

This is an amendment to 11.21.3 NMAC, Sections 8, 9, 21 & 22, effective 8/9/2022

**11.21.3.8 COMMENCEMENT OF CASE:**

**A.** A prohibited practices case shall be initiated by filing with the director a complaint on a form furnished by the director. The form shall set forth, at a minimum, name, address and phone number of the public employer, labor organization, or employee against whom the complaint is filed (the respondent) and of its representative if known, the specific section of the [aet] Act claimed to have been violated; the name, address, and phone number of the complainant; a concise description of the facts constituting the asserted violation; and a declaration that the information provided is true and correct to the knowledge of the complaining party. The complaint shall be signed and dated, filed with the director, and served upon the respondent.

**B.** When an individual employee files a prohibited practices complaint alleging a violation of Subsection F and H of Section 19, Subsection C or D of Section 20 of the [aet] Act, an interpretation given to the collective bargaining agreement by the employer and the exclusive representative shall be presumed correct. [11.21.3.8 NMAC - N, 3/15/2004; A, 8/9/2022]

**11.21.3.9 LIMITATIONS PERIOD:** Any complaint filed more than six months following the conduct claimed to violate the [aet] Act or more than six months after the complainant either discovered or reasonably should have discovered each conduct, shall be dismissed. [11.21.3.9 NMAC - N, 3/15/2004; A, 8/9/2022]

**11.21.3.21 ADMINISTRATIVE AGENCY DEFERRAL:** Where the board becomes aware that a complainant has initiated another administrative or legal proceeding based on essentially the same facts and raising essentially the same issues as those raised in the complaint, the board may take any of the following actions, at the board's discretion:

**A.** The board may hold the proceedings under the [aet] Act in abeyance pending the outcome of the other proceeding.

**B.** The board may go forward with its own processing. In so doing, the board may request that the other proceedings be held in abeyance pending outcome of the board proceeding. In the event that the resolution of the proceedings in such other forum is contrary to the [aet] Act or all issues raised before the board are not resolved, the board may proceed under the provisions of 11.21.3 NMAC.

**C.** For purposes of this rule, "board" shall mean the board or the director. [11.21.3.21 NMAC - N, 3/15/2004; A, 8/9/2022]

**11.21.3.22 ARBITRATION DEFERRAL:**

**A.** If the subject matter of a prohibited practices complaint requires the interpretation of a collective bargaining agreement; and the parties waive in writing any objections to timeliness or other procedural impediments to the processing of a grievance, and the director determines that the resolution of the contractual dispute likely will resolve the issues raised in the prohibited practices complaint, then the director may, on the motion of any party, defer further processing of the complaint until the grievance procedure has been exhausted and an arbitrator's award has been issued.

**B.** Upon its receipt of the arbitrator's award, the complaining party shall file a copy of the award with the director, and shall advise the director in writing that it wishes either to proceed with the prohibited practice complaint or to withdraw it. The complaining party shall simultaneously serve a copy of the request to proceed or withdraw upon all other parties.

**C.** If the complaining party advises the director that it wishes to proceed with the prohibited practices complaint, or if the board on its own motion so determines, then the director shall review the arbitrator's award. If in the opinion of the director, the issues raised by the prohibited practices complaint were fairly presented to and fairly considered by the arbitrator, and the award is both consistent with the [aet] Act and sufficient to remedy any violation found, then the director shall dismiss the complaint. If the director finds that the prohibited practice issues were not fairly presented to, or were not fairly considered by, the arbitrator, or that the award is inconsistent with the [aet] Act or that the remedy is inadequate, then the director shall take such other action deemed appropriate. Among such other actions, the director may accept the arbitrator's factual findings while substituting legal

conclusions and remedies pursuant to Subsection F of Section 10-7E-9 NMSA 1978 appropriate for the prohibited practice issues.

**D.** In the event that no arbitrator's award has been issued within one year following deferral under this rule, then the director may, after notice and in the absence of good cause shown to the contrary, dismiss the complaint.

**E.** The director's decision either to dismiss or further process a complaint pursuant to this rule may be appealed to the board under the procedure set forth in 11.21.3.13 NMAC. Interim decisions of the director under this rule, including the initial decision to defer or not to defer further processing of a complaint pending arbitration, shall not be appealable to the board.

[11.21.3.22 NMAC - N, 3/15/2004; A, 2/28/2005; A, 7/1/2020; A, 8/9/2022]