

Statutory Authority

AA/EEO

Ohio Administrative Code 123:1-49

123:1-49-02 Duties of the state employees equal opportunity

The Division of Equal Employment Opportunity for State Personnel (hereinafter sometimes referred to as the "Division") is hereby created within the Department of State Personnel. The Division shall be under the direct supervision of a chief, who shall serve as State Employees Equal Opportunity Coordinator (hereinafter referred to as "State Employees EEO Coordinator"). The Division shall provide leadership and guidance to departments and agencies in the conduct of equal employment opportunity programs for the employees of and applicants for employment within the agencies. The State Employees EEO Coordinator shall adopt regulations and issue procedures to implement the EEO regulations.

HISTORY: (former PL-36-02); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-03 Responsibilities of state agencies in regard to EEO.

(A) Each state agency shall be primarily responsible for carrying out the requirements of these regulations and subsequent procedures. The agency shall furnish such information and assistance, as may be required by the State Employees EEO Coordinator. Such information shall include statistical data on minority and women applicant flow, employment, promotion and any other information relevant to the administration of this regulation.

(B) The head of each agency shall establish and promulgate a program to carry out the agency's responsibilities under these regulations. Each agency head shall also designate an agency Affirmative Action Executive who shall have sufficient knowledge and experience to handle the assignment.

(C) An Affirmative Action Executive may be named for a group of participating agencies when the department, board and commissions are too small for each to have a full time executive. Ultimate responsibility for the agency's affirmative action program rests with the agency head.

(D) The head of the agency may also designate Deputy Affirmative Action Executives and assign clerical support to assist the Affirmative Action Executives in the performance of his or her duties.

(E) The names of the Affirmative Action Executives and the Deputy Affirmative Action Executives, their addresses and telephone numbers, and any change made in their designation shall be furnished to the State Employees EEO Coordinator.

HISTORY: (former PL-36-03); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-04 Establishment of affirmative action plan.

Each Agency shall establish, maintain, and carry out a continuing Affirmative Action Plan designed to promote equal opportunity in every aspect of agency personnel policy and practice.

HISTORY: (former PL-36-04); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1 49-05 Characteristics of an affirmative action program.

In addition to the Affirmative Action Plan required by 123:1-49-04 an agency shall also:

(A) Periodically appraise its personnel operations to assure their conformity with these regulations and the agency's plan.

(B) Appoint an Affirmative Action Executive whose functions are:

(1) Advising the head of the agency with respect to the preparation of equal employment opportunity programs, procedures, regulations, reports, and the agency's Affirmative Action Plan.

(2) Evaluating from time to time the sufficiency of the total agency program for equal employment opportunity and reporting thereon to the head of the agency with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial or supervisory employees who have failed to cooperate fully or who are in violation of the program.

(3) Make changes in programs and procedures designed to eliminate discriminatory practices when so authorized by the head of the agency.

(4) Evaluating tests, employment policies, practices and qualifications and reporting to the head of the agency and to the State Employees EEO Coordinator any such policies, practices and qualifications which have unequal impact on minorities and women. This function shall be performed in cooperation with the Department of State Personnel.

(5) Providing for counseling of any aggrieved employee or applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, or national origin.

(6) Providing for receipt and investigation of individual complaints of discrimination in personnel matters within the agency, and for attempting to resolve on an informal basis the matter raised by the employee or applicant in a complaint of discrimination.

(C) Publish the functions, rules and activities of the office by posting the following information on official bulletin boards:

(1) The name and address of the State Employees EEO Coordinator.

(2) The names and addresses of the Appointing Authority, Affirmative Action Executive, and Deputy Affirmative Action Executive: and the fact they are available to counsel employees or applicants for employment who believe they have been discriminated against because of race, color, religion, sex, national origin, age or handicap.

(3) The right of each employee and applicant for employment who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age or handicap to file a complaint.

(4) The complaint procedure and time limits for such complaints as established by these regulations.

(D) Follow the Equal Employment Opportunity Commission Guidelines adopted by reference in 123:1-49-06 of these regulations.

(E) Submit annually for the review and approval of the Division of Equal Employment Opportunity for State Personnel written equal employment opportunity plans of action. Affirmative Action Plan shall be submitted in a format prescribed by said Division.

HISTORY: (former PL.36-05); Eff 8.13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-06 Adoption of equal employment opportunity commission guidelines.

The Federal Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex, 29 C.F.R. 1604; Guidelines on Discrimination Because of Religion, 29 C.F.R. 1605; Guidelines on Discrimination Because of National Origin, 29 C.F.R. 1606; and Guidelines on Employment Selection Procedure, 29 C.F.R. 1607, are hereby adopted by reference and incorporated into this regulation as though fully set forth herein.

HISTORY: (former PL-36-06); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1 49-07 Division review.

The Division shall review and evaluate agency program operations periodically, obtain such reports, as it deems necessary, and report to the Governor and the Director of the Department of State Personnel as appropriate on overall progress. When it finds that an agency program is not in conformity with these regulations, the Division shall require improvement or corrective action to bring the agency's program into conformity with these regulations.

HISTORY: (former PL-36-07); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-08 Filing and presentation of complaints.

(A) Each agency shall have a procedure for accepting complaints from any aggrieved employee or applicant for employment with that agency. Complaints can be filed in person or by an authorized representative, for an individual who believes that he or she has been discriminated against because of race, color, religion, sex, national origin, age or handicap.

(B) A complainant may only file a single complaint based upon any given allegation of discrimination.

HISTORY: (former PL-36-08); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1 149-109 Complaints in writing.

Complaints shall be in writing and shall be filed with either an appropriate agency official or with the Division of Equal Employment Opportunity for State Personnel. Those filed with the Division shall be referred to the agency for processing. The appropriate agency officials to receive complaints are the Agency Head, the Affirmative Action Executive or a Deputy Affirmative Action Executive. The complaint may be delivered in person or submitted by certified or registered mail.

HISTORY: (former PL-36-09); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-10 Format of complaints.

(A) The complaint should include the name, address, and telephone number of the complainant; the name of the person or persons committing the alleged discrimination; a description of the acts considered to be discriminatory; a statement as to any other action or proceeding instituted in any other forum based upon the same facts as are alleged in the complaint, together with a statement as to the status or disposition of such other action; and any other pertinent information which will assist in the investigation and resolution of the complaint. The complaint shall be signed by the complainant.

(B) Where a complaint contains incomplete information, the agency shall promptly seek the needed information from the complainant.

HISTORY: (former PL.36-10); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-11 Filing of complaint.

(A) The complaint must be filed within 30 calendar days of the date of the matter causing complainant to believe he or she has been discriminated against.

(B) A complaint shall be deemed filed on the date it is received, if delivered to an appropriate official, or on the date postmarked (if validated by certified or registered mail) if addressed to an appropriate official designated to receive complaints. The agency shall acknowledge receipt of the complaint to the complainant or his or her representative in writing and advise the complainant in writing of the grievance procedure under this regulation and of his or her right to file a charge affidavit with the Ohio Civil Rights Commission under Title VII of the Civil Rights Act of 1964, including the time limits imposed on the exercise of these rights.

(C) The agency, shall extend the time limits in this section when the complainant shows that he or she was not notified of the time limits and was not otherwise aware of them, or that he or she was prevented by circumstances beyond his or her control from submitting the matter within the time limits, or for other reasons considered sufficient by the agency.

HISTORY: (former PL-36-11); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/7

123:1-49-12 Complainant's right to have representation.

At any stage in the presentation of a complaint the complainant shall have the right to be accompanied, represented, and advised by a representative of his or her own choosing. If the complainant is an employee of the agency, a reasonable amount of time off from work to present his or her complaint must be given by the appointing authority. If the complainant is an employee

of the agency and has designated another employee of the agency as his or her representative, the representative as well as the complainant shall be given a reasonable amount of time off from work to present the complaint.

HISTORY: (former PL-36-12); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-13 Rejection or cancellation of complaint.

The State Employees Equal Employment Coordinator, Appointing Authority or the Affirmative Action Executive may reject a complaint which was not timely filed under 123:1-49-11 or where information is not supplied under 123:1-49-10, and shall reject those allegations in a complaint which are not within the purview of 123:1-49-08, or which sets forth identical matters as contained in a previous complaint filed by the same complainant which is pending in the agency or has been decided by the agency. The State Employees Equal Employment Coordinator, Appointing Authority or the Affirmative Action Executive, may dismiss a complaint because of failure of the complainant to prosecute the complaint. The decision to reject or dismiss the complaint shall be transmitted by letter to the complainant and the complainant's representative, if any. The decision letter shall inform the complainant of his or her right to file a charge with the Ohio Civil Rights Commission under Ohio Revised Code Chapter 4112 and with the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964 and of the time limits for filing such charges.

HISTORY: (former PL-36-13); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-14 Prehearing processing.

When complaints are filed with the agency, the agency shall transmit a copy of the complaint to the State Employees Equal Employment Opportunity Coordinator within fifteen (15) days of the receipt thereof. The Affirmative Action Executive or his designee shall counsel the aggrieved person concerning the issues in the matter, and attempt to resolve the complaint informally prior to investigation. If the complaint is not resolved in this matter, the Affirmative Action Executive shall provide for a prompt investigation of the complaint. The investigation shall include a thorough review of the circumstances under which the alleged discrimination occurred and of the treatment of members of the complainant's group identified by his complaint as compared with the treatment of other employees in the organizational segment in which the alleged discrimination occurred. Information needed to apprise the complainant shall be recorded in this investigative file. The term "investigative file" shall mean the various documents and information acquired during the investigation under this section-including affidavits of the complainant, of the alleged discriminating official, and of the witnesses and copies of, or extracts from, records, policy statements, or regulations of the agency-organized to show their relevance to the complaint or the general environment out of which the complaint arose.

HISTORY: (former PL-36-14); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-15 Informal adjustment of complaint.

(A) The agency shall provide an opportunity for informal adjustment of the complaint after the complainant has reviewed the investigative file. The agency shall allow the complainant or the complainant's representative a reasonable amount of time off from work to review the investigative file promptly after the file is completed by the Affirmative Action Executive or

designee, and provide opportunity for the complainant to discuss the investigative file with the Affirmative Action Executive or designee. If an informal adjustment of the complaint is arrived at, the terms of the adjustment shall be in writing and made part of the complaint file, with a copy of the terms of the adjustment provided to the complainant. If the agency does not carry out, or rescinds, any action specified by the terms of the adjustment, the agency shall reinstate the complaint for further processing from the point processing ceased under the terms of the adjustment.

(B) If an informal adjustment of the complaint, satisfactory to both complainant and the agency is not arrived at the complainant shall be notified in writing by the Affirmative Action Executive or designee:

(1) Of the proposed disposition of complaint, including dismissal based on the findings.

(2) Of his or her right either with or without a hearing of a decision by the Appointing Authority and the Affirmative Action Executive if said complainant notifies the agency in writing within fifteen (15) calendar days of the receipt of the notice that he or she desires a hearing.

(C) If the complainant fails to notify the agency of his or her wishes within the fifteen (15) day period prescribed in paragraph (B)(2) of this section, the agency shall notify the complainant by letter of the decision. This letter shall also inform the complainant of his or her right to file a charge affidavit with the Ohio Civil Rights Commission under Chapter 4112 of the Ohio Revised Code and with the Equal Opportunity Commission under Title VII of the Civil Rights Act of 1964. The decision of the agency shall be subject to review by the State Employees Equal Employment Opportunity Coordinator who shall notify the complainant and the complainant's representative by letter of the disposition of the complaint.

HISTORY: (former PL.36-15); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-16 Freedom from reprisal or interference.

Complainants, their representatives, and witnesses shall be free from restraint, interference, coercion, discrimination, or reprisal at any stage in the presentation and processing of a complaint.

HISTORY: (former PL-36-16); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-17 Choice of review procedures.

(A) Choice of review procedures: A complainant, his or her representative, or a witness who alleges restraint, interference, coercion, discrimination, or reprisal in connection with the presentation of a complaint under this Subpart may have the allegation reviewed as an individual complaint of discrimination or as a charge subject to paragraph (B) of this section.

(B) Procedure for review of charges:

(1) An employee or applicant may file a charge of restraint, interference, coercion, discrimination, or reprisal, in connection with the presentation of a complaint with an appropriate agency official as defined in 123:1-49-09, within fifteen (15) calendar days of the date of the alleged occurrence. The charge shall be in writing and shall contain all pertinent facts. Except as provided in subparagraph (2) of this paragraph, the agency shall undertake an appropriate inquiry into such a charge and shall forward to the Division within fifteen (15) calendar days of the date of its receipt

a copy of the charge and report of action taken. The agency shall also provide the charging party with a copy of the report of action taken. When the agency has not completed an appropriate inquiry fifteen (15) calendar days after receipt of such a charge, the charging party may submit a written statement with all pertinent facts to the Division, and the Division shall require the agency to take whatever action is appropriate.

(2) When a complainant, after completion of the investigation of his or her complaint under 123:1-49-14 requests a hearing and in connection with that complaint alleges restraint, interference, coercion, discrimination, or reprisal, the complaints examiner assigned to hold the hearing shall consider the allegations as an issue in the complaint at hand or refer the matter to the agency for further processing under the procedure chosen by the complainant pursuant to paragraph (A) of this section.

HISTORY: (former PL-36-17); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-18 Hearing.

The hearing shall be held by the complaint examiner who must be an employee of another agency or who may be an employee of the Division. The agency in which the complaint arose shall request the Division of Equal Employment Opportunity for State Personnel to supply the name of a complaints examiner who has been certified by the Division as qualified to conduct a hearing under this section.

HISTORY: (former PL-36-18); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-19 Transmittal of complaint file.

The agency in which the complaint arose shall transmit all the documents which have been acquired up to that point in the processing of the complaint to the complaints examiner who shall review the complaint file to determine whether further investigation is needed before scheduling the hearings. When the complaints examiner determines that further investigation is needed, he or she shall remand the complaint to the Affirmative Action Executive for further investigation or arrange for the appearance of witnesses necessary to supply the needed information at the hearings. The complaint examiner shall schedule the hearing for a convenient time and place.

HISTORY: (former PL-36-19); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1 49-20 Conduct of hearing.

The complaints examiner shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. The official rules of evidence applicable to civil proceedings shall be followed but may be liberally construed. Information having a bearing on the complaint or employment policy or practices relevant to the complaint shall be received in evidence, but the hearing officer may exclude irrelevant or unduly repetitious evidence. The complainant, his or her representative, and representatives of the agency at the hearing shall be given the opportunity to cross-examine witnesses who appear and testify.

HISTORY: (former PL-36-20); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1 49-21 Powers of complaints examiner.

The complaints examiner shall have the power to:

(A) Regulate the course of the hearing:

(B) Rule on offers of proof:

(C) Limit the number of witnesses whose testimony would be unduly repetitious; and

(D) Exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing.

HISTORY: (former PL-36-21); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-22 Responsibilities of agency in hearing.

The complaints examiner shall request the agency to make available as a witness at the hearing any employee requested by the complainant when he or she determines that the testimony of the employee is necessary. The complaints examiner may also request the appearance of an employee of any state agency whose testimony he or she determines is necessary to furnish information pertinent to the complainant under consideration. The complaints examiner shall give the complainant his or her reasons for the denial of a request for the appearance of employees as witnesses and shall insert those reasons in the record of the hearing. An agency to whom a request is made must make its employees available as witnesses at a hearing on a complaint when requested to do so by the complaints examiner. Any Appointing Authority who has not allowed the employee to testify must state the reasons in writing for the hearing officer. The agency to whom request is made shall provide an explanation to the complaints examiner. If the explanation is inadequate, the complaints examiner shall insert it in the record of the hearing, provide a copy to the complainant, and make arrangements to secure testimony from the employee through a written interrogatory. An employee of an agency shall be in pay status during the time he or she is made available as a witness. The agency should be billed for expenditures involved in the hearing by the Division.

HISTORY: (former PL-36-22); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-23 Documents part of hearings record.

All documents submitted to, and accepted by, the complaints examiner at the hearing shall be made part of the record of the hearing. If the agency submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, he or she shall make the document available to the agency representative for reproduction.

HISTORY: (former PL-36-23); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123: 1-49-24 Decision transmittal.

The complaints examiner shall transmit to the head of the agency or his or her designee (1) the complaint file (including documents accepted at the hearing), (2) the findings and analysis of the complaints examiner and (3) the recommended decision on the merits of the complaint, including remedial action, where appropriate. The complaints examiner shall make such decision within one week of the conclusion of the hearing. In addition, the complaints examiner may transmit, by separate letter to the State Employees EEO Coordinator, whatever findings and recommendations he or she considers appropriate with respect to conditions in the agency having no bearing on the matter which gave rise to the complaint.

HISTORY: (former PL-36-24); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-25 Prompt resolution of complaint.

The complaint shall be resolved promptly. To this end the complainant and the agency shall proceed with the complaint without undue delay so that the complaint is resolved within 120 calendar days after it was filed, including time spent in the processing of the complaint by the complaints examiner.

HISTORY: (former PL-36-25); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123: 1-49-26 Monthly reports of complaints.

The Affirmative Action Executive shall furnish the Division of Equal Employment Opportunity for State Personnel monthly reports on all complaints pending within the agency in a form specified by the Division. If an agency has not issued a final decision, and has not requested the Division to supply a complaints examiner, within 60 days from the date the complaint was filed, the Division may require the agency to take special measures to insure prompt processing of the complaint.

HISTORY: (former PL-36-26); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123: 1-49-27 Complaint examiner's decision binding.

When the complaints examiner has submitted a recommended decision finding discrimination and the agency has not issued a final decision within 30 calendar days after the complaints examiner's recommended decision it shall become binding on the agency. In such event, the agency shall notify the complainant of the decision and furnish to him or her a copy of the findings, analysis, and the decision of the complaints examiner under 123:1-49-24.

HISTORY: (former PL-36-27); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-28 Decisions based on information in complaint file.

The Appointing Authority or Affirmative Action Executive shall make the decision of the agency on a complaint based on information in the complaint file.

HISTORY: (former PL-36-28); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-29 Agency transmittal to complainant.

(A) The decision of the agency shall be in writing and shall be transmitted by letter to the complainant and his or her representatives. When there has been no hearing, the decision shall contain the specific reasons in detail for the agency's action, including any remedial action taken.

(B) When there has been a hearing on the complaint, the decision letter shall transmit a copy of the findings, analysis and recommend decision of the complaints examiner under 123:1-49-24. The decision of the agency shall adopt, reject, or modify the decision recommended by the complaints examiner. If the decision is to reject or modify the recommended decision, the decision letter shall set forth the reasons for rejection or modification.

(C) When there has been no hearing and no decision under 123:1-49-15, a letter setting forth the findings and analysis of the head of the agency or the Affirmative Action Executive shall be issued.

HISTORY: (former PL-36-29); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123; 1-49-30 Remedial action by agency.

The decision of the agency shall require any remedial action authorized by law determined to be necessary or desirable to resolve the issues of discrimination and to promote the policy of equal opportunity, whether or not there is a finding of discrimination. When discrimination is found, the agency shall require remedial action to be taken in accordance with 123:1-49-38, shall review the matter giving rise to the complaint to determine whether corrective action against alleged discriminatory officials is appropriate, and shall record in each alleged discriminatory official's employee history file the basis for its decision to take, or not to take corrective action but this decision shall not be included in the complaint file.

HISTORY: (former PL-36-30); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-31 Complaint file.

The agency shall establish a complaint file. Except as provided in 123:1-49-30, this file shall contain all documents pertinent to the complaint in such format and order as may be required by the Division. The complaint file shall not contain any document that has not been made available to the complainant or to the complainant's representative.

HISTORY: (former PL-36-31); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123: 1-49-32 Notification of right of appeal.

The decision letter shall inform the complainant of his or her right to appeal the decision of the agency to the Division and of the right to file a charge affidavit with the Ohio Civil Rights Commission in accordance with Chapter 4112 of the Ohio Revised Code, and with the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964, and of the time limits applicable thereto.

HISTORY: (former PL-36-32); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123: 1-49-33 Reasons for appeal.

A complainant may appeal the decision of the agency to the Division of Equal Opportunity for State Personnel:

(A) to reject the complaint, or a portion thereof, for reasons covered by 123:1-49-13; or

(B) to dismiss the complaint under 123:1-49-13 because of the complainant's failure to prosecute his/her complaints; or

(C) on the merits of the complaint, under 123:1-49-28, if the decision does not resolve the complaint to the complainant's satisfaction.

HISTORY: (former PL-36-33); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123: 1-49-34 Appeal in writing.

The complainant shall file his or her appeal in writing, either in person or by mail, with the Division of Equal Employment Opportunity for State Personnel, Department of State Personnel, 65 S. Front Street, Columbus, Ohio 43215. The appeal shall include a statement of the reasons for the appeal.

HISTORY: (former PL-36-34); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-35 Time limits for appeal.

The individual may file an appeal after receipt of the agency's notice of final decision of his or her complaint not later than fifteen (15) calendar days after receipt of the notice.

HISTORY: (former PL-36-35); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123: 1-49-36 Disposition of appeal by division.

The Division of Equal Employment Opportunity for State Personnel shall upon appeal review the complaint file and all relevant written information made to the Division. The Division may remand a complaint to the agency for further investigation or a rehearing if it considers that action necessary. Any further investigation or rehearing resulting from a remand from the Division shall be conducted according to the same rules as apply to an original investigation and hearing. There is no right of a hearing before the Division. The Division shall issue a written decision setting forth

its reasons for the decision and shall send copies thereof to the complainant, his or her designated representative, and the agency. When corrective action is ordered, the agency shall report promptly to the Division that the corrective action has been taken. The decision of the Division is final, but shall contain a notice of the right to file a charge affidavit with the Ohio Civil Rights Commission in accordance with Chapter 4112 of Ohio Revised Code, and with the Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.

HISTORY: (former PL-36.36); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123: 1-49-37 Reasons for reconsideration.

The Division may, in its discretion reopen and reconsider any previous decision when the party requesting reopening submits written argument or evidence which tends to establish that:

(A) New and material evidence is available that was not readily available when the previous decision was issued; or

(B) The previous decision involves an erroneous interpretation of law or regulation or a misapplication of established policy.

HISTORY: (former PL-36-37); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123: 1-49-38 Remedial action for applicants and employees.

(A) Remedial action involving an applicant.

(1) When an agency, or the Division, finds that an applicant for employment has been discriminated against and except for that discrimination would have been hired the agency shall offer the applicant employment of the type and grade denied him. The offer shall be made in writing. The individual shall have fifteen (15) calendar days from receipt of the offer within which to accept or decline the offer. Failure to notify the agency of his or her decision within the 15-day period will be considered a declination of the offer, unless the individual can show that circumstances beyond his or her control prevented him or her from responding within the time limit. If the offer is accepted, appointment shall be effective on the first Monday following the date of acceptance.

(2) When an agency, or the Division, finds that discrimination existed at the time the applicant was considered for employment but does not find that the individual is the one who would have been hired except for discrimination, the agency shall consider the individual for any existing vacancy of the type and grade for which he or she had been considered initially and for which he or she is qualified before consideration is given to other candidates. If the individual is not selected, the agency shall record the reasons for non-selection. If no vacancy exists, the agency shall give him or her this priority consideration for the next vacancy for which he or she is qualified.

(B) Remedial action involving an employee. When an agency, or the Division, finds that an employee of the agency was discriminated against and as a result of that discrimination was denied an employment benefit, or an administrative decision adverse to said employee was made, the agency shall take remedial actions which shall include one or more of the following, but need not be limited to these actions:

- (1) Retroactive promotion when the record clearly shows that but for the discrimination the employee would have been employed at a higher pay range.
- (2) Consideration for promotion to a position for which he or she is qualified before consideration is given to other candidates when the record shows that discrimination existed at the time selection for promotion was made but it is not clear that except for the discrimination the employee would have been promoted. If the individual is not selected, the agency shall record the reasons for non- selection.
- (3) Cancellation of an unwarranted personnel action involving the complainant and restoration of the employee.
- (4) Expungement from the agency's records of any reference to or any record of an unwarranted disciplinary action. Such records in Department of State Personnel and State Personnel Board of Review shall also be destroyed.
- (5) Full opportunity to participate in the employee benefit denied him or her (e.g. training, preferential work assignments, overtime scheduling).

HISTORY: (former PL-36-38); Eff 8.13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-39 Right to appeal to Ohio civil rights commission.

(A) Under Section 4112.05(B) of the Ohio Revised Code, an employee or applicant may file a charge affidavit with the Ohio Civil Rights Commission within six (6) months after the alleged unlawful discriminatory practices are committed. Under Title VII of the Civil Rights Act of 1964 an employee or applicant may file a charge with the Equal Employment Opportunity Commission within one hundred and eighty days after the alleged unlawful employment practice occurred. Filing a charge under this regulation does not in any way limit the rights of an individual to file a charge with the Ohio Civil Rights Commission or the Equal Employment Opportunity Commission.

(B) An agency shall notify an employee or applicant of his or her right to file a charge affidavit with the Ohio Civil Rights Commission, and of the six (6) month time limit for filing, and with the Equal Employment Opportunity Commission, and of the one hundred and eighty day time limit for filing in any final action on a complaint under 123:1-49-13, 123:1-49-15, 123:1-49-27, 123:1-49-28. The Division shall notify an employee or applicant of his or her right to file a charge and of the time limits for filing, in any decision under 123:1-49-36.

HISTORY: (former PL-36-39); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-40 Agency head to provide leadership in affirmative action planning.

The head of each agency shall exercise personal leadership in establishing, maintaining, carrying out and evaluating a continuing Affirmative Action Plan designed to promote equal opportunity in every aspect of agency personnel policy and practice in the recruitment, employment, development, advancement, and treatment of employees.

HISTORY: (former PL-36-40); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-41 General requirements of plans.

(A) An Affirmative Action Plan is a set of specific, result-oriented procedures to which all state agencies must apply every good faith effort. The objective is to insure equal employment opportunities for all persons. A workable Affirmative Action Plan must include an analysis of areas within which the agency is deficient in the hiring and promotion of members of minority groups and women. Each agency must establish goals and timetables to correct these deficiencies and increase materially the opportunities of minorities and women at all levels of state government. There must be identification and analysis of problem areas inherent in minority employment and evaluate the opportunities for minority group personnel. All barriers, legal or artificial, must be eliminated.

(B) Each agency shall include in its Affirmative Action Plan such information and analysis which the State Employees EEO Coordinator may require. This information shall include, but is not limited to, the following:

(1) Statistical evaluation of the agency's work force and information regarding the labor market composition.

(2) Goals, timetables and affirmative action commitments must be designed to correct any identifiable deficiencies. Such goals and timetables, with supporting data and the analysis thereof shall be a part of the agency's written Affirmative Action Program. The goals and timetables should be attainable in terms of the agency's analysis of its deficiencies and its entire Affirmative Action Plan. Thus, in establishing its goals and timetables the agency should consider the results which could be reasonably expected from good faith efforts to make its overall Affirmative Action Plan work. If the agency does not meet its goals and timetables, the agency's "good faith efforts" shall be judged by whether it is following its program and attempting to make it work toward the attainment of its goals. Support data for the above analysis and program shall be compiled and maintained as part of the agency's Affirmative Action Plan. This data should include applicant flow data and applicant rejection ratios indicating minority status.

(3) No agency's compliance status shall be judged alone by whether or not it reaches its goals or meets its timetables. Rather, each agency's compliance posture shall be reviewed and determined by reviewing the contents of its plan, the extent of its adherence to its plan, and its good faith efforts to make its plan work toward the realization of the plan's goals within the timetables set for completion. The purpose of the agency's establishment and use of goals and timetables is to insure that it meets its affirmative action obligation and is not intended and should not be used to discriminate against any applicant or employee because of race, color, religion, national origin, sex, age, or handicap.

(4) If an agency fails to submit an Affirmative Action Plan with specific goals and timetables, the Division shall return such plan to the agency for the addition of such goals and timetables or the Division may itself determine the goals and timetables for the agency.

HISTORY: (former PL-36-41); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123: 1-49-42 Review of plans by division.

The Division shall review agency employment practices under the agency's Affirmative Action Plan. If said agency meets its minority and women personnel goals or if the agency can demonstrate that it has made every good faith effort to meet said goals, the agency shall be presumed to be in compliance with these regulations. Where the Division finds that the agency has failed to comply with the requirements of these regulations and its obligations, the Division shall take such action as may be appropriate.

HISTORY: (former PL-36-42); Eff 8.13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-43 Additional requirements for agency affirmative action plans.

In addition to the general requirements of an Affirmative Action Plan, an agency shall:

- (A) Provide sufficient resources to administer its Equal Employment Opportunity Program in a positive and effective manner;
- (B) Examine recruiting and employee selection and job qualification procedures for bias and eliminate any such procedure found to have a discriminatory impact on minorities or women;
- (C) Conduct a continuing campaign to eradicate every form of prejudice or discrimination based upon race, color, religion, sex, or national origin, from the agency's personnel policies and practices and working conditions, including corrective action against employees who engage in discriminatory practices;
- (D) Utilize to the fullest extent the present skills of employees by all means, including the redesigning of jobs where feasible, so that tasks not requiring the full utilization of skills of incumbents are concentrated in jobs with lower skill requirements;
- (E) Provide the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs, and other training measures so that they may perform at their highest potential and advance in accordance with their abilities;
- (F) Communicate the agency's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, or national origin, and solicit their recruitment assistance on a continuing basis;
- (G) Participate at the community level with other employers, with schools and universities, and with other public and private groups in cooperative action to improve employment opportunities and community conditions that affect employability;
- (H) Review, evaluate, and control managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provide orientation, training, and advice to managers and supervisors to assure their understanding and implementation of the equal employment opportunity policy and program;
- (I) Inform its employees and recognized employee organizations of the affirmative equal employment opportunity policy and program and enlist their cooperation.

HISTORY: (former PL-36-43); Eff 8.13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123: 1-49-44 Guidelines for affirmative action plans.

The State Employees EEO Coordinator shall issue guidelines which state agencies may use for establishing, implementing and judging an acceptable Affirmative Action Plan as required by this Subpart.

HISTORY: (former PL-36-44); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-45 Statistical data.

Each agency shall be required to gather such data in a format as the Division may require to provide an adequate statistical base for determining compliance.

HISTORY: (former PL-3645); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123: 1-49-46 Delegation of authority by the coordinator.

The State Employees EEO Coordinator may delegate to any official agency, commission, or employee in the executive branch of the government of the State of Ohio, any function or duty of the said Coordinator under this regulation, except authority to promulgate implementing personnel procedure memorandums of a general nature. The authority delegated by the Coordinator pursuant to the regulations in this part shall be exercised under his or her general direction and control.

HISTORY: (former PL-36-46); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13/73

123:1-49-47 Each section is independent.

(A) Each section and each part of each section of this regulation is hereby declared to be an independent section or part of a section and, notwithstanding any other evidence or intent, it is hereby declared to be the controlling intent that if any section, or any provision thereof or the application thereof to any person or circumstances, is held to be invalid, the remaining sections or parts of sections and the application of such provision to any other person or circumstances, other than those as to which it is held invalid, shall not be affected thereby and it is hereby declared to be the intent that the other provisions of this regulation would have been adopted independently of such section, sections, or parts of a section so held to be invalid.

(B) Nothing in Chapter 123:1-49 should be construed to be in conflict with sections of the Ohio Revised Code relating to personnel or to the other Administrative Rules of the Director of State Personnel.

HISTORY: (former PL-36-47); Eff 8-13-73
Rule promulgated under: RC Chapter 119.
Rule authorized by: Executive Order, 9/13