

## § 1601.16

## 29 CFR Ch. XIV (7–1–23 Edition)

determine which elements are undisputed, to resolve those issues that can be resolved and to ascertain whether there is a basis for negotiated settlement of the charge.

(d) The Commission's authority to investigate a charge is not limited to the procedures outlined in paragraphs (a), (b), and (c) of this section.

### **§ 1601.16 Access to and production of evidence; testimony of witnesses; procedure and authority.**

(a) To effectuate the purposes of title VII, the ADA, and GINA, any member of the Commission shall have the authority to sign and issue a subpoena requiring:

(1) The attendance and testimony of witnesses;

(2) The production of evidence including, but not limited to, books, records, correspondence, or documents, in the possession or under the control of the person subpoenaed; and

(3) Access to evidence for the purposes of examination and the right to copy.

Any District Director, and the Director of the Office of Field Programs, or upon delegation, the Director of Field Management Programs, or any representatives designated by the Commission, may sign and issue a subpoena on behalf of the Commission. The subpoena shall state the name and address of its issuer, identify the person or evidence subpoenaed, the person to whom and the place, date, and the time at which it is returnable or the nature of the evidence to be examined or copied, and the date and time when access is requested. A subpoena shall be returnable to a duly authorized investigator or other representative of the Commission. Neither the person claiming to be aggrieved, the person filing a charge on behalf of such person nor the respondent shall have the right to demand that a subpoena be issued.

(b)(1) Any person served with a district director-issued subpoena who intends not to comply shall petition the issuing director to seek its revocation or modification. Any person served with a Commissioner-issued subpoena who intends not to comply shall petition the General Counsel to seek its revocation or modification. Petitions

must be transmitted digitally or mailed to the issuing director at the address stated on the subpoena (or, if the subpoena was issued by a Commissioner, to the General Counsel) within five days (excluding Saturdays, Sundays, and Federal legal holidays) after service of the subpoena. Petitions to the General Counsel pertaining to subpoenas issued by a Commissioner may be transmitted digitally or mailed to 131 M Street NE, Washington, DC 20507 and a copy of the petition shall also be served upon the issuing Commissioner.

(2) The petition shall separately identify each portion of the subpoena with which the petitioner does not intend to comply and shall state, with respect to each such portion, the basis for non-compliance with the subpoena. A copy of the subpoena shall be attached to the petition and shall be designated "Attachment A." Within eight calendar days after receipt or as soon as practicable, the General Counsel or Director, as appropriate, shall either grant the petition to revoke or modify in its entirety or make a proposed determination on the petition, stating reasons, and submit the petition and proposed determination to the Commission for its review and final determination. A Commissioner who has issued a subpoena shall abstain from reviewing a petition concerning that subpoena. The Commission shall serve a copy of the final determination on the petitioner.

(c) Upon the failure of any person to comply with a subpoena issued under this section, the Commission may utilize the procedures of section 11(2) of the National Labor Relations Act, as amended, 29 U.S.C. 161(2), to compel enforcement of the subpoena.

(d) If a person who is served with a subpoena does not comply with the subpoena and does not petition for its revocation or modification pursuant to paragraph (b) of this section, the General Counsel or his or her designee may institute proceedings to enforce the subpoena in accordance with the provisions of paragraph (c) of this section. Likewise, if a person who is served with a subpoena petitions for revocation or modification of the subpoena pursuant to paragraph (b), and the

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Commission issues a final determination upholding all or part of the subpoena, and the person does not comply with the subpoena, the General Counsel or his or her designee may institute proceedings to enforce the subpoena in accordance with paragraph (c) of this section.

(e) Witnesses who are subpoenaed pursuant to §1601.16(a) shall be entitled to the same fees and mileage that are paid witnesses in the courts of the United States.

[43 FR 30798, July 18, 1978, as amended at 47 FR 46275, Oct. 18, 1982; 51 FR 29098, Aug. 14, 1986; 54 FR 32061, Aug. 4, 1989; 55 FR 14245, Apr. 17, 1990; 56 FR 9624, Mar. 7, 1991; 71 FR 26828, May 9, 2006; 74 FR 3430, Jan. 21, 2009; 74 FR 63983, Dec. 7, 2009; 85 FR 65218, Oct. 15, 2020]

### § 1601.17 Witnesses for public hearings.

(a) To effectuate the purposes of title VII, the ADA, and GINA, any Commissioner, upon approval of the Commission, may demand in writing that a person appear at a stated time and place within the State in which such person resides, transacts business, or is served with the demand, for the purpose of testifying under oath before the Commission or its representative. If there be noncompliance with any such demand, the Commission may utilize the procedures of section 710 of title VII, the ADA, and GINA to compel such person to testify. A transcript of testimony may be made a part of the record of each investigation.

(b) Witnesses who testify as provided in paragraph (a) of this section shall be entitled to the same fees and mileage that are paid witnesses in the courts of the United States.

[42 FR 55388, Oct. 14, 1977, as amended at 56 FR 9624, Mar. 7, 1991; 74 FR 63983, Dec. 7, 2009]

### PROCEDURE FOLLOWING FILING OF A CHARGE

### § 1601.18 Dismissal: Procedure and authority.

(a) Where a charge on its face, or as amplified by the statements of the person claiming to be aggrieved discloses, or where after investigation the Commission determines, that the charge and every portion thereof is not timely

filed, or otherwise fails to state a claim under title VII, the ADA, or GINA, the Commission shall dismiss the charge. A charge which raises a claim exclusively under section 717 of title VII or the Rehabilitation Act shall not be taken and persons seeking to raise such claims shall be referred to the appropriate Federal agency.

(b) Written notice of disposition, pursuant to this section, shall be issued to the person claiming to be aggrieved and to the person making the charge on behalf of such person, where applicable; in the case of a Commissioner charge, to all persons specified in §1601.28(b)(3)(ii); and to the respondent. The dismissal shall include a notice of rights informing the person claiming to be aggrieved or the person on whose behalf a charge was filed of the right to sue in Federal district court within 90 days of receipt of the determination. Appropriate notices of right to sue shall be issued pursuant to §1601.28.

(c) The Commission hereby delegates authority to District Directors; the Director of the Office of Field Programs, or upon delegation, the Director of Field Management Programs, as appropriate, to dismiss charges, as limited by §1601.21(d). The Commission hereby delegates authority to Field Directors, Area Directors and Local Directors, or their designees, to dismiss charges pursuant to paragraphs (a), (b) and (c) of this section, as limited by §1601.21(d). The authority of the Commission to reconsider decisions and determinations as set forth in §1601.21 (b) and (d) shall be applicable to this section.

[42 FR 55388, Oct. 14, 1977, as amended at 48 FR 19165, Apr. 28, 1983; 49 FR 13024, Apr. 2, 1984. Redesignated and amended at 52 FR 26957, July 17, 1987; 54 FR 32061, Aug. 4, 1989; 55 FR 26684, June 29, 1990; 56 FR 9624, 9625, Mar. 7, 1991; 71 FR 26828, May 9, 2006; 73 FR 3388, Jan. 18, 2008; 74 FR 63982, Dec. 7, 2009; 85 FR 65218, Oct. 15, 2020]

### § 1601.19 No cause determinations: Procedure and authority.

(a) Where the Commission completes its investigation of a charge and finds that there is not reasonable cause to believe that an unlawful employment practice has occurred or is occurring as to all issues addressed in the determination, the Commission shall issue a determination to all parties to the