

**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 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).

[**ARC 8733B**, IAB 5/5/10, effective 6/9/10]