

**CHAPTER 6**  
**FAIR EMPLOYMENT PRACTICES**

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**NOTE:** Rule-making authority cited for Director of the Department of Labor, 22 GCA §3305 and §5210.

**§6101. Authority.** By virtue of the authority vested in it by 22 GCA Chapter 3 and §5210, the Department of Labor hereby issues these Rules and Regulations, which it finds necessary in order to carry out its responsibilities in the administration and enforcement of the provisions of the law as it relates to Unlawful Employment Practice and/or Discrimination. These Rules and Regulations shall be liberally construed to accomplish the purposes of the law and the policies of the Department and shall be in force and effect until such time that it is amended or rescinded by rules and regulations hereafter made and published by the Department of Labor.

**§6102. Statement of Policy.** It is the public policy of the territorial government of Guam to protect and safeguard the civil rights of all individuals to seek, have access to, obtain and hold employment without discrimination because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex and/or age. Employment practices should treat all individuals equally, evaluating each individual only on the basis of bona fide occupational qualification, unless pursuant to permissible defense as enumerated in the law.

**§6103. Purpose.** The intended purpose and objectives of the law and these Rules and Regulations are to promote equal employment opportunity and to assist all

individuals in understanding their rights, duties and obligations, so as to effectuate compliance with the law.

**§6104. Definitions.** (a) *Person* shall mean one or more individuals, partnerships, associations, corporations, legal representatives, business trustees, receivers or any organized group of persons.

(b) *Employer* shall mean any person employing an individual within the territory of Guam.

(c) *Employee* shall mean an individual employed by a person, but shall not include any individual employed in the domestic service of any family or person at his private home, or any individual employed by his/her parent, spouse or child.

(d) *Complainant* shall mean the individual who has filed a complaint.

(e) *Complaint* shall mean a verified written statement filed with the Department pursuant to these Rules and Regulations alleging unlawful employment practice or discrimination within the meaning of the law.

(f) *Department* shall mean the Department of Labor, government of Guam.

(g) *Director* shall mean the Director of the Department of Labor, government of Guam.

(h) *Investigating Officer* shall mean the person duly designated by the Department to conduct an investigation of a verified complaint filed with the Department.

(i) *Representative* shall mean any person duly designated by one or more individuals and acting on behalf of the designator.

(j) *Respondent* shall mean any person or employer against whom a complaint has been filed alleging unlawful employment practice or discrimination with the meaning of the law.

(k) *Days* shall mean consecutive calendar days unless otherwise specified.

(l) *Verified* shall mean sworn to or affirmed before a notary public or other person duly authorized by the Director to administer oaths and take acknowledgments.

(m) *Employment Agency* shall mean any person regularly undertaking, with or without compensation, to

procure employees for an employer, or to procure for employees opportunities to work for an employer, and includes an agent of such person.

(n) *Labor Organization* shall mean any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining or of dealing with employers regarding grievances, terms or conditions of employment, or of providing other mutual aid or protection.

(o) The term *because of sex or on the basis of sex* shall mean to include sexual harassment or because of or on the basis of pregnancy, childbirth or related medical conditions, unless pursuant to permissible defense as enumerated in the law.

(p) *Party or Parties* shall mean the complainant and/or the respondent.

(q) *Law* shall mean 22 GCA Chapter 3 and 22 GCA Chapter 7.

**§6105. Complaint.** (a) Who May File:

(1) Any individual claiming to be aggrieved by an alleged unlawful employment practice or discrimination may make, sign and file a complaint with the Department.

(2) Any person claiming to have been discharged, expelled, refused employment or otherwise discriminated against by any person, employer, labor organization or employment agency because he has opposed unlawful employment practice or discrimination or because he has filed a complaint, testified or assisted in any proceeding under the law, may make, sign and file a complaint with the Department.

(3) The Attorney General may make, sign and file a complaint whenever he has reason to believe that a person, employer, employment agency or labor organization has engaged or is engaging in an unlawful employment practice or discrimination.

(b) **Complaint Filing Assistance.** Assistance in the filing of complaints is available to complainants at the Department's Fair Employment Practice Branch.

**§6106. Same: Form and Contents; Time for Filing.** (a) **Complaint Form.** All complaints shall be on a form and in

number of copies as be obtained at the Department's Fair Employment Practice Branch.

(b) **Contents of Complaint.** Each complaint shall contain the following:

(1) The full name, address and telephone number (if any) of the complainant.

(2) The full name, address and telephone number (if any, and if known) of the respondent.

(3) A plain and concise statement of the facts constituting the alleged unlawful employment practice or discrimination.

(4) The date and place the alleged unlawful employment practice or discrimination occurred.

(5) Such other information as may be required by the Department.

**§6107. Same: Filing.** (a) **Time Limitation for Filing Complaint.** No complaint shall be filed after the expiration of ninety (90) days from the date upon which the alleged act of unlawful employment practice or discrimination occurred.

(b) **Manner and Place of Filing:**

(1) The complaint shall be filed by personal delivery to the Department's Fair Employment Practice Branch.

(2) The Department may not accept complaint if it finds it to be lacking necessary information to appropriately conduct investigation and/or other action necessary to render appropriate decision.

(c) **Filing Date.** The complaint shall be deemed filed as of the date of receipt of the complaint at the Department's Fair Employment Practice Branch. Receipts of the complaint shall be acknowledged by the Department's Fair Employment Practice Branch by means of a date-time-stamp or other acceptable means and shall be initialed or signed by a staff of such office.

**§6108. Same: Service, Amendment or Withdrawal.** (a) **Service of Complaint.** Within fifteen (15) days after a complaint is filed with the Department, the Department shall serve upon the respondent a notice of the complaint, including the date, place and general description of the alleged unlawful employment practice or discrimination.

(b) **Amendment of Complaint.** The complainant shall be permitted to make amendments to his complaint as considered reasonable and fair, prior to issuance of a Department's order under 17 GAR §61111. All such amendments related to or growing out of the subject matter of the original complaint shall be deemed to relate back to the original filing date.

A complaint may be amended:

(1) To cure technical defects of omissions, including, but not limited to, failure to verify the complaint.

(2) To clarify and/or amplify allegations.

Service of complaint amendment. Within fifteen (15) days after the amendment is filed, the Department shall serve a notice of the amended complaint upon the respondent by certified mail, return receipt requested or by personal delivery. Receipt of the amendment shall be acknowledged as in 17 GAR §6105.

(c) **Withdrawal of Complaint:**

(1) Upon request of the complainant, a complaint, or any part thereof, may be withdrawn only on conditions as hereinafter set forth:

(A) If the request for withdrawal is received in the Department prior to the issuance of Department's order under the provisions of 17 GAR §6111, only upon written consent of the Fair Employment Practice Officer.

(B) If the request for withdrawal is received after the issuance of the Department's order under the provisions of 17 GAR §61111, only upon written consent of the Director.

(2) The request for withdrawal of the complaint shall be in writing, and shall set forth fully the reasons for such request. The request must be signed and verified by the complainant. If the request is approved, the Department shall promptly notify the respondent of such action. The Attorney General shall be provided a copy of the Department's notice of withdrawal.

**§6109. Investigation.** (a) After the filing of a complaint, the Department shall cause to make an investigation of the allegations contained in the complaint.

(b) **Determination of No Reasonable Cause.** If after investigation of the complaint, the investigating officer determines that no reasonable cause exists to believe that the respondent has engaged in an unlawful employment practice or discrimination within the meaning of the law, then the investigating officer shall dismiss the complaint. Notice of the dismissal shall be given to the complainant and the respondent in accordance with 17 GAR §6108.

(c) **Determination of Reasonable Cause.** If after investigation of the complaint, the investigating officer finds reasonable cause to believe that an unlawful employment practice or discrimination has occurred or is occurring, the investigating officer shall immediately endeavor to eliminate the unlawful practice by conference, conciliation and persuasion.

**§6110. Conciliation. (a) Conference.** The investigating officer may require any or all of the parties to an informal conciliation conference for the purpose of attempting to informally resolve the matter. All parties shall be reasonably notified of the time, date and the place of the informal conciliation conference.

(b) **Conciliation Efforts.** In attempting to conciliate a case after a determination of reasonable cause has been made, the investigating officer shall endeavor to achieve a just resolution of all violations found and to obtain agreement that the respondent will eliminate the unlawful employment practice and provide appropriate relief.

(c) **Successful Conciliation.** Where such conciliation efforts are successful, the terms of such conciliation agreement shall be reduced to writing and shall be signed by all parties and the investigating officer, provided that the agreement provides, in the judgment of the investigating officer, full and fair relief to the parties. A copy of the signed conciliation agreement shall be sent to all parties and the Attorney General.

(d) **Termination of Conciliation Efforts.** Should a respondent fail or refuse to confer and otherwise cooperate with the Department or its representative, or fail or refuse to make a good faith effort to informally resolve any dispute, and the Department is unable to eliminate the unlawful employment practice or discrimination through informal conference, conciliation and persuasion, and it appears to the Department that further efforts at conciliation would be futile and non-productive, the

Department shall terminate its conciliation efforts and proceed with issuing the Department's order as provided under 17 §6111.

(e) **Compliance Reports.** If conciliation efforts is successful, proof of respondent's compliance with the law in accordance with the terms of the conciliation agreement shall be obtained by the Department before the case is closed. In order to obtain such proof, the Department may require any party to submit to it such reports as the Department deems necessary to show the manner of compliance with the terms of the conciliation agreement.

**§6111. Dismissal of Complaints.** (a) The investigating officer shall dismiss the complaint under the following conditions:

(1) If it is determined that the Department does not have jurisdiction over the complaint.

(2) If it is determined after investigation that reasonable cause does not exist to believe that the alleged unlawful employment practice or discrimination has been committed.

(3) If the complainant has failed or refused to appear for interviews or conferences, provide requested information, the Department deems necessary or in any way refused or failed to fully cooperate in the investigation or conciliation to the extent that the Department is unable to resolve the complaint, and the Department has received no response from the complainant within thirty (30) days after the notice to the complainant of the Department's intent to dismiss the complaint.

(4) If the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within thirty (30) days to a notice sent by the Department to the complainant's last known address.

(5) If the respondent has made a predetermination settlement offer as described in 17 GAR §6109, which is in writing and specific in its terms, and the complainant refuses to accept the offer, provided, that the offer would, as determined by the Department, afford full relief for the harm alleged by the complainant and the complainant fails to accept such

an offer within thirty (30) days after notice of the offer is made.

(b) Notice of Dismissal:

(1) In the event of any dismissal of a complaint, the complainant shall be notified by certified mail, return receipt requested or by personal delivery, of the reason or reasons for dismissal and of his right to apply to the Director for reconsideration of such dismissal as provided by 17 GAR §6110. The respondent shall be notified, in like manner, of the dismissal of any complaint filed against him and of the reasons therefor.

**§6112. Predetermination Settlement.** (a) Settlement of all complaints at the earliest stage of the complaint processing is recommended and encouraged. The following action is suggested in endeavoring predetermination settlement:

(1) At any time after the filing of a complaint, but prior to the issuance of a determination, the investigating officer may encourage the parties to resolve the complaint through a predetermination settlement.

(2) If the complainant and the respondent agree to the terms of settlement, the same must be reduced in writing, signed by the parties and the investigating officer.

(3) If so approved, the case will be closed without a finding on the merits of the complaint and a copy of the final predetermination settlement shall be sent by certified mail, return receipt requested or personal delivery, to the complainant the respondent.

(b) **Effect on Other Complaints.** A predetermination settlement shall not affect the processing of any other complaint, including, but not limited to, complaints in which the allegations are like or related to the individual allegations settled.

(c) **Department's General Policy in Predetermination Settlement.** In any predetermination settlement discussion, the general policies of the Department shall include, but not be limited to the following:

(1) If a settlement is achieved, no determination will be made as to whether or not reasonable cause

exists to believe that the allegations of the complaint are true;

(2) The Department shall not subject either party to prejudice as a result of the party's either participating or refusing to participate in a predetermination settlement attempt;

(3) Participation by respondent in a predetermination settlement attempt will not be construed as evidence of a violation of the law or a waiver of the right to a departmental determination on the issues raised by the complaint if a settlement cannot be achieved; and

(4) If a predetermination settlement is achieved, the terms thereof shall not attribute fault to any of the parties involved.

**§6112. Reconsideration of Decision for Dismissal.** (a) Request by Complainant. A complainant may submit to the Director a request for reconsideration of the dismissal of his complaint. Such request must be in writing, state specifically the grounds upon which it is based, and be filed with the Department within thirty (30) days from the date of the mailing of the notice of dismissal on which reconsideration is being requested.

(b) **Director's Actions on Request for Reconsideration.** Whenever a request for reconsideration is made, the Director shall review the entire file, and may, in his discretion, grant or deny such request. If a request is granted, the Director shall refer the entire matter, together with his recommendation, to the investigating officer for reevaluation in light of the Director's action. If the request for reconsideration is denied, the Director shall notify the complainant, in writing, of his determination by certified mail, return receipt requested or by personal delivery.

**§6113. Department's Order.** (a) **Issuance of Order.** After determination is made that the respondent has engaged in unlawful employment practice or discrimination as defined in the law, and conciliation efforts terminated, the Department shall state its findings of facts and shall issue and cause to be served on respondent an order requiring such respondent to cease and desist from such unlawful practice and/or discrimination and to take such affirmative action to include, but not limited to those enumerated in the law, as,

in the judgment of the Department, will effectuate the purpose of the law.

(b) **Notice of Rights of Hearing.** In all cases where an order is issued, it shall include a notice to the respondent, advising him of his rights to a hearing in conformance with the Administrative Adjudication Law.

(c) **Copy of Order to Attorney General.** In all cases where an order is issued, a copy of such order shall be provided the Attorney General.

**§6114. Hearings.** (a) **Request for Hearing.** In all cases where the respondent objects and/or opposes the order of the Department, in whole or in part, the respondent may request for a hearing on the case. Such request shall be in writing, signed by or on behalf of the respondent. The request must be received by the Department within fifteen (15) days from the date the Department's order is served upon the respondent. Failure to submit request within the time allotted will constitute a waiver of respondent's right to a hearing. In such instances, the Department's decision as enumerated in the Department's order shall be final.

(b) **Department's Action on the Request for Hearing.** Within ten (10) days upon receipt of a request for a hearing, the Department shall forward a copy of the request and a complete copy of the case to the Attorney General for his appropriate action.

(c) **Assignment of Hearing Officer.** Upon receipt of the request and the cases filed from the Department, the Attorney General shall assign a hearing officer to hear the case.

(d) **Scheduling of Hearing.** The hearing officer shall schedule the hearing on the case.

(e) **Notice of Hearing.** Upon establishing the time, date and place for the hearing, the hearing officer shall serve notice upon all parties. The notice shall inform all parties of the time, date and place of the hearing. Such notice shall be served upon all parties at least ten (10) days prior to the hearing.

(f) **Conduct of Hearing.** The hearing officer shall conduct the hearing in conformance with the Administrative Adjudication Law.

(g) **Decision.** Upon completion of the hearing, the hearing officer shall serve upon all parties and to the

Department a copy of the decision rendered upon the case heard.

(h) **Conformity with the Administrative Adjudication Law.** All procedures and action taken as relates to hearings and appeals shall be in conformance with the Administrative Adjudication Law.