

Wyoming Administrative Rules

# Workforce Services, Department of

## Labor Standards

### Chapter 3: Fair Employment Rules

**Effective Date:** 11/21/2016 to Current

**Rule Type:** Current Rules & Regulations

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## Chapter III

### FAIR EMPLOYMENT RULES

#### Section 1. Authority.

These rules are promulgated as authorized by W.S. 27-9-104(a)(ii).

#### Section 2. Definitions.

As used in these rules:

- (a) "Act" means Wyoming Fair Employment Practices Act of 1965, as amended.
- (b) "Department" means the Department of Workforce Services, State of Wyoming.
- (c) "Labor Standards" means Labor Standards, a program within the Department of Workforce Services.
- (d) "Complaint" means a verified, written statement on a Charge of Discrimination form provided by Labor Standards, which sets forth the name(s) and address(es) of the person(s), employer(s), employment agency(ies) or labor organization(s) alleged to have committed the discriminatory or unfair employment practice(s) and a detailed account of the discrimination or unfair employment practice complained of.
- (e) "Verified" means a complaint in which the complainant signs and swears or affirms before a notary public that the facts and allegations stated in the complaint are true.
- (f) "Complainant" means any person claiming to be aggrieved by a discriminatory or unfair employment practice and who has filed a complaint with Labor Standards.
- (g) "Employee" means any person who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.
- (h) "Employer" means the State of Wyoming, or any political subdivision or board, commission, department, institution or school district thereof, and every other person employing two or more employees within the state; but employer shall not mean religious organizations or associations.

(i) "Respondent" means any employer, employment agency or labor organization against whom a complaint has been filed.

(j) "Court" means the District Court in and for the Judicial District of the State of Wyoming in which the asserted unfair employment practice occurred, or if said court be not in session at the time, then any judge of said court.

(k) "Conciliation Process" means the negotiation process used by Labor Standards in an attempt to arrive at a mutually agreed upon resolution of the complaint where a probable cause determination has been made.

(l) "Make Whole" means any form of relief determined by Labor Standards to place the complainant as nearly as possible in the position he or she would have enjoyed had the discriminatory or unfair employment practice not occurred.

### Section 3. Complaints.

(a) Who may file: Any person claiming to be aggrieved by a discriminatory or unfair employment practice; may personally or through his/her attorney file a verified complaint.

(b) Time limit on filing: A complaint must be filed with Labor Standards within six (6) months of the alleged discriminatory or unfair employment practice. If the last day of the sixth (6th) month falls on a Saturday, Sunday or state recognized holiday, the deadline for filing the complaint shall be extended to the next business day.

(c) Form of Complaint: The complaint shall be made on a Charge of Discrimination form provided by Labor Standards.

(d) Place to file: All complaints must be filed at any Labor Standards office.

(e) Manner of Filing: Complaints may be filed with Labor Standards by personal delivery, U.S. Mail, or facsimile. Where a complaint is filed by facsimile, complainant shall forward the original complaint to Labor Standards as soon as possible. A complaint shall be deemed filed when one or more of the following have occurred:

(i) In Person. When a complaint is submitted in person with a representative of Labor Standards, that submittal is deemed to occur the day the person physically delivers the document into the hands of the Labor Standards representative authorized to receive it.

(ii) By Mail. When a complaint is filed with Labor Standards by mail, that submittal is deemed to have been filed as of the postmark date on the envelope by which the document is mailed.

(iii) By Facsimile. When a complaint is filed with Labor Standards by fax, that document is deemed to have been filed as of the date the document is received. The fax must contain sufficient information to identify the party providing the information and the purpose for which it is intended. The party sending the fax assumes the risk of transmission errors or illegibility.

(f) Amendments: A complaint may be amended within thirty (30) calendar days of the filing of the complaint to cure only technical defects or omissions. After the statutorily mandated 6-month filing period has expired, a complaint may not be amended to introduce additional claims of discrimination or unfair employment practices.

#### Section 4. Procedures After Filing of Complaint.

(a) Notification of Respondent(s): Labor Standards shall notify the named respondent(s) in writing that a complaint has been filed. A copy of the complaint shall accompany the notification. The respondent(s) shall be given the opportunity to respond to the allegations contained in the complaint.

(b) Complainant's Reply: The complainant shall be given the opportunity to reply in writing to the respondent(s) response.

(c) Withdrawal of Complaint: The complainant may withdraw the complaint at any time.

(d) Fact-finding/Settlement Conference: Prior to the commencement of its investigation, Labor Standards shall hold a fact-finding/settlement conference if both parties agree to attend. The purpose of the conference is to gather facts, clarify the issues and explore the possibility of settlement. If a settlement is reached by the parties, signed settlement agreements shall be delivered to the parties by personal delivery or certified mail to the last known addresses of the parties. If a settlement is not rendered during the conference, Labor Standards shall pursue the investigation of the allegations contained in the complaint.

(e) Investigation: Labor Standards shall conduct an investigation of the allegations contained in the complaint to determine if probable cause exists to conclude that discrimination occurred or there exists a discriminatory or unfair employment practice. In making a determination, Labor Standards may give substantial weight to the current guidelines of the Equal Employment Opportunity Commission.

(f) No Probable Cause Determination: If Labor Standards determines that probable cause does not exist to conclude that discrimination occurred or that a discriminatory or unfair employment practice exists, Labor Standards shall dismiss the complaint. The complainant and the respondent shall be notified in writing by either

personal delivery or certified mail of the dismissal. A copy of the determination shall accompany the Notice of Dismissal.

(g) Appeal of No Probable Cause Determination: The complainant may request a fair hearing on his or her complaint within twenty (20) days of the complainant's receipt of the Notice of Dismissal.

(h) Probable Cause Determination: If Labor Standards determines that probable cause does exist to conclude that discrimination occurred, Labor Standards shall endeavor to make whole the complainant through its conciliation process. If during the conciliation process a settlement is reached by the parties, a settlement agreement shall be drafted by Labor Standards and signed by the complainant, respondent and Labor Standards. A copy of the signed settlement agreement shall be delivered to the parties by personal delivery or certified mail to each party's last known address. If no settlement is reached within forty-five (45) days after both parties receive the probable cause determination, Labor Standards shall make a determination that the conciliation process has failed and, upon request of either party, refer the complaint to an independent hearing officer for a fair hearing.

(i) Disclosure: Labor Standards shall not disclose the filing of a complaint nor what transpires during the course of an investigation or the conciliation process, except as such disclosures are deemed essential to an investigation or are deemed necessary for evidence at a hearing.

(j) Access to Case Files:

(i) Investigative Records: Prior to a decision being issued by a hearing officer at a fair hearing, the contents of any files maintained by Labor Standards including, but not limited to, all documents, statements, notes, memoranda, correspondence, exhibits and reports or summaries prepared by Labor Standards employees shall be confidential and not subject to public disclosure. The parties to the complaint may inspect any such file or part thereof upon making proper arrangements with Labor Standards at any time after the issuance of the Notice of Hearing. After a decision has been issued by the hearing officer, the contents of the investigative records shall be available for public inspection subject to the Wyoming Public Records Act, W.S. 16-4-201 through 16-4-205, and upon written application to Labor Standards.

(ii) Settlement and Conciliation Conference Records: The contents of any files maintained by Labor Standards pertaining to settlement and/or conciliation efforts conducted including, but not limited to, any correspondence, notes, or reports furnished to or prepared by Labor Standards in connection with such settlement and/or conciliation efforts shall be confidential until the administrative process has been exhausted.

(iii) Fair Hearing Records: A fair hearing record includes but is not limited to the following: pleadings; briefs; memoranda, exhibits; orders; decisions; and the audiotapes of the hearing. Fair hearing records shall be made available for public inspection subject to the Wyoming Public Records Act (W.S. 16-4-201 through 16-4-205) and upon written request to Labor Standards. Labor Standards shall provide to a requesting party copies of any requested document(s) from the fair hearing record at cost.

#### Section 5. Fair Hearings.

(a) Who Shall Conduct Fair Hearings: Fair hearings shall be conducted by an independent hearing officer. Labor Standards shall contract with an independent hearing officer in accordance with W.S. 27-9-104(b).

(b) Fair Hearing Procedures: The independent hearing officer shall conduct the fair hearing in accordance with W.S. 27-9-101 through 27-9-106 and the Wyoming Administrative Procedures Act, W.S. 16-3-107 through 16-3-115.

(c) Authority and Final Agency Action: The independent hearing officer shall exercise all authority of the Department under W.S. 27-9 101 through 27-9-106. The independent hearing officer's decision shall constitute the Department's final agency action.

(d) Any individual may appear for himself in any proceeding before any appeal tribunal. Any partnership may be represented by any of its members or a duly authorized representative. Any corporation or association may be represented by an officer or a duly authorized representative.

(e) Any party may appear by an attorney at law admitted to practice in the State of Wyoming or who is admitted pro hac vice.

#### Section 6. Judicial Review.

(a) Appeals to District Court: Pursuant to W.S. § 16-3-114, any complainant or respondent aggrieved or adversely affected by the hearing officer's decision may file a petition for judicial review. Petitions for judicial review of the hearing officer's decision shall be made pursuant to Rule 12 of the Wyoming Rules of Appellate Procedure.