

DEPARTMENT OF CIVIL RIGHTS

CIVIL RIGHTS COMMISSION

ORGANIZATION, PRACTICE, AND PROCEDURE

Filed with the secretary of state on May 16, 2023

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the civil rights commission by section 29 of article V of the state constitution of 1963 and section 601 of the Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2601)

R 37.2, R 37.4, R 37.5, R 37.6, R 37.7, R 37.10, R 37.11, R 37.12, and R 37.25 of the Michigan Administrative Code are amended, and R 37.28, R 37.29, R 37.30, and R 37.31 are added, as follows:

R 37.2 Definitions.

Rule 2. As used in these rules:

(a) "Certified complaint" means a complaint of discrimination, drafted by department staff on an official complaint form that is prepared after a preliminary determination of jurisdiction, and has the claimant's signature.

(b) "Chairperson" means the duly appointed or elected chairperson or a co-chairperson of the commission or, in the event of his or her or their absence, the acting chairperson designated by the remaining members of the commission.

(c) "Charge" means that document or pleading authorized by the department that initiates a contested case hearing under R 37.12.

(d) "Claimant" means any person who makes a complaint of discrimination to the department.

(e) "Commission" means the state civil rights commission created by section 29 of article V of the constitution.

(f) "Commissioner" means any member of the commission.

(g) "Complaint" means a communication from the claimant to the department that alleges discrimination as set forth in R 37.4.

(h) "Constitution" means the state constitution of 1963.

(i) "Day" means a calendar day, including a Saturday, Sunday, and state holiday.

(j) "Department" means the department of civil rights established by section 475 of the Executive organization act of 1965, 1965 PA 380, MCL 16.575.

(k) "Department investigator" means a member, agent, or employee of the department designated or delegated by the director to conduct an investigation.

(l) "Director" means the director of the department appointed by the commission.

(m) "Hearing commissioner" means a commissioner designated by the chairperson or the commission to conduct a hearing.

(n) "Hearing referee" means an agent of the commission designated or delegated by the chairperson or the director to conduct a hearing.

(o) "Party" or "parties" means the claimant or respondent, or both, and the commission or department, or both, where appropriate.

(p) "Person" means an individual, agent, association, corporation, joint apprenticeship committee, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, this state, or a political subdivision or agency of this state, or another legal or commercial entity.

(q) "Respondent" means person against whom the claimant has complained, or against whom the department has issued a charge.

(r) "Summary of complaint" means a document prepared by department staff following an intake interview that explains why a certified complaint was not taken and outlines the timeline to request a reconsideration of that decision.

#### R 37.4 Complaints.

Rule 4. (1) A person claiming to be aggrieved by unlawful discrimination may personally, or through counsel or other agent, submit a complaint to the department.

(2) A commissioner, director, or agent authorized by the commission or director, may initiate, make, sign, and file a complaint in the public's interest.

(3) Assistance in drafting and filing a complaint must be available without charge at all department offices.

(4) A certified complaint must be in writing, dated, and include all of the following:

(a) The full name and address of the claimant and his or her agent, if any.

(b) The full name and address of the respondent.

(c) The alleged discrimination and a detailed statement describing it. ~~the particulars thereof.~~

(d) The date, dates, or range of dates of the alleged discrimination and whether the alleged discrimination is of a continuous nature.

(e) The claimant's signature.

(5) The complaint must be filed with the department at 1 of its offices.

(6) The complaint must be filed within 180 days after the date of the alleged discrimination, or within 180 days after the date when the alleged discrimination was or should have been discovered. If the alleged discrimination is of a continuous nature, the date of the discrimination is any date after the commencement of the discrimination, up to and including the date upon which the discrimination ceased.

(7) The complaint may be filed by personal delivery, mail, or electronic service, and addressed or emailed to 1 of the department's offices.

(8) Complaint forms may be obtained at any of the offices of the department.

(9) A copy of the complaint filed by the claimant must be delivered or mailed to the respondent.

(10) The department may require answers to interrogatories, order the submission of books, papers, records, and other materials pertinent to a complaint, and require the attendance of witnesses, administer oaths, take testimony, and compel, through court authorization, compliance with its orders or an order of the commission.

(11) A complaint, or part of a complaint, may only be withdrawn with written consent of the commission or department upon conditions considered proper under the circumstances.

#### R 37.5 Conciliation conference.

Rule 5. (1) The respondent may be invited, at any time, to participate in a conciliation conference in a final attempt to address and eliminate the alleged discrimination.

(2) The members of the commission and the department staff shall not disclose what has transpired at the conciliation conference.

(3) If the conciliation conference is successful, the department shall notify the parties of the resolution and close the case.

(4) If the conciliation conference fails, the department may do any of the following:

(a) Conduct additional investigation.

(b) Dismiss the certified complaint based on the investigation.

(c) Refer the case for final legal review with a recommendation for a charge and an administrative hearing.

R 37.6 Charge; issuance; refusal to issue.

Rule 6. (1) If, after investigation, the department determines that there are sufficient grounds, a charge shall be issued.

(2) If the department determines that there are insufficient grounds to issue a charge, it shall refuse to issue a charge and shall notify the parties by mail or electronic service of the determination and the refusal, together with the reasons for refusal, and of the claimant's right to request reconsideration by the department of the determination within 30 days after the date of mailing, in accordance with R 37.7.

R 37.7 Reconsideration of refusal to issue charge; request; hearing.

Rule 7. (1) A claimant may request that the department reconsider a summary of complaint or refusal to issue a charge on a certified complaint. The request must be in writing, state specifically the grounds upon which it is based, and be filed within 30 days after the date of mailing of the notice of disposition of which reconsideration is requested. It must be filed at any office of the department by personal delivery or by mail.

(2) A reconsideration of a summary of complaint must review whether the request for reconsideration is timely filed and if the allegations are jurisdictional.

(3) Reconsideration of a closed or dismissed certified complaint must be filed within 30 days of closure or dismissal and must address the following 3 criteria:

(a) Whether an adequate investigation was conducted.

(b) Whether there is new probative evidence that may change the result of the investigation.

(c) Whether the determination was made in error.

(4) The department may authorize a hearing on the request for reconsideration at a time and place before the hearing commissioner or commissioners or hearing referee or referees as it or the director may determine, and notice must be given to all parties to the proceedings by mail, electronic service, or delivery. The parties may appear in person or by counsel, present witnesses and testimony, and examine and cross-examine witnesses. Verbatim stenographic notes of the proceedings must be made and maintained by a competent reporter. The hearing commissioner or commissioners or hearing referee or referees shall report to the commission on the proceedings. The commission shall determine whether the department shall consider the matter further, and notify all parties by registered or certified mail, return receipt requested, and issue instructions for appropriate action based upon such determination.

R 37.10 Charge; service.

Rule 10. Copies of the charge or amended charge must be delivered by mail or electronic service or sent by certified or registered mail, return receipt requested, to the parties, together with notice to the respondent to answer the charge as provided in R 37.11.

R 37.11 Answer.

Rule 11. (1) The respondent shall file a written verified answer to the charge of discrimination within 21 days after the date of service of the charge.

(2) The answer must be filed in duplicate at any office of the department. The filing must be by personal delivery mail or electronic service, with proof of service.

(3) Upon request, the commission or director may, for good cause shown, extend the time within which the answer may be filed.

(4) The answer must be in writing and the original must be signed and verified by the respondent. The answer must contain the address of the respondent, and if he or she is represented by counsel, the name and address of counsel. The answer must contain a general or specific denial or admission or a denial of any knowledge or information sufficient to form a belief of every allegation of the charge and a statement of any matter constituting a defense. An allegation in the charge that is not denied or admitted in the answer, unless the respondent states in the answer that he or she is without knowledge or information sufficient to form a belief, is considered admitted.

(5) The respondent has the right, reasonably and fairly, to amend his or her answer. Both of the following apply to an amended answer:

(a) The respondent's right to amend his or her answer may be exercised at any time, without permission, up to 10 days before the first hearing. If the first hearing is in less than 10 days, the respondent may apply, and the hearing commissioner or hearing referee may allow the respondent to amend his or her answer.

(b) Duplicate copies of an amended answer must be filed with the department.

(6) If an answer is not filed within the time provided for in these rules, each of the allegations in the charge are considered admitted. Upon application, the hearing commissioner or hearing referee, for good cause shown, may set aside the admission.

(7) The department, within 7 days after the date of receiving an answer or amended answer from the respondent, shall send a copy by mail or electronic service, with proof of service, to the claimant's last known address of record or to the claimant's counsel.

R 37.12 Hearing.

Rule 12. (1) Upon or after the issuance and service of a department-issued charge, the commission or director may schedule and summon the parties to a hearing. The commission may, at any time, schedule and conduct a hearing with respect to any matter that in the judgment of the commission may involve unlawful discrimination and may warrant investigation by the commission, regardless of whether a charge or complaint has been filed by or with the department.

(2) Notice of the time and place of the hearing must be mailed, electronically served, or delivered to the parties not less than 21 days before the date of the hearing. Upon good cause shown, the commission or director may order a hearing upon shorter notice. However, notice of the time and place of a hearing upon shorter notice must be mailed, electronically served, or delivered to the parties not less than 7 days before the date of the hearing, unless notice is waived by each party.

(3) A hearing must be conducted by 1 or more hearing commissioners, or 1 or more hearing referees, or any combination of hearing commissioners or hearing referees. The hearing commissioners or hearing referees shall hear the evidence and report to the commission.

(4) Unless waived by the hearing commissioners or hearing referees, the claimant shall be present at the hearing. The respondent may appear at the hearing in person or by counsel, examine and cross-examine witnesses and, if an answer has been filed, may submit oral testimony and other evidence in support of the answer.

(5) Subject to R 37.31, hearings must be held at a place designated by the commission or director having due regard for the convenience of the parties and witnesses.

(6) The case in support of the charge must be presented at the hearing by the department's counsel or by a member of the department's staff, or upon notice from the claimant, by the claimant or his or her counsel, subject to the right of the department to present additional evidence or arguments.

(7) Hearing commissioners or hearing referees have full authority to control the procedure of the hearing, admit or exclude testimony or other evidence without regard to strict rules of evidence, and rule upon all motions and objections, and may do any of the following:

(a) By motion or at the request of a party, order witnesses excluded so that they cannot hear the testimony of other witnesses. The hearing commissioners or hearing referees shall not exclude a party, an individual designated by a party as its representative, or a person whose presence is shown by a party to be essential to the party's presentation of his or her position.

(b) Examine witnesses and direct the production of papers or other evidence.

(c) Hear oral testimony. Oral testimony must be given under oath or affirmation and verbatim stenographic notes of the hearing must be made and maintained by a competent reporter. Transcripts must be maintained and, before the issuance of a final order, be available to the hearing commissioners or hearing referees. Parties may obtain transcripts by making arrangements with the reporters, and the department is not responsible for providing transcripts to the parties before the issuance of final orders.

(8) If hearings are conducted by 3 or more commissioners or referees, all rulings and determinations are made by majority rule.

(9) Evidence of the department's endeavors at conciliation is not admissible at the hearing.

(10) Hearing commissioners or hearing referees or a party may request a prehearing conference that the hearing commissioner or hearing referee may schedule, subject to objection by any party. A prehearing conference may be held to obtain admissions, stipulations as to fact and law, agreement on the issues, and to determine the authenticity of documents. A prehearing conference may be held in-person, by telephone, videoconference, or other electronic means. Written stipulations may be introduced in evidence if signed by each person sought to be bound, or by his or her counsel. Oral stipulations may be made on the record at open hearing.

(11) Hearing commissioners or hearing referees may continue a hearing from day to day or adjourn it to a later date or to a different place by an announcement at the hearing or by appropriate notice to all parties.

(12) Hearing commissioners or hearing referees shall allow the parties, their counsel, or the member of the department's staff presenting the case in support of the charge, and may allow interveners, to argue orally before them and to file briefs within the time limits the hearing commissioners or hearing referees determine.

(13) Hearing commissioners or hearing referees may exclude any person who engages in improper conduct before them from the hearing room or from further participation in the proceeding, except a party, his or her counsel, or a witness engaged in testifying, each of whom are subject to appropriate disciplinary action by the commission.

(14) Hearings must be open to the public, unless the hearing commissioners or hearing referees determine otherwise.

(15) Any motion filed by a party after the issuance of a charge and before the hearing must be referred to the hearing commissioners or hearing referees for decision. The hearing commissioners or hearing referees may request briefs and schedule oral arguments, as they consider necessary, and, where appropriate, they may reserve their ruling until the conclusion of the hearing. All rulings upon motions must be included in the report of the hearing commissioners or hearing referees to the commission.

(16) A party may submit, or the hearing commissioners or hearing referees may request, proposed findings of fact, proposed conclusions of law, and proposed orders at the conclusion of the hearing. All proposals must be submitted to the commission with the report of the hearing commissioners or hearing referees.

#### R 37.25 Exemption from particular section of act; bona fide occupational qualification (BFOQ).

Rule 25. (1) A person subject to article 2 of the Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2201 to 37.2211, may apply to the commission for exemption from particular sections of article 2 of the Elliott-Larsen civil rights act, 1976 PA 453, MCL 37.2201 to 37.2211, on the basis that religion, national origin, age, height, weight, or sex is a bona fide occupational qualification (BFOQ). An application for a BFOQ exemption may be obtained from the department's office of legal affairs or via the website at [www.michigan.gov/mdcr](http://www.michigan.gov/mdcr).

(2) The commission may direct the department to investigate any matter deemed relevant to an application, and the applicant shall make available all records, documents, data, or other information requested by the department or commission. Failure to provide this information results in denial of the application.

(3) An exemption must not be granted if the same facts and circumstances are at issue in a complaint pending before the department or commission. Upon a sufficient showing, the commission may grant an exemption. The exemption may be later revoked by the commission if the commission obtains other or different information, but the revocation is prospective. Any person obtaining an exemption shall notify the commission if and when the classification exempted is no longer utilized.

(4) An approved BFOQ exemption is effective for not more than 5 years after the date of the order of exemption issued by the commission.

(5) Within 21 days' after notice to the person to whom an approved BFOQ exemption has been granted, the commission may revoke the BFOQ exemption by a majority vote of the commission.

(6) An application to renew a BFOQ exemption may be submitted on the application form provided by the department.

#### R 37.28 Method for calculation of days.

Rule 28. (1) All time is measured in days unless another rule specifically provides a different method.

(2) When counting the number of days, Saturdays, Sundays, and state holidays must be included, subject to subrule (4) of this rule.

(3) "Day 1," the first day for counting, is the day after the event.

(4) When counting the number of days, the last day of the counting period is included, unless it is a Saturday, Sunday, state holiday, or other day when state offices are closed, in which cases the last day becomes the next day state offices are open for business.

R 37.29 Mail and electronic service.

Rule 29. (1) Mailing a copy under these rules means enclosing it in a sealed envelope with first class postage fully prepaid, addressed to the person to be served, and depositing the envelope and its contents in the United States mail. Service by mail is complete upon mailing. Electronic service must be by email. When filing documents by email, all of the following apply:

- (a) All documents must be in PDF format.
  - (b) The email subject line must include the case name, department case number, and title of each document being sent.
  - (c) An email sent at or before 11:59 p.m. is considered served on that day. If the email is sent on a Saturday, Sunday, or legal holiday, it is deemed to be served on the next business day.
- (2) Both mailing and electronic service require proof of service. Proof of service must be by written acknowledgment of service, or a written statement by the individual who served the documents.
- (3) Proof of service may be satisfied in documents filed through mail or email, or both, with the following written statement:

*PROOF OF SERVICE*

*I,     [name]    , certify, under penalty of perjury, that on     [date]    , I caused a copy of the above document to be served by     [mail/email]     on     [other party name]    .*  
*/s/ [electronic signature]*  
*[name]*

R 37.30 Signature.

Rule 30. (1) The claimant's signature on a certified complaint form means all of the following apply:

- (a) Claimant has read the document.
  - (b) To the best of claimant's knowledge, information, and belief the allegations are grounded in fact.
  - (c) The certified complaint is made in good faith and not made for any improper purpose, including to harass or to cause unnecessary expense.
- (2) Retention of a signature electronically affixed to a document that will be retained in electronic format must not depend on the mechanism that was used to affix that signature.

R 37.31 Manner of hearings.

Rule 31. (1) Hearings scheduled in accordance with R. 37.7 and R. 37.12 may be held in person or remotely, or both, at the discretion of the commission and in a manner as determined by the commission.

(2) If a remote hearing is initially scheduled for a hearing pursuant to R 37.7, the claimant must be provided an opportunity to request an in-person hearing. A request for an in-person hearing must be made in writing to the commission within 7 days of the hearing notice.

(3) If a remote hearing is initially scheduled for a hearing pursuant to R 37.12, a party may request an in-person hearing within 7 days of the hearing notice.

(4) Requests for in-person hearings are considered on a case-by-case basis and granted only if both of the following requirements are met:

- (a) A reasonable, good cause showing of accessibility limitations, specific evidentiary issues, or other unique circumstance.
- (b) An agreement to comply with specific requirements for in-person hearings.