

Statutory Authority

AA/EEO

Ohio Revised Code 4112

4112-1-01 Definitions.

When used in Chapter 4112. of the Revised Code and Chapters 4112-1 to 4112-3 of the Administrative Code:

- (A) "Chair" or "chairperson" means the commissioner designated "chairman" by the governor pursuant to section 4112.03 of the Revised Code.
- (B) "Charge" means a written statement made under oath or affirmation alleging that any person has engaged in or is engaging in unlawful discriminatory practices which is filed pursuant to rule 4112-3-01 of the Administrative Code and Chapter 4112. of the Revised Code.
- (C) "Commission" means the Ohio civil rights commission and any of its designated representatives.
- (D) "Commission attorney" means the attorney or attorneys directed by the attorney general of Ohio to represent the commission, pursuant to division (B) of section 4112.05 and section 4112.10 of the Revised Code.
- (E) "Commissioner" includes any one of the members of the commission duly appointed, pursuant to section 4112.03 of the Revised Code.
- (F) "Complainant" or "charging party" means any person filing a charge.
- (G) "Complaint" means a formal complaint issued by the commission pursuant to Chapter 4112. of the Revised Code and rule 4112-3-05 of the Administrative Code.
- (H) "Conciliation" means a process to achieve a just resolution which assures that any unlawful discriminatory practice of respondent will be eliminated by requiring appropriate affirmative relief or other action.
- (I) "Continuing violation" means a violation of Chapter 4112. of the Revised Code that has no definite ending date. Whether or not a particular violation is continuing depends upon the circumstances of the case. A denial of promotion, a continuing discriminatory practice or policy, a denial of equal compensation, a failure to recall, and a denial of housing accommodations may be continuing violations, depending upon the circumstances.
- (J) "Director" means the duly appointed executive director of the commission.
- (K) "Discriminate" includes, but is not limited to, segregate or separate, according different treatment or taking actions fair in form but which have a disparate impact.
- (L) "Hearing examiner" means a person or persons appointed by the commission pursuant to division (A) (3) of section 4112.04 of the Revised Code, to process complaints, conduct public hearings, and issue hearing examiner reports.
- (M) "Party or parties" include the commission, the complainant or complainants, the respondent or respondents and other persons joined pursuant to rule 4112-3-05 of the Administrative Code.

(N) "Respondent" means a person against whom a charge has been filed, or with respect to whom an investigation has been initiated by the commission without a charge, or against whom a complaint has been issued.

(O) "Unlawful discriminatory practice" means any act or acts prohibited by section 4112.02 of the Revised Code.

(P) Other terms used in Chapter 4112-1 to 4112-3 shall have the same meaning as set forth in Chapter 4112. of the Revised Code, unless the context requires another construction.

HISTORY: Eff 11-4-71; 11-15-77; 7-12-89; 8-10-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

R.C.119.032 review date: August 10, 2002

4112-1-02 Computation of time.

(A) In computing any period of time referred to in the rules of the commission or contained in any order of the commission, the day of the act, event, or occurrence from which the designated procedure begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday or legal holiday observed by the state of Ohio, in which event the time period shall run until the end of the next day which is neither a Saturday, Sunday or a legal holiday observed by the state of Ohio. All time periods are measured by calendar days, except where working days are expressly indicated.

(B) Whenever a party has a right or is required to do some act or take some action within a prescribed period after the service of a notice or other paper upon that party and such notice or paper is served by mail, three days shall be added to the prescribed period.

HISTORY: Eff 11-4-71; 11-15-77; 7-12-89

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05, 4112.06

4112-1-03 General investigation.

(A) The commission may, in its discretion, conduct such general investigations into the problems of discrimination as it deems necessary or desirable and may study and report upon the problems of the effect of discrimination on any field of human relationships.

(B) In pursuing its functions authorized by statute and by rule 4112-3-07 of the Administrative Code, the commission may exercise its full powers of discovery and subpoena in the manner set forth in rules 4112-3-12 and 4112-3-13 of the Administrative Code.

HISTORY: Eff 11-4-71; 11-15-77; 7-12-89

Rule promulgated under: RC 111.15

4112-1-04 Commission meeting.

(A) Public meetings. All commission meetings are public meetings. However, executive sessions may be closed to the public provided that the adoption or passage of a resolution, rule, regulation or other formal action is not involved.

(B) Executive sessions. The commission may hold an executive session at a regular or special meeting for the following purposes:

(1) To confer with an attorney for the commission concerning disputes involving the commission which are the subject of pending or imminent litigation. Litigation will be considered imminent at the point at which litigation is actually contemplated.

(2) To consider information required to be kept confidential by federal or state law.

(3) To consider the appointment, employment, dismissal, discipline, promotion, demotion or compensation of a commission employee or official. Such session may be held to investigate charges or complaints against a commission employee or official provided, however, that such commission employee or official may request a public hearing. Furthermore, any final disposition of such matter shall be made in open meeting.

(4) To consider specialized details of security arrangements where disclosure of the matters discussed might reveal information that could be used for the purpose of committing or avoiding prosecution for a violation of the law.

(C) Commission committees. Committees created by the commission which act solely in an advisory capacity to the commission need not conduct meetings which are open to the public.

(D) Notice of meetings. The commission will provide notification of the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings pursuant to the following provisions.

(1) Any persons may ascertain the time and place of all regularly scheduled and special meetings by:

(a) Writing to the "Ohio Civil Rights Commission, 1111 East Broad Street, Suite 301, Columbus, Ohio 43205-1379"; or

(b) By calling the commission; or

(c) By consulting the commission bulletin board located at "1111 East Broad Street, Suite 301, Columbus, Ohio."

(2) Any representative of the news media may obtain notice of all special meetings by requesting in writing that such notice be provided. Such notice will only be given, however, to one representative of any particular publication or radio or television station. A request for such notification shall be addressed to the "Ohio Civil Rights Commission, 1111 East Broad Street, Suite 301, Columbus, Ohio 43205-1379." The request shall provide the name, mailing address and a maximum of two telephone numbers where the media representative can be reached. The commission shall maintain a list of all representatives of the news media who have requested notice of special meetings pursuant to this paragraph.

(3) In the event of a special meeting not of an emergency nature, the commission shall notify all media representatives on the list of such meeting by doing at least one of the following:

(a) Sending written notice, which must be mailed no later than four calendar days prior to the day of the special meeting.

(b) Notifying such representatives by telephone no later than twenty-four hours prior to the special meeting. Such telephone notice shall be complete if a message has been left for the representative, or if, after reasonable effort, the commission has been unable to provide such telephone notice, by informing such representative personally no later than twenty-four hours

prior to the special meeting.

(4) In the event of a special meeting of an emergency nature, the commission shall notify all media representatives on the list of such meeting by providing either the notice described in paragraph (D)(3)(b) of this rule, or notifying the clerk of the state house press room. In such event, however, the notice need not be given twenty-four hours prior to the meeting but shall be given as soon as possible.

(5) In giving the notices required by this paragraph the commission may rely on assistance provided by any member of the commission and any such notice is complete if given by such member in the manner provided in this rule.

(6) Any person may, upon payment of an annual fee in the amount of thirty-five dollars, receive notice of all meetings of the commission. The commission shall maintain a list of all persons who have requested such notification. In order to receive notification, such persons must provide to the commission a sufficient quantity of self-addressed stamped envelopes for the mailing of the notices. Such notice shall be mailed no later than four calendar days prior to the day of the meeting.

(E) Minutes of commission meetings. All minutes of regular or special meetings of the commission shall be recorded and open to public inspection. Minutes of regular or special meetings and executive sessions need only reflect the general subject matter of discussions at such meetings. At the beginning of each commission meeting the executive director of the commission or the executive director's designee shall inform those present that the notice requirements set forth in this rule have been complied with and this shall be noted in the commission minutes.

HISTORY: Eff 11-15-77; 7-12-89; 8-10-97; 1-11-98

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

R.C. 119.032 review date: August 10, 2002

4112-1-05 Delegation of powers and duties.

Except where contrary to law, the commission may delegate any of the powers and duties of the commission to the members of the staff of the commission.

HISTORY: Replaces rule 4112-33-01; Eff (Amended) 11-4-71; 11-15-77

Rule promulgated under: RC 111.15

Rule amplifies: RC 4112.04

4112-1-06 Certification of documents.

The director or such other person as may be designated by the director or authorized by the commission is authorized to certify all documents or records which are a part of the files and records of the commission.

HISTORY: Eff 11-4-71; 11-15-77; 7-12-89

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.09

4112-1-07 Construction of rules.

Where these rules incorporate by reference a provision of a statute or a civil rule, such provision is incorporated as it exists at the effective date of these rules and as it may from time to time be amended and construed.

HISTORY: Replaces rule 4112-37-01; Eff (Amended) 11-4-71; 11-15-77

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC Chapter 4112

4112-1-08 Availability of rules.

The rules of the commission shall be available to the public at all commission offices. A certified copy of these rules shall be filed by the director with the secretary of state and the legislative service commission at Columbus, Ohio.

HISTORY: Eff 11-4-71; 11-15-77; 7-12-89

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04

4112-1-09 Service by the commission.

Notices, decisions, orders, and other substantive process and papers of the commission may be served personally or by mail. A return made and verified by the individual making such service and setting forth the manner of such service is proof of service, and a returned post office receipt, when certified mail is used, is proof of service. Service by mail shall be deemed completed upon mailing. Whenever a party is represented before the commission by an attorney, service may be made upon the attorney in lieu of such party.

HISTORY: Replaces part of rule 4112-1-01 (M); Eff 11-4-71; 11-15-77; 7-12-89

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.0

4112-3-01 Charge.

(A) Who may file. Any person may make, sign, and file with the commission at any of its offices a written charge. Assistance in drafting and filing charges shall be available to complainants at all commission offices.

(B) Form of charge.

(1) For charges other than those governed by paragraph (B) (2) of this rule, the charge shall be in writing, the original being signed and sworn to or affirmed by the complainant before a notary public or other person duly authorized by law to administer oaths. Notarial service, when available, shall be furnished without charge by the commission.

(2) For charges that allege a violation or violations of division (H) of section 4112.02 of the Revised Code, the charge shall be in writing, the original being signed and affirmed by the complainant. The affirmation shall state: "I declare under penalty of perjury that the foregoing is true and correct."

(C) Contents. A charge shall contain the following:

- (1) The full name and address of the person making the charge.
- (2) The full name and address of the person against whom the charge is made.
- (3) A concise statement of the facts which the complainant believes indicates an unlawful discriminatory practice.
- (4) The date or dates of the alleged unlawful discriminatory practice; or if the alleged unlawful discriminatory practice is of a continuing nature, the dates between which said continuing acts are alleged to have occurred.
- (5) A statement as to any other action, if any, civil or criminal, instituted in any other forum based upon the same grievance as is alleged in the charge together with a statement as to the status or disposition of such other action.
- (6) A statement as to any other action or proceeding in any other forum based upon the same facts as are alleged in the charge, together with a statement as to the status or disposition of such other action.

(D) Time of filing. A charge alleging unlawful discriminatory practices under division (A) of section 4112.02 of the Revised Code must be filed within six months after the unlawful discriminatory practices alleged in the charge were committed. Charges alleging violations of division (H) of section 4112.02 of the Revised Code must be filed within the year after the alleged unlawful discriminatory practice was committed. In cases of recurring or continuing violations, the statutory six-month period begins to run anew with each new discriminatory act or with each new day of the continuing violation, as the case may be. A charge filed with the equal employment opportunity commission (EEOC) or with the department of housing and urban development (HUD) which indicates it is also filed with the commission is deemed filed with the Ohio civil rights commission on the date it is received at one of the commission offices. Notwithstanding the above, any charge that is filed with the EEOC within six months, or HUD within one year, of the alleged unlawful discriminatory practice is deemed timely filed with the commission, regardless of when it is received.

(E) Place of filing. A charge may be filed with the commission at any of its offices or by delivery to a commissioner.

(F) Forms. Charge forms may be obtained at any of the offices of the commission, but the use of any particular form is not required for the proper filing of a charge. A charge is deemed filed when the commission receives a written statement sufficiently precise to identify the parties and to describe generally the action or practices complained of.

(G) Amendment of charges. A charge may be amended to cure technical defects or omissions, including failure to swear or affirm to the charge, or to clarify and amplify allegations made therein, or to add or substitute respondents, and such amendments relate back to the original filing date; provided, however, an amendment alleging additional acts constituting unlawful discriminatory practices not related to or growing out of the subject matter of the original charge will be permitted only where, at the date of the amendment, the allegation could have been timely filed as a separate charge.

(H) Joinder of parties in same complaint. Persons complaining of unlawful discriminatory practices arising out of the same transaction, occurrence, or succession or series of transactions or occurrences may join as complainants in a single charge. All persons charged with unlawful discriminatory practices arising out of the same transaction, occurrence, or succession or series of transactions or occurrences may be joined as respondents in the same charge. Persons may be joined as a party if in the person's absence complete relief cannot be accorded among those

who are already parties.

(I) **Withdrawal of charge.** A charge or any part of a charge may be withdrawn only with the written consent of the commission at any time prior to the issuance of a complaint by the commission or final disposition of the charge. The commission may delegate the authority to the director or the director's designee, to grant consent to a request to withdraw a charge, other than a commissioner charge, where the withdrawal of charge will not defeat the purpose of Chapter 4112. of the Revised Code. If substantial investigative work has been completed when the request to withdraw a charge is received, the commission may proceed to make a finding of probable cause, no probable cause, or other appropriate finding, notwithstanding the pending request to withdraw the charge.

HISTORY: Eff 11-4-71; 11-15-77; 7-12-89; 7-1-94; 8-10-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

4112-3-02 Fact finding conferences.

Prior to the initiation of a formal preliminary investigation pursuant to rule 4112-3-03 of the Administrative Code or Chapter 4112. of the Revised code, a commission staff member may be assigned to initiate contact with the complainant and respondent, and conduct a fact-finding conference between the complainant and respondent or their representatives to examine the factual basis behind the charge and attempt to negotiate a settlement.

Any party who participates in a fact-finding conference may be accompanied and advised by legal counsel, who shall take no further part in the conference, unless agreed to by all parties present, including the commission staff member conducting the conference. As a result of such fact-finding conference, the commission staff member may:

(A) Settle the matter in a manner acceptable to the commission and all parties, in which case the terms of the settlement will be reduced to writing and signed by all parties and the commission staff member. The commission may delegate the authority to approve negotiated settlement agreements, and any such negotiated settlement agreement shall be noted on the commission minutes.

(B) In the event that sufficient facts are adduced during the fact-finding conference to establish the probability, or lack of probability, with respect to unlawful discriminatory practices of the respondent, recommend an appropriate finding in the same manner as would be made after formal preliminary investigation pursuant to rule 4112-3-03 of the Administrative Code or Chapter 4112. of the Revised Code.

HISTORY: Eff 11-4-71; 11-15-77; 12-23-79; 7-12-89

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

4112-3-03 Preliminary investigation, probable cause, conciliation, no probable cause.

(A) **Preliminary investigation.** After the receipt of a charge, or after a recommendation pursuant to rule 4112-3-02 of the Administrative Code or Chapter 4112. of the Revised Code, that a formal investigation be conducted, the director or the director's designee may assign a member or members of the commission staff to conduct a preliminary investigation. Such investigation shall be designed to obtain necessary information upon which the commission can determine whether it is probable that any unlawful discriminatory practices have been or are being engaged in by the respondent. The investigation of any alleged unlawful discriminatory practices by the commission

need not be limited to the particular facts or issues raised in any charge affidavit.

(B) Probable cause determination. Where the facts indicate that it is probable that any unlawful discriminatory practices have been or are being engaged in, the director may refer the matter to the commission and recommend that the commission approve a finding of probable cause and authorize proceeding with conciliation. The commission may delegate authority to the director or the director's designee to make a finding of probable cause and issue a probable cause letter of determination and serve a copy upon the parties. Such letter of determination shall be final when issued.

(C) Conciliation. When the commission determines such probable cause does exist, the commission shall instruct the director to endeavor to eliminate all unlawful discriminatory practices by conference, conciliation and persuasion.

(D) Conciliation agreement. If, as a result of conference and conciliation, the commission is able to provide for voluntary compliance with sections 4112.01 to 4112.08 of the Revised Code, and to effect the elimination of any unlawful discriminatory practices, whether against the complainant or others, it may prepare a conciliation agreement which shall set forth all measures to be taken by the parties thereto, including provisions for affirmative and other relief, goals and timetables, and compliance reports.

The conciliation agreement shall be signed by the respondent, the complainant, and a representative of the commission. An executed conciliation agreement is a final order of the commission for the purposes of section 4112.06 of the Revised Code.

(E) Failure of conciliation. Failure by a respondent to submit a counter proposal acceptable to the commission, within seven calendar days of being served by the commission with a notice of failure of conciliation, shall constitute prima facie evidence of a failure, within the meaning of division (A) of section 4112.05 of the Revised Code, of informal methods of persuasion and conciliation.

(F) No probable cause determination and dismissal. Where the facts, as determined during the fact-finding conference conducted pursuant to rule 4112-3-02 of the Administrative Code, by the preliminary investigation or during any subsequent endeavor at conciliation indicate that it is not probable that any unlawful discriminatory practices have been or are being engaged in, the director shall refer the charge to the commission with a recommendation of dismissal. The commission may thereupon dismiss the charge and serve on the complainant and other appropriate parties notification of its action. The commission may delegate authority to the director or the director's designee to make a finding of no probable cause and issue a no probable cause letter of determination and serve a copy upon the parties. Such letter of determination shall be final when issued.

(G) Investigation without charge. When preliminary investigations are initiated by the commission on its own motion, no specific charge need be filed with the commission. The commission shall promptly notify the respondent in writing of such investigation.

(H) Compliance reports. The commission may require any party to submit to it such compliance reports as the commission deems necessary showing compliance with the terms of any conciliation agreement.

(I) Investigation after conciliation. The commission may make compliance investigations regarding conciliation agreements, negotiated settlement agreements, and cease and desist orders, and take appropriate action according to its findings, pursuant to paragraphs (B)(2) and (B)(3) of rule 4112-3-10 of the Administrative Code.

(J) Non-disclosure. Nothing said or done during endeavors at conciliation shall be disclosed by any member of the commission or its staff to be used as evidence in any subsequent proceeding unless the respondent asserts that the commission's duty to attempt conciliation pursuant to section 4112.05 of the Revised Code has not been met. The commission may, however, publish the terms of conciliation of any charge which has been conciliated.

HISTORY: Eff 11-4-71; 11-15-77; 12-23-79; 7-12-89; 9-1-92 (Emer.); 10-2-92

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

4112-3-04 Reconsideration by the commission.

(A) Procedure for reconsideration. Any party may apply to the commission for reconsideration of any initial determination of probable cause made by members of the staff of the commission or any final commission action affecting the party. Such application must be in writing, state specifically the grounds on which it is based, and be filed with the commission at its office in Columbus within ten days from the date of service of the notice of disposition of which reconsideration is requested. (If the notice of determination is served by mail, the application for reconsideration must be received at the commission office in Columbus thirteen days from the date of mailing.) The commission shall serve notice of such application for reconsideration on all other parties to the matter in which the application for reconsideration is filed. When such application is made, the commission may, in its discretion, hear one or more of the parties. The commission may grant or deny the application for reconsideration. If the commission grants the application for reconsideration, it shall refer the matter, together with its recommendations, to the director for further action. If the commission denies the application for reconsideration, it shall record its action accordingly and shall notify the parties by mail of such denial. Each party shall be entitled to only one request for reconsideration.

(B) Reconsideration by motion of commission. If a complaint has not been issued pursuant to rule 4112-3-05 of the Administrative Code, the commission may reconsider any initial determination made by members of its staff on any final commission action on its own initiative at any time within one year after the charge of discrimination is filed. If a complaint has been timely issued pursuant to rule 4112-3-05 of the Administrative Code or Chapter 4112. Of the Revised Code, the commission may consider any initial determination made by members of its staff or any final commission action on its own initiative at any time within two years after the action to be reconsidered was taken. Notice of such reconsideration shall be served by the commission on all parties to the initial investigation or final conciliation, as the case may be.

HISTORY: Eff 11-4-71; 11-15-77; 7-12-89; 7-1-94; 8-10-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

4112-3-05 Complaint and notice of hearing.

(A) Issuance of complaint. If the commission determines that it is probable that any unlawful discriminatory practices have been or are being engaged in against the complainant or others and after the commission fails to effect the elimination of such unlawful discriminatory practices by conciliation, the commission shall issue and cause to be served upon all parties or their attorneys of record, if any, a complaint containing a notice of hearing. The commission may delegate authority to the director to issue complaints on behalf of the commission.

(B) Issuance of complaint in advance. The commission may issue a complaint in any case involving a violation of Chapter 4112. of the Revised Code in advance of any preliminary investigation or conciliation endeavors. When a complaint is so issued, the public hearing shall be

held in abeyance pending conciliation.

(C) Contents of complaint. In any complaint which it may issue, the commission shall state the unlawful discriminatory practices allegedly engaged in and the dates of their occurrence in a manner sufficient to comply with rule 8(A)(1) of the "Ohio Rules of Civil Procedure." The complaint shall be in writing and signed by at least three commissioners.

(D) Contents of notice of hearing. The notice of hearing shall state the date, time and place of hearing, which place shall be within the county where the unlawful discriminatory practice is alleged to have occurred, or in the county where the respondent resides or transacts business. The notice shall inform the respondent that he shall file a written answer to the complaint within twenty-eight days after service of such notice and shall state the name, address and telephone number of the commission attorney. Upon failure to file an answer, the respondent shall be deemed in default under paragraph (G) of rule 4112-3-06 of the Administrative Code.

(E) Time of issuance. No complaint shall be valid unless issued within one year after the complainant files the charge of discrimination which results in the issuance of the complaint. In cases of recurring or continuing violations, the statutory one-year period begins to run anew with each new discriminatory act or with each new day of continuing violation, as the case may be.

(F) Amendment of complaint. Any complaint may be amended by the commission or any hearing examiner at any time prior to issuance of a final order on such complaint; provided, however, that no order of the commission shall be issued unless the respondent has had an opportunity for a hearing on the complaint or amendment thereto on which the order is based. Rule 15(C) of the "Ohio Rules of Civil Procedure" shall govern whether an amendment relates back to the date of the filing of the earlier complaint. Such amended complaint shall be served on all original parties and new parties added or substituted through the amended complaint.

(G) Joinder of parties. Any person who is an indispensable party to a proceeding before the commission shall be joined as a party. The hearing examiner shall determine whether a person is an indispensable party by applying the standards set forth in rules 19 through 21 of the "Ohio Rules of Civil Procedure." Any person charged with unlawful discriminatory practices arising out of the same transaction, occurrence or succession or series of transactions or occurrences may be joined as respondents in the same proceeding before the commission.

(H) Consolidation of complaints. The commission or hearing examiner may, within their discretion, join one or more complaints into a single proceeding at any time prior to public hearing.

HISTORY: Eff 11-4-71; 11-15-77; 12-23-79; 7-12-89

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

4112-3-06 Answer.

(A) Time of filing answer. A respondent against whom a complaint has been issued and on whom a notice of hearing and copy of such complaint has been served shall file a written answer within twenty-eight days from the date of service of such complaint and notice of hearing.

(B) Place and manner of filing. The answer shall be filed in duplicate at the office of the commission in Columbus and a copy served upon the commission attorney. The filing may be by regular mail or personal delivery, or by registered or certified mail, return receipt requested.

(C) Extension of time. Upon application, the commission or hearing examiner, for good cause shown, may extend the time within which the answer may be filed, but in no case beyond ten

days prior to the date set for the hearing on the complaint, or as such date may be extended.

(D) Form of answer. The answer shall be in writing and shall contain the post office address of the respondent, and if he is represented by an attorney, the name, post office address and telephone number of said attorney. The answer shall contain a general or specific denial of each and every allegation of the complaint controverted by the respondent, or a denial of any knowledge or information sufficient to form a belief concerning such allegations and a statement of any matter constituting a defense. Any allegation in the complaint which is not denied or admitted in the answer, unless the respondent shall state in the answer that the respondent, after due investigation, is without knowledge or information sufficient to form a belief, shall be deemed admitted. An affirmative defense not first set forth by answer may not be raised at hearing on a complaint. Any allegation of new matter contained in an answer shall be deemed denied without the necessity of a reply.

(E) Amendment of answer. The respondent may amend his or her answer at any time before twenty days prior to the hearing on the complaint, as a matter of right, and thereafter at the discretion of the commission or the person or persons conducting the hearing, on application duly made and for good cause shown. Whenever a complaint is amended, the respondent shall file an amended answer in the same manner as the original answer was filed.

(F) Service of answer. The commission shall, within ten days after the date of the filing of an answer or amended answer, but in any case not less than three days before the date set for hearing, serve a copy of such answer on the complainant at the complainant's last known address.

(G) Failure to file answer. A respondent who has not filed an answer, as provided in paragraphs (A) to (E) of this rule, shall be deemed in default and the hearing shall proceed on the evidence in support of the complaint. Such default may be set aside by the commission or the hearing examiner upon:

(1) Good cause shown; and

(2) Equitable terms and conditions.

HISTORY: Eff 11-4-71; 11-15-77; 12-23-79; 7-12-89

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.05

4112-3-07 Hearing.

(A) Scope of rule. This rule governs the practice and procedure before hearing examiners appointed by the Ohio civil rights commission.

(B) Hearing examiners. The commission may employ or appoint such individuals as the commission may, from time to time, determine necessary to act as hearing examiners for all purposes and with all authority necessary to fulfill the duties of hearing examiner.

(C) Appearances of parties.

(1) As soon as practicable after the issuance of a complaint the commission and respondent shall each designate in writing one person to act as their representative for all matters relevant to the complaint and hearing. Copies of appearances shall be filed with the hearing examiner and served on all parties. Appearances shall include the addresses and telephone numbers of all representatives. Such representatives shall thereafter be exclusively responsible for receiving from and submitting to the hearing examiner all correspondence and communication of any kind

relevant to the complaint and hearing.

(2) Such representative shall thereafter be changed only upon service of ten days notice on the hearing examiner. An attorney may not withdraw his or her appearance for a party within ten days prior to public hearing without leave of the hearing examiner.

(3) An attorney who is not admitted to practice law in Ohio may be granted leave to appear on behalf of a party on a pro hac vice basis upon the filing of a motion indicating the attorney is admitted to practice in any of the several states or pursuant to rule two of the supreme court "Rules for the Government of the Bar of Ohio."

(4) The complainant shall be a party to the proceeding and may be present at the hearing. The respondent may appear at the hearing through one designated representative of the respondent. The respondent may examine and cross-examine witnesses and the complainant, and may submit oral testimony and other evidence. Complainant and respondent's representative may be called to testify or be cross-examined by opposing counsel and may sit at the respective counsel tables despite a separation of witnesses. Any person who has or claims an interest in the subject of the hearing and in obtaining or preventing relief against the acts or practices complained of may, at the discretion of the hearing examiner, be permitted to appear for the presentation of oral or written arguments.

(D) Conduct of hearings. Hearings shall be conducted consistent with this rule by the full commission or one or more commissioners or by one or more hearing examiners or any combination of the above who are designated by the commission for such purpose. If more than one commissioner or hearing examiner conducts a hearing, one of them shall be designated by the commission as the presiding member.

(E) Pre-hearing conferences. At any time before the hearing begins, the hearing examiner may direct the parties or their counsel to participate in one or more pre-hearing conferences or to submit pre-hearing memorandums, or both. The pre-hearing conference may be conducted by telephone or at any place selected by the hearing examiner.

(1) The purpose of such conference shall be to reach agreement and to ascertain the positions of the parties on the following:

(a) The simplification and clarification of the issues.

(b) The necessity or desirability of amending the complaint or answer.

(c) The possibility of obtaining stipulations of fact, or admissions of undisputed facts. The commission expects the parties to stipulate evidence to the fullest extent to which complete or qualified agreement can be reached, including all material facts that are not or fairly should not be in dispute.

(d) Reviewing the contents of and establishing the authenticity of documents.

(e) Requests for the issuance of subpoenas.

(f) Schedules for taking of depositions and the use of depositions in the proceeding.

(g) Schedule for the completion of discovery.

(h) An agreement limiting the number of expert witnesses and other witnesses and limiting the subject matter of their testimony.

(i) The disclosure of the names and addresses of witnesses. Such disclosure may be withheld for good cause shown, up to five days prior to hearing.

(j) The exchange of documents intended to be offered in evidence.

(k) The possibility of settlement.

(l) Any other matter that will tend to simplify the issue or expedite the proceedings, including the avoidance of undue repetition or complication in the presentation of evidence or argument.

(2) Whenever a pre-hearing conference is held, the hearing examiner may issue an order which recites the matters discussed, the agreements reached and the rulings made at the pre-hearing conference. The order shall be served on the parties and shall be filed in the record of the proceedings on the complaint.

(3) Should a party fail substantially to comply with the regulations of the commission regarding pre-hearing conferences or submission of pre-hearing memorandums, after being served with due notice and an opportunity to comply, said failure may constitute a waiver of all objections to the agreements reached, if any, and any order or ruling with respect thereto.

(F) The hearing examiner may require that any document intended to be introduced into evidence at a hearing be marked and provided to the other party and hearing examiner sufficiently in advance of the hearing to permit study and preparation of cross examination and rebuttal evidence.

(G) Pre-hearing motions.

(1) Unless the commission determines otherwise in a particular case, prior to the hearing on any complaint, all motions made to the commission relating to the complaint and the hearing thereon including, but not limited to, motions to dismiss, objections to interrogatories or other discovery procedures and post-complaint petitions to modify or revoke subpoenas, shall be filed with and ruled upon by the hearing examiner. Recommendations by the hearing examiner to grant motions to dismiss may be forwarded to the commission for consideration at their next regularly scheduled meeting.

(2) Every motion, memorandum and supporting document filed with the hearing examiner by the respondent or the respondent's attorney or the commission attorney shall be served upon respondent or the respondent's attorney, the complainant or the complainant's attorney, or the commission attorney, as the case may be. Proof of such service in writing shall be attached to such motions and documents.

(3) All motions shall contain a memorandum stating the reasons in support of the motion and citing the authorities upon which the movant relies. If the motion requires consideration of facts not appearing of record, the movant shall also serve and file copies of all affidavits, depositions or other documentary evidence they desire to present in support of the motion. Each party or his or her attorney or the commission attorney opposing the motion may file an answer memorandum by the fourteenth day after the day on which the motion was filed. The movant may file a reply memorandum by the twenty-first calendar day after the motion was filed. On the twenty-first calendar day after the motion was filed, the motion shall be deemed submitted to the hearing examiner; provided, however, that where the circumstances warrant and upon equitable terms and conditions, the hearing examiner may rule upon the motion prior to the expiration of this twenty-one-day period.

(H) Time of hearing. A hearing shall be conducted as set forth in the notice of hearing, except as such may be changed by the hearing examiner at his or her discretion or as set forth below:

(1) The parties to a hearing may consent by written stipulation to a hearing within less than twenty-eight days after service of the complaint or amended complaint, but no hearing shall be scheduled within less than ten days of service of a complaint or an amended complaint.

(2) The hearing examiner may postpone or continue any hearing upon his or her own motion or upon motion of a party for good cause shown.

(3) Postponements of hearings will not be allowed on the motion of any party except upon a showing of good cause and proper diligence. A motion for postponement must be served upon all parties to the proceeding and filed with the hearing examiner at least five days prior to the date of hearing.

(4) In no case will a motion for postponement served or filed less than five days in advance of a hearing or made at the hearing be granted unless the party moving it demonstrates that an extraordinary situation exists which could not have been anticipated and which would justify the granting of a postponement. In any such situation, if time does not permit the filing of such motion prior to the hearing, it may be made orally at, or prior to, the hearing.

(5) If a motion for postponement is based upon the absence of a witness, the motion must state what the substance of the testimony of the absent witness would be. No postponement will be granted if the other party files with the hearing examiner within five days after the service of a motion a statement admitting that the witness on account of whose absence the postponement is desired would, if present, testify as stated in the motion. If time does not permit the filing of such statement prior to the hearing, it may be made orally at, or prior to, the hearing.

(6) Only one postponement will be allowed to a party on account of the absence of a witness unless the party moving for a further postponement shall at the time apply for an order to take testimony of the alleged absent witness by deposition.

(7) A hearing shall not be delayed to permit discovery unless due diligence is shown.

(I) Procedure at hearings.

(1) The case in support of the complaint shall be presented at the hearing by the attorney general.

(2) The person or persons conducting a hearing shall not be bound by the rules of evidence prevailing in the courts of law and equity, but shall, in ascertaining the practices followed by the respondent, take into account all reliable, probative and substantial evidence, statistical or otherwise, produced at the hearing which may tend to prove the existence of any act or pattern and practice of unlawful discrimination. Irrelevant, immaterial, unreliable, and unduly repetitious evidence will be excluded.

(3) The person or persons conducting a hearing shall have full authority to control the procedure at the hearing. They may call and examine witnesses, including expert witnesses, admit or exclude testimony or other evidence, rule upon all objections and take such other actions as are necessary and proper for the conduct of such hearing including, but not limited to, ordering the appearance of any person and directing the production of any books, papers, documents or tangible things at the hearing, introducing them into the record, and ruling upon any petition to revoke or modify a subpoena or other demand for discovery pending at the commencement of the hearing. However, a hearing examiner shall make no finding at the hearing that the respondent has engaged in any unlawful discriminatory practice or that the complaint should be dismissed.

(4) Where hearings are conducted by three or more commissioners and/or hearing examiners, all rulings and determinations shall be made by majority rule.

(5) Written stipulations of fact may be introduced in evidence, if signed by the persons sought to be bound thereby, or their attorney. Oral stipulations may be made on the record at the hearing.

(6) The person or persons conducting a hearing may continue a hearing from day-to-day or adjourn it to a later date or to such different place, as is permitted by law, by announcing such action at the hearing, or by appropriate notice to all parties.

(7) The person or persons conducting the hearing shall permit the parties or their attorneys, the commission attorney, and other persons permitted to appear pursuant to paragraph (C)(4) of this rule to argue orally and/or to submit written briefs. The commission attorney may file a written brief within twenty-one days after delivery to the commission attorney of the transcript of the public hearing. The respondent and complainant or their attorneys may file briefs within twenty-one days of being served with the brief of the commission attorney, and the commission attorney may file a reply brief within ten days of being served with the brief of the respondent and complainant or their attorneys; provided, however, that these time periods may be extended as the hearing examiner may determine for good cause shown.

(8) The testimony taken at the hearing shall be under oath and shall be reduced to writing and filed with the commission. Thereafter, at its discretion, the commission, upon notice to the parties, may take further testimony or hear arguments, or order a hearing examiner to do so. The parties may be present and be heard at such proceeding.

(9) Standards of conduct and supervision:

(a) All persons appearing before the commission or a hearing examiner shall conform to the standards of ethical conduct required in the courts of the state of Ohio.

(b) A hearing examiner shall, for good cause stated in the record, bar from participation in a particular proceeding any person who shall refuse to comply with his or her directions or who shall be guilty of disorderly conduct, dilatory tactics or contemptuous language in the course of such a proceeding.

(10) All hearings shall be open to the public, unless for good cause, the commission shall decide otherwise.

(11) Any party to a hearing may be represented by counsel who may appear on behalf of such party during the hearing.

(12) Any person appearing before the commission as a witness in any public hearing, including, but not limited to the complainant, shall have a right to be accompanied, represented and advised by an attorney whose participation in the hearing, or other proceeding, shall be limited to the protection of the rights of the witness and who may not examine or cross-examine witnesses.

(J) Transcript of hearing.

(1) A record shall be made of all hearings before a hearing examiner. Such record may be recorded by stenographic means, by the use of audio-electronic recording devices or by video recording devices as the hearing examiner may direct. Hearings before a hearing examiner which are recorded electronically shall be transcribed into written form. Opening and closing statements shall not be included in the transcripts unless the hearing examiner so directs.

(2) A party may request the hearing examiner to provide a court reporter for a hearing if the hearing examiner has not elected to do so. In such case, the requesting party shall be responsible for payment of the court reporter's fees and expenses, including the cost of production of the transcript, the original of which shall become the official transcript.

(K) Post-hearing motions. Unless the commission determines otherwise in a particular case, all post-hearing motions made before issuance of the hearing examiner's report shall be addressed to the hearing examiner and shall be ruled upon by him or her subject to commission approval, modification or disapproval pursuant to rule 4112-3-09 of the Administrative Code.

HISTORY: Eff 11-4-71; 11-15-77; 12-23-79; 7-12-89

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

4112-3-08 Transcript of the record.

The transcript of the record at any hearing shall consist of the notice of hearing, the complaint, as may have been amended, the answer, as the same may have been amended, the stenographic transcript of the testimony taken at the hearing, the exhibits and depositions offered in evidence, proffers of evidence, written applications, orders, motions, stipulations, the findings of fact, conclusions of law and recommendations of the person or persons conducting the hearing, the findings of fact, conclusions of law, and final orders of the commission.

HISTORY: Eff 11-4-71; 11-15-77; 7-12-89

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.05

4112-3-09 Report of findings.

(A) Written report and recommendation. At the conclusion of the hearing and upon due consideration of the evidence adduced at the hearing and the oral argument and/or briefs of the parties and the commission attorney, the person or persons conducting the hearing shall submit to the commission a written report setting forth findings of fact and conclusions of law and a recommendation of action to be taken by the commission.

(B) Objections. A copy of the written report and recommendation of the person or persons conducting the hearing shall be served on all parties and the commission attorney no more than fifteen days after the filing of such report with the commission. Any party to a hearing and the commission attorney may serve a written statement of objections to such written report and recommendation on the commission, which written statement of objections shall be considered by the commission before approving, modifying or disapproving such recommendation. Said objections must be filed within twenty days from the date the hearing examiner's report was served on the parties and must be served on all opposing parties and the hearing examiner.

(C) Consideration of written report and recommendation. The commission shall consider the written report and recommendation of the person or persons conducting the hearing at any regular or special meeting held not less than twenty days after the date of service of such report and recommendation upon all parties as required by paragraph (B) of this rule. The commission may approve, modify or disapprove the written report and recommendation of the person or persons conducting the hearing and shall issue its order accordingly.

HISTORY: Eff 11-15-77; 7-12-89; 1-11-98

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04
Rule amplifies: RC 4112.04, 4112.05
R.C. 119.032 review date: August 10, 2002

4112-3-10 Orders.

(A) Content. The final order of the commission issued after a hearing shall be accompanied by findings of fact and conclusions of law.

(B) Issuance of a cease and desist order.

(1) If upon all the reliable, probative, and substantial evidence the commission determines that the respondent has engaged in, or is engaging in, any unlawful discriminatory practices, whether against the complainant or others, the commission shall issue and cause to be served on such respondent, an order containing findings of fact and conclusions of law, and requiring such respondent to cease and desist from such unlawful discriminatory practices and to take such further affirmative or other action as will effectuate the purposes of sections 4112.01 to 4112.08 of the Revised Code. Further affirmative action may include, but is not limited to, hiring, reinstatement, or upgrading of employees with or without back pay; admission or restoration to union membership or to training programs with utilization of objective criteria for admission; admission to place of public accommodations; sale or lease of housing accommodations and lending money upon equal terms and conditions; cancellation, rescission or revocation of a contract, deed, lease or other document transferring any housing accommodation which is the subject of a charge or complaint of unlawful discrimination to a person who had notice, prior to the transfer or the execution of the agreement to make the transfer, that a charge or complaint under division (H) of section 4112.02 of the Revised Code, was filed or issued; institution of any affirmative action program with goals and timetables; and requiring periodic reports to the commission of the manner of compliance. If a respondent is operating by virtue of any license or permit issued by the state or a political subdivision or agency thereof, or is holding a contract or subcontract with the state or a political subdivision or agency thereof, and the commission determines after a hearing that the respondent has engaged in or is engaging in any unlawful discriminatory practice, the commission shall send a certified copy of its findings and order to the licensing or contracting authority.

(2) At any time during which its order is in effect the commission may investigate whether the terms of the order are being complied with. Upon a determination that the terms of the order are not being complied with, the commission may take appropriate action to assure compliance including, but not limited to, petitioning a common pleas court for its enforcement. Upon a determination that the order is being complied with and all unlawful discriminatory practices have been eliminated, the commission may issue a declaratory order stating that the respondent has ceased to engage in unlawful discriminatory practices. Such declaratory order shall not affect in any way the requirement of any respondent to submit such compliance reports as the commission may direct.

(3) The commission, the complainant, and the respondent may at any time enter into a written conciliation agreement which shall also constitute a cease and desist order of the commission. Such consent orders shall include an express provision that the respondent intends to be legally bound thereby. Consent and cease and desist orders shall have the same force and effect as a final order of the commission entered after hearing and may be filed by the commission for enforcement purposes in the appropriate common pleas court pursuant to section 4112.06 of the Revised Code. Such consent order shall waive public hearing and may or may not contain findings of fact and conclusions of law.

(C) Issuance of dismissal order. If upon all the reliable, probative and substantial evidence the commission finds that the respondent has not engaged in any unlawful discriminatory practices against the complainant or others, it shall issue and cause to be served on the complainant an

order dismissing the said complaint as to such respondent.

(D) Service. Copies of orders, accompanied by a notice of the statutory right to judicial review, shall be served on all parties, and their attorneys of record, if any, and the attorney general.

(E) Filing of orders. The final order of the commission issued after a hearing shall be filed in the principal office of the commission in the city of Columbus and shall be open to public inspection during regular office hours of the commission.

HISTORY: Eff 11-4-71; 11-15-77; 12-23-79; 7-12-89; 9-1-92 (Emer.); 10-2-92; 8-10-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

R.C. 119.032 review date: August 10, 2002

4112-3-11 Reconsideration of final orders.

(A) After issuing any order pursuant to rule 4112-3-10 of the Administrative Code, but prior to the expiration of the appeal period provided by section 4112.06 of the Revised Code, the commission, on its own motion or by motion of any party, and after reasonable notice has been given to all parties, may reopen any proceeding and take such action as it may deem necessary, including modifying or setting aside in whole or in part any finding or order previously made by it. Any party who might be affected by such modification or setting aside shall have the opportunity to be heard at such a proceeding.

(B) In reconsidering any order issued pursuant to rule 4112-3-10 of the Administrative Code, the commission may consider the following:

(1) Mistake, inadvertence, surprise or excusable neglect;

(2) Newly discovered evidence which by due diligence could not have been discovered prior to the public hearing;

(3) Fraud, misrepresentation or other misconduct of a party; or

(4) Any other reason for setting aside in whole or in part the final order previously issued.

(C) A motion for reconsideration will not toll the time period for filing a petition for judicial review set forth in division (H) of section 4112.06 of the Revised Code.

HISTORY: Eff 11-4-71; 11-15-77; 9-1-92 (Emer.); 10-2-92

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

4112-3-12 Discovery.

(A) Rights of discovery. The commission and respondent shall both enjoy the same rights of discovery as are provided for in division (B)(3) of section 4112.04 of the Revised Code, and in rules 26 through 37, "Ohio Rules of Civil Procedure."

(B) Civil rules govern discovery. The "Ohio Rules of Civil Procedure" governing discovery shall be applicable to discovery under this rule, except to the extent that the civil rules by their nature would be inapplicable and except to the extent that Chapter 4112. of the Revised Code provides otherwise, as in division (B)(3) of section 4112.04 of the Revised Code.

(C) Notwithstanding the above, a hearing examiner has inherent power to control the scope of discovery, including, but not limited to, issuing protective orders on his or her own motion.

HISTORY: Eff 11-4-71; 11-15-77; 7-12-89
Rule promulgated under: RC 111.15
Rule authorized by: RC 4112.04
Rule amplifies: RC 4112.05

4112-3-13 Subpoenas.

(A) Issuance of subpoenas. A commissioner may issue a subpoena to compel the attendance of witnesses or the production of evidence, including, but not limited to, books, records, correspondence, or other documents relating to any matter under investigation by the commission or as otherwise permitted under Chapter 4112. of the Revised Code. The director or the director's designee may sign and issue subpoenas on behalf of the commission. Subpoenas issued on behalf of the commission for a public hearing may be issued by a hearing examiner. Subpoenas issued under this rule shall be governed by division (B) (3) of section 4112.04 of the Revised Code, the "Ohio Rules of Civil Procedure," and rule 4112-3-12 of the Administrative Code.

(B) Issuance of subpoena at the request of respondent. A commissioner or a hearing examiner may issue a subpoena to compel the attendance of witnesses or the production of documents at a public hearing at the request of a respondent. Subpoenas shall be issued upon receipt of a written request from a respondent or respondent's attorney which identifies the matter in question and contains the name and address of the person to be served. Subpoena requests for the production of documents must specify the documents to be produced. Subpoenas issued at the request of a respondent shall contain the name and address of the respondent and shall state that they were issued at the respondent's request. Subpoenas issued on behalf of a respondent shall be sent to the respondent and served by the respondent, consistent with the "Ohio Rules of Civil Procedure."

(C) Fees. Where a subpoena or subpoena for production of evidence is issued upon the application of the respondent, the cost of service, witness and mileage fees shall be borne by the respondent. Where a subpoena or subpoena to produce documentary evidence is issued at the instance of the commission or any commissioner or a hearing examiner, the cost of such service, witness and mileage fees shall be borne by the commission. Such witness and mileage fees shall be the same as paid by the common pleas courts of Ohio.

(D) Failure to obey subpoena. On the failure of any person to obey a subpoena or subpoena to produce evidence issued at the instance of the commission, or any commissioner or a hearing examiner, the commission may, through the commission attorney, make application to the common pleas court of the county in which the witness resides, was served or transacts business, for an order from the court for such person to show cause why he or she shall not be held in contempt and such further relief as may be appropriate pursuant to division (B) of section 4112.04 and section 4112.11 and 4112.99 of the Revised Code, and civil rule 37.

HISTORY: Eff 11-4-71; 11-15-77; 7-12-89; 8-10-97
Rule promulgated under: RC 111.15
Rule authorized by: RC 4112.04
Rule amplifies: RC 4112.04, 4112.05

4112-3-14 Miscellaneous motions or petitions.

(A) Generally. All motions, petitions and objections to interrogatories (hereinafter collectively referred to as "motions"), except pre-hearing motions governed by paragraph (G) of rule 4112-3-07 of the Administrative Code and motions governed by paragraph (K) of rule 4112-3-07 of the

Administrative Code, shall be filed with the commission at its Columbus office and shall be determined by the commission based upon the motion papers hereinafter referred to. Oral arguments will not be permitted except upon leave of the commission upon written request and proper showing by the movant prior to the submission, and the time of hearing and length of such argument shall be fixed by the commission. This rule shall apply to all motions including, but not limited to, motions for reconsideration under rule 4112-3-04 of the Administrative Code, objections to reports of hearing examiners under rule 4112-3-09 of the Administrative Code, and pre-complaint petitions to revoke or modify subpoenas under division (B) (3) (d) of Section 4112.04 of the Revised Code.

(B) Service. Every motion, memorandum and supporting document filed with the commission by the respondent or respondent's attorney or the commission attorney shall be served upon respondent's attorney, the complainant or complainant's attorney, or the commission attorney, as the case may be. Proof of such service in writing shall be attached to such motions and documents.

The commission shall serve a copy of all motions, memorandum and supporting documents filed by the complainant upon the respondent or his or her attorney and the commission attorney; provided, however, that if a complainant is represented by an attorney, the complainant's attorney shall make such service.

(C) Supporting memorandum required. The movant shall file with his or her motion a memorandum stating the reasons in support of the motion and citing the authorities upon which the movant relies. If the motion requires consideration of facts not appearing of record, the movant shall also serve and file copies of all affidavits, depositions or other documentary evidence the movant desires to present in support of the motion. Each party or his or her attorney or the commission attorney opposing the motion may file an answer memorandum by the fourteenth day after the day on which the motion was filed. The movant may file a reply memorandum by the twenty-first calendar day after the motion was filed. On the twenty-first calendar day after the motion was filed, the motion shall be deemed submitted to the commission; provided, however, that where the circumstances warrant and upon equitable terms and conditions, the commission may rule upon the motion prior to the expiration of this twenty-one-day period.

HISTORY: Eff 11-4-71; 11-15-77; 12-23-79; 7-12-89; 8-10-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

4112-3-15 Application for bona fide occupational qualification.

(A) Application. Any respondent seeking a BFOQ pursuant to division (E) of section 4112.02 of the Revised Code must submit a written application to the commission. The application must contain the following:

- (1) A list of the specific job classifications which are the subject of the application;
- (2) A full statement of the facts giving rise to the application;
- (3) A legal memorandum in support of the application containing appropriate citations; and
- (4) Supporting evidence, including affidavits and other documentation, which the applicant believes justifies the approval of the application.

(B) Consideration of application. After an application has been submitted in compliance with this rule, the commission may consider the application at a regularly scheduled meeting and either:

(1) Grant or deny the application; or

(2) Refer the application to the commission staff for further investigation; or

(3) Refer the matter to a hearing examiner to conduct a public hearing on the application. Such hearing shall be conducted consistent with rule 4112-3-07 of the Administrative Code.

(C) Disposition. Any application that is referred to the commission staff for further investigation or to a hearing examiner for a public hearing shall be considered by the commission at a regularly scheduled meeting as soon as practical after receipt of an investigative report or a hearing examiner's report. The commission may grant or deny the application for a BFOQ after the hearing or further investigation.

(D) Denial of a BFOQ. In the event the commission denies the respondent's application for a BFOQ, such denial shall not preclude the respondent from asserting a BFOQ as a defense to a charge of discrimination at any subsequent public hearing concerning the issues regarding which the application for a BFOQ was sought.

(E) Denial of a BFOQ is not appealable. The commission's denial of a request for a BFOQ, pursuant to this rule, shall not be deemed to be a final appealable order of the commission.

(F) Expiration of a BFOQ. Any BFOQ granted pursuant to this rule shall expire after two years, unless the respondent has applied for and been granted an extension by the commission.

HISTORY: Replaces rule 4112-3-15; Eff 7-12-89

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.05

Rule amplifies: RC 4112.02

4112-3-16 Disposition of electronic records.

Electronic records of all hearings shall be preserved so long as the record may be the basis of a proceeding to obtain judicial review and may be reviewed by any party at the commission's central office during regular business hours.

(A) When the following facts signify that the electronic record may no longer be the basis for a proceeding to obtain judicial review, the electronic record will be erased and made available for reuse:

(1) The commission has taken final action with respect to the particular matter.

(2) All parties required to be advised of such action have been sent proper notices.

(3) Any party entitled to obtain judicial review from such action has failed to timely file a petition to obtain judicial review.

(B) If a timely petition to obtain judicial review is filed, the electronic record of hearings may be erased and made available for reuse sixty days after the time when such record has been fully transcribed and the transcription received by the court wherein the petition to obtain judicial review was filed and received by all parties, provided no objection has been filed.

(C) If a timely petition to obtain judicial review is filed and an objection is made to the accuracy of the transcription, the electronic record may not be erased until two years have passed from the

date of the final order of the commission or until all state appellate proceedings have been completed.

(D) The disposition of electronic records as provided in this rule is subject to the permission of the state records commission pursuant to section 149.37 of the Revised Code.

HISTORY: Replaces rule 4112-3-15; Eff 12-23-79; 7-12-89

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04, Rule amplifies: RC 4112.04, 4112.05

4112-3-17 Deferral of charges to EEOC and referral of charges to HUD.

The commission may, without further action, defer any charge the subject matter of which is within their jurisdiction to the EEOC or refer any such charge to the department of housing and urban development for investigation, findings and other proceedings. The commission may adopt, in whole or in part, modify or reject the findings of the EEOC and HUD and may take whatever further action as may be necessary to secure the rights of persons under, and achieve the purposes of, Chapter 4112. of the Revised Code. In the event that no such further action is necessary, the commission shall deem its activities with respect to any charge as having terminated as of the date such charge is deferred to the EEOC or referred to HUD.

HISTORY: Eff 12-23-79; 7-12-89; 8-10-97

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

4112-5-01 Purpose.

The purpose of the following rules and regulations on discrimination is to assure compliance with the provisions of Chapter 4112 of the Revised Code. These rules express the Ohio civil rights commission's interpretation of language in Chapter 4112 of the Revised Code and indicate factors which the commission will consider in determining whether or not there has been a violation of the law. Such rules apply to every action which falls within the coverage of Chapter 4112 of the Revised Code, and are not intended to either expand or contract the coverage of Chapter 4112 of the Revised Code.

HISTORY: Eff 11-15-77

Rule promulgated under: RC 111.15

Rule amplifies: RC Chapter 4112

4112-5-02 Definitions.

2-5-02 Definitions. When used in Chapter 4112. of the Revised Code and Chapters 4112-5 to 4112-7 of the Administrative Code:

(A) "Accommodation" as applied to employers means a reasonable adjustment made to a job and/or the work environment that enables a qualified disabled person to safely and substantially perform the duties of that position.

(B) "Adverse impact" means a neutral policy or practice of an employer or other entity covered by Chapter 4112. of the Revised Code which has a disproportionate impact (or can reliably be predicted to have a disproportionate impact) on a protected class. Such policy or practice constitutes an unlawful discriminatory practice, unless it can be justified by business necessity.

(C) "Animal assistant" means any animal which aids the disabled. Specific examples include:

(1) A dog which alerts a hearing impaired person to sounds;

(2) A dog which guides a visually impaired person;

(3) A monkey which collects or retrieves items for a person whose mobility is impaired.

(D) "Bona fide occupational qualification" (hereinafter denoted BFOQ) means those special job situations where an employer may hire employees or take other employment related actions on the basis of sex age, religion, national origin, or disability justified by business necessity.

(E) "Business necessity" means a practice or policy essential to job performance such that no acceptable or alternative practice or policy with lesser discriminatory impact exists.

(F) "Employee" includes, but is not limited to, an individual compensated by an employment agency for work to be performed for an employer contracting with the employment agency. Such persons may be considered an employee of the contracting employer for such terms, conditions and privileges of employment under the control of that employer. Such an individual is an employee of the employment agency with regard to such terms, conditions and privileges of employment under the control of the employment agency.

(G) "Fringe benefits" include medical, hospital, accident, life insurance, and retirement benefits; profit-sharing and bonus plans; leave and other terms, conditions, and privileges of employment.

(H) "Disabled person" includes any person who presently has a disability as defined by division (A)(13) of section 4112.01 of the Revised Code or any person who has had a disability as defined by division (A)(13) of section 4112.01 of the Revised Code, who no longer has any functional limitation, but who is treated by a respondent as having such a disability, or any person who is regarded as disabled by a respondent.

(I) "Place of public accommodation" includes, but is not limited to, all places included in the meaning of such terms as inns, taverns, road houses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation or rest; restaurants or eating houses, or any place where food is sold for consumption on the premises; buffets, saloons, barrooms, or any store, park or enclosure where spirituous or malt liquors are sold; ice cream parlors, confectionaries, soda fountains and all stores where ice cream, ice and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises; wholesale and retail stores, and establishments dealing with goods or services of any kind, including, but not limited to, the credit facilities thereof; banks, savings and loan associations, establishments of mortgage bankers and brokers, all other financial institutions, and credit information bureaus; insurance companies and establishments of insurance policy brokers; dispensaries, clinics, hospitals, bathhouses, health spas, swimming pools, laundries and all other cleaning establishments; barber shops, beauty parlors, theaters, motion picture houses, airdomes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, trailer camps, resort camps, fairs, bowling alleys, golf courses, gymnasiums, shooting galleries, billiard and pool parlors, video arcades; garages, all public conveyances operated on land or water or in the air, as well as the stations and terminals thereof; travel or tour advisory services, agencies or bureaus; public halls and public elevators of buildings and structures, occupied by two or more tenants, or by the owner and one or more tenants; or any place that offers accommodations, advantages, facilities or privileges to a substantial public on a nonsocial, sporadic, impersonal and nongratiuitous basis.

(J) "Private housing accommodations" mean any building, structure, or portion thereof which is occupied as or designated or intended for occupancy as a home, residence, or sleeping place of one or more persons, whether or not living independently of each other. Such term also includes any real property which is offered for sale or lease for the construction or location thereon of any

such building, structure, or portion thereof.

(K) "Qualified disabled person" means, with respect to employment, a disabled person who can safely and substantially perform the essential functions of the job in question, with or without reasonable accommodation, and who is not excluded from the coverage of Chapter 4112. of the Revised Code.

HISTORY: Eff 11-15-77; 7-12-89; 1-11-98

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

4112-5-04 Record keeping.

The making and maintenance of records of the race, religion, sex or national origin of applicants for employment, union membership, housing or loans relating to housing shall not violate sections 4112.02(E) and 4112.02(H)(7) of the Revised Code where such records are made in conformance with instructions from, or the requirements of, an agency or court of the local, state, or federal government in connection with the administration of a program which serves to promote the elimination of discrimination. Such records shall be gathered and maintained in such a fashion as to preclude their inadvertent or deliberate use for discriminatory purposes and to avoid possible misinterpretation by applicants of the purpose for which such data will be used.

HISTORY: Eff 11-15-77

Rule promulgated under: RC 111.15

Rule amplifies: RC 4112.02

119.032 Review date: 1-10-02

4112-5-05 Sex discrimination.

(A) Sex as a bona fide occupational qualification. The BFOQ exception as to sex shall be narrowly construed so as to prohibit employment practices which tend to deny employment opportunities unnecessarily to one sex or the other. Requests for a BFOQ must be submitted pursuant to rule 4112-3-15 of the Administrative Code.

(B) Application of the BFOQ exception. The following situations do not warrant application of the BFOQ exception.

(1) Refusal to hire, promote, recall, or deny an individual any term, condition or privilege of employment based upon stereotyped characterizations of the sexes. Individuals shall be considered on the basis of individual capacities rather than on the basis of characteristics generally attributed to that group.

(2) Refusal to hire, promote or recall or deny an individual any term, condition or privilege of employment when such refusal or denial is based on assumptions of the general comparative employment characteristics of that sex.

(3) Refusal to hire based upon state employment laws or administrative regulations which restrict or limit employment of one sex and do not take into account the capacities, preferences and abilities of the individual and therefore discriminate on the basis of sex. Such laws and regulations conflict with and are superseded by Chapter 4112. of the Revised Code.

(C) Job opportunities advertising. Help wanted advertising which indicates a preference, limitation or specification based on sex shall constitute unlawful sex discrimination unless sex is a BFOQ for a particular job.

(D) Pre-employment inquiries. Any pre-employment inquiries by an employer, in connection with the prospective employment of an individual, which express directly or indirectly any limitation, specification or preference as to sex shall be unlawful unless based on a BFOQ.

(E) Fringe benefits. It shall be an unlawful employment practice for an employer to discriminate on the basis of sex with regard to fringe benefits.

(1) Benefits available to employees and their spouses and families which are conditioned on whether the employee is the head of the household or principal wage earner are a prima facie violation of the prohibitions against sex discrimination contained in Chapter 4112. of the Revised Code.

(2) An employer's declaration that the cost of a benefit program is greater with respect to one sex than the other shall not be a valid defense to a charge of unlawful sex discrimination.

(3) It shall be an unlawful employment practice for an employer to maintain a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex or which differentiates benefits available on the basis of sex.

(F) Marital status. An employment rule or regulation which restricts the employment of married members of one sex and which is not applicable to married members of the other sex shall constitute unlawful sex discrimination, unless such rule or regulation is based on a BFOQ.

(G) Pregnancy and childbirth.

(1) A written or unwritten employment policy or practice which excludes from employment applicants or employees because of pregnancy is a prima facie violation of the prohibitions against sex discrimination contained in Chapter 4112. of the Revised Code.

(2) Where termination of employment of an employee who is temporarily disabled due to pregnancy or a related medical condition is caused by an employment policy under which insufficient or no maternity leave is available, such termination shall constitute unlawful sex discrimination.

(3) Written and unwritten employment policies involving commencement and duration of maternity leave shall be so construed as to provide for individual capacities and the medical status of the woman involved.

(4) Employment policies involving accrual of seniority and all other benefits and privileges of employment, including company-sponsored sickness and accident insurance plans, shall be applied to disability due to pregnancy and childbirth on the same terms and conditions as they are applied to other temporary leaves of absence of the same classification under such employment policies.

(5) Women shall not be penalized in their conditions of employment because they require time away from work on account of childbearing. When, under the employer's leave policy the female employee would qualify for leave, then childbearing must be considered by the employer to be a justification for leave of absence for female employees for a reasonable period of time. For example, if the female meets the equally applied minimum length of service requirements for leave time, she must be granted a reasonable leave on account of childbearing. Conditions applicable to her leave (other than its length) and to her return to employment shall be in accordance with the employer's leave policy.

(6) Notwithstanding paragraphs (G)(1) to (G)(5) of this rule, if the employer has no leave policy, childbearing must be considered by the employer to be a justification for leave of absence for a

female employee for a reasonable period of time. Following childbirth, and upon signifying her intent to return within a reasonable time, such female employee shall be reinstated to her original position or to a position of like status and pay, without loss of service credits.

(H) Separate lines of progression and seniority systems. It is an unlawful employment practice to maintain separate lines of progression or separate seniority lists based on sex where such practice would adversely affect any employee unless sex is a BFOQ for that job. Accordingly, employment practices are unlawful which arbitrarily classify jobs so that:

(1) Females are prohibited from applying for jobs labeled in a male line of progression and vice versa.

(2) A female scheduled for layoff is prohibited from displacing a less senior male and vice versa.

(3) The seniority system or line of progression classifies similar jobs as light or heavy or in some other manner and thereby operates to create unreasonable obstacles to the advancement of either sex into jobs which members of that sex would reasonably be expected to perform.

(I) Employment agencies.

(1) It shall constitute unlawful sex discrimination for an employment agency to deal exclusively with one sex, except to the extent that such agency limits its services to furnishing employees for particular jobs for which sex is a BFOQ.

(2) An employment agency that receives a job order containing an, unlawful sex specification will share responsibility with the employer placing the job order if the agency fills the order knowing that the sex specification is not based on a BFOQ.

(3) An employment agency that receives a job order containing an unlawful sex specification will not share responsibility with the employer placing the order if the agency does not have reason to believe that the employer's claim of a BFOQ is without substance and the agency makes and maintains a written record available to the commission of each such job order. Such record shall include the name of the employer, the description of the job and the basis for the employer's claim that sex is a BFOQ.

(J) Sexual harassment.

(1) Harassment on the basis of sex is a violation of division (A) of section 4112.02 of the Revised Code. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

(a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(2) In determining whether alleged conduct constitutes sexual harassment, the commission will look at the record as a whole and the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the legality of a particular action will be made from the facts, on a case-by-case basis.

(3) Applying general agency principles, an employer, employment agency, joint apprenticeship

committee or labor organization (hereinafter collectively referred to as "employer") is responsible for its acts and those of its agents and supervisory employees with respect to sexual harassment regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(4) With respect to conduct between fellow employees, an employer is responsible for acts of sexual harassment in the work place where the employer (or its agents or supervisory employees) knows or should have known of the conduct, unless the employer can show that it took immediate and appropriate corrective action.

(5) An employer may also be responsible for the acts of nonemployees (e.g., customers) with respect to sexual harassment of employees in the work place, where the employer (or its agents or supervisory employees) knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases the commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such nonemployees.

(6) Prevention is the best tool for the elimination of sexual harassment. An employer should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raising the subject, expressing strong disapproval, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment under Chapter 4112. of the Revised Code, and developing methods to sensitize all concerned.

(7) Other related practices. Where employment opportunities or benefits are granted because of an individual's submission to the employer's requests for sexual favors, the employer may be held liable for unlawful sex discrimination against other persons who were qualified for but denied that employment opportunity or benefit.

HISTORY: Eff 7-12-89; 1-11-98
Rule promulgated under: RC 111.15
Rule authorized by: RC 4112.04
Rule amplifies: RC 4112.04, 4112.05
R.C. 119.032 review date: January 10, 2003

4112-5-06 Discrimination against the disabled in places of public accommodation.

(A) Discrimination prohibited. It shall constitute unlawful discrimination in violation of Chapter 4112. of the Revised Code for any facility which is a place of public accommodation to:

(1) Deny any disabled person the reasonable access to and use of the areas within such facility which are open to and used by the public in general.

(2) Deny any disabled person any term, condition, privilege, service or advantage which, upon entrance to such facility, accrues to the public in general. For example, no disabled person shall be denied, except for reasons applicable alike to all persons regardless of disability, the full use and enjoyment of:

(a) Recreational or social facilities within such place of public accommodation.

(b) Food services within such facility.

(c) Maintenance services within such facility.

(d) Any service such place of public accommodation is in the business of providing.

(3) Directly or indirectly publish, circulate, issue, display, post or mail any written, printed or broadcast communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of such place of public accommodation shall be refused, withheld or denied to any person on account of disability.

(4) Deny any disabled person in a place of public accommodation the attendance of an animal assistant or require the disabled person to pay an extra charge for the attendance of the animal assistant

(B) Reasonable accommodation. Whether a place of public accommodation has reasonably accommodated its facility for use by the disabled shall be determined on a case-by-case basis; however, the following factors will be considered:

(1) Whether parking spaces for the disabled are provided in close proximity to the building entrance.

(2) Whether walkways from such parking spaces have been made accessible to the disabled.

(3) Whether steps at building entrances have been supplemented by a means of access to the building entrance, such as ramps or by sloped grading.

(4) Whether public entrance doorways provide the disabled with reasonable access to such building.

(5) Whether public telephones, lavatory facilities, water fountains, elevators, corridors, vending machines, stairways, food service lanes and aisles, utility outlets of frequent or essential use, and other similar facilities within such place of public accommodation are accessible to the disabled.

(C) Burden of proof when a disabled person is denied access to place of public accommodation. The owner, proprietor, keeper, or manager of a place of public accommodation shall have the burden of proving that the denial of any accommodation, advantage, facility or privilege to a disabled person is based on a restriction applicable to all persons regardless of disability or an inability to reasonably accommodate due to undue hardship.

(D) Undue hardship. Upon an owner's, proprietor's, keeper's or manager's claim of inability to accommodate the disabled due to undue hardship, the following factors will be considered:

(1) Business necessity.

(2) Whether the cost of accommodating the disabled would be substantially disproportionate to the total cost, use or size of such place of accommodation.

(3) Whether or not it is architecturally feasible to make reasonable accommodation.

(4) The requirements of other laws and contracts.

(5) Other appropriate considerations the proprietor, keeper or manager of the place of public accommodation can support with objective evidence.

(E) New construction of places of public accommodation. Each place of public accommodation which is to be designed or constructed, after the effective date of rule 4112-5-06 of the Administrative Code, shall be deemed to have met the requirements of rule 4112-5-06 of the

Administrative Code if they are so designed and constructed as to be readily accessible to and usable by disabled persons.

(F) Alterations and renovation of places of public accommodation. Each place of public accommodation which is altered or renovated in whole or in part, after the effective date of rule 4112-5-06 of the Administrative Code, shall be deemed to have met the requirements of rule 4112-5-06 of the Administrative Code if they are so altered or renovated as to be reasonably accessible to and usable by the disabled. However this paragraph shall not apply to repairs and minor alterations of such buildings.

(G) "American National Standards Institute" accessibility standards. In order to meet the accessibility requirements of paragraphs (E) and (F) of this rule, all places of public accommodation designed, constructed, renovated or altered after the effective date of rule 4112-5-06 of the Administrative Code shall at a minimum conform such design, construction, renovation or alteration of its facilities to the "American National Standard Specification for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped," published by the "American National Standards Institute," as such standards are periodically and officially revised.

(H) Variances. Variations with the requirements set forth in the "American National Standards Institute" specifications may be permissible when full compliance with such standards would result in undue hardship. The factors set forth in paragraph (D) of this rule shall be considered when a claim of undue hardship is raised.

(I) Seating accommodations in places of public accommodations. As regulated by the number of persons to be accommodated by fixed seating, the following number of spaces for wheel chairs shall be provided.

(2) In lieu of the requirements set forth in paragraph (I)(1) of this rule, there may be provided sections of fixed seating that can be readily removed when the occasion warrants.

(J) Parking spaces for the disabled in places of public accommodation. If parking spaces are provided for self-parking by employees or visitors, or both, then accessible spaces shall be provided for the disabled in each such parking area in conformance with the table below:

Spaces required by the table in paragraph (J)(1) of this rule need not be provided in the particular lot. They may be provided in a different location if equivalent or greater accessibility, in terms of distance from an accessible entrance, cost and convenience is ensured.

(2) One in every eight accessible spaces must be designed with adequate adjacent space to deploy a lift used with a van. The access aisle for van accessible spaces must be a minimum of 96 inches wide. These spaces must have a sign indicating they are van accessible, as required under "Accessibility Guideline 4.6.4" of the Americans with Disabilities Act, but they are not reserved exclusively to van users.

The minimum vertical clearance at van accessible spaces is 98 inches at the parking space, and along at least one vehicle access route from the site entrance and exit to the parking space, as required under "Accessibility Guideline 4.6.5" of the Americans with Disabilities Act. All van accessible spaces may be grouped on one level of a parking structure.

(K) Building codes. Nothing in these rules on the disabled shall be construed to minimize or circumvent in any way more stringent accessibility standards required of a place of public accommodation by local, state or federal building codes.

HISTORY: Eff 11-15-77; 7-12-89; 1-11-98
Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04
Rule amplifies: RC 4112.04, 4112.05

4112-5-07 Discrimination against the disabled in private housing accommodations.

(A) Discrimination prohibited. No person shall, on the basis of a disability, be subjected to discrimination in private housing accommodations as it relates to:

(1) The sale, transfer, assignment, renting, subleasing or financing of such accommodations. In particular, it shall constitute unlawful discrimination in violation of Chapter 4112. of the Revised Code for any person to:

(a) Refuse to sell, rent, transfer, or sublease after making a bona fide offer to a person, because of such person's disability.

(b) Refuse to negotiate for the sale, renting, transfer, subleasing or financing of private housing accommodations because of a person's disability.

(c) Refuse to consider sources of a disabled applicant's income or to subject the applicant's source of income or ability to generate income to automatic discounting in whole or in part because of such applicant's disability.

(d) Segregate the placement of a disabled person in a unit, floor, building or complex within such private housing accommodations, unless such placement is at the request or with the consent of the disabled person.

(2) Advertising or listing for the sale, transfer, assignment, renting, subleasing or financing of private housing accommodations.

(3) Membership or participation in any organization, service or facility relating to the selling, transfer, assignment, renting, subleasing or financing of private housing accommodations.

(4) Representations as to the availability of such housing or its availability for inspection.

(5) Representations of the composition of the block, neighborhood or area, in which such housing is located, because of the presence or anticipated presence of disabled persons.

(6) Any housing accommodations sponsored activities, including social or recreational activities.

(7) Any housing accommodation services, including maintenance and utility services.

(8) Any other term, condition or privilege in the sale, transfer, assignment, renting, subleasing or financing of such housing accommodations.

(B) Application inquiries. It shall constitute unlawful housing discrimination for any person to make any written or oral inquiries or record concerning the disability of any applicant or intended occupant involved in the sale, renting, assignment or subleasing of private housing accommodations, unless such inquiries or records are made pursuant to federal contract requirements of a bona fide affirmative action plan. If such records or inquiries are so required, they shall be maintained in such a fashion as to preclude their inadvertent or deliberate use for discriminatory purposes and to avoid possible misinterpretation by applicants of the purpose for which such data will be used.

(C) Animal assistants. Every disabled person who has an animal assistant or who obtains an animal assistant shall be entitled to keep the animal assistant on the premises purchased, leased, rented, assigned or subleased by such disabled person. He or she shall not be required to pay

any extra charge for such animal assistant but shall be liable for damage done by the animal assistant to the premises.

(D) Duty to accommodate. Nothing in rule 4112-5-07 shall require any person selling, transferring, assigning, leasing or subleasing private housing accommodations to modify such property in any way or provide a higher degree of care for a DISABLED person. Nor shall anything in rule 4112-5-07 relieve any disabled person of any obligation generally imposed on all persons regardless of disability in any lease, agreement or contract of purchase concerning such housing accommodations, except that a disabled person shall be permitted, at his or her own expense, to make reasonable modifications of existing premises occupied or to be occupied by such person if modifications are necessary to afford such person full enjoyment of the premises. When the disabled person vacates the premises, the modifications shall be removed, when requested by the landlord, at the disabled person's expense and the premises restored to ITS original condition. Reasonable accommodations in rules, policies, practices, or services shall also be made when such accommodations are necessary to afford a disabled person equal opportunity to use and enjoy a premises.

(E) Burden of proof. If an applicant, because of disability, is refused housing accommodations or discriminated against in any term, condition or privilege in the sale, assignment, transfer, renting, subleasing, or financing of housing accommodations, the owner, landlord, proprietor, or agent shall have the burden of establishing the basis for such refusal or discrimination.

(F) Health and safety. It shall constitute a defense to a claim of unlawful housing discrimination that the sale, transfer, assignment, renting, or subleasing of such housing accommodations would, under the circumstances, pose a direct threat to the health or safety of other individuals or would result in substantial physical damage to the property of others. However, defenses raised pursuant to this paragraph will be closely scrutinized. Speculative evidence of hazards to health and safety will not suffice.

HISTORY: Eff 11-4-71; 11-15-77; 12-23-79; 7-12-89; 9-2-92; 10-2-92; 1-11-98

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

4112-5-08 Discrimination in the employment of the disabled.

(A) Discrimination prohibited. No qualified disabled person shall, on the basis of disability, be subjected to discrimination in employment as it relates to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation or any changes in compensation;

(4) Job assignment, job classification, organizations, organizational structure, position descriptions, lines of progression, and seniority lists;

(5) Departure and return from leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the respondent, except as provided in paragraph (f) of this rule;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer-sponsored activities, including social or recreational programs; and

(9) Any other term, condition or privilege of employment.

(B) Pre-employment inquiries.

(1) Pre-employment inquiries are permissible if they are designed to:

(a) Determine whether an applicant can perform the job without significantly increasing the occupational hazards to himself or herself, to others, to the general public, or to the work facilities;

(b) Determine whether the applicant can perform the essential functions of the job with or without a reasonable accommodation.

(2) The pre-employment inquiries permissible under paragraph (e) of this rule should be preceded by a statement that discrimination on the basis of a disability, which does not create the occupational hazards nor prevent substantial job performance, as set out in paragraph (e) of this rule, is prohibited by state law.

(3) Information obtained in accordance with this paragraph as to the medical condition or history of the applicant shall be collected only through the use of separate forms which shall be accorded confidentiality as medical records. Supervisors may, however, be given information and instructions necessary to the person's health and safety and may be informed of work restrictions and necessary accommodations.

(4) If, pursuant to federal contract requirements or a bona fide affirmative action plan, an employer is required to maintain records of the number of disabled persons who apply, and/or who are employed, such records shall be gathered and maintained in such a fashion as to preclude their inadvertent or deliberate use for discriminatory purposes and to avoid possible misinterpretation by applicants of the purpose for which such data will be used.

(C) Pre-employment physical examinations.

(1) Pre-employment physical examinations may be given after a conditional offer of employment has been extended to the applicant if such examinations are used:

(a) To determine those matters set out in paragraph (B)(1) of this rule;

(b) To establish a base line for health records and facilitate preventive medicine programs; or

(c) For other reasons demonstrated by the employer to be valid. Such examinations cannot be used to exclude an applicant, unless the disability resulting in the exclusion creates a significant occupational hazard or prevents substantial job performance as set out in paragraph (e) of this rule.

(2) Information obtained in a physical examination shall be collected and used in the same manner as set out in paragraph (B) (3) of this rule.

(D) Burden of proof when applicant is excluded based on disability.

(1) Burden of proof. If an applicant is refused employment, or an employee is discriminated against in any term, condition or privilege of employment because of a disability, the employer shall have the burden of establishing the basis for the refusal or discrimination, whether it is based upon a BFOQ, occupational hazard, inability to substantially perform the job, or inability of the employer to accommodate.

(2) Bona fide occupational qualifications.

(a) Division (e) of section 4112.02 of the Revised code, which is distinct from the exemption language of division (l) of section 4112.02 of the revised code, permits discrimination against the disabled when such discrimination is based on a BFOQ. The commission construes the BFOQ exception very narrowly and requires an employer to prove that all or substantially all persons with a particular disability are unable to perform the typical duties of the job in question.

(b) The following job requirements are BFOQs:

(i) Any specific requirement set out in a statute of the united states or an authorized regulation of an agency of the united states government; and

(ii) Any specific requirement set out in a statute of the state of ohio or an authorized regulation of an agency of the state of ohio, or in an ordinance, authorized rule, or other official act of a unit of local government of the state of ohio, unless the ohio civil rights commission finds that the state or local requirement is not consistent with the laws against discrimination.

(c) The following are not BFOQs:

(i) Preferences or objections of co-workers, the employer, clients, or customers; and

(ii) Physical or administrative obstacles or inadequacies in work facilities that reasonably can be corrected as provided in paragraph (e) of this rule.

(3) Occupational hazards.

(a) Division (l) of section 4112.02 of the Revised code, provides that a disabled person need not be employed or trained under circumstances that would significantly increase the occupational hazards affecting either the disabled person, other employees, the general public, or the facilities in which the work is to be performed. If this section is relied upon to refuse to hire or train a disabled person, it is the employer's burden to establish the manner and degree to which such occupational hazards would be increased. Objective standards must be used to evaluate any such increased hazards. Only "significant" increases in hazards justify refusal to hire or train. Thus, the hazard must be reasonably foreseeable with a significant probability of happening.

(b) Occupational hazards specifically recognized by the united states department of labor's occupational safety and health administration which are not correctable by reasonable accommodation meet the requirements of division (l) of section 4112.02 of the revised code, and will justify refusal to employ or train a disabled person.

(c) Even if under existing circumstances occupational hazards would be significantly increased, an employer may not rely on division (l) of section 4112.02 of the revised code to refuse to employ or to train a disabled person if through reasonable accommodation pursuant to paragraph

(e) of this rule the significantly increased occupational hazards could be avoided.

(4) Ability to perform the job.

(a) Division (l) of section 4112.02 of the revised code further provides that a disabled person need not be employed or trained in a job that requires him or her routinely to undertake any task, the performance of which is substantially and inherently impaired by his or her disability. The determination of whether a disabled person is substantially unable to perform a job must be made on an individual basis, taking into consideration the specific job requirements and the individual

disabled person's capabilities.

(b) An employer cannot rely on division (L) of section 4112.02 of the Revised Code to exclude a disabled person unless the job requires him or her to routinely undertake a task which such person cannot substantially perform. A task which is an infrequent, irregular or nonessential element of a job cannot be used to exclude a disabled person.

(c) An employer cannot rely on division (L) of section 4112.02 of the Revised Code to exclude a disabled person if, through reasonable accommodation pursuant to paragraph (E) of this rule, the disabled person can substantially perform the essential elements of the job.

(d) The performance of a job by a disabled person is not substantially and inherently impaired by his or her disability within the meaning of division (L) of section 4112.02 of the Revised Code, if such person is capable of performing the job, with reasonable accommodation to his or her disability, at the minimum acceptable level of productivity applicable to a non-disabled incumbent employee or applicant for employment.

(e) A physician's opinion on whether a person's disability substantially and inherently impairs his or her ability to perform a particular job will be given due weight in view of all of the circumstances including:

(i) The physician's knowledge of the individual capabilities of the applicant or employee, as opposed to generalizations as to the capabilities of all persons with the same disability, unless the disability is invariable in its disabling effect;

(ii) The physician's knowledge of the actual sensory, mental, and physical qualifications required for substantial performance of the particular job; and

(iii) The physician's relationship to the parties.

(E) Reasonable accommodation.

(1) An employer must make reasonable accommodation to the disability of an employee or applicant, unless the employer can demonstrate that such an accommodation would impose an undue hardship on the conduct of the employer's business.

(2) Accommodations may take the form, for example, of providing access to the job, job restructuring, acquisition or modification of equipment or devices, or a combination of any of these. Job restructuring may consist, among other things, of realignment of duties, revision of job descriptions or modified and part-time work schedules. Specific examples include:

(a) If a job entails primarily typing duties with some irregular messenger or delivery tasks, the messenger or delivery tasks could be assigned to an ambulatory employee so that a nonambulatory disabled person with satisfactory typing skills could be employed.

(b) If a disabled employee is required to have physical therapy during normal working hours, his or her work schedule could be modified to allow the employee to make up the time lost because of the therapy.

(3) In determining whether an accommodation would result in undue hardship to an employer, the following factors may be considered:

(a) Business necessity;

(b) Financial cost and expense where such costs are unreasonably high in view of the size of the employer's business, the value of the disabled employee's work, whether the cost can be

included in planned remodeling or maintenance, and the requirements of other laws and contracts; and

(c) Other appropriate considerations which the employer can support with objective evidence.

(4) The exceptions to the prohibition against discrimination because of disability set out in division (E) of section 4112.02 and division (L) of section 4112.02 of the Revised Code, and paragraph (E) of this rule are not applicable where reasonable accommodation would remove the limitation on the disabled person's ability to safely and substantially perform the job.

(F) Application and testing procedures.

(1) An employer may not use any test or other criterion which creates barriers to employment opportunities of disabled persons unless:

(a) The test or criterion being used has been validated as related to job performance for the position in question; and

(b) Alternative tests or criteria to predict the same job performance, but which have less adverse effect, are shown to be unavailable.

(2) Validated tests shall be administered to disabled persons in a manner which ensures that the test accurately reflects the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the person's disability itself, except where such disability impairs the very factors which the test purports to measure.

(G) Fringe benefits.

(1) An employer may not discriminate on the basis of disability in providing fringe benefits to employees. Any fringe benefit plan must provide for equal benefits and equal contributions to the plan by disabled and non-disabled persons unless any difference in benefits or contributions is justified by verifiable actuarial figures and an actual substantial increase in cost to the employer.

(2) Where, on an actuarial basis as set forth in paragraph (G)(1) of this rule, participation by a disabled person in a fringe benefit is prohibitive because of a substantial increase in cost of the benefit, the employee shall have the option of either paying the additional cost of the benefit above the cost for non-disabled persons or losing the benefit, but being paid by the employer a sum equal to the contribution the employer would have made for the benefit on behalf of the employee.

(3) In no event shall a disabled person be denied employment because of inability to participate in a fringe benefit plan as described in paragraphs (G)(1) and (G)(2) of this rule.

(H) Voluntary affirmative action plans.

(1) In determining whether an employer has violated the proscriptions of Chapter 4112. of the Revised Code against discrimination based on disability, the Ohio civil rights commission will consider evidence of an employer's efforts to establish and implement a voluntary affirmative action plan for employment of disabled persons. The Ohio civil rights commission is specifically interested in implementation of such plans which has resulted in employment of disabled persons and in changes in employment practices or procedures which will facilitate access to employment by disabled persons.

(2) Approval by an agency of the United States government of an employer's affirmative action plan that is required by federal law, does not relieve such employer of the obligations imposed by Chapter 4112. of the revised code, as it relates to employment of disabled persons, but such

plans will be treated as voluntary plans for the purposes of paragraph (H)(1) of this rule.

HISTORY: Eff 11-15-77; 7-12-89; 1-11-98

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

4112-5-09 Discrimination against the disabled in institutions of higher education.

(A) Applicability. This rule applies to post-secondary education programs and activities, including post-secondary vocational educational programs and activities as defined in section 4112.022 of the Revised Code.

(B) Admissions and recruitment.

(1) Generally. Qualified disabled persons shall not be denied admission or be subjected to discrimination in admission or recruitment on the basis of disability at an educational institution covered by Chapter 4112. of the Revised Code.

(2) Admissions. In administering its admission policies, an educational institution:

(a) May not apply limitations upon the number or proportion of disabled persons who may be admitted;

(b) May not make use of any test or criterion for admission that has a disproportionate adverse effect on disabled persons or any class of disabled persons unless:

(i) The test or criterion, as used by the educational institution, has been validated as a predictor of success in the education program or activity in question; and

(ii) Alternate tests or criteria that have a less disproportionate adverse effect are shown not to be available.

(c) Shall assure itself that:

(i) Admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure);

(ii) Admissions tests that are designed for persons with impaired sensory, manual or speaking skills are offered as often and in as timely a manner as are other admissions tests; and

(iii) Admissions tests are administered in facilities that, on the whole, are accessible to disabled persons; and

(d) Except as provided in paragraph (C) of this rule, may not make preadmission inquiry as to whether an applicant for admission is a disabled person but, after admission, may make inquiries on a confidential basis as to disabilities that may require accommodation.

(3) Preadmission inquiry exception. When an educational institution is taking remedial action to correct the effects of past discrimination or when an educational institution is taking voluntary affirmative action to remedy conditions that have resulted in limited participation by qualified disabled persons, the educational institution may invite applicants for admission to indicate

whether and to what extent they are disabled, provided that:

(a) The educational institution states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary affirmative action efforts; and

(b) The educational institution states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this rule.

(4) Validity studies. For the purpose of paragraph (B)(2)(b) of this rule, an educational institution may base prediction equations on first-year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

(C) Treatment of students.

(1) No qualified disabled student shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any academic, research, occupational training, housing, health insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other post-secondary education program or activity to which this rule applies.

(2) Any educational institution to which this rule applies that considers participation by students in education programs or activities not operated wholly by the educational institution as part of, or equivalent to, an education program or activity operated by the educational institution shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified disabled persons.

(3) An educational institution may not, on the basis of disability, exclude any qualified disabled student from any course, course of study, or other part of its education program or activity.

(4) Educational institutions shall operate their programs and activities in the most integrated setting appropriate.

(D) Academic adjustments.

(1) Academic requirements. Educational institutions shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of disability, against a qualified disabled applicant or student. Academic requirements that the educational institution can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this rule. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(2) Other rules. Educational institutions may not impose upon disabled students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of disabled students in the educational institution's education program or activity.

(3) Course examinations. In its course examinations or other procedures for evaluating students' academic achievement in its program, educational institutions shall provide such methods for evaluating the achievement of students who have a disability that impairs sensory, manual, or

speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(4) Auxiliary aids.

(a) Educational institutions shall take such steps as are necessary to ensure that no disabled student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the educational institution because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(b) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted for use by students with manual impairments, and other similar services and actions. Educational institutions need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

(E) Housing.

(1) Housing provided by the educational institution. Any educational institution that provides housing to its non-disabled students shall provide comparable, convenient, and accessible housing to disabled students at the same cost as to others. Such housing shall be available in sufficient quantity and variety so that the scope of disabled students' choice of living accommodations is, as a whole, comparable to that of non-disabled students.

(2) Other housing. An educational institution that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of disability.

(F) Financial and employment assistance to students.

(1) Provision of financial assistance.

(a) In providing financial assistance to qualified disabled persons, an educational institution may not:

(i) On the basis of disability, provide less assistance than is provided to non-disabled persons, limit eligibility for assistance, or otherwise discriminate; or

(ii) Assist any entity or person that provides assistance to any of the educational institution's students in a manner that discriminates against qualified disabled persons on the basis of disability.

(b) An educational institution may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of disability only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of disability.

(2) Assistance in making available outside employment. An educational institution that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner

that would not violate paragraph (F)(1)(a) of this rule if they were provided by the educational institution.

(3) Employment of students. An educational institution that employs any of its students may not do so in a manner that violates paragraph (F)(1)(a) of this rule.

(G) Nonacademic services.

(1) Physical education and athletics.

(a) In providing physical education courses and athletics and similar programs and activities to any of its students, educational institutions may not discriminate on the basis of disability. An educational institution that offers physical education courses or that operates or sponsors intercollegiate, club or intramural athletics shall provide to qualified disabled students an equal opportunity for participation in these activities.

(b) An educational institution may offer to disabled students physical education and athletic activities that are separate or different only if separation or differentiation is consistent with the requirements of section 4112.022 of the Revised Code, and only if no qualified disabled student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(2) Counseling and placement services. An educational institution that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of disability. The educational institution shall ensure that qualified disabled students are not counseled toward more restrictive career objectives than are non-disabled students with similar interests and abilities. This requirement does not preclude an educational institution from providing factual information about licensing and certification requirements that may present obstacles to disabled persons in their pursuit of particular careers.

(3) Social organizations. An educational institution that provides significant assistance to fraternities, sororities, or similar organizations, including the use of services and facilities for social functions, shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this rule.

HISTORY: Eff 9-1-92 (Emer.); 7-12-89; 1-11-98

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.06

4112-6-01 Housing discrimination charges: notice of filing, answer, commencement of investigation, time limitations, publication of agreements.

(A) Notice of filing of charge. Upon the filing of written charge alleging an unlawful discriminatory housing practice:

(1) The commission shall serve notice upon the complainant acknowledging such filing and advising the complainant of the time limits and choice of forums provided under Chapter 4112. of the Revised Code.

(2) The commission shall promptly serve on the respondent a notice advising such respondent of the procedural rights and obligations of respondents under Chapter 4112. of the Revised Code together with a copy of the original charge.

(3) Each respondent may file an answer to such charge.

(B) Commencement of investigation. The investigation of any charge alleging an unlawful discriminatory housing practice shall commence not later than the thirtieth day after receipt of the charge.

(C) Time limitation for commission action. The commission shall make a final administrative disposition of a charge alleging an unlawful discriminatory housing practice within one year of the date of receipt of a charge, unless it is impracticable to do so. If the commission is unable to do so, it shall notify the complainant and respondent, in writing, of the reasons for not doing so. No complaint shall be valid unless issued within one year after the charge which results in the issuance of the complaint is filed.

(D) Publication of conciliation agreement. Each agreement for conciliation of any charge alleging an unlawful discriminatory housing practice under Chapter 4112. of the Revised Code shall be made public

HISTORY: Eff 10-2-92; 1-11-98
Rule promulgated under: RC 111.15
Rule authorized by: RC 4112.04
Rule amplifies: RC 4112.04, 4112.05

4112-6-02 Punitive damages.

Division (G) of section 4112.05 of the Revised Code authorizes punitive damages up to fifty thousand dollars when there is finding of unlawful discrimination in housing. The purpose of an award of punitive damages is to deter unlawful conduct in the future.

It is the policy of the commission that punitive damages are appropriate whenever a respondent engages in intentional discrimination. The amount of punitive damages to be awarded depends on the circumstances of each case. The commission will look at the nature of the respondent's conduct, the respondent's prior history of discrimination, respondent's size and profitability, respondent's cooperation or lack of cooperation during the investigation of the charge, and the effect respondent's actions had on the complainant.

The fact that an unlawful discriminatory act was committed by an agent, as opposed to a principal, shall not affect the amount of punitive damages.

HISTORY: Eff 7-12-92; 9-1-92 (Emer.); 10-2-92
Rule promulgated under: RC 111.15
Rule authorized by: RC 4112.04
Rule amplifies: RC 4112.05

4112-6-03 Housing accommodations for older persons.

As used in this rule, "housing accommodations for older persons" means:

(A) Housing provided under any state or federal program that is specifically designed and operated to assist elderly persons; or

(B) Housing intended for, and solely occupied by, persons sixty-two years of age or older; or

(C) Housing intended and operated for occupancy by at least one person fifty-five years of age or older per unit. The housing qualifies as housing for older persons under this paragraph, if it includes at least the following factors:

(1) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

(2) At least eighty percent of the units are occupied by at least one person fifty-five years of age or older per unit; and

(3) The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons fifty-five years of age or older.

HISTORY: Eff 9-1-92 (Emer.); 10-2-92

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

4112-6-04 Election of civil action.

(A) If a complaint is issued under section 4112.05 of the Revised Code alleging a violation of division (H) of section 4112.02 of the Revised Code, the complainant, respondent, or an aggrieved party may elect to have the claims in the complaint be decided in a civil action.

(B) Notice of the election must be made in a writing that is sent by certified mail, return receipt requested, to the commission, to the civil rights section of the office of the attorney general, and to the other parties to the pending administrative process within thirty days after receipt of the complaint by the electing party.

(C) The electing party must, upon receiving the mailing receipts which are returned to the electing party as the result of the certified mailings sent pursuant to paragraph (B) of this rule, send those receipts to the civil rights section of the attorney general's office.

(D) Upon receipt of a timely mailed election, the commission shall authorize the office of the attorney general to commence and maintain the civil action in the court of common pleas of the county in which the alleged unlawful discriminatory practices occurred.

(E) The office of the attorney general shall commence the civil action within thirty days after the receipt of the commission's authorization to commence the civil action.

HISTORY: Eff 9-11-92 (Emer.); 12-11-92; 7-1-94

Rule promulgated under: RC 111.15

Rule authorized by: RC 4112.04

Rule amplifies: RC 4112.04, 4112.05

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