



**Washington Lawyers' Committee for Civil Rights and Urban Affairs
Judiciary and Public Safety Performance Oversight Testimony**

My name is Dennis Corkery and I am a Staff Attorney at the Washington Lawyers' Committee for Civil Rights and Urban Affairs. At the Committee, I handle claims of employment discrimination and wage and hour violations, often guiding employees in D.C. through the administrative complaint process at the D.C. Office of Human Rights (OHR) and other enforcement agencies, such as the United States Equal Employment Opportunity Commission (EEOC). The Committee has been able to foster positive and collaborative relationships with OHR and, particularly because our work relies on the efficient processing of charges of discrimination, we are pleased to offer our perspective about our clients' experiences with the agency.

Our organization fields roughly one hundred employment-related intakes per month and, as we investigate their claims, we often encourage potential clients to begin their administrative complaint process at the EEOC or OHR or help them navigate this process if they have already begun. Our clients' experiences have shown us that, although OHR often helps resolve issues of discrimination, there are areas where the agency must improve in order to fulfill its goals as an agency.

Most importantly, OHR can cause individuals to forego their statutory rights to pursue claims under both Federal law and the D.C. Human Rights Act (the HRA) in a number of ways. It is important to note that unless complaints adhere to the very strict deadlines¹ and charge crafting requirements² of federal employment discrimination law, they will forgo their chance to pursue their federal claims.

First, complainants are often inadequately informed of relevant deadlines. In fact, OHR's website conflates the HRA's statute of limitations of one year³ with the three hundred day federal deadline.⁴ Furthermore, some courts take the position that federal claims are tolled when complainants sign their formal charge, not when they submit their intake questionnaire.⁵ Nevertheless, the OHR website misleadingly assures complainants that submitting an intake questionnaire "serves to preserve all rights under the statute of limitations."⁶

Although the OHR website advises D.C. government employees of other deadlines specific to their employment claims,⁷ it fails to inform them about the 12-309 requirement to submit a Notice of Claim to the Office of the Mayor within six months.⁸

Additionally, OHR does not adequately inform complainants of their rights under HRA. Although, under federal law, the completion of the administrative process creates a private cause of action,⁹ the HRA extinguishes the ability for complainants to go court once OHR issues its finding unless the complainant has been withdrawn in time.¹⁰ This very important difference and the right of complainants to go to Superior Court without engaging with the OHR process at all, however, is never explained by OHR.

Even if they do not miss their administrative complaint deadline, complainants face other obstacles at OHR in the process of asserting their federal rights. In the majority of claims we see processed by OHR, there are significant differences between the content of the intake questionnaire composed by the complainant and the formal charge that is produced by OHR; in fact, for one of our current clients, an adverse employment action cited in her questionnaire was entirely omitted in her charge, an error that threatened to limit the claims she could ultimately bring under federal law. Unlike the EEOC, the OHR refuses to accept charges that complaints or their counsel have written. In one instance, I asked an investigator who was drafting a charge for one of our clients and asked her to include a few words that federal law requires if she was to later bring the case as a class action. The investigator, after checking with her superiors, refused to include that language because it did not relate to an OHR investigation.

In light of these issues, the Committee recommends that OHR make three major changes to its intake and investigation processes.

- First, the Committee encourages the agency to better inform complainants of administrative deadlines associated with federal statutes.
- Second, we recommend that the HRA's choice of remedies provision is explained fully when complainants approach the OHR.
- Finally, we encourage the agency to allow complainants to submit their own formal charges of discrimination by mail, email, or in person.

As noted before, we believe that OHR already makes significant contributions to resolving issues of discrimination in the District. However, we also believe that making the aforementioned improvements would aid the agency in more effectively carrying out its stated goals.

¹ See, e.g., *AMTRAK v. Morgan*, 536 U.S. 101, 109 (2002) (in order to bring a suit “[a]n individual must file a charge within the statutory time period” of 300 days).

² E.g., *Park v. Howard Univ.*, 71 F.3d 904, 907 (D.C. Cir. 1995) (citing *Cheek v. W. & S. Life Ins. Co.*, 31 F.3d 497, 500 (7th Cir. 1994) (holding that claims encompassed in a lawsuit must be “limited in scope to claims that are ‘like or reasonably related to the allegations of the charge and growing out of such allegations’”).

³ D.C. Code § 2-1403.04.

⁴ See *AMTRAK*, *supra*.

⁵ *Peterson v. Archstone*, 925 F. Supp. 78, 85 (D.D.C. 2013) (finding questionnaires may only serve as charges if they clearly ask the investigating agency to act).

⁶ <http://ohr.dc.gov/complaints>

⁷ <http://ohr.dc.gov/complaints/process>

⁸ D.C. Code § 12-309.

⁹ See *AMTRAK*, *supra*.

¹⁰ D.C. Code § 2-1403.04.