

SENATE BILL NO. 313

INTRODUCED BY N. MCCONNELL

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ENFORCEMENT OF DISCRIMINATION LAWS; REVISING INVESTIGATION, COMPLAINT, AND HEARING TIMELINES; ALLOWING A CHARGING PARTY TO COMMENCE A CIVIL ACTION UNDER CERTAIN CIRCUMSTANCES; REQUIRING A HEARING OFFICER TO BE AN ATTORNEY; AND AMENDING SECTIONS ~~49-2-501~~, 49-2-504; AND 49-2-505, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~Section 1.~~ Section 49-2-501, MCA, is amended to read:

~~"49-2-501. Filing complaints.~~ (1) A person claiming to be aggrieved by any discriminatory practice prohibited by this chapter may file a complaint with the department.

~~(2)~~ A complaint may be filed on behalf of a person charging unlawful discrimination prohibited by this chapter if the person acting on behalf of the charging party is the charging party's guardian, attorney, or duly authorized representative or an advocacy group, labor organization, or other organization acting as an authorized representative.

~~(3)~~ The complaint must be written and verified and must state the name and address of the party alleged to have engaged in the discriminatory practice and the particulars of the alleged discriminatory practice.

~~(4)~~ (a) Except as provided in 49-2-510 and subsection subsections (4)(b) and (4)(c) of this section, a complaint under this chapter must be filed with the department within 180 ~~360~~ days after the alleged unlawful discriminatory practice occurred or was discovered.

~~(b)~~ If the charging party has initiated efforts to resolve the dispute underlying the complaint by filing a grievance in accordance with any grievance procedure established by a collective bargaining agreement, contract, or written rule or policy, the complaint may must be filed within 180 ~~360~~ days after the conclusion of the grievance procedure if the grievance procedure concludes within 120 days after the alleged unlawful discriminatory practice occurred or was discovered. If the grievance procedure does not conclude within 120 days, the complaint must be filed within 300 days after the alleged unlawful discriminatory practice occurred or was discovered.

~~(c)~~ If there is a pending criminal charge against the party alleged to have engaged in the discriminatory

1 ~~practice and the criminal charge is related to the alleged discriminatory practice, the complaint must be filed within~~
2 ~~360 days after the criminal case is resolved.~~

3 ~~———(5) If the department determines that the complaint is untimely, it shall dismiss the complaint on a finding~~
4 ~~of no reasonable cause. A charging party may file objections to the dismissal with the commission pursuant to~~
5 ~~49-2-511."~~

6

7 **Section 1.** Section 49-2-504, MCA, is amended to read:

8 **"49-2-504. Informal investigation -- conciliation -- findings.** (1) The department shall informally
9 investigate the matters set out in the complaint promptly and impartially to determine whether there is reasonable
10 cause to believe that the allegations are supported by a preponderance of the evidence.

11 (2) (a) During the informal investigation process and before the department issues a finding under
12 subsection (7), the department may attempt to resolve the complaint by mediation.

13 (b) If the parties to the complaint voluntarily agree to enter into the mediation process, the time period
14 for the department to complete the informal investigation and issue a finding under subsection (7) may be
15 extended up to 45 days. An agreement to enter into mediation serves to extend the time for hearing beyond 12
16 months as provided for in 49-2-505(2).

17 (c) If the department makes a finding under subsection (7)(c) that there is reasonable cause to believe
18 that unlawful discrimination occurred, the department shall attempt to resolve the complaint by conciliation in a
19 manner that, in addition to providing redress for the complaint, includes conditions that eliminate the
20 discriminatory practice, if any, found in the investigation.

21 (3) The department shall, within 10 business days following receipt of a filed complaint, notify a
22 respondent that the respondent is the subject of a filed complaint. The notification must be in writing and must
23 include a copy of the filed complaint. If requested, the department shall also provide the parties with all other
24 information related to the complaint in the possession of the department that is not currently in the possession
25 of the parties or a party. The department shall make known to the parties the fact that information is available
26 upon request. The department may not investigate a complaint until it has received notice that the respondent
27 has received the department's notification of the complaint.

28 (4) If the department determines that the inclusion of documents or information obtained by the
29 department would seriously impede the rights of a person or the proper investigation of the complaint, the
30 information may be excluded from the notification by providing a written summary of the information. The written

1 summary must include sufficient information to give maximum effect to the intent of this chapter.

2 (5) The respondent shall file an answer to a complaint filed with the department within 10 business days
3 of the respondent's receipt of the complaint. An answer may be a response simply admitting or denying the
4 allegations without further specificity or requesting additional information from the department. The time for filing
5 an answer may be extended by a showing of good cause.

6 (6) The department shall commence proceedings within 30 days after receipt of a complaint.

7 (7) (a) After the informal investigation, the department shall issue a finding on whether there is
8 reasonable cause to believe that a preponderance of the evidence supports the charging party's allegation of
9 unlawful discrimination. Unless the time period is extended as provided in subsection (2)(b), the finding must be
10 issued within ~~180~~ 120 days after a complaint is filed, ~~except that the department shall issue the finding within 120~~
11 ~~days after a complaint is filed under 49-2-305.~~

12 (b) If the department finds that there is no reasonable cause to believe that unlawful discrimination
13 occurred, it shall issue a notice of dismissal and dismiss the case from the department's administrative process.
14 After receipt of a notice of dismissal, a charging party may:

15 (i) continue the administrative process by filing objections with the commission as provided in 49-2-511;
16 or

17 (ii) discontinue the administrative process and commence proceedings in district court as provided in
18 49-2-511.

19 (c) If the department finds that there is reasonable cause to believe that unlawful discrimination occurred
20 and conciliation efforts are unsuccessful, the department shall certify the complaint for hearing pursuant to
21 49-2-505.

22 ~~—— (8) Within 30 days of a certification under subsection (7)(c), the charging party may commence a civil~~
23 ~~action for appropriate relief on the merits of the case in the district court in the district in which the alleged violation~~
24 ~~occurred. The court may provide the same relief as described in 49-2-506. In addition, the court may in its~~
25 ~~discretion allow the prevailing party reasonable attorney fees and costs. If the charging party commences a civil~~
26 ~~action pursuant to this subsection, the complaint may not proceed to a hearing pursuant to 49-2-505."~~

27

28 **Section 2.** Section 49-2-505, MCA, is amended to read:

29 **"49-2-505. Contested case hearing -- appeal to commission -- final agency decision.** (1) ~~The~~ Except
30 ~~as provided in 49-2-504(8), the~~ THE department shall hold a contested case hearing on a complaint that is

1 certified for hearing under 49-2-504 or that is remanded for hearing by the commission or by a reviewing court.
2 The department shall serve notice of the hearing and a copy of the complaint on the parties.

3 (2) If the parties mutually agree to extend the time for hearing beyond 12 months after the complaint is
4 filed, then the parties shall stipulate to a schedule for proceedings to be established by the department. The
5 department shall, not later than ~~395~~ 240 days after the complaint was filed, set a date for an administrative
6 hearing in the case in accordance with the stipulated schedule. The hearing must occur within 1 year of the date
7 that the complaint was filed. The date of the hearing may be extended beyond the 1-year deadline if the parties
8 mutually agree to an extension. After a hearing date is set, the department may, in its sole discretion, issue a
9 continuance of the hearing date, including a continuance beyond the 1-year deadline, only upon a showing of
10 good cause.

11 (3) (a) The hearing must be held by the department in the county where the unlawful conduct is alleged
12 to have occurred unless a party requests and is granted a change of venue for good cause shown. The case in
13 support of the complaint may be presented before the department by the charging party or an attorney
14 representing the charging party. The hearing must be held in accordance with the applicable portions of the
15 Montana Rules of Civil Procedure, and the hearings officer must be an attorney in good standing admitted to
16 practice law in Montana.

17 (b) Upon request of the hearings officer, the department may present evidence with regard to activity
18 conducted. However, except in cases brought pursuant to 42 U.S.C. 3601, et seq., the department may not
19 represent either party in a contested case hearing.

20 (c) If the case is not settled, fully decided on order or motion, or otherwise resolved, after a hearing, the
21 hearings officer shall issue a decision. If the decision is not appealed to the commission within 14 days as
22 provided in subsection (4), the decision becomes final and is not appealable to district court.

23 (4) A party may appeal a decision of the hearings officer by filing an appeal with the commission within
24 14 days after the issuance of the notice of decision of the administrative hearing.

25 (5) The commission shall hear all appeals within 120 days of receipt of an appeal. The commission may
26 affirm, reject, or modify the decision in whole or in part. The commission shall render a final agency decision
27 within 90 days of hearing the appeal.

28 (6) All hearings conducted under this section may, upon stipulation of the parties, be heard
29 telephonically.

30 (7) The department or the commission may make provisions for defraying the expenses of an indigent

1 party in a hearing held pursuant to this chapter.

2 (8) The prevailing party in a hearing under this section may bring an action in district court for attorney
3 fees and costs. The court in its discretion may allow the prevailing party reasonable attorney fees and costs. An
4 action under this section must comply with the Montana Rules of Civil Procedure.

5 (9) Within 30 days after the commission issues a final agency decision in writing under subsection (5),
6 a party may petition a district court for judicial review of the final agency decision as provided in 2-4-702."

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