

CORRECTED

AMENDED
Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

BLI 7-2008 (TEMP)

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on **March 18, 2008** by the

Bureau of Labor and Industries, Civil Rights Division 839
Date prior to or same as filing date
Agency and Division Administrative Rules Chapter Number

Marcia Ohlemiller 800 NE Oregon St. #1045, Portland, OR 97232 971-673-0784
Rules Coordinator Address Telephone

to become effective **March 25, 2008** through **September 21, 2008**
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Rule amendments that implement statutory changes to Oregon housing discrimination law.

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

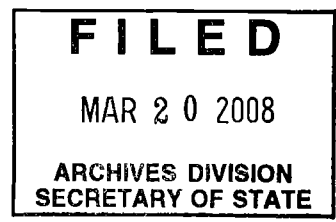
List each rule number separately, 000-000-0000.

Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT:

AMEND: 839-003-0005; 0010; 0020; 0025; 0040; 0045; 0050; 0055; 0060; 0065; 0070; 0080; 0085; 0090; 0095; 0100; 0200; 0205; 0210; 0215; 0220; 0225; 0230; 0235; 0240; 0245;

839-005-0000; 0003; 0010; 0016; 0026; 0195; 0200; 0205; 0220



SUSPEND:

Stat. Auth.: **ORS House Bill 3639**

Other Auth.: Chapter 659A

Stats. Implemented: ORS 659A.001, 659A.145, 659A.421, 659A.820, 659A.825, 659A.830, 659A.840, 659A.845, 659A.850, 659A.870, 659A.875, 659A.880 and 659A.885.

RULE SUMMARY

Amend the administrative rules listed above in order to implement House Bill 3639, enacted by the 2008 special session of the Oregon Legislature, and conform rules to federal housing discrimination law.

Authorized Signer

Dan Gardner
Printed name

March 25, 2008
Date

Secretary of State
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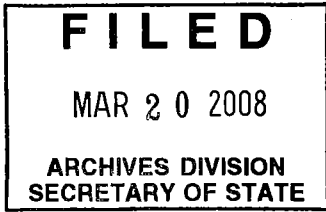
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| | | |
|---|--------------------|----------------|
|  | DAN GARDNER | 3/18/08 |
| Authorized Signer | Printed name | Date |

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. ARC 940-2005

Secretary of State

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Bureau of Labor and Industries, Civil Rights Division

839

Agency and Division

Administrative Rules Chapter Number

In the Matter of: **Rule amendments that implement statutory changes to Oregon housing discrimination law.**

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Statutory Authority: **ORS House Bill 3639**

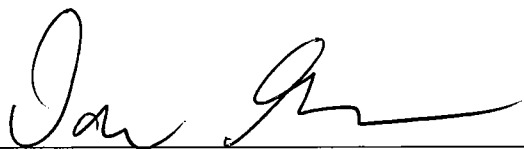
Other Authority: **Chapter 659A**

Stats. Implemented: **ORS 659A.001, 659A.145, 659A.421, 659A.820, 659A.825, 659A.830, 659A.840, 659A.845, 659A.850, 659A.870, 659A.875, 659A.880 and 659A.885.**

Need for the Temporary Rule(s): **To conform rules to statutory changes in HB 3639 and federal housing discrimination law.**

Documents Relied Upon, and where they are available: **HB 3639 enrolled, Oregon Legislature website.**

Justification of Temporary Rule(s): **Need for rules to become effective immediately upon filing in order to comply with HUD (Department of Housing and Urban Development) requirements.**



DAN GARDNER

3/18/08

Authorized Signer

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 945-2005

DIVISION 3

CIVIL RIGHTS COMPLAINT PROCEDURES

839-003-0005

Definitions

Except where otherwise required by ORS 654.005 and except as provided below, definitions for terms used in these rules are found in ORS 659A.001 and 659A.100:

(1) "Administrator" means the Administrator of the Civil Rights Division of the Bureau of Labor and Industries or a designee of the administrator.

(2) "Bureau" means the Bureau of Labor and Industries.

(3) "Commissioner" means the Commissioner of the Bureau of Labor and Industries or a designee of the commissioner.

(4) "Complaint" means for the purpose of ORS chapter 659A, except complaints alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, a written, verified statement signed by the complainant or the complainant's attorney that:

(a) Gives the name and address of the complainant and the respondent;

(b) Identifies the protected class basis of the complaint;

(c) Describes the actions complained of, including:

(A) The date(s) of occurrence;

(B) What the action was and how it harmed the complainant; and

(C) The causal connection between the complainant's protected class and the alleged harm.

(5) "Complainant" means a person filing a complaint personally or through an attorney.

(6) "Days," unless otherwise stated in the text of a document, means calendar days. "Work days" means Monday through Friday, except holidays officially recognized by the State of Oregon or the federal government.

(7) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(8) "EEOC" means the Equal Employment Opportunity Commission of the federal government.

(9) "Federal Housing Law" means The Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing And Urban Development ("HUD") has jurisdiction.

(10) "Notice" means written information delivered personally or sent by mail to the person's last known personal or business address or business address of the person's designated representative.

(11) "OSEA" means the Oregon Safe Employment Act, ORS 654.001 et seq.

(12) "Protected class" means a group of people protected by law from discrimination on the basis of a shared characteristic, or a perception of that characteristic, such as race, sex, age, disability or other.

(13) "Person" has the meaning given in ORS 659A.001 (9).

(14) "Respondent" includes any person or other entity against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(15) "Formal Charges" are formal charges drafted and issued by the bureau's Hearings Unit.

(16) "Substantial evidence" means proof that a reasonable person would accept as sufficient to support the allegations of the complaint.

(17) "Substantial Evidence Determination" means the division's written findings of substantial evidence.

(18) "Written verified complaint" means a complaint that is:

(a) In writing; and

(b) Under oath or affirmation

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.001, 659A.145, 659A.421 & federal housing law

839-003-0010

Who May File

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Complaints of housing discrimination must be filed in accordance with 839-003-0200.

(1) Any person claiming to be harmed by an act prohibited by statutes enforced by the Civil Rights Division may file a complaint with the division personally or through an attorney.

(2) Any employee, or a representative authorized to do so by ORS 654.062(2), may file a complaint with the division alleging discrimination by an employer against the employee for raising issues of employee safety or health in the workplace.

(3) The commissioner or Attorney General of Oregon may file a complaint whenever there is reason to believe that a person or entity has violated statutes enforced by the division.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.820 & ORS 659A.825

839-003-0020

Civil Suit

As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law, except as provided below.

(1) A person alleging unlawful discrimination under state law may file a civil suit as provided in ORS 659A.870 to 659A.885, or 30.680.

(a) A person is not required to file a complaint of a violation of state law with the division before filing a civil suit.

(b) A person filing a civil suit in state or federal court waives the right to file a complaint with the division with respect to those matters alleged in the civil suit. This subsection does not apply to a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law.

(2) After filing a complaint with the division, a complainant may file a civil suit in state or federal court alleging the same matters as those alleged in the complaint filed with the division. The complainant should notify the division of the civil suit. When the division receives notice from the complainant or complainant's attorney, or court documents indicating that such a suit has been filed, the division will dismiss the complaint. The division will notify the complainant and respondent that the division has dismissed the complaint and will take no further action. This subsection does not apply to a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law.

(3) The commissioner will notify the complainant in writing of the right to file suit in state court, as provided in ORS 659A.870 to 659A.885, when a complaint is dismissed by the division or on the one-year anniversary of the complaint filing, whichever occurs first. The complainant will have 90 days from the notice mailing date to file a civil suit. A complainant filing suit against a public body must also file a tort claim notice as required by ORS 30.275. This subsection does not apply to a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law.

(4) A civil action under ORS 659A.885 against a public body, as defined in ORS 30.260, or any officer, employee or agent of a public body as defined in ORS 30.260, based on an unlawful employment practice must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

(5) An action alleging breach of a division settlement agreement, entered into under ORS 659A.001 to 659A.030, 659A.233, 659A.303, 659A.145, 659A.409, 659A.420, 659A.421, 659A.150 to 659A.224 and 659A.800 to 659A.890, may be filed under 659A.860 in accordance with the applicable statute of limitations.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 30.275, 30.680, 659A.001 - 659A.030, 659A.233, 659A.303, 659A.409, 659A.420, 659A.421, 659A.150 - 659A.224 & 659A.800 - 659A.890

839-003-0025

Filing a Complaint

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Complaints of housing discrimination must be filed in accordance with 839-003-0200.

(1) A person or the person's attorney may file a complaint, in person or by mail, with the division at any bureau office in the state of Oregon. The complaint must meet the standards provided in OAR 839-003-0005(4).

(2) The filing date is the date the division receives a complaint that meets the standards contained in OAR 839-003-0005(4).

(3) Except as provided in section (5) of this rule, a person must file a complaint with the division no later than one year after the alleged unlawful practice. If the alleged unlawful practice is of a continuing nature, the right to file a complaint exists so long as the person files the complaint within one year of the most recent date the unlawful practice occurred.

(4) A person alleging constructive discharge must file a discrimination complaint with the division within one year of the date the discharge occurred.

(5) A person alleging discrimination for reporting or opposing unsafe or unhealthy work conditions under ORS 654.062 must contact the division within 90 days of having reasonable cause to believe that such violation has occurred. An employee would have reasonable cause to believe a violation has occurred on the earliest date that the employee:

(a) Believed retaliation had occurred against the employee for opposing employee health and safety hazards; and

(b) Knew or should have known of the right to file a complaint with the division and of the requirement that the complaint be filed within 90 days of the alleged retaliation.

(A) If a notice required by OSEA, as provided in OAR 437-001-0275(2)(a), was properly posted in the employee's workplace, continuously on and following the date of the alleged retaliation, the division will find that the employee knew or should have known of the 90-day filing requirement.

(B) If the employer failed to post the required OSEA poster, the 90-day filing requirement will begin on the date the employee learned of the right to file a complaint and of the 90-day filing requirement. The employee may establish this date based on the employee's own statement or other evidence offered by the employee.

(C) If the employer disagrees with the employee's presented date as the date the employee learned of the right to file a complaint, the burden is on the employer to show that the employee knew or should have known on an earlier date.

(D) If extenuating circumstances exist, the division may extend the 90-day period as provided in 29 CFR Part 15(d)(3).

(6) The procedures for filing a complaint are as follows:

(a) A person or the person's attorney makes an inquiry to the division;

(b) The division may provide the person or the person's attorney with a letter of information and/or questionnaire to assist in determining if there is a basis for filing a complaint;

(c) If the division determines the person has a basis for filing a complaint, the division will draft a complaint based upon the information provided by the person and send or give the complaint to the person or the person's attorney for verification. The person or the person's attorney will request any necessary changes to the complaint.

(d) The person or the person's attorney will verify and sign the complaint. The complaint will then be submitted to the division.

(e) If the person is an unemancipated minor the complaint must be signed by the minor and the parent or legal guardian of the minor.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 654.062, 659A.820 & 29 CFR Part 15(d)(3)

839-003-0040

Amendment of Complaints

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Complaints of housing discrimination must be amended in accordance with 839-003-0205.

(1) The division may amend a complaint to correct technical defects and to add additional persons as respondents. The division may amend a complaint on its own initiative or at the complainant's request (with the division's agreement) at any time prior to the issuance of Formal Charges, except that respondents may only be added during the course of investigation. Examples of technical defects include: clerical errors, additions or deletions, name and address corrections, and statute citation errors.

(2) A complaint may be amended to add a protected class only if the addition is supported by facts already alleged. New facts may not be added. If new facts are alleged, the complainant must file a new complaint meeting the standards provided in OAR 839-003-0005(4).

(3) Amended complaints need not be verified or signed by the complainant or the complainant's attorney.

(4) The division will send a copy of the amended complaint to the complainant and all respondents.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.820

839-003-0045

Withdrawal of Complaint

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. The withdrawal of a housing discrimination complaint is addressed in 839-003-0210.

A complainant may voluntarily withdraw a complaint at any time by giving the division written notice of the complainant's decision to withdraw. If the complainant wants a federal "right to sue letter," the complainant must provide a written request to EEOC or to the division. If the complainant makes the request to the division, the division will forward the request to EEOC.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A

839-003-0050

Administrative Dismissal

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Administrative dismissal of a housing discrimination complaint is addressed in 839-003-0215.

- (1) The division will dismiss the complaint if it determines that the bureau has no jurisdiction over the allegations of the complaint.
- (2) The division may dismiss the complaint if the complainant files a proceeding, based on the same set of facts, with another agency having the authority to provide remedy to the complainant for the alleged discrimination.
- (3) If a complainant or the complainant's attorney fails to cooperate with the division, the division may dismiss the complaint.
- (4) The complainant must notify the division in writing of address and telephone number changes. When a complainant cannot be located by reasonable efforts, the division may dismiss the complaint.
- (5) The division will dismiss a complaint unless substantial evidence of unlawful discrimination is found. Such dismissal notice will include a statement that the complaint has been dismissed and a notice of complainant's right to file a civil suit, if such right exists.
- (6) The division will dismiss complaints alleging violation of federal discrimination statutes administered by EEOC (OAR 839-003-0015) in accordance with federal requirements.
- (7) The division may elect to administratively dismiss a complaint without investigation. In such instances, the division will notify the complainant and respondent of the dismissal and issue notice of the complainant's right to file a civil suit, if such right exists.

(8) The division will dismiss a complaint if it learns that the complainant has filed a civil suit alleging the same matters, as provided in OAR 839-003-0020.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 30.680, ORS 659A.835, ORS 659A.850 & ORS 659A.870 - ORS 659A.885

839-003-0055

Conciliation Agreements Prior to Completion of the Investigation

As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law.

(1) The division encourages complainants and respondents to resolve complaints by mutual agreement at any time. The division will facilitate settlement negotiations between the complainant and respondent, as provided in this rule, at any time during the investigation.

(2) If the complainant and respondent agree upon settlement, the division will draft a settlement agreement that states:

(a) That a "no fault" settlement has been reached;

(b) That the complainant, the respondent and the Civil Rights Division accept the terms of the agreement as a resolution of the complaint;

(c) The specific action(s) the complainant and respondent will take as a result of the complaint settlement and the time within which the action(s) will be taken; and

(d) That the division may investigate any alleged breach of the agreement.

(3) The settlement agreement will not include release language that applies to any forum other than the Civil Rights Division.

(4) The complainant, the respondent and a representative of the division will sign the division's settlement agreement. The complainant and respondent will receive copies of the signed agreement. Upon execution of this agreement, the division will notify the complainant and respondent that the complaint is dismissed.

(5) The division may allow the complainant and the respondent to enter into a private agreement with release language in addition to the division's agreement. The division will not be a party to nor enforce private agreements.

(6) Nothing in these rules is intended to preclude private settlement between the complainant and the respondent.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.835, ORS 659A.840 & ORS 659A.850

839-003-0060

Fact-Finding Conference

As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law.

(1) At its discretion, the division may hold a fact-finding conference. This conference may encompass part or all of the division's investigation of the complaint. The complainant and the respondent will attend the conference and a division representative will conduct the conference. The purposes of the conference will be to:

- (a) Review evidence regarding the complaint;
- (b) Identify the undisputed elements of the complaint;
- (c) Define and, if possible, resolve the disputed elements of the complaint; and
- (d) Attempt to settle the complaint.

(2) The division will schedule the conference, notifying the complainant and the respondent of the time and place. The division may require the complainant and the respondent to provide information and documents relevant to the complaint. The division may issue subpoenas ad testificandum to compel the respondent's representatives to attend the conference and issue subpoenas duces tecum to compel the production of documents at the conference.

(3) The conference may be rescheduled, subject to the division's approval, at the request of the complainant or the respondent, or at the division's discretion.

(4) The complainant's failure to attend the conference may cause the complaint to be administratively dismissed if the division determines that the complainant has failed to cooperate pursuant to OAR 839-003-0050(3).

(5) If the complainant attends the conference but the respondent's representatives fail to attend, the division representative may proceed based on the information in the division's possession.

(6) The respondent's representatives at a fact-finding conference should include persons with:

(a) Knowledge of the facts bearing on the complaint; and

(b) Authority to negotiate a settlement agreement.

(7) The complainant and the respondent may be accompanied by legal counsel, but counsel's role is strictly limited to providing legal advice to the counsel's client.

(8) The division's representative conducting the conference may:

(a) Question the participants about their knowledge of the situation;

(b) Ask for additional statements and documentation from the complainant and the respondent;

(c) Terminate discussion of a particular point when further discussion would be irrelevant or repetitive;

(d) Exclude witnesses with the exception of the complainant, the respondent and counsel;

(e) Order unruly participants to leave the conference;

(f) Tape-record the conference with the knowledge of the participants;

(g) Attempt to negotiate a settlement agreement between the parties; and

(h) Recess or terminate the conference at any time.

(9) If the conference does not result in settlement, the division will either continue the investigation or dismiss the complaint. This subsection does not apply to a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.800, ORS 659A.850 & ORS 659A.860

839-003-0065

Investigations

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Investigation of housing discrimination complaints is addressed in 839-003-0220.

(1) The division may investigate the allegations contained in a complaint to determine objectively whether there is substantial evidence of unlawful discrimination. The division will determine the method by which complaints will be investigated or otherwise

processed. The division will not investigate allegations occurring more than one year prior to the date the complaint was filed unless the allegations constitute a continuing violation or the circumstances occurring more than one year prior to the date the complaint was filed pertain to timely allegations.

- (2) The investigation may include interviews with the complainant, the respondent representatives, and any other persons whom the division chooses to interview. The investigation may also involve the examination and analysis of written documents.
- (3) The investigator may tape-record statements with the knowledge of the participants.
- (4) The respondent has the right to have a representative present during interviews of current supervisory employees.
- (5) The respondent's current, non-supervisory, or former employees, may request that a representative for the respondent be present during interviews by a division representative.
- (6) A complainant, respondent or witness interviewed by the division may request a copy of the summary report of the individual's own interview. The division may request that the complainant, respondent or witness confirm by signature that the summary report is an accurate representation of the interview. The complainant, respondent or witness may submit to the division additional comments regarding the interview.
- (7) The division representative may make written request to the respondent for documents, records, files or other sources of evidence. The respondent will provide such information within 21 days of the date of the division's written request. The division may grant the respondent additional time in which to respond.
- (8) The division may issue subpoenas compelling division access to premises, records and witnesses. Failure to respond to a subpoena may result in the division making a determination based on available information.
- (9) Upon conclusion of the investigation, the division will either issue a Substantial Evidence Determination or will dismiss the complaint. The division will mail a copy of the Substantial Evidence Determination or dismissal notice to the complainant and respondent.
- (10) If the division does not find substantial evidence of unlawful discrimination, the division will dismiss the complaint, notify the complainant and respondent of the dismissal and notify the complainant of the right to file a civil suit, if such right exists.
- (11) If the division finds substantial evidence of unlawful discrimination, the complaint may be assigned to a division representative for settlement. However, the commissioner may proceed directly to a contested case hearing if the interests of justice so require.

(12) A Substantial Evidence Determination or dismissal may not be appealed to the division.

(13) The division may reopen a case at its own discretion.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.800, ORS 659A.805, ORS 659A.835 & ORS 659A.870 to ORS 659A.885

839-003-0070

Settlement Process After Substantial Evidence Determination

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. The settlement process after substantial evidence determination in housing discrimination complaints is addressed in 839-003-0225.

(1) If the division finds substantial evidence of unlawful discrimination, the division may seek to eliminate the effects of the unlawful discriminatory act(s) by conference, settlement and persuasion. The division will facilitate settlement negotiations between the complainant and respondent as provided in OAR 839-003-0055.

(2) If no settlement agreement is reached in the period of time set aside for settlement after a Substantial Evidence Determination, the division retains the discretion to further negotiate settlement, administratively dismiss the complaint, or proceed to a contested case hearing.

(3) The complainant may withdraw the complainant's own complaint at any time.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.835 & ORS 659A.840

839-003-0080

Access to Records/Confidentiality

As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law.

(1) During an investigation, the contents of the investigative file and related records, other than the complaint, are confidential. However, any individual may inspect and copy information or statements that the individual has given to the division. The division may charge a fee for inspection or to copy information.

(2) After the complaint is closed, a copy of the closed file will be available for a fee. To obtain a copy of a closed file a person must make a written request to the division. The request must include the person's name, address and telephone number, the complainant's and the respondent's names and payment of the fee, as determined by the division.

(3) The division will not at any time disclose any information that is required to be kept confidential by ORS 659A.840(6) or any other state or federal law or under any contractual agreement between the bureau and federal, state and local agencies.

(4) A complainant's or respondent's designation of information as confidential will not supercede the State of Oregon Public Records Law.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 192.440(3) & ORS 192.501(8)

839-003-0085

Subpoenas

As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law.

(1) The commissioner or the commissioner's designee may issue a subpoena to require:

(a) The presence and testimony of witnesses;

(b) The production of evidence, including but not limited to books, records, correspondence or documents in the possession or under the control of the person subpoenaed; and

(c) Access to evidence to be examined or copied.

(2) If any person fails to comply with a subpoena issued under this rule, the commissioner may initiate the legal procedures necessary to enforce compliance.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.800(4)

839-003-0090

Remedy

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Remedies in complaints of housing discrimination are addressed in 839-003-0230.

(1) In cases of employment discrimination remedy includes, but is not limited to:

- (a) Employment or reemployment;
- (b) Wages or other benefits lost due to the practice;
- (c) Out-of-pocket expenses attributable to the practice;
- (d) Compensation for emotional distress and impaired personal dignity; and
- (e) Interest.

(2) Consideration of all acts alleged to comprise a hostile work environment in a complaint, including alleged acts occurring outside the one year statute of limitations for filing a complaint, is permissible for the purposes of assessing liability, so long as any act contributing to that hostile work environment takes place within the statutory period.

(3) In order to recover damages for lost wages, the complainant will generally be required to mitigate damages by seeking employment.

(a) Earned income from employment may be deducted from lost wage damages.

(b) In most cases, unearned income such as unemployment or public assistance benefits will not be deducted from lost wage damages.

(4) Settlements of complaints and the awards in commissioner's Final Orders do not necessarily include all possible remedies named in sections (1) and (2) of this rule. Nothing in this rule will be construed to limit or alter the statutory powers of the commissioner to protect the rights of persons similarly situated to the complainant or to order the performance of an act or a series of acts designed to eliminate the effect of any unlawful practice found.

(5) The commissioner may order the respondent to eliminate the effects of any unlawful practice found and may require respondent to:

(a) Perform a designated act or series of acts that are calculated to carry out the policy of these rules in order to eliminate the effects of an unlawful practice and to protect the rights of those affected;

(b) Take action and submit reports to the commissioner on the manner of compliance with the terms and conditions specified in the commissioner's order or agreement;

(c) Refrain from any action prohibited by the order or agreement that would jeopardize the rights of the individuals or groups named in the complaint or would frustrate the purpose and the policy of these rules and relevant statutes.

(6) When the respondent makes an offer of remedy, the division will inform the complainant of the offer. If the complainant does not accept an offer that the division has determined will eliminate the effects of the unlawful practice, the division may dismiss the complaint.

(7) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.800, 659A.850, 659A.860, 659A.865 & 659A.885

839-003-0095

Enforcement of Settlement Agreements and Orders

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Enforcement of settlement agreements and orders is addressed in 839-003-0240.

(1) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance, as provided in ORS 659A.860.

(2) If the complainant believes the terms of a bureau settlement agreement have been breached, the complainant may file a complaint with the division alleging retaliation, or file a new complaint re-alleging the original violation if it is still occurring. The division may review the provisions of the settlement agreement and investigate.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.850, ORS 659A.860 & ORS 659A.865

839-003-0100

Commissioner's Complaint

This section does not apply to housing discrimination complaints filed under ORS 659A.145 or 659A.421 or federal housing law. Commissioner's complaints of housing discrimination are addressed in 839-003-0245.

(1) The Commissioner of the Bureau of Labor and Industries may make, sign and file a complaint whenever the commissioner has reason to believe that any person or group of persons has been denied rights due to an unlawful practice or employment practice. The complaint will be processed in the same manner as any other complaint filed under OAR 839-003-0005.

(2) In the matter of concurrent complaints, nothing in these rules will be construed to:

(a) Require or prohibit the filing of a commissioner's complaint involving the same or similar issues or allegations stated in any other complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885;

(b) Require or prohibit the continued processing or initiation of a commissioner's complaint in the event that a complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885, is resolved or dismissed, with or without remedy to the individual; or

(c) Alter or limit an individual's private right of action provided under ORS 659A.870 to 659A.885.

Stat. Auth.: ORS 183 & ORS 659A.805

Stats. Implemented: ORS 659A.820, ORS 659A.825 & ORS 659A.870 - ORS 659A.885

COMPLAINTS OF HOUSING DISCRIMINATION

839-003-0200

Filing a Complaint Under State and Federal Housing Discrimination Laws

(1) A person claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law includes a person who believes that the person has been injured by an unlawful practice or discriminatory housing practice or will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(2) A person claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law or the person's attorney, or the commissioner may file a complaint, in person or by mail, with the division at any bureau office in the state of Oregon. Complaint means a written, verified statement signed by the complainant or the complainant's attorney that:

(a) Gives the name and address of the complainant and the respondent;

(b) Describes the acts or omissions alleged to be an unlawful practice, including those acts or omissions the person believes are about to occur and;

(c) Describes how the person was harmed or will be harmed by such actions.

(3) The filing date is the date the division receives a complaint that meets the standards contained in OAR 839-003-0200(2).

(4) A person must file a complaint with the division no later than one year after the alleged unlawful practice. If the alleged unlawful practice is of a continuing nature, the right to file a complaint exists so long as the person files the complaint within one year of the most recent date the unlawful practice occurred.

(5) The procedures for filing a complaint are as follows:

(a) A person or the person's attorney makes an inquiry to the division;

(b) The division may provide the person or the person's attorney with a letter of information and/or questionnaire;

(c) The division will draft a complaint based upon the information provided by the person and send or give the complaint to the person or the person's attorney for verification. The person or the person's attorney will request any necessary changes to the complaint.

(d) The person or the person's attorney will verify and sign the complaint. The complaint will then be submitted to the division.

(e) If the person is an unemancipated minor the complaint must be signed by the minor and the parent or legal guardian of the minor.

(6) The Division will serve notice upon the complainant acknowledging the filing of the complaint and advising the complainant of the time limits and choice of forums provided under ORS chapter 659A and federal housing law.

(7) Within 10 days after the filing of a complaint, the division will serve the respondent with a copy of the original complaint that identifies the alleged discriminatory housing practice and a notice that advises the respondent of the procedural rights and obligations of the Respondent, including the respondent's right to file an answer to the complaint.

(a) Each respondent may file, not later than 10 days after receipt of notice from the division, an answer to such complaint.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 654.062, ORS 659A.145, ORS 659A.421, 659A.820 & 29 CFR Part 15(d)(3)

839-003-0205

Amending a Housing Discrimination Complaint

(1) The division may amend a complaint to correct technical defects, to add additional persons as respondents and to add additional information found during the investigation of a complaint, including new factual allegations. The division may amend a complaint on its own initiative or at the complainant's request (with the division's agreement) at any

time prior to the issuance of Formal Charges, except that respondents may only be added during the course of investigation. Examples of technical defects include: clerical errors, additions or deletions, name and address corrections, and statute citation errors.

(a) Within 10 days after identifying an additional person who will named as a respondent, the division will serve the person with a copy of the complaint that identifies the alleged discriminatory housing practice and a notice that advises the person of the procedural rights and obligations of the person, including the person's right to file an answer to the complaint.

(A) Such notice, in addition to meeting the requirements of subsection (1)(a), will explain the basis for the division's belief that the person to whom the notice is addressed is properly joined as a respondent.

(B) Each respondent may file, not later than 10 days after receipt of notice from the division, an answer to such complaint.

(2) The division will send a copy of the amended complaint to the complainant and all respondents.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, ORS 659A.421, ORS 659A.820

839-003-0210

Withdrawal of a Housing Discrimination Complaint

A complainant may voluntarily withdraw a complaint at any time by giving the division written notice of the complainant's decision to withdraw.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, ORS 659A.421

839-003-0215

Administrative Dismissal of a Housing Discrimination Complaint

(1) The division will dismiss the complaint if it determines that the bureau has no jurisdiction over the allegations of the complaint.

(2) If a complainant or the complainant's attorney fails to cooperate with the division, the division may dismiss the complaint.

(3) The complainant will notify the division in writing of address and telephone number changes. When a complainant cannot be located by reasonable efforts, the division may dismiss the complaint.

(4) The division will dismiss a complaint unless substantial evidence of unlawful discrimination is found. The division will provide written notice of such dismissal to complainant and respondent.

(5) The division cannot issue a finding of substantial evidence of discrimination once complainant has filed a civil suit alleging the same matters as provided in OAR 839-003-0235, and the trial for the civil suit has commenced.

(6) The division will dismiss complaints alleging discrimination under federal housing law statutes administered by HUD in accordance with federal requirements.

(7) The division will notify the complainant in writing of the right to file suit in state court, as provided in ORS 659A.870 to 659A.885, when a complaint is dismissed by the division. A complainant filing suit against a public body must also file a tort claim notice as required by ORS 30.275.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 30.680, ORS 659A.145, ORS 659A.421, ORS 659A.835, ORS 659A.850 & ORS 659A.870 - ORS 659A.885

839-003-0220

Housing Discrimination Investigations

(1) The division will investigate the allegations contained in any complaint filed under ORS 659A.820 or 659A.825 alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law to determine objectively whether there is substantial evidence of unlawful discrimination. The division will determine the method by which complaints will be investigated or otherwise processed. The division will not investigate allegations occurring more than one year prior to the date the complaint was filed unless the allegations constitute a continuing violation or the circumstances occurring more than one year prior to the date the complaint was filed pertain to timely allegations.

(2) The division will commence an investigation of any complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law within 30 days after the timely filing of the complaint.

(3) (a) At the end of each investigation of a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law the division will prepare a final investigative report containing:

(A) The names and dates of the contacts with witnesses;

(B) A summary and the dates of correspondence and other contacts with the complainant and the respondent;

(C) A summary description of other pertinent records;

(D) A summary of witness statements; and

(E) Answers to interrogatories.

(b) A final investigative report under this section may be amended if additional evidence is later discovered.

(c) The division will make the final investigative report available, upon request, to both the complainant and the respondent.

(4) The division will complete an investigation of any complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law within 100 days after the filing of the complaint, unless it is impracticable to do so.

(a) If the division is unable to complete the investigation of the complaint within 100 days after the filing of the complaint the division will notify the complainant and respondent in writing of the reasons for not doing so.

(5) The division will make final disposition of any complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law within one year after the filing of the complaint, unless it is impracticable to do so.

(a) If the division is unable to make final disposition of the complaint within one year the division will notify the complainant and respondent in writing of the reasons for not doing so.

(6) If the division determines that it is impracticable to complete an investigation and make final disposition of any complaint within one year the commissioner's authority to conduct investigations or other proceedings to resolve a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law does not cease within the one year period under ORS 659A.830(3).

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, ORS 659A.421, ORS 659A.800, ORS 659A.805, ORS 659A.835 & ORS 659A.870 to ORS 659A.885

839-003-0225

Settlement Process After Substantial Evidence Determination in Housing Discrimination Complaints

(1) During the period beginning with the filing of a complaint and ending with the filing of a charge or a dismissal by the division, the division will, to the extent feasible, seek to eliminate the effects of the unlawful discriminatory act(s) by engaging in conciliation,

settlement and persuasion. The division will facilitate any settlement negotiations between the complainant and respondent as provided in OAR 839-003-0055.

(2) Nothing said or done in the course of settlement discussions concerning a complaint alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law may be disclosed under ORS 192.410 to 192.505 or in any other manner, or used as evidence in a subsequent proceeding under this chapter or federal housing law, without the written consent of the persons concerned.

(3) If no settlement agreement is reached in the period of time set aside for settlement after a Substantial Evidence Determination, the division will proceed to a contested case hearing.

(4) The complainant may withdraw the complainant's own complaint at any time.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, ORS 659A.421, ORS 659A.835 & ORS 659A.840

839-003-0230

Remedies in Housing Discrimination Complaints

(1) In cases of housing discrimination remedy includes, but is not limited to:

(a) Rental, lease or sale of real property;

(b) Service lost;

(c) Expenses or lost benefits attributable to the practice;

(d) Compensation for emotional distress and for impaired personal dignity; and

(e) Interest.

(2) Settlements of complaints and the awards in commissioner's Final Orders do not necessarily include all possible remedies named in sections (1) of this rule. Nothing in this rule will be construed to limit or alter the statutory powers of the commissioner to protect the rights of persons similarly situated to the complainant or to order the performance of an act or a series of acts designed to eliminate the effect of any unlawful practice found.

(3) The commissioner may order the respondent to eliminate the effects of any unlawful practice found and may require respondent to do one or more of the following:

(a) Perform a designated act or series of acts that are calculated to carry out the policy of these rules in order to eliminate the effects of an unlawful practice and to protect the rights of those affected;

(b) Take action and submit reports to the commissioner on the manner of compliance with the terms and conditions specified in the commissioner's order or agreement;

(c) Refrain from any action prohibited by the order or agreement that would jeopardize the rights of the individuals or groups named in the complaint or would frustrate the purpose and the policy of these rules and relevant statutes.

(4) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, ORS 659A.421, ORS 659A.800, 659A.850, 659A.860, 659A.865 & 659A.885

839-003-0235

Civil Suit

(1) A person alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law may file a civil suit as provided in ORS 659A.870 to 659A.885, or 30.680.

(a) A person is not required to file a complaint of a violation of state law with the division before filing a civil suit.

(2) A civil suit alleging an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law, may be filed no later than two years after the occurrence or termination of an alleged discriminatory housing practice, or within two years after the breach of any settlement agreement entered into under ORS 659A.840, whichever occurs last. The two-year period may not include any time during which an administrative proceeding was pending with respect to the housing practice.

(3) After filing a complaint with the division, a complainant may file a civil suit in state or federal court alleging the same matters as those alleged in the complaint filed with the division. The complainant should notify the division of the civil suit. When the division receives notice from the complainant or complainant's attorney, or court documents indicating that such a suit has been filed the division will not dismiss the complaint until the civil trial commences. The division will notify the complainant and respondent that the division has dismissed the complaint and will take no further action.

(4) If Formal Charges have been issued with respect to a housing discrimination complaint, and an administrative law judge has commenced a hearing on the record under

ORS chapter 659A, the complainant may not commence a civil action in court that alleges the same matters.

(5) When the commissioner or the Attorney General has reasonable cause to believe that a person or group of persons is engaged in a pattern or practice of resistance to the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner or the Attorney General may file a civil action on behalf of the aggrieved individuals in the same manner as an individual or group of individuals may file a civil action under ORS 659A.885.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 30.275, 30.680, 659A.001 - 659A.030, 659A.145, 659A.150 - 659A.224, 659A.233, 659A.303, 659A.409, 659A.420, 659A.421, & 659A.800 - 659A.890

839-003-0240

Enforcement of Settlement Agreements and Orders in Housing Discrimination Complaints

(1) Any agreement or order issued by the commissioner may be enforced by mandamus or injunction or by suit in equity to compel specific performance, as provided in ORS 659A.860.

(2) If the complainant believes the terms of a bureau settlement agreement have been breached, the complainant may file a complaint with the division alleging retaliation, or file a new complaint re-alleging the original violation if it is still occurring. The division will review the provisions of the settlement agreement and investigate.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.145, ORS 659A.421, ORS 659A.850, ORS 659A.860 & ORS 659A.865

839-003-0245

Commissioner's Complaint

(1) The Commissioner of the Bureau of Labor and Industries may make, sign and file a complaint whenever the commissioner has reason to believe that any person or group of persons has been denied rights or is about to be denied rights due to an unlawful practice under ORS 659A.145 or 659A.421 or federal housing law. The complaint will be processed in the same manner as any other complaint filed under OAR 839-003-0200.

(2) In the matter of concurrent complaints, nothing in these rules will be construed to:

(a) Require or prohibit the filing of a commissioner's complaint involving the same or similar issues or allegations stated in any other complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885;

(b) Require or prohibit the continued processing or initiation of a commissioner's complaint in the event that a complaint filed with the division or circuit court by an individual under ORS 659A.820, 659A.825, or 659A.885, is resolved or dismissed, with or without remedy to the individual; or

(c) Alter or limit an individual's private right of action provided under ORS 659A.870 to 659A.885.

Stat. Auth.: ORS 183 & ORS 659A.805

Stats. Implemented: ORS 659A.145, ORS 659A.421, ORS 659A.820, ORS 659A.825 & ORS 659A.870 - ORS 659A.885

DIVISION 5
DISCRIMINATION

839-005-0000

Purpose and Scope

- (1) It is the policy of the State of Oregon that unlawful discrimination because of race, color, religion, sex, sexual orientation, national origin, marital status, age, disability and other classes protected under Oregon statutes is a matter of state concern and that such discrimination threatens individual rights and privileges and menaces the institutions and foundations of a free democratic state.
- (2) Prohibited discrimination is a basis of unlawful practices and unlawful employment practices described in ORS chapter 659A and other chapters of the Oregon statutes.
- (3) The Civil Rights Division of the Bureau of Labor and Industries is responsible for protecting individual rights through the enforcement of civil rights statutes prohibiting unlawful practices and unlawful employment practices over which the bureau has jurisdiction.
- (4) The purpose of these rules is to implement, interpret and describe the division's approach to civil rights enforcement under the bureau's jurisdiction.
- (5) These rules apply to all inquiries and complaints received by the division on or after the effective date of these rules.
- (6) An individual claiming a violation of the civil rights statutes may file a complaint with the Civil Rights Division as provided in OAR 839-003-0025 or OAR 839-003-0200 for complaints alleging housing discrimination filed under ORS 659A.145, 659A.421 or federal housing law.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A

839-005-0003

Definitions

As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law.

- (1) "Bureau" means the Bureau of Labor and Industries.

(2) "Complainant" means an individual who files a complaint with the division, personally or through the individual's attorney, pursuant to the guidelines provided in OAR 839-003-0025 or OAR 839-003-0200 for complaints alleging housing discrimination filed under ORS 659A.145, 659A.421 or federal housing law.

(3) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(4) "Employee" does not include any individual employed by that individual's parents, spouse or child or in the domestic service of any person.

(5) "Employer" means any person in this state who, directly or through an agent, engages or utilizes the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed. Employer also includes any public body that, directly or through an agent, engages or utilizes the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed, including all officers, agencies, departments, divisions, bureaus, boards and commissions of the legislative, judicial and administrative branches of the state, all county and city governing bodies, school districts, special districts, municipal corporations and all other political subdivisions of the state.

(6) "Person" includes one or more individuals, partnerships, associations, labor organizations, limited liability companies, joint-stock companies, corporations, legal representatives, trustees, and trustees in bankruptcy or receivers. "Person" also includes a public body as defined in ORS 30.260. For the purposes of ORS 659A.145 or 659A.421 or federal housing law, "person" also includes fiduciaries, mutual companies, trusts and unincorporated organizations.

(7) "Employment agency" includes any person undertaking to procure employees or opportunities to work.

(8) "Labor organization" includes any organization that is constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(9) "Protected class" means a group of people protected by law from discrimination on the basis of a shared characteristic, such as race, sex, sexual orientation, disability, or other, or a perception of that characteristic.

(10) "Respondent" includes any person against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(11) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, bisexuality, or gender identity, regardless of whether the individual's

gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's assigned sex at birth.

(12) "Gender identity" means an individual's gender-related identity, whether or not that identity is different from that traditionally associated with the individual's assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.

(13) "Gender expression" means the manner in which an individual's gender identity is expressed, including, but not limited to, through dress, appearance, manner, or speech, whether or not that expression is different from that traditionally associated with the individual's assigned sex at birth.

(14) "Sex" means the anatomical, physiological and genetic characteristics associated with being male or female.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A, Oregon Laws, 2007, Chapter 100

839-005-0010

Discrimination Theories

As used in enforcing ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law.

(1) Substantial evidence of intentional unlawful discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(10) of these rules;

(b) The complainant is a member of a protected class;

(c) The complainant was harmed by an action of the respondent; and

(d) The complainant's protected class was the reason for the respondent's action. In determining whether the complainant's protected class was the reason for the respondent's action, the division uses whichever of the following theories applies:

(A) Specific Intent Theory: The respondent knowingly and purposefully discriminates against an individual because of that individual's membership in a protected class. Unless the respondent can show that a bona fide occupational qualification or a bona fide voluntary, court-ordered affirmative action plan (OAR 839-005-0045) allows the action.

(B) Different or Unequal Treatment Theory: The respondent treats members of a protected class differently than others who are not members of that protected class. When the respondent makes this differentiation because of the individual's protected class and not because of legitimate, non-discriminatory reasons, unlawful discrimination exists. In establishing a case of different or unequal treatment:

(i) There must be substantial evidence that the complainant was harmed by an action of the respondent under circumstances that make it appear that the respondent treated the complainant differently than comparably situated individuals who were not members of the complainant's protected class. Substantial evidence of discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support that protected class membership was the reason for the respondent's alleged unlawful action. If the respondent fails to rebut this evidence with evidence of a legitimate non-discriminatory reason, the division will conclude that substantial evidence of unlawful discrimination exists.

(I) Pretext: If the respondent rebuts the evidence with evidence of a legitimate non-discriminatory reason, but there is substantial evidence that the respondent's reason is a pretext for discrimination, the division will conclude there is substantial evidence of unlawful discrimination.

(II) Mixed Motive: If the respondent presents substantial evidence that a legitimate, non-discriminatory reason contributed to the respondent's action, but the division finds the individual's protected class membership was also a substantial factor in the respondent's action, the division will determine there is substantial evidence of discrimination.

(ii) The complainant at all times has the burden of proving that the complainant's protected class was the reason for the respondent's unlawful action.

(e) For the purposes of housing discrimination complaints filed under ORS 659A.145 or 659A.421 or discrimination under federal housing law, a complainant need not be a member of a protected class. Substantial evidence in complaints of housing discrimination exists when the division's investigation reveals, based on the totality of circumstances known at the time of the decision, that a reasonable person would accept as sufficient to believe that a discriminatory housing practice has occurred or is about to occur.

(2) Adverse Impact Discrimination: Substantial evidence of adverse impact discrimination does not require establishment of intentional discrimination as provided in (1) of this rule. Adverse impact discrimination exists if the division's investigation reveals evidence that a reasonable person would accept as sufficient to support the following elements:

(a) The respondent is a respondent as defined by ORS 659A.001(10) and OAR 839-005-0003(10) of these rules;

(b) The respondent has a standard or policy that is applied equally.

(c) The standard or policy has the effect of screening out or otherwise affecting members of a protected class at a significantly higher rate than others who are not members of that protected class; and

(d) The complainant is a member of the protected class adversely affected by the respondent's standard or policy and has been harmed by the respondent's application of the standard or policy.

(e) For the purposes of housing discrimination complaints filed under ORS 659A.145 or 659A.421 or discrimination under federal housing law, a complainant need not be a member of a protected class. Substantial evidence in complaints of housing discrimination exists when the division's investigation reveals, based on the totality of circumstances known at the time of the decision, that a reasonable person would accept as sufficient to believe that a discriminatory housing practice has occurred or is about to occur.

(3) For the purposes of housing discrimination complaints filed under ORS 659A.145 or 659A.421 or discrimination under federal housing law, in determining whether evidence of adverse impact discrimination exists and, if so, what relief should be granted, a court or the commissioner will consider:

(a) The significance of the adverse impact on the protected class;

(A) For the purposes of housing discrimination complaints filed under ORS 659A.145 or 659A.421 or discrimination under federal housing law, a complainant need not be a member of a protected class.

(b) The importance and necessity of any business purpose for the standard or policy; and

(c) The availability of less discriminatory alternatives for achieving the business purpose for the standard or policy.

(4) Discrimination based on disability may involve intentional discrimination, including harassment, or discrimination that need not be intentional, including adverse impact, or the failure to permit reasonable modifications, the refusal to make reasonable accommodations or the failure to design and construct covered buildings under applicable rules. To be protected from discrimination based on disability, an individual must have a disability, as defined in ORS 659A.100(1) and (2) and the relevant rules. Reasonable accommodation for purposes of employment is defined in ORS 659A.118 and OAR 839-006-0206. Reasonable accommodation in real property transactions is covered by ORS 659A.145 and OAR 839-005-0220. Reasonable modifications in services, programs or activities, provision of auxiliary aids, services by state government, removal of barriers to facilities, goods and services and provision of auxiliary aids by public accommodations are covered by ORS 659A.142 and OAR 839-006-0310 to 0330. Reasonable

modifications in housing and the design and construction of covered buildings are covered by ORS 659A.145. Claims of disability discrimination brought under federal housing law are defined under that law.

(5) An employer must reasonably accommodate an employee or applicant's religious belief, observance or practice unless the employer can demonstrate that such accommodation would cause undue hardship on the employer's business.

(6) Harassment in employment based on an individual's protected class is a type of intentional unlawful discrimination. In cases of alleged unlawful sexual harassment in employment see OAR 839-005-0030.

(a) Conduct of a verbal or physical nature relating to protected classes other than sex is unlawful when substantial evidence of the elements of intentional discrimination, as described in section (1) of this rule, is shown and:

(A) Such conduct is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment;

(B) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or

(C) Submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.

(b) The standard for determining whether harassment is sufficiently severe or pervasive to create a hostile, intimidating or offensive working environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

(c) Employer Proxy: An employer is liable for harassment when the harasser's rank is sufficiently high that the harasser is the employer's proxy, for example, the employer's president, owner, partner or corporate officer.

(d) Harassment by Supervisor plus Tangible Employment Action: An employer is liable for harassment by a supervisor with immediate or successively higher authority over an individual when the harassment results in a tangible employment action that the supervisor takes or causes to be taken against the individual. A tangible employment action includes, but is not limited to, any of the following:

(A) Terminating employment, including constructive discharge;

(B) Failing to hire;

(C) Failing to promote; or

(D) Changing a term or condition of employment, such as work assignment, work schedule, compensation or benefits or making a decision that causes a significant change in an employment benefit.

(e) Harassment by Supervisor, No Tangible Employment Action: When harassment by a supervisor with immediate or successively higher authority over the individual is found to have occurred, but no tangible employment action was taken, the employer is liable if:

(A) The employer knew of the harassment, unless the employer took immediate and appropriate corrective action.

(B) The employer should have known of the harassment. The division will find that the employer should have known of the harassment unless the employer can demonstrate:

(i) That the employer exercised reasonable care to prevent and promptly correct any harassing behavior; and

(ii) That the complaining individual unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm.

(f) Harassment by Coworkers or Agents: An employer is liable for harassment by the employer's employees or agents who do not have immediate or successively higher authority over the complaining individual when the employer knew or should have known of the conduct, unless the employer took immediate and appropriate corrective action.

(g) Harassment by Non-Employees: An employer is liable for harassment by non-employees in the workplace when the employer or the employer's agents knew or should have known of the conduct unless the employer took immediate and appropriate corrective action. In reviewing such cases, the division will consider the extent of the employer's control and any legal responsibility the employer may have with respect to the conduct of such non-employees.

(h) Withdrawn Consent: An employer may be liable for harassment by the employer's supervisory or non-supervisory employees, agents or non-employees even if the acts complained of were of a kind previously consented to by the complaining individual, if the employer knew or should have known that the complaining individual had withdrawn consent to the offensive conduct.

(i) When employment opportunities or benefits are granted because of an individual's submission to an employer's harassment, the employer is liable for unlawful discrimination against other individuals who were qualified for but denied that opportunity or benefit.

(7) Harassment in Housing and Public Accommodations: Harassment on the basis of a protected class, including sexual harassment, is an unlawful practice in housing and in places of public accommodation when:

- (a) Substantial evidence of the elements of OAR 839-005-0010(1) is shown; and
- (b) Such conduct has the purpose or effect of creating an intimidating, hostile or offensive environment. The standard for determining whether harassment in housing and in places of public accommodation creates an intimidating, hostile or offensive environment is whether a reasonable person in the circumstances of the complaining individual would so perceive it.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A & the Fair Housing Act (42 U.S.C. 3601 et seq.)

839-005-0016

Exceptions to Discrimination Based on Sexual Orientation

(1) The following actions are not unlawful practices under ORS chapter 659A, including housing discrimination under ORS 659A.145 or 659A.421 or federal housing law:

(a) Housing and the use of facilities. It is not an unlawful practice for a bona fide church or other religious institution to take any action with respect to housing or the use of facilities when:

(A) The action taken is based on a bona fide religious belief about sexual orientation; and

(B) The housing or the use of facilities involved is closely connected with or related to the primary purpose of the church or institution; and

(C) The housing or the use of facilities involved is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(b) Employment Preference. It is not an unlawful employment practice for a bona fide church or other religious institution, including but not limited to a school, hospital or church camp, to prefer an employee, or an applicant for employment, of one religious sect or persuasion over another if:

(A) The employee or applicant belongs to the same religious sect or persuasion as the church or institution; and

(B) In the opinion of the church or institution, the preference will best serve the purposes of the church or institution; and

(C) The employment involved is closely connected with or related to the primary purposes of the church or institution; and

(D) The employment involved is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(c) Employment Actions. It is not an unlawful employment practice for a bona fide church or other religious institution to take any employment action based on a bona fide religious belief about sexual orientation when:

(A) The employment position involved is directly related to the operation of the church or other place of worship, such as clergy, religious instructors and support staff;

(B) The employment position involved is in a nonprofit religious school, nonprofit religious camp, nonprofit religious day care center, nonprofit religious thrift store, nonprofit religious bookstore, non profit religious radio station or nonprofit religious shelter; or

(C) The employment position involves religious activities, as long as the employment position:

(i) Is closely connected with or related to the primary purpose of the church or institution; and

(ii) Is not connected with a commercial or business activity that has no necessary relationship to the church or institution.

(d) Dress Code. An employer is not prohibited from enforcing an otherwise valid dress code or policy, as long as the employer provides, on a case-by-case basis, for reasonable accommodation of an individual based on the health and safety needs of the individual.

(2) The above exceptions do not excuse a failure to provide reasonable and appropriate accommodations permitting all persons access to restrooms consistent with their expressed gender.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A, Oregon laws, 2007, Chapter 100

839-005-0026

Protections and Rights Relating to Pregnancy

(1) Pregnant women are protected from sex discrimination in employment.

(2) In judging the physical ability of an individual to work, pregnant women must be treated the same as males, non-pregnant females and other employees with off-the-job illnesses or injuries.

(3) The statutes prohibit discrimination regarding employee and dependent spouse or domestic partner benefits for pregnancy when employee and dependent spouse or domestic partner benefits exist for other medical conditions. Domestic Partnership for the purposes of chapter 659A means two individuals who have received a Certificate of Registered Domestic Partnership from the State of Oregon in compliance with Oregon Laws, 2007, Chapter 99 and rules adopted by the State Registrar of the Center for Health Statistics.

(4) Women needing to be absent from work because of pregnancy or childbirth may have rights under the Oregon Family Leave Act, as provided in ORS 659A.150 to 659A.186 and OAR 839-009-0200 to 839-009-0320.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.029, ORS 659A.030 & ORS 659A.150 - ORS 659A.186 & Oregon Laws, 2007, Chapter 99

Housing Discrimination

839-005-0195

Purpose and Scope

(1) The public policy of the State of Oregon guarantees all persons the fullest possible participation in the social and economic life of the state, including the right to purchase, lease, rent or occupy property without discrimination on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes. The Bureau of Labor and Industries, through the Civil Rights Division, protects these rights by enforcement of ORS 659A.145, 659A.421 and the Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing and Urban Development has jurisdiction.

(2) A person claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law may file a complaint with the Civil Rights Division as described in OAR 839-003-0200.

(a) A person claiming to be aggrieved by an alleged unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law includes a person who believes that the person has been injured by an unlawful practice or discriminatory housing practice or will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(3) These rules apply to all complaints and inquiries relating to these sections received on or after the effective date of these rules.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.100, ORS 659A.103, ORS 659A.142, ORS 659A.145, 659A.421 & ORS 659A.820 & the Fair Housing Act (42 U.S.C. 3601 et seq.)

839-005-0200

Definitions

(1) "Disabled Person" means a person with a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment or is regarded as having such an impairment.

(2) "Dwelling" means any building, structure, or portion of a building or structure that is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land that is offered for sale or lease for the construction or location of any such building, structure, or portion of such a building or structure. "Family" includes a single individual.

(3)(a) "Familial status" means the relationship between one or more individuals who have not attained 18 years of age and who are domiciled with:

(A) A parent or another person having legal custody of the individual; or

(B) The designee of the parent or other person having such custody, with the written permission of the parent or other person.

(b) "Familial status" includes any individual, regardless of age or domicile, who is pregnant or is in the process of securing legal custody of an individual who has not attained 18 years of age.

(4) "Federal Housing Law" means The Fair Housing Act (42 U.S.C. 3601 et seq.) for which the U.S. Department of Housing And Urban Development has jurisdiction.

(5) "Major life activity" includes, but is not limited to, self-care, ambulation, communication, transportation, education, socialization, employment and ability to acquire, rent or maintain property.

(a) Examples of specific major life activities include, but are not limited to, walking, sitting, standing, lifting, reaching, speaking, interacting with others, thinking, seeing, hearing, breathing, learning, reading, eating, sleeping, performing manual tasks, reproduction and working.

(b) To be substantially limited in the major life activity of working, a person must be significantly restricted in the ability to perform a class of jobs or a broad range of jobs in various classes as compared to the ability of an average person with comparable skill, experience, education or other job-related requirements needed to perform those same positions.

(6) "Misclassified," as used in ORS 659A.100(2)(b), means an erroneous or unsupported medical diagnosis, report, certificate or evaluation.

(7) "Person associated with a purchaser," as used in ORS 659A.145(1), includes one or more individuals, partnerships, associations, labor organizations, limited liability companies, joint stock companies, corporations, legal representatives, trustees, trustees in bankruptcy or receivers, fiduciaries, mutual companies, trusts and unincorporated organizations and public bodies as defined in ORS 30.260 that have the primary purpose of serving, representing or otherwise benefiting the protected class.

(8) "Physical or mental impairment" means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin and endocrine; or any mental or psychological disorder, such as mental retardation, organic brain syndrome, traumatic brain injury, emotional or mental illness, and specific learning disabilities.

(9) "Property" and "real property" means property used or intended for commercial, business or residential purposes including, but not limited to a dwelling.

(10) "Purchaser" includes an occupant, prospective occupant, renter, prospective renter, lessee, prospective lessee, buyer or prospective buyer.

(11) "Receipt or alleged receipt of treatment for a mental disorder," as used in ORS 659A.142(5), means actual treatment of a person for a mental condition or an assertion that the person received such treatment.

(12) "Regarded as having an impairment," as used in ORS 659A.100(2)(c), means:

(a) A person having a physical or mental impairment that does not substantially limit a major life activity but who has been treated as having an impairment by a seller, lessor, advertiser, real estate broker or salesperson, or the agent of any seller, lessor, advertiser, real estate broker or salesperson;

(b) A person having a physical or mental impairment that substantially limits a major life activity only as a result of the attitude of others toward such impairment; or

(c) A person having no physical or mental impairment but who is treated as having an impairment by a seller, lessor, advertiser, real estate broker or salesperson, or the agent of any seller, lessor, advertiser, real estate broker or salesperson.

(13) "Residential real estate related transaction" means any of the following:

(a) The making or purchasing of loans or providing other financial assistance:

(A) For purchasing, constructing, improving, repairing or maintaining a dwelling; or

(B) Secured by residential real estate; or

(b) The selling, brokering or appraising of residential real property.

(14) "Substantially limits" means:

(a) The impairment renders the person unable to perform a major life activity that the average person in the general population can perform; or

(b) The impairment significantly restricts the condition, manner or duration under which a person can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform the same major life activity.

(15) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant.

(16) "Treatment" includes examination, evaluation, diagnosis and therapy by a health professional within the scope of the professional's applicable license.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.100, 659A.103, 659A.142, 659A.145, 659A.421, the Fair Housing Act (42 U.S.C. 3601 et. seq.) & Oregon Laws, 2007, Chapter 100

839-005-0205

Prohibited Discrimination

(1) A person may not, because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes of any person:

(a) Refuse to sell, lease or rent any real property to a purchaser;

(b) Expel a purchaser from any real property;

(c) Make any distinction, discrimination or restriction against a purchaser in price, terms, conditions or privileges relating to the sale, rental, lease or occupancy of real property or in the furnishing of any facilities or services in connection with real property;

(d) Attempt to discourage the sale, rental, lease or occupancy of any real property to a purchaser;

(e) Publish, circulate, issue or display or cause to be published, circulated, issued or displayed, any communication, notice, advertisement, or sign of any kind whether oral, written or electronic, relating to the sale, rental or leasing of real property that indicates any preference, limitation, specification or unlawful discrimination based on race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes ;

(f) Assist, induce, incite or coerce another person to commit an act or engage in a practice that violates ORS 659A.145, 659A.421, Federal Housing Law or these rules;

(g) Coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by ORS 659A.145, 659A.421, federal housing law or these rules;

(h) Deny access to, or membership or participation in, any multiple listing service, real estate broker's organization or other service, organization or facility relating to the business of selling or renting dwellings, or discriminate against any person in the terms or conditions of the access, membership or participation;

(i) Represent to a person that a dwelling is not available for inspection, sale, rental or lease when the dwelling in fact is available for inspection, sale, rental or lease;

(j) Otherwise make unavailable or deny a dwelling to a person.

(2) A person whose business includes engaging in residential real estate related transactions may not discriminate against any person in making a transaction available, or in the terms or conditions of the transaction, because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(3) A real estate licensee may not accept or retain a listing of real property for sale, lease or rental with an understanding that a purchaser may be discriminated against with respect to the sale, rental or lease thereof because of race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(4) A person may not, for profit, induce or attempt to induce any other person to sell or rent any dwelling by representations regarding the entry or prospective entry into the

neighborhood of a person or persons of a particular race, color, religion, sex, sexual orientation, national origin, marital status, disability, familial status, source of income and other classes protected under Oregon statutes.

(5) For purposes of OAR 839-005-0205 subsections (1) to (4), "source of income" does not include federal rent subsidy payments under 42 U.S.C. 1437f, income from specific occupations or income derived in an illegal manner.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, ORS 659A.142, ORS 659A.145, ORS 659A.421, the Fair Housing Act (42 U.S.C. 3601 et. seq.) & Oregon Laws, 2007, Chapter 100

839-005-0220

Disabled Persons

(1) Persons protected from discrimination on the basis of disability in real property transactions include any disabled person associated with a purchaser.

(2) In addition to the prohibitions in OAR 839-005-0205, discrimination in real property transactions based on a person's disability includes, but is not limited to:

(a) Refusing to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by such person if such modifications may be necessary to afford such person full enjoyment of the premises, except that, in the case of rental, the landlord may, where it is reasonable to do so, condition permission for modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(A) In the case of a rental, a disabled renter is only required to restore the interior premises to the condition that existed before the modification when the landlord required restoration as a condition to granting the disabled renter's reasonable modification request.

(b) Refusing to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling and;

(c) Failure to design and construct a covered multifamily dwelling as required by the Fair Housing Act (42 U.S.C. 3601 et seq.).

(3) Just Cause. A lessor or agent may engage in conduct otherwise prohibited by ORS 659A.145 when:

(a) A disabled person's leasing or rental of the subject property would constitute a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others; and

(b) No reasonable accommodation is possible that would eliminate or acceptably minimize the risk to health and safety.

(4) A lessor or agent must allow alterations of existing premises if the premises are occupied by or to be occupied by a disabled person, and the disabled person pays for the alterations, as provided in OAR 839-005-0220(2).

(5) There is no just cause for discrimination on the basis of perceived disability.

(6) Receipt or alleged receipt of treatment for a mental disorder does not constitute evidence of an individual's inability to acquire, rent or maintain property.

(7) In the sale, lease or rental of real estate, a person may not disclose to any person that an occupant or owner of real property has or died from human immunodeficiency virus or acquired immune deficiency syndrome.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.103, ORS 659A.142 & ORS 659A.145, 659A.421 & the Fair Housing Act (42 U.S.C. 3601 et. seq.).