

# PENNSYLVANIA HUMAN RELATIONS COMMISSION

## POLICY ON POLICY DEVELOPMENT

### **I. Applicability**

This policy applies to the development of policy guidances concerning issues of unlawful discrimination, which fall within the Pennsylvania Human Relations Commission's ("PHRC's") legal jurisdiction. It also applies to substantive revisions of existing policies developed under this policy.

This policy does not apply to nonsubstantive revisions of existing policies. A non-substantive revision is one which:

- (a) Affects a small portion of the existing guidance without fundamentally altering its content;
- (b) Deals with minor editorial improvements such as dates, changes in departmental staff, updates of old information, or other typographical issues;
- (c) Changes the layout, format, or sequence of information in the existing guidance without affecting its content;
- (d) Reflects a non-substantive change in a regulatory or statutory provision upon which the policy statement relies for legal authority;
- (e) Otherwise revises the guidance without changing its basic content or meaning.

This policy does not apply to the development of policies concerning any other matter of interest to the PHRC. These matters include, but are not limited to (and shall not be construed as being limited to), internal case processing procedures, administrative operating procedures (such as this policy), personnel matters, procurement processes, contracting, official positions on pending legislation or any other matter collateral to the PHRC's authority to accept, investigate and rule on allegations of unlawful discrimination under the Pennsylvania Human Relations Act ("PHRA").

### **II. Disclaimer**

The policies and procedures outlined in this policy statement are intended to supplement existing requirements. Nothing in the policies or procedures shall affect statutory or regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the PHRC to give the rules in these policies that type of binding force or effect. They are nonbinding guidelines, which indicate the manner in which the PHRC intends to exercise its administrative discretion in the future, unless it is convinced otherwise during the course of a specific proceeding.

To this end, the policy guidances developed under this policy statement are not binding and may be deviated from whenever the PHRC believes that any statute or regulation requires it, or that it is otherwise appropriate to do so. No policy guidance may be cited as authority for any PHRC

ruling, adjudication or other binding action. The legal rationales set forth in a policy may be cited as the basis for PHRC binding action to the extent that the PHRC believes the rationale is valid in the context of the specific proceeding.

### **III. Determination of Need for Policy Development or Substantive Revision**

Any Commissioner, the Executive Director, or any other member of the PHRC staff may recommend that the PHRC develop a policy guidance under this policy statement.

All requests from PHRC staff shall be channeled through the Executive Director or designee. Requests from staff shall be sent up through the supervisory chain of command.

The following criteria shall be applied to determine whether to proceed with the development of the requested policy guidance. The request may be approved if:

(a) The requested policy guidance involves an issue, which arises with relative frequency in resolving complaints;

(b) The requested policy guidance will not be redundant with other PHRC policy guidances, regulations or express statutory requirements.

(c) The issue is one of major statutory or regulatory interpretation, is presently unresolved and requires the issuance of a policy guidance in advance of resolution by adjudication of individual cases;

(d) The importance of the issue involved justifies the expenditure of the agency time and resources necessary to develop the policy under the rules of this policy statement; and

(e) The requested guidance will facilitate greater compliance with the PHRA, Pennsylvania Fair Educational Opportunities Act, or any PHRC regulatory requirements than would be facilitated by awaiting resolution of the issue through adjudication.

### **IV. Creation of Proposed Policy Guidance**

Once a requested policy guidance has been approved for creation, the Executive Director or designee shall assign the appropriate staff to create the proposed guidance. Any directions concerning the content of the proposed guidance (what position the PHRC wishes to take on the subject) shall be included with the assignment.

The Commissioner or staff person who requested the guidance should be included in this process. The primary responsibility should be assigned to the staff persons with the most knowledge and expertise in the area. For example, a housing related policy guidance should be created by housing staff, an education related guidance by education staff, and so on. Staff with

an interest in creating the guidance should be given priority in receiving the assignment. All interested staff should be allowed the opportunity to assist in developing the guidance, subject to approval by the Executive Director or designee.

All policy guidances will include a disclaimer, substantially similar to that in Section II of this Policy, setting out the nonbinding nature of the guidance.

## **V. Initial Review of Proposed Policy Guidance**

Once a proposed policy guidance is prepared, it will receive the following reviews, in this order:

(a) Chief Counsel – The Chief Counsel will review the policy to assure that it is within the PHRC's authority to implement and does not contravene any statutory, regulatory or binding case law. The Chief Counsel shall make any necessary changes to assure legality. The legal rationale for any necessary changes shall be set forth in writing and included with the guidance package submitted to the Executive Director under subsection (b) of this section. The Chief Counsel may also recommend any other changes deemed appropriate.

(b) Executive Director – The Executive Director will review the policy guidance and any changes or recommendations made by Chief Counsel. The Executive Director may recommend whatever changes he or she deems appropriate, which do not affect the legality of the guidance.

(c) Commissioners – The Commissioners will review the tentative policy guidance document and any changes or recommendations made by Chief Counsel and the Executive Director. The Commissioners may make any changes they deem appropriate and which do not affect the legality of the proposed guidance. The Commissioners may tentatively adopt any proposed policy guidance submitted to it at this stage. The adoption may be with or without changes. All proposed changes must be approved by Chief Counsel for legality. The Commissioners may also reject any proposed guidance. Rejected guidances shall become null and void and shall not continue through the approval process set out below.

## **VI. Public Participation**

A tentatively approved guidance will be submitted for public comment. All tentatively approved guidances shall be posted on the PHRC web site. The posting shall include a time for submission of comments and a contact person to receive the comments. The PHRC may post any other information about the proposed guidance, as it deems appropriate.

The minimum length of time for comments will be 15 days. The PHRC may extend this time frame, at its sole discretion, where it determines that the length and complexity of the proposed guidance makes an extension appropriate.

The PHRC, at its sole discretion, may distribute any proposed guidance to organizations or members of the public who have an identifiable interest in the issue.

The PHRC, at its sole discretion, may hold hearings to receive public comments.

All comments shall be in writing and submitted to the contact person indicated in the posting notice. Commission staff shall have the right to submit written comments to the contact person during the comment period. The Commission may, in its sole discretion, consider any timely, oral comments. The only exception shall be oral comments delivered at a public hearing on a proposed guidance, which are transcribed or otherwise reduced to written form.

## **VII. Review of Comments and Final Approval**

Upon expiration of the comment period, PHRC staff involved in developing the guidance shall review all written comments received by the comment deadline from Commission staff and/or the interested public. A response document will be prepared which addresses the reviewing staff's recommendations for changes to the proposed guidance, if any, in response to the comments.

Commission staff will incorporate any recommended changes into a proposed final guidance document. This document, together with the comment response document, will be submitted for the following reviews, in the following order:

(a) Chief Counsel – The Chief Counsel will review the proposed final guidance document to assure that it is within the PHRC's authority to implement and does not contravene any statutory, regulatory or binding case law. The Chief Counsel shall make any necessary changes to assure legality. The legal rationale for any necessary changes shall be set forth in writing and included with the guidance package submitted to the Executive Director under subsection (b) of this section.

(b) Executive Director – The Executive Director will review the proposed final guidance document and any legally required changes made by Chief Counsel. The Executive Director may recommend whatever changes he or she deems appropriate, which do not affect the legality of the guidance. A written explanation for any changes recommended by the Executive Director shall be prepared and included with the guidance package submitted to the Commissioners under subsection (c) of this section.

(c) Commissioners – The Commissioners will review the proposed final guidance document, any required changes made by Chief Counsel and any recommended changes proposed by the Executive Director. The Commissioners may make any changes they deem appropriate. All changes must be approved by Chief Counsel for legality. A proposed final guidance document will not become effective until approved by the Commissioners. The Commissioners may establish a later effective date, if deemed appropriate.

**VIII. Publication of Final Guidance Documents**

All final guidance documents shall be published on the PHRC web site.

The Commission may publicize final guidances in any other manner it deems appropriate.