

123:1-49-06

Filing of complaint.

- (A) In order for a complaint to be considered jurisdictional by the ~~equal opportunity division~~ affirmative action and equal employment opportunity unit, the complainant must:
- (1) Be an agency employee or candidate for state employment;
 - (2) Allege that the improper conduct occurred in the making of a state government employment-related decisions including, but not limited to, hiring, layoff, termination, transfer promotion, demotion, rate of compensation, or eligibility for in-service training programs;
 - (3) File with either the agency or with the ~~equal opportunity division~~ affirmative action and equal employment opportunity unit of the department of administrative services in person, electronically, by U.S. mail, or through an authorized representative; and
 - (4) File within thirty calendar days of the date of the alleged improper conduct.
- (B) A complaint shall be deemed filed on the date it is electronically filed or on the date it is time-stamped if addressed to an appropriate official designated to receive complaints. The agency or the ~~equal opportunity division~~ affirmative action and equal employment opportunity unit, whichever initially receives the complaint, shall determine whether the complaint meets the jurisdictional requirements set forth in paragraph (A) of this rule.
- (C) When a complaint is filed with the agency, the agency shall transmit a copy of the complaint electronically to the ~~equal opportunity division~~ affirmative action and equal employment opportunity unit within fifteen calendar days of the receipt thereof. If the agency determines that the complaint meets the jurisdictional requirements, the agency shall proceed to process the complaint. If the agency determines that the complaint is not jurisdictional, it shall notify the ~~equal opportunity division~~ affirmative action and equal employment opportunity unit.
- (D) The ~~equal opportunity division~~ affirmative action and equal employment opportunity unit shall review all complaints whether filed with the agency or directly with the ~~division unit~~. If the ~~division unit~~ disagrees with the jurisdictional determination of the agency, it may reinstate the complaint and require the agency to process the complaint as jurisdictional pursuant to these rules; or the ~~division unit~~ may reject the complaint as non-jurisdictional and close the matter for purposes of these rules. The agency may, at its discretion, proceed to process a non-jurisdictional complaint. However, rules 123:1-49-07 and 123:1-49-08 will not apply to a non-jurisdictional complaint.

The determination of jurisdiction by the ~~equal opportunity division~~ affirmative action and equal employment opportunity unit is final.

- (E) Any complaint filed beyond the thirty calendar day period set forth in paragraph (A) of this rule will not be considered jurisdictional for purposes of these rules. The ~~state equal employment opportunity coordinator~~ affirmative action and equal employment opportunity unit may extend the time limits for filing a jurisdictional complaint under this rule when the complainant demonstrates they were prevented by circumstances beyond their control from submitting the matter within the time limits, or for other reasons considered sufficient by the agency or the ~~state equal employment opportunity coordinator~~ affirmative action and equal employment opportunity unit.
- (F) A complaint shall include the name, street address, email address, and telephone number of the complainant; the name of the person or persons committing the alleged improper conduct; a description of the conduct; a statement as to any other action or proceeding instituted in any other forum based upon the facts alleged in the complaint, including the status or disposition of such other action; and any other pertinent information which will assist in the investigation and resolution of the complaint.
- (G) All jurisdictional complaints shall be acknowledged in writing and shall include notice of complainant's right to file a charge affidavit with the Ohio civil rights commission or the federal equal employment opportunity commission, including the time limits for filing such charges.
- (H) An agency or a complainant may make a request for a jurisdictional complaint to be investigated by a third party from outside of the agency if a conflict of interest is perceived to exist within the agency. All requests for third party investigators shall be submitted to the ~~state equal employment opportunity coordinator~~ affirmative action and equal employment opportunity unit and the ~~coordinator~~ unit shall approve or disapprove of such request as deemed appropriate. If such a request is approved, the ~~coordinator~~ unit will select a third party investigator, who shall conduct an investigation and upon completion, submit the investigation and their recommendation and to the agency for its determination. The agency shall provide the ~~equal opportunity division~~ affirmative action and equal employment opportunity unit with a copy of the investigation and the agency's determination.
- (I) At any stage in the filing or investigation of a complaint, the complainant may be accompanied, represented, and advised by a representative of his or her own choosing. If the complainant is an employee of the agency, a reasonable amount of time off from work to file his or her complaint must be given by the agency. If the complainant is an employee of the agency and has designated another employee of the agency as his or her representative, the representative as well as the complainant shall be given a reasonable amount of time off from work to file the complaint.

- (J) If a jurisdictional complaint is still pending with the agency within sixty days from the date the complaint was filed, the ~~state equal employment opportunity coordinator~~affirmative action and equal employment opportunity unit may require the agency to take special measures to ensure prompt processing of the complaint. The ~~state equal employment opportunity coordinator~~affirmative action and equal employment opportunity unit or the agency may dismiss a complaint because of failure of the complainant to prosecute the complaint. The decision to dismiss the complaint shall be transmitted by letter to the complainant and the complainant's representative, if any. The decision letter shall inform the complainant of his or her right to file a charge with the Ohio civil rights commission and with the federal equal employment opportunity commission and of the time limits for filing such charges.
- (K) The agency shall document the actions of the agency in resolving a jurisdictional complaint and report the actions of the agency to the ~~equal opportunity division~~affirmative action and equal employment opportunity unit.
- (L) Any investigation shall include a thorough review of the circumstances under which the alleged improper conduct occurred and may include a review of the treatment of members of the complainant's group identified by the complaint as compared with the treatment of other similarly situated employees in the agency in which the alleged improper conduct occurred. Information needed to apprise the complainant shall be recorded in the agency's investigative file.
- (M) The term "investigative file" shall mean the various documents and information acquired during the investigation including, but not limited to, affidavits of the complainant, of the alleged discriminating employee, and of the witnesses and copies of, or extracts from, records, policy statements, or regulations of the agency organized to show their relevance to the complaint or the general environment out of which the complaint arose.
- (N) Complainants, their representatives, and witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint.
- (O) A complainant, his or her representative, or a witness who alleges restraint, interference, coercion, discrimination, or retaliation in connection with the presentation of a complaint under this chapter of the Administrative Code may have the allegation reviewed as an individual complaint of discrimination.

Effective: 10/25/2020

Five Year Review (FYR) Dates: 8/10/2020 and 09/15/2024

CERTIFIED ELECTRONICALLY

Certification

10/15/2020

Date

Promulgated Under: 119.03
Statutory Authority: 124.09(A)
Rule Amplifies: 124.04(O)
Prior Effective Dates: 08/13/1973, 03/28/2014