

R51. Agriculture and Food, Administration.

R51-4. ADA Complaint Procedure.

R51-4-1. Authority and Purpose.

A. This rule is promulgated pursuant to Section 63G-3-201. The Department of Agriculture and Food adopts and defines complaint procedures to provide for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, pursuant to 28 CFR 35.107, July 1, 1992 Ed.

B. No qualified individual with a disability, by reason of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of this department, or be subjected to discrimination by this department.

R51-4-2. Definitions.

A. "The ADA Coordinator" means the Department of Agriculture and Food coordinator or his designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.

B. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

- (1) Office of Planning and Budget;
- (2) Department of Human Resource Management;
- (3) Division of Risk Management;
- (4) Division of Facilities Construction Management, and
- (5) Office of the Attorney General.

C. "Disability" means with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of an impairment; or being regarded as having an impairment.

D. "Major life activities" means such functions as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

E. "Individual with a disability" means a person who has a disability which limits one of the major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the Department of Agriculture and Food, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

R51-4-3. Filing of Complaints.

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. The complaint shall be filed with the department's ADA Coordinator in writing or in another acceptable format suitable to the individual.

C. Each complaint shall:

- (1) include the individual's name and address;
- (2) include the nature and extent of the individual's disability;
- (3) describe the department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;
- (4) describe the action and accommodation desired, and
- (5) be signed by the individual or by a legal representative.

D. Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R51-4-4. Investigation of Complaint.

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Rule R51-4-3(C) if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the department's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve:

- (1) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;
- (2) facility modifications; or
- (3) reclassification or reallocation in grade, the coordinator shall consult with the ADA State Coordinating Committee.

R51-4-5. Issuance of Decision.

A. Within 15 working days after receiving the complaint, the ADA Coordinator shall issue a decision outlining in writing or in another acceptable or suitable format stating what action, if any, shall be taken on the complaint.

B. If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable suitable format why the decision is being delayed and what additional time is needed to reach a decision.

R51-4-6. Appeals.

A. The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

B. The appeal shall be filed in writing with the department's executive director or a designee other than the department's ADA Coordinator.

C. The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the department's executive director or designee.

D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

E. The executive director or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve:

- (1) an expenditure of funds which is not absorbable and would require appropriation authority;
- (2) facility modifications; or

(3) reclassification or reallocation in grade, he shall also consult with the State ADA Coordinating Committee.

F. The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another acceptable or suitable format to the individual.

G. If the executive director or his designee is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another acceptable or suitable format why the decision is being delayed and the additional time needed to reach a decision.

R51-4-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the Utah State Personnel Management Act, Title 67, Chapter 19 of the Utah Code; the Federal ADA Complaint Procedures, 28 CFR Subpart F, beginning with Part 35.170, July 1, 1992 edition; or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, discrimination, grievances

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