

# **Rules of Procedure**

**for**

**Complaints of Discrimination  
Filed under the provisions of**

**San Francisco Administrative Code Chapters 12A, B, C & H  
San Francisco Police Code Articles 33 & 38**



**City and County of San Francisco**

**Human Rights Commission**

Issued: May 9, 2002

## **HRC Rules and Regulations for Discrimination and Retaliation Complaints**

**Summary:** The Human Rights Commission ("HRC") adopts these rules and regulations pursuant to Sections 12A.10; 12B.2.(g)(9); 12B.3; 12C.3.(8); 12C.4; and 12H.4 of the San Francisco Administrative Code and Sections 3307(a); 3811(a) and 3856(a) of the San Francisco Police Code. These regulations supersede all existing regulations and administrative requirements implementing the nondiscrimination provisions of Administrative Code Chapters 12A, 12B (excepting 12B.2.(b) "Equal Benefits" which is governed by a separate set of HRC Rules), 12C, and 12H, and/or Police Code Article 33 and/or Article 38, that the Human Rights Commission or any other department of the City and County of San Francisco has issued prior to the effective date of these regulations.

### **I. POWERS OF THE COMMISSION**

The powers of the Human Rights Commission shall mean the power and authority granted by the City Charter and ordinances, including the authority to mediate and investigate matters within its jurisdiction.

### **II. SCOPE OF RULES**

These rules govern complaints brought under San Francisco Administrative Code Chapters 12A, 12B, 12C and 12H and Police Code Sections Articles 33 and/or 38 except that these rules shall not apply to complaints brought under San Francisco Administrative Code 12B.2.(b)[Equal Benefits]. If any Ordinance sets forth rules or procedures inconsistent with these rules, these rules shall supplement such Ordinance and shall govern only where they are consistent with such Ordinance.

### **III. DELEGATION OF POWERS**

Where the City Charter or ordinances identify the "Human Rights Commission" as responsible for certain powers or duties, these powers or duties may be delegated to the Chairperson or Director, unless otherwise prohibited by law.

### **IV. DEFINITIONS**

**"Chairperson"** means the Chairman or Chairwoman of the Human Rights Commission.

**"City"** means the City and County of San Francisco.

**"Commission"** means the Human Rights Commission of the City and County of San Francisco and includes any Commissioner, officer, employee, or other individual delegated any function, power, or duty of the Commission.

**"Commissioner"** means any member of the HRC, including the Chairperson.

**"Complainant"** means a person who files a complaint claiming to be aggrieved by an Unlawful Discriminatory Act(s).

**"Complaint"** means a verified recitation of allegations filed with the HRC pursuant to San Francisco Administrative Code Chapters 12A, 12B, 12C and 12H and Police Code Articles 33 and/or 38 by a person alleging an Unlawful Discriminatory Act. It also means a complaint filed by the HRC or other person with standing to file a complaint under said laws.

**"Deliver"** or **"Mail"** includes, but is not limited to, sending something by facsimile (FAX) or electronic mail (e-mail) as allowed by the rules set forth in Rule V.C.

**"Director"** means the Director of the HRC, who is the executive officer or acting executive officer of the HRC.

**"HRC"** means the Human Rights Commission of the City and County of San Francisco and includes any Commissioner, officer, employee, or other individual delegated any function, power, or duty of the Commission.

**"Party"** includes Complainant, Respondent(s), and any person who has been allowed to intervene in the complaint process.

**"Person"** includes one or more individuals, firms, partnerships, nonprofit associations, associations, governmental entities, corporations, or legal representatives.

**"Respondent"** means any person who is alleged to have committed an unlawful discriminatory action or practice in a complaint filed with the HRC.

**"Response"** means the Respondent's written answer, filed with the HRC, to the Complainant's allegations.

**"Unlawful Discriminatory Act"** means an action, series of actions or practice that violates a person's rights under the nondiscrimination provisions of Administrative Code Chapters 12A, 12B, 12C, 12H and/or Police Code Articles 33 and/or 38.

## **V. FILING PAPERS WITH THE HRC**

**A. Address.** To file a document with the HRC, a party shall submit the document to the Human Rights Commission, 25 Van Ness Avenue, Suite 800, San Francisco, CA 94102-6033. When a rule requires something to be mailed or delivered to the HRC, it shall, absent an express agreement to the contrary, be mailed or delivered to the Director or to the HRC staff assigned to process the complaint.

**B. Mailing.** Filing of a document is effective if the document is mailed to the HRC by first class, overnight or express mail, registered, or certified mail, postmarked no later than the last day of the applicable time limit. Where mail is metered and bears a later postmark, the date of the postmark shall control for timeliness purposes.

**C. Fax or email.** Filing of a document is also effective if it is delivered or sent by facsimile transmission (fax) or electronic mail (e-mail) on or before the last day of the time limit. If the document is filed by fax or e-mail, the sender shall also place a hard copy of the document in the mail to the HRC, postmarked no later than the last day of the time limit. Any document filed by fax or e-mail shall bear a notation of the date and place

of transmission, the fax number or e-mail address where appropriate, to which it was transmitted, and, for fax documents, the total number of pages transmitted.

**D. Computation of time periods.** In computing time periods prescribed in these rules, each calendar day shall be counted. The day of the event which starts the time period running is not counted, but the last day of the period is included. If the last day of the period falls on a Saturday, Sunday, or a legal holiday (as proclaimed by City), the time period expires at the corresponding time on the next business day.

**E. Application to HRC.** The rules contained in this Rule V. also shall apply to all notices, HRC decisions and other papers required to be sent by the HRC pursuant to these Rules.

**F. Extensions of time.** The Director shall have the authority to grant extensions of time for the performance of any act under these rules when the interests of justice so require.

**G. Service.** Parties are required to file all documents with the HRC. The HRC shall effect service upon all parties. Nothing in this rule is intended to discourage parties from providing courtesy copies of documents they file with the HRC to other parties, but no party shall be obliged to effect service directly upon any other party.

**H. Calculation of response times.** Service by the HRC is complete at the time documents are hand-delivered or deposited in a mailbox, post office or like facility maintained by the US Postal Service, in a sealed envelope, postage paid, and addressed to the person to be served at the address last provided by that person. However, the time period for response to documents served by mail shall be extended 5 days if the place of address is within California and 10 days if the place of address is outside of California. The time period for response to documents served by private carrier or delivery (UPS, Fed-EX, etc.) shall be calculated from the date of reported delivery.

## **VI. FILING A COMPLAINT**

### **A. Who may file a complaint.**

**1. Aggrieved person.** An aggrieved person is any person who alleges being aggrieved as a result of Unlawful Discriminatory Acts.

**2. Claims on behalf of others.** No person, except for an attorney, parent, guardian, disability assistant, interpreter or similar representative authorized by the HRC or law to assist or advocate on behalf of a specific aggrieved person, may file a complaint on behalf of someone else. Persons who wish to bring alleged violations to the attention of the HRC but who have not been personally harmed may submit information in writing which the HRC in its sole discretion may decide to investigate.

**3. HRC initiated investigations.** The HRC may, in its sole discretion, investigate possible Unlawful Discriminatory Acts on its own initiative.

**4. Exhaustion.** Parties shall exhaust available internal grievance procedures before filing a complaint, unless the HRC excuses this requirement as impractical or for other good cause. Parties may preserve the timeliness of their complaint while exhausting available internal grievance procedures by presenting their complaint, as provided in Rule VI.E, to the HRC within the applicable statute of limitations.

## **B. Claims arising out of the same or similar facts.**

**1.Group claims.** A group of individuals who make a complaint of discrimination together shall have the complaint treated as individual complaints by each individual, but the matter may, at the discretion of the HRC, be conducted as a single investigation.

**2.Consolidated claims.** Complaints from individuals based on identical or similar facts may be consolidated by the HRC for the purposes of investigation

**3.Claims in other forums.** Where a party has filed or, subsequent to filing with the HRC files, a claim with another local, State or Federal agency or agencies arising out of the same facts and involving some or all of the same parties, the HRC has the discretion whether to proceed with the Complaint or to hold the Complaint in abeyance pending the resolution of the issue in such other forum. HRC shall provide written notice to the parties whenever action on a Complaint is so suspended.

## **C. Elements of a complaint.**

**1. Complaint defined.** A complaint is a written statement signed and verified by the Complainant that alleges specific Unlawful Discriminatory Acts and which is based on the person's actual or perceived membership in or association with persons with actual or perceived membership in, one or more of the protected categories enumerated in Administrative Code Sections 12B.1.(a), 12C.1(a), 12H.2-1; Police Code Sections 3303(a), 3304(a), 3305(a), and/or 3801, or for retaliation against a person for their opposition to Unlawful Discriminatory Acts.

**2. Complete Complaint.** To be complete, a complaint must be in writing and include:

- a. the name of the Complainant(s);
- b. the protected category(ies) that is the basis for the alleged Unlawful Discriminatory Act(s);
- c. the specific actions, practice(s) or incident(s) alleged to be discriminatory or retaliatory and when they occurred; and
- d. the signature of the Complainant, verifying under penalty of perjury the truth of the allegations.

**D. Defective complaint.** The HRC may, in its sole discretion, disregard any error or defect in the complaint, as enumerated in Rule VI.C.2. above, that does not substantially affect the rights of the parties, except that the HRC shall not waive the requirement for verification. The Complaint of any Complainant who fails or refuses to verify the complaint shall be dismissed without prejudice. A defective complaint, once timely amended to cure the defect, shall be deemed to have been filed on the date the initial defective complaint was filed. Nothing in this rule shall be interpreted to permit a party to engage in dilatory or delaying tactics to obstruct the prompt investigation of complaints.

**E. Lodging a complaint.** To preserve a timely complaint while pursuing informal resolution of issues underlying the complaint, a person may contact the HRC and sign an informal statement setting forth the general nature of the alleged unlawful discriminatory acts with the proviso that the party will activate a formal Complaint or withdraw the allegations within thirty (30) days. For purposes of computing timeliness of a complaint, the date of the Complaint will be the date the party presented the signed, informal statement to the HRC. Lodged complaints not activated thirty (30) days will be dismissed without prejudice.

**F. Coordination with other proceedings.** Complainants should not assume that filing or lodging of a complaint with the HRC the statute of limitations for any cause of action in any other judicial or administrative forum.

**G. Communications not to be considered as complaints.** The following types of communications do not constitute a complaint.

1. Oral allegations that a person refuses to put in writing or sign, despite offers of assistance from HRC;
2. General inquiries that seek advice about what a person's rights might be in a hypothetical situation;
3. Third party or anonymous correspondence;
4. Copies of allegations submitted to others (Mayor, legislator, community organization, etc.);
5. Documents received by fax or e-mail that are not followed up with a signed original as required by Rule V.C.

Nothing in these rules is intended to discourage any person from informally complaining to the HRC or presenting information regarding possible violations of the laws enforced by the HRC. However, only formal complaints filed in conformance with Rule VI shall entitle the Complainant to the procedural rights set forth herein.

## **VII. TIMELINESS OF COMPLAINTS**

1. Any complaint based on a violation of Police Code Article 33 shall be brought within one (1) year of the alleged discriminatory acts;
2. Any complaint based on a violation of Police Code Article 38 shall be brought within two (2) years of the alleged discriminatory acts; and
3. All other complaints shall be brought within one (1) year of the alleged discriminatory acts.

## **VIII. AMENDING COMPLAINTS**

The Complainant may amend a complaint at any time prior to resolution. HRC shall serve all amended complaints on Respondents with instructions concerning which allegations of the amended complaint, if any, Respondent shall answer, and the time when the verified response is due. If the amendment occurs before the Respondent has answered, the Respondent shall be served with and shall respond to the amended complaint. The Respondent's time for filing a response shall start upon service of the amended complaint.

## **IX. WITHDRAWING COMPLAINTS**

A Complainant may withdraw a complaint at any time prior to resolution. HRC shall notify the Respondent in writing within 5 days after a complaint has been withdrawn. A complaint may be withdrawn without prejudice, but nothing in these Rules shall require the HRC to accept a new complaint alleging substantially identical conduct if the Complainant has engaged in repeated or unwarranted withdrawal and resubmission of complaints.

## **X. RESPONSE TO COMPLAINT**

**A. Who may file.** The Respondent(s) or an authorized representative shall file a verified response to the Complaint or amended complaint in writing.

**B. Contents.** A response shall contain the following:

1. the full name and title, where applicable, of the Respondent(s).
2. the name, address, and telephone number of the Respondent's representative, if any.
3. a specific admission or denial of each allegation contained in the complaint. If the Respondent does not have knowledge or information sufficient to form a belief as to the truth of a particular allegation, the Respondent shall so state and such statement shall operate as a denial of the allegation.
4. a statement of any matter constituting an explanation or affirmative defense.
5. the signature of the Respondent or authorized representative, verifying under penalty of perjury that the response is true and complete to the best of the signatory's knowledge and belief.

**C. Time, place and manner of responding.** The response shall be filed within 21 days of service of the complaint. The HRC shall provide a copy of the response to the Complainant after redacting any confidential information.

**D. Amendment of response.** The Respondent, at the discretion of the Commission staff, may amend its response. The HRC shall serve a copy of the amended response to the Complainant after redacting any confidential information.

**E. Failure to respond to a complaint.** Any party who fails to file a response to a complaint or amended complaint may be held to be in default. A party in default has no right to present evidence to controvert the allegations in a complaint. However, the HRC shall enter findings of unlawful discrimination after default only upon proof of the allegations in the complaint, which may include the express admissions of the defaulting party or other probative evidence supporting a finding of fact.

**F. Parties to keep addresses and contact information current.** All parties shall keep the HRC advised of their current telephone number(s) and mailing address(es). Complainants shall provide the HRC their telephone number(s), mailing addresses and addresses at which they can be personally served at the time they verify the Complaint and shall notify the HRC of any changes of addresses and telephone numbers during the investigation and administrative adjudication of the complaint. Complainant's failure to maintain current contact information may result in dismissal of the Complaint, with prejudice.

**G. HRC notice.** When serving the complaint on the Respondents, the HRC shall notify Respondents in writing that a complaint has been filed against them, that they are required to file their telephone numbers and mailing addresses and addresses at which they can be personally served with the HRC, and that they must notify the HRC of any changes of addresses or telephone number during the investigation and administrative adjudication of the complaint. Respondent's failure to maintain current contact information may result in entry of findings adversely affecting the Respondents' interests.

**H. Confidentiality of information.** HRC records are subject to disclosure under the California Public Records Act, Govt. Code Section 6250 et. seq., and the San Francisco Sunshine Ordinance, SF Administrative Code Chapter 67. The HRC shall protect from disclosure any confidential statement submitted by a party or witness, the identity of any

person who submits such a statement, the home address and/or home telephone numbers, HIV status or other medical information, immigration status and similar private information to the fullest extent permitted by law.

## **XI. ADMINISTRATIVE CLOSURE:**

**A. Jurisdiction.** As soon as practicable after the HRC receives allegations of Unlawful Discrimination Acts, and no later than five (5) days after the filing of a verified complaint, the HRC shall make a full and prompt assessment of whether it has jurisdiction over the subject matter of the Complaint. Where it lacks jurisdiction, the HRC shall so advise the Complainant and all parties served in connection with the complaint and close the complaint. The HRC may, in its sole discretion, issue a letter of concern about a matter where it lacks jurisdiction and/or offer to assist the parties informally to resolve their dispute.

**B. Prima facie case.** Within 60 days of the filing of a verified complaint, and after mediation has been rejected, delayed, or failed to achieve resolution, the HRC shall determine whether there is sufficient evidence to establish a prima facie case of unlawful discrimination. Where there is insufficient credible evidence to conclude that an Unlawful Discriminatory Act(s) may have occurred, HRC staff shall close the matter and dismiss the complaint. Any party may request reconsideration of a finding of insufficient evidence to establish a prima facie case by filing a short statement, in writing, with the Director within fifteen (15) days showing why administrative closure is unwarranted.

**C. Investigation.** If the HRC finds that there is jurisdiction and sufficient credible evidence to conclude that unlawful discrimination may have occurred, the HRC shall proceed to investigate the Complaint. (See Section XIII)

## **XII. MEDIATION**

**A. Mediation defined.** Mediation refers to a process whereby the HRC staff acts as a neutral third party to encourage and facilitate the resolution of a dispute between two or more parties. It is a voluntary, informal, and nonadversarial process with the objective of helping the disputed parties reach a mutually acceptable agreement. In mediation, decision-making authority rests with the parties. The role of the HRC as mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring resolution alternatives.

**B. Initiating mediation.** At any time after allegations of discrimination are presented to the HRC, any party may make a request to the HRC for mediation. Upon receipt of a request for mediation, or on its own initiative where the HRC determines that mediation might be productive, the HRC shall ascertain if all parties agree to attempt resolution through mediation. If all parties to the dispute, or all parties concerned with a specific issue in the dispute agree to mediation, the HRC shall appoint a staff member to act as mediator.

Nothing in these Rules precludes the parties from discussing settlement whether or not mediation has been convened.

Before investigating a complaint, staff shall strongly encourage the parties, when appropriate, to participate in mediation to resolve the dispute.



**C. HRC as neutral mediator.** The HRC mediator shall maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias by word or by action, and a commitment to serve equally the interests of all participants. An HRC staff member who has investigated a complaint may serve as neutral mediator as long as he or she is not privy to confidential information or his or her ability to remain neutral has not been otherwise compromised. Any party who believes that the HRC mediator cannot be neutral may request that the HRC substitute a mediator who has not been involved in any stage of the Complaint. If the HRC does not provide a substitute mediator, the party may refuse to mediate.

**C. Date, time and place of mediation.** In consultation with the parties, the mediator shall fix the date, time and place of mediation. The mediation process may be in the form of an in-person session with the parties present and staff acting as mediator, or staff may attempt to negotiate a resolution between the parties by mail and/or phone. Mediation sessions shall be held at the HRC or at any convenient location agreeable to the parties and the mediator.

**E. Attendance at mediation.** All involved parties shall attend the mediation session(s). A party other than a natural person (e.g. a business, club or corporation) satisfies this attendance requirement by sending a representative familiar with the facts of the case who has the authority to negotiate and effectively recommend settlement to the business or other entity involved.

Any party to the mediation may have the assistance of an attorney or other representative. Other persons may attend only with the consent of the mediator.

**F. Confidentiality of mediation.** Except as otherwise required by law, anything said, any admission made, and any document prepared in the course of, or pursuant to, mediation is a confidential communication. Each party to the mediation has a privilege to refuse to disclose and to prevent another from disclosing mediation communications. The HRC mediator may not disclose any statement, conduct, or decision occurring at, or in conjunction with, the mediation in any subsequent administrative proceedings or appeals or in any civil action unless all parties to the mediation consent to the disclosure.

**G. Agreements.** Parties to mediation are strongly encouraged to memorialize agreements resolving the mediated dispute in writing, either in formal agreements signed and dated by the parties or an authorized representative of the party or parties, or by letter issued by the HRC. The HRC shall assist parties in drafting agreements.

**H. Termination of mediation.** Any party or the HRC may terminate the mediation at any time by notifying the mediator (if applicable) and other parties. If any party or the HRC terminates the mediation, or if the mediation does not result in resolution, the parties shall resume the same status as before mediation and the matter shall proceed as if mediation had not taken place. At the request or agreement of all parties, mediation may resume at any time in the process.

**I. Investigation after mediation.** If mediation is attempted but fails to resolve the dispute, the HRC shall decide whether to investigate the complaint as provided in Rule XI.B. and Rule XI.C. Where the confidentiality required by Rule XII.F. may be breached, the HRC will assign new staff to investigate the complaint unless all parties agree to permit the mediator to serve as investigator.

### **XIII. INVESTIGATION**

**A. Length of time for investigation.** Staff shall endeavor to complete the investigation within 120 days. If the scope of the investigation and the availability of witnesses require a longer investigation, the HRC shall notify the parties. Any party may request to mediate the matter at any point in the investigative process. The HRC shall commence mediation upon the agreement of all parties.

**B. Investigation plan.** Staff shall create a written investigation plan specifying the names of any witnesses to be interviewed, documents to request, and/or sites to be visited. Staff shall send the investigation plan to the parties with a request for suggestions for other witnesses and documents to be examined.

**C. Witness interviews.** Staff shall create a mutually convenient schedule for interviewing witnesses. Interviews may be conducted at a Respondent's site if suitable space is available. Interviews are informal in nature. HRC staff may also obtain information from witnesses by written interrogatories.

**D. Document review.** HRC staff may require any person or company to produce relevant documents.

**E. Subpoena power.** The HRC may subpoena any person or company to provide testimony or documents relevant to the case who fails or refuses to voluntarily cooperate with the investigation.

**F. Conclusion of investigation.** HRC staff shall submit the complaint to the Director for action.

### **XIV. DIRECTOR'S FINDING**

**A. Director's Action.** After reviewing the complete investigation file, the Director shall:

1. issue a Director's Finding which will consist of written findings and, where authorized by law, recommendation of sanctions, **or**
2. return the file to the staff member with instructions for further investigation and analysis, **or**
3. decide that a Director's Finding is not in order and direct the staff member to administratively close the Complaint as provided in Rule XI.

**B. Notification.** The HRC shall serve copies of the Director's Findings or Notice of Administrative Closure, as applicable together with written notice of the applicable appeal rights to all parties within 10 days of the Director's action.

## **XV. APPEALS**

Parties will have such appeal rights as are provided in the Administrative and Police Codes. An appeal process will be set forth in a future version of the Rules.

## **XVI. SEVERABILITY**

These rules shall be construed so as not to conflict with applicable local, state, or federal laws, rules or regulations. In the event that a court or agency of competent jurisdiction holds that a local, state or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of these rules or the application thereof to any person or circumstance, it is the intent of the Commission that the court or agency sever such clause, sentence, paragraph or section so that the remainder of these rules shall remain in effect.