

**DEPARTMENT OF LABOR**  
**DIVISION OF INDUSTRIAL AFFAIRS**  
**1310 The Office of Anti-Discrimination**  
Statutory Authority: 19 Delaware Code, Sections 712(a)(2) and 728  
(19 Del.C. §712(a)(2) & §728)

**FINAL**

**ORDER**

A public meeting was held on September 24, 2008 to receive public comments relating to the proposed Delaware Department of Labor Office of Anti-Discrimination's Rules and Regulations (collectively the "Rules and Regulations") for adoption by the Delaware Department of Labor. The Director of Industrial Affairs and the Administrator of the Office of Anti-Discrimination (collectively the "Department") will present their recommendations to the Secretary of Labor to adopt these proposed Rules and Regulations as they were published in the *Register of Regulations*, Vol. 12, Issue 2 (August 1, 2008).

**Summary of the Evidence and Information Submitted**

Exhibits Admitted:

- Exhibit 1 – News Journal Affidavit of publication of notice of public hearing.
- Exhibit 2 – Delaware State News Affidavit of publication of notice of public hearing.
- Exhibit 3 – Written comments from State Council for Persons With Disabilities.
- Exhibit 4 – Written Comments from Delaware Developmental Disabilities Council.
- Exhibit 5 – Written comments from the Labor & Employment Section of the Delaware State Bar Association.

The Department opened the floor to public comments. Sarah E. DiLuzio, Esquire spoke on behalf of the Labor & Employment Section of the Delaware State Bar Association (the "DSBA"). Ms. DiLuzio vocalized the DSBA's written comments. In particular, with regard to section 2 (Commencement of Actions) of the proposed Rules and Regulations, the DSBA felt that a more complete statement of the charge of discrimination would better serve the interests of the employer. She further stated that she has received charges without sufficient factual detail in her practice. Additionally, with regard to section 3 (Answers) of the proposed Rules and Regulations, the DSBA felt that the Department's current practice of liberally granting extension requests should become a requirement. The DSBA also asked for specific protections for proprietary information. Finally, in section 6 (Investigations) of the proposed Rules and Regulations, the DSBA requested that respondent's counsel be notified before the Department conducted an on-site visit, interview, or deposition of respondent's employees.

G. Kevin Fasic, Esquire spoke on behalf of the Delaware State Chamber of Commerce (the "Chamber"). Mr. Fasic stated that the Chamber endorsed the comments offered by the DSBA, and recommended their adoption. Both Ms. DiLuzio and Mr. Fasic stated that the DSBA's comments resulted from a "spirited" discussion between members of the plaintiff and defense bars.

The law firm of Young Conaway Stargatt & Taylor LLP submitted written comments electronically while the public meeting was underway. Because these comments were not received before 2:00 p.m. on September 24, 2008, the time noticed for the public meeting, and because these comments were not presented during the public meeting, the comments were not entered into evidence at the meeting. Even though these comments were not made exhibits to this Order, the Director and Administrator decided to review Young Conaway Stargatt & Taylor LLP's submission for non-substantive content.

The Director and Administrator considered the public concerns raised and reviewed their applicability to the proposed Rules and Regulations. The Director and Administrator decided to adopt some non-substantive modifications proposed by Young Conaway Stargatt & Taylor LLP, and to recommend approval of the proposed Rules and Regulations as modified.

### **Recommended Findings of Fact With respect to the Evidence and Information**

The Department is persuaded that the proposed Rules and Regulations are consistent with efficient administration of the statutory directives in the Discrimination in Employment Act.

### **Recommendation**

The proposed Rules and Regulations are respectfully submitted to the Secretary of Labor for consideration with a recommendation for adoption this 29th day of October, 2008.

### **DEPARTMENT**

James G. Cagle, Jr.,  
Director, Industrial Affairs

Julie Klein Cutler  
Administrator, Office of Anti-Discrimination

### **Decision and Effective Date**

Having reviewed and considered the record and recommendations of the Department, the proposed Rules and Regulations are hereby adopted and made effective January 1, 2009.

### **Text and Citation**

The Rules and Regulations appeared in the *Register of Regulations*, Vol. 12, Issue 2 (August 1, 2008). The Rules and Regulations are available from the Department of Labor, Division of Industrial Affairs, Office of Anti-Discrimination.

### **DEPARTMENT OF LABOR**

Thomas B. Sharp, Secretary of Labor

### **1311 Office of Anti-Discrimination Rules and Regulations**

#### **1.0 General Provisions**

##### **1.1 Purpose and scope.**

**1.1.1 The regulations set forth in this part contain the procedures established by the Department of Labor for carrying out its responsibilities in the administration and enforcement of 19 Del.C. Ch 7, Subchapters II-III.**

##### **1.2 Address; office hours.**

**1.2.1 Questions may be addressed to "Anti-Discrimination Office Administrator" at 4425 N. Market Street, Wilmington, Delaware 19802. The office is open daily from 8:00 a.m. to 4:30 p.m. except Saturdays, Sundays, and Legal Holidays.**

##### **1.3 Definitions.**

- 1.3.1 The terms [“]Charging Party,[“] “Conciliation,[“] [“]Delaware Right to Sue Notice,[“] [“]Mediation,[“] [“]No Cause Determination,[“] [“]Reasonable Cause Determination,[“] and [“]Respondent,[“] when used in this regulation, shall have the meanings set forth in 19 Delaware Code, Section 710.
- 1.3.2 The following words and terms, when used in this regulation, [~~should~~ shall] have the following meaning[s]:
- “Administrator” means the Office of Anti-Discrimination Administrator or his designee.
- “Complainant” means any individual claiming to have been harmed by an unlawful employment practice under the Discrimination in Employment Act (19 Del.C. §711) or the Handicapped Persons Employment Protections Act (19 Del.C. §724).
- “Day” means calendar day unless otherwise specified.
- “Department” means the Department of Labor.
- “Fact-finding conference” means a conference convened by the administrator as an investigative forum intended to define the issues, to determine which elements are undisputed, to resolve those issues that can be resolved and to ascertain whether there is a basis for negotiated settlement of the verified charge.
- “Mediation Director” means the director of the Discrimination Mediation Unit or his designee.
- “Party” means any complainant, charging party, respondent, or the Department of Labor.
- “Verified charge” or “charge” means [the a] charge of discrimination [which that] sets forth a concise statement of facts, in writing, verified under oath and signed by the Charging Party.
- 1.4 Attorneys; form of appearance on behalf of parties.
- 1.4.1 An attorney may appear on behalf of a party by providing written notice of appearance. To constitute an appearance, a form, letter, or document shall contain the names of the parties, the department’s docket number if known, the name of the party [which that] the attorney represents, and the attorney’s address, telephone number, facsimile number, and [email e-mail] address.
- 1.4.2 If a party appears through an attorney, all papers shall be served on the attorney with the same force and effect as though served on the client.
- 1.4.3 An attorney may withdraw his appearance by providing written notice of withdrawal to the department, certifying that a copy of the notice of withdrawal was mailed to all parties.
- 1.5 Parties’ obligation to keep department informed of change of address or status.
- 1.5.1 The parties shall promptly notify the department of any change in address, telephone number, contact information, or other material change in business status while the charge is pending.
- 1.6 Liberal construction of regulations.
- 1.6.1 These regulations shall be liberally construed by the administrator to permit the department to discharge its statutory duties under 19 Del.C. Ch. 7, Subchapters II and III.
- 1.7 Practice where regulations do not govern.
- 1.7.1 In any circumstance that arises not governed by these regulations, the administrator shall exercise his discretion in order to permit the department to discharge its statutory duties under 19 Del.C. Ch. 7, Subchapters II and III.
- 1.8 Validity of regulations if any portion declared invalid.
- 1.8.1 If any portion of these regulations is adjudged by a court of competent jurisdiction to be invalid, or if by legislative action any portion loses its force and effect, the ruling or action will not affect, impair or void the remainder of these regulations.
- 1.9 Amendment of regulations.
- 1.9.1 The administrator may rescind, amend or expand these regulations from time to time as necessary to comply with the Discrimination in Employment Act, 19 Del.C. Ch 7, Subchapter II or the Handicapped Persons Employment Protection Act, 19 Del.C. Ch 7, Subchapter III, and such new regulations shall be submitted to the Registrar’s office in accordance with the provisions of 29 Del. C. §10161(b).

## **2.0 Commencement of Actions**

### **2.1 Manner of commencing actions.**

**2.1.1 An action shall be commenced by the filing of a verified charge with the department's Office of Anti-Discrimination.**

### **2.2 Who may file a verified charge.**

**2.2.1 A complainant may file a verified charge alleging a violation of the Discrimination in Employment Act or the Handicapped Persons Employment Protections Act.**

### **2.3 Preparation and contents of verified charge.**

**2.3.1 A verified charge shall be filed on a printed form approved by the administrator.**

**2.3.2 The department shall assist the complainant in the completion of the verified charge where necessary.**

**2.3.3 The verified charge shall indicate that it is filed with the department, and shall set forth the following:**

**2.3.3.1 The complainant's full name, address, and telephone number;**

**2.3.3.2 The respondent's full name, address, and telephone number if known;**

**2.3.3.3 A brief statement of jurisdiction identifying the nature, date of, and location of the employment relationship;**

**2.3.3.4 The specific prohibited basis or bases that gave rise to the alleged violation;**

**2.3.3.5 The specific adverse employment action alleged to have occurred as a result of the alleged violation;**

**2.3.3.6 A brief statement ~~setting forth of~~ the facts deemed to constitute the alleged violation;**

**2.3.3.7 The specific law or laws allegedly violated;**

**2.3.3.8 A brief statement explaining why the complainant alleges a causal relationship between the prohibited basis and the adverse action; and**

**2.3.3.9 Notarized signature and verification by the complainant.**

### **2.4 Filing a verified charge.**

**2.4.1 The filing of a verified charge is perfected upon completion of the following steps before an official of the Office of Anti-Discrimination:**

**2.4.1.1 Administration of an oath;**

**2.4.1.2 Execution of the verified charge; and**

**2.4.1.3 Notarization of the complainant's verified signature.**

### **2.5 Notification of filing.**

**2.5.1 Upon ~~the~~ filing of a verified charge, the department shall provide the charging party with a form approved by the administrator which notifies the charging party of the jurisdictional limitations of the department, including the limitation of the department to only administer claims under the Discrimination in Employment Act and the Handicapped Persons Employment Act, and the inability of the department to provide an attorney or conduct a hearing.**

### **2.6 Service of a charge.**

**2.6.1 Within 14 days of ~~the~~ filing ~~of~~ a charge, the department shall cause a copy of the charge to be served on the respondent by certified mail, return receipt requested.**

**2.6.2 In its discretion, the department may also cause to be served ~~with the copy of the charge as a request for information,~~ an invitation to participate in mediation, ~~or a request for information with the copy of the charge or both~~.**

**2.6.3 At the time of service, the department shall provide the respondent with notice of the respondent's right to file an answer.**

**2.6.4 ~~Service~~ The date of service on a respondent ~~is determined to shall~~ be the delivery date noted on the certified mail return receipt.**

### **2.7 Amendment of a charge.**

- 2.7.1 ~~[Any At any]~~ time before the department issues its final determination under 19 **Del.C.** §712(c)(3), the charging party, with the approval of the administrator, may file an amendment to the charge.
- 2.7.2 Amendments that cure technical defects or clarify allegations made in the original charge, or ~~[that]~~ allege additional acts ~~[which that]~~ constitute unlawful practices related to or growing out of the allegations set forth in the original charge, will relate back to the date the charge was first filed.
- 2.7.3 Within seven days of ~~[the]~~ filing ~~[of]~~ an amendment, the department shall cause a copy of the amendment to be served on the respondent by certified mail, return receipt requested. The department shall provide written notice to the respondent of the respondent's right to file an amended answer within 20 days of receipt **[of the amended charge]**.

### **3.0 Answers**

- 3.1 Time for filing an answer.
- 3.1.1 A respondent may file an answer to the charge within 20 days of receipt~~[, certifying of the charge. The respondent shall certify]~~ that a copy of the answer was mailed to the charging party or his attorney ~~[where appropriate]~~ at the address provided.
- 3.1.2 ~~[A Respondent respondent may]~~, in lieu of filing an answer, ~~[may]~~ request mediation within 20 days of receipt~~[, certifying of the charge. The respondent shall certify]~~ that a copy of the request for mediation was mailed to the charging party or his attorney ~~[where appropriate]~~ at the address provided.
- 3.1.3 A request for ~~[an]~~ extension of time **[to file an answer or request for mediation]** shall be in writing and addressed to the administrator. The administrator within his discretion may authorize an extension.
- 3.2 Form and content of answer.
- 3.2.1 The answer to the charge shall fully and completely advise the charging party and the department ~~[as to the nature]~~ of the respondent's ~~[defenses responses]~~ to each claim asserted, and shall specifically admit or deny the allegations set forth in each paragraph of the charge. A respondent may admit in part and deny in part.
- 3.2.2 ~~[An affirmative defense to an allegation Affirmative defenses]~~ shall be set forth separately.
- 3.2.3 The following information may be redacted from the copy of the answer served on the charging party:
- 3.2.3.1 Employment records of individuals other than the charging party;
  - 3.2.3.2 Medical records of individuals other than the charging party;
  - 3.2.3.3 Confidential trade secrets; and
  - 3.2.3.4 The identity of witnesses who respondent intends to produce.

### **4.0 Preliminary Findings and Recommendations**

- 4.1 Timing of preliminary findings and recommendations.
- 4.1.1 The administrator shall issue preliminary findings and recommendations within 60 days from the date of service of the charge on the respondent as required by 19 **Del.C.** §712(c)(2).
- 4.2 Form and content of preliminary findings and recommendations.
- 4.2.1 The preliminary findings and recommendations shall ~~[set forth include]~~ the following:
- 4.2.1.1 A **[brief]** statement of whether or not the respondent filed an answer;
  - 4.2.1.2 A referral to mediation **[or]** investigation, or **[recommending a recommendation of]** dismissal.
- 4.3 Service of preliminary findings and recommendations.
- 4.3.1 Within one business day of issuing the preliminary findings and recommendations, the department shall cause a copy to be mailed to each party by U.S. **[mail Mail]**.
- 4.4 Criteria for preliminary recommendation of dismissal.

- 4.4.1 In determining whether to issue a preliminary recommendation of dismissal, the administrator shall ~~take the following factors into account based on a~~ review ~~of~~ all information submitted by the parties that has been properly served as required by 19 Del.C. §712(c)(1), and shall consider the following factors]:
- 4.4.1.1 The nature of the discrimination charged;
  - 4.4.1.2 ~~Probability~~ **The probability** of obtaining additional evidence that may ~~impact~~ **affect** the department's final determination after full investigation; and
  - 4.4.1.3 Whether the public interest is best served by the continuation of the investigatory process.
- 4.4.2 Before dismissing a case under 19 Del.C. §712(c)(2) the administrator shall notify the charging party of the reason for the recommendation, and shall offer the charging party at least 14 days to present additional information ~~which warrants that would warrant~~ further investigation.
- 4.4.2.1 The administrator in his sole discretion shall determine whether additional information provided warrants further investigation.
  - 4.4.2.2 If the charging party does not present additional information ~~which that~~ warrants further investigation within the stated time, the department may dismiss the case and issue a Delaware Right to Sue Notice.

## **5.0 Mediation**

- 5.1 Confidentiality of Mediation Communications and Records.
- 5.1.1 All information exchanged during mediation proceedings are considered dispute resolution communications and shall be kept confidential. Records obtained in the course of mediation should remain confidential and not be used as evidence in any manner unless obtained independent of the mediation. Parties participating in the mediation process shall be required to sign and adhere to a confidentiality agreement in a form approved by the administrator.
  - 5.1.2 Mediation settlement agreements are confidential and shall not be disclosed by the department except where the department seeks enforcement of the agreement under Section 5.3.
- 5.2 Mediation proceedings.
- 5.2.1 At any time following the time for filing an answer, the administrator at his discretion may refer a case to the mediation unit for mediation proceedings.
  - 5.2.2 The mediation director may designate a mediator employed by the department or otherwise appointed by the mediation director to conduct the mediation proceedings.
  - 5.2.3 If the mediation does not result in a settlement agreement, the mediation director shall refer the case to the investigation unit.
  - 5.2.4 If the mediation does not result in a settlement agreement and the respondent has not yet filed an answer, the respondent must file an answer to the charge within 20 days of the respondent's receipt of notification that the charge is being referred to the investigation unit.
  - 5.2.5 If the mediation does not result in a settlement agreement and the respondent has filed an answer, the respondent must file a response to any pending request for information, and may file a supplementary answer, within 20 days of the respondent's receipt of notification that the charge is being referred to the investigation unit.
  - 5.2.6 The mediation director and staff, including appointed mediators, may not participate in the investigation of any case referred to the investigation unit.
- 5.3 Enforceability of mediation settlement agreements.
- 5.3.1 A **mediation** settlement agreement reached during a mediation conference shall be set forth in writing and signed by the parties.
  - 5.3.2 Allegations of breach of a **mediation** settlement agreement **reached during a mediation conference** shall be brought to the attention of the mediation director. The mediation director shall review and investigate the allegations of breach of a mediation settlement agreement to determine whether a breach has occurred.

- 5.3.3 The mediation director shall issue written findings to the parties with regard to the allegation of breach of a mediation settlement agreement.
- 5.3.4 The administrator in his discretion will determine whether to forward the allegations of a breach of the mediation settlement agreement to the Attorney General for review.

## **6.0 Investigation**

- 6.1 Timing of investigations.
  - 6.1.1 The administrator shall promptly initiate an investigation into stated allegations of discrimination when:
    - 6.1.1.1 The administrator refers a charge for investigation in accordance with 19 Del.C. §712(c)(2)(c); or
    - 6.1.1.2 The mediation director refers a case to the investigation unit after unsuccessful mediation.
  - 6.1.2 The department shall complete its investigation as promptly as possible.
- 6.2 Investigatory procedures.
  - 6.2.1 ~~In the conduct of investigations, all~~ All] investigatory powers granted by 19 Del.C. §§107-108 shall be available to the department. In its discretion, the department may conduct investigations using, among other things, written requests for information, fact[-]finding conferences, subpoenas, on[-]site visits, interviews, and depositions as provided in these regulations.
  - 6.2.2 In connection with an investigation, the department may require the submission of information relating to:
    - 6.2.2.1 The race, marital status, genetic information, color, age, religion, sex, national origin or disability of employees;
    - 6.2.2.2 The employment records of employees;
    - 6.2.2.3 The procedures for advertising or notifying the public of the availability of jobs;
    - 6.2.2.4 The procedures for hiring or selecting employees;
    - 6.2.2.5 The testing, seniority, promotion and discharge procedures; and
    - 6.2.2.6 Such other information as the department determines to be reasonably necessary to carry out the provisions of the Discrimination in Employment Act or Handicapped Persons Employment Protections Act.
- 6.3 Requests for Information.
  - 6.3.1 The department may serve requests for information to assist the department in its investigation. Unless otherwise specified in a request for information, the response shall be due to the department within 14 days following service.
- 6.4 On[-]Site Visits.
  - 6.4.1 The department may conduct on[-]site visits to assist the investigatory process for the purpose of gathering evidence, interviewing witnesses, observing a respondent's facilities, and reviewing documents.
  - 6.4.2 The department shall provide the respondent with written notice of the on[-]site visit at least 14 days prior to the visit. The notice shall specify the date and time of the visit.
  - 6.4.3 The respondent shall grant access to its premises, documents, and employees during a scheduled on site visit.
- 6.5 Subpoenas.
  - 6.5.1 The administrator may issue a subpoena as he deems necessary to assist the investigatory process. The administrator shall issue a subpoena in the name of the department, and the subpoena shall direct the person designated to personally appear and bring any books, records, documents and any other evidence ~~which that~~ relates to any charge under investigation, or, in lieu of personal appearance, to produce any books, records, documents and any other evidence which relates to any charge under investigation.
  - 6.5.2 A subpoena shall state the time and place where the person designated is directed to appear.

6.5.3 A subpoena shall be served either by personal service by any person 18 or more years of age by delivery of a copy thereof to the person named therein, by overnight delivery by commercial courier, or by registered or certified mail, return receipt requested.

6.6 Depositions.

6.6.1 The department may take depositions of witnesses under oath as part of any investigation when, in the discretion of the administrator, such depositions will aid the investigatory process.

6.7 Enforcement of subpoenas.

6.7.1 If any person fails to comply with a subpoena issued by the department, he shall be subject to the appropriate enforcement provisions of 19 Del.C. §108.

6.8 Fact-finding conferences.

6.8.1 Fact-finding conferences, as part of a discrimination investigation, are subject to the following:

6.8.1.1 As part of its investigation and at the discretion of the administrator, the department may convene a fact-finding conference for the purpose of obtaining evidence, identifying the issues in dispute, ascertaining the positions of the parties and exploring the possibility of settlement. The fact-finding conference is not an adjudication of the merits of the charge.

6.8.1.2 The department shall provide the parties with written notice of the fact[-]finding conference at least 30 days prior to the conference. The notice shall specify the date, time and location of the conference and shall identify the individuals requested to attend on behalf of each party, and any documents ~~which~~ **that** a party is requested to provide at the conference.

6.8.2 The conference shall be conducted as follows:

6.8.2.1 The department employee acting as fact-finder shall conduct and control the proceedings.

6.8.2.2 With prior notice to the department, the parties may request to bring witnesses to the conference in addition to those whose attendance may be specifically requested by the department. The fact-finder has discretion over which witnesses shall be heard and the order in which they are heard. The fact-finder may exclude any witness or other person from the conference, except **[that]** one representative of each party and counsel shall be permitted to remain throughout.

6.8.2.3 The department may request the parties to provide affidavits from witnesses who intend to appear at the fact-finding conference.

6.8.2.4 A party may be accompanied at a fact-finding conference by his or her attorney, and by a translator, if necessary.

6.8.2.5 An attorney for a party who has not previously entered his appearance shall do so at the outset of the conference.

6.8.2.6 Because the fact-finding conference is a means of investigation and not a hearing on the merits of a case, the parties shall not be entitled to cross-examine witnesses. All questioning shall be conducted by the fact-finder, unless in his discretion the fact-finder permits questions to be asked by other persons present at the conference.

6.8.2.7 During the conference, the fact-finder may allow a recess to permit the parties to discuss settlement.

6.8.3 Postponements of a fact-finding conference shall be subject to the following:

6.8.3.1 Except in extraordinary circumstances, requests for postponements must be made by notice to all parties at least 14 days prior to the conference.

6.8.3.2 Any opposition to a request for postponement must specifically state the basis for the opposition and must be received by the department at least seven days prior to the conference.

6.8.3.3 If a party or witness fails to appear at a scheduled fact-finding conference, the department may proceed with the conference without the party **[or witness]**.

6.8.4 If the respondent or the charging party refuses or fails to attend a scheduled fact-finding conference, the department may in its discretion schedule an alternate conference date. The

department may subpoena any party or witness who failed to attend the initially scheduled fact-finding conference. The department may also subpoena any documents ~~[which that]~~ either party was ~~[requested asked]~~ to bring, ~~[and but]~~ failed to bring, to the fact-finding conference.

## **7.0 Administrative Dismissal**

- 7.1 The administrator may in his discretion administratively dismiss a charge for reasons including but not limited to the following:
  - 7.1.1 Lack of jurisdiction;
  - 7.1.2 The charging party is unavailable or unwilling to participate in the investigation, or to attend a scheduled conference or conciliation;
  - 7.1.3 Relief is precluded by the respondent's bankruptcy or other special circumstances as determined by the administrator;
  - 7.1.4 The charge was not timely filed under 19 **Del.C.** §712(c); or
  - 7.1.5 The charge on its face fails to state a claim under the Delaware Discrimination in Employment Act or Handicapped Persons Employment Act.
- 7.2 The department will determine whether to administratively dismiss a charge under 19 **Del.C.** §712(c)(5).
- 7.3 Prior to administratively dismissing a charge under 19 **Del.C.** §712(c)(5) for lack of jurisdiction, untimeliness or failure to state a claim, the administrator shall notify the charging party of the reason for the proposed dismissal and shall offer the charging party the opportunity to respond.
  - 7.3.1 The administrator shall make his final determination, considering all responses received within 14 days of the date of notice.

## **8.0 Withdrawal of Charge of Discrimination**

- 8.1 A pending charge may be withdrawn by the charging party within 60 days of the commencement of the action. After 60 days the charge may only be withdrawn with the consent of the administrator.
- 8.2 A request for withdrawal shall be in writing and shall be signed by the charging party and his attorney if applicable.

## **9.0 Final Determinations**

- 9.1 Issuance of findings.
  - 9.1.1 Following the completion of an investigation of a charge, the administrator shall determine whether or not **[there is]** reasonable cause ~~[exists to support the allegations of the charge to believe that the respondent has committed or is committing an unlawful employment practice in violation of 19 Delaware Code, Chapter 7, Subchapter II or III].~~
  - 9.1.2 If the administrator determines that **[there is]** reasonable cause **[exists]** to believe a violation of 19 **Del.C.** **[Chapter].** 7, Subchapter II or III has occurred, he shall issue to the parties a finding of reasonable cause.
  - 9.1.3 If the administrator determines that the conditions for issuing a finding of reasonable cause have not been met, he shall issue a finding of no reasonable cause.
  - 9.1.4 If the administrator determines that reasonable cause exists as to some but not all of the allegations of the charge, he shall issue a determination setting forth those issues to which he finds reasonable cause exists and those issues to which he finds no reasonable cause exists.
  - 9.1.5 Subject to the provisions of section 9.2, a Notice of Final Determination is final when issued.
- 9.2 Request for reconsideration of finding of reasonable cause.
  - 9.2.1 A party requesting reconsideration of a finding of reasonable cause shall file a written request to the administrator within ten days of receipt of the finding, with a copy to the ~~[opposing party other parties].~~

9.2.2 The administrator shall determine whether reconsideration is warranted within ten days of ~~its~~ receipt ~~[of the request for reconsideration]~~.

9.2.2.1 The administrator in his sole discretion shall determine what if any further supporting evidence or information is needed to complete his review, and shall offer the party at least fourteen days to present additional information.

9.2.3 The administrator shall issue his written decision to the parties. The administrator's decision is final when issued.

## **10.0 Conciliation**

10.1 Timing of conciliation proceedings.

10.1.1 Within 30 days from the date of a final determination of ~~["a"]~~reasonable cause~~["a"]~~, every attempt will be made to commence conciliation proceedings for the purpose of negotiating a settlement of the charge and compliance with ~~[all-affected the pertinent]~~ statutes.

10.2 Confidentiality of conciliation records.

10.2.1 All information exchanged during conciliation proceedings are considered dispute resolution communications and shall be kept confidential. Records obtained in the course of conciliation should remain confidential and not be used as evidence in any manner unless obtained independent of the conciliation. Parties participating in the conciliation process shall be required to sign and adhere to a confidentiality agreement in a form approved by the administrator.

10.2.2 Conciliation settlement agreements are confidential and shall not be disclosed by the department except where the department seeks enforcement of the agreement under Section 11.

10.3 Conciliation conference proceedings.

10.3.1 After a finding of reasonable cause, the administrator shall schedule a conciliation proceeding.

10.3.2 The ~~[parties administrator]~~ shall ~~[have give the parties]~~ at least 14 days notice of the date, time and place of the conciliation proceeding.

10.3.3 The department employee acting as conciliator shall conduct and control the proceeding.

10.3.4 A party may be accompanied at a conciliation proceeding by his or her attorney or another representative, and by a translator, if necessary.

10.3.5 The conciliator may exclude any person from the conciliation proceeding, except ~~[that]~~ counsel and translators shall be permitted to remain throughout.

10.3.6 An attorney for a party who has not previously entered his appearance shall do so at the outset of the proceeding.

10.3.7 A party's failure to attend the conciliation proceeding may be deemed to be a failure of conciliation effort.

10.3.8 Any conciliation agreement shall be subject to the approval of the department.

## **11.0 Enforceability of settlement agreements.**

11.1 A settlement agreement reached during investigation or conciliation shall be set forth in writing and signed by the parties.

11.2 Allegations of breach of a settlement agreement shall be brought to the attention of the administrator. The administrator shall review and investigate the allegations of breach of a settlement agreement to determine whether a breach has occurred.

11.3 The administrator shall issue written findings to the parties with regard to the allegation of breach of a settlement agreement.

11.4 The administrator in his discretion will determine whether to forward allegations of breach of the settlement agreement to the Attorney General for review.

## **12.0 Delaware Right[-]to[-]Sue Notice**

12.1 Issuance of a Delaware Right[-]to[-]Sue Notice.

- 12.1.1 The administrator shall issue a Delaware Right[-]to[-]Sue Notice under 19 **Del.C.** §712(c)(3), (5) upon the following:
- 12.1.1.1 Issuance of a final determination of no reasonable cause;
- 12.1.1.2 Failure of conciliation efforts; or
- 12.1.1.3 Administrative dismissal of the charge ~~[in accordance with Section 7].~~
- 12.1.2 The administrator may issue a Delaware Right[-]to[-]Sue Notice while the charge is pending upon the following:
- 12.1.2.1 At the request of the Charging Party; or
- 12.1.2.2 By initiation of the administrator, in his discretion.
- 12.1.3 Termination of proceedings.
- 12.1.3.1 Issuance of a Delaware Right[-]to[-]Sue Notice shall terminate further proceedings of the charge by the department.

### **13.0 Service of Recommendations, Determinations, and Notices**

- 13.1 All preliminary recommendations, final determinations and Delaware Right[-]to[-]Sue Notices shall be promptly served on all parties by U.S. Mail or ~~[as otherwise indicated by written agreement of by other means as agreed upon in writing by]~~ the parties.

### **14.0 Access to Department's Investigatory Files**

- 14.1 Confidentiality of department's investigatory files.
- 14.1.1 The department's investigatory records are confidential and exempt from public access under 29 **Del.C.** Ch. 100.
- 14.2 Parties' right to obtain factual documents.
- 14.2.1 After issuance of a Delaware Right[-]to[-]Sue Notice under 19 **Del.C.** §712(c)(3), (5), while litigation is pending, a party to a charge may make a written request to the administrator for copies of the following information in the department's file of that charge:
- 14.2.1.1 Witness statements; and
- 14.2.1.2 All factual written data, factual written reports or documentary information obtained or provided to the department in the course of its investigation ~~[which that]~~ is not otherwise subject to confidentiality or privilege.
- 14.3 A request made under this section must certify that a copy was mailed to the other party or his attorney where appropriate at the address provided.
- 14.4 Discovery of department's investigatory files by non-parties.
- 14.4.1 Non-parties to a charge shall not have access to the material in the department's investigatory file of that charge.
- 14.5 Copying Costs.
- 14.5.1 The department's fee for copying documents requested under this section shall be the same fee as is applicable to requests granted pursuant to 29 **Del.C.** Ch. 100. The administrator may waive or modify this fee in the case of an indigent party or in other extraordinary situations for good cause.

### **15.0 Retention of Investigatory Files**

- 15.1 The department shall retain ~~[investigative investigatory]~~ files for two years after the end of the administrative process.
- 15.2 Where a charge is filed concurrently with the United States Equal Employment Opportunity **[Commission]**, the department shall retain the investigative file for two years after the end of the federal administrative process.