

City of Lincoln, Nebraska

COMMISSION ON HUMAN RIGHTS

Guide
to
Discrimination Complaints
and
Adjudication Procedures

555 South 10th Street, Suite 304
Lincoln, NE 68508
humanrights.lincoln.ne.gov
Main Line: (402) 441-7624
Fax: (402) 441-6937



humanrights.lincoln.ne.gov • 402-441-7624 • 555 S. 10th St., Ste. 304, Lincoln, NE 68508

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Leirion Gaylor Baird
Mayor of Lincoln

Mindy Rush Chipman
Director

Notes:

Complainant. The Hearing Officer will prepare a report and submit it to the Commissioners for the final ruling and entry of a final order.

Compensation

If the Respondent is found liable after the Public Hearing, the Commission may award the Complainant one or more of the following types of relief, based on the evidence of damages the Complainant has presented:

- **Out-of-Pocket Damages.** Reimbursement for financial losses resulting from the discrimination, such as back pay or moving costs if forced out of an apartment or rental home.
- **Emotional Distress Damages.** Compensation for the distress the Complainant proved was caused by the discrimination.
- **Injunctive Relief.** Orders the Respondent to do or not to do something, such as ceasing a discriminatory policy or installing a wheelchair ramp.
- **Fine.** Payment to the City of Lincoln for violation of Title 11 of the Lincoln Municipal Code, Equal Opportunity Ordinance, in housing cases only.

Questions?

Contact the Lincoln Commission on Human Rights at (402) 441-7624 with any questions about these procedures. Copies of the applicable Title 11 Lincoln Municipal Code, Equal Opportunity Ordinance, and the Commission's Rules and Regulations are available at the Commission's office. You may also visit our website at humanrights.lincoln.ne.gov.

This booklet provides a general overview of the complaint and investigative process. Please note that the Commission has specific regulations and procedures which apply to each case. Any individual case may proceed differently from what is described below. Contact your assigned investigator for any clarification specific to your case or an attorney for any legal guidance.

Overview

The Lincoln Commission on Human Rights (Commission) is a NEUTRAL agency. Though we assist the Complainant with filing their discrimination complaint, **we do not represent or advocate for either party.** The Commission does not choose which cases should be filed based on an assumption that discrimination occurred. Rather, if the Commission does not discover any jurisdictional issues, the Complainant is able to file their complaint.

This is an administrative process and not a lawsuit. The Commission will not advise you on what actions to take. If you would like to consult with an attorney, you may do so at any time. However, you are not required to obtain an attorney for this process.

The job of the Commission is to conduct a thorough and neutral investigation into your complaint. After the investigation, our Commissioners will make a determination in your case. When the opportunity arises, the Commission will assist both parties with mediation and/or discussing settlement. Once you have completed the administrative process, regardless of the determination made in your case, you may pursue legal action in court.

Discrimination & Jurisdictional Requirements

To be successful in a discrimination case, the Complainant (individual filing the complaint) must be able to prove they were subjected to **unequal treatment** by a covered individual, business, or housing provider (known as the Respondent), based on a **preponderance of the evidence** (more likely than not) in employment and public accommodation cases and based on the **reasonable cause standard** (more than mere suspicion) in housing cases.

The unequal treatment must be based on the Complainant's status in one or more of the **protected classes** listed below and not due to other legitimate, non-discriminatory reasons.

Sex	National Origin or Ancestry
Age **	Disability
Race	Retaliation
Color	Marital Status
Religion	Familial Status *

* covered only in housing cases

** covered only in employment cases

The conduct must have occurred with the Complainant's place of employment, housing, or a public accommodation, within the city limits of Lincoln.

The complaint must be filed within one year of the date of the alleged discriminatory action.

conciliation, discussion, and negotiation.

In the event that conciliation is unsuccessful, the case may proceed to an administrative hearing. At that time, the case becomes public record.

Complainants may file housing complaints in court at any time during the investigation. If that occurs, the complaint filed with Commission will be administratively closed.

Administrative Hearing

After a reasonable cause finding and unsuccessful conciliation, a public hearing may be ordered. The hearing is considered a trial, but is somewhat less formal than court. A Hearing Officer, who is an attorney, presides over the hearing and manages the hearing process.

No one is required to have an attorney, but it is recommended. **The Commission does not represent either party and does not present evidence at the hearing. However, a City Attorney will represent the interests of the Commission.** Either party may review the Commission's investigative file, upon 48 hours' notice, to identify evidence.

At the hearing, the Complainant is required to present evidence, such as witness testimony and documents, to prove discrimination occurred and to establish what damages he or she has incurred. Witnesses may be subpoenaed for their testimony and may be cross-examined by the other party.

After the hearing, the Hearing Officer writes a recommended decision, either affirming reasonable cause or determining no cause exists to believe discrimination occurred, including the factual and legal reasons for the recommendation. If the Hearing Officer affirms the reasonable cause finding, the Hearing Officer will propose appropriate relief for the

Procedures After the Investigation

Employment cases only: if the Commissioners determine there is **no reasonable cause** to believe discrimination occurred, and the case was dually filed with the EEOC, the Complainant has 15-days to request a substantial weight review. This request must be in writing and mailed to the address below. The EEOC will also mail you a Notice of Right to Sue within 90-days of your case being closed.

EEOC St. Louis District Office
ATTN: Joseph Wilson
1222 Spruce St., Rm., 8.100
St. Louis, MO 63103

Housing cases only: If the Commission determines there is **no reasonable cause** to believe discrimination occurred, the Complainant may submit a written request for a reconsideration review to:

Director
FHEO Office of Enforcement
U.S. Department of Housing and Urban Development
451 7th Street, SW
Room 5206
Washington, DC 20410-2000

After a no reasonable cause determination, regardless if the case is for employment, housing, or public accommodation, the case will be closed with the Commission. There is no appeal process with the Commission. At this time, you may choose to file your complaint in court. **The Commission does not assist either party with pursuing legal action.**

If the Commissioners determine there is **reasonable cause** to believe discrimination occurred, the Commission will work with both parties to reach a resolution through informal

Please note this is only a general statement of the legal standard for establishing discrimination. For example, additional and/or different legal standards apply to complaints regarding sexual harassment and the failure to reasonably accommodate a disability. It is important to realize that **not all unfavorable or unfair treatment is discriminatory.** However, a complainant may have other legal remedies, which may be pursued whether or not a complaint is filed with the Commission.

Filing a Complaint

To file a discrimination complaint, please contact the Commission at (402) 441-7624. A staff member will ask you several questions to determine if you meet jurisdictional requirements. If the requirements are not met, the Commission may refer you elsewhere. If the requirements are met, an intake interview will be scheduled. Due to limited staffing, **investigators cannot accommodate walk-ins.**

Please come prepared for the intake interview with all pertinent information and documents, such as: correct names of individuals involved, contact information for witnesses, specific dates events occurred, and the name and location of the Respondent. This interview typically lasts one hour.

Once the intake interview is conducted, the investigator will prepare the Complainant's complaint and schedule a time for the Complainant to review and file it. Only when a complaint is filed will the Respondent be made aware of your contact with the Commission. The complaint is not filed against a specific individual, but against the entity of the company.

An investigator is generally assigned to a case within 2-4 months of filing the complaint. The Commission sends a copy of the complaint, by certified mail, to the Respondent within ten days of filing. The respondent then has 20-days to respond to an employment or public accommodations complaint and 10-days to respond to a housing complaint. The Respondent will also have the opportunity to discuss settlement options at this time.

Timeliness of the Case

Some cases are resolved by mediation or settlement within several weeks or months of a complaint being filed. Cases that require full investigations are *usually* completely within six months, but may take up to a year.

When the Commission has a backlog of cases, investigators are expected to work on older cases first, which may result in your case not being assigned for investigation until several months after filing your complaint. If a reasonable cause determination is found, conciliation discussions and, if applicable, a public hearing, may take place over several additional months. Due to these reasons, **the Commission cannot provide immediate remedies to Complainants.**

Settlement Before & During the Investigation

In each case, the investigator will speak with the parties about whether they wish to settle the case before the investigation is completed. Settlement is voluntary. The investigator will not pressure either side to settle and will not propose settlement terms, but will facilitate discussion if both sides are interested. Either party may contact the investigator to initiate settlement negotiations at any time.

The Investigation

Please note that a Complainant's failure to cooperate with the investigation, or to keep the investigator informed of his or her current address and telephone number, can lead to dismissal of the case. A Respondent's failure to respond to the complaint can lead to default or other sanctions. A Complainant who no longer wishes to proceed with a case may request to withdraw the complaint, which will stop the Commission's proceedings.

When the investigation commences, the Complainant will be notified by letter and instructed to contact the investigator to schedule a rebuttal interview within 10-days. During this interview, the Complainant will have an opportunity to hear the Respondent's response to the complaint. At this time, the Complainant may provide any additional witnesses or documentation to support their allegations. **The investigators decide which witnesses are interviewed.**

The investigator will then proceed with additional interviews and gathering evidence. **Remember, it is not the investigator's job to prove your case.** Both parties will need to supply their own supplemental information to support their narrative.

The investigator will then prepare an investigative report which annotates evidence provided by the Complainant, Respondent, and any outside parties. The report is reviewed by a nine-member Commission (known as Commissioners), made up of volunteers who are appointed by the Mayor and confirmed by the City Council. **The Commissioners, not the investigator, will make a final determination.**