

IDAPA 45 – IDAHO HUMAN RIGHTS COMMISSION

DOCKET NO. 45-0101-1900

NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-5996(12) Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 45, Rules of the Idaho Human Rights Commission.

IDAPA 45

- 45.01.01, *Rules of the Idaho Human Rights Commission* – with modifications.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rules is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

FEE SUMMARY: This rulemaking does not impose a fee or charge.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rules, call Lindsay Glick at (208) 332-3570 ext. 3435.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

Brian Scigliano, President
Idaho Human Rights Commission
317 W. Main Street
Boise, ID 83735
Phone: (208) 332-3570 ext. 3110
Fax: (208) 334-6430

**IDAPA 45
TITLE 01
CHAPTER 01**

IDAPA 45 – HUMAN RIGHTS COMMISSION

45.01.01 – RULES OF THE IDAHO HUMAN RIGHTS COMMISSION

000. LEGAL AUTHORITY.

These rules are adopted under the legal authority of Sections 67-5906(12) and 44-1703(2), Idaho Code. (7-1-93)

001. TITLE AND SCOPE.

These rules are titled IDAPA 45.01.01, “Rules of the Idaho Human Rights Commission.” These rules cover practice before the Idaho Human Rights Commission pertaining to alleged violations of the Idaho Human Rights Commission Act, Title 67, Chapter 59 of the Idaho Code, and the Discriminatory Wage Rates Based Upon Sex Act, Title 44, Chapter 17 of the Idaho Code. (7-1-93)

002. WRITTEN INTERPRETATIONS.

This agency has no written statements that pertain to the interpretation of the rules of this chapter. (6-30-19)T

003. ADMINISTRATIVE APPEAL.

There is no administrative appeal from any proceedings brought pursuant to this chapter. (6-30-19)T

004. LIBERAL CONSTRUCTION – RULEMAKING – NO CONTESTED CASES.

These rules will be liberally construed to secure just, speedy and economical determination of all issues presented to the Idaho Human Rights Commission. Unless prohibited by statute, the Commission may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. The Idaho Human Rights Commission hereby adopts by reference the Rules of Practice and Procedure adopted by the Attorney General’s Office on Rulemaking. The Idaho Human Rights Commission specifically does not adopt the Attorney General’s rules regarding Contested Case Proceedings. By statutory authority, the Idaho Human Rights Commission does not conduct contested case proceedings. (7-1-93)

005. DECLARATORY RULINGS.

Any individual who petitions for a declaratory ruling on the applicability of a statute or rule administered by the Human Rights Commission must substantially comply with this rule. The petition must be addressed to the Administrator and will: (3-29-12)

01. Identification. Identify the petitioner and state the petitioner’s interest in the matter; (7-1-93)

02. State Ruling. State the declaratory ruling that the petitioner seeks; and (7-1-93)

03. Other Rationale. Cite the statute, rule, or other controlling law and the factual allegations upon which the petitioner relies to support the petition. (3-29-12)

006. OFFICE – OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS – WEB ADDRESS.

The mailing and physical address of the office of the Idaho Human Rights Commission is 317 West Main Street, Boise, Idaho 83735-0660. The office hours are from 8:00 a.m. to 5:00 p.m., excluding Saturdays, Sundays, and legal holidays. The telephone number is (208) 332-3570, and the fax number is (208) 334-6455. The Commission’s website, which contains information about anti-discrimination laws and the statutes it enforces, is <http://humanrights.idaho.gov>.

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Act. The Human Rights Commission Act, Sections 67-5901, et seq., Idaho Code. (3-29-12)

02. Complainant. Any individual who files a complaint with the Commission pursuant to the Act. (3-29-12)

03. Complaint. A statement filed with the Commission pursuant to these rules alleging an unlawful practice within the meaning of the Act. The complaint may be written on a complaint form provided by the Commission or the Equal Employment Opportunity Commission (EEOC), or otherwise communicated to the Commission, and signed by the Complainant under penalty of perjury. (6-30-19)T

04. Covered Entity. Those individuals and organizations within the jurisdiction of the Act, as set forth in Sections 65-5901 and 67-5902, Idaho Code. (3-29-12)

05. EEOC. The United States Equal Employment Opportunity Commission or any of its designated representatives. (3-29-12)

06. Party or Parties. The Complainant, the Respondent, the Commission, and any other individual or entity authorized by the Commission to intervene in any proceeding. (3-29-12)

07. Respondent. The party against whom a complaint is filed in accordance with the Act and these rules. (3-29-12)

011. REPRESENTATION OF PARTIES.

In proceedings before the Commission, Complainants, Respondents, witnesses and any other individuals or entities authorized by the Commission to intervene must be represented as follows: (3-29-12)

01. Individual. An individual must represent himself or herself or be represented by an attorney, or a family member. (3-29-12)

02. Partnership. A partnership must be represented by a partner, a duly authorized employee, or an attorney. (3-30-01)

03. Corporation. A corporation must be represented by an officer, a duly authorized employee, or an attorney. (3-30-01)

04. Other Entity. A municipal corporation, state, or local government agency, or entity, incorporated association, or non-profit organization must be represented by an officer, a duly authorized employee or an attorney. (6-30-19)T

012. INTERPRETATION OF STATE LAW.

In evaluating allegations of discrimination on the basis of race, color, religion, sex or national origin under the Act, the Commission will rely on the interpretations of Title VII of the Civil Rights Act, as amended, 42 USC 2000e et seq. and federal regulations at 29 CFR Parts 1604 through 1607. The Commission will rely on interpretations of the Age Discrimination in Employment Act, as amended, 42 USC 621 et seq., and regulations at 29 CFR Part 1625 in determining allegations of age discrimination. (6-30-19)T

013. -- 099. (RESERVED)

100. TEMPORARY IMPAIRMENTS.

Minor illnesses or conditions which are only temporarily disabling will not be considered to be disabilities under the Act. (3-29-12)

101. DISABILITIES.

The prohibition of discrimination on the basis of disability in the Act will be construed in compliance with the Americans with Disabilities Act as amended, 42 USC 1201 et seq. and federal regulations at 29 CFR Part 1630. (3-29-12)

01. Reasonable Accommodations. Reasonable accommodations are adjustments or modifications to the work assignment or work environment to enable an individual with a disability to fulfill employment

responsibilities. They may include, but are not limited to: (3-29-12)

- a. Making the worksite accessible to and usable by individuals with a disability; (3-29-12)
- b. Modification of equipment or tools so they can be used by an individual with a disability; (3-29-12)
- c. Job restructuring; (7-1-93)
- d. Modified work schedules, particularly as they may be necessary for the individual to receive treatment for a disability; (3-29-12)
- e. Acquisition of adaptive aids or devices; (7-1-93)
- f. Reassignment to a vacant position. (7-1-93)

02. Accommodations of a Personal Nature. Employers are not required to provide accommodations of a personal nature, such as wheelchairs and hearing aids. (6-30-19)T

03. Cooperation. An individual with a disability who seeks an accommodation must cooperate in the consideration of various accommodation options. An employer is not required to provide the “best” accommodation or the one most desired by the employee or applicant. The determination of “reasonableness” will be made on a case-by-case basis. (3-29-12)

04. Pre-Employment Inquiry. An employer, labor organization, or employment agency may not make pre-employment inquiry of an applicant as to whether the applicant has a physical or mental impairment, the nature or severity of such impairment. A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions, or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. (6-30-19)T

102. -- 199. (RESERVED)

200. MEDICAL ISSUES.

01. Medical Examinations and Inquiries. Medical examinations and inquiries are permitted as follows: (7-1-97)

a. A covered entity may require a medical examination or inquiry after making an offer of employment to an applicant and before he or she begins employment duties, and may condition an offer of employment on the results of such examination or inquiry, if all entering employees in the same job category are subjected to such an examination or inquiry regardless of disability. Medical inquiries or examinations conducted in accordance with this section do not have to be job-related and consistent with business necessity. If certain criteria are used to screen out an applicant, however, the exclusionary criteria must be job-related and consistent with business necessity. (3-29-12)

b. A covered entity may require a medical examination or make an inquiry of an employee that is job-related and consistent with business necessity. Inquiries may be made into the ability of an employee to perform job-related functions. (7-1-93)

c. A covered entity may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program. (7-1-93)

02. Disabilities Not Presently Job-Related. An employer may not discriminate against an applicant or employee because of a disability that is not presently job-related but that may worsen and become job-related in the future. (3-29-12)

03. Confidentiality, Exceptions. Information about the medical condition or history of an applicant or

employee should be considered confidential except that: (7-1-93)

a. Supervisors and managers may be informed regarding restrictions on the work or duties of individuals with a disability and regarding any accommodations or health or safety precautions; and (3-29-12)

b. First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment. (3-29-12)

201. -- 299. (RESERVED)

300. COMPLAINTS.

01. Who May File. A complaint may be filed by any of the following: (7-1-93)

a. An individual for himself or herself, a family member on behalf of a minor, or an individual with guardianship, power of attorney, or similar legal authority over another, who claims to be aggrieved by an alleged unlawful discriminatory practice as defined in the Act; (3-29-12)

b. A Commissioner or the Administrator may request the Commission to initiate a complaint. The Commission will review the reasons provided by the initiating Commissioner or Administrator and may initiate a complaint if satisfied that there is reason to believe that an unlawful discriminatory practice as defined in the Act has occurred or is occurring; (3-29-12)

c. An individual who claims that he or she has been discharged, expelled, or otherwise discriminated against by an employer, labor organization, or employment agency because he or she opposed practices forbidden under the Act, or because he or she has filed a complaint, testified, assisted or participated in any manner in an investigation, hearing or other procedure before the Commission. (3-29-12)

02. Commission Assistance. Assistance in filing complaints will be available to any Complainant by a Commissioner, the Administrator, or staff member. The Commission reserves the right to refuse to accept a complaint for filing if, in the opinion of the Administrator, there is no reason to suspect that illegal discrimination may have occurred, or if the action is barred by the terms of Subsection 300.06.a. (3-29-12)

03. Contents of Complaint. A complaint should contain the following: (7-1-93)

a. The full name, mailing address, and telephone number (if any and if known) of the Complainant or Complainants and Respondent or Respondents; (6-30-19)T

b. A brief written statement sufficiently clear to identify the practices and to describe generally the action or practice alleged to be unlawful; (7-1-98)

c. The date or dates on which the alleged unlawful discriminatory practices occurred and, if the alleged unlawful practice is of a continuous nature, the dates between which said continuing practices are alleged to have occurred; (7-1-93)

d. A statement as to any other action which has been instituted in any other forum or agency based on the same grievance as is alleged in the complaint. (7-1-93)

04. Medical Documentation. Individuals filing disability discrimination complaints may be required to furnish the Commission with opinions or records from duly licensed health professionals regarding (a) the nature of their disabilities, and (b) any limitations, including work restrictions, caused by the disability. Failure to provide medical reports within a reasonable period of time may be cause for dismissal of a complaint. (6-30-19)T

05. Method of Filing. A complaint may be filed by personal delivery, mail, email, or facsimile delivered to the Commission office in Boise. (3-29-12)

06. Time for Filing. The following time limitations apply to the filing of complaints with the

Commission: (7-1-93)

a. A complaint must be filed within one (1) year after the alleged unlawful practice occurs. If the alleged unlawful practice is of a continuing nature, the date of the occurrence of said unlawful practice will be deemed to be any date subsequent to the commencement of the unlawful practice up to and including the date on which the complaint is filed if the alleged unlawful practice continues. (3-29-12)

b. The date a complaint is received at the Commission's office will be noted on the complaint. For purposes of compliance with Section 67-5908(4), Idaho Code, the date of notation will be the date of filing. (3-29-12)

c. Notwithstanding any other provisions of these rules, a complaint will be deemed to have met the timelines requirement of Subsection 300.06.a. when the Commission receives a written statement sufficiently precise to identify the practices and to describe generally the action or practice alleged to be unlawful. (6-30-19)T

07. Complaints Deferred by EEOC. Any complaint deferred to the Commission by the EEOC will be treated, for purposes of filing requirements, according to the rules stated above. (3-29-12)

08. Amended Complaints. A complaint may be amended, before the determination by the Commission and at the discretion of the Administrator, to cure technical defects or omissions, or to clarify or amplify allegations by the Complainant. (3-29-12)

09. Supplemental Complaint. The Complainant may file a supplemental complaint setting forth actions that have allegedly occurred subsequent to the date of the original or amended complaint, and said supplemental complaint, if timely filed, will be considered together in the same proceeding with the original or amended complaint whenever practicable. (3-29-12)

10. Withdrawal of Complaint. Upon the request of the Complainant, on a form provided by the Administrator stating the reasons for such request, a complaint, or any part thereof, may be withdrawn with the written consent of the Administrator. If a complaint is withdrawn pursuant to the provision of these rules, the Administrator will close the case and notify the parties. (3-29-12)

11. Initial Actions. When filed, a complaint will be docketed, assigned a complaint number, and assigned to the staff for mediation or investigation. (3-29-12)

12. Service on Respondent. As promptly as possible, the Commission will serve a copy of the complaint on the Respondent by personal delivery, mail, email, or facsimile. (6-30-19)T

13. Mediation. Upon the filing of a complaint, the Commission or its delegated staff member will endeavor to resolve the matter by informal means. Such informal means may include, at the discretion of the Commission staff, a mediation conference at a time and place acceptable to all participants, to clarify the positions of the parties to the complaint and explore any bases for no-fault settlement. A mediation conference is not a contested case hearing under Section 67-5209, Idaho Code. (3-29-12)

14. Settlement. Terms of any settlement agreed to by the parties at any time prior to a determination by the Commission on the merits of the charge will be reduced to writing in a Settlement Agreement. Upon the signing of a Settlement Agreement by all parties, the Administrator will close the case. (3-29-12)

15. Answers. The Respondent must answer or otherwise respond to the complaint in writing within thirty (30) days of receiving it. A copy of Respondent's answer, including any attachments submitted, will be sent by the Commission staff to the Complainant. Upon application, the Commission may for good cause extend the time within which the answer may be filed. The answer must be fully responsive to each allegation contained in the complaint. Any allegation in the complaint that is not denied or admitted in the answer will be deemed admitted unless the Respondent states in the answer that Respondent is without knowledge or information sufficient to form a belief. If the Respondent fails to answer or otherwise respond to the complaint within thirty (30) days of receipt or such time as may be extended by the Commission, the Commission may act on the complaint based on the information provided by the Complainant. Upon application, the Commission may for good cause shown permit the

Respondent to amend its answer to the complaint. Any amendments to the complaint, or any supplemental complaint, will be served upon the Respondent as promptly as possible. Answers to amended or supplemental complaints, if necessary, must be submitted within ten (10) working days. Time for submitting such answers may be extended by the Commission to thirty (30) days for good cause. (3-29-12)

16. Requests for Information, Answers, and Narrative Statements. At any time after the filing of a complaint, the Commission staff may issue to either the Complainant or the Respondent requests for information regarding any matter that is not privileged and that is relevant to the subject matter involved. Answers to requests for information must be returned to the Commission office at a time determined by the investigator. (6-30-19)T

17. File Briefs. Any party to a complaint filed with the Commission may file briefs or other written memoranda setting out his or her position or interpretation of the law. (7-1-97)

18. Summary of Investigation. At the completion of the investigation, the staff member to whom the case is assigned will prepare a report containing a summary of the investigation and submit it to the Administrator to review. (3-29-12)

19. Administrative Closure. At any point during the handling of a particular case, the Administrator may close the case for administrative reasons that include, but are not limited to: (3-29-12)

- a. Failure of the Complainant to accept a full relief settlement offer; (7-1-93)
- b. Failure of the Complainant to cooperate with the Commission in the processing of the case, including failure to answer requests for information or failure to provide medical information as requested; (3-29-12)
- c. Inability to locate the Complainant; (7-1-93)
- d. It appearing upon investigation that the case is not within the jurisdiction of the Commission; (3-29-12)
- e. The Complainant's filing of a suit in either state or federal court alleging the same unlawful practices complained of to the Commission. (3-29-12)

20. Notification of Closure. The Administrator will notify the parties of an administrative closure, including the grounds for the decision, as promptly as possible. (3-29-12)

21. Decision on the Merits. At the completion of the investigation and approval of the summary by the Administrator, the Commission or a designated panel of at least three (3) Commissioners will determine whether there is probable cause to believe that the Respondent has been or continues to be engaged in any unlawful discriminatory practices defined in the Act. (3-29-12)

22. No Probable Cause. If the Commission or designated panel finds no probable cause on the allegations of the complaint, a statement of no probable cause and order of dismissal will be issued for the Commission by the Administrator. The summary of investigation, statement, and order will be sent to Complainant and Respondent, thereby closing the case. (3-29-12)

23. Probable Cause. If the Commission or designated panel finds probable cause on the allegations of the complaint, a statement of probable cause will be issued. The summary of investigation and statement will be sent to Complainant and Respondent. (3-29-12)

24. Conciliation. If the Commission finds probable cause on the allegations of the complaint, the Commission staff will endeavor through conference with the parties to redress and eliminate the possible unlawful discriminatory practice by conciliation. (3-29-12)

25. Conciliation Agreement. If conciliation is successful, a written Conciliation Agreement will be prepared, that states all measures to be taken by any party, and if appropriate, compliance provisions. The Conciliation Agreement must be signed by the parties, and the Administrator will close the case. (3-29-12)

26. Failure of Agreement. If the parties fail to reach terms of conciliation, the Commission will determine whether or not to pursue the case in the District Court. (3-29-12)

27. No Action. If the Commission determines not to pursue the case in District Court, the Administrator will notify Complainant and Respondent, close the case, and advise Complainant of his or her right to pursue the case through a private cause of action. (3-29-12)

28. Action. If the Commission decides to pursue a case, it will file an action in District Court in the name of the Commission on behalf of the Complainant. (3-29-12)

29. Confidentiality of Records. The records of the Commission are confidential according to Section 74-105(8), Idaho Code. The Commission and its employees will not reveal information about a case to nonparties except as may be necessary to conduct a full and fair investigation. All filings must be recorded at the Commission office where records are kept. The Administrator of the agency is the custodian of records (6-30-19)T

30. Document Destruction. The Commission may retain closed investigatory files for three (3) years from the date of closure at which time these documents may be destroyed at the discretion of the Administrator. (3-29-12)

31. Notice of Right to Sue. At the time of case closure, the Administrator will issue a notice of administrative dismissal notifying the Complainant of his or her right to file a civil action in District Court. Any such suit must be filed within ninety (90) days of the date of this notice. (3-29-12)

301. -- 999. (RESERVED)