

4112-3-03

Preliminary investigation, probable cause, conciliation, alternative dispute resolution, no probable cause.

- (A) Preliminary investigation. After the receipt of a charge, the director or the director's designee may assign a member or members of the commission staff to conduct a preliminary investigation. The investigation shall be designed to obtain necessary information upon which the commission can determine whether it is probable that any unlawful discriminatory practices have been or are being engaged in by the respondent. The commission's investigation of any alleged unlawful discriminatory practices ~~by the commission~~ need not be limited to the particular facts or issues raised in any charge affidavit.
- (B) Probable cause determination. Where the facts indicate that it is probable that any unlawful discriminatory practices have been or are being engaged in, the director or the director's designee may refer the matter to the commission and recommend that the commission approve a finding of probable cause and authorize proceeding with conciliation. The commission may delegate authority to the director or the director's designee to make a finding of probable cause and issue a letter of determination and serve a copy upon the parties. For charges alleging unlawful discriminatory practice related to employment, upon notification of a finding of probable cause, the complainant may withdraw the charge and request a notice of right to sue.
- (C) Elimination of unlawful discriminatory practices. When the commission ~~determines~~ finds that such probable cause does exist and the commission does not receive and grant a request to withdraw the charge and issue a notice of right to sue upon notification of a probable cause finding, the commission shall instruct the director or the director's designee to endeavor to eliminate all unlawful discriminatory practices by conference, conciliation and persuasion. Any party may request the matter be considered for alternative dispute resolution. However, the commission has sole discretion to determine the method and terms utilized to effect the elimination of any unlawful discriminatory practice.
- (D) Conciliation agreement and consent order. If, as a result of conference, conciliation, and persuasion the commission is able to provide for voluntary compliance with sections 4112.01 to 4112.08 of the Revised Code, and to effect the elimination of any unlawful discriminatory practices, whether against the complainant or others, it may prepare a conciliation agreement and consent order which will set forth all measures to be taken by the parties thereto, including provisions for affirmative and other relief, goals and timetables, and compliance reports. The conciliation agreement and consent order shall be signed by the persons to be bound by the agreement and a representative of the commission. An executed conciliation agreement and consent order is a final order of the commission for the purposes of section 4112.06 of the Revised Code.

- (E) Informal attempts to eliminate unlawful discriminatory practices. Failure by a respondent to agree to the terms proposed by the commission to effect the elimination of an unlawful discriminatory practice or to submit a counter proposal acceptable to the commission shall constitute prima facie evidence of a failure, within the meaning of division (A) of section 4112.05 of the Revised Code, of informal methods of conference, conciliation and persuasion.
- (F) No probable cause determination and dismissal. Where the facts, as determined during the preliminary investigation indicate that it is not probable that any unlawful discriminatory practices have been or are being engaged in, the director or the director's designee shall refer the charge to the commission with a recommendation of dismissal. The commission may thereupon dismiss the charge and serve on the complainant and other parties notification of its action. The commission may delegate authority to the director or the director's designee to make a finding of no probable cause and issue a letter of determination and serve a copy upon the parties. For charges alleging unlawful discriminatory practice related to employment, upon notification of a finding of no probable cause, the commission will issue the complainant a notice of a right to sue.
- (G) Other administrative findings as necessary. If during the preliminary investigation the commission finds a reason exists to bring about an administrative finding other than a probable cause or no probable cause finding, the commission may delegate authority to the director or the director's designee to make a finding necessary and serve a copy upon the parties. For charges alleging unlawful discriminatory practice related to employment, upon notification of an administrative finding, the commission may issue the complainant a notice of right to sue.
- ~~(G)~~(H) Investigation without charge. When preliminary investigations are initiated by the commission on its own motion, no specific charge need be filed with the commission. The commission shall promptly notify the respondent in writing of an investigation.
- ~~(H)~~(I) Compliance reports. The commission may require any party to submit to it such compliance reports as the commission deems necessary showing compliance with the terms of any conciliation agreement and consent order.
- ~~(I)~~(J) Investigation after conciliation. The commission may make compliance investigations regarding conciliation agreements and consent orders and cease and desist orders, and take appropriate action according to its findings, pursuant to paragraphs (B)(2) and (B)(3) of rule 4112-3-10 of the Administrative Code.
- ~~(J)~~(K) Non-disclosure. Nothing said or done during endeavors at conference, conciliation and persuasion or during alternative dispute resolution shall be disclosed by any member of the commission or its staff or be used as evidence in any subsequent

hearing or other proceeding unless the respondent asserts that the commission's duty to attempt conciliation pursuant to section 4112.05 of the Revised Code has not been met. The commission may, however, publish the terms of an executed conciliation agreement and consent order.

Effective: 4/11/2023

Five Year Review (FYR) Dates: 10/12/2024

CERTIFIED ELECTRONICALLY

Certification

03/31/2023

Date

Promulgated Under: 119.03

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Rule Amplifies: 4112.04, 4112.05, 4112.051, 4112.052

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