

Dear Senators MCKENZIE, Fulcher, Malepeai, and  
Representatives LOERTSCHER, Crane, Elaine Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of  
the Human Rights Commission Rules:

IDAPA 45.01.01 - Rules Pertaining To The Rules of the Idaho Human Rights Commission (Docket  
No. 45-0101-1101) Temporary Rule;

IDAPA 45.01.01 - Rules Pertaining To The Rules of the Idaho Human Rights Commission (Docket  
No. 45-0101-1102).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the  
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research  
and Legislation no later than fourteen (14) days after receipt of the rules analysis from Legislative  
Services. The final date to call a meeting on the enclosed rules is no later than 08/22/2011. If a meeting is  
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules analysis  
from Legislative Services. The final date to hold a meeting on the enclosed rules is 09/16/2011.

The germane joint subcommittee may request a statement of economic impact with respect to a  
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,  
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has  
been held.

To notify Research and Legislation, call 334-4845, or send a written request to the address or FAX  
number indicated on the memorandum enclosed.



Jeff Youtz  
Director

# Legislative Services Office Idaho State Legislature

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*Serving Idaho's Citizen Legislature*

## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate State Affairs Committee and the House State Affairs Committee  
**FROM:** Division Manager - Mike Nugent  
**DATE:** August 03, 2011  
**SUBJECT:** Human Rights Commission Rules

IDAPA 45.01.01 - Rules Pertaining To The Rules of the Idaho Human Rights Commission (Docket No. 45-0101-1101) Temporary Rule

IDAPA 45.01.01 - Rules Pertaining To The Rules of the Idaho Human Rights Commission (Docket No. 45-0101-1102)

The Human Rights Commission is proposing to promulgate temporary and proposed rules relating to definitions and procedures before the Commission. The temporary rule has definitions that are contained in the larger proposed rule. The Commission indicates that the temporary rule was necessary to have a May 24, 2011 effective date to comply with changes in the Americans with Disabilities Act, and federal regulations, as well as Idaho Supreme Court decisions.

The longer proposed rules are a comprehensive update to the Commission's rules that have been in effect for decades, clarify who may represent a party before the Commission and make the changes included in the temporary rule. It appears the proposed rules have been promulgated within the scope of statutory authority granted to the Human Rights Commission.

cc: Human Rights Commission  
Deputy Attorney General Jeanne T. Goodenough

**IDAPA 45 - HUMAN RIGHTS COMMISSION**  
**45.01.01 - RULES OF THE IDAHO HUMAN RIGHTS COMMISSION**  
**DOCKET NO. 45-0101-1101**  
**NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is May 24, 2011.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 67-5906(12) and 44-1703(2), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This temporary rule has been adopted to delete definitions of “mental condition,” “physical condition,” “record of such a disability,” “regarded as having such a disability,” and “substantial limitations.” This will ensure that state law on disability discrimination will be interpreted in compliance with the Americans with Disabilities Act and federal regulations, as established by Idaho Supreme Court decisions.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

It is necessary to bring the rules of the Commission into compliance with changes in federal regulations regarding disability discrimination, which became effective on May 24, 2011.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Deputy Attorney General Jeanne T. Goodenough, 317 West Main Street, Boise, Idaho 83735-0660. Phone: (208) 334 2873 ext. 4229. Email: [jeanne.goodenough@labor.idaho.gov](mailto:jeanne.goodenough@labor.idaho.gov).

DATED this 29th day of June, 2011.

Jeanne T. Goodenough  
Deputy Attorney General  
Idaho Human Rights Commission  
317 West Main Street  
Boise, ID 83735-0660  
(208) 334 2873; FAX (208) 334 6125

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**THE FOLLOWING IS THE TEMPORARY TEXT FOR DOCKET NO. 45-0101-1101**

**010. DEFINITIONS.**

**01. Administrator.** The Administrator appointed by the Commission pursuant to the Human Rights Act. (7-1-93)

**02. Commission.** The Idaho Human Rights Commission as created by the Human Rights Act. (7-1-93)

- 03. Commissioner.** A duly appointed member of the Idaho Human Rights Commission. (7-1-93)
- 04. Complainant.** Any person who files a complaint with the Commission pursuant to the Human Rights Act. (7-1-93)
- 05. Complaint.** A statement filed with the Commission pursuant to these Rules alleging an unlawful practice within the meaning of the Human Rights Act. The complaint may be in the form of a letter but, whenever timely possible, should be written on a complaint form provided by the Commission or on the complaint form used by the Equal Employment Opportunity Commission, and signed by the Complainant or their legal representative. (7-1-97)
- 06. Conciliation Agreement.** A written agreement settling the issues raised by the complaint and signed by the parties after a determination on the merits of the complaint by the Commission. (7-1-93)
- 07. Covered Entity.** Those persons and organizations within the jurisdiction of the Human Rights Act, as set forth in Sections 65-5901 and 67-5902, Idaho Code. (7-1-98)
- 08. Discriminatory Wage Act.** The Act set forth in Title 44, Chapter 17, Idaho Code, "Discriminatory Wage Rates Based Upon Sex." (7-1-93)
- 09. E.E.O.C.** The United States Equal Employment Opportunity Commission or any of its designated representatives. (7-1-93)
- 10. Human Rights Act.** As used herein, the term "Human Rights Act" shall mean the Human Rights Commission Act of 1969, as amended and codified as Title 67, Chapter 59, Idaho Code. (7-1-93)
- ~~**11. Mental Condition.** Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and learning disabilities. (7-1-93)~~
- 12.1. Party or Parties.** The Complainant, the Respondent, the Commission, and any other person authorized by the Commission to intervene in any proceeding. (7-1-93)
- ~~**13. Physical Condition.** Any physiological disorder, condition, cosmetic disfigurement, anatomical loss, or abnormality affecting one (1) or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, speech organs, cardiovascular, reproductive, digestive, genito-urinary, hemie and lymphatic, skin and endocrine. (7-1-93)~~
- ~~**14. Record of Such a Disability.** A person may have "a record of such a disability" when he/she has a history of or has been misclassified as having a physical or mental condition that substantially limits one (1) or more major life activities. (7-1-97)~~
- ~~**15. Regarded as Having Such a Disability.** A person may be "regarded as having such a disability" when he/she:~~
- ~~**a.** Has a physical or mental impairment that does not substantially limit a major life activity but is treated by a covered entity as constituting such a limitation; (7-1-98)~~
- ~~**b.** Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others towards such an impairment; or (7-1-93)~~
- ~~**c.** Has none of the impairments listed above but is treated by a covered entity as having such an impairment. (7-1-98)~~
- 16.2. Religion.** All aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business. (3-15-02)

**173. Respondent.** Any person against whom a complaint is filed in accordance with the Human Rights Act and these Rules. (7-1-93)

**184. Settlement Agreement.** A written agreement settling the issues raised by the complaint and signed by the parties prior to the Commission's making a determination on the merits of the complaint. (7-1-93)

**195. Sex.** The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. Subsection 010.19 shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, that nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion. (3-15-02)

~~**20. Substantial Limitation.** A physical or mental condition constitutes a "substantial limitation" when a person is unable to perform a major life activity, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working, that the average person in the general population can perform or is significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity. (3-15-02)~~

~~**a.** The following factors should be considered in determining whether a physical or mental condition constitutes a substantial limitation: (3-15-02)~~

~~**i.** The nature and severity of the impairment; (3-15-02)~~

~~**ii.** The duration or expected duration of the impairment; and (3-15-02)~~

~~**iii.** The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment. (3-15-02)~~

~~**b.** With respect to the major life activity of working, a physical or mental condition constitutes a "substantial limitation" when a person is significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working. (3-15-02)~~

~~**c.** The following factors may be considered in determining whether a physical or mental condition constitutes a "substantial limitation" on the major life activity of "working": (3-15-02)~~

~~**i.** The geographical area to which the individual has reasonable access; (3-15-02)~~

~~**ii.** The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or (3-15-02)~~

~~**iii.** The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes). (3-15-02)~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**101. DISABILITIES.**

The prohibition of discrimination on the basis of disability in the Act will be construed in compliance with the Americans with Disabilities Act as amended, 42 USC 12020 et seq. and federal regulations at 29 CFR Part 1630.

(5-24-11)T

**01. Contagious Diseases.** A person suffering from a chronic contagious disease is a person with a disability if he/she meets the requirements of Section 67-5902(15), Idaho Code. That person is entitled to an individualized medical inquiry to determine if he/she is qualified for the job in question. Factors to be considered include the nature, duration and severity of the risk of infection, and the probability that the disease would be transmitted and would cause varying degrees of harm. ~~(7-1-97)~~(5-24-11)T

**02. Alcoholism.** Alcoholism is a disability if the requirements of Section 67-5902(15), Idaho Code, are met. No accommodation is necessary if the disability creates a health or safety threat. (See Section 67-5910(2)(d), Idaho Code.) Whenever alcoholism includes current use of alcohol, an employer may condition job retention upon the employee's successful completion of a treatment program and documented participation in an aftercare program. (7-1-97)

**03. Drug Addiction.** Drug addiction is a disability if the requirements of Section 67-5902(15), Idaho Code, are met. No accommodation is necessary if the disability creates a health or safety threat. (See Section 67-5910(2)(d), Idaho Code.) No accommodation is necessary for drug addiction which includes current illegal use, possession, or selling of a controlled substance. An employer may condition job retention upon the employee's successful completion of a treatment program and documented participation in an aftercare program. (7-1-97)

**04. Reasonable Accommodations.** Reasonable accommodations are adjustments or modifications to the work assignment or work environment to enable a person with a disability to fulfill employment responsibilities. They may include, but are not limited to: (7-1-97)

- a. Making the worksite accessible to and usable by persons with a disability; (7-1-97)
- b. Modification of equipment or tools so they can be used by a person with a disability; (7-1-97)
- c. Job restructuring; (7-1-93)
- d. Modified work schedules, particularly as they may be necessary for the person to receive treatment for a disability; (7-1-93)
- e. Acquisition of adaptive aids or devices; (7-1-93)
- f. Reassignment to a vacant position. (7-1-93)

**05. Accommodations of a Personal Nature.** Employers shall not be required to provide accommodations of a personal nature, such as wheelchairs and hearing aids. Nor shall they be required to hire two (2) full-time employees to fill one (1) position. (7-1-93)

**06. Cooperation.** A person with a disability who seeks an accommodation must cooperate in the consideration of various accommodation options. An employer is not required to provide the "best" accommodation or the one most desired by the employee or applicant. The determination of "reasonableness" will be made on a case-by-case basis. (7-1-97)

**07. Pre-Employment Inquiry.** An employer, labor organization, or employment agency shall not make pre-employment inquiry of an applicant as to whether the applicant has a physical or mental impairment or as to the nature or severity of such impairment. A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions, or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. (7-1-93)

**IDAPA 45 - HUMAN RIGHTS COMMISSION**  
**45.01.01 - RULES OF THE IDAHO HUMAN RIGHTS COMMISSION**  
**DOCKET NO. 45-0101-1102**  
**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 67-5906(12) and 44-2704(2), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2011.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Commission's rules have not been updated for several years. Non-substantive changes are being made to increase clarity, to eliminate unnecessary definitions, to replace references to "person" with "individual," and other minor wording improvements, as well as bring the rule into compliance with changes to federal law.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: None.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there are no substantive changes to the rules.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Deputy Attorney General Jeanne T. Goodenough, 317 West Main Street, Boise, Idaho 83735-0660. Phone: (208) 334 2873 ext. 4229. Email: [jeanne.goodenough@labor.idaho.gov](mailto:jeanne.goodenough@labor.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2011.

DATED this 29th day of June, 2011.

Jeanne T. Goodenough  
Deputy Attorney General  
Idaho Human Rights Commission  
317 West Main Street  
Boise, ID 83735-0660  
(208) 334 2873; FAX (208) 334 6125

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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 45-0101-1102**

**002. WRITTEN INTERPRETATIONS.**

*Explanations for rule changes are available for public inspection in the Office of the Human Rights Commission, 317 West Main Street, Boise, Idaho 83735-0660. Brochures explaining various provisions of anti-discrimination laws are also available at the address given above office of the Idaho Human Rights Commission. (7-1-97)( )*

**(BREAK IN CONTINUITY OF SECTIONS)**

**005. DECLARATORY RULINGS.**

Any ~~person~~ individual who petitionings for a declaratory ruling on the applicability of a statute or rule administered by the Human Rights Commission must substantially comply with this rule. The petition ~~shall~~ must be addressed to the Administrator and ~~shall~~ will: (7-1-93)( )

**01. Identification.** Identify the petitioner and state the petitioner's interest in the matter; (7-1-93)

**02. State Ruling.** State the declaratory ruling that the petitioner seeks; and (7-1-93)

**03. Other Rationale.** Indicate Cite the statute, rule, or other controlling law and the factual allegations upon which the petitioner relies to support the petition. (7-1-93)( )

~~**04. Legal Assertions.** Legal assertions in the petition should be accompanied by citations of cases or statutory provisions. (7-1-93)~~

**006. OFFICE -- OFFICE HOURS -- ADDRESS -- RECORDS.**

The office of the Idaho Human Rights Commission is located at 317 West Main Street, Boise, Idaho 83735-0660. The Commission's email address is inquiry@ihrc.idaho.gov. Office hours are from 8:00 a.m. to 5:00 p.m. Mountain Time, except Saturday, Sunday, and legal holidays. This is the office where all filings must be made and where records are kept. The Administrator of the agency is the custodian of records. (7-1-97)( )

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

~~**01. Administrator.** The Administrator appointed by the Commission pursuant to the Human Rights Act. (7-1-93)~~

~~**02. Commission.** The Idaho Human Rights Commission as created by the Human Rights Act. (7-1-93)~~

~~**03. Commissioner.** A duly appointed member of the Idaho Human Rights Commission. (7-1-93)~~

**01. Act.** The Human Rights Commission Act, Section 67-5901, Idaho Code, et seq. ( )

~~**04. Complainant.** Any ~~person~~ individual who files a complaint with the Commission pursuant to the ~~Human Rights~~ Act. (7-1-93)( )~~

~~**05. Complaint.** A statement filed with the Commission pursuant to these ~~R~~rules alleging an unlawful practice within the meaning of the ~~Human Rights~~ Act. The complaint may be in the form of a letter but, whenever ~~timely~~ possible, should be written on a complaint form provided by the Commission or on the complaint form used by the Equal Employment Opportunity Commission (EEOC), and signed by the Complainant ~~or their legal representative~~ under penalty of perjury. (7-1-97)( )~~

~~**06. Conciliation Agreement.** A written agreement settling the issues raised by the complaint and signed by the parties after a determination on the merits of the complaint by the Commission. (7-1-93)~~

~~**07. Covered Entity.** Those ~~persons~~ individuals and organizations within the jurisdiction of the ~~Human Rights~~ Act, as set forth in Sections 65-5901 and 67-5902, Idaho Code. (7-1-98)( )~~

~~**08. Discriminatory Wage Act.** The Act set forth in Title 44, Chapter 17, Idaho Code, "Discriminatory~~



~~Wage Rates Based Upon Sex.”~~ (7-1-93)

~~095.~~ **E.E.O.C.** The United States Equal Employment Opportunity Commission or any of its designated representatives. (7-1-93)(    )

~~10.~~ **Human Rights Act.** As used herein, the term “Human Rights Act” shall mean the Human Rights Commission Act of 1969, as amended and codified as Title 67, Chapter 59, Idaho Code. (7-1-93)

~~11.~~ **Mental Condition.** Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and learning disabilities. (7-1-93)

~~1206.~~ **Party or Parties.** The Complainant, the Respondent, the Commission, and any other person individual or entity authorized by the Commission to intervene in any proceeding. (7-1-93)(    )

~~13.~~ **Physical Condition.** Any physiological disorder, condition, cosmetic disfigurement, anatomical loss, or abnormality affecting one (1) or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, speech organs, cardiovascular, reproductive, digestive, genito urinary, hemic and lymphatic, skin and endocrine. (7-1-93)

~~14.~~ **Record of Such a Disability.** A person may have “a record of such a disability” when he/she has a history of or has been misclassified as having a physical or mental condition that substantially limits one (1) or more major life activities. (7-1-97)

~~15.~~ **Regarded as Having Such a Disability.** A person may be “regarded as having such a disability” when he/she:

~~a.~~ Has a physical or mental impairment that does not substantially limit a major life activity but is treated by a covered entity as constituting such a limitation; (7-1-98)

~~b.~~ Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others towards such an impairment; or (7-1-93)

~~c.~~ Has none of the impairments listed above but is treated by a covered entity as having such an impairment. (7-1-98)

~~16.~~ **Religion.** All aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business. (3-15-02)

~~107.~~ **Respondent.** Any person The party against whom a complaint is filed in accordance with the Human Rights Act and these Rules. (7-1-93)(    )

~~18.~~ **Settlement Agreement.** A written agreement settling the issues raised by the complaint and signed by the parties prior to the Commission's making a determination on the merits of the complaint. (7-1-93)

~~19.~~ **Sex.** The terms “because of sex” or “on the basis of sex” include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work. Subsection 010.19 shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, that nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion. (3-15-02)

~~20.~~ **Substantial Limitation.** A physical or mental condition constitutes a “substantial limitation” when a person is unable to perform a major life activity, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working, that the average person in the general population can

~~perform or is significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.~~ (3-15-02)

~~a. The following factors should be considered in determining whether a physical or mental condition constitutes a substantial limitation:~~ (3-15-02)

~~i. The nature and severity of the impairment;~~ (3-15-02)

~~ii. The duration or expected duration of the impairment; and~~ (3-15-02)

~~iii. The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.~~ (3-15-02)

~~b. With respect to the major life activity of working, a physical or mental condition constitutes a "substantial limitation" when a person is significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.~~ (3-15-02)

~~c. The following factors may be considered in determining whether a physical or mental condition constitutes a "substantial limitation" on the major life activity of "working":~~ (3-15-02)

~~i. The geographical area to which the individual has reasonable access;~~ (3-15-02)

~~ii. The job from which the individual has been disqualified because of an impairment, and the number and types of jobs utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (class of jobs); and/or~~ (3-15-02)

~~iii. The job from which the individual has been disqualified because of an impairment, and the number and types of other jobs not utilizing similar training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).~~ (3-15-02)

#### **011. REPRESENTATION OF PARTIES.**

In proceedings before the Commission, Complainants, Respondents, witnesses and any other ~~persons~~ individuals or entities authorized by the Commission to intervene must be represented as follows: (3-30-01)(    )

**01. Natural Person Individual.** An natural person individual must represent himself or herself or be represented by an attorney, or a family member. (3-30-01)(    )

**02. Partnership.** A partnership must be represented by a partner, a duly authorized employee, or an attorney. (3-30-01)

**03. Corporation.** A corporation must be represented by an officer, a duly authorized employee, or an attorney. (3-30-01)

**04. Other Entity.** A municipal corporation, state, federal, tribal, or local government agency, or entity, incorporated association, or non-profit organization must be represented by an officer, a duly authorized employee or an attorney. (3-30-01)

#### **012. INTERPRETATION OF STATE LAW.**

In evaluating allegations of discrimination on the basis of race, color, religion, sex or national origin under the Act, the Commission will rely on the interpretations of Title VII of the Civil Rights Act, 42 USC 2000e et seq. and federal regulations at 29 CFR Parts 1604 through 1607. The Commission will rely on interpretations of the Age Discrimination in Employment Act, 42 USC 621 et seq., and regulations at 29 CFR Part 1625 in determining allegations of age discrimination. (    )

**0123. -- 099. (RESERVED)**

**100. TEMPORARY ~~DISABILITIES~~ IMPAIRMENTS.**

Minor illnesses or conditions which are only temporarily disabling will not be considered to be disabilities under ~~this~~ ~~the~~ ~~Act~~. ~~Examples of such conditions include, but are not limited to: broken bones, sprains, or colds.~~ (7-1-97)( )

**101. DISABILITIES.**

The prohibition of discrimination on the basis of disability in the Act will be construed in compliance with the Americans with Disabilities Act as amended, 42 USC 1201 et seq. and federal regulations at 29 CFR Part 1630. ( )

**01. Contagious Diseases.** An ~~person suffering from~~ ~~individual who has~~ a chronic contagious disease is an ~~person individual~~ with a disability if he ~~or~~ she meets the requirements of Section 67-5902(15), Idaho Code. That ~~person individual~~ is entitled to an individualized medical inquiry to determine if he ~~or~~ she is qualified for the job in question. Factors to be considered include the nature, duration and severity of the risk of infection, and the probability that the disease would be transmitted and would cause varying degrees of harm. (7-1-97)( )

**02. Alcoholism.** Alcoholism is a disability if the requirements of Section 67-5902(15), Idaho Code, are met. No accommodation is necessary if the disability creates a health or safety threat. (See Section 67-5910(2)(d), Idaho Code.) Whenever alcoholism includes current use of alcohol, an employer may condition job retention upon the employee's successful completion of a treatment program and documented participation in an aftercare program. (7-1-97)

**03. Drug Addiction.** Drug addiction is a disability if the requirements of Section 67-5902(15), Idaho Code, are met. No accommodation is necessary if the disability creates a health or safety threat. (See Section 67-5910(2)(d), Idaho Code.) No accommodation is necessary for drug addiction ~~which that~~ includes current illegal use, possession, or selling of a controlled substance. An employer may condition job retention upon the employee's successful completion of a treatment program and documented participation in an aftercare program. (7-1-97)( )

**04. Reasonable Accommodations.** Reasonable accommodations are adjustments or modifications to the work assignment or work environment to enable an ~~person individual~~ with a disability to fulfill employment responsibilities. They may include, but are not limited to: (7-1-97)( )

- a. Making the worksite accessible to and usable by ~~persons individuals~~ with a disability; (7-1-97)( )
- b. Modification of equipment or tools so they can be used by an ~~person individual~~ with a disability; (7-1-97)( )
- c. Job restructuring; (7-1-93)
- d. Modified work schedules, particularly as they may be necessary for the ~~person individual~~ to receive treatment for a disability; (7-1-93)( )
- e. Acquisition of adaptive aids or devices; (7-1-93)
- f. Reassignment to a vacant position. (7-1-93)

**05. Accommodations of a Personal Nature.** Employers ~~shall are~~ not ~~be~~ required to provide accommodations of a personal nature, such as wheelchairs and hearing aids. ~~nor shall are~~ they ~~be~~ required to hire two (2) full-time employees to fill one (1) position. (7-1-93)( )

**06. Cooperation.** An ~~person individual~~ with a disability who seeks an accommodation must cooperate in the consideration of various accommodation options. An employer is not required to provide the "best" accommodation or the one most desired by the employee or applicant. The determination of "reasonableness" will be made on a case- by-case basis. (7-1-97)( )

**07. Pre-Employment Inquiry.** An employer, labor organization, or employment agency ~~shall~~ may not make pre-employment inquiry of an applicant as to whether the applicant has a physical or mental impairment, ~~or as to~~ the nature or severity of such impairment, or a worker's compensation claim. A covered entity may make pre-employment inquiries into the ability of an applicant to perform job-related functions, or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions. (7-1-93)(    )

**102. -- 199. (RESERVED)**

**200. MEDICAL ISSUES.**

**01. Medical Examinations and Inquiries.** Medical examinations and inquiries are permitted as follows: (7-1-97)

**a.** A covered entity may require a medical examination or inquiry after making an offer of employment to an applicant and before he ~~or~~ she begins employment duties, and may condition an offer of employment on the results of such examination or inquiry, if all entering employees in the same job category are subjected to such an examination or inquiry regardless of disability. Medical inquiries or examinations conducted in accordance with this section do not have to be job-related and consistent with business necessity. If certain criteria are used to screen out an applicant, however, the exclusionary criteria must be job-related and consistent with business necessity. (7-1-97)(    )

**b.** A covered entity may require a medical examination or make an inquiry of an employee that is job-related and consistent with business necessity. Inquiries may be made into the ability of an employee to perform job-related functions. (7-1-93)

**c.** A covered entity may conduct voluntary medical examinations and activities, including voluntary medical histories, which are part of an employee health program. (7-1-93)

**02. Disabilities Not Presently Job-Related.** An employer ~~shall~~ may not discriminate against an applicant or employee because of a disability ~~which that~~ is not presently job-related but ~~which that~~ may worsen and become job-related in the future. (3-30-01)(    )

**03. Confidentiality, Exceptions.** Information about the medical condition or history of an applicant or employee should be considered confidential except that: (7-1-93)

**a.** Supervisors and managers may be informed regarding restrictions on the work or duties of ~~persons~~ individuals with a disability and regarding any accommodations or health or safety precautions; ~~and~~ (7-1-97)(    )

**b.** First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; ~~and~~. (7-1-93)(    )

~~**e.** Enforcement agencies shall be provided relevant information upon request when investigating complaints under state or federal law. (7-1-93)~~

**201. -- 299. (RESERVED)**

**300. COMPLAINTS.**

**01. Who May File.** A complaint may be filed by any of the following: (7-1-93)

**a.** Any ~~person~~ individual for himself ~~or~~ herself, ~~or also on behalf of himself/herself and other similarly situated individuals~~ a family member on behalf of a minor, or an individual with guardianship, power of attorney, or similar legal authority over another, who ~~claimings~~ claims to be aggrieved by an alleged unlawful discriminatory practice as defined in the Act; (7-1-97)(    )

b. A Commissioner or ~~the~~ Administrator ~~may request~~~~ing~~ the Commission to initiate a complaint; ~~provided he/she has sufficient reason to believe that an unlawful discriminatory practice as defined in the Act has occurred or is occurring. Upon such request~~ ~~†~~The Commission ~~shall~~ will review the reasons provided by the initiating Commissioner or Administrator and may initiate a complaint if satisfied that there is reason to believe that an unlawful discriminatory practice as defined in the Act has occurred or is occurring; (7-1-97)(    )

c. Any ~~person~~ individual who claim~~ing~~s that he/ ~~or~~ she has been discharged, expelled, or otherwise discriminated against by an employer, labor organization, or employment agency because he/ ~~or~~ she opposed practices forbidden under the ~~Human Rights~~ Act, or because he/ ~~or~~ she has filed a complaint, testified, assisted or participated in any manner in an investigation, hearing or other procedure before the Commission. (7-1-97)(    )

**02. Commission Assistance.** Assistance in filing complaints ~~shall~~ will be available to any Complainant by a Commissioner, the Administrator, or staff member. The Commission reserves the right to refuse to accept a complaint for filing if, in the opinion of the Administrator, there is no reason to suspect that illegal discrimination may have occurred, or if the action is barred by the terms of Subsection 300.06.a. (7-1-97)(    )

**03. Contents of Complaint.** A complaint should contain the following: (7-1-93)

a. The full name, mailing address, and telephone number (if any) of the Complainant or Complainants; (7-1-93)

b. The full name, mailing address, and telephone number (if any and if known) of the Respondent or Respondents; (7-1-93)

c. A brief written statement sufficiently clear to identify the practices and to describe generally the action or practice alleged to be unlawful; (7-1-98)

d. The date or dates on which the alleged unlawful discriminatory practices occurred and, if the alleged unlawful practice is of a continuous nature, the dates between which said continuing practices are alleged to have occurred; (7-1-93)

e. A statement as to any other action which has been instituted in any other forum or agency based on the same grievance as is alleged in the complaint. (7-1-93)

**04. Medical Documentation.** ~~Persons~~ Individuals filing disability discrimination complaints may be required to furnish the Commission with opinions or records from duly licensed health professionals regarding (a) the nature of their disabilities, and (b) any limitations, including work restrictions, caused by the disability. Medical reports from the following sources will be accepted: physicians and osteopathic physicians, nurse practitioners, counselors, psychologists, occupational therapists, clinical social workers, dentists, audiologists, speech pathologists, podiatrists, optometrists, chiropractors, physical therapists, and substance abuse treatment providers, insofar as any opinion or evaluation within the scope of the relevant license applies to the individual's physical or mental impairment. Failure to provide medical reports within a reasonable period of time may be cause for dismissal of a complaint. (7-1-97)(    )

**05. Method of Filing.** A complaint may be filed~~+~~ by personal delivery, mail, email, or facsimile delivered to the Commission office in Boise. (7-1-97)(    )

**06. Time for Filing.** The following time limitations apply to the filing of complaints with the Commission: (7-1-93)

a. A complaint must be filed within one (1) year after the alleged unlawful practice occurs. If the alleged unlawful practice is of a continuing nature, the date of the occurrence of said unlawful practice ~~shall~~ will be deemed to be any date subsequent to the commencement of the unlawful practice up to and including the date on which the complaint ~~shall have been~~ is filed if the alleged unlawful practice continues. (7-1-93)(    )

b. ~~Upon receipt of~~ The date a complaint is received at the Commission's office, ~~the date of such receipt shall~~ will be noted ~~there~~ on the complaint. For purposes of compliance with Section 67-5908(4), Idaho Code,

the date of notation ~~shall~~ will be the date of filing. (7-1-93)( )

c. Notwithstanding any other provisions of these rules, a complaint ~~shall~~ will be deemed to have met the timelines requirement of Subsection 300.06.a. when the Commission receives, in any manner described in Subsection 300.05.a., a written statement sufficiently precise to identify the practices and to describe generally the action or practice alleged to be unlawful. (7-1-97)( )

**07. Complaints Deferred by E.E.O.C.** Any complaint deferred to the Commission by the E.E.O.C. ~~shall~~ will be treated, for purposes of filing requirements, according to the rules ~~as~~ stated above. (7-1-93)( )

**08. Amended Complaints.** A complaint may be amended, before the determination by the Commission and at the discretion of the Administrator, to cure technical defects or omissions, or to clarify ~~and~~ or amplify allegations by the Complainant. (7-1-97)( )

**09. Supplemental Complaint.** The Complainant may file a supplemental complaint setting forth actions ~~which that~~ have allegedly occurred subsequent to the date of the original or amended complaint, and said supplemental complaint, if timely filed, will be considered together in the same proceeding with the original or amended complaint whenever practicable. (7-1-93)( )

**10. Withdrawal of Complaint.** Upon the request of the Complainant, on a form provided by the Administrator stating the reasons for such request, a complaint, or any part thereof, may be withdrawn ~~upon~~ with the written consent of the Administrator. If a complaint is withdrawn pursuant to the provision of these rules, the Administrator ~~shall~~ will close the case and notify the parties. (7-1-93)( )

**11. Initial Actions.** ~~Upon the filing of a complaint~~ When filed, said a complaint ~~shall~~ will be docketed, assigned a complaint number, and assigned to the staff for ~~settlement mediation~~ or investigation ~~and conciliation~~. (7-1-93)( )

**12. Service on Respondent.** As promptly as possible, the Commission ~~shall cause~~ will serve a copy of ~~said the~~ complaint ~~to be served~~ on the Respondent by: (5-3-03)( )

a. Personal delivery; (5-3-03)

b. Mail; ~~or~~ (5-3-03)( )

c. Email; or ( )

d. Facsimile. (5-3-03)

**13. Mediation.** Upon the filing of a complaint, the Commission or its delegated staff member ~~shall~~ will endeavor to resolve the matter by informal means. Such informal means may include, at the discretion of the Commission staff, ~~the holding of~~ a mediation conference at a time and place acceptable to all participants. ~~If held, a mediation conference shall be for the purposes of to~~ clarifying the positions of the parties to the complaint and ~~of~~ exploring any bases for no-fault settlement. A mediation conference is not, ~~and shall not be considered for any purposes to be,~~ a contested case hearing under Section 67-5209, Idaho Code. (7-1-97)( )

**14. Settlement.** ~~If~~ Terms of any settlement ~~are~~ agreed to by the parties at any time prior to a determination by the Commission ~~as to~~ on the merits of the charge, ~~said terms shall~~ will be reduced to writing in a Settlement Agreement. Upon the signing of a Settlement Agreement by all parties, the Administrator will ~~cause the case to be~~ closed the case. (7-1-93)( )

**15. Answers.** The Respondent ~~shall~~ must answer or otherwise respond to the complaint in writing within thirty (30) days of receiving it. A copy of ~~said Respondent's~~ answer, including any attachments ~~thereto~~ submitted, will be sent by the Commission staff to the Complainant. Upon application, the Commission may for good cause ~~shown~~ extend the time within which the answer may be filed. The answer ~~shall~~ must be fully responsive to each allegation contained in the complaint ~~which that~~ is not denied or admitted in the answer ~~shall~~ will be deemed admitted unless the Respondent ~~shall~~ states in the answer ~~he/she~~ that Respondent is

without knowledge or information sufficient to form a belief. If the Respondent fails to answer or otherwise respond to the complaint within thirty (30) days of receipt or such time as may be extended by the Commission, the Commission may act on the complaint based on the information provided by the Complainant. Upon application, the Commission may for good cause shown permit the Respondent to amend its answer to the complaint. Any amendments to the complaint, or any supplemental complaint, shall will be served upon the Respondent as promptly as possible. Answers to amended or supplemental complaints, if necessary, shall must be submitted within ten (10) working days. Time for submitting such answers may be extended by the Commission to thirty (30) days for good cause ~~shown~~. (7-1-97)(    )

**16. ~~Interrogatories~~ Requests for Information.** At any time after the filing of a complaint, the Commission staff may issue to either the Complainant or the Respondent ~~interrogatories~~ requests for information regarding any matter; that is not privileged, ~~which and that~~ is relevant to the subject matter involved. ~~It is not ground for objection that the information sought will be inadmissible in court if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.~~ (7-1-93)(    )

**17. ~~Interrogatory~~ Answers Returned.** Answers to ~~the interrogatories~~ requests for information shall must be returned to the Commission office ~~within thirty (30) days from the date of service of said interrogatories~~ at a time determined by the investigator. (7-1-93)(    )

~~**18. Extension.** Upon application by a party, for good cause shown, the Administrator may grant one (1) extension of time for filing answers to interrogatories, said extension not to exceed an additional fifteen (15) days.~~ (7-1-93)

~~**19. Orders.** In the event that a party objects to certain interrogatories, and after an attempt has been made to resolve any difference between the Commission and the party, the Commission may issue an order compelling the party to answer the interrogatories. This order must be signed by at least two (2) Commissioners. An order issued under this rule shall be enforceable by application to the District Court.~~ (7-1-93)

~~**2018. Narrative Statement.** The Commission staff may, ~~in specific cases, seek from a party~~ request a narrative statement ~~of response in addition to or rather than answers to interrogatories~~ from a party. ~~In such cases, the narrative statement should must include all information which that the party desires to be considered by the Commission, in determining whether to credit the allegations of the complaint.~~ (7-1-93)(    )~~

~~**219. File Briefs.** Any party to a complaint filed with the Commission may file briefs or other written memoranda setting out his or her position or interpretation of the law. (7-1-97)~~

~~**220. Summary of Investigation.** At the completion of the investigation, the staff member to whom the case is assigned shall will prepare a report containing a summary of the investigation and submit it to the Administrator to review. (7-1-93)(    )~~

~~**231. Administrative Closure.** At any point during the handling of a particular case, the Administrator may close the case for administrative reasons. ~~Such reasons shall that~~ include, but are not limited to: (7-1-99)(    )~~

~~a. Failure of the Complainant to accept a full relief settlement offer; (7-1-93)~~

~~b. Failure of the Complainant to cooperate with the Commission in the processing of the case, including failure to answer interrogatories requests for information or failure to provide medical information as requested; (7-1-93)(    )~~

~~c. Inability to locate the Complainant; (7-1-93)~~

~~d. It appearing upon investigation that the case is not jurisdictional within the jurisdiction of the Commission; (7-1-93)(    )~~

~~e. The Complainant's filing of a suit in either state or federal court alleging the same unlawful practices as complained of to the Commission. (7-1-93)(    )~~

**242.** **Notification of Closure.** The Administrator ~~shall~~ **will** notify the parties of ~~such an~~ administrative closure, including the grounds ~~therefor~~ **the decision**, as promptly as possible. (7-1-93)(    )

**253.** **Decision on the Merits.** At the completion of the investigation and approval of the summary by the Administrator, the Commission or a designated panel of at least three (3) Commissioners ~~shall~~ **will** determine whether there is probable cause to believe that the Respondent has been or continues to be engaged in any unlawful discriminatory practices defined in the Act. (7-1-93)(    )

**264.** **No Probable Cause.** If the Commission or designated panel finds no probable cause ~~to credit on~~ the allegations of the complaint, a statement of no probable cause and order of dismissal will be issued for the Commission by the Administrator. The summary of investigation, statement, and order ~~shall~~ **will** be sent to Complainant and Respondent, thereby closing the case. (5-3-03)(    )

**275.** **Probable Cause.** If the Commission or designated panel finds probable cause ~~to credit on~~ the allegations of the complaint, a statement of probable cause ~~shall~~ **will** be issued. The summary of investigation and statement ~~shall~~ **will** be sent to the Complainant and the Respondent. (5-3-03)(    )

**286.** **Conciliation.** If the Commission finds probable cause ~~to credit on~~ the allegations of the complaint, the Commission staff ~~shall~~ **will** endeavor through conference with the parties to redress and eliminate the possible unlawful discriminatory practice by conciliation. (7-1-93)(    )

**297.** **Conciliation Agreement.** If ~~the commission staff shall succeed in endeavors to conciliate conciliation is successful~~, a written Conciliation Agreement ~~shall~~ **will** be prepared, ~~which shall set forth that states~~ all measures to be taken by any party, and if appropriate, compliance provisions. The Conciliation Agreement ~~shall must~~ be signed by the parties, and the Administrator ~~shall cause the will close the case to be closed~~. (7-1-93)(    )

**3028.** **Failure of Agreement.** ~~In the event of If the parties failure~~ to reach terms of conciliation, ~~agreeable to all parties, the Administrator shall so certify and assign the case to the Commission's legal counsel. The Commission, after review by its legal counsel, shall will~~ determine whether or not to pursue the case in the District Court. (7-1-93)(    )

**3129.** **No Action.** If the Commission determines not to pursue the case in District Court, the Administrator ~~shall so will~~ notify Complainant and Respondent, close the case, and advise Complainant of his or her right to pursue the case through a private cause of action. (7-1-93)(    )

**320.** **Action.** If the Commission decides to pursue a case, it ~~shall direct its legal counsel to will~~ file an action in District Court in the name of the Commission ~~for the use on behalf~~ of the ~~person or persons alleging discrimination Complainant~~. (7-1-93)(    )

**331.** **Confidentiality of Records.** ~~In order to protect the interests of all parties in reaching successful settlements of discrimination charges without resorting to court action, The records of the Commission are confidential according to Section 9-340B(8), Idaho Code. #I~~The Commission and its employees will not reveal information about a case to nonparties except as may be necessary to conduct a full and fair investigation ~~or to cooperate with other government law enforcement agencies~~. (7-1-93)(    )

**34.** **Federal Compliance.** ~~In the interest of consistency and to avoid confusion on the part of persons governed by both the State and Federal anti discrimination laws, the Commission will generally follow the interpretations of the Federal anti discrimination laws in examining the merits of a complaint filed with it under this Act. If a person files a complaint under Title 67, Chapter 59, Idaho Code, and Title 44, Chapter 17, Idaho Code, the Commission will attempt to avoid duplication in investigation and settlement efforts, whenever possible.~~ (7-1-97)

**352.** **Document Destruction.** The Commission ~~will may~~ retain closed investigatory files for three (3) years from the date of closure at which time these documents may ~~be~~ destroyed at the discretion of the Administrator. (7-1-97)(    )

**363.** **Notice of Right to Sue.** At the time of case closure, the Administrator will issue a notice of administrative dismissal notifying the ~~e~~Complainant of his or her right to file a civil action in District Court. Any such suit must be filed within ninety (90) days of the date of this notice. (7-1-99)(    )