

CIVIL RIGHTS COMMISSION[161]

Notice of Intended Action

Proposing rule making related to waivers and providing an opportunity for public comment

The Civil Rights Commission hereby proposes to amend Chapter 15, “Miscellaneous Provisions,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 17A.3.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 216.5.

Purpose and Summary

These proposed amendments update the rule on requesting a waiver of the Commission’s rules in order to remove language on variances in compliance with 2020 Iowa Acts, House File 2389. Also, a new implementation sentence is proposed for Chapter 15, because the chapter did not previously have one.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rule making, no impact on jobs has been found.

Waivers

This rule does not provide for a waiver of its terms.

Public Comment

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Commission no later than 4:30 p.m. on May 11, 2021. Comments should be directed to:

Haley Wurdinger
Iowa Civil Rights Commission
Grimes State Office Building
400 East 14th Street
Des Moines, Iowa 50319
Email: haley.wurdinger@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

May 14, 2021
1:15 p.m.

Room B100
Grimes State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 161—15.3(17A,ExecOrd11) as follows:

161—15.3(17A,ExecOrd11) Waiver of requirements imposed by commission rule.

15.3(1) *Filing of a request for waiver ~~or variance~~.* Any person may file a request for waiver ~~or variance~~ of an administrative rule of the civil rights commission by writing a proper request which is received by Executive Director, Iowa Civil Rights Commission, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319-1004. All requests for waiver ~~or variance~~ of an administrative rule must be in writing and meet all requirements set out in paragraph 15.3(2) "a." A request for a waiver is filed by any of the methods listed in rule 161—3.5(216). The date a request for waiver is filed is governed by 161—subrule 3.5(4). The commission shall provide the requester with a file-stamped copy of the request if the requester provides an extra copy for this purpose.

15.3(2) *Form of request.*

a. Required contents. A request for waiver ~~or variance~~ of a rule must:

- (1) Prominently state on its face that it is a request for a waiver ~~or variance~~ of an administrative rule; and
- (2) State the name and address of the entity or person for whom a waiver ~~or variance~~ is requested; and
- (3) Describe or give the citation of the specific rule for which a waiver ~~or variance~~ is requested; and
- (4) State the specific waiver ~~or variance~~ requested.

The commission shall not process a filing as a request for a waiver ~~or variance~~ if that filing does not conform to the requirements of this paragraph.

b. Suggested contents. In addition, a request for waiver ~~or variance~~ of a rule should also:

- (1) State all relevant facts that the requester believes would justify a waiver ~~or variance~~.
- (2) State the reasons the requester believes will justify a waiver ~~or variance~~.
- (3) State the history of the commission's action relative to the requester. If the request is in connection with a complaint of discrimination on file with the commission, the requester should identify the complaint at issue including, if possible, the complaint number.
- (4) State any information regarding the commission's treatment of similar cases, if known.
- (5) State the name, address and telephone number of any person inside or outside state government who would be adversely affected by the grant of the request or who otherwise possesses knowledge of the matter with respect to the waiver ~~or variance~~ request.

15.3(3) *Procedure for evaluating requests for waiver.*

a. Service of request. Within 30 days after the receipt of a request for waiver ~~or variance~~ of an administrative rule, the commission shall provide a copy to all persons who are required to receive one by a provision of law. The commission may also provide a copy of the request to those individuals whom the requester has identified as being adversely affected by a grant of the request. In the case of a request made in connection with a complaint of discrimination on file with the commission, the commission shall provide a copy of the request to all other parties in the case. Service may occur by regular mail. If necessary for maintenance of the confidentiality of a commission investigation, information may be

redacted from a request for ~~variance~~ waiver before the request is provided to persons other than the requester.

b. Decision maker for request. The decision whether to grant a request for waiver ~~or variance~~ shall be made either by the executive director or upon a vote of the commissioners. If the request is made in connection with a complaint of discrimination on file with the commission, any discussion by the commissioners of the request for waiver may be in closed session.

c. Investigation of allegations. The decision maker or a designated member of the commission staff may conduct an investigation into any factual issue which is relevant to the request for a waiver ~~or variance~~. A refusal by the requester to cooperate in this investigation may be grounds to deny the request for waiver ~~or variance~~. In the case of a request made in connection with a complaint of discrimination, if any party to the complaint refuses to cooperate in the investigation, the decision maker may infer that the requested information would be adverse to the uncooperative party.

d. Time frame for decision on request. The commission shall render a decision on a request for waiver ~~or variance~~ of a rule within 120 days of receipt of the request. During this period the commission may extend the time for rendering a decision by notifying all persons who were notified of the request pursuant to paragraph 15.3(3)“a” that the time for rendering a decision has been extended. This notice shall include a new time frame for rendering the decision. Failure to render a decision or extend the time for rendering a decision within the required period shall be deemed a denial of the request.

e. Notification of decision. The commission shall send any decision rendered concerning the request for waiver ~~or variance~~ to all persons who were notified of the request pursuant to paragraph 15.3(3)“a.”

f. Form of grant of request. Any waiver ~~or variance~~ shall be the narrowest exception possible to the provisions of the rule. A waiver ~~or variance~~ shall not be permanent unless the requester has shown that a temporary waiver ~~or variance~~ is impracticable. The commission may renew a temporary waiver ~~or variance~~ without a request if the commission finds that the factors of paragraph 15.3(4)“b” remain valid.

15.3(4) Standard for evaluating request for waiver.

a. Burden of persuasion. The burden of persuasion rests with the person who requests from the commission a waiver ~~or variance~~ of a rule.

b. Standard. A request for a waiver ~~or variance~~ shall be evaluated based on the unique, individual circumstances set out in the request. A waiver ~~or variance~~ may be granted only if the decision maker finds clear and convincing evidence that:

(1) The application of the rule would pose an undue hardship on the person for whom the waiver ~~or variance~~ is requested; and

(2) The waiver ~~or variance~~ from the requirements of a rule in the specific case would not prejudice the substantial legal rights of any person; and

(3) The provisions of a rule subject to a request for a waiver ~~or variance~~ are not specifically mandated by statute or another provision of law; and

(4) Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver ~~or variance~~ is requested; and

(5) Granting the request would not waive ~~or vary~~ any requirement created or duty imposed by statute.

15.3(5) Exceptions to waiver.

a. Waiver in contested cases. This rule does not apply to any request for a waiver ~~or variance~~ of a rule which is made in connection with a contested case before the commission. Waiver ~~or variance~~ requests made in connection with a contested case are governed by rule 161—4.29(17A).

b. Not applicable to this rule. No person may request a waiver ~~or variance~~ from the requirements of this rule.

c. Requests by commission officials. No commissioner, commission staff member or other commission official may file a request for a waiver of a requirement placed upon that individual as part of that individual’s official duties.

d. Time requirements. This rule does not authorize the commission to waive ~~or vary~~ any time requirement of an administrative rule.

e. No effect on case status. In the case of a request made in connection with a complaint of discrimination on file with the commission, the commission may not grant a request for waiver ~~or variance~~ if this would either close a case which was open at the time of the request or reopen a case which was closed at the time of the request. The reopening provisions of rule 161—3.16(216), however, shall apply.

15.3(6) *Public inspection of waiver requests.* All waiver ~~or variance~~ requests and responses shall be indexed by administrative rule number and available to members of the public for inspection at the offices of the Civil Rights Commission, Grimes State Office Building, 400 E. 14th Street, Des Moines, Iowa 50319. Identifying information concerning any person, including parties to complaints on file, may be withheld by the commission in order to protect the confidentiality of case-related information as required by ~~2009~~ Iowa Code Supplement section 216.15(5).

ITEM 2. Adopt the following new implementation sentence in **161—Chapter 15**:
These rules are intended to implement Iowa Code chapter 216.