chapter 42-35.

**2.9 Formal Hearings**

- A. The respondent to a complaint may file a written answer to the complaint, appear at the hearing, give testimony and be represented by counsel and may obtain from the Office, a subpoena for any person or for the production of any evidence pertinent to the proceedings. The complainant must be present at the hearing and may be represented by counsel.
1. The Hearing Officer from the RI State Equal Opportunity Office shall hear the case and make a decision based on the evidence presented thereto. The Hearing Office shall not be bound by the formal rules of evidence governing courts of law, but shall permit reasonable direct and cross examination and the submission of briefs. Testimony at the hearing shall be taken under oath and recorded by tape or otherwise.
  2. Sequence of the Hearing
    - a. Introduction of the Hearing Officer
    - b. Administration of oath to the parties and witnesses

- c. Complainant's Presentation
  - d. Respondent's Presentation
  - e. Complainant's closing statements
  - f. Respondent's closing statements
3. Appearance - The complainant must be present at the hearing and may present testimony or evidence and may either in person or by counsel, examine or cross-examine witnesses. If, after receiving proper notice, the complainant does not appear at the hearing, the complaint may be dismissed.
  4. Continuation and Adjournment - The Hearing Officer or Administrator may continue or adjourn the hearing to a later date.
  5. Improper Conduct - The Hearing Officer may exclude from the hearing room or from further participation in the proceedings any person that engages in improper conduct. Exceptions to this are only a party or his/her attorney or a witness engaged in testifying.
  6. Sequestering Witnesses - The Hearing Office may sequester witnesses from the hearing until the time of their testimony.
  7. Findings - If the Hearing Officer finds from the evidence that the respondent has engaged in a discriminatory practice, he/she shall make written findings of fact, conclusion of law and the decision. Within five (5) days after the decision of the Hearing Officer, the Office shall inform the parties of record of the decision. As part of its order, the Office may require the respondent to pay actual damages to the complainant and to take such affirmative action as the Hearing Office considers necessary, including a requirement for reports of the manner of compliance. If the Hearing Officer finds from the evidence that the respondent has not engaged in a discriminatory practice, the Office shall make written findings of fact and serve the complainant and respondent with a copy of the finding of fact and with an order dismissing the complaint.

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Editorial Note: This Part was filed with the Department of State prior to the launch of the Rhode Island Code of Regulations. As a result, this digital copy is presented solely as a reference tool. To obtain a certified copy of this Part, contact the Administrative Records Office at (401) 222-2473.