EDUCATION AND LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Amended at ARRS Committee)

803 KAR 2:250. Discrimination.

RELATES TO: KRS 338.015, 338.071, 338.121, 338.141, 338.991
STATUTORY AUTHORITY: KRS 338.051, 338.061
CERTIFICATION STATEMENT:
NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards. This administrative regulation establishes the procedure for discrimination complaints pursuant to KRS 338.121.

Section 1. Definitions.
(1) "Commissioner" is defined by KRS 338.015(7).
(2) "Complainant" means any person who makes a "complaint" as defined by subsection (3) of this section.
(3) "Complaint" means any oral or written communication related to an occupational safety and health concern made by an employee to an employer, governmental agency, or made to the commissioner or the commissioner's designee.
(4) "Review commission" is defined by KRS 338.015(8).
(5) "Secretary" is defined by KRS 338.015(12).
(6) "Working days":
(a) Means Monday through Friday; and
(b) Does not mean Saturday, Sunday, federal or state holidays, or the day of receipt of notice.

Section 2. Complaint.
(1) An employee or former employee may file an oral or written complaint with the commissioner or commissioner's designee alleging discrimination.
(2) A complaint shall be filed no more than thirty (30) days from the occurrence of the alleged discriminatory activity.
(3) A complaint shall provide the name and address of the complainant, name and address of employer, date, and description of alleged discrimination.
(4) The commissioner or commissioner's designee shall provide the employer notification of the complaint upon initiation of an investigation.

Section 3. Settlement.
(1) Settlement shall be encouraged at any stage of the proceedings if the settlement is consistent with KRS Chapter 338.
(2) Primary consideration shall be the reinstatement of a complainant to his or her former position with back pay and assurance of the future protection of the rights of all employees pursuant to KRS Chapter 338.

Section 4. Withdrawal of Complaint to the Commissioner.
(1) A request by the complainant to withdraw a complaint filed with the commissioner shall be given careful consideration and substantial weight.

(2) The commissioner or commissioner's designee shall make the final determination if a complaint and subsequent investigation will be withdrawn and terminated.

Section 5. Arbitration or Other Agency Proceedings.

(1) A complainant may pursue grievance arbitration proceedings in collective bargaining agreements while requesting relief from other agencies such as the National Labor Relations Board.

(2) The commissioner's jurisdiction to receive KRS 338.121(3) complaints, to investigate, and to determine if discrimination occurred shall be independent of the jurisdiction of other agencies or bodies.

(3) The commissioner or commissioner's designee may investigate and issue citations against any party found in violation regardless of the pendency or determination of other proceedings.

(4) If a complainant is pursuing remedies other than those established by KRS 338.121, the commissioner's determination shall be postponed.

Section 6.

(1) Investigation.

(a) Upon receipt of a complaint, the commissioner or commissioner's designee may initiate an investigation.

(b) The investigation shall be completed and the commissioner's determination issued within ninety (90) days, absent extenuating circumstances.

(2) Citation.

(a) If the commissioner finds a violation of KRS 338.121, he or she shall issue a citation, with delivery or receipt confirmation, and recommend a penalty pursuant to KRS 338.991.

(b) The citation shall include a determination by the commissioner as to the merits of the alleged violation.

(c) The commissioner or commissioner's designee shall provide notice of the determination to all affected parties.

(d) The citation shall state that it shall be deemed the final order of the review commission and not subject to review by any court or agency, as established by KRS 338.141, unless, within fifteen (15) working days from the date of receipt of the notice, the employer notifies the commissioner in writing that the employer intends to contest the citation before the review commission.

(e) The commissioner shall immediately transmit a notice to contest to the review commission in accordance with the rules of procedure established by the commission in accordance with KRS 338.071.

(3) Penalty.

(a) The commissioner shall determine the amount of a proposed penalty, based on the appropriateness of the penalty with respect to the:

1. Size of the business of the employer being charged,
2. Gravity of the violation,
3. Good faith of the employer, and
4. History of previous violations.

(b) Penalties shall be proposed with respect to an alleged discriminatory act even if the employer immediately abates, or initiates steps to abate, the alleged violation.

(4)

(a) If the commissioner determines there has not been discriminatory action, the complainant shall be notified of the complainant's rights of review.

(b)

1. The complainant may petition the secretary for a review of the determination.
2. The petition shall be in writing and state reasons why the review is requested.

(c) The secretary shall affirm the determination or remand it to the commissioner for further investigation.

(803 KAR 002:250. 13 Ky.R. 1398; eff. 2-10-1987; TAm eff. 8-9-2007; TAm eff. 9-8-2011; 42 Ky.R. 113, 682; eff. 10-2-2015; 47 Ky.R. 2687; 48 Ky.R. 816; eff. 11-30-2021; 52 Ky.R. 314, 743; eff.2-3-2026.) COMPILER'S NOTE: 2025 RS HB 6, enacted by the General Assembly on March 27, 2025, altered the information to be provided at the time an administrative regulation is filed. Aside from formatting changes necessary to upload the regulation into the LRC's publication application, this regulation has been published as submitted by the agency.

FILED WITH LRC: October 14, 2025

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Education and Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email robin.maples@ky.gov.