

HAWAII ADMINISTRATIVE RULES

TITLE 14

DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

SUBTITLE 1

STATE OF HAWAII HUMAN RESOURCES RULES

CHAPTER 13.01

INTERNAL COMPLAINT PROCEDURE

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Historical Note: Chapter 13.01 is based substantially on Chapter 14-13, Hawaii Administrative Rules. [Eff 6/22/81; 9/25/92; comp 8/1/91; am and comp 6/11/92; R 4/1/02]

§14-13.01-1 Purpose. The purpose of this chapter is to establish a uniform internal complaint procedure that may be used to consolidate multiple existing complaint procedures within each department to minimize confusion and possible loss of rights in filing a complaint. [Eff 4/1/02; comp DEC 01 2003] (Auth: HRS §76-42, SLH 2000, Act 253) (Imp: HRS §76-42, SLH 2000, Act 253)

§14-13.01-2 Applicability. This chapter shall apply to all employees and members of the general public who wish to complain about any matter concerning State government [Eff 4/1/02; comp DEC 01 2003] (Auth: HRS §76-42, SLH 2000, Act 253) (Imp: HRS §76-42, SLH 2000, Act 253)

§14-13.01-3 General Provisions. (a) Nothing in these rules restricts the right of any employee or member of the general public to lodge a complaint concerning any matter relating to State government except those complaints by employees that are required to be disposed of in accordance with collective bargaining agreements. These rules set forth the procedures for those complaints that require action on the part of State officials.

(b) Specifically, these rules are intended to insure that any employee covered by chapter 76, HRS, or any member of the general public disqualified during the recruitment process by virtue of failure to meet minimum qualifications or unsuitability is provided the opportunity to lodge an internal complaint concerning a matter within the jurisdiction of the merit appeals board as set forth in section 76-14, HRS.

(c) Matters subject to collective bargaining grievance procedures shall not be considered a complaint under this chapter.

(d) The complainant shall be assured freedom from coercion, discrimination, or reprisal, and have the right to be represented by a person or persons of the complainant's own choosing at any stage in the presentation of the complaint

(e) All proceedings shall be conducted during the employee's work hours as practicable and, for a complainant who is not an employee, during office hours at times convenient to the complainant.

[Eff 4/1/02; comp DEC 01 2003] (Auth: HRS §76-42, SLH 2000, Act 253) (Imp: HRS §76-42, SLH 2000, Act 253)

S14-13.01-4 Establishment of the internal complaint procedure. Each department head shall establish a uniform internal complaint procedure applicable to all employees concerning employees and members of the general public whose complaints are within the jurisdiction of the merit appeals board. Each department head may establish a uniform internal complaint procedure applicable to all employees and the general public for all other complaints which are not within the jurisdiction of the merit appeals board in accordance with the following guidelines:

- (1) For complaints in general:
 - (A) The department shall prepare a standardized complaint form for use by employees and the general public in the submission of a complaint. To the maximum extent possible this form should replace existing complaint forms unless a specific form is required by law. Nothing in this section prevents any agency from modifying or supplementing any standardized complaint form to obtain additional information necessary to efficiently process complaints related to the requirements of specific programs;
 - (B) Complaint forms, instructions, and the complaint procedures shall be easily accessible to employees and the general public at each department's personnel office or those designated offices on each of the neighbor islands or off-site facilities. A listing of the offices where forms are available and can be filed shall be posted in each department personnel office and those designated offices on each of the neighbor islands or off-site facilities;
 - (C) Management need not consider any complaint not filed in accordance with the procedure contained herein; provided that the parties may mutually

- agree to waive or extend any specific time limitation set forth in the procedure;
- (D) To minimize confusion and possible loss of rights, the time and manner for filing a complaint shall be as uniform and easily understandable as possible to employees and the general public;
 - (E) The procedure shall provide for the referral of a complaint to the appropriate individual at the lowest level who has the authority to act on the complaint and who shall be responsible for contacting the complainant. If the complaint is not a matter within the authority of the department, the department shall notify the complainant in writing and the department shall refer the complaint to the appropriate agency, if known. This will be considered the informal step;
 - (F) Complaints concerning matters that are subject to collective bargaining grievance procedures shall be returned to the complainant. If the complainant disputes whether the complaint involves matters subject to collective bargaining grievance procedures, the complainant may submit the matter to the Hawaii Labor Relations Board pursuant to the board's rules of practice and procedure;
 - (G) A written decision for an informal resolution shall be issued to the complainant on the outcome of any efforts to resolve the complaint;
 - (H) If the complaint cannot be resolved at the informal step, the decision shall be accompanied by information on the filing of a formal complaint with the department or the merit appeals board, as applicable.

- (2) For human resources complaints within the jurisdiction of the merit appeals board, the following procedures apply:
- (A) Members of the general public may only file a complaint involving denial of opportunity to pursue a vacancy for reason of failure to meet the minimum qualifications for that vacant position for which the complainant had filed a formal application or for determinations of unsuitability;
 - (B) Only employees covered by chapter 76, HRS, may file a complaint concerning classification and reclassification of a particular position and initial pricing of classes;
 - (C) Only employees covered by chapter 76, HRS, who are excluded from collective bargaining may file a complaint concerning other employment actions under chapter 76 or chapter 89C, HRS, including disciplinary actions and adverse actions for failure to meet performance requirements;
 - (D) A complaint under subsection (b) must be filed within:
 - (i) Seven working days from the date of the alleged occurrence for all recruitment and examination complaints;
 - (ii) Twenty working days from the date of notice for all complaints on classification and initial pricing actions;
 - (iii) Ten working days for all other human resources complaints;
 - (E) For classification and initial pricing issues, the filing of the formal complaint is the request for administrative review. For recruitment and examination, the filing of the formal complaint is an appeal to the

merit appeals board. For all other human resource issues, the formal complaint procedure shall be established by the department.

- (3) For complaints not within the jurisdiction of the merit appeals board:
 - (A) The filing of a written complaint shall be within twenty working days from the date that the alleged violation occurred unless the filing deadline is otherwise established by law in which case that deadline shall govern;
 - (B) If the complaint is not satisfactorily resolved at the informal step, the employee complainant shall file a formal complaint pursuant to procedures established by the department or otherwise established by law.
[Eff 4/1/02; comp DEC 01 2003]
(Auth: HRS §76-42, SLH 2000, Act 253)
(Imp: HRS 76-42) (Imp: HRS §76-42, SLH 2000, Act 253)

§14-13.01-5 Appeals to the merit appeals board. The internal complaint procedures shall be exhausted before an appeal is filed with the merit appeals board. Appeals to the merit appeals board shall be in accordance with section 76-14, HRS, and in accordance with such rules of practice and procedure as may be adopted by the board. [Eff 4/1/02; comp DEC 01 2003]
(Auth: HRS §76-42, SLH 2000, Act 253) (Imp: HRS §76-42, SLH 2000, Act 253)

§14-13.01-6 Other appeals processes. When an appeal is not under the jurisdiction of the merit appeals board but some other administrative agency or appellate body, the complainant is responsible for the timely filing of an appeal with the appropriate agency regardless of whether the internal complaint procedure under this chapter was used. [Eff 4/1/02; comp

DEC 01 2003] (Auth: HRS §76-42, SLH 2000, Act 253)
(Imp: HRS §76-42, SLH 2000, Act 253)