



# Guidelines for Attorney-Drafted Charges

Pilot Program: July-October 2019

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**DISTRICT OF COLUMBIA OFFICE OF HUMAN RIGHTS**

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## I. INTRODUCTION

OHR is pleased to roll out a Pilot Program to accept drafted Charges of Discrimination from Complainant's attorneys in response to feedback from local bar associations and advocacy groups and a policy recommendation from the Council of the District of Columbia Committee on Government Operations Fiscal Year 2020 Committee Budget Report. The goal of the pilot project is to discern how and whether accepting charges drafted by Complainant's attorneys will reduce intake processing time. The Pilot will apply only to attorney-drafted Charges raising public accommodation and employment claims. This pilot will not apply to charges relating to the Fair Criminal Record Screening Act (FCRSA) claims. **The Pilot will run from July 15, 2019 to October 15, 2019.**

## INTAKE AT OHR

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 our office. A Charge of Discrimination is meant to be a summary of the complainant's claims, reflecting timely facts and events presented in the Intake Questionnaire and captured during the Intake Interview. **All Charges must be reviewed by OHR for legal sufficiency.** Complainant or their representative is welcome to provide additional information to OHR during the investigation phase.

## II. THE INTAKE QUESTIONNAIRE

The complaint process at OHR begins with submitting an Intake Questionnaire Form via online form, email, mail, or in-person. **All Complainants, whether represented or not, must fill out the Intake Questionnaire and submit it to OHR.** This allows OHR to track each case and assign it to an Intake Officer for further processing.

OHR has different forms for different claims. **Please check to make sure you have used the correct form from [our website](#).**

**Note:** An attorney-drafted Charge on EEOC Form 5 Charge **will not be treated** as an Intake Questionnaire.

## III. THE INTAKE INTERVIEW

OHR will typically draft the Charge after conducting the Intake Interview. Complainant and their attorney **must** attend the Intake Interview, unless otherwise notified by the Intake Manager.

As part of this Pilot, an attorney-drafted Charge may be submitted to OHR before or after the Intake Interview. The attorney-drafted charge must state a claim and conform to the following guidelines, as well as the guidance provided in Sections II and III of [OHR's Standard Operating Procedures for Complaint Processing](#). An attorney-drafted Charge that is submitted before the Intake Interview **will not be automatically docketed by OHR.**

**Note:** An attorney-drafted Charge must be submitted to the assigned OHR Intake Officer within 7 business days after the Intake Interview or OHR will draft the Charge and forward to the attorney for final review and notarized signature.

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## IV. THE ATTORNEY-DRAFTED CHARGE

Once the 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**, OHR will docket the Charge and forward it to the Mediation and Investigation Units for further processing. If the attorney-drafted Charge is **not consistent with OHR's guidelines**, OHR will contact the attorney to review the deficiencies and revise the Charge so that it is consistent with OHR's requirements.

### a. General Tips

- i. All Charges must **include dates or a date range** for the cited incidents and the allegations must **state a claim under laws enforced by OHR**.
- ii. When providing information in the "particulars" section of the Charge, **do not include the names of non-management employees. Instead, identify those employees with a general title (i.e., co-worker 1)**.
- iii. OHR can 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 (through Intake Questionnaire or attorney drafted charge). You may provide information outside the statute of limitations as background information, but it should be kept to a minimum in the procedural history section of the Charge and labeled as "Background."
- iv. Finally, 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.

### b. Guidance for Drafting a Charge of Discrimination with OHR

- i. An attorney-drafted Charge may be submitted on EEOC Form 5.
- ii. Limit of One Statute per Charge  
For example, if a complainant wishes to allege three claims: (1) gender discrimination under the D.C. Human Rights Act; (2) leave interference under the D.C. Family & Medical Leave Act; and (3) failure to accommodate under the Protecting Pregnant Workers Act, the attorney **MUST submit three separate charges** – one for each statute.

**EXCEPTION:** If an attorney-drafted Charge implicates companion federal laws, all relevant federal statutes should be listed on the Charge filed with OHR.

- iii. Limit of One Respondent per Charge: Please draft separate charges for separate respondents, even where the allegations against each respondent are the same.
- iv. Notary Requirement: Presently, DC Municipal Regulations require that the Charge be notarized; OHR is working on amending the rules to not require notarization. *OHR provides FREE notary service.*
- v. All Charges should include specific information about the parties, a statement of particulars with dates, and a statement of the law violated. The below provides guidelines for each section of the Charge:

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## 1. Parties' Information

### a. Complainant

- i. Name, home address, telephone, and email for Complainant
- ii. Complainant's attorney 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 Resident Agent's name in this section
- ii. Email and telephone of Respondent, if available
- iii. Trade name may be provided in parentheses and denoted by "d/b/a"
- iv. 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
- v. 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.)")

## 2. Applicable Bases

- a. Check applicable bases and write in others not listed such as DC specific protected traits.

## 3. Dates Discrimination Took Place

- a. Dates MUST be provided in this section as well as in the narrative of the "Particulars" section.
- 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.

## 4. Particulars

### a. Introduction

- i. Date of initial written complaint (OHR Intake Questionnaire Form) initially submitted to OHR
- ii. **For DC government cases**, provide the date of the EEO Counselor contact, the date of 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. Issues – Please use Headers (Specific allegations asserted)

- i. Each legal theory **must be labeled and underlined** and must be described in a separate paragraph

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*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 legal theory. OHR will review these statements to ensure it states a claim
- iii. Be sure to include relevant dates and bases. An approximate date (identified as such) is permissible

#### 5. 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 certifying that no other action criminal, civil, or administrative has been commenced based on the factual circumstances asserted in the Charge.

## CHARGE EXAMPLE – PARTICULARS AND CONCLUSION

The below example is provided ONLY to illustrate charge language that is consistent with the guidelines above.

### DCFMLA Charge of Discrimination

**Date of Initial Written Complaint to OHR:** March 10, 2019.

I was hired by Respondent in November 2012, as a full-time IT Specialist. I believe that I have been discriminated against in the terms, condition, and privileges of employment based on my rights under the D.C. Family and Medical Leave Act (“DCFMLA”) for the following reasons.

#### Issue #1: DCFMLA - Interference

On March 1, 2018, I notified Respondent’s Supervisor (Eric Apple) that my father was going to have a heart transplant and I needed to use DCFMLA to take care of him before, during, and after his surgery. I met with Respondent’s Supervisor (Eric Brown) twice to gain more information about DCFMLA, but he told me that he would see whether I was “qualified”. Respondent’s Supervisor (Eric Brown) did not follow up with me.

On March 5, 2018, I submitted my DCFMLA family leave request for time off from May 1-July 15, 2018. Respondent did not approve my DCFMLA request until May 20, 2018, and charged me with AWOL for my absences from May 1-May 20, 2018. On June 1, 2018, Respondent’s Manager (Carl Orange) called me and told me I had to report to work full duty by July 1, 2018. I reminded him about Respondent’s Supervisor’s approval of my leave request until July 15, 2018, but he refused to honor it and threatened to charge me with AWOL if I did not report for duty. I reported for duty on July 1, 2018, and as a result, had to incur significant care taking expenses for my father.

#### Issue #2: DCFMLA - Retaliation

In December of 2018, I was informed by my doctor that I would need my appendix removed. I scheduled my surgery for January 11, 2019, and made Respondent’s Supervisor (Eric Apple) aware of my surgery. On December 10, 2018, I submitted my DCFMLA medical leave request for time off between January 11 and February 5, 2019. Respondent denied my DCFMLA request. When I asked why my request was denied, Respondent said that I had already taken too much leave earlier in the year when I was caring for my father.

### Conclusion

Therefore, I charge Respondent with unlawful discriminatory acts in violation of the D.C. Family and Medical Leave Act of 1990. I have not commenced any other action civil, criminal or administrative, based on the above allegations, other than the instant Charge of Discrimination.



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