

**CHAPTER 16**  
**EMPLOYMENT PRACTICES - UNLAWFUL DISCRIMINATION**

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**§16100. Adoption of Rules and Regulations.** These Rules and Regulations are adopted to aid the Guam Department of Labor and interested persons in proceedings under 22 GCA Chapter 5, Article 2, **Employment Practices - Unlawful Discrimination.**

**§16101. Definitions.** As used in these Regulations:

- (a) *Department* means the Guam Department of Labor.
- (b) *Director* means the Director of Labor.
- (c) *Investigating Officer* means a person appointed by the Director to conduct investigations under these Regulations.
- (d) *Hearings Officer* means a person appointed by the Director to conduct hearings under these Regulations.

(e) *Act* means 22 GCA Chapter 5 Article 2.

**§16102. Complaint: Filing.** A complaint that a person, employer, labor organization or employment agency has engaged or is engaging in an unlawful employment

practice or discrimination may be filed, by any person claiming to be aggrieved by the practice, or by the Attorney General whenever he has reason to believe that any person, employer, labor organization or employment agency, has engaged or is engaging in an unlawful employment practice or discrimination. Such complaint shall be in writing and the original and two (2) copies shall be filed with the Department, the original being sworn to before any person authorized to administer oaths or acknowledgments.

**§16103. Same: Content.** The complaint shall include:

(a) The full name and address of the person making the complaint, hereinafter, referred to as the complainant;

(b) The full name and address of the person, employer, labor organization or employment agency against whom the complaint is made, hereinafter referred to as the respondent;

(c) A clear and concise statement of the facts constituting the alleged unlawful employment practice or unlawful discrimination, including the time and place of occurrence and the names of persons involved;

(d) The subsection of 22 GCA §5201, alleged to have been violated;

(e) Such other information as the Department may require.

**§16104. Same: Time of Filing.** No complaint may be filed after the expiration of ninety (90) days from the date upon which the alleged act of unlawful employment practice or discrimination occurred.

**§16105. Same: Amendments.** A complaint or any part thereof, may be amended by a complainant at any time prior to the issuance of a notice of hearing and thereafter at the discretion of the hearings officer.

**§16106. Same: Withdrawal.** A complaint, or any part thereof, may be withdrawn, prior to the issuance of a notice of hearing on written consent of the investigation officer, and thereafter on written consent of the hearings officer. The request for withdrawal of the complaint shall be in writing and shall be signed and verified by the complainant.

**§16107. Investigation.** After the filing of a complaint, the investigating officer shall make prompt investigation in connection therewith.

**§16108. Same: No Violation Found.** If after investigation of the complaint, the investigating officer finds no violation of the Act, he shall dismiss the complaint. The complainant shall be notified in writing of such dismissal and of his right to apply to the Director for reconsideration of same as provided by 17 GAR §16110.

**§16109. Same: Violation Found.** If the investigating officer determines after investigation that further action is warranted, he shall immediately endeavor to eliminate the unlawful employment practice or discrimination complained of, by conference, conciliation and persuasion. If the investigating officer shall succeed in these endeavors, he shall prepare a written statement of the terms of conciliation agreed upon. The original shall be filed with the Director and copies served upon all parties involved. The complainant shall at the same time be notified of his right to apply to the Director for reconsideration of such terms as provided in 17 GAR §16110.

**§16110. Reconsideration of Dismissal by Director.** The complainant may apply to the Director for reconsideration of the dismissal of his complaint by the investigating officer, or of the terms of conciliation approved by the investigating officer, as the case may be. Application for reconsideration must be in writing, state specifically the grounds upon which it is based, and be filed within thirty (30) days from the date of the notice of disposition.

**§16111. Same: Director's Options.** Whenever an application for reconsideration is made, the Director shall review the entire file, and may, in his discretion, hear the parties. The Director may then either grant or deny such application. If an application for reconsideration is granted, the Director shall refer the entire matter, together with his recommendations, to the investigating officer for further action.

**§16112. Issuance of Written Accusation.** In case of failure to eliminate an unlawful employment practice or discrimination, by conference, conciliation and persuasion or in advance thereof if in the judgment of the investigating officer circumstances warrant, the investigating officer shall cause to be issued and served in the name of the Department, a written accusation, together

with a copy of the complaint, as the same may have been amended, requiring the person, employer, labor organization or employment agency named in such accusation to answer the charges of such accusation at a hearing.

**§16113. Answer: Filing Deadline.** Within fifteen (15) days from the date of service of the accusation the respondent may file a written answer thereto. An original and two (2) copies shall be filed with the Department and a copy shall be immediately transmitted to the complainant.

**§16114. Same: Content.** The answer shall specifically admit, deny or explain each of the facts alleged in the complaint unless the respondent is without knowledge, in which case he shall so state, such statement operating as a denial. Failure to deny or admit any allegation in the accusation, unless the respondent shall state in the answer that he is without knowledge of information sufficient to form a belief, may be deemed as admission of such allegation.

**§16115. Same: Extension of Filing Deadline.** Upon application, the hearings officer may for good cause shown extend the time within which the answer may be filed.

**§16116. Same: Amendments.** (a) The answer or any part thereof may be amended by a respondent at any time prior to hearing, and thereafter at the discretion of the hearings officer. An original and two (2) copies of the amended answer shall be filed with the Department.

(b) In any case where an accusation has been amended subsequent to the filing of the answer, the respondent shall have an opportunity to amend his answer within fifteen (15) days after service upon him of said amended accusation.

**§16117. Hearing.** A hearing for the purpose of taking evidence upon a complaint shall be conducted by a hearings officer. The hearings officer shall inquire fully into the facts as to whether the respondent has engaged or is engaging in an unlawful labor practice or discrimination, as set forth in the complaint or amended complaint; and, after the final hearing, shall promptly make and submit to the Director a report and Recommended Order incorporating findings of fact upon all issues involved and the determination of rights of the parties. A copy of the hearings officer's report and Recommended Order shall be served upon each party.

**§16118. Same: Officer's Authority.** The hearings officer shall have authority with respect to cases assigned to him to:

- (a) Give notice concerning and to hold hearings;
- (b) Administer oaths and affirmations;
- (c) Issue subpoenas, either at his own instance or upon written application at the instance of a party, requiring the attendance and testimony of witnesses and the production of any evidence including books, records, correspondence or documents in their possession or under their control. An application for subpoena requiring the production of evidence will not be granted unless the evidence is described with sufficient particularity to enable it to be identified by the producer. Witnesses who appear before the hearings officer by subpoena shall receive for their attendance the same fees and mileage provided witnesses in civil cases. When a subpoena is issued at the instance of a party to the proceedings other than the hearings officer, the cost shall be borne by the party at whose request the subpoena is issued;
- (d) Rule upon petitions to revoke subpoenas;
- (e) Rule upon offers of \_\_\_\_\_ and receive relevant evidence;
- (f) Cause deposition to be taken whenever the ends of justice would be served thereby;
- (g) Conduct and regulate the course of hearings and, if appropriate or necessary, to exclude persons, including counsel, from the hearing for contemptuous conduct and to strike all related testimony of witnesses refusing to answer any proper question;
- (h) Call, examine and cross-examine witnesses and to introduce into the record documentary or other evidence;
- (i) Rule upon all motions and objections;
- (j) Make and submit to the Director a report and a Recommended Order.

**§16119. Same: Evidence.** The hearings officer shall not be bound by technical rules of evidence. However, no hearsay evidence shall be admitted or considered; and all irrelevant, immaterial or unduly repetitious evidence shall be excluded.

**§16120. Same: Oral Argument.** Any party shall be entitled, upon request, to a reasonable period at the close of the hearing for oral argument.

**§16121. Recommended Order: Content.** The Recommended Order shall contain the hearings officer's disposition of the case which shall be either to dismiss the complaint, or to require that the respondent cease and desist from such unlawful employment practice or discrimination found to have been committed and to take such affirmative action as specified in order to effectuate the purpose of the act and to make reports from time to time showing the extent to which he has complied with the order.

**§16122. Same: Filing.** The hearings officer shall file the original of his report and Recommended Order with the Director and cause a copy thereof to be served upon each of the parties.

**§16123. Same: Exceptions to.** Within fifteen (15) days after receipt of a copy of the hearings officer's Recommended Order any party may file with the Director an original and two (2) copies of a statement in writing setting forth exceptions to the Recommended Order or to any other part of the record on proceedings (including rulings upon a motion of objections) together with an original and two (2) copies of a brief or legal memorandum in support of said exceptions; and any party may, within the same period, file an original and two (2) copies of a brief or legal memorandum in support of the report and Recommended Order. Copies of such exceptions and briefs or legal memoranda shall immediately be served on each of the other parties.

**§16124. Same: Final Upon Approval of Director.** In the event no statement of exceptions and request for review is filed as herein provided, the findings, conclusions and Recommended Order of the hearings officer shall become final upon approval of the Director, unless the Director on his own motion orders a review.

**§16125. Final Order.** Upon the filing of a statement of exceptions and brief, the Director may decide the matter forthwith upon the record, may grant the opportunity for oral argument, or may reopen the case and receive further evidence. After making his review, the Director shall make a final decision stating the reasons or basis therefore and enter an appropriate Final Order.

**§16126. Appeal of Director's Decision.** Within thirty (30) days from the date of the Final Order, any party aggrieved thereby may petition a judge of the Superior Court for review of the same, subject to the general provisions of law for the calling in of another judge. Such petition shall state the grounds upon which a review is sought and copies thereof shall be served upon the other parties and the Department. The Department shall thereby file in the court the record of the proceedings. Upon ten (10) days' written notice to all parties, the petition may be brought on for hearing. Upon such hearing, the judge may confirm, modify or set aside the decision or order of the Department and enter an appropriate decree.

**§16127. Same: Commencement of Proceedings Not Stay of Final Order.** Commencement of appeal proceedings shall not stay enforcement of the Department's Final Order unless the reviewing court orders a stay upon such terms as it deems proper.

**§16128. Appeal of Superior Court Decision.** Any party may appeal from a decision of a Superior Court judge entered under the provisions of this Act to the District Court. Such appeal shall be taken and presented in the same manner and form and with the same effect as is provided in other cases of appeal to the District Court from a decision, judgment, order or decree of a judge of the Superior Court.

NOTE: Filed with Legislative Secretary, December 23, 1975.