

ARTICLE VI. - EQUAL EMPLOYMENT<sup>[22]</sup>

Footnotes:

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**Editor's note**—Ord. No. 95-31, adopted August 15, 1995, did not specifically amend the Code; hence inclusion herein as Art. VI, §§ 2-261—2-263, 2-271—2-273, 2-281—2-288, and 2-301—2-313, was at the discretion of the editor.

## DIVISION 1. - GENERALLY

## Sec. 2-261. - Short title.

This article shall be known and may be cited as the "Palm Beach County Equal Employment Ordinance."

(Ord. No. 95-31, 8-15-95)

## Sec. 2-262. - Purpose.

It shall be the policy of the Board of County Commissioners, in the exercise of its police power for the public safety, public health, and general welfare to assure, within constitutional limitations, that all persons regardless of race, color, sex, national origin, religion, age, disability, familial status, marital status, sexual orientation or gender identity or expression as defined by Title VII of the Civil Rights Act of 1991, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, as amended, the Rehabilitation Act, the Americans with Disabilities Act of 1990, the Florida Civil Rights Act or otherwise provided herein, be afforded equal opportunity to all terms and conditions of employment. The county shall take all necessary and reasonable action to prevent discrimination in employment.

(Ord. No. 95-31, 8-15-95; Ord. No. 02-066, § 1, 9-10-02; Ord. No. 05-046, § 1, 9-27-05; Ord. No. 07-041, § 1, 12-18-07)

## Sec. 2-263. - Definitions.

In this article unless the context otherwise requires:

*Age* provisions contained herein apply to any person at least forty (40) years of age.

*Aggrieved person* includes any person that: (1) claims to have been injured by a discriminatory practice; or (2) believes that he or she will be injured by a discriminatory practice that is about to occur.

*Auxiliary aids and services* includes, but is not limited to: (1) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments; (2) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments; (3) acquisition or modification of equipment or devices; and (4) other similar services and actions.

*Because of sex or on the basis of sex* includes, but is 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. "Because of sex" or "on the basis of sex" also includes, but is not limited to sexual harassment. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when: (1) submission to such

conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as a 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 work environment.

*Board* unless a different meaning clearly appears from the context, means the Palm Beach County Equal Employment Board, created by this article.

*Chairperson* or *chair* means the chairperson of the Equal Employment Board, or the chairperson of a panel or committee, as the context may indicate.

*Complainant* shall mean the person filing a complaint pursuant to this article.

*Complaint* means a written statement which alleges the occurrence of a discriminatory practice, and includes an amended complaint.

*Conciliation* means the attempted resolution of issues raised by a complaint, or by the investigation of such complaint, through informal negotiations involving the complainant, the respondent and the Office of Equal Opportunity.

*Conciliation agreement* means an agreement entered into between the complainant and respondent resolving the alleged discriminatory practice and which may require respondent to refrain from committing a discriminatory practice or to take affirmative action. The agreement may include consent to the entry of a court decree embodying its terms and shall be subject to approval by the Equal Employment Board.

*Director* means the director of the Palm Beach County Office of Equal Opportunity.

*Disability* with respect to an individual, means: (1) a physical or mental impairment which substantially limits one (1) or more major life activities; (2) a record of such an impairment; or (3) being regarded as having such an impairment. Disability does not include current or illegal use of or addiction to a controlled substance (as defined in Section 102 of the Controlled Substances 30 Act (21 USC 802)).

*Discrimination classification* means a classification on the basis of race, color, religion, national origin, sex, age, disability, familial status, marital status, sexual orientation or gender identity or expression.

*Discrimination practice* means a practice designated as discriminatory under the terms of this article.

*Document* includes, but is not limited to, writings, drawings, graphs, charts, photographs, phonorecords and other data or compilations from which information can be obtained.

*Employee* means any individual employed by, or seeking employment from an employer.

*Employer* means a person engaged in an industry affecting commerce who has fifteen (15) or more employees for each working day in each of four (4) or more calendar weeks in the current or preceding calendar year, and any agent of such person; including, but not limited to, all state and local governments, governmental agencies, and political subdivisions unless opted out. The term does not include the United States, an Indian Tribe, a bona fide private membership club which is exempt from taxation under Section 14 501(c) of Title 26.

*Employment agency* means any person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, and includes an agent of such person.

*Familial status* means an individual who has legal custody of one or more child who has not attained the age of eighteen (18). The protection afforded against discrimination on the basis of familial status shall apply to any individual who is expecting the birth of a child or is in the process of securing legal custody of a child under the age of eighteen (18).

*Gender identity or expression* means a gender-related identity, appearance, expression or behavior of an individual, regardless of the individual's assigned sex at birth.

*Has a record of having such impairment* means had a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one (1) or more major life activities.

*Is regarded as having an impairment* means: (1) Has a physical or mental impairment that does not substantially limit one (1) or more major life activities, but that is treated by another person as constituting such a limitation; (2) Has a physical or mental impairment that substantially limits one (1) or more major life activities only as a result of the attitudes of others toward such impairment; or (3) Has none of the impairments defined as physical/mental impairment, but is treated by another person as having such an impairment.

*Labor organization* means any organization engaged in an industry affecting commerce, and any agent of such an organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, whole or in part, of collective bargaining or of dealing with employers, or other mutual aid or protection in connection with employment. Labor organization includes: (1) An organization of any kind representing employees in dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms and conditions of employment; (2) A conference, general committee, system board, or council which is subordinate to a national or international labor organization. A labor organization shall be deemed to be engaged in an industry affecting commerce if it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or the number of its members is fifteen (15), and such labor organization is the certified representative of employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended.

*Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

*Marital status* means the status of being married, single, divorced or widowed.

*National origin* includes the national origin of an ancestor.

*Office of equal opportunity* or *OEO* means Palm Beach County office of equal opportunity.

*Party* means any person designated as a party to a proceeding before the equal employment board, pursuant to this article.

*Person* includes one (1) or more individuals, associations, corporations, trustees, joint apprenticeship committees, joint stock companies, partnerships, labor unions, legal representatives, mutual companies, receivers, trusts, trustees in bankruptcy, unincorporated organizations, fiduciaries or any other legal or commercial entity, the state, or any governmental entity or agency in Palm Beach County.

*Physical or mental impairment* means any: (1) Physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one (1) or more of the following body systems: Neurological, musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin and endocrine; or (2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term includes, but is not limited to such diseases and conditions as orthopedic, visual, cerebral palsy, multiple sclerosis, cancer, heart diseases, human immunodeficiency virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by the current, illegal use of a controlled substance) and alcoholism.

*Qualified individual with a disability*, means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this article, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

*Reasonable accommodation* may include: (1) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and (2) Job restructuring, part-time or modified, work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

*Religion* means all aspects of religious observance and practice, as well as beliefs, unless an employer demonstrates that he is unable to reasonably accommodate an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

*Respondent* shall mean the person or other entity accused in a complaint of a discriminatory practice and any other person or entity identified in the course of the investigation not named as a respondent in the initial complaint who may be joined as an additional or substitute respondent upon written notice.

*Sexual orientation* means male or female homosexuality, heterosexuality and bisexuality, by

preference or practice.

*Substantially limited* means likely to experience difficulty in securing, retaining or advancing in employment because of a disability.

*Training programs* means any plan containing terms and conditions for qualification, recruitment, selection, employment, or training of employees to: (1) Enter a specific trade or occupation after completion of a specified training program; or (2) Offer a person already either partially or wholly trained in a specific trade or occupation an opportunity to advance after completion of a specified training program. A training program may be "joint" i.e., managed and supervised by representatives of labor and management or unilateral.

*Undue hardship* means an action requiring significant difficulty or expense, when considered in light of the following factors: (1) The nature and cost of the accommodation needed; (2) The overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility; (3) The overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and (4) The type of operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

*Unlawful discriminatory practice* includes only those practices specified in Division 4, section 2-312 herein.

(Ord. No. 95-31, 8-15-95; Ord. No. 02-066, §§ 1, 2, 9-10-02; Ord. No. 07-041, §§ 2, 7, 12-18-07)

Sec. 2-264—2-270. - Reserved.

DIVISION 2. - OFFICE OF EQUAL OPPORTUNITY

Sec. 2-271. - In general.

The county administrator exercising his/her power of appointment shall employ a director and such other personnel in the office of equal opportunity (OEO) as may be provided for in the budget approved by the board of county commissioners and for which an appropriation has been made. The director and staffing complement shall be referred to as the office of equal opportunity. It shall be the responsibility of the director and/or the director's designee to investigate complaints of discrimination prohibited by this article, and the laws of the United States of America and the State of Florida, and attempt to conciliate and mediate complaints of discrimination, to perform such other duties which will promote and provide for equal opportunity and for enforcement of this article and the laws of the United States of America and the State of Florida; and to perform such other duties of an administrative nature as may be assigned by the county administrator.

(Ord. No. 95-31, 8-15-95)

Sec. 2-272. - Duties and powers of the office of equal opportunity.

The duties, functions, powers and responsibilities of the office shall include the following:

- (1) The enforcement of the provisions (1) of this article and rules and regulations promulgated

hereunder.

- (2) Publish and disseminate public information and materials relating to equal employment opportunities issues.
- (3) Perform, such other administrative duties as may be assigned by the county administrator.
- (4) To become a referral agency for the state and federal government and comply with the necessary state and federal regulations.
- (5) To report to the board of county commissioners on a quarterly basis the number and types of cases processed or in process.

(Ord. No. 95-31, 8-15-95)

Sec. 2-273. - Duties and powers of the director.

The powers and duties of the director and/or the director's designee shall be:

- (1) To investigate and make findings regarding:
  - a. Tension or prejudice in relation to all equal employment involving race, sex, color, religion, national origin, age, disability, familial status, marital status, sexual orientation or gender identity or expression.
  - b. Discrimination against any person by any person with regard to employment on the basis of race, sex, color, religion, national origin, age, disability, familial status, marital status, sexual orientation or gender identity or expression.
- (2) To attempt to conciliate and mediate complaints of discrimination brought pursuant to this article.
- (3) To prepare consent agreements embodying any agreement reached by the parties relating to the complaint and to present such agreement to the equal employment board, for the board's acceptance or rejection.
- (4) To administer oaths, subpoena witnesses, and compel production of evidence pertaining to any investigation authorized by this article.
- (5) To administratively dismiss complaints pursuant to the provisions of this article.
- (6) To exercise all powers reasonable and necessary to fulfill the purpose of this article.

(Ord. No. 95-31, 8-15-95; Ord. No. 02-066, § 1, 9-10-02; Ord. No. 07-041, § 3, 12-18-07)

Secs. 2-274—2-280. - Reserved.

DIVISION 3. - EQUAL EMPLOYMENT BOARD

Sec. 2-281. - Established; composition.

The equal employment board is hereby created and established. This board is to be composed of nine (9) citizens of Palm Beach County appointed by the board of county commissioners to serve staggered terms of two (2) years. The board shall reflect, to the greatest extent possible, representation from groups identified in this article and from various types of employment. Members of the equal employment board shall be the same as members of the fair housing board created pursuant to Palm Beach County Ordinance 90-1, as may be amended.

(Ord. No. 95-31, 8-15-95)

Sec. 2-282. - Qualifications of members.

Members of the board shall be residents of Palm Beach County, Florida. Seven (7) of the appointments shall be made as district appointments and two (2) of the appointments shall be made at large by the board of county commissioners on the basis of community representation, integrity, experience and interest in the area of equal opportunities. Each district appointee may be removed without cause by the appointing commissioner at any time, and at large appointees may be removed at any time by a vote of the board of county commissioners. Members may not be members of more than two (2) other advisory boards appointed by the board of county commissioners; however, membership on the equal employment board and the fair housing board shall only be considered to be membership on one (1) advisory board. Members shall be governed by the applicable provisions of the County Code of Ethics, Resolution No. R-94-693, as may be amended. Abstention from voting due to a conflict of interest on more than three (3) separate matters during a calendar year shall result in automatic removal.

(Ord. No. 95-31, 8-15-95)

Sec. 2-283. - Terms of office.

In order that the terms of office of all members of the board shall not expire at the same time, the initial appointments to the board shall be made as follows:

- (1) All current members of the fair housing board as established by Palm Beach County Ordinance No. 90-1 shall be made members of the equal employment board provided that each member agrees to the appointment. All members shall serve the remainder of their respective terms on the fair housing board.
- (2) Any members of the fair housing board who elect not to be members of the equal opportunity board shall be replaced by appointments made at large by the board of county commissioners in the same manner as other vacancies are filled and are to serve for the unexpired portion of the term.
- (3) The two (2) additional members needed to complete the equal opportunity board shall be appointed at-large by the board of county commissioners for a term of one (1) year.

Thereafter, all appointments shall be for a term of two (2) years as provided above. Appointments to fill vacancies on the board shall be for the remainder of the unexpired term.

(Ord. No. 95-31, 8-15-95)

Sec. 2-284. - Attendance.

Members shall be automatically removed for lack of attendance. Lack of attendance is defined as failure to attend three (3) consecutive meetings or failure to attend more than one-half (½) of the meetings scheduled during a calendar year. Participation for less than three-fourths (¾) of a meeting shall constitute lack of attendance. Excused absences due to illness, absence from the county, or personal hardship, if approved by vote of the equal employment board, shall not constitute lack of attendance. Excused absences shall be entered into the minutes at the next regularly scheduled meeting of the equal employment board. Members removed under this section shall not continue to serve until a new appointment is made and removal shall create a vacancy.

(Ord. No. 95-31, 8-15-95)

Sec. 2-285. - Organization of the board.

- (a) The members of the board shall elect a chairperson and vice-chairperson by a majority vote of the board and such officers shall serve for a term of one (1) year. The chairperson shall have the following duties:
- (1) Schedule all board meetings and set agenda for the same;
  - (2) Preside at board meetings;
  - (3) Sign subpoenas;
  - (4) Appoint and define the role of such committees as are necessary or expedient to advise the board, the director of the office of equal opportunity and the board of county commissioners; and
  - (5) Perform such other functions as the board may assign by rule of order.

The vice-chairperson shall perform the duties of the chairperson in the chairperson's absence and such other duties as the chairperson may assign.

- (b) If a vacancy occurs in the office of chairperson, the vice-chairperson shall become the chairperson for the unexpired term of the chairperson. If a vacancy occurs in the office of vice-chairperson the board will elect another member to fill the unexpired term of the vice-chairperson.
- (c) Three (3) members of the board shall constitute a hearing panel for the purposes of hearing discrimination complaints. A majority of the members appointed shall constitute a quorum to hold a meeting for any other purpose. The majority vote of those present at a duly constituted meeting shall be sufficient for all actions.
- (d) Members shall serve without compensation. Travel reimbursement is limited to expenses incurred only for travel outside Palm Beach County necessary to fulfill board member responsibilities when sufficient funds are budgeted and available, and upon prior approval of the board of county commissioners.

(Ord. No. 95-31, 8-15-95)

#### Sec. 2-286. - Meetings of the board.

Meetings of the board shall be held on a regular basis to hear and dispose of pending matters. Notice of the time and place of meetings shall be given to all board members, all parties scheduled to be heard, and shall be made public. The meetings shall be governed by Roberts Rules of Order. The chairperson may call an unscheduled meeting of the board, upon not less than twenty-four (24) hours notice, and meetings may also be called by the director upon the written request of three (3) members of the board. All meetings shall be public, except where prohibited by law. The county administrator shall provide a regular meeting place for the board, and shall provide such staff as may reasonably be required to assist the board in the performance of its duties.

(Ord. No. 95-31, 8-15-95)

#### Sec. 2-287. - Objectives.

The objective of the board shall be:

- (1) To promote and encourage fair treatment and equal opportunity in employment for all persons regardless of race, sex, color, religion, national origin, age, disability, familial status, marital status, sexual orientation or gender identity or expression to promote and encourage mutual understanding and respect among such persons and to endeavor to eliminate employment discrimination against and antagonism between such persons.



- (2) To cooperate with governmental and non-governmental agencies and organizations having like or kindred functions.
- (3) To make such investigation and studies in the field of employment as in its judgment will aid in effecting its general purposes.
- (4) To assist various groups and agencies of the community to cooperate in educational programs and campaigns, devoted to the elimination of discrimination in employment.
- (5) To aid in permitting Palm Beach County to benefit from the fullest realization of its equal employment resources.
- (6) To recommend to the board of county commissioners the acceptance of certain grants and contracts from foundations and other sources for the purpose of carrying out the purposes of this article.
- (7) To recommend to the board of county commissioners methods for elimination of discrimination and intergroup tensions.
- (8) The objectives set forth above are not to be construed as duties and the board of county commissioners shall have the discretion to determine when each objective is implemented.

(Ord. No. 95-31, 8-15-95; Ord. No. 02-066, § 1, 9-10-02; Ord. No. 07-041, § 4, 12-18-07)

Sec. 2-288. - Powers and duties.

The powers and duties of the board shall be:

- (1) To refer or accept referral of complaints when appropriate and to cause, through the office of equal opportunity, investigations of:
  - a. Tension or prejudice in relation to all employment matters involving race, sex, color, religion, national origin, age, disability, familial status, marital status, sexual orientation or gender identity or expression.
  - b. Discrimination against any person by any with regard to employment matters on the basis of race, sex, color, religion, national origin, age, disability, familial status, marital status, sexual orientation or gender identity or expression.
- (2) To propose reasonable rules and regulations as are necessary to effectuate the policies of this article and govern the proceedings of the board. Such rules and regulations shall become effective upon approval by the board of county commissioners.
- (3) To receive, initiate, seek to conciliate, hold hearings upon and adjudicate complaints alleging violation of this article; to recommend methods and alternatives for eliminating injustices occasioned thereby; to carry out and enforce the purpose of this article.
- (4) To administer oaths, subpoena witnesses, and compel production of evidence pertaining to any hearing convened pursuant to the powers and duties authorized by this article.
- (5) To subpoena witnesses and compel production of evidence requested by the office of equal opportunity relating to an investigation being conducted pursuant to this article.
- (6) Meet and exercise its power in any place within Palm Beach County.
- (7) To issue remedial orders prohibiting violations of this article and providing affirmative relief from the effects of the violations as specified in Division 4, section 2-312.
- (8) Prepare, adopt and present an annual report to the board of county commissioners.

(Ord. No. 95-31, 8-15-95; Ord. No. 02-066, § 1, 9-10-02; Ord. No. 07-041, § 5, 12-18-07)

Secs. 2-289—2-300. - Reserved.

DIVISION 4. - COMPLAINTS

Sec. 2-301. - Filing of complaints alleging discrimination in employment.

- (a) A complaint that any person has engaged in or is engaging in an unlawful employment practice within the meaning of this article may be made by or on behalf of any person claiming to be aggrieved within one hundred eighty (180) days of the alleged discriminatory act.
- (1) Any person who claims to have been injured by an unlawful discriminatory practice must file a sworn written complaint with the office of equal opportunity which shall state the name and address of the complainant and the person or persons against whom the complaint is made.
- (2) A complaint on behalf of a person claiming to be aggrieved may be made by any person, agency or organization.
- (3) A complaint shall be in writing, signed by the complainant and verified by the director of the office of equal opportunity or the director's designee. Each complaint should contain the following information:
- The full name and address and telephone number of the person making the complaint except in cases where the complaint is being made on behalf of another person;
  - The full name and address of the person against whom the complaint is made; and
  - A general description of the action or practices complained of.
- (b) A complaint may be filed by the director of the office of equal opportunity, with the approval of the board.
- (c) Intake of complaints may be done in person, by telephone or by mail at the office of equal opportunity, any satellite office of the office of equal opportunity or with any representative of the office of equal opportunity.
- (4) Complaints may be amended to cure technical defects, omissions, or to clarify and amplify allegations. Amendments alleging additional acts which constitute unlawful practices related to or growing out of the subject matter of the original complaint will relate back to the date the complaint was first received.

(Ord. No. 95-31, 8-15-95)

Sec. 2-302. - Notice of complaints.

Upon the filing of a complaint, the director shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this article. The director or the director's designee shall, not later than ten (10) days after such filing or the identification of an additional respondent, serve on the respondent a notice, by registered or certified mail, identifying the alleged discriminatory employment practice and advising such respondent of the procedural rights and obligations of respondents under this article, together with a copy of the original complaint. The respondent may file a sworn written answer to the complaint within ten (10) days of the receipt of the complaint. Failure to file an answer by the respondent shall not result in any presumption of admission to the allegations in the complaint. Any subsequent amendment to the complaint or answer thereto shall be served by U.S. Mail.

(Ord. No. 95-31, 8-15-95)

Sec. 2-303. - Processing complaints.

Within one hundred (100) days of the filing of a complaint as set forth in section 2-301, the staff of the office of equal opportunity shall make such investigation as the director or the board deems appropriate to ascertain facts and issues. If the office of equal opportunity is unable to complete the investigation within one hundred (100) days after the filing of the complaint, they shall notify the complainant and the respondent in writing of the reasons for not doing so. In conducting an investigation to ascertain whether or not there has been a violation of this article, the director and/or the director's designee shall have access at all reasonable times to premises, record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation providing that the office of equal opportunity complies with the provisions of the federal and state constitutions relating to unreasonable searches and seizures. The director, chairperson, vice-chairperson or any other member of the equal employment board may issue subpoenas to compel access to, or the production of, such materials, or the appearance of such persons, and may issue interrogatories to a respondent to the same extent and subject to the same limitations as would apply if the subpoenas or interrogatories were issued or served in aid of a civil action in court. In the case of a refusal to obey a subpoena issued to any person, or refusal to comply with any method of discovery authorized in the Florida Rules of Civil Procedure the board and/or the director shall request the county attorney to make application to the appropriate court to order the witness to comply with the request for discovery, or to appear before the board and to produce evidence, if so requested, or to give testimony concerning the matter in question. The director and/or the board may administer oaths. If the complaint is not settled within one hundred (100) days of the filing of the complaint, and if the director shall determine that there are reasonable grounds to believe an unlawful discriminatory practice has occurred and is appropriate for conciliation, then the director and/or the director's designee shall attempt to conciliate the matter pursuant to section 2-309 of this article.

(Ord. No. 95-31, 8-15-95)

Sec. 2-304. - Withdrawal of complaint.

A complaint filed pursuant to this article may be withdrawn at any time by the complaining party upon notifying the office of equal opportunity; however, the director may continue action against the respondent if the facts establish reasonable grounds to support a finding of discrimination and the board approves such further action.

(Ord. No. 95-31, 8-15-95)

Sec. 2-305. - Preservation of records.

Following service of the complaint in the manner provided herein, the respondent shall preserve all personnel records, payroll records or any other written or documentary material relating to the complaint until the complaint has been resolved.

(Ord. No. 95-31, 8-15-95)

Sec. 2-306. - Administrative dismissal of complaint.

(a) Any complaint filed pursuant to this article shall be dismissed by the director upon the following grounds:

(1)

The complainant has failed or refused to cooperate or the complainant cannot be located after reasonable efforts to do so have been made and after twenty (20) days notice to the complainant by mail to the complainant's last known address the complainant has failed to duly respond.

- (2) The complaint has not been timely filed with the board or the office of equal opportunity.
  - (3) The complainant refuses to accept full remedy when there is a settlement negotiation prior to a finding being issued.
  - (4) The complainant and respondent have entered into a separate independent settlement agreement regarding the subject matter of the complaint.
  - (5) The complainant withdraws the complaint.
- (b) In the event that any other agency of the state or of any other unit of state or federal government has jurisdiction of the subject matter of any complaint filed with the office of equal opportunity and has legal authority to investigate or act upon the complaint, the office of equal opportunity may refer such complaint to such agency. Referral of such a complaint by the office of equal opportunity shall not constitute agency action within the meaning of Florida Statute § 120.52(2). In the event of any referral under this subsection, the office of equal opportunity shall accord substantial weight to final findings and orders of any such agency.

(Ord. No. 95-31, 8-15-95; Ord. No. 05-046, § 2, 9-27-05)

Sec. 2-307. - Investigation procedures.

After a complaint has been filed, the office of equal opportunity shall conduct an investigation. The office of equal opportunity may utilize the services and information gathered from other public agencies charged with the administration of equal opportunity laws. The following procedures shall be followed:

- (1) *Requests for information.* In conducting an investigation the director and/or the director's designee shall have access at all reasonable times to premises, records, documents, individuals, and other evidence or possible sources of evidence and may examine, record the testimony or statements of such persons as are reasonably necessary for the furtherance of the investigation providing that the director and/or the director's designee complies with the provisions of the federal and state constitutions relating to unreasonable searches and seizures. The director and/or the director's designee may obtain information by:
  - a. Oral interview; and/or
  - b. Requests for written statement or affidavit; or
  - c. Any discovery methods set forth in the Florida Rules of Civil Procedure.
- (2) *Access to files during investigation.* Information obtained during the investigation of a complaint shall be disclosed only to the complainant, the respondent, or their authorized representative, or to witnesses, only when disclosure is deemed necessary by the director for the investigation or for securing appropriate disposition of the complaint. The director may direct that a particular record, document or portion thereof be withheld from inspection by a party only when necessary for the protection of a witness or third party, or for the preservation of a trade secret and only in accordance with the provisions of the Florida Public Records Law and/or the Federal Privacy Act.

(Ord. No. 95-31, 8-15-95)

Sec. 2-308. - Determination of reasonable grounds—Notice.

- (a) Upon completion of an investigation, if a complaint has not been settled or withdrawn, the director and/or the director's designee shall make a determination as to whether there is reasonable grounds to believe that an unlawful discriminatory practice has occurred. The director and/or the director's designee shall report the results of the investigation and his/her determination to the board and advise the board that a notice of determination shall be served upon the complainant and respondent. The board shall receive a copy of the notice of determination.
- (b) A notice of determination of reasonable grounds shall include an invitation to participate in conciliation.
- (c) After service of a notice of determination, the parties named in the determination may inspect the records and documents, in the custody of the office of equal opportunity, which pertain to the determination. The director may direct that a particular record, document or portion thereof be withheld from inspection by a party only when necessary for the protection of a witness or third party, or for the preservation of a trade secret and only in accordance with the provisions of the Florida Public Records Law and the Federal Privacy Act.

(Ord. No. 95-31, 8-15-95)

Sec. 2-309. - Same—Conciliation procedure.

- (a) After service of a notice of determination of reasonable grounds the office of equal opportunity shall endeavor to eliminate any unlawful discriminatory practice by informal methods of conference, conciliation and persuasion. The office of equal opportunity shall attempt to achieve a just resolution of all violations found, and to obtain agreement that the respondent will eliminate the unlawful practice and provide appropriate affirmative relief. Where such conciliation attempts are successful, the terms of the consent agreement shall be reduced to writing and signed by the complainant, the respondent and the director. The original of the signed agreement shall be filed with the director and copies shall be served upon the respondent, complainant and the board. The board shall, at its next regularly scheduled meeting, approve the agreement.
- (b) When a consent agreement has not been signed, and the complaint has not been withdrawn or dismissed, the director shall serve a notice of failure of conciliation upon the complainant, respondent and the board not less than thirty (30) days after the service of a notice of determination of reasonable grounds. Within thirty (30) days after the service of the notice of failure of conciliation, the complainant may request an administrative hearing before the board and the board shall schedule such a hearing within thirty (30) days of such a request.
- (c) Nothing said or done in the course of the conciliation process may be made public or used as evidence in subsequent proceedings under section 2-311 without the written consent of the persons concerned. Any employee of the office of equal opportunity who violates this section shall be prosecuted in the same manner as a misdemeanor of the second degree, punishable as provided in Florida Statutes Chapter 775.

(Ord. No. 95-31, 8-15-95)

Sec. 2-310. - Administrative remedies.

- (a) If the director is unable to obtain voluntary compliance with this article and has reasonable cause to believe that a discriminatory practice has occurred, the director may institute an administrative proceeding before the equal employment board on any director initiated complaint.

- (b) The complainant may request an administrative proceeding before the equal employment board within thirty (30) days after receiving notice of failure of conciliation.
- (c) In conducting an administrative hearing to ascertain whether or not there has been a violation of this article, the board shall have the power to administer oaths, issue subpoenas, compel the production of books, papers and other documents and receive evidence. The board shall conduct the administrative hearing in accordance with the procedure provided in §§ 120.57(1) and 120.58, Florida Statutes.
- (d) All recommended orders prepared by the board as a result of such hearing or hearings shall conform with the requirements for such orders as set out in section 120.59, Florida Statutes.
- (e) The board shall serve a copy of the order on each party to the administrative proceedings. The recommended order shall be considered as the final order of the board for the purposes of proceeding further under this section.
- (f) Either party to such administrative proceedings shall have the right to appeal the administrative order described herein by filing notice of appeal pursuant to Florida Appellate Rule 9.110(2) within thirty (30) days of the issuance of such order by the board. Any party shall have the right to bring an action in the appropriate court to insure compliance with this order.
- (g) In the case of a refusal to obey a subpoena issued by the board, the county or the person at whose request it was issued may, in addition to any other remedies made available, petition for its enforcement in the appropriate court.
- (h) Should any party fail or refuse to comply with the final order issued or breach a conciliation agreement as provided herein, then following the expiration of the appeal time provided herein, the board shall forward such order or conciliation agreement to the board of county commissioners with a request that the board of county commissioners authorize the county attorney to bring such action or actions as necessary to obtain compliance with this article.
- (i) When an act is required or allowed to be done at or within a specified time by this section, for cause shown, the board, in its discretion, and upon the written request of a party, may order the period enlarged unless otherwise prohibited by law.
- (j) All written motions upon which a ruling is requested shall be filed with the office of equal opportunity at least three (3) working days prior to the hearing date established by the board. Such motions shall be considered and ruled upon by the board prior to the start of the hearing.
- (k) All motions and orders thereon shall be made a part of the record of such administrative proceedings.
- (l) No appeal may be made from rulings on such motions until a final order has been issued.
- (m) If there are separately filed cases before the board which involve similar issues of law and fact and identity of parties, then such cases may be consolidated by the director for hearing before the board.
- (n) Discovery shall be permitted and shall proceed in the manner provided by the Florida Rules of Civil Procedure.
- (o) The board may order a pre-hearing conference prior to any administrative hearing. Prior to such conference the board may direct that the parties submit a pre-conference statement addressing the issues of law and fact that will be involved in such hearing, identifying the witnesses that will testify, providing such other information as requested by the board.
- (p)

The director shall set the time and place of any administrative hearing. The director shall serve notice by certified mail of such hearing on the parties no later than fourteen (14) calendar days prior to the final hearing. Such notice requirement may be waived with the written consent of all parties. The notice shall also contain:

- (1) A statement of the nature of the hearing.
  - (2) A statement of the legal authority and jurisdiction under which the hearing is to be held.
  - (3) A reference to the statutes, ordinance and rules involved.
- (q) Requests for subpoenas by the complainant or respondent in any administrative proceeding shall be filed with the office of equal opportunity and forwarded to the board. Such requests shall set forth the name and address of the person whose attendance is requested and shall describe with particularity any material to be produced. Such subpoenas shall be issued by the board or the director. The requesting party shall be responsible for service of any subpoena.
- (r) A subpoena shall be subject to a motion to quash or a motion for protective order before the appropriate court.
- (s) The official transcript of a hearing shall be preserved by tape recording or by a court reporter.
- (t) Should a party elect to provide a court reporter for a hearing, that party shall be responsible for entire payment of the reporter's fee.
- (u) If the equal employment board finds that a discriminatory practice has occurred, it shall issue an order prohibiting the practice and awarding affirmative relief from the effects of the practice, including actual damages and reasonable attorney's fees and costs. Actual damages may include back pay, except liability for back pay shall not accrue from a date more than two (2) years prior to the filing of a complaint under the article.
- (v) To vindicate the public interest, the equal employment board, may assess a civil penalty against the respondent in an amount not to exceed five hundred dollars (\$500.00). Funds recovered under this section shall be paid to the board of county commissioner's general fund.

(Ord. No. 95-31, 8-15-95)

Sec. 2-311. - Enforcement by private persons.

- (a) A person may also commence a civil action in any court of competent jurisdiction against the named employer, employment agency, labor organization, joint labor-management committee or person no later than one (1) year after the date of determination of reasonable cause by the office of equal opportunity. The commencement of such action shall divest the office of equal opportunity of jurisdiction of such complaint, except that the office of equal opportunity may intervene as a matter of right.
- (b) Nothing in this article shall be construed to waive the right of any person to file a charge with any other agency with the legal authority to investigate or act upon the complaint. The commencement of such action shall divest the office of equal opportunity of jurisdiction of such complaint.
- (c) If the court finds that a discriminatory practice has occurred, it may issue an order prohibiting the discriminatory practice and providing affirmative relief from the effects of the practice, actual and punitive damage, and reasonable attorney's fees and costs. Actual damages may include back pay, except liability for back pay shall not accrue from a date more than two (2) years prior to the filing of a complaint under this article. It is intended that any award of attorneys fees be interpreted in a

manner consistent with federal case law, involving a Title VII action. The right to trial by jury is preserved in any such private right of action in which the aggrieved person is seeking compensatory or punitive damages, and any party may demand a trial by jury.

(Ord. No. 95-31, 8-15-95)

Sec. 2-312. - Unlawful employment practices.

- (a) It is an unlawful employment practice for an employer:
- (1) To discharge or to fail or refuse to hire any individual, or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation or gender identity or expression.
  - (2) To limit, segregate, or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee, because of such individual's race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation or gender identity or expression.
- (b) It is an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation or gender identity or expression, or to classify or refer for employment any individual on the basis of race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation or gender identity or expression.
- (c) It is an unlawful employment practice for a labor organization:
- (1) To exclude or to expel from its membership, or otherwise to discriminate against, any individual because of race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation or gender identity or expression.
  - (2) To limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any which would deprive or tend to deprive any individual of employment opportunities, or adversely affect any individual's status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation or gender identity or expression.
  - (3) To cause or attempt to cause an employer to discriminate against an individual in violation of this article.
- (d) It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual because of race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation or gender identity or expression or in admission to, or employment in, any program established to provide apprenticeship or other training.
- (e) Whenever, in order to engage in a profession, occupation, or trade, it is required that a person receive a license, certification, or other credential, become a member of an association of any club, association, or other organization, or pass any examination, it is an unlawful employment practice for any person to discriminate against any other person seeking such license, certification,



or other credential, seeking to become a member or associate of such club, association or other organization, or seeking to take or pass such examination, because of such other person's race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation or gender identity or expression.

- (f) It is an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee to print or cause to be printed or published, any notice or advertisement relating to employment, membership, certification, referral for employment, or apprenticeship or other training, indicating any preference, limitation, specification, or discrimination based on race, color, religion, sex, national origin, age, disability, familial status, marital status, sexual orientation or gender identity or expression.
- (g) It is an unlawful employment practice for an employer, employment agency, a joint labor-management committee, or labor organization to discriminate against any person because that person has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding or hearing under this article.
- (h) Intimidate, coerce, threaten or interfere with any person in the exercise or enjoyment of, or on account of their having exercised or enjoyed, or on account of their having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by this article.
- (i) Retaliate or discriminate in any manner against a person who has opposed a practice declared discriminatory by this article, or who has filed a complaint, testified, assisted or participated in any manner in any investigation, proceeding, hearing or conference under this article.
- (j) Aid, abet, incite, compel or coerce any person to engage in any of the practices prohibited by this article; or to obstruct or prevent any person from complying with the provision of this article; or any order issued thereunder.
- (k) Resist, prevent, impede or interfere with the board or any of its members or representatives in the lawful performance of its or their duty under this article.
- (l) Initiate maliciously, frivolously or in bad faith any charge under the provisions of this article for the purpose of harassment.

(Ord. No. 95-31, 8-15-95; Ord. No. 02-066, § 1, 9-10-02; Ord. No. 07-041, § 6, 12-18-07)

#### Sec. 2-313. - Limitations and exceptions—Employment.

Notwithstanding any other provision of this article, it is not an unlawful employment practice for an employer, employment agency, labor organization, or joint labor-management committee to:

- (1) Take or fail to take any action on the basis of religion, sex or national origin in those certain instances in which religion, sex or national origin is a bona fide occupational qualification reasonably necessary for the performance of the particular employment to which such action or inaction is related.
- (2) Observe the terms of a bona fide seniority system, a bona fide employee benefit plan such as a retirement, pension, or insurance plan, or a system which measures earnings by quantity or quality or production, which is not designed, intended, or used to evade the purposes of Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Equal Pay Act of 1963, the Rehabilitation Act, the Americans with Disabilities Act of 1990, or the Florida Civil Rights Act. However, no such employee benefit plan or system which measures earnings shall excuse the involuntary retirement of, any individual on the basis of any factor not related to the ability of such individual to perform the particular employment for which such individual is

engaged. This subsection shall not be construed to make unlawful the rejection or termination of employment when the individual applicant or employee has failed to meet bona fide requirements for the job or position sought or held or to require any changes in bona fide retirement or pension programs or existing collective bargaining agreements during the life of the contract, nor shall this article preclude such physical and medical examinations of all employees or persons offered employment to determine fitness for the job or position held or offered.

Section 2-312 shall not apply to any religious corporation, association, educational institution, or society which conditions opportunities in the area of employment to members of that religious corporation, association, educational institution, or society or to persons who subscribe to its tenets or beliefs. Section 2-312 shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporations, associations, educational institutions, or societies of its various activities.

(Ord. No. 95-31, 8-15-95; Ord. No. 05-046, § 3, 9-27-05)

Secs. 2-314—2-330. - Reserved.