

CHAPTER 36
DISCRIMINATION AGAINST EMPLOYEES

[Prior to 9/24/86, Labor, Bureau of [530]]

[Prior to 10/21/98, see 347—Ch 36]

875—36.1(91A) Definitions.

“*Commissioner*” means the labor commissioner of the division of labor services or a designee.

“*Division*” means the division of labor services.

“*Employee*” means a natural person as defined in Iowa Code section 91A.2(3).

“*Employer*” means any person as defined in Iowa Code chapter 4, who in this state employs for wages a natural person.

875—36.2(91A) Employee rights. Employees are afforded a wide range of substantive and procedural rights under the Act. This chapter deals with the protection of employees. Iowa Code section 91A.10(5) prohibits the discharge of an employee or discriminatory actions against an employee for exercising rights under the Act.

875—36.3(91A) Purposes. This chapter describes the procedures, functions and interpretations established by the commissioner with respect to implementation and enforcement of Iowa Code section 91A.10(5).

875—36.4(91A) General requirements. Iowa Code section 91A.10(5) provides in general that an employer shall not discharge or in any manner discriminate against any employee because the employee has:

1. Filed any complaint under or related to the Act;
2. Assigned a claim to the commissioner;
3. Instituted or caused to be instituted any proceeding under or related to the Act;
4. Cooperated in bringing any action against an employer;
5. Exercised on the employee’s behalf or on behalf of others any right afforded by the Act.

875—36.5(91A) Unprotected activities distinguished.

36.5(1) Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The prohibitions apply when the adverse action occurs because the employee has engaged in protected activities. An employee’s engagement in activities protected by the Act does not automatically render the employee immune from discharge or discipline for legitimate reasons, or from adverse action dictated by nonprohibited considerations.

36.5(2) However, to establish a violation, the employee’s engagement in protected activity need not be the sole consideration behind discharge or other adverse action. A violation exists if the protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place “but for” engagement in the protected activity. The issue as to whether a discharge or discrimination action was because of protected activity will be determined on the basis of the facts in each case.

875—36.6(91A) Complaint under or related to the Act.

36.6(1) Discharge or discriminatory actions to an employee because the employee has filed a complaint against an employer is prohibited. An example of a complaint would be where an employee filed a wage claim with the commissioner. However, this would not be the only type of action protected. The range of complaints related to the Act is commensurate with the Act’s broad remedial purposes.

36.6(2) The statutory principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about wages with their employers. A complaint to the employer made in good faith would be related to the Act, and an employee would be protected against discharge or discrimination caused by the complaint to the employer.

875—36.7(91A) Proceedings under or related to the Act.

36.7(1) Discharge of or discrimination against any employee because the employee has brought an action under the Act, or has cooperated in bringing any action against an employer, is prohibited. An example of cooperating in bringing an action would be a situation in which an employee has testified or is about to testify in proceedings under or related to Iowa Code chapter 91A. Protection under the Act would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceeding, including inspections, investigations, or adjudicative functions.

36.7(2) Reserved.

875—36.8(91A) Filing of complaint for discrimination or discharge.

36.8(1) Any employee who believes that discrimination in violation of Iowa Code section 91A.10(5) has occurred, may, within 30 days after the violation occurs, lodge a complaint with the commissioner alleging the violation. No particular form is required. The commissioner shall cause an appropriate investigation to be made. If, as a result of the investigation, the commissioner determines that section 91A.10(5) has been violated, civil action may be instituted in any appropriate district court to restrain the violations and to obtain other appropriate relief, including rehiring or reinstatement of the employee to the former position with back pay.

36.8(2) Complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed or misled the employee regarding the grounds for discharge or other adverse action, where the employee has within the 30-day period resorted in good faith to grievance, where the employee has filed a complaint regarding the same general subject with another agency, or where the employer's actions are of the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

875—36.9(91A) Withdrawal of complaints. Enforcement is not only a matter of protecting rights of employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the commissioner's investigation. The commissioner's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw the complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

875—36.10(91A) Arbitration or other agency proceedings.

36.10(1) An employee who files a complaint under Iowa Code section 91A.10(5) may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The commissioner's jurisdiction is independent of the jurisdiction of the other agencies or bodies. The commissioner may file an action in district court regardless of the pendency of other proceedings. However, the commissioner recognizes the policy favoring voluntary resolution of disputes under proceedings in collective bargaining agreements. Due deference is given to the jurisdictions of other forums established to resolve disputes which may also be related to the commissioner's jurisdiction. Where a complainant is pursuing other remedies, postponement of the commissioner's determination and deferral to the results of the other proceedings may be appropriate.

36.10(2) Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Iowa Code section 91A.10(5) and those proceedings are not likely to violate the rights guaranteed by section 91A.10(5). The factual issues in such proceedings must be substantially the same as those raised in the complaint to the commissioner, and the forum hearing the matter must have the power to determine the ultimate issues of discrimination. If the other actions initiated by a complainant are dismissed without adjudicatory hearing, such dismissal will not ordinarily be regarded as determinative of the complaint.

875—36.11(91A) Decision of the commissioner.

36.11(1) Upon receipt of all requested information, the commissioner may determine the employee's complaint alleging discharge or discrimination is enforceable, and the commissioner shall notify the employee of that determination.

36.11(2) Upon a determination that the employee's complaint alleging discharge or discrimination is enforceable, the commissioner shall notify the employer of that determination in writing and afford the employer an opportunity to tender settlement within 14 days of the writing prior to initiating judicial proceedings.

36.11(3) Upon a determination that the employee's complaint alleging discharge or discrimination is unenforceable, the commissioner shall notify the employee of that decision in writing. The employee shall have 14 days from the date of the written notification to appeal the decision to the commissioner. If the appeal is not made in writing within the 14-day period, then the employee loses the right to appeal the unenforceable decision.

These rules are intended to implement Iowa Code sections 84A.2 and 91A.10(5).

[Filed 8/9/85, Notice 2/27/85—published 8/28/85, effective 10/2/85]

[Filed emergency 9/5/86—published 9/24/86, effective 9/24/86]