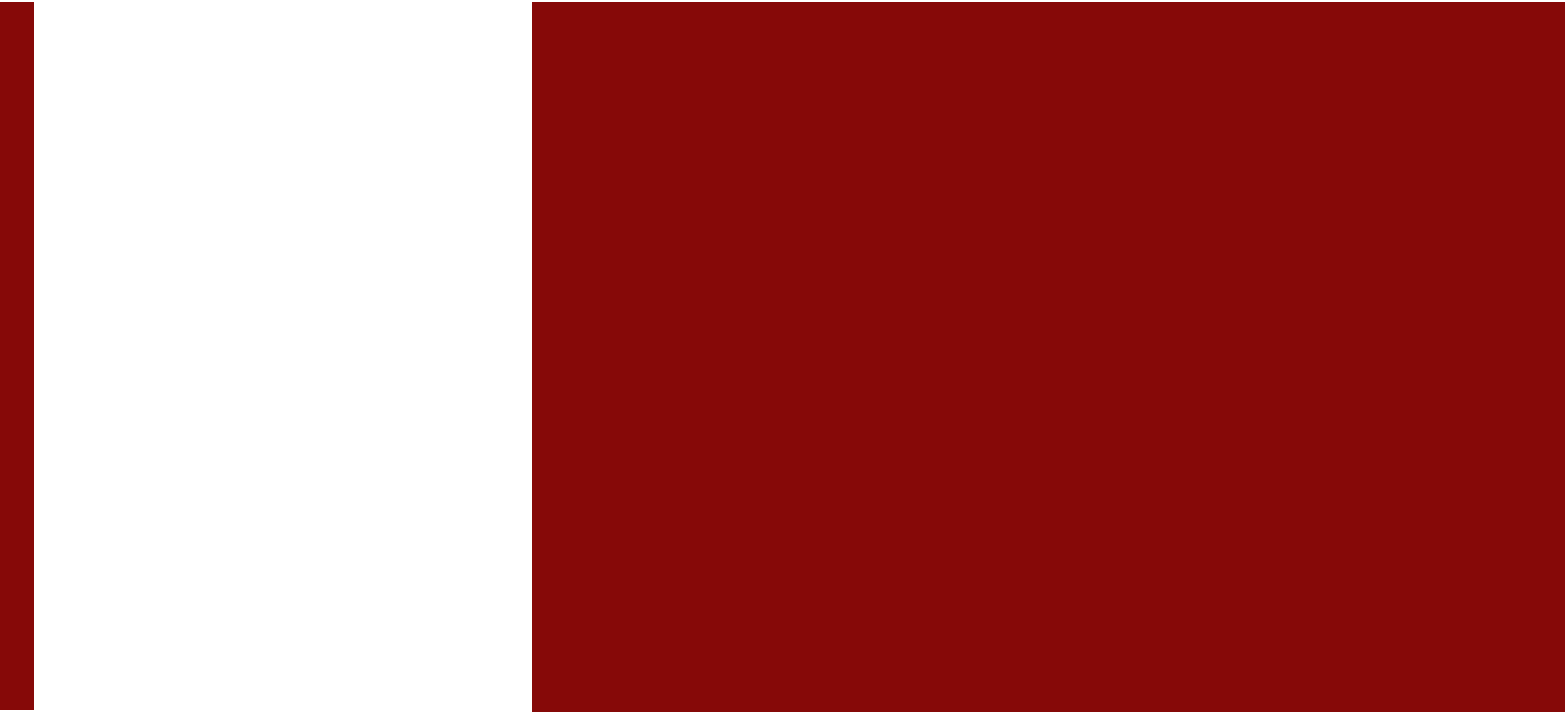




A Step-by-Step Guide to Responding to Discrimination Charges Under the Minnesota Human Rights Act

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Presentation Road Map



- Introduction to the Minnesota Human Rights Act
- Receiving a Charge
- Investigation and Fact Development
- Responding to the Charge
- What Happens Next



Introduction to the Minnesota Human Rights Act

Introduction to the MHRA



The Minnesota Human Rights Act (MHRA) protects the civil rights of Minnesotans and is one of the strongest laws of its kind in the country.

Minnesota first established the Minnesota Department of Human Rights (MDHR) in 1967, and the MHRA was enacted in 1973.

Originally the MHRA only protected based on race, color, creed, and national origin in unions, employment, education, public services, and public accommodations.

- Sexual orientation, including gender identity, was added to the list of protections in 1993 after six failed attempts to amend the MHRA.

Introduction to the MHRA

Today, the MHRA prohibits discrimination in education, employment, housing, public accommodations, public services, credit, and business based on certain protected classes, including:

- Race
- Religion
- Disability
- National Origin
- Sex
- Marital Status
- Familial Status
- Age
- Sexual Orientation
- Gender Identity



PROTECTED CLASSES	AREAS OF PROTECTION						
	Employment	Housing	Public Places	Government Services	Education	Credit	Business
Race	●	●	●	●	●	●	●
Color	●	●	●	●	●	●	●
Creed	●	●	●	●	●	●	●
Religion	●	●	●	●	●	●	●
National Origin	●	●	●	●	●	●	●
Sex	●	●	●	●	●	●	●
Marital Status	●	●	●	●	●	●	●
Disability	●	●	●	●	●	●	●
Public Assistance	●	●	●	●	●	●	●
Age	●				●		
Sexual Orientation	●	●	●	●	●	●	●
Gender Identity	●	●	●	●	●	●	●
Familial Status	●	●	●	●	●	●	●
Local Human Rights Commission Activity	●						

Introduction to the MHRA: Protected Class Definitions



Race

inclusive of traits associated with race, including but not limited to hair texture and hair styles such as braids, locs, and twists

Disability

any condition or characteristic that renders a person a disabled person

- A disabled person is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; (3) is regarded as having such an impairment; or (4) has an impairment that is episodic or in remission and would materially limit a major life activity when active.

Introduction to the MHRA: Protected Class Definitions



National Origin

the place of birth of an individual or of any of the individual's lineal ancestors

Sex

includes, but is not limited to, pregnancy, childbirth, and disabilities related to pregnancy or childbirth

Marital Status

whether a person is single, married, remarried, divorced, separated, or a surviving spouse (in employment cases also includes protection against discrimination on the basis of the identity, situation, actions, or beliefs of a spouse or former spouse)

Introduction to the MHRA: Protected Class Definitions



Familial Status

one or more minors having legal status or custody with the minor's parent or parents, the minor's legal guardian or guardians, or the designee of the parent(s) or guardian(s) with written permission; or residing with and caring for one or more individuals who lack the ability to meet essential requirements for physical health, safety, or self-care because the individual or individuals are unable to receive and evaluate information or make or communicate decisions

- The protections afforded against discrimination on the basis of familial status also apply to any person who is pregnant or is in the process of securing legal custody of an individual who has not attained the age of majority.

Age

a person's age, when used as a basis for a decision if the person is over the age of majority (except education, for which protections apply to any individual over the age of 25 years)

Introduction to the MHRA: Protected Class Definitions



Sexual Orientation

to whom someone is, or is perceived of as being, emotionally, physically, or sexually attracted to based on sex or gender identity

- A person may be attracted to men, women, both, neither, or to people who are genderqueer, androgynous, or have other gender identities.

Gender Identity

a person's inherent sense of being a man, woman, both, or neither.

- A person's gender identity may or may not correspond to their assigned sex at birth or to their primary or secondary sex characteristics, and may or may not be visible to others.

Introduction to the MHRA: Enforcement



1. Any person aggrieved by a violation of the MHRA may bring a civil action against the alleged violator (respondent).
 - Here, the alleged victim directly sues the School District in civil court.
2. Any person aggrieved by a violation of the MHRA may file a verified charge with the commissioner or the commissioner's designated agent.
 - This is the more common approach.
 - Here, the MDHR would investigate the charge and determine whether to pursue a civil action against the respondent School District.

Introduction to the MHRA: Enforcement



A charge filed with the MDHR must:

1. Be in writing (by hand, or electronically with an unsworn declaration under penalty of perjury) on a form provided by the commissioner and signed by the charging party;
2. State the name of the person alleged to have committed an unfair discriminatory practice; and
3. Set out a summary of the details of the practice complained of.

Introduction to the MHRA: Enforcement



The MDHR may require a charging party to provide the address of the person alleged to have committed the unfair discriminatory practice, names of witnesses, documents, and any other information necessary to process the charge.

The MDHR may dismiss a charge when the charging party fails to provide required information.

Introduction to the MHRA: Enforcement



The MDHR shall serve a copy of the charge and a form for use in responding to the charge upon the respondent personally, electronically with the respondent's consent, or by mail **within ten days of the filing.**

The respondent shall file with the department a written response setting out a summary of the details of the respondent's position relative to the charge **within 30 days of receipt of the charge.**

If the respondent fails to timely respond and there was proper service, the MDHR may bring an action for default in district court on behalf of the complaining party.

Introduction to the MHRA: Statute of Limitations



A charge must be *filed within one year* of an alleged unfair discriminatory practice. Filing is accomplished by delivery of the charge to the department's office before one year has elapsed.

- Exception: The continuing violation doctrine allows consideration of incidents outside of the one-year time period in some circumstances. Generally, the following factors are considered in determining whether a continuing violation exists:
 - Whether the acts involve the same subject matter
 - The frequency of the acts
 - Whether an act outside the limitations period should have triggered awareness and duty to assert rights under the MHRA



Receiving a Discrimination Charge

Receiving a Discrimination Charge:

1. Determine a District Point-Person



- The first thing a district should do upon receiving a charge is determine who at the School District will be the point-person for the charge.
- This person will:
 - Be responsible for being the contact for legal counsel, insurance, and district students and staff
 - Gather documents for legal counsel and insurance representative
 - Facilitate and coordinate deadlines and interviews
 - Keep the School Board up-to-date, as necessary
- In smaller districts this will generally end up being the Superintendent, in larger districts this could be HR.

Receiving a Discrimination Charge:

2. Review the Charge



The point person should then do a preliminary review of the charge itself, so you are able to concisely discuss it with others.

Multiple documents typically come in the packet with the charge itself:

- Cover letter with instructions on how to respond
- Consent to Receive Notice by Email Form
- Tennessen Warning
- Acknowledgement of Service Form
- Subpoena
- Mediation Acknowledgement Form
- Charge

All of these documents, including the envelope the charge arrives in, should be kept in one packet together.

Receiving a Discrimination Charge:

2. Review the Charge



Take note of the following:

- When was the charge filed?
 - This will help your legal counsel determine if there are any statute of limitations arguments to be made.
- When did the district receive the charge?
 - This determines when your response is due.
 - Ideally, it will be stamped or written on the envelope.

Receiving a Discrimination Charge:

2. Review the Charge



Take note of the following:

- Who filed the charge/who is the charging party?
 - Do they still work/attend school at the district?
 - Were you aware of any problems with this person?
- What type of discrimination is alleged?
 - Employment, education, public accommodation, etc.
 - Race, sex, sexual orientation, disability, etc.
- What does the charge allege happened?

All of these details are things you will want to communicate to your attorney and insurance representative.

Receiving a Discrimination Charge:

3. Contact Legal Counsel



School districts have a variety of levels of interaction with legal counsel:

- Some have their own general counsel's office.
- Some are in regular contact with their attorney.
- Some speak only when necessary (this is one of those times).

Legal counsel will likely request several documents be sent their way promptly, so the school district can get working on that while the point person takes the next step.

The point person should also discuss the forms enclosed with the charge.

Receiving a Discrimination Charge:

4. Contact Insurance Company



You will want insurance to start processing the district's claim right away to begin providing coverage.

- Sometimes processing takes a bit of time, so with the short time limits you want to contact insurance and legal counsel both right away so they can get their separate processes going.

The point person should ask the insurance representative how much information they need from the district or from legal counsel moving forward.

- E.g. copies of the charge, the response, a budget, and periodic updates



Investigation and Fact Development

Investigation and Fact Development



It can be tempting when a district receives a charge, especially one that the district thinks is unfounded, to send a terse response indicating that the district denies the allegations.

However, this is a high-risk approach due to the potential for liability if the charge goes forward, and investigation is necessary to be confident in the response you provide.

Basic steps in investigating allegations before responding to a charge are as follows:

- Closely review charge
 - Unlike a typical investigation, complainant/charging party cannot be interviewed
- Preserve and gather data
- Review other existing information
- Prepare for and conduct interviews

Investigation and Fact Development: Preserve and Gather Data



Preserve and review any relevant digital information:

- Security footage
- Social media posts
- Text messages
- Emails

These can all be very useful IF they are promptly preserved.

Investigation and Fact Development: Review Other Existing Information



Gather any other relevant school district documents for review, such as:

- Applicable School District policies
- Personnel and/or student files of involved individuals
- Collective bargaining agreements of involved employees
- Notes by supervisors related to incident, if any

These documents could answer questions like:

- Were these issues reported?
- Was this issue foreseeable?
- Did the district follow its own policies/was its treatment consistent with the way these issues have been handled in the past?

Investigation and Fact Development: Review Other Existing Information



If relevant, also consider looking at the space where the incident occurred prior to conducting interviews:

- Provides context for the incident
- May help to gauge credibility

Investigation and Fact Development: Gather Information From Individuals



- Interviews should begin as soon as possible, so the memories are better.
- However, do take care to make sure that all relevant documents are located and reviewed first.
- Generally, it is best for the person with the most knowledge to speak with the person drafting the response first, and then work through the people in descending order of most to least knowledge.
- Questions (or at least topics) should be outlined in advance.

Investigation and Fact Development: Special Considerations for Interviewing Students



- Consider notifying parents if appropriate.
 - A school is not required to notify the parents before conducting an interview of their child, but if a district has a practice of doing so, it should adhere to that practice.
 - It is a good idea to at least let parents know after the student has been interviewed, so they aren't surprised when their child tells them.
- If a parent wants to attend their child's interview, a district may want to schedule the child's interview accordingly.
- Students may divulge private educational data, so they need a Tennessean Warning, which should be given in an age-appropriate manner.

Investigation and Fact Development: Special Considerations for Interviewing Employees



- Employees are also entitled to a Tennessean Warning.
- In addition, union employees are entitled to the presence of a union representative.
 - Accordingly, it may be prudent to ask in advance if they want union representation present and give them time and an opportunity to schedule with a union representative if necessary.
 - Note that they are only entitled to a union representative, not the one of their choice.
 - Union stewards may be more likely to be available than other union representatives

Investigation and Fact Development: Gather Information From Individuals

Tennessean Warnings

- Must be given when collecting private or confidential information
- Not required when the data sought are not about the individual being questioned
- Generally best to give a Tennessean Notice any time you interview a parent, student, or employee

Notice must include:

- Reason for collecting data
- How the data will be used
- Whether the person is legally required to provide data, or may refuse to do so
- Consequences if the person provides the data
- Consequences if the person does not provide the data
- The identities of people and entities that have access to the data by law
 - Here, that would likely include the district administration, the School Board, the Department and other government entities, and the court system if the matter proceeds to litigation.

Investigation and Fact Development: Gather Information From Individuals

- Tennessean Warning (tailored to situation)
- Instructions for responding to questions
 - Do not guess or speculate; if they are guessing or speculating, they should say so.
 - It is okay if they don't know the answer or don't remember (though they should try to).
- Start with background questions
 - They make the interviewee more comfortable.
 - They demonstrate to the interviewer what a normal response is like in terms of tone, hesitations, body language, etc.
 - Background questions should take approximately the same length of time for everyone interviewed.
- Next, open-Ended Questions about the incident in question
 - Avoid yes or no answers.
 - Questions at this point should generally start with who, what, when, where, why, or how.

Investigation and Fact Development: Gather Information From Individuals



- Take notes throughout, if possible, to identify any holes in the narrative
 - If the point-person is not conducting the interview, they should be taking notes).
- Narrow questions come next, fleshing out the details of the narrative; identify potential conflicts in the narrative and follow up.
 - Short answers are okay here.
 - Some questions may seem obvious but should be asked anyway: assume nothing.
- If an answer reveals another incident that you don't have any information about, go back to open ended questions.
 - The incident may be a part of a pattern.
- Be sensitive to data privacy concerns:
 - Say, "I've heard that . . ." not "Kelly told me that . . ."

Investigation and Fact Development: Gather Information From Individuals



- At the conclusion of the interview, the interviewee may be asked:
 - Whether they are aware of any documents that relate to the incidents; and
 - If they are aware of any other information that is related to the incidents you discussed.
 - If they raise anything new, return to open-ended questions again.
- The interviewee should be instructed not to discuss the conversation with anyone else, except:
 - Students can tell their parents.
 - Employees can talk to their union representative.
- Ask the interviewee to contact the point person if they think of any additional information or if they experience retaliation.

Investigation and Fact Development: Gather Information From Individuals



- Tell employees who are interviewed that they may be contacted by the Human Rights Department for an interview by the Department.
 - The Department tends to take the stance that administrative employees are representatives of the district and generally contacts them through counsel but will not necessarily do the same for non-administrative employees.
- If they are contacted, they are entitled to talk to the Department on their own, but they may prefer to contact the district's point person and coordinate for legal counsel to attend.

Investigation and Fact Development: Documenting Interviews



Do not assume you will remember everything later—contemporaneous notes are extremely helpful in litigation.

Write up detailed notes of interviews immediately afterwards, including:

- Date and time
- A notation that a Tennessean Warning was given
- All of the information provided
- What the interviewee said they did not remember or did not know

Also note whether the person seemed credible and why:

- Did the interviewee seem like they were telling the truth or lying?
- Did the interviewee seem like they had a good memory of the events?
- Did the interviewee seem like they were telling you what you wanted to hear?

This may help when determining what happened.



Responding to the Charge

Responding to the Charge: Form of the Response



The Department requires the response to be written, and to:

- Explain your position in detail
- Address the claims noted in the charge
- Contain information sufficient to explain your defense

A respondent may include exhibits or attachments to the response.

Responding to the Charge: Contents of the Response



The goal in drafting a response is to present the required information in a simple but compelling fashion.

The district's response should answer the following questions:

- Did it happen?
- Was it reported?
 - If so, was it addressed appropriately?
- Was what happened prohibited by the MHRA?
- Were there any procedural errors (such as statute of limitations)?
- Conduct any follow-up interviews as necessary while drafting the response.

Responding to the Charge: Exhibits



Any documents that were analyzed in drafting the response should generally be referenced as exhibits.

Ideally, the exhibits will be labeled and include page numbers for easy reference.

Exhibits that include information that is not related to the charge (e.g., handwritten notes related to other incidents on the same page as handwritten notes about the incident underlying the charge) should be redacted.

Responding to the Charge: Confidential Documents



The MHRA requires the department to allow the charging party to review the respondent's answer and attached materials.

However, the department allows a respondent to send information and documents it does not want provided to the charging party under separate cover, so long as they are not referred to in the answer as being enclosed.

In practice, this means a district will typically prepare the following:

- Answer (with no references to exhibits)
- Confidential answer (with exhibit references) with attached exhibits
- Cover letter explaining that the answer is to be provided to the charging party and the confidential answer and attached exhibits are for the department's eyes only

Responding to the Charge: Finalize and Send Response



- Ideally, key figures in the investigation will be given an opportunity to review the draft response before it is sent to the department.
- When the response is sent in, a copy of the sent email should be preserved as evidence of timeliness.



What Happens Next

What Happens Next: MDHR Interviews and Determination



- The department may issue a request for additional documents.
- The charge will be investigated by the department, which will generally conduct interviews of key witnesses.
 - District's legal counsel may attend these interviews and may be able to help staff prepare for the interviews as well.

What Happens Next: Determination



Once a charge has been filed with the MDHR, the MDHR has **12 months** to make a determination on whether there is probable cause to credit the allegation within the charge and must issue a written decision to the parties regarding its decision.

What Happens Next: No Probable Cause/ Reconsideration



If the MDHR finds that there is no probable cause for the charge, then the MDHR serves both parties with written notice of its determination. Within 30 days after receipt of notice, the charging party may request in writing, on forms prepared by the department, that the MDHR reconsider the determination. The charging party will also send a copy of its request for reconsideration to the respondent at the time of submission to the state. The request shall contain a brief statement of the reasons for and new evidence in support of the request for reconsideration.

- In this event, the district should provide a response to the request for reconsideration.

The MDHR shall reaffirm, reverse, or vacate and remand for further consideration the determination of no probable cause within 20 days after receipt of the request for reconsideration, and shall within 10 days notify in writing the charging party and respondent of the decision to reaffirm, reverse, or vacate and remand for further consideration.

What Happens Next: Probable Cause/Conciliation



If the MDHR finds that there is probable cause for the charge, then the MDHR shall serve on the respondent a notice setting forth a short plain written statement of the alleged facts which support the finding of probable cause and an enumeration of the provisions of law allegedly violated. Within **30 days** after receipt of that notice, the respondent may request in writing, on forms prepared by the department, that the MDHR reconsider the determination.

- If it determines probable cause exists, the department must seek to settle the matter through conciliation.
- If conciliation is not successful, a lawsuit may be filed in state court or in the office of administrative hearings, which could ultimately result in:
 - Changes to policies and procedures
 - Civil penalties
 - Payment of additional damages

What Happens Next: Moving Forward



Independent from the MDHR's proceedings, the district should consider whether there are any other changes that can or should be made based on the information gathered in responding to the charge.

- Are the district's policies up to date and complete?
 - Are there any points of confusion that came to light?
- Have employees and students been trained on the policies?
 - Did those who were involved in the investigation seem to understand the policies?
- Are there any practices that should be discontinued or changed?

Making these changes now can help avoid new charges in the future.

Questions?

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