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**SOUTH CAROLINA HUMAN AFFAIRS COMMISSION**

CHAPTER 65

Statutory Authority: 1976 Code Section 1-13-70

65-9. Procedure for the Institution of Civil Actions as Provided in Section 1-13-90(d) of the Act.

**Synopsis:**

Regulation 65-9 governs the procedures for filing a lawsuit following an investigation at the Agency, and should reflect the statutory deadlines found in the South Carolina Human Affairs Law.

Notice of Drafting for the proposed amended regulation was published in the *State Register* on September 23, 2016.

**Instructions:**

Replace Regulation 65-23 as printed below.

**Text:**

65-9. Procedure for the Institution of Civil Actions as Provided in Section 1-13-90(d) of the Act.

A. Civil Actions by the Commission.

(1) If within thirty (30) days after issuance of a determination finding reasonable cause to believe that a respondent named in a complaint has violated the Act, the Commission is unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring an action in equity against the respondent in circuit courts, provided however, that the respondent named in the complaint is not a state agency or department or a local subdivision of a state agency or department; and provided, further, that the Commission may seek preliminary or temporary injunctive relief pursuant to Section 1-13-70(s) of the Act according to the procedures set forth in Section 65-4 of these Regulations and provided that reasonable cause has been shown as specified in Section 65-4.

(2) The Commission must bring an action in the circuit court within one year of the alleged violation, unless the time for bringing the action is extended by written consent of the respondent.

(3) If, after a thorough investigation, the Commission determines that the respondent has violated the terms of a conciliation agreement, the Commission may bring an action against the respondent in the circuit court within one year from the date of the alleged violation, except that the period may be extended by written consent of the respondent.

(4) No action may be brought by the Commission if the complainant or another party has filed an action in state or federal court which alleges essentially the same facts and seeks essentially the same relief for the same complainant. If the Commission brings a civil action against a respondent and later determines that another action in state or federal court has been filed, the Commission shall promptly dismiss its action.

B. Notice of Right to Sue: Procedure and Authority.

(1) Issuance of Right to Sue upon Request.

(a) When a complaint requests in writing that a notice of right to sue be issued and the complaint to which the request relates is filed against a respondent other than a state agency or department or local subdivision of a state agency or department, the Commission shall promptly issue such notice as described in (3) below and provide copies to all parties, at any time after the expiration of one hundred eighty (180) days from the date of the filing of the complaint with the Commission, unless otherwise provided in Section 65-2J hereof.

(b) When a person claiming to be aggrieved requests, in writing, that a notice of right to sue be issued, and the complaint to which the request relates is filed against a respondent other than a state agency or department or local subdivision of a state agency or department, the Commission may issue such notice as described in (3) below and shall provide copies to all parties, at any time before the expiration of one hundred eighty (180) days from the date of filing the complaint with the Commission provided that the Commissioner has determined that it is probable the Commission will be unable to complete its administrative processing of the complaint within one hundred eighty (180) days from the filing of the complaint and has attached a written certificate to that effect. No right to sue letter will be issued before the expiration of one hundred eighty (180) days from the date of filing of the complaint when it is probable that the Commission will be able to complete its administrative processing within the one hundred eighty (180) day period.

(c) Issuance of a notice of right to sue shall terminate further processing of the complaint.

(2) Issuance of Notice of Right to Sue Following Commission Disposition of a Complaint.

(a) Where the Commission has found reasonable cause to believe that the Act has been violated, has been unable to obtain voluntary compliance with the Act, and where the Commission has decided not to bring a civil action against the respondent, the Commission will issue a notice of right to sue on the complaint as described in (3) below to the person claiming to be aggrieved and provide a copy thereof to all parties.

(b) Where the Commission has entered into a conciliation agreement to which the person claiming to be aggrieved is not a party, the Commission shall issue a notice of right to sue on the complaint to the person claiming to be aggrieved.

(c) Where the Commission has dismissed a complaint pursuant to Section 65-2J, it shall issue a notice of right to sue as described in (3) below to the person claiming to be aggrieved and provide a copy thereof to all parties.

(3) Content of Notice of Right to Sue. The notice of right to sue shall include:

(a) authorization to the complainant to bring a civil action pursuant to Section 1-13-90(d) of the Act within one hundred twenty (120) days from issuance of such authorization by the Commission to the complainant, his/her attorney of record, or, in those instances covered by 65-2J(2)(d) hereof, from the date of mailing to the complainant’s last known address;

(b) advice concerning the institution of such civil action by the complainant, where appropriate;

(c) a copy of the complaint;

(d) the Commission’s decision, determination, or dismissal as appropriate.

**Fiscal Impact Statement:**

No additional state funding is requested. The Agency estimates that no additional costs will be incurred by the state in complying with the proposed amendments to 65-9.

**Statement of Rationale:**

The Regulation should be changed to reflect the One Hundred Twenty (120) day statutory deadline for filing a lawsuit. This deadline is found in South Carolina Code Section 1-13-90(d)(6).