

Agency for Workforce Innovation Discrimination-Complaint Procedures

Note: These procedures are also available in audio format, at: www.floridajobs.org/civilrights/moa/tabs/8-Aaudio.wav and in Braille from the Office for Civil Rights. Contact information for the Office for Civil Rights is included at the end of these procedures. Para español: www.floridajobs.org/civilrights/moa/tabs/8-A-Spanish.doc.

INTRODUCTION

The Office for Civil Rights enforces the federal and state nondiscrimination laws that apply to the Agency for Workforce Innovation, referred to herein as “the Agency,” and entities that receive federal financial assistance from or through the Agency. Some laws are applicable to employment only, some are applicable to programs and services only, while others are applicable to both employment and programs and services.

This document is designed to inform all employees and customers of the Agency and recipients of federal financial assistance from or through the Agency about the standard procedures used by the Office for Civil Rights to receive and resolve complaints of discrimination. The Office for Civil Rights coordinates with the Agency’s Office of the Inspector General in the conduct of an investigation to determine whether or not there is reasonable cause to believe the respondent has violated a nondiscrimination law. When the Office for Civil Rights or the Office of the Inspector General conducts an investigation, it acts as a neutral, unbiased fact-finder and is not an advocate for either the complainant or the respondent.

The complaint process that the Office for Civil Rights has established is designed to comply with the requirements of 29 CFR part 37 (*Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998*) as described in Sections 37.70-37.80 of the regulations. This same process complies with the requirements for discrimination-complaint processing under other federal and state law applicable to the Agency and its programs.

Any person who believes he or she, or any specific class of individuals, has been subjected to unlawful discrimination by the Agency or a recipient of federal financial assistance from or through the Agency may file a charge of discrimination with the Office for Civil Rights or with the United States Department of Labor’s Civil Rights Center. If a complaint is filed with the Office for Civil Rights, the complaint may be investigated and a final, written determination, called a *Notice of Final Action*, will be made as to whether or not unlawful discrimination actually occurred. The final determination will be furnished to the Director of the Agency for Workforce Innovation or the recipient’s chief administrative officer for appropriate action; a copy will also be given to the complainant.

Note: Filing a charge of discrimination with the Office for Civil Rights does not preclude the filing of the same or similar charge with another State or federal agency having jurisdiction.

INTRODUCTION (continued)

Retaliation is Prohibited: A complainant has a right to file a charge of discrimination, have an investigation conducted, have witnesses participate in the investigation, and obtain a determination as to whether or not discrimination occurred. A respondent is prohibited by law from retaliating against an individual because he or she has either:

- opposed an unlawful discriminatory employment practice;
- opposed an unlawful discriminatory non-employment practice; or,
- made a charge, testified, assisted or participated in an investigation conducted by the Office for Civil Rights or the Office of the Inspector General.

Any complainant who feels a respondent has violated this prohibition may file a complaint alleging retaliation with the Office for Civil Rights or with the state or federal agency having complaint jurisdiction. Retaliation is a separate complaint and a respondent can be found guilty of retaliation even if there is no finding of discrimination on the underlying complaint.

A copy of these procedures is to be on file with each recipient of federal financial assistance under the *Workforce Investment Act of 1998* and made available upon request.

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Nondiscrimination Under the Workforce Investment Act of 1998

(Reference: Section 188 of the Act and 29 CFR part 37)

The forms of discrimination that are prohibited under the Workforce Investment Act of 1998 are listed in 29 CFR part 37, in Section 37.5. Sections 37.6 and 37.7 describe, in greater detail, specific discriminatory actions that are prohibited. These are shown in Tables I and II (following pages). 29 CFR 37.30 provides the specific wording for the notice that must be given to applicants for employment, employees, applicants for programs and services, and program participants and service recipients under Title I of the Act:¹

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases:

- Against any individual in the United States on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief; and
- Against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIA), on the basis of the beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his/her participation in any WIA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas:

- Deciding who will be admitted, or have access, to any WIA Title I-financially assisted program or activity;
- Providing opportunities in, or treating any person with regard to, such a program or activity; or
- Making employment decisions in the administration of, or in connection with, such a program or activity.

¹ This is an extract. The Notice at 29 CFR 37.30 also discusses complaint-filing procedures, decision and resolution. The complete text may be found at: www.dol.gov/DOL/allcfr/OASAM/Title_29/Part_37/29CFR37.30.htm.

Table I
Prohibited Discrimination in Employment
with the
Agency for Workforce Innovation,
the Local Workforce Investment Boards,
One-Stop Operators and Service Providers

applicable to employees and applicants for employment¹

Prohibited Discrimination	Under WIA, Section 188 and 29 CFR 37.5 (x)	Under other applicable Federal law ² (x)	Under Florida law ³ (x)
age	x	x	x
color	x	x	x
disability	x	x	x
national origin	x	x	x
marital status			x
political affiliation	x		x <i>Note 4</i>
political belief	x	x	
race	x	x	x
religion	x	x	x
sex	x	x	x

- Notes**
1. Local ordinances and one-stop operator or service-provider policies may prohibit discrimination on additional bases than those covered under applicable federal and state law.
 2. References: Title VII of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Age Discrimination in Employment Act of 1967; and the Equal Pay Act of 1963.
 3. Florida Civil Rights Act of 1992. [*Chapter 760, Florida Statutes*]
 4. Alleged discrimination on the basis of political affiliation is ground for the filing of a complaint under Florida law by employees of state government only. [*§110.105(2), Florida Statutes*].

Table II
Prohibited Discrimination in Services
Under Laws Applicable to Selected Programs
of the
Agency for Workforce Innovation,
the Local Workforce Investment Boards,
One-Stop Operators and Service Providers
applicable to: applicants for programs and services
program participants
service recipients

Prohibited Discrimination	Under U.S. Department of Labor regulations	Under U.S. Department of Health and Human Services regulations			Under U.S. Department of Agriculture regulations
	In WIA Title I financially assisted programs ¹ (x)	In job-service programs ² (x)	In the Child Care program ³ (x)	In the TANF/ Workforce program ³ (x)	In the Food Stamp Employment and Training (FSET) program ⁴ (x)
age	x	x	x	x	x
citizenship	x				
color	x	x	x	x	x
disability	x	x	x	x	x
national origin	x	x	x	x	x
immigrant status <i>lawfully admitted; authorized to work in the United States</i>	x				
participation in any WIA Title I financially assisted program or activity	x				
political affiliation	x				
political belief	x				x
race	x	x	x	x	x
religion	x	x			x
sex	x	x	x	x	x

- Notes**
1. References: 29 CFR 37.5, 37.3(a).
 2. Reference: 20 CFR 658.411.
 3. References: 45 CFR 80.3, 84.4, 86.11, 90.12, 91.11.
 4. Reference: 7 CFR 272.6.

HOW TO FILE A COMPLAINT

Where to File: Most people who wish to file a discrimination complaint about a program or activity offered through the One-Stop system have several choices of where the complaint may be filed, depending on whether the alleged victims of discrimination are employees or customers, and also depending on the specific source of financial assistance for the program or office that allegedly discriminated. The choice of where to file a charge of discrimination is left completely to the complainant; the options are shown in Tables III and IV. (See pages 5 and 6.) The primary options for filing discrimination complaints are the Office for Civil Rights itself and the U.S. Department of Labor's Civil Rights Center. Either the Office for Civil Rights or the Civil Rights Center will explain the differences and answer any questions a potential complainant has regarding various options. Contact information for the Office for Civil Rights, the Civil Rights Center, and the other state and federal agencies that will accept complaints under the laws applicable to the Agency and its programs is provided in Table V. (See page 7).

Persons wishing to file a discrimination complaint with the Office for Civil Rights should do so using the official *Discrimination Complaint Information Form*, available on line at www.floridajobs.org/civilrights/moa/compl_form_instructions.doc or by contacting the Office for Civil Rights by telephone, in writing, or electronic mail. A "Notice About Investigatory Use of Personal Information," "Authorization of Representative," "Consent Form" (regarding the release of personal information), and "Mediation Election" are included in the forms package.

Complaints filed with the Office for Civil Rights that do not use the forms package (for example, a signed letter or faxed statement of allegations) will be accepted so long as the information provided substantially complies with the requirements of the Content of Complaint section below. However, persons filing a complaint with the Office for Civil Rights without using the forms package must subsequently submit such additional information as the Office for Civil Rights may request. With the exception of sexual harassment allegations or situations posing an immediate recognizable threat to the complainant's safety and well being, the Office for Civil Rights or the Office of the Inspector General will not begin investigating the complaint until the mediation election form and the additional information are received.

Who May File: A complaint filed with the Office for Civil Rights is officially called a "charge of discrimination." (Throughout these procedures, the terms "complaint" and "charge of discrimination" may be used interchangeably.) A charge of discrimination may be filed, either with the Office for Civil Rights or the Civil Rights Center, by any person who believes he or she, or any specific class of individuals, has been or is being discriminated against by a policy, program, activity or employee of the Agency or a recipient of federal financial assistance through the Agency. This includes all applicants for employment and employees who believe they have been discriminated against - either on the job or during the hiring, promotion or discharge process. It also includes all customers, beneficiaries or applicants for services who believe they have been denied services or treated differently than others in the receipt of services. A charge of discrimination may also be filed through a representative. (For requirements and procedures for filing complaints with other state and federal agencies, contact the appropriate agency or agencies. Contact information is provided in Table V.)

Table III
Jurisdiction for Employment-Discrimination Complaints

Agency or Department	In WIA Title I financially assisted programs (x)	Under other applicable Federal law (x)	Under Florida law (x)	Time limit for filing <i>from the date of the alleged discrimination</i>
Office for Civil Rights, Agency for Workforce Innovation (OCR, AWI)	x <i>Note 1</i>	x <i>Note 1</i>	x <i>Note 1</i>	180 days <i>Note 4</i>
Civil Rights Center, U.S.Department of Labor (CRC, USDOL)	x	x <i>Note 2</i>		180 days <i>(may be extended for good cause shown)</i>
Office for Civil Rights, U.S.Department of Health and Human Services (OCR, DHHS)		x <i>Note 2</i>		180 days <i>(may be extended for good cause shown)</i>
Office of Civil Rights, U.S.Department of Agriculture (OCR, USDA)		x <i>Note 2</i>		180 days <i>(may be extended for good cause shown)</i>
Florida Commission on Human Relations (FCHR)			x	365 days
U.S. Equal Employment Opportunity Commission (EEOC)	x <i>Note 3</i>	x		300 days

- Notes:**
1. The OCR's employment-complaint jurisdiction is limited to Agency operations or to programs receiving federal financial assistance through the Agency.
 2. Applicable to programs under the department's jurisdiction operated by the Agency for Workforce Innovation or by recipients of federal financial assistance from or through the Agency for Workforce Innovation.
 3. Employment-discrimination complaints in WIA Title-I programs may also be filed with the EEOC; however, they will not be processed under WIA Section 188 or its implementing regulations.
 4. The 180-day time limit for filing a charge of discrimination with the OCR in accordance with the nondiscrimination provisions of the Workforce Investment Act of 1998 and its implementing regulations may be extended by the Director of the Civil Rights Center, U.S. Department of Labor. Discrimination complaints filed with the OCR under the provisions of the Florida Civil Rights Act of 1992 by employees of the Agency for Workforce Innovation or applicants for employment with the Agency must be filed within 365 calendar days of the alleged act of discrimination.

Table IV
Jurisdiction for Discrimination Complaints About Services

Agency or Department	In WIA Title I financially assisted programs (x)	In job-service programs (x)	In the Food Stamp Employment and Training (FSET) program (x)	In the School Readiness program (x)	In the Temporary Assistance to Needy Families (TANF) program (x)	Time limit for filing <i>from the date of the alleged discrimination</i>
Office for Civil Rights, Agency for Workforce Innovation (OCR, AWI)	x	x <i>Note 1</i>	x	x	x	180 days <i>Note 4</i>
Civil Rights Center, U.S.Department of Labor (CRC, USDOL)	x	x <i>Note 1</i>	x <i>Note 2</i>	x <i>Note 2</i>	x <i>Note 2</i>	180 days <i>(may be extended for good cause shown)</i>
Office for Civil Rights, U.S.Department of Health and Human Services (OCR, DHHS)				x <i>Note 3</i>	x <i>Note 3</i>	180 days <i>(may be extended for good cause shown)</i>
Office of Civil Rights, U.S.Department of Agriculture (OCR, USDA)			x <i>Note 3</i>			180 days <i>(may be extended for good cause shown)</i>

- Notes:**
1. Excludes employment-related complaints by job-services registrants, or individuals who are referred or placed, that are filed against an "outside employer," that is, an entity other than the Agency, local workforce investment boards, one-stop operators, and service providers.
 2. Complaints may also be filed with the CRC under the USDOL WIA Section 188 nondiscrimination regulations (29 CFR part 37) when the programs and activities shown above are operated by the One-Stop partners listed in section 121(b) of WIA, to the extent that the programs and activities are part of the One-Stop delivery system.
 3. Applicable to programs under the department's jurisdiction operated by the Agency for Workforce Innovation or by recipients of federal financial assistance from or through the Agency for Workforce Innovation.
 4. The 180-day time limit for filing a charge of discrimination with the OCR in accordance with the nondiscrimination provisions of the Workforce Investment Act of 1998 and its implementing regulations may be extended by the Director of the Civil Rights Center, U.S. Department of Labor.

Table V
Contact Information
for
Filing a Discrimination Complaint

For information about how to file a discrimination complaint, forms, or other assistance, contact the appropriate agency or department, shown in Tables III and IV, as listed here:

Agency for Workforce Innovation

Office for Civil Rights

107 East Madison Street MSC 150
 Tallahassee, Florida 32399-4129
 (850) 921-3201 (SunCom number: 291-3201)
 TTY (via the Florida Relay Service): 711
in English, Spanish, French and Haitian Creole
 FAX: (850) 921-3122 (SunCom fax number: 291-3122)

Florida Commission on Human Relations

2009 Apalachee Parkway, Suite 100
 Tallahassee, Florida 32301
 (850) 488-7082
 1-800-342-8170
 TTY (via the Florida Relay Service): 711
in English, Spanish, French and Haitian Creole
 FAX: (850) 488-5291

U.S. Department of Labor

Civil Rights Center

200 Constitution Avenue, NW
 Room N-4123
 Washington, DC 20210
 (202) 693-6500
 TTY: (202) 693-6515
 FAX: (202) 693-6505

Equal Employment Opportunity Commission

Miami District Office

One Biscayne Tower, Suite 2700
 2 South Biscayne Boulevard
 Miami, Florida 33131
 (305) 536-4491 or 1-800-669-4000
 TTY: (305) 536-5721 or 1-800-669-6820
 FAX: (305) 536-4011

U.S. Department of Health & Human Services

Office for Civil Rights

61 Forsyth Street, SW - Suite 3B70
 Atlanta, Georgia 30323
 (404) 562-7886
 TTY: (404) 331-2867
 FAX: (404) 562-7881

Equal Employment Opportunity Commission

Tampa Area Office

501 East Polk Street, Suite 1000
 Tampa, Florida 33602
 (813) 228-2310 or 1-800-669-4000
 TTY: (813) 228-2003 or 1-800-669-6820
 FAX: (813) 228-2841

U.S. Department of Agriculture

Office of Civil Rights

300 7th Street, SW; Suite 400
 Stop Code 9430
 Washington, DC 20250-9410
 (202) 401-1014
 TTY: (202) 401-0216
 FAX: (202) 690-5686

Updated: June 23, 2005

When to File: A charge of employment discrimination, filed with the Office for Civil Rights under federal law, must be filed within 180 calendar days of the alleged act of discrimination. A charge of employment discrimination, filed with the Office for Civil Rights under Florida law, must be filed within 365 calendar days of the alleged act of discrimination. A charge of discrimination in services, filed with the Office for Civil Rights, must be filed within 180 calendar days of the alleged act of discrimination. “Filing” means a written complaint must be received by the Office for Civil Rights before the expiration of the 180- or 365-day period for filing, as applicable. Complaints received after the filing deadline will be returned to the complainant with a notice of options for filing with either a federal or state enforcement agency, unless the Civil Rights Center’s director has extended the filing time, as described below.

A charge of discrimination filed with the Civil Rights Center must be filed and received by the Civil Rights Center within 180 calendar days of the act of alleged discrimination, unless the Civil Rights Center’s director has extended the filing time, as described below.

The Civil Rights Center director may extend the deadline for filing a discrimination complaint if the complainant specifically asks the director for an extension and proves that s/he has good cause for the late filing. The Office for Civil Rights will accept a complaint filed after the deadline if the complaint is accompanied by a written extension from the Civil Rights Center’s director.

Employees and applicants for employment should note that filing a charge of discrimination with state or federal enforcement agencies, namely the Florida Commission on Human Relations, the Civil Rights Center, or the United States Equal Employment Opportunity Commission (EEOC), is a prerequisite to challenging an employment decision in court. Filing with the Office for Civil Rights or another agency does not extend the deadline for filing a complaint with the Florida Commission or the EEOC.² Neither the FCHR nor EEOC will accept non-employment-related discrimination complaints. Contact the Office for Civil Rights for more information.

Content of the Complaint: A complaint filed with the Office for Civil Rights or the Civil Rights Center must be in writing and include the following:

- 1) The complainant’s name and address (or other means of contacting the complainant);
- 2) The identity of the respondent (the recipient and/or individual allegedly responsible for the discrimination);
- 3) A description of the complainant’s allegations. The description must include enough detail to allow the Office for Civil Rights or the Civil Rights Center to decide whether:
 - a) the Office for Civil Rights or the Civil Rights Center has jurisdiction over the complaint;
 - b) the complaint was filed in time; and,
 - c) the complaint states a case of discrimination, i.e., that the allegations, if true, would violate a federal or state nondiscrimination law; and,
- 4) The signature of the complainant.

² However, some federal agencies may extend the filing deadline, for good cause shown. See Tables III and IV.

Complaints filed with the Office for Civil Rights must also include:

- 5) Indication whether or not there is a willingness to mediate; and,
- 6) A completed consent form regarding the release of personal information.

If the complainant has a personal representative in this complaint, his or her name, contact information and signature are also required, whether the complaint is filed with the Office for Civil Rights or the Civil Rights Center.

Incomplete Complaint: If a complaint filed with the Office for Civil Rights does not contain enough information to permit the Office for Civil Rights to determine that it has jurisdiction, the Office for Civil Rights will request that the complainant provide the needed information. Within seven days of receiving the forms package from the complainant, the Office for Civil Rights will notify the complainant, in writing, of any deficiencies. Where the complainant is unreachable by the Office for Civil Rights' reasonable efforts to locate him or her, or where the complainant does not provide the needed information within the time specified in the request, the Office for Civil Rights may close the complainant's file without prejudice. ("Without prejudice" means that the complainant can resubmit the complaint, so long as it is filed by the deadline.) If the Office for Civil Rights closes the complainant's file for lack of required information or for lack of authority to investigate, the Office for Civil Rights will send written notice of the closure to the complainant's last known address. Should the complainant supply the missing information after the file is closed, the complaint can be reopened and investigated provided the deadline for filing, discussed above under "When to File," has not passed, and jurisdiction can be established. The complaint will be logged as received on the date the file is reopened and the 90 calendar-day resolution period will commence with the later date.

For a description of the procedures the Civil Rights Center uses if it receives a discrimination complaint that does not contain enough information, see the Workforce Investment Act nondiscrimination regulations at 29 CFR 37.83.

Calculation of Time Periods: The date used by the Office for Civil Rights to determine whether a complaint has been timely filed is the date the Office for Civil Rights actually receives written notice of an allegation of discrimination. The written notice can be made by submitting an official Office for Civil Rights *Discrimination Complaint Information Form* or through other means, such as a letter or memorandum. Where a complaint is received in some form other than on the Office for Civil Rights or the United States Department of Labor's complaint form, the complainant must subsequently complete and submit the Office for Civil Rights' *Discrimination Complaint Information Form* and the appropriate consent forms. Under these circumstances, an Office for Civil Rights form that would otherwise be untimely will relate back to the date the first letter or memorandum was received, so long as the complaint form states the same facts or additional facts related to or growing out of the subject matter of the first letter or memorandum.

The other time periods in these procedures will not commence until the Office for Civil Rights actually receives a completed forms package including: the complaint form, mediation election form and Privacy Act consent form. The time period for determining jurisdiction, initial notification letter, mediation, and the 90-day deadline for issuing a Notice of Final Action will

not commence until the complainant has submitted these forms in a manner that substantially complies with the Content of the Complaint section, above.

Where the last day of any time period in these procedures falls on a weekend or official state holiday, the next regularly scheduled workday will be the deadline for completing the action. Any time period in these rules which is less than ten days will be calculated excluding weekends or official state holidays.

For information about how the Civil Rights Center calculates applicable time periods, contact the Civil Rights Center directly. Contact information is provided in Table V.

Note: Agencies other than the Office for Civil Rights or the Civil Rights Center with which a complainant may file may have their own methods of handling incomplete complaints or calculating time periods. Individuals should contact those agencies for additional information, if needed. Contact information is provided in Table V.

COMPLAINT-PROCESSING PROCEDURES

Note: The procedures described in this section are used by the Office for Civil Rights. The procedures used by the Civil Rights Center for processing discrimination complaints are explained in the Workforce Investment Act nondiscrimination regulations, beginning at 29 CFR 37.81. Agencies other than the Office for Civil Rights or the Civil Rights Center with which a complainant may file may have different complaint-processing procedures. Individuals should contact those agencies for their complaint-processing information. Contact information is provided in Table V.

I. Determining Jurisdiction

When the Office for Civil Rights receives a charge of discrimination, it will be reviewed to determine whether the complaint contains the required information and whether it is within the Office for Civil Rights' jurisdiction; that is, whether the Office for Civil Rights has the legal authority to investigate. Jurisdiction will be determined within five business days after the Office for Civil Rights receives the charge of discrimination.

The Office for Civil Rights has jurisdiction only over complaints that meet all of the following requirements:

- 1) The complaint alleges a violation of a state or federal discrimination law;
- 2) The complaint was received by the Office for Civil Rights by the deadline for filing, as discussed above under "When to File," unless the Civil Rights Center's director has extended the deadline;
- 3) The recipient against which the complaint is filed is either the Agency or an entity that receives federal financial assistance through the Agency.

Notice of Lack of Jurisdiction: Where the Office for Civil Rights determines it does not have jurisdiction over a complaint, the Office for Civil Rights will, within 10 business days after receiving the complaint, notify the complainant in writing that the Office for Civil Rights will not accept the complaint. The notice will give a statement of the reasons underlying that determination and also inform the complainant of his or her options for filing a complaint with agencies other than the Office for Civil Rights. For complaints involving entities that receive financial assistance through the Agency from the United States Department of Labor, the complainant will be notified that he or she has the option of filing the complaint with the Civil Rights Center within 30 days after receipt of the notice of lack of jurisdiction from the Office for Civil Rights.

Deferral: Even if the Office for Civil Rights has jurisdiction and the complaint is filed within the allowable time period, the Office for Civil Rights may decline to process the complaint if the complainant has a similar case pending in another forum and the Office for Civil Rights has reasonable assurance that the complainant was aware of his or her right to file with the Office for Civil Rights at the time the complaint was filed in that forum. If the complainant chooses to continue with the complaint filed in another forum, the Office for Civil Rights will close its case file and defer to the investigation by the other agency or office.

Where the Office for Civil Rights defers its investigation, the Office for Civil Rights will immediately notify the complainant in writing. This notification will advise the complainant that he or she may request that the Office for Civil Rights reopen its investigation after the complainant receives a determination in the case that is pending. The request to reopen the investigation must be received within 30 days of receipt of determination in the other case. The Office for Civil Rights may request and review the other case file as part of its investigation.

Where the respondent has been given notice of the complaint, the investigator will also notify the respondent in writing that the Office for Civil Rights' case file has been closed for administrative reasons unrelated to the merit of the allegations made in the complaint.

When the complainant has a career-service grievance pending with the Agency's Human Resource Management Office, the Office for Civil Rights will not accept a complaint on issues filed and investigated as a grievance. Under the Agency's grievance procedures, claims of discrimination or sexual harassment are excluded from the career-service grievance process and must be filed with the Office for Civil Rights, not Human Resources. If Human Resources has accepted a grievance because it does not mention any discriminatory basis for the actions, but the issues and parties are also sent to the Office for Civil Rights on the complaint form, then the Office for Civil Rights will not accept the complaint for investigation unless an explanation for filing the same issues with Human Resources as a grievance (absent claims of discrimination) is provided.

Just because a person has filed a complaint or participated in an Office for Civil Rights' investigation, a respondent is not prevented from taking standard personnel actions against that person. However, the respondent should act with caution and only where there is independent justification for the standard personnel action. The respondent should be prepared to show that an action would have been taken regardless of the existence of the complaint or investigation.

II. Issuing the Initial Notification Letter

Within five business days after it receives the complaint and determines it has jurisdiction to investigate, the Office for Civil Rights will provide written notice to the complainant and to the respondent. This initial notification will state that the Office for Civil Rights has received the complaint and that the complainant has the right to be represented by an attorney or other individual of his or her choice during the process. The initial notification to the complainant and to the respondent will contain a list of the issues identified in the complaint. The Office for Civil Rights will state whether it will accept or reject each issue for investigation. Where the Office for Civil Rights decides to reject an issue, it will also give the reason or reasons for each rejection. The letter will again explain options available to the complainant for filing with agencies other than the Office for Civil Rights and will restate the filing-deadline dates for the other agencies. This notice will also state whether the investigation will be conducted by the Office for Civil Rights or by the Office of the Inspector General.

If the complainant has requested mediation, the initial notification letter will explain that the complainant will be contacted regarding the date, time, and location of the mediation conference. The notice will also explain that any investigation will be suspended until the mediation process has been concluded.

If mediation is not requested, the respondent's notice will indicate that a complaint has been received, accepted for investigation by the Office for Civil Rights and will be processed as described in Section IV, below.

III. Conducting Mediation (Alternative Dispute Resolution)

Mediation is offered as an alternate means of resolving the complaint that allows the parties to avoid the traditional investigative or litigation process. In mediation, a neutral third party, trained in dispute resolution, listens to both the complainant and management and then encourages them to reach a voluntary, negotiated settlement of the charge of discrimination. Mediation gives the parties a chance to discuss the issues raised in the complaint, clear up misunderstandings, find areas of agreement, and incorporate those areas of agreement into solutions.

The Office for Civil Rights has identified trained mediators with background in civil rights for potential use in support of the alternative dispute-resolution program. Under United States Department of Labor regulations, the decision to use mediation rests with the complainant.

The mediator will arrange for and send written confirmation of the mediation conference to the parties and their representatives, if any. The letter will include the date, time and location of the mediation conference and a statement of the issues presented and the relief sought. Both the complainant and respondent may be represented by an attorney or another person of their choice at the mediation conference, or may appear on their own behalf with or without a personal representative or attorney present. However, both parties are required to have someone present at the mediation conference with the authority to resolve the dispute.

A mediator does not resolve the charge of discrimination or impose a decision on the parties: instead, the mediator helps the parties achieve a mutually acceptable resolution of the complaint. The mediation process is separate from the formal complaint investigation, and anything disclosed by the parties during mediation will not be revealed to the Office for Civil Rights' or the Office of the Inspector General's investigator by the mediator.

Where the complainant does not elect to mediate, an investigator will immediately begin fact finding as described in Section IV, below. Where the complainant elects to mediate, within five business days of receipt of the complainant's election to mediate, the Office for Civil Rights will prepare a memorandum to the respondent informing the respondent that a complaint has been received and requesting the respondent to contact the Office for Civil Rights within five business days about mediation arrangements. The mediation conference will be held within 15 business days following the response to the Office for Civil Rights. Where the respondent is located in Tallahassee, the memorandum and a copy of the complaint will be delivered to the respondent's chief administrative officer, with a copy to the equal opportunity representative, by close of business of the following day. Where the respondent is located outside Tallahassee, the memorandum and a copy of the complaint will be sent by overnight mail.

While the Office for Civil Rights or mediator will attempt to schedule the mediation conference at a time convenient to all parties, the Office for Civil Rights retains the final authority to set the

date and time of the mediation conference, and the parties may have to adjust their schedules to attend the conference.

If the parties are able to resolve the dispute at the mediation conference, a written settlement agreement will be prepared and signed by all parties prior to the adjournment of the conference. The agreement will have the force of a binding contract. A copy of the agreement will be given to all parties.

If the parties are unable to resolve the complaint at the mediation conference, neither party suffers any negative effect whatsoever. The mediator will immediately notify the Office for Civil Rights that mediation did not resolve the dispute, and the standard formal investigation of the charge of discrimination may begin. The Office for Civil Rights will contact the complainant to ascertain whether or not the complainant wishes to continue with a formal investigation or withdraw the complaint.

Breach of the Mediation Agreement: In the event a mediation agreement is subsequently breached, the non-breaching party should notify the Office for Civil Rights and, in the case of mediation conducted by another entity, such as the Florida Commission on Human Relations, EEOC or the Civil Rights Center, that entity should also be notified.

United States Department of Labor regulations provide that the non-breaching party may file a complaint directly with the Civil Rights Center's director within 30 calendar days of the date when the non-breaching party learns of the alleged breach. If the director determines that the agreement has been breached, the complainant may file a complaint with the Civil Rights Center based upon the original allegations, even if more than 180 days have elapsed since the alleged discrimination. The Civil Rights Center will process the complaint based upon the original allegations.

The mediation procedures are described more fully in a separate, written document available on line, at: www.floridajobs.org/civilrights/moa/tabs/8-D.doc, and from the Office for Civil Rights. They are also available in audio format at: www.floridajobs.org/civilrights/moa/tabs/8-Audio.wav, and in Braille from the Office for Civil Rights.

IV. Fact Finding and Investigation

Written Requests for Information and Documents; Telephone Interviews: Once the Office for Civil Rights learns mediation either will not be used or did not resolve the complaint, an investigator will be assigned to begin the fact-finding process. Within five business days the Office for Civil Rights will send the respondent an initial notification letter, as indicated above. The notice informs the respondent that the Office for Civil Rights or the Office of the Inspector General will be investigating the complaint and that the respondent has the right to be represented by an attorney or other individual of its choice. The letter includes a listing of the issues raised in the complaint that the Office for Civil Rights has accepted.

The letter also will contain a request for a position statement and, where deemed necessary, a request for documents and/or response to written questions designed to elicit information needed to resolve the complaint. The respondent will be advised it must reply to the letter within

14 calendar days of the date of the letter, and that any statements of witnesses should be made in the form of a sworn affidavit. The letter from the Office for Civil Rights will be addressed to the appropriate contact person in the Agency, or the chief administrative officer of the recipient receiving federal financial assistance through the Agency. The materials furnished by the respondent will be given to the investigator by the Office for Civil Rights.

The investigator may send the complainant a request for documents and/or written questions to elicit information concerning the issues raised in the complaint. The complainant must respond to the request for information within 14 calendar days of the date of the letter.

Additional requests for documents and/or written questions may be sent to the complainant and/or respondent as necessary during the investigation process. The investigator may also examine evidence from other sources, such as personnel records, grievances, inspector-general reports, and other agency or recipient records. The investigator may interview witnesses by telephone or in person where necessary. Where the information obtained using the above methods is sufficient to determine whether or not there is reasonable cause to believe that the respondent has violated a nondiscrimination law, the fact-finding stage of the investigation may conclude without an on-site investigation.

On-Site Investigation: An on-site investigation may be necessary where the review of documents and information obtained through written requests or telephone interviews is not sufficient to enable the investigator to reach a conclusion whether or not discrimination occurred. Factors used to decide when an on-site investigation is necessary include whether: the issues are complicated; numerous witnesses must be interviewed or voluminous documentation reviewed; or several contemporaneous complaints against the same respondent have been received by the Office for Civil Rights or the Office of the Inspector General.

The investigator will call the respondent to establish a date and time for the on-site investigation, identify records and other documents to be made available for review, and identify individuals to be interviewed. This call should be followed up with written confirmation of the date, time and scope of the on-site investigation.

The local office or recipient should assign responsibility to a staff person for preparing for and coordinating the on-site visit. Where appropriate, this individual should be the equal opportunity representative for the recipient. The investigator may first meet with the complainant to review the complaint and to obtain any additional information not contained in the complaint or case file.

An opening conference with the respondent and its representatives should follow. The purpose of the opening conference is to:

- 1) Describe the complaint being investigated, the specific issues under investigation and the Office for Civil Rights' or the Office of the Inspector General's authority to investigate;
- 2) Confirm arrangements made by the respondent to assure privacy, including setting aside a private area for the investigator to conduct interviews and review documents;

- 3) Schedule other meetings, such as a meeting for information collection and an exit conference.

The investigator will not discuss the merits of the complaint during the opening conference.

The investigator will interview the respondent's representatives and the persons named in the complaint. The investigator should strive to determine the respondent's account of the facts, additional people the respondent wants interviewed, the matters on which each witness is knowledgeable, and the documentation the respondent wishes reviewed.

The investigator may interview the witnesses named either by the complainant or the respondent, or determined independently by the investigator to have relevant information. As the investigation progresses, the investigator may identify additional individuals who should be interviewed and attempt to arrange a meeting. The investigator will also review records and other documents, beginning with those initially requested, and progressing to additional records identified during the on-site visit. When the records required are voluminous or complex, the investigator may hold a meeting with the staff responsible for keeping records to ascertain the respondent's information system, explain the investigator's information needs, and make specific requests to the appropriate respondent staff person for copies of the information.

An exit conference with the respondent's representatives may be held at the conclusion of the on-site portion of the investigation. The purpose of the exit conference is to clarify information obtained during the on-site portion, to request additional information, and/or to answer any questions about the investigative process. Since information gathered on-site usually needs to be reviewed and analyzed before a conclusion about discrimination can be reached, the investigator should remain neutral and express no opinion about information collected and state no conclusions about any issues, especially any feelings about whether or not discrimination has occurred. However, the investigator may entertain a resolution offer if either party should wish to present a conciliation agreement.

V. Reviewing and Analyzing the Evidence

Once the fact-finding stage of the investigation has been completed, the investigator will review and analyze the evidence and determine whether there is reasonable cause to believe the respondent violated a nondiscrimination law and, therefore, whether or not unlawful discrimination occurred.

Types of Evidence:

- **Direct Evidence** – An example might be the failure by the respondent to take appropriate corrective action where it knew or should have known of discriminatory practices or policies.
- **Comparative Evidence** - This may be evidence obtained through a comparison with similarly situated employees or program participants to ascertain differences in treatment.

- **Statistical Evidence** - Statistical analysis may indicate that a greater disparity exists than would be expected when comparing data for members of protected groups to data for employees or program participants not in said groups.

Conclusions regarding each allegation of discrimination must be supported by reliable and verifiable evidence, including any of the above types of evidence. Written documentation is the preferred type of evidence to substantiate or refute a complainant's allegation(s). In the absence of written documentation, however, the investigator can use witnesses' testimony as corroborating evidence. Use of direct, observable or first-hand knowledge of one or more witnesses to substantiate a conclusion is permissible. Hearsay or second-hand knowledge is not considered to be supporting evidence.

Frequently in a complaint investigation there are allegations raised by a complainant that cannot be supported by written documentation or corroborated by witnesses' testimony. If the respondent denies the allegation(s), in the absence of supporting written documentation or witnesses' testimony, the investigator cannot draw a conclusion regarding the alleged discriminatory act: the evidence is inconclusive. It does not exonerate an alleged offender and it does not suggest that the complainant filed false or frivolous allegations: no conclusion can be drawn.

The investigator's findings and recommended determination will be discussed with the Office for Civil Rights. The Office for Civil Rights may ask the investigator to do additional investigation or research prior to preparing the Notice of Final Action.

VI. The Notice of Final Action

Preparing the Notice: Once the Office for Civil Rights approves the final determination, the investigator will prepare a written draft of the *Notice of Final Action*. The draft Notice and case file shall be reviewed by the Office for Civil Rights and submitted to the Agency's Office of the General Counsel for review for legal sufficiency prior to the issuance of the Notice by the Office for Civil Rights.

Issuing the Notice: The Notice of Final Action must be issued to the complainant and respondent within 90 calendar days of the date on which the complaint is filed.

Contents of the Notice: The Notice of Final Action must discuss each of the issues raised in the complaint and, for each issue, state the investigator's decision and provide an explanation of the reasons underlying the decision. Where an issue was resolved by the parties through mediation or by another means not requiring a final determination by the investigator, the Notice should contain a statement describing the way the parties resolved the issue.

The complainant's Notice of Final Action must also contain a statement that the complainant has the right to file a complaint with the Civil Rights Center under Section 188 of the Workforce Investment Act. Where the Notice of Final Action is issued by the Office for Civil Rights within the 90-day period after the complaint is received, the Notice must state that if the complainant is dissatisfied with the Office for Civil Rights' decision on the complaint, the complainant or his or her representative may file a complaint with the director of the Civil Rights Center within 30 days of the date on which the Notice of Final Action is received by the complainant.

Note: Where the Office for Civil Rights does not expect to issue a Notice of Final Action within the 90-day period allowed for conduct of the investigation after the filing of the complaint, the Office for Civil Rights will send the complainant a “90-day letter” at least 10 days prior to the expiration of the 90-day period. The 90-day letter will notify the complainant or his or her representative that a complaint of discrimination under Section 188 of the Workforce Investment Act may be filed with the director of the Civil Rights Center within 30 days of the expiration of the 90-day period—in other words, within 120 days of the date on which the complaint was filed with the Office for Civil Rights. The letter will also inform complainants who allege employment discrimination of their right to file with the EEOC and Florida Commission on Human Relations, as well as with the Civil Rights Center.

VII. A Cause Finding

Where the Notice of Final Action contains a determination that there is cause to believe the respondent violated a federal or state nondiscrimination law, the Notice of Final Action sent to the respondent may also contain a list of recommended corrective actions. Corrective actions must be designed to make the complainant whole, eliminate the discrimination and ensure that the discrimination does not recur. The Office for Civil Rights may recommend changes in policies and procedures, personnel changes, disciplinary action, additional record keeping, accommodations, training, changes to physical facilities, and monetary relief, where appropriate. The recommendations should be narrowly tailored to address and eliminate the discrimination found by the investigation.

Where the complaint involves the Agency for Workforce Innovation as the respondent, the Notice of Final action containing the recommendations will be sent to the Agency’s director with copies to the responding office. Included must be a request that a reply be sent to the Office for Civil Rights within 30 days as to how the recommendations will be implemented. The respondent may offer alternatives to the recommended resolution.

When the complaint does not involve the Agency as the respondent, the Notice of Final Action containing the recommendations will be sent to the chief administrative officer of the respondent. Included must be a request that the respondent reply to the Office for Civil Rights within 30 days as to how the recommendations will be implemented.

In either case, the Office for Civil Rights will monitor the situation to assure that the respondent makes the required reply and that the respondent follows through on implementation of the recommendations. Where the respondent fails to implement the recommendations and eliminate the discrimination, the respondent may face sanctions that may result, after opportunity for a hearing, in the suspension, termination, denial or discontinuance of federal financial assistance, and other sanctions as provided by law. The Office for Civil Rights will also be available to provide technical assistance to the respondent in changing policies and procedures, record keeping, accommodations and training.

The Office for Civil Rights also may use the above procedure to make recommendations in cases where there is no determination that discrimination occurred but where the investigation has revealed circumstances that warrant a change in policies and procedures, personnel, disciplinary

action, record keeping, accommodation, training or remodeling of facilities to assure compliance with the applicable laws and regulations.

VIII. Miscellaneous Provisions

Right to Appeal: The Notice of Final Action issued by the Office for Civil Rights is the State's final determination of the complaint, and neither the complainant nor the respondent has a right to appeal the determination to or ask for reconsideration by the Office for Civil Rights. If the complainant is dissatisfied with the Office for Civil Rights' resolution, or if the Office for Civil Rights does not issue the Notice of Final Action within 90 days of the date on which the complaint was filed, the complainant does have the right to file a complaint with the Civil Rights Center, as described above in Section VI, "The Notice of Final Action." However, the Civil Rights Center will not review the Office for Civil Rights' processing of, or final determination on, the complaint. Rather, the Civil Rights Center will process the complaint anew.

The complainant may also have the right to file with another investigatory agency after receiving the Office for Civil Rights' Notice of Final Action; this will be explained in the letter that accompanies the Notice of Final Action. Information about the additional right to file is also available by contacting the Office for Civil Rights.

Negotiated Settlement: Even if the parties choose not to mediate, they may settle the complaint on mutually agreeable terms at any time during the Office for Civil Rights' investigation, and the Office for Civil Rights encourages parties to do so. If settlement is achieved, its terms shall be reduced to writing and signed by the complainant and the respondent. A copy of the settlement agreement shall be filed with the Office for Civil Rights along with a withdrawal of complaint executed by the complainant. The withdrawal will be without prejudice and the complainant will be able to re-file the complaint as noted below in the complainant's "Right to Withdraw the Complaint" section.

Right to Representation: Both the complainant and the respondent have the right to be represented at all stages of the complaint process by an attorney or other individual of their choice. Before a complainant's representative will be recognized by the Office for Civil Rights, the complainant should submit a completed "Authorization of Representative" notice in writing.

Respondent's Duty to Maintain Records: Once the respondent becomes aware that a complaint has been filed with the Office for Civil Rights or with the Civil Rights Center, the respondent shall preserve all original personnel or participant records and other evidence relevant to the complaint until the Office for Civil Rights or the Civil Rights Center issues the Notice of Final Action. Where the respondent fails to preserve such records, an inference of discrimination may arise where there is a lack of documentation to refute the complainant's allegations. Records must be maintained for three years from the date of closure of the complaint case file.

Respondent's Duty to Provide Information: A respondent has a duty to provide the investigator with relevant information necessary to the investigation. Where a respondent fails to provide requested information in the custody and control of the respondent in a timely manner, after notice and an opportunity to cure have been given, the failure may give rise to an inference of discrimination where there is a lack of information to refute the complainant's allegations.

Complainant's Duty to Provide Information: A complainant has a duty to provide the investigator with relevant information necessary to the investigation. The Office for Civil Rights may dismiss a complaint where a complainant, after notice and an opportunity to cure has been given, fails to provide requested information, refuses to submit to an interview or attend meetings, or otherwise refuses to cooperate to the extent that the Office for Civil Rights is unable to resolve the complaint. Under such circumstances, the complaint may be dismissed without a final determination of whether there is cause to believe the respondent violated a federal or state nondiscrimination law.

Complainant's Right to Amend the Complaint: The complainant has the right to amend the complaint at any time prior to the issuance of the initial notification letter. After that letter has been issued, the complainant can amend the complaint only with the permission of the Office for Civil Rights. The complainant has the duty to amend the complaint if it lacks the required information, as described in the "Content of Complaint" section above. Where an amendment relates to the subject matter of the original complaint, the amendment will relate back to the date the original complaint was received by the Office for Civil Rights. A complainant's "amendment" may add additional issues (other than retaliation) not covered in the original complaint, and therefore may be considered separately as a new complaint.

Complainant's Right to Withdraw the Complaint: The complainant has the right to withdraw his or her complaint at any time prior to the issuance of the Notice of Final Action. Such a withdrawal must be in writing and will be without prejudice, meaning the complainant reserves the right to re-file the complaint at any time before the filing deadline discussed above, in the "When to File" section of these procedures.

Access to Files During the Investigation: Florida law [§119.07(1)(q), *Florida Statutes*] states that all records that relate to a charge of discrimination are not public record until the investigation is completed either by a final determination of discrimination or the investigation becoming inactive. Once the Office for Civil Rights issues a Notice of Final Action and the Office for Civil Rights can confirm that it has been delivered to the complainant, the complaint file becomes a public record and, unless exempted by another part of the public-records law, the file is open for public inspection. To assure due process, confirmation of delivery by the United States Postal Service return receipt will document that the notice has been issued.

Neither the complainant nor the respondent has a right to see information gathered as part of the investigation until the notice of final action has been issued. Nonetheless, the investigator may disclose information submitted by the complainant and respondent where it is necessary to further the investigation.

Anyone having a question concerning filing discrimination complaints should contact:

The Agency for Workforce Innovation
Office for Civil Rights
107 East Madison Street – MSC 150
Tallahassee, Florida 32399-4129

Phone 850-921-3201 • SunCom 291-3201 • Fax 850-921-3122 • SunCom Fax 291-3122
e-mail: Civil.Rights@awi.state.fl.us

Florida Relay Service (TTY): 711 (in English, Spanish, French or Haitian Creole)

or

The Director, Civil Rights Center (CRC)
U.S. Department of Labor
200 Constitution Avenue NW, Room N-4123
Washington, DC 20210
(202) 693-6500 (voice)
(800) 877-8339 (Federal Relay Service -- for TTY/TDD)
e-mail: CivilRightsCenter@dol.gov