

CHAPTER 04 - CIVIL RIGHTS DIVISION

SECTION .0100 - GENERAL

26 NCAC 04 .0101 INTRODUCTION

The Civil Rights Division shall investigate all charges filed under G.S. 7A-759 and deferred charges from the Equal Employment Opportunity Commission in accordance with the Federal regulations implementing Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act which are published in 29 C.F.R., Parts 1600 through 1699, and are hereby incorporated by reference to include subsequent amendments. Copies of 29 C.F.R., Parts 1600 through 1699 are available at no cost from the Government Printing Office website at www.gpoaccess.gov.

History Note: Authority G.S. 7A-751; 7A-759;
Filed as a Temporary Rule Eff. October 15, 1986 for a period of 120 days to expire on February 11, 1987;
Eff. February 1, 1987;
Amended Eff. July 1, 1989;
Temporary Amendment Eff. January 1, 1998;
Amended Eff. November 1, 2012; August 1, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

26 NCAC 04 .0102 CONTENT AND PROCEDURE

(a) Any person wishing to file a complaint of alleged employment discrimination under G.S. 7A-759 with the Civil Rights Division shall complete the preliminary intake form found at www.ncoah.com; or submit the complaint in writing or by telephone to:

Director of Civil Rights Division
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714
(984) 236-1850

(b) The complaint shall include the following information:

- (1) The full name, address, telephone number (work and home), and email address of person making the complaint;
- (2) The full name and address of the person or agency against whom the complaint is made (the respondent);
- (3) A statement of the alleged employment discrimination including pertinent dates;
- (4) A statement of the specific employment issues (e.g. discharge, discipline, promotion) including the name and job title of the decision maker;
- (5) A statement of the act, policy or practice which is alleged to be unlawful;
- (6) For each act, policy or practice alleged, a statement of the facts which lead the person to believe the act, policy or practice is discriminatory; and
- (7) The approximate number of employees of the respondent employer.

(c) A complaint is considered a charge when the Equal Employment Opportunity Commission's Charge of Discrimination form is signed and dated and received by the Civil Rights Division.

(d) The Civil Rights Division shall assess the charge to determine if it is within the jurisdiction of the Office of Administrative Hearings and if so, it shall be assigned a charge number. If the charge is not within the jurisdiction of the Office of Administrative Hearings, it shall be transferred to the Equal Employment Opportunity Commission.

History Note: Authority G.S. 7A-759;
Temporary Rule Eff. October 15, 1986 for a Period of 120 Days to Expire on February 11, 1987;
Eff. February 1, 1987;
Amended Eff. November 1, 2012; December 1, 1999; April 1, 1991; April 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016;
Amended Eff. October 1, 2022.

26 NCAC 04 .0103 NOTIFICATION OF INVESTIGATION

- (a) When a charge of employment discrimination is filed, the Civil Rights Division shall notify the charging party and respondent that an investigation will commence. Notice shall be served by registered U.S. mail.
- (b) Any correspondence related to a charge must include the name of the charging party and the respondent and the Civil Rights Division's charge number and be submitted to:

Director of Civil Rights Division
Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

History Note: Authority G.S. 7A-759;
 Temporary Rule Eff. October 15, 1986 for a Period of 120 Days to Expire on February 11, 1987;
 Eff. February 1, 1987;
 Amended Eff. November 1, 2012; December 1, 1999; April 1, 1991; April 1, 1989;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

26 NCAC 04 .0104 ADDITIONAL INFORMATION
26 NCAC 04 .0105 INVESTIGATION

History Note: Authority G.S. 7A-759; 150B-11;
 Temporary Rule Eff. October 15, 1986 For a Period of 120 Days to Expire on February 11, 1987;
 Eff. February 1, 1987;
 Amended Eff. December 1, 1999; April 1, 1991; April 1, 1989;
 Repealed Eff. November 1, 2012.

26 NCAC 04 .0106 INVESTIGATION REPORT

- (a) The Civil Rights Division shall investigate all charges filed pursuant to this Section.
- (b) A civil rights investigator shall prepare an investigative memorandum setting out the findings and the conclusions of the Civil Rights Division's investigation based on the allegations and appropriate statutes.
- (c) The Civil Rights Division shall determine whether there is probable cause to believe the alleged discrimination has occurred.
- (d) A civil rights investigator shall conduct a pre-decision interview with the charging party prior to the issuance of the Civil Rights Division's decision.
- (e) Upon completion of the investigation the civil rights director shall issue a decision that shall be served on the charging party and respondent by US mail.
- (f) If the investigation results in a determination that there is no probable cause to believe the alleged discrimination has occurred, the Civil Rights Division's director shall inform the charging party of the rights of appeal to the Equal Employment Opportunity Commission.
- (g) If the investigation results in a determination that there is probable cause to believe the alleged discrimination has occurred, the civil rights director shall invite the parties to participate in pre-settlement discussions and attempt conciliation.

History Note: Authority G.S. 7A-759;
 Temporary Rule Eff. October 15, 1986 for a Period of 120 Days to Expire on February 11, 1987;
 Eff. February 1, 1987;
 Amended Eff. November 1, 2012; April 1, 1989;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

26 NCAC 04 .0107 CONCILIATION AND SETTLEMENT

- (a) A civil rights investigator shall contact the charging party and the respondent to schedule a settlement conference with the Civil Rights Division director and compliance manager within 10 days of the service of the decision that there is probable cause to believe discrimination has occurred upon the parties.
- (b) Where a settlement is reached among the charging party, the respondent and the Civil Rights Division, an agreement shall be prepared by the investigator and executed by the parties.

- (c) Upon notification to the Civil Rights Division by the respondent that all provisions of the settlement agreement have been met, the compliance manager shall close the charge.
- (d) The compliance manager shall forward the settlement documents to the Equal Employment Opportunity Commission and the Civil Rights Division director shall notify the parties that the charge is closed.
- (e) If conciliation is unsuccessful the charging party must make a declaration of intent within seven days of how to proceed with the charge. The charging party may:
- (1) File a petition for a contested case hearing with the Hearings Division of the Office of Administrative Hearings;
 - (2) Request that the case be forwarded to the Equal Employment Opportunity Commission for further conciliation;
 - (3) Request a notice of right-to-sue from the Equal Employment Opportunity Commission for the purpose of filing in Federal District Court; or
 - (4) Choose not to pursue the matter any further.
- (f) Upon receipt of the signed and dated declaration of intent, the Civil Rights Division shall close the charge and forward the case file to the Equal Employment Opportunity Commission.
- (g) If no declaration of intent is received after seven days, the Civil Rights Division shall close the charge and forward the case file to the Equal Employment Opportunity Commission.

History Note: Authority G.S. 7A-759;
Temporary Rule Eff. October 15, 1986 for a Period of 120 Days to Expire on February 11, 1987;
Eff. February 1, 1987;
Amended Eff. November 1, 2012; April 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

26 NCAC 04 .0108 CONTESTED CASE HEARING

- (a) Any determination of probable cause that has not resulted in conciliation may be heard by an Administrative Law Judge. The charging party shall commence the proceedings by filing a petition for a contested case hearing.
- (b) The Administrative Law Judge shall enter a stay in contested cases where there is a companion employment discrimination charge under investigation by the Civil Rights Division. The Civil Rights Division director shall notify the judge's assistant when the companion case is closed.
- (c) The Civil Rights Division's investigative file, shall be made available to all parties, upon request, as provided in Section 83 of the EEOC Compliance Manual, Volume 1 (October, 1987) incorporated herein by reference as well as subsequent amendments thereto. Copies of Section 83 are available upon request from the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714 at no charge.

History Note: Authority G.S. 7A-759; 150B-21.6; 150B-26; 150B-33;
Temporary Rule Eff. October 15, 1986 for a Period of 120 Days to Expire on February 11, 1987;
Eff. February 1, 1987;
Amended Eff. November 1, 2012; December 1, 1999; August 2, 1993; July 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

26 NCAC 04 .0109 AUTHORITY TO ADMINISTER OATHS OR AFFIRMATIONS

History Note: Authority G.S. 7A-759; 150B-11;
Eff. April 1, 1989;
Repealed Eff. November 1, 2012.

26 NCAC 04 .0110 SUBPOENAS

If any subpoena, including a subpoena ducus tecum, is required for the proper investigation of a charge, the Director or any employee of the Civil Rights Division may apply to the Chief Administrative Law Judge for issuance of the subpoena under the authority of G.S. 7A-756(2). The subpoena shall issue in the discretion of the Chief Administrative Law Judge.

History Note: Authority G.S. 7A-756; 150B-11;
Eff. April 1, 1989;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.

SECTION .0200 - POLITICAL DISCRIMINATION COMPLAINTS

26 NCAC 04 .0201	DEFINITIONS
26 NCAC 04 .0202	CONTENT AND FILING PROCEDURES
26 NCAC 04 .0203	TIME
26 NCAC 04 .0204	INITIAL DETERMINATION

History Note: Authority G.S. 7A-751; 126-14.4; 150B-2;
Temporary Adoption Eff. January 1, 1998;
Eff. August 1, 1998;
Amended Eff. October 1, 2008; December 1, 1999; August 1, 1998;
Repealed Eff. August 21, 2013 [See S.L. 2013-382, s.7.6].