

123:1-49-06

Filing of complaint.

(A) In order for a complaint to be considered jurisdictional by the ~~affirmative action and equal employment opportunity unit~~ state human resources division, 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, or other terms and conditions of employment;
- (3) File with either the agency or with the ~~affirmative action and equal employment opportunity unit of the department of administrative services~~ state human resources division 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 will~~ 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 ~~affirmative action and equal employment opportunity unit~~ state human resources division, whichever initially receives the complaint, ~~shall~~ will 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 affirmative action and equal employment opportunity unit within fifteen calendar days of the receipt thereof~~ will notify the state human resources division in its monthly reporting. If the agency determines that the complaint meets the jurisdictional requirements, the agency ~~shall will~~ proceed to process the complaint. If the agency determines that the complaint is not jurisdictional, it ~~shall will~~ notify the ~~affirmative action and equal employment opportunity unit~~ the state human resources division. The agency may, at its discretion, proceed to process a non-jurisdictional complaint. However, rule 123:1-49-07 of the Administrative Code will not apply to a non-jurisdictional complaint.

~~(D) The affirmative action and equal employment opportunity unit shall review all complaints whether filed with the agency or directly with the unit. If the 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 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 affirmative action and equal employment opportunity unit is final.~~

~~(E)~~(D) 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, unless the state human resources division. ~~The affirmative action and equal employment opportunity unit may~~ extends the time limits for filing a ~~jurisdictional complaint under this rule when because~~ 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 ~~affirmative action and equal employment opportunity unit~~state human resources division.

~~(F)~~(E) A complaint ~~shall will~~ include the name, street address, email address, and telephone number of the complainant; the name of the person or persons who allegedly committed ~~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)~~(F) All jurisdictional complaints ~~shall will~~ be acknowledged in writing and ~~shall will~~ include notice of the 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)~~(G) 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 will~~ be submitted to the ~~affirmative action and equal employment opportunity unit~~ state human resources division and the ~~unit shall division will~~ approve or disapprove of such request as deemed appropriate. If such a request is approved, the ~~unit division~~ will select a third party investigator, who ~~shall will~~ conduct an investigation and upon completion, submit the investigation and their recommendation ~~and to~~ the agency for its determination. The agency ~~shall will~~ provide the ~~affirmative action and equal employment opportunity unit division~~ with a copy of the investigation and the agency's determination.

~~(I)~~(H) 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 the~~ complaint ~~must will~~ 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~~ will be given a reasonable amount of time off from work to file the complaint.

~~(J)~~(I) If a jurisdictional complaint is still pending with the agency within sixty days from the date the complaint was filed, the ~~affirmative action and equal employment opportunity unit~~ state human resources division may ~~require~~ request the agency to take special measures to ensure prompt processing of the complaint. The ~~affirmative action and equal employment opportunity unit~~ division or the agency may dismiss a complaint because of a failure of the complainant to prosecute the complaint. The decision to dismiss the complaint ~~shall~~ will be transmitted ~~by letter in writing~~ to the complainant and the complainant's representative, if any. The decision letter ~~shall~~ will inform the complainant of ~~his or her~~ the 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)~~(J) The agency ~~shall~~ will document the actions of the agency in resolving a jurisdictional complaint and report the actions and findings of the agency to the complainant and the state human resources division ~~affirmative action and equal employment opportunity unit~~.

~~(L)~~(K) Any investigation ~~shall~~ will 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~~ Information needed to prepare a report of the agency's actions and findings to the complainant and the state human resources division will be recorded in the agency's investigative file.

~~(M)~~(L) The term "investigative file" ~~shall~~ means 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)~~(M) Complainants, their representatives, and witnesses ~~shall~~ will be free from restraint, interference, coercion, discrimination, ~~or reprisal, or retaliation~~ at any stage in the presentation and processing of a complaint.

~~(O)~~(N) A complainant, his or her representative, or a witness who alleges restraint, interference, coercion, discrimination, reprisal, 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.

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CERTIFIED ELECTRONICALLY

Certification

10/07/2024

Date

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