

Rules and Regulations of the Equal Opportunity Commission of the State of Nebraska  
 Equal Pay Act of Nebraska  
 March 16, 1983

Title 139  
 Nebraska Equal Opportunity Commission  
 Equal Pay Act of Nebraska  
 Nondiscrimination on Basis of Sex

Table of Contents

<b>Subject</b>	<b>Statutory Authority</b>	<b>Code</b>
Act	48-1219 to 48-1227	
	48-1116	1.001
Chairman	48-1116	1.010
<b>Complainant of Discriminatory Unequal Pay Practice</b>		
Amendment	48-1223	2.001.05
Answer	48-1223	2.001.06
Contents	48-1223	2.001.03
Definition	48-1223	1.004
Dismissal	48-1223	2.002.03
Form	48-1223	2.001.02
Investigation	48-1222	2.002.02
Place and Manner of Filing	48-1223	2.001.04
Time of Service	48-1223	2.002.01
Withdrawal	48-1223	2.001.07
Who May File	48-1223	2.001.01
Commission	48-1220, 48-1116	1.002
Commissioner	48-1116	1.010
Complainant		1.008
Conciliation	48-1222	2.03.01
Non-disclosure	48-1222	2.003.02
Time Limit and Waiver of Time Limit	48-1223	2.003.04
Settlement and Order	48-1222	2.003.03
Discriminatory Unequal Pay Practice	48-1221	1.003

Employ	48-1220, 48-1116	1.002
Employee	48-1220, 48-1116	1.002
Employer	48-1220, 48-1116	1.002
Executive Director	48-1220, 48-1116	1.006
Interrogatories	48-1222	2.002.02
Oaths and Affirmations	48-117	3.005
Party		1.009
Person	48-1220, 48-1116	1.002
Reasonable Cause Findings	48-1223	2.003
Respondent		1.007
<b>Rules and Regulations</b>		
Adoption, Amendment and Recision	48-1116, 84-901 to 84-910	7.002
Availability	84-903	Chapter 6
Construction	48-1222	Chapter 5
Declaration of Validity		Chapter 8
Service		Chapter 4
Subpoenas		3.001
Failure to Obey	48-1222	3.004
Issuance	48-1222	3.001.01
Petition to Revoke	48-1222	3.003
Witness and Mileage Fees	48-1222	3.002
Wage Rate	48-1220, 48-1222	1.005

**Title 139  
Nebraska Equal Opportunity Commission  
Equal Pay Act of Nebraska  
Nondiscrimination on Basis of Sex  
Rules and Regulations**

**Chapter 1. Definitions.**

**1.001.**

As used herein, the term “Act” shall mean the Equal Pay Act of Nebraska, as amended.

**1.002.**

As used herein, the terms “Employee”, “Employer”, “Employ”, “Commission”, and “Person” shall have the same meaning as set forth in section 48-1220 of the Act, as amended.

**1.003.**

As used herein, the term “Discriminatory Unequal Pay Practice” shall mean the acts, conduct and matters defined as constituting prohibited acts by section 48-1221.

**1.004.**

The term “Charge” shall mean a written statement under oath, filed with the Commission by a complainant, setting forth the time, place and facts of an alleged discriminatory unequal pay practice.

**1.005.**

“Wage Rate”, as used herein, shall mean all compensation for employment, including payment in kind and also including medical, hospital, accident, life insurance and retirement benefits; profit-sharing and bonus plans; leave; and other terms, conditions and privileges of employment.

**1.006.**

The term “Executive Director” shall mean an employee of the Commission, selected by and serving at the will of the Commission as Executive Director, who shall have such duties, powers and authority as may be conferred upon her or him by the Commission, subject to the provisions of the Act.

**1.007.**

“Respondent” shall mean a person against whom a charge has been filed.

**1.008.**

“Complainant” shall mean any person filing a charge.

**1.009.**

The term “Party” or “Parties” shall mean either the complainant or the respondent, or both.

**1.010.**

The term “Chairman” shall mean the Chairperson of the Nebraska Equal Opportunity Commission; and the term “Commissioner” shall mean any member, including the Chairman, of the Nebraska Equal Opportunity Commission. The Chairman or a majority of the Commission may designate any member of the Commission to serve, in the absence of the Chairman, the Acting Chairman; and in the absence of the Chairman, the Acting Chairman shall have all of the

duties, powers and authority conferred upon the Chairman by the Act and by these Rules and Regulations.

## **Chapter 2. Procedure.**

### **2.001. Filing, Amending and Withdrawal of Charge.**

#### **2.001.01. Who May File.**

Any person who claims to have been injured by a discriminatory unequal pay practice may file a charge with the Commission. The charge shall be in writing and under oath of the complainant.

#### **2.001.02. Form.**

A charge shall be filed with the Commission. The charge shall be signed by the complainant under oath or affirmation before a notary public or other person duly authorized by law to administer oaths and affirmations. The charge may be filed on forms provided by the Commission, blank copies of which will be supplied by the Commission upon request and will be available at the offices of the Commission. Notarial service will be without charge by the Commission.

#### **2.001.03. Contents.**

A charge shall contain the following:

##### **2.001.03A.**

The full name, address and telephone number, if any, of the person making the charge.

##### **2.001.03B.**

The full name, address and telephone number, if known, of the respondent.

##### **2.001.03C.**

A plain and concise statement of the facts alleged to constitute a discriminatory unequal pay practice or practices.

##### **2.001.03D.**

The date and place in the State of Nebraska where the alleged discriminatory unequal pay practice was committed.

##### **2.001.03E.**

A statement as to any other action instituted by or on behalf of the complainant in any other forum, based on the same facts as alleged in the charge, together with a statement as to the status or disposition of such other action.

**2.001.04. Place and Manner of Filing.**

The charge may be filed by personal delivery, ordinary mail or registered or certified mail, addressed to the office of the Commission in Lincoln or any branch office of the Commission.

**2.001.05. Amendment of Charge.**

Notwithstanding the provisions of Section 2.001.03 of these Rules and Regulations, a charge may be amended as follows: to cure technical defects or omissions; to clarify and amplify allegations made therein; to allege additional acts which constitute discriminatory unequal pay practices which are related to or growing out of the subject matter of the original charge. All such amendments will relate back to the original filing date. Upon any amendment of a charge, a copy thereof shall promptly be served by the Commission on the respondent by certified or registered mail or through personal service.

**2.001.06. Answer to Charge.**

The respondent may file an answer to the charge at any time prior to the expiration of twenty (20) days after she or he receives the charge. The answer shall be sworn to before a notary public. With leave of the Commission an answer may be amended at any time. The Commission will permit answers to be amended whenever it believes it would be reasonable and fair to do so.

**2.001.07. Withdrawal of Charge.**

A filed charge or any part thereof may be withdrawn, by request in writing by the complainant, and written notice of any such withdrawal shall be sent to the Commission, by registered or certified mail, to all parties who have been previously notified of the charge.

**2.002. Action upon Charge.**

**2.002.01. Duties of Commission Staff.**

Each charge shall be docketed and given a case number, and a copy of said charge shall promptly be served by the Commission on the respondent in person or by registered or certified mail.

**2.002.02. Investigation.**

The Commission shall institute an investigation by its employees to ascertain all of the facts relating to the alleged discriminatory unequal pay practice or practices set forth in the charge. The staff shall initially solicit information from all parties and utilize interrogatories, depositions,

or subpoenas to facilitate a prompt investigation. Interrogatories shall be answered within fifteen (15) days of receipt and the person to whom the interrogatories are directed shall be so informed. The Commission's staff may enter the place of employment of any employer to inspect and copy payrolls and other employment records, to compare character of work and operations of employees and question such employees.

### **2.002.03. Dismissal.**

The report of the investigation shall be presented to the Commission by the Executive Director. The Commission shall dismiss the charge (i) if it is determined that there is not sufficient evidence to sustain a finding of reasonable cause to believe that the discriminatory unequal pay practice was committed; or (ii) if the matter is adjusted and settled during the investigation; or (iii) if it is determined that the Commission does not have jurisdiction over the matter; or (iv) if the complainant fails to cooperate fully in the investigation of a charge.

No Commission employee during the investigation of a charge shall propose terms of settlement and adjustment to the respondent's attorney or to the respondent; but, at the request of the respondent's attorney or the respondent, may advise the respondent of possible terms of settlement and adjustment, and shall communicate to the complainant and to the Commission any terms of settlement and adjustment proposed by the respondent. Any terms of settlement arrived at during the investigation shall be submitted to the Commission and the charge shall be dismissed, and the case closed as having been adjusted and settled during the investigation.

The Commission shall notify all parties of any dismissal of a charge by registered or certified mail, which notification shall specify the reason or reasons for dismissal.

### **2.003. Reasonable Cause Findings.**

#### **2.003.01. Conciliation.**

If the Commission, based upon the report of its investigation by its employees, determines that there is reasonable cause to believe that the alleged discriminatory pay practice has been committed, the Commission shall appoint a Commissioner, or an employee of the Commission to undertake a conciliation conference with the respondent and complainant in order to eliminate the effect of the discriminatory unequal pay practice and to prevent repetition thereof.

Both the complainant and the respondent shall be notified of the time and place of the conciliation conference by registered or certified mail at least ten (ten) days prior to the date set for the conference, and the notice shall advise the parties of the conciliator who will participate in said conference either in person or by attorney, or both. The place of the conference designated by the Commission shall be at a place reasonably convenient for the parties. In the

event of failure or refusal of the respondent to appear or participate in the conciliation conference, the Commission may bring any legal action necessary on behalf of the Complainant.

**2.003.02. Non-disclosure.**

The members of the Commission and its staff shall not make public what has occurred in any conciliation conference without the written consent of both parties except evidence concerning endeavors at a conciliation conference may be made public if legal action is taken.

**2003.03. Settlement and Order.**

**2.003.03A. Settlement Terms Approved by the Commission.**

If a settlement is effected in a conciliation conference, the terms of which are approved by the Commission, the Commission shall have the written terms of settlement and adjustment prepared and signed by the parties; and the Commission shall thereupon enter upon all parties an Order in accord with the executed written terms of settlement and adjustment. Any such Order shall specify the right of the Commission to investigate and determine, at reasonable times, whether the terms of settlement and adjustment and the Order entered pursuant thereto have been or are being complied with. If the Commission determines that the respondent has violated or is violating the terms of settlement and adjustment and the Order entered pursuant thereto, the Commission may take necessary legal action on behalf of the complainant.

**2.003.03B. Dismissal.**

The Commission may, without the consent of the complainant, dismiss the charge if, in its opinion, matter brought forth in the conciliation conference establishes that the respondent has eliminated the effects of the alleged discriminatory unequal pay practice with respect to the complainant or if the respondent has offered in good faith to eliminate the effects of the alleged discriminatory unequal pay practice with respect to the complainant in such manner as to effectuate the purposes of the Act and complainant has refused to accept such offer.

**2.003.03C. Terms Not Approved by the Commission.**

If the terms of settlement and adjustment agreed to by the parties are not approved by the Commission, the Commission need not enter upon the parties any Order in accord with said terms of settlement and adjustment, and may close the case as having been settled on terms not approved by the Commission; and in such event, the Commission need not take legal action on behalf of the complainant in the event of an alleged violation of the terms of settlement and adjustment.

**2.003.04. Time Limit and Waiver of Time Limit.**

Except as provided in section 2.003.03 of these Rules and Regulations, within ninety (90) days after a Commission ruling of reasonable cause on a charge that has been properly filed with the Commission, the Commission shall make a decision either to take legal action necessary on behalf of the complainant or to dismiss the charge. The ninety (90) day time limit may be waived if both parties agree to do so in writing, provided, that even when both parties agree in writing to a waiver of the ninety (90) day time limitation, the Commission may in its discretion anytime after ninety (90) days from its reasonable cause finding determine that conciliation efforts have failed and promptly take legal action necessary on behalf of the complainant by petitioning a court of competent jurisdiction to restrain violations of the Act.

### **Chapter 3. Subpoenas; Attendance; Fees; Oaths and Affirmations.**

#### **3.001. Subpoenas.**

##### **3.001.01. Issuance of Subpoena.**

Whenever in the discretion of the Commission it is deemed necessary to compel the attendance of witnesses or the production for examination of any books and papers relating to any matter under investigation or in question before the Commission, the Commission may issue a subpoena and thereby compel such attendance of witnesses or production for examination of books and papers.

##### **3.001.02. Issuance of Subpoena at Instance of Party.**

The Commission shall issue such subpoena at the instance of any party to a proceeding upon a showing of necessity therefore.

#### **3.002. Fees.**

Where a subpoena is applied for and issued at the instance of any party to a complaint or other proceeding, the cost of service, witness and mileage fees shall be borne by the party at whose instance it has been requested and issued unless otherwise ordered by the Commission. Where a subpoena is issued at the instance of the Commission or any member thereof, the cost of such service, witness and mileage fees shall be borne by the Commission. Such witness and mileage fees shall be made in an amount allowed under the rules governing such payment by the district courts of the State of Nebraska.

#### **3.003. Petition to Revoke Subpoena.**

##### **3.003.01.**



Within five (5) days (excluding Saturdays, Sundays and official State holidays) after the service of a subpoena on any person, including the chairman or any Commissioner, requiring the attendance of said person as a witness at an investigation, or requiring the production of any evidence in her or his possession or under her or his control, such person may petition the Commission in writing, personally or by registered or certified mail, to revoke the subpoena. The Commission shall revoke such subpoena if, in its opinion, the attendance of the person subpoenaed or the evidence, the production of which is required does not relate to any matter under investigation or to any matter in question in such proceedings before the Commission, or if in its opinion, such subpoena does not describe with sufficient particularity the reasons requiring the attendance of a person as a witness, or the evidence, the production of which is required. If the Chairman or any Commissioner has been served with a subpoena, then the Chairman or Commissioner so served shall not participate in the decision of the Commission with respect to such petition.

**3.003.02.**

If a petition to revoke a subpoena is properly served, the person on whom the subpoena has been served shall not be required to respond to such subpoena until the Commission has acted upon the petition.

**3.004. Failure to Obey Subpoena.**

On the failure of any person to obey a subpoena issued by the Commission, the Commission shall make application to the district court of the county in which the witness resides or transacts business or is found, for an order from the court for such person to show cause why she or he shall not be held in contempt of court except as provided in Section 3.003.

**3.005. Oaths and Affirmations.**

Any Commissioner participating in an investigation may administer oaths or affirmations.

**Chapter 4. Service.**

**4.001. Manner of Service.**

Complaints, orders and other process and proper papers may be served personally or by registered or certified mail, unless otherwise allowed by the Act and by these Rules and Regulations, in which event, service may be made by ordinary first-class mail, postage prepaid.

**4.002. Proof of Service.**

Proof of service, where required by the Act, or by these Rules and Regulations, shall consist of either the verified return of the individual who made service, which return shall set forth the manner of such service or the return receipt from service by certified or registered mail.

**4.003. Service on Parties' Attorneys.**

The attorney representing any party in any proceedings under the Act shall file her or his appearance with the Commission, and thereafter all notices, orders and other documents served by the Commission shall be served upon said attorney instead of upon the party she or he represents, until said attorney or said party notifies the Commission in writing that said attorney no longer represents or is authorized to represent said party.

**Chapter 5. Construction of Rules and Regulations.**

**5.001.**

These Rules and Regulations shall be construed to effectuate the purposes of the Act, and the public policy of the State of Nebraska as expressed in the Act, and shall not be construed or applied in a manner inconsistent with the provisions of the Act.

**Chapter 6. Availability of Rules and Regulations.**

**6.001.**

The Rules and Regulations of the Commission shall be available to the public at the office of the Commission.

**Chapter 7. Adoption, Amendment and Recision.**

**7.001. Effective Date.**

These Rules and Regulations shall become effective five (5) days after the filing of a certified copy thereof with the Revisor of Regulations of the State of Nebraska.

**7.002. Adoption, Amendment and Recision.**

The Commission may adopt, amend or rescind any Rule or Regulation not inconsistent with the provisions of the Act at a regular or special meeting of the Commission, provided that at least a quorum of the Commission is present at such meeting and that written notice of the proposed adoption, amendment or recision has been given to all members of the Commission at least five (5) days before the meeting at which such action is to be taken and provided further that the

Nebraska Rules of Administrative Agencies sections 84-901 to 84-910 have been satisfied. Any Rule or Regulation so adopted, amended or rescinded shall become effective five (5) days after filing of a certified copy thereof with the Revisor of Regulations of the State of Nebraska.

**7.003. Rules; Petition for Promulgation, Amendment or Repeal.**

Any interested person may petition the Commission requesting the promulgation, amendment or repeal of any rule. Such petition shall be in writing and signed by the petitioner or petitioners and shall clearly state the rule or amendment desired, if such be the case. The petition shall further state the grounds urged in support of the requested promulgation, amendment or repeal. If, in the judgment of the Commission, it should appear that the requested rule, amendment or repeal would serve no useful or beneficial purpose, the Commission may reject the same, with or without having first afforded the petitioner a hearing.

**Chapter 8. Declaration of Validity.**

**8.001.**

If any article of this Act or any part of any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof.

The former mentioned herein can be obtained from the office(s) of the Nebraska Equal Opportunity Commission.