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**SOUTH CAROLINA HUMAN AFFAIRS COMMISSION**

CHAPTER 65

Statutory Authority: 1976 Code Section 1-13-70

65-2. Complaint.

**Synopsis:**

Regulation 65-2 governs the requirements for the Agency’s acceptance and retention of formal complaints of discrimination under the Human Affairs Law. Current language in the regulation requires notarization of all complaints. The proposed amendments would eliminate the need for notarization on the complaint form, and would instead reflect the statutory requirement that the complainant swear or affirm the allegations of the complaint under oath.

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

**Instructions:**

Replace Regulation 65-2 as printed below.

**Text:**

65-2. Complaint.

 A. Who may file.

 A complaint that any person has engaged in or is engaging in an unlawful employment practice may be made by an individual claiming to be aggrieved ‑ said individual shall be hereinafter referred to as the “complainant”.

 B. Complaint Form.

 The complaint shall be in writing on a form provided by the Commission for this purpose. The complaint must be signed and sworn under oath or affirmation.

 C. Required Contents of a Complaint. A complaint shall contain:

 (1) The full name, address, and telephone number (if any) of the complainant. (Note: The person claiming to be aggrieved has the responsibility to provide the Commission with notice of any change in address and with notice of any prolonged absence from the current address and telephone number so that he/she can be located as necessary during the Commission’s processing of the complaint.)

 (2) The full name and address of the person against whom the complaint is made, if known (hereinafter referred to as the “respondent”).

 (3) A short, clear, and concise statement of the facts showing that the complainant is entitled to relief under the Act. This shall include:

 (a) a clear statement of the harm alleged to be suffered by the complainant;

 (b) a statement of the alleged basis of the discrimination;

 (c) a statement of the complainant’s knowledge, if any, concerning the respondent’s reason for the alleged unlawful discrimination; and

 (d) a statement of any and all other information providing the factual basis for the complaint.

 (4) The date or dates when the alleged unlawful employment practice occurred, if known; if the alleged unlawful employment practice is of a continuing nature, the dates between which the alleged continuing acts occurred shall be stated, if known.

 (5) If known, the approximate number of employees of the respondent employer, or the approximate number of members of the respondent labor organization, as the case may be.

 (6) A statement as to any other action or proceeding, judicial or administrative, civil or criminal, instituted by the same complainant or other in his/her behalf, in any other forum based upon the same operative facts or harm as is alleged in the complaint filed with the Commission, together with a statement of the status or disposition of such other action or proceeding.

 D. Time of Filing.

 (1) A complaint alleging an unlawful employment practice must be filed with the Commission within one hundred eighty (180) calendar days after the alleged unlawful practice occurs, unless the practice is of a continuing nature. If the alleged practice is of a continuing nature, the date of the occurrence of said practice shall be deemed to be any date after commencement of the practice up to and including the date on which the practice shall have ceased, or the date on which the complaint is filed if the unlawful practice is continuing at the time the charge is filed.

 (2) The timeliness of a complaint shall be determined for purposes of satisfying the filing requirements by the date on which the complaint is received by the Commission. All charges shall be dated and time stamped upon receipt by the Commission.

 E. Place of Filing.

 A complaint shall be filed with the Commission at its office at 2611 Forest Drive, Suite 200, Columbia, South Carolina, or by mail at Post Office Drawer 11300, Columbia, South Carolina 29211.

 F. Manner of Filing.

 The complaint may be made in person to any member of the Commission’s staff or mailed to the Commission’s office in Columbia, South Carolina. A complaint may also be filed in the above manner at any other Commission office subsequently established for the filing of complaints by the Commission at any other location in the State.

 G. Service of the Complaint.

 Within ten (10) days after the filing of a complaint in the Commission’s office, the Commission shall serve the respondent with a copy of the complaint by mail or in person.

 H. Amendment of Complaint.

 (1) A complaint may be amended by the complainant to cure technical defects, including failure to verify the complaint, or to clarify allegations made therein. A complaint shall not be amended to include additional unlawful employment practices unless such additional unlawful employment practices are clearly related to the allegations contained in the original complaint. Any additional unlawful employment practices which are not clearly related to the allegations contained in the original complaint may, if timely, be made in a separate complaint.

 (2) Amendments will relate back to the date the complaint was first received. If a complaint is amended, a copy of the amended complaint shall be served within ten (10) days of Commission receipt thereof on the respondent.

 (3) A complaint may only be amended while the complaint is active, and a complaint may not be amended by a complainant after a letter of determination, final order, conciliation or dismissal of a complaint has been made by the Commission.

 I. Withdrawal of Complaint.

 A complaint or any part thereof may be withdrawn at any time upon Commission receipt of a written request of the complainant or his/her legal representative stating that the complainant requests that the complaint be withdrawn. Such withdrawal shall be without prejudice to the rights of the complainant; provided however, that should the complainant refile the complaint at a later time, timeliness shall be established on the basis of the latter filing. The respondent shall be notified within ten (10) days of the withdrawal of the complaint.

 J. Dismissal of Complaint.

 (1) Where a complaint, on its face, or as amended, fails to state a claim under the Act, the Commission shall dismiss the complaint.

 (2) A complaint shall also be dismissed:

 (a) When the complaint, and every portion thereof, is not timely filed.

 (b) When the complaint does not contain required contents pursuant to Section 65‑2C of these Regulations.

 (c) In the event that the complainant fails to provide information necessary for the proper filing or processing of a complaint, fails or refuses to appear or to be available for scheduled interviews or conferences with Commission investigators, or otherwise refuses to cooperate with the Commission to the extent that the Commission is unable to resolve the complaint, and after due written notice, the complainant has had no less than fifteen (15) but no more than thirty (30) days in which to respond.

 (d) When the complainant cannot be located the Commission shall dismiss the complaint, provided that reasonable efforts have been made to locate the complainant, and the complainant has not responded within thirty (30) days to a written notice sent by the Commission to the complainant’s last known address.

 (3) Where the Commission determines after investigation that there is not reasonable cause to believe that the Act has been violated, the Commission shall dismiss the complaint.

 (4) In the event that a respondent has made a settlement offer, in writing and specific in its terms, the Commission shall dismiss the complaint if the complainant refuses to accept the offer; provided however, that the offer would afford full relief for the harm alleged by the person claiming to be aggrieved, and that the person claiming to be aggrieved fails to accept such an offer within thirty (30) days after actual notice of the said offer.

 (5) Any complaint which has been brought as a court action alleging essentially the same facts and seeking relief for the same complainant shall be promptly dismissed.

 (6) Any dismissal; pursuant to (a) through (d) above, shall constitute a final action by the Commission within the meaning of Section 706(c) of Title VII of the Civil Rights Act of 1964, as amended.

**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 Regulation 65-2.

**Statement of Rationale:**

Regulation 65-2, Complaint, should be changed to eliminate the unnecessary requirement of notarization on the Complaint Form, and should instead reflect the statutory requirement of a statement that is made under oath or affirmation. The proposed amendments will parallel the requirements of the Agency’s federal counterpart, the Equal Employment Opportunity Commission, thereby making the respective practices of the two entities substantially similar, which is required by the *Worksharing Agreement* between the Agency and the Equal Employment Opportunity Commission.