

# District of Columbia Office of Human Rights



## Attorney-Drafted Charges Pilot Program Guidance

July 15, 2024, to December 31, 2024

## I. Introduction to OHR's Attorney-Drafted Charge Pilot Program

In 2019, OHR conducted a Pilot Program to determine whether to accept attorney-drafted charges. The evaluation of that Pilot Program and the potential implementation of a permanent attorney-drafted charge process was interrupted by the COVID-19 pandemic. Since there has been a significant amount of time that has elapsed since the original Pilot Program, OHR is re-constituting its Attorney-Drafted Charge Pilot Program to take into account feedback from local bar associations, advocacy groups, recommendations from the Council of the District of Columbia Committee on Public Works and Operations, and lessons learned from OHR's 2019 Pilot Program.

The new Pilot will apply across all claims enforced by OHR and will run from **July 15, 2024, to December 31, 2024**. Upon the expiration of the Pilot, OHR will accept recommendation and suggestions for any changes to the process for 30 days by any interested party. Such feedback should be submitted in writing to [OHR.OGC@dc.gov](mailto:OHR.OGC@dc.gov). OHR will make a determination about whether to permanently accept attorney-drafted charges and the guidelines for doing so within 90 days of the close of the feedback period.

## II. OHR's Role in the Intake and Charge Process

The role of OHR in the intake process is to assist the complainant in articulating allegations of discrimination that fall within OHR's jurisdiction to mediate and investigate. Individuals **do not need an attorney** in order to file a claim or finalize a charge with OHR. A Charge of Discrimination ("Charge") is meant to be a **summary** of the complainant's claims, reflecting relevant facts, discrete issues, a general chronology, if warranted, and a recitation of any **pertinent events or actions** that support the overall claims presented in the Intake Questionnaire and captured during the Intake Interview. All Charges must be reviewed by OHR for legal sufficiency. Should OHR have jurisdiction and the Charge states a claim for relief, Complainant and/or their representative will have an opportunity during the investigation phase to provide additional information in support of the Charge.

## III. The Initial Written Complaint

The complaint process at OHR begins with submitting an Initial Written Complaint ("IWC"), also known as the Intake Questionnaire, via an online form, email, mail, fax, or in-person. **All complainants, whether represented or not, must fill out the IWC and submit it to OHR.** The IWC constitutes the filing date for statute of limitation purposes.

OHR has different IWC forms for different claims. Please check to make sure the correct form is submitted. Please see OHR's *SOP: Complaint Processing* for more information or visit OHR's website at: [File A Discrimination Complaint | ohr \(dc.gov\)](#).

**Note:** For the purposes of determining timeliness of filing of an IWC, the date an attorney-drafted Charge on EEOC Form 5 is submitted to OHR will constitute the filing date. An attorney-drafted Charge on EEOC Form 5 Charge, however, **will not otherwise be treated** as an IWC, and all complainants, even if they submit an EEOC Form 5 Charge, must submit an OHR IWC.

#### IV. The Intake Interview

If, based on the information provided in the IWC, OHR determines that it likely has jurisdiction over the matter, the complainant will be scheduled for an intake interview. In some cases, OHR may follow-up with complainant prior to determining jurisdiction or drafting a Charge in order to gather additional information about a potential complaint. Complainant and the attorney **must attend** the Intake Interview, unless otherwise notified by the Intake Manager. Note that OHR may dismiss complaints after an intake interview, and before the drafting of a Charge, for reasons including lack of jurisdiction, lack of sufficient information, the filing of frivolous claims, or for administrative reasons.

#### V. The Charge of Discrimination

OHR typically drafts the Charge after conducting the Intake Interview, which is a separate document from the IWC. As part of this Pilot, an attorney-drafted Charge may be submitted to OHR within 7 business days after the Intake Interview, or, if Complainant prefers, OHR will draft the Charge and forward it to the Complainant's attorney for final review and Complainant's signature.

If an attorney-drafted Charge is submitted to OHR, it will be reviewed by the Intake Officer and, when necessary, the Intake Manager. If the attorney-drafted Charge is consistent with OHR's guidelines, properly states a claim for relief over which OHR has jurisdiction, and clearly defines the timeline, claims, issues, and basis(es) for the complaint, OHR will in most cases docket the Charge and forward it to OHR's Mediation and Investigation Units for further processing.

If the attorney-drafted Charge is not consistent with OHR's guidelines, including if the claims are untimely, or otherwise fails to state a claim for relief over which OHR has jurisdiction, OHR will contact the attorney to review the deficiencies; clarify the timeline, issues, claims, and bases for investigation; and revise the Charge so that it is consistent with OHR's requirements.

The final decision on what claims to accept in the Charge remains at all times with OHR. Should a complainant disagree with what claim(s) OHR has accepted and wish to pursue additional claims in D.C. Superior Court or a court of competent jurisdiction, because a complainant is not required to exhaust administrative remedies under the DCHRA by filing first with OHR, the complainant will need to first withdraw the entire case from OHR and file a private right of action on all claims in court. See D.C. Code § 2-1403.16(a). The D.C. Human Rights Act allows claims to be filed with the D.C. Superior Court within one year from the incidents in question. *Id.* "The timely filing of a complaint with the office...shall toll the running of the statute of limitations while the complaint is pending." *Id.*

**Note:** OHR does not currently accept class-action or disparate impact charges. However, complainants and their counsel may file "group" charges – which will be consolidated and investigated together – as long as each individual complainant files their own IWC *and* Charge of Discrimination. In addition, OHR's Director has the authority to initiate Director's Inquiries into potential discriminatory practices or policies, such as industry-wide practices or a particular policy, in the District that may have a discriminatory effect on a particular group or protected trait.

## VI. Attorney-Drafted Charge Requirements

A Charge **should not be longer than two (2) pages in length and must be submitted one sided only**. The font size should be no smaller than 11. All headings should conform to OHR standards as outlined below. Exceptions to this page limit may be made in cases involving a multitude of issues, claims involving continuing violations, or hostile work environment claims. An attorney-drafted Charge of employment discrimination may be submitted on EEOC Form 5.

Please note that the below attorney-drafted Charge requirements are not exhaustive, and OHR may require additional information in the Charge depending on the type of claim and the statute(s) involved.

### **Limit of One D.C. Statute per Charge:**

For example, if a complainant wishes to allege three claims: (1) sex discrimination under the D.C. Human Rights Act (DCHRA); (2) leave interference under the D.C. Family & Medical Leave Act (DCFMLA); and (3) failure to accommodate under the Protecting Pregnant Workers Fairness Act (PPWFA), the attorney **MUST submit three separate charges** – one for each statute. This is because certain claims, such as DCFMLA, are adjudicated under a different process than DCHRA claims, and separate determination letters must therefore be issued on each claim.

**Exception:** If an attorney-drafted Charge implicates companion federal laws, for example, both Title VII and the Americans with Disabilities Act, all relevant federal statutes should be listed on the Charge filed with OHR.

### **Timeliness of Claims:**

OHR will only accept claims for investigation that involve incidents or discovery of incidents that occurred within one year of the date a complaint is filed with OHR (which begins with the filing of the Initial Written Complaint or IWC). Information outside of the statute of limitations may be provided as background information on the final Charge of Discrimination, but it should be kept to a minimum in the procedural history section of the Charge and labeled as “**Background.**” For example, in a hostile work environment claim, facts or background details occurring outside of the one year statute of limitations period may still be included in a summary fashion as “background” evidence in support of the claim of hostile work environment harassment, but should be clearly labeled as such and should be distinguished from the timely allegations of hostile work environment harassment.

### **Required Contents of Charge:**

The allegations must **state a claim under laws enforced by OHR**, and should include specific information about the parties, a statement of particulars with dates, and a statement of the law violated.

The below provides guidance for each section of the Charge:

- **Parties' Information**
  - a. Complainant
    - i. Name, home address, telephone, and email for Complainant.
    - ii. Complainant's attorney's contact information may be provided in addition to or in lieu of Complainant's contact information.
    - iii. Date of birth of Complainant should only be provided in age discrimination cases.
  - b. Respondent
    - i. Corporate name and business address of Respondent. Also, please provide the Registered Agent's name in this section.
    - ii. Email and telephone of Respondent, if available.
    - iii. Owner's name, if known.
    - iv. Trade name may be provided in parentheses and denoted by "d/b/a."
    - v. If the business address of Respondent is outside of the District of Columbia, the location of the violation in the District of Columbia must be included, either in this section or in the narrative of the Charge.
    - vi. Estimated number of employees of Respondent located in the United States, with the number of employees of Respondent located in the District of Columbia indicated in parentheses (e.g., "50 (25 in D.C.)").
- **Dates Discrimination Took Place**
  - a. All Charges should include dates or, at a minimum, a date range for the cited incidents so that OHR can determine whether it has jurisdiction over the asserted claims.
  - b. Check "continuing action" ONLY for hostile work environment/harassment claims which include allegations beyond the typical one-year statute of limitation.
    - Note:** "Continuing action" should not be checked if you are alleging ongoing discrimination under theories other than hostile work environment or harassment; rather, indicate the particulars in the section below.
- **Particulars**
  - a. Introduction
    - i. Date of OHR Initial Written Complaint (IWC) initially submitted to OHR;
    - ii. **For DC government cases**, you must also provide the date of the initial EEO Counselor contact, the date complainant received the Exit Letter, and the date the Exit Letter was submitted to OHR;
    - iii. Describe the relationship between the parties, including any particular job title or role of the complainant, the type of the Respondent, and complainant's qualification for employment, housing, etc.
    - iv. If the address where the incident occurred is different from the business address include it here.

- b. Claims – Please use Headers (specific claims asserted)
  - i. Each legal theory **must be labeled and underlined** and must be described in a separate paragraph. For example, if retaliation and disparate treatment are alleged, each issue must be articulated in its own distinct paragraph with headers such as, “Retaliation,” or “Disparate Treatment.”
  - ii. The individual paragraph for each legal theory should include a concise summary statement of the factual allegations that support each element of the legal theory. If the same set of factual allegations supports more than one legal theory, claim, or basis, please still include the same summary of facts under each separate legal theory. OHR will review these statements to ensure it states a claim.
  - iii. Be sure to include relevant dates, or at a minimum, a date range, for the cited incidents.
- o **Conclusion**
  - a. Concluding paragraph of the Charge should identify the pertinent federal and District statutes.

**Note:** OHR will NOT docket a Charge that does NOT allege violation of District laws.
  - b. Certification: A short statement describing any other action, civil, criminal, or administrative in nature, instituted in any other forum or agency based on the same unlawful discriminatory practice as is alleged in the Charge.

**Note:** If Complainant has already filed a claim alleging the same unlawful discriminatory practice in a court of competent jurisdiction, or with the United States Equal Employment Opportunity Commission (EEOC) or Department of Housing and Urban Development (HUD), Complainant should NOT also file the same factual and legal allegations in a Charge of Discrimination with OHR. OHR may dismiss such cases in order to avoid duplicative investigations and/or to comply with OHR’s federal work-share agreements with its partner agencies.

## VII. Charge Examples – Particulars and Conclusion

The below examples are provided **ONLY** to illustrate charge language that is consistent with the guidance above, however such charge language must still be inserted in the Particulars section of the template Charge form.

### **Sample 1: Charge of Discrimination (PRIVATE SECTOR)**

I was hired by Respondent’s restaurant in January 2024, as a Stock Clerk. I believe that I have been discriminated against in the terms, conditions, and privileges of employment based on my sex (female), and subjected to retaliation for participating in a protected activity for the following reasons:

### **Sexual Harassment Quid Pro Quo - Sex**

I originally applied for this job prior to January 2024. As a condition of my employment, I was asked to perform sex acts with one of Respondent's Managers, Joe Smith (male), in late December 2023. Respondent's Manager used expletives to tell me, "If you want the job, you need to (perform) oral sex." After being hired in January 2024, Respondent's Manager, Mr. Smith, kept asking me for sexual favors stating that my job depended on it.

### **Sexual Harassment -Sex**

On or around late April or early May, 2024, I raised the issue of Mr. Smith's sexual requests with Respondent's General Manager, Fred Thomas (male), and Mr. Smith was transferred to a different location. However, a few months later, one of Mr. Smith's friends, Tony Johnson (male), became my Supervisor. He also began to make sexual advances toward me, but I did not comply with his sexual advances. I complained to Mr. Thomas on May 15, 2024 about Mr. Johnson's behavior.

### **Retaliation - Terms and Conditions, Discipline**

Shortly after I raised my complaints with Mr. Thomas, he began to reduce my hours and my work shifts were cut. Then, on May 31, 2024, I did not receive a paycheck for my work. I complained to Mr. Thomas about missing my paycheck and unpaid wages on June 3, 2024 and he immediately suspended me for three days for insubordination.

### **Retaliation - Discharge**

Subsequently, on June 30, 2024, Respondent terminated my employment. I contend Respondent terminated my employment in retaliation for complaining about sexual harassment by Mr. Smith and Mr. Johnson.

Therefore, I charge Respondent with unlawful discriminatory acts in violation of Title VII of the Civil Rights Act of 1964, as amended, and the D.C. Human Rights Act of 1977, as amended. I have not commenced any other action civil, criminal or administrative, based on the above allegations, other than the instant Charge of Discrimination that has been cross-filed with the EEOC.

### **Sample 2: Charge of Discrimination (D.C. GOVERNMENT)**

Complainant first filed with an EEO Counselor on December 12, 2023. The EEO Counselor directed her to another EEO counselor, and the Counselor issued an Exit Letter on February 1, 2024, and Complainant filed her Initial Written Complaint with OHR on February 10, 2024. Complainant again contacted the EEO counselor on April 7, 2024, and the EEO Counselor issued another Exit letter on May 19, 2024. Complainant submitted the Exit letter issued to OHR on the same day.

Respondent hired me in May 2023 as a Legal Assistant. I believe that Respondent has discriminated against me in the terms, conditions, and privileges of employment based on my sex (Female) and race (Asian) for the following reasons:

### **Disparate Treatment (Discharge) - Sex and Race**

Since my hiring, I noticed Respondent's leadership team, who are all white, lacked cultural competence and diversity, pushing people out that they did not accept. On October 31, 2023, my supervisor Amanda Simmons (Caucasian/white), called me into her office and notified me that Respondent was terminating my employment.

When I asked about a reason for termination, Ms. Simmons stated the agency was deciding to get rid of my position and they did not need to give me a reason. She also stated the agency could fire me for any reason, even if it does not like my hair, as I was on a probationary period. The letter of termination dated October 28, 2023, stated that they came to this decision "because I was determined to be unfit for the job." Prior to my termination, I have received only positive feedback on my work and work product, and I received favorable reviews on my 6-month informal evaluation.

However, Respondent has kept my male colleague Eric Brown (Caucasian/white), who was in the same position as mine, even though I was more experienced and qualified than he was with my previous ten- year work experience as volunteer with legal aid organizations. Therefore, I assert that Respondent discriminated against me based on my sex and race when Respondent terminated my employment despite my qualifications when they continued to employ a white male employee.

Therefore, I charge Respondent with unlawful discriminatory acts in violation of the D.C. Human Rights Act of 1977, as amended; and Title VII of the Civil Rights Act of 1964, as amended. I have not commenced any other civil, criminal, or administrative action based on the above allegations, other than the instant Charge of Discrimination, which has been cross-filed with the EEOC.