

# **Legislative Regulation Review Committee**

2008-061

Commission on Human Rights and Opportunities

**WHISTLEBLOWER RETALIATION**

STATE OF CONNECTICUT  
**REGULATION**

OF

NAME OF AGENCY

Chief Human Rights Referee  
Office of Public Hearings  
Commission on Human Rights and Opportunities

Concerning

SUBJECT MATTER OF REGULATION

Rules of Practice for Contested Case Proceedings under  
the Whistleblower Protection Act, §4-61dd of the  
General Statutes

**Section 1**

**Section 1.** The Regulations of Connecticut State Agencies are amended by amending sections 4-61dd-1, 4-61dd-2, 4-61dd-4 through 4-61dd-8, 4-61dd-11, 4-61dd-12, 4-61dd-14, 4-61dd-15, 4-61dd-18, and 4-61dd-19, to read as follows:

**Sec. 4-61dd-1. Definitions**

As used in sections 4-61dd-1 to 4-61dd-21, inclusive, of the Regulations of Connecticut State Agencies:

- (1) "Complainant" means a person who has filed a complaint with the office of public hearings pursuant to section 4-61dd of the Connecticut General Statutes;
- (2) "Complaint" means a written statement containing facts sufficient to allege a violation of section 4-61dd of the Connecticut General Statutes, and includes any amended complaint;
- (3) "Contested case" means "contested case" as defined in section 4-166 of the Connecticut General Statutes;
- (4) "Day" means a calendar day;
- (5) "Employee" means any person employed by the state, a quasi-public agency, or a large state contractor;
- (6) "Final decision" means "final decision" as defined in section 4-166 of the Connecticut General Statutes;
- (7) "Intervenor" means "intervenor" as defined in section 4-166 of the Connecticut General Statutes;
- (8) "Notice of hearing" means the notice required to be provided to the parties pursuant to subsections (a) and (b) of section 4-177 of the Connecticut General Statutes;

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(9) "Office of public hearings" means the office of public hearings of the Commission on Human Rights and Opportunities, which consists of human rights referees appointed by the governor in accordance with section 46a-57 of the Connecticut General Statutes;

(10) "Paper" means any motion, pleading, memorandum, correspondence, or other non-evidentiary document filed with the office of public hearings;

(11) "Party" means "party" as defined in section 4-166 of the Connecticut General Statutes;

(12) "Person" means "person" as defined in section 4-166 of the Connecticut General Statutes;

(13) "Presiding officer" means the human rights referee **appointed under section 46a-57 of the Connecticut General Statutes** assigned **by the chief human rights referee** to conduct a hearing and issue a decision on a complaint;

(14) "Quasi-public agency" means "quasi-public agency" as defined in section 1-120 of the Connecticut General Statutes;

(15) "Respondent" means any person who is named as the subject of a complaint filed under section 4-61dd of the Connecticut General Statutes; and

(16) "Ruling" means a decision, **order** or directive of the presiding officer, other than a final decision.

**(17) "Large state contractor" has the same meaning as it is defined in section 4-61dd of the Connecticut General Statutes.**

**Sec. 4-61dd-2. Applicability, purpose, construction and severability**

(a) Sections 4-61dd-1 to 4-61dd-21, inclusive, of the Regulations of Connecticut State Agencies govern contested case proceedings commenced pursuant to section 4-61dd of the Connecticut General Statutes and held before a human rights referee **at the office of public hearings**. The purpose of sections 4-61dd-1 to 4-61dd-21, inclusive, of the Regulations of Connecticut State Agencies is to secure the just and expeditious adjudication of a contested case.

(b) As used in sections 4-61dd-1 to 4-61dd-21, inclusive, of the Regulations of Connecticut State Agencies, words in the singular include the plural, and words in the masculine include the feminine or neuter, and vice versa, as the case may be.

(c) Nothing in sections 4-61dd-1 to 4-61dd-21, inclusive, of the Regulations of Connecticut State Agencies shall be construed to limit the ability of the presiding officer to make such orders as will aid in the just, economic, and efficient resolution of a contested case.

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(d) Sections 4-61dd-1 to 4-61dd-21, inclusive, of the Regulations of Connecticut State Agencies shall apply on and after their effective date to every hearing held pursuant to section 4-61dd (b) (2) of the Connecticut General Statutes, whether such hearing commenced before or on or after such effective date, except where application to a hearing that commenced before such effective date would unavoidably result in unfairness to any party.

(e) If any provisions of sections 4-61dd-1 to 4-61dd-21, inclusive, of the Regulations of Connecticut State Agencies should be found to be unconstitutional or otherwise legally unenforceable, all other provisions of said regulations shall remain in full force and effect.

**Sec. 4-61dd-4. The complaint**

(a) The complaint shall contain sufficient information to place each respondent on notice of the claims against that respondent. The complaint shall be in writing and shall contain, at minimum, the following:

- (1) The full name, address and telephone number of the complainant;
- (2) The name and address of each respondent;
- (3) A plain and simple statement of the alleged facts, events or actions upon which the complaint is based;
- (4) The date of the alleged violation;
- (5) The location where the alleged violation occurred;
- (6) The relief sought; and
- (7) Such other information as the office of public hearings may require.

(b) A complaint may be amended in accordance with section 4-61dd-7.

(c) The complaint shall be filed with the office of public hearings.

(d) ~~A~~ The complaint shall not be deemed defective solely because of the absence of one or more of the items contained in subsection (a) of this section, provided that the complaint shall be amended ~~in accordance with section 4-61dd-7~~ as directed by the presiding officer.

(e) The office of public hearings shall serve the complaint on the respondent by certified mail, return receipt requested.

**Sec. 4-61dd-5. Filing and service of papers**

(a) The original and one copy of ~~the complaint~~, the answer, and any other paper allowed or required by sections 4-61dd-1 to 4-61dd-21, inclusive, of the Regulations of Connecticut State Agencies shall be filed at the office of public hearings or at such other address as the chief human rights referee or the presiding referee may require as set forth in the notice of hearing. ~~The address and telephone number of the office of public hearings are as follows:~~

**Office of Public Hearings**

**~~Commission on Human Rights and Opportunities~~**

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~~21 Grand Street—3rd Floor~~

~~Hartford, CT 06106~~

~~(860) 541-3452~~

(b) The date of the filing of the complaint, the answer, or any other paper shall be the date ~~such paper is it is~~ stamped as received in the office of public hearings.

(c) A copy of ~~the complaint~~, the answer, and any other paper filed with the office of public hearings shall be served upon all other parties by personal delivery, including by a document delivery service, ~~or~~ by mail or by electronic or facsimile mail as authorized by the presiding officer. The ~~complaint~~, the answer, and any other paper filed shall be accompanied by a certification that copies thereof were served upon all parties.

(d) Upon motion by a party, and for good cause shown, the presiding officer may extend the time within which the answer or any other paper may be filed.

**Sec. 4-61dd-6. Notice of hearing**

(a) Upon the filing of a complaint, the chief human rights referee shall appoint a human rights referee to act as a presiding officer, and shall further issue to all parties a written notice of hearing in accordance with subsections (a) and (b) of section 4-177 of the Connecticut General Statutes. The notice of hearing shall include:

- (1) A statement of the time and place of the hearing;
- (2) A statement of the time and place of the initial conference;
- (3) A statement of the legal authority and jurisdiction under which the hearing is to be held;
- (4) A reference to the particular sections of the statutes and regulations involved;
- (5) A short and plain statement of the matters asserted;
- (6) A statement informing the respondent that respondent shall file a written answer to the complaint within ten (10) days of receipt of the complaint and the notice of hearing or such other time as may be established in the notice of hearing;
- (7) The address, facsimile mail number and telephone number of the office of public hearings; and
- (8) The address at which the answer and all original papers concerning the contested case proceeding shall be filed.

(b) ~~The notice of hearing shall be issued~~ The office of public hearings shall issue the notice of hearing together with the complaint by certified mail, return receipt requested not less than sixty (60) days prior to the hearing and not less than fourteen (14) days prior to the initial conference.

**Sec. 4-61dd-7. Amendment of the complaint; consolidation**

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(a) Any complaint may, upon motion by the complainant, be amended after the appointment of the presiding officer. The presiding officer shall permit reasonable amendment of any complaint and shall allow the parties sufficient time to respond and to prepare their case in light of the amendment.

(b) A motion to amend the complaint by adding a respondent, along with a copy of the proposed amendment, shall be served **by the complainant** upon the proposed respondent, in accordance with section 4-61dd-5(c) of the Regulations of Connecticut State Agencies.

(c) If the complainant dies, the complaint may be amended not more than ninety (90) days thereafter to allow a legal representative of the complainant's estate to pursue the complaint.

(d) Upon commencement of the contested case proceeding, the presiding officer may, on his own or upon motion by a party, consolidate two or more complaints and issue appropriate orders relating thereto.

**Sec. 4-61dd-8. The answer**

(a) The respondent shall file a written answer to the complaint not more than ten (10) days after receipt of the complaint **and the notice of hearing**. The answer shall admit, deny or plead insufficient knowledge to each and every allegation, or portion thereof, of the complaint. The answer shall set forth any facts or claims that may constitute a defense.

(b) The answer shall contain the mailing address, telephone number and facsimile mail number of the respondent, and the mailing address, telephone number and facsimile mail number of the respondent's authorized representative.

(c) Any allegation not answered in accordance with subsection (a) of this section shall be deemed admitted.

(d) The presiding officer shall, upon motion by a party, permit reasonable amendment of the answer and shall allow parties sufficient time to respond and to prepare their case in light of the amendment.

(e) The complainant's failure to file a written response to a defense shall not be deemed an admission of said defense.

**Sec. 4-61dd-11. Representation; appearances; withdrawals**

(a) The parties may appear pro se or through **counsel an attorney** or other duly authorized representative, as provided by law.

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**(b) An attorney may appear by filing an appearance or document containing the name of the case, the docket number, the name of the party or parties which the attorney is representing, the attorney's juris number if the attorney is admitted to practice in Connecticut, and the attorney's address, telephone number, facsimile mail number and electronic mail number. Any document constituting an appearance shall be personally signed by the attorney filing the appearance.**

**(c) A law firm may appear by filing its juris number only if it also appears by naming an individual attorney associated with the firm who will be responsible for the firm's representation and providing the juris number of that individual attorney. Delivery or mailing of documents to that individual will constitute delivery to the law firm. Law firms that appear are responsible for keeping the office of public hearings informed of the individual attorney responsible for the client's representation.**

**(d) Upon written motion, counsel in good standing from jurisdictions other than Connecticut and law student interns may request and, for good cause shown, be allowed to appear in specific proceedings, provided counsel admitted to practice in Connecticut is present during all of the proceedings and signs all pleadings and other papers filed therein and agrees to take full responsibility for the conduct of the attorney or law student intern and the representation of the case.**

**(e) (b)** An attorney who wishes to withdraw an appearance shall file written notice with the office of public hearings and concurrently serve copies of the notice upon his or her client and upon **all** other parties. The notice shall include the following information: the name of the case; the case number; the name of the party represented; and the withdrawing attorney's name, address, telephone and facsimile mail numbers, and juris number. The attorney shall include a certification that a copy of the notice was mailed to the client and to all other parties. The certification shall include the name of each person served, the address at which service was made, and the dates copies were served. A withdrawal of appearance form is available from the office of public hearings, and it may be used in lieu of the written notice.

**Sec. 4-61dd-12. Powers and duties of presiding officer**

(a) The presiding officer shall control all proceedings to ensure a fair and impartial hearing, ensure that the relevant facts are fully elicited, adjudicate issues of law and fact, and prevent delay and harassment. In addition to any other powers provided by law, the presiding officer shall have the power to:

- (1) Determine the scope of the hearing;
- (2) Rule on requests and motions, ~~including motions to dismiss for lack of jurisdiction;~~
- (3) Make all necessary or appropriate rulings with regard to evidentiary matters;
- (4) Administer oaths and affirmations;
- (5) Issue subpoenas and compel the attendance and testimony of witnesses for the purposes of providing testimony or producing physical evidence;
- (6) Examine witnesses and control the examination of witnesses;

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- (7) Consolidate proceedings or portions thereof; and
- (8) Issue a final decision and order.

(b) The presiding officer may, on his own or upon motion by a party, continue a hearing or conference from day to day or adjourn it to a later date or to a different place by announcement thereof at the hearing or by other appropriate notice. Such notice shall be posted on the door of the hearing room if the change is made within twenty-four (24) hours of the scheduled hearing.

**Sec. 4-61dd-14. Motions, objections and waiver**

(a) Except as otherwise permitted by the presiding officer, all motions ~~other than those made orally on the record~~ shall be in writing, stating briefly the grounds for such motion and the order or relief sought. Motions shall be filed in accordance with section 4-61dd-5 of the Regulations of Connecticut State Agencies. When time is essential, motions may be made by telephonic conference call, provided that all parties have an opportunity to participate.

(b) Except as otherwise permitted by the presiding officer, Objections objections or other responses to written motions shall be in writing, stating briefly the basis of the objection or response, and shall be filed not more than ten (10) days after the filing of the motion, ~~unless the presiding officer orders otherwise.~~ Responses to motions shall be filed in accordance with section 4-61dd-5 of the Regulations of Connecticut State Agencies.

(c) The presiding officer may decide all motions without oral argument. If the presiding officer, on his own or upon motion by a party, orders oral argument, the presiding officer shall notify the parties of the time and place for such argument. Parties not present shall be deemed to ~~waive~~ have waived their right to participate at oral argument.

(d) ~~Motions made and objections raised during a hearing, may be made orally or in writing.~~ Any objection not duly and timely made may be deemed waived.

**Sec. 4-61dd-15. Default and dismissal; insufficiency of pleadings; hearing in damages**

(a) The presiding officer may, on his own or upon motion by a party, enter an order of default against a respondent if the respondent:

- (1) Fails to file a written answer as provided for in section 4-61dd-8 of the Regulations of Connecticut State Agencies; or
- (2) Fails to appear at a lawfully noticed conference or hearing without good cause.

(b) Upon entering an order of default, the presiding officer may take evidence and issue such orders as may be necessary. The office of public hearings shall issue to the parties notice of the entry of the default and of the date, time and place for a hearing in damages. The hearing shall be limited to the relief necessary to make the complainant whole. Service of the notice of entry of default and hearing in damages shall be made upon the respondent by certified mail, return receipt requested.

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(c) The presiding officer may, on his own or upon motion by a party, dismiss a complaint or a portion thereof if the complainant:

- (1) Fails to establish subject matter jurisdiction or personal jurisdiction;
- ~~(2) Fails to state a claim for which relief can be granted;~~
- ~~(3) (2)~~ Fails to appear at a lawfully noticed conference or hearing without good cause; or
- ~~(4) (3)~~ Fails to sustain his or her burden after presentation of evidence.

**(d) Whenever a respondent alleges that the complaint fails to state a claim for which relief can be granted, the respondent may file a motion to strike. The motion shall be accompanied by a memorandum of law citing the legal authorities relied on and shall distinctly specify the reason or reasons for the claimed insufficiency. Unless otherwise ordered by the presiding officer, the complainant shall file a response to the motion within fifteen days of the filing of the motion. If the motion is granted by the presiding officer, the complainant shall, within the time ordered by the presiding officer, file a revised complaint complying with the ruling. Failure to file a revised complaint may result in the dismissal of the case.**

**(e) Whenever a complainant alleges the legal insufficiency of an answer, part of an answer or special defense, the complainant may file a motion to strike the contested pleading or part thereof. Unless otherwise ordered by the presiding officer, the respondent shall file a response to the motion within fifteen days of the filing of the motion.**

~~(d)~~ **(f)** Upon the entry of an order of dismissal of the entire case, the office of public hearings shall notify the parties as provided in section 4-180(c) of the Connecticut General Statutes.

**Sec. 4-61dd-18. Closing arguments and briefs**

At the close of evidence, ~~the parties may present final arguments on the facts and issues of the case orally before the presiding officer. The presiding officer may, on his own or upon motion by a party,~~ **the presiding officer may, on his own or upon motion, permit the parties to present final arguments on the facts and issues of the case orally and may** require the filing of briefs upon such terms and with such time as the presiding officer determines. The presiding officer may require the parties to submit proposed findings of fact and conclusions of law. The presiding officer may deem the failure to brief any claim to be a waiver of such claim.

**Sec. 4-61dd-19. Final decisions; modifications**

(a) The presiding officer shall issue a written final decision not more than ninety (90) days following the close of evidence or the due date for the filing of briefs, whichever is later, in accordance with section 4-180 of the Connecticut General Statutes.

(b) Final decisions shall contain the names and addresses of the parties, findings of fact, conclusions of law, analysis by the presiding officer and an appropriate order, and shall satisfy any and all requirements contained in ~~chapter 54~~ **section 4-180** of the Connecticut General Statutes.

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(c) The presiding officer may, without further proceedings, modify a final decision to correct clerical errors in accordance with section 4-181a (c) of the Connecticut General Statutes.

(d) The presiding officer shall enter appropriate orders with respect to each respondent.

(e) The office of public hearings shall serve a copy of the final decision and order on all parties and their representatives in accordance with ~~chapter 54~~ **section 4-180** of the Connecticut General Statutes.

**Section 2.** . Section 46a-68-43 (b)(1) of the Regulations of Connecticut State Agencies is amended to read as follows:

(b) Where an occupational category, position classification within an occupational category employing a significant number of persons or position classification for which a separate availability base is calculated has experienced an increase or reduction in force (see Form 42A1, Line C), the agency shall conduct adverse impact tests to determine whether any quantifiable aspect of the employment process has substantially disadvantaged members of a protected race/sex group. Ordinarily, a selection rate for any group less than eighty percent (80%) of the selection rate for the group with the highest rate is substantially different for the purpose of Sections 46a-68-31 through 46a-68-74, inclusive, and constitutes adverse impact. Adverse impact tests (see Form 43B series) for data contained in the Applicant Flow Analysis (see Form 42A2 data) and Employment Process Analysis (see Form 42A1 data) shall be conducted in the following manner:

(1) Adverse impact test no. 1. On Form 43B1, the qualified applicant pool for each race/sex group shall be compared to the availability of that group in the relevant labor market area for employment. To do so:

- A. enter the Work Force Parity % (see Form 40A, Line B) for each race/sex group on Line B;
- B. multiply each figure by 0.8 and enter the result on Line C;
- C. convert each number shown on Form 42A2, Line I to a percentage by dividing the number for each race/sex group by the Grand Total (see Form 42A2, Line **G I**, Column 1), multiply by 100% and enter the results on Line D; and
- D. compare Line D with Line C for each race/sex group and indicate by asterisk (\*) on Line E those instances where the figure on Line C exceeds that on Line D.

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**Statement of Purpose:** Section 1 clarifies who the presiding officer of a hearing is; to include the word "order" within the definition of "Ruling"; to define "Large state contractor", to clarify how a complaint is to be amended and to specify where it is to be filed and how it is to be served; to expand the means by which a pleading may be served; to clarify when an answer shall be filed; to clarify that a motion to amend a complaint shall be served by the complainant; to detail the information an attorney or law firm shall provide to be allowed to appear and withdraw in specific proceedings; to clarify the ways in which an objection may be filed; to clarify the standards for dismissal of a complaint and other minor and technical revisions.

Section 2 corrects a typographical error that references an incorrect line in Form 42A2 which is part of the Affirmative Action Plans for state agencies. The reference does not effect the substantive outcome of the plans, but may be slightly confusing to affirmative action officers.

**CERTIFICATION**

R-39 REV. 1/77

Page \_\_\_\_\_ of \_\_\_\_\_ pages

Be it known that the foregoing:

Regulations  Emergency Regulations

Are:  
 Adopted  Amended as herein above stated  Repealed

By the aforesaid agency pursuant to:

Section 4-61dd of the General Statutes

Section \_\_\_\_\_ of the General Statutes as amended by Public Act No. \_\_\_\_\_ of the \_\_\_\_\_ Public Acts.

Public Act No. \_\_\_\_\_ of the Public Acts.

After Publication in the Connecticut Law Journal on July 15 2008, of the notice of the proposal to:

Adopt  Amend  Repeal such regulations

(applicable):  And the holding of an advertised public hearing on the 14th day of August 2008

WHEREFORE, the foregoing regulations are hereby:

Adopted  Amended as herein above stated  Repealed

Effective:

When filed with the Secretary of the State

The \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

In Witness Whereof:

DATE 8/29/08

SIGNED (Head of Board, Agency or Commission)

*[Signature]*

OFFICIAL TITLE, DULY AUTHORIZED

Chief Human Rights Referee

Approved by the Attorney General as to legal sufficiency in accordance with Sec. 4-169, as amended, C.G.S.:

SIGNED Will B AK 11/4/08

OFFICIAL TITLE, DULY AUTHORIZED

ASSOC. ATTY. GENERAL

- Approved
- Disapproved
- Disapproved in part, (Indicate Section Numbers disapproved only)
- Rejected without prejudice.

by the Legislative Regulation Review Committee in accordance with Sec. 4-170, as amended, of the General Statutes

DATE

SIGNED (Clerk of the Legislative Regulation Review Committee)

Two certified copies received and filed, and one such copy forwarded to the Commission on Official Legal Publications in accordance with Section 4-172, as amended, of the General Statutes.

DATE \_\_\_\_\_ SIGNED (Secretary of the State.) \_\_\_\_\_ BY \_\_\_\_\_

**INSTRUCTIONS**

1. One copy of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the Attorney General for his examination of legal sufficiency. Section 4-169 of the General Statutes.
2. Seventeen copies of all regulations for adoption, amendment or repeal, except emergency regulations, must be presented to the standing Legislative Regulation Review Committee for its approval. Section 4-170 of the General Statutes
3. Each Regulation must be in the form intended for publication and must include the appropriate regulation section number and section heading. Section 4-172 of the General Statutes.
4. Indicate by "(NEW)" in heading if new regulation. Amended regulations must contain new language in capital letters and deleted language in brackets. Section 4-179 of the General Statutes.