

**161—3.8(216) The complaint.****3.8(1) Amendment of complaint.**

*a.* A complaint or any part may be amended by the complainant or by the commission anytime prior to the hearing thereon and, thereafter, at the discretion of the administrative law judge. The complaint may be amended to include additional material allegations the investigation may have disclosed.

To prevent unnecessary litigation or duplication, the commission may amend a complaint based upon information gained during the course of the investigation. The scope of the issues at public hearing shall include the facts as uncovered in the investigation and shall not be limited to the allegations as stated in the original complaint. Provided, however, that when an amendment is made, the respondent may be granted a continuance within the discretion of the administrative law judge if it is needed to allow the respondent to prepare to defend on the additional grounds.

*b.* Amendments alleging additional acts which constitute unfair or discriminatory practices related to or growing out of the subject matter of the original complaint will relate back to the date the original complaint was filed. If a reasonable investigation of the initial complaint would encompass an alleged unfair or discriminatory practice then that alleged unfair or discriminatory practice grows out of the subject matter of the original complaint.

*c.* Amendments alleging additional acts which constitute unfair or discriminatory practices which are not related to and which do not grow out of the subject matter of the original complaint will be permitted only where at the date of the amendment the allegation could have been filed as a separate complaint. The complaint as so amended shall then be processed by the commission as a single complaint of discrimination.

**3.8(2) Amendments adding those allegedly liable as successors and relation back.** Whenever the commission or complainant learns subsequent to the filing of the original complaint that an entity may be liable as a successor to the respondent named in the original complaint, the complainant or the commission may at any time amend the complaint to add the alleged successor as a respondent. Provided, however, that when such an amendment is made after issuance of the notice of hearing the alleged successor added by the amendment may be granted a continuance within the discretion of the administrative law judge, if it is needed to allow the alleged successor to prepare its defense. An amendment adding an alleged successor always relates back to the date of the filing of the original complaint.

**3.8(3) Withdrawal of complaint.** A complaint or any part thereof may be withdrawn by the complainant at any time prior to the hearing thereon and, thereafter, at the discretion of the commissioners. However, nothing herein shall preclude the commission from continuing the investigation and initiating a complaint on its own behalf against the original respondent, as provided for in the Act, whenever it deems it in the public interest.