

CHAPTER 2
GENERAL DEFINITIONS
[Prior to 1/13/88, see Civil Rights 240—1.1(601A)]

161—2.1(216) Definitions.

2.1(1) Wherever “Act” is used in rules of the commission it shall mean the Iowa Civil Rights Act of 1965, as amended (Iowa Code chapter 216).

2.1(2) Unless indicated otherwise, the terms “court,” “person,” “employment agency,” “labor organization,” “employer,” “employee,” “unfair practice,” or “discriminatory practice,” “commission,” “commissioner,” and “public accommodation” shall have the same meaning as set forth in Iowa Code chapter 216.

2.1(3) The term “chairperson” shall mean the chairperson of the Iowa civil rights commission; and the term “commissioner” shall mean any member, including the chairperson, of the commission. The vice chairperson of the commission shall serve, in the absence of the chairperson, as acting chairperson; and, in the absence of the chairperson, the vice chairperson shall have all the duties, powers and authority conferred upon the chairperson by the Act and commission rules. At all times it shall be necessary that a quorum be present before the commission can transact any official business.

2.1(4) The term “complainant” shall mean the person, as defined in Iowa Code subsection 216.2(11), who makes a complaint of discrimination with the commission.

2.1(5) The term “executive director” shall mean an employee of the commission, selected by and serving at the will of the governor, who shall have the duties, powers and authority conferred upon the director by law.

2.1(6) Except as provided in paragraph “b,” the term “issuance” shall mean mailing by regular mail or, when required, U.S. certified mail, a document or letter indicating a decision or other administrative action of the commission. When certified mail is required, the date of issuance of a decision or an administrative action of the commission shall be the date the commission mails by U.S. certified mail a document or letter indicating the decision or action. When mailing is by regular mail, the date of mailing is presumed to be the date on the cover letter accompanying the administrative action or decision unless the date is shown to be in error.

a. Except as provided in paragraph “b,” the verb “issue” shall mean to mail by regular mail or, when required, by certified mail, a document or letter indicating a decision or other administrative action of the commission. When certified mail is required, the date an administrative action or decision is “issued” shall be the date the commission mails by U.S. certified mail a document or letter indicating the administrative decision or action. When mailing is by regular mail, the date of mailing is presumed to be the date on the cover letter accompanying the document or letter indicating the administrative decision or action, unless this date is shown to be in error.

b. When used to refer to a decision to administratively close a case, the term “issuance” and the verb “issue” can mean either the mailing of the document indicating administrative closure by regular mail or the mailing of that document by certified mail. The date an administrative closure is issued is the date the administrative closure is mailed to the complainant. When mailing is by regular mail, the date of mailing is presumed to be the date on the cover letter accompanying the administrative closure unless this date is shown to be in error. When certified mail is required, the date an administrative action or decision is “issued” shall be the date the commission mails by U.S. certified mail a document or letter indicating the decision or action.

c. When local mail is permissible, the date of mailing is presumed to be the date on the cover letter.

When used to refer to a subpoena, the term “issuance” and the verb “issue” shall each mean the signing of the subpoena by the issuing authority. The date a subpoena becomes effective is the date service is completed.

2.1(7) The term “respondent” shall mean the person, as that term is defined in Iowa Code subsection 216.2(11), against whom the complaint of discrimination is made with the commission.

2.1(8) The term “right to sue” shall mean the release issued by the commission stating that the complainant has a right to commence an action in the district court. The term “right to sue” is the same as the “release” or “administrative release” described in Iowa Code section 216.16 and these terms may be used interchangeably.

2.1(9) The term “verified” shall mean (a) sworn to or affirmed before a notary public, or other person duly authorized by law to administer oaths and take acknowledgments, or (b) supported by an unsworn declaration which recites that the person certifies the matter to be true under penalty of perjury, states the date of the statement’s execution and is subscribed by the person. Such an unsworn declaration may be in substantially the following form: “I certify under penalty of perjury and pursuant to the laws of the state of Iowa that the preceding is true and correct. Executed on (date). (Signature).”

2.1(10) Final actions. The following procedures shall constitute final actions of the commission:

a. The term “administratively closed” shall mean that the commission will cease action on a complaint because, in the opinion of the investigating official, no useful purpose would be served by further efforts. Administratively closing a case is appropriate in circumstances such as the following: The commission staff has not been successful in locating a complainant after diligent efforts; the respondent has gone out of business; a right-to-sue letter has been issued; or after a probable cause decision has been made, it is determined that the record does not justify proceeding to public hearing.

b. The term “no jurisdiction” shall mean that the alleged discriminatory act or practice is not one that is prohibited by the Act or where the complaint does not conform to the requirements of the Act.

c. The term “no probable cause finding” shall mean the procedure by which a complainant and respondent are notified that the investigating official has found that there is no probable cause to believe that discrimination exists after reviewing an investigation of a complaint.

d. The term “satisfactorily adjusted” shall mean that the complainant has indicated in writing that the complaint has been resolved to the satisfaction of the complainant, and that no further action is desired from the commission. Whenever the offer of adjustment by a respondent is acceptable to the investigating official, but not to the complainant, the commission may close the case as satisfactorily adjusted. In a case which has been determined by the commission as having probable cause, the respondent’s signature must be obtained before the case can be considered to be satisfactorily adjusted.

e. The term “successfully conciliated” shall mean that a written agreement has been executed on behalf of the respondent, on behalf of the complainant, and on behalf of the commission, the contents of which are designed to remedy that alleged discriminatory act or practice and any other unlawful discrimination which may have been uncovered during the course of the investigation.

f. The term “withdrawn” shall mean that a complainant has indicated in writing the desire that no further action be taken by the commission regarding the complaint.

2.1(11) Construction of rules. The rules and regulations promulgated by the Iowa civil rights commission shall be liberally construed to effectuate the purposes and provisions of Iowa Code chapter 216.

2.1(12) The term “terms and conditions of employment,” shall include but is not limited to medical, hospital, accident and life insurance or benefits, leave, vacations, and other terms, conditions, and privileges of employment.

2.1(13) The term “injury” shall mean a loss of pecuniary benefit, rights, or any offense against a person’s dignity.

2.1(14) The term “certified mail” shall mean delivery by United States Postal Service mail designated as certified mail.

2.1(15) The term “local mail” shall mean Iowa state government local (interoffice) delivery. Local mail is sent and delivered between state government offices in an envelope designated “Local,” without the need for postage.

2.1(16) The term “mail or regular mail” shall mean delivery by United States Postal Service mail delivered at regular speed or delivery by courier service.

2.1(17) The term “electronic filing” shall mean submission of documents via the online case management system established and utilized by the commission or via another online system. The commission may require proof to ensure the accuracy and validity of online filings, including additional

written verification of the veracity and accuracy of documents filed online. Senders shall include in the subject line of the E-mail the case number, if one exists, and a brief description of the submission. Filings by E-mail must be delivered to a valid E-mail address of current commission staff.

2.1(18) The term “electronic signature” shall mean that a person attests to the validity of the electronic documents. Electronic signatures accompany various forms of electronic submissions including, but not limited to, E-mails and submissions made online through the case management system. The commission may permit and accept electronic signatures in E-mails, depending on the type of document. An electronic signature in the case management system consists of a person’s name typed and submitted into the designated field.

2.1(19) The terms “written” and “in writing” shall mean the creation of words, phrases, or sentences by any means including, but not limited to, pen and paper, typewriter text, computer discs, computer text, electronic text and any other medium.

[ARC 8746B, IAB 5/5/10, effective 6/9/10; ARC 8748B, IAB 5/5/10, effective 6/9/10; ARC 8747B, IAB 5/5/10, effective 6/9/10]

¹ Objection to 2.1(8) [Prior to 1/13/88 numbered as 1.1(9)] reimposed by ARRC 4/20/88, republished 5/4/88, see full text of objection on following page.

These rules are intended to implement Iowa Code chapter 216.

[Filed 4/20/72; amended 7/9/74, 10/7/74, 3/14/75]

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¹ The Administrative Rules Review Committee at its May 21, 1979, meeting delayed the effective date of 240—subrules 1.1(7) to 1.1(9), 1.3(1), 1.8(2) and rules 1.16 and 1.17 70 days.

² The Administrative Rules Review Committee at its February 11, 1988, meeting delayed the effective date of subrule 2.1(8) 70 days.

³ Effective date of 161—2.1(4), 2.1(6) to 2.1(11) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 1993; delayed until adjournment of the 1994 Session of the General Assembly by this Committee May 11, 1993.

On July 11th, 1979, the administrative rules review committee voted the following objections:

The committee objects to ARC 0192, item 1, appearing in Vol. 1, IAB 23 (4-18-79), relating to the definition of terms, on the grounds these provisions are beyond the authority of the commission and unreasonable. Specifically, the committee is concerned with subrules 1.1(8) and 1.1(9) appearing under item 1. Subrule 1.1(8) provides:

The term “retirement plan and benefit system” as used in section 601A.12 of the Code relates only to the discontinuation of employment pursuant to the provisions of such retirement plan or system. A retirement plan or benefit system shall be limited to those plans or systems where contributions are limited to those plans or systems where contributions are based upon anticipated financial costs of the needs of the retiree.

It is the opinion of the committee this subrule exceeds the authority of the commission in that it is an overbroad interpretation of §601A.13, the Code. That section in essence exempts from the provisions of the Act retirement plans or benefit systems which discriminate on the basis of age or sex, unless the plan is a “mere subterfuge”. The exemption does not appear limited to plans or systems “relating only to the discontinuation of employment” or those “where contributions are based upon the anticipated financial costs of the retiree” as the subrule provides. Under the subrule, a plan or system which fails to meet either of the above criteria would apparently automatically be considered unfair discrimination. If the General Assembly had intended this result it would have so provided within the Act.

It is further the opinion of the committee subrule *1.1(9) defining as “injury”, for which damages may be awarded, an offense against a person’s dignity, is unreasonable in that it provides no ascertainable standard to determine what damage the offended party has suffered. Under the provisions of §601A.15(8) “a”(8) the commission clearly has the authority to award damages for an injury. The committee believes this term to mean that the party has been harmed in some way that damage received can be measured and appropriate recompense awarded for that damage. Dignity, like beauty, is in the eye of the beholder. Absent a showing that physiological or psychological damage has resulted from an “offense against a person’s dignity”, it appears impossible to accurately measure the financial equivalent of such an injury or to award appropriate damages.