



# LOS ANGELES CITY EMPLOYEE RELATIONS BOARD

## UNFAIR EMPLOYEE RELATIONS PRACTICE

### CLAIMS & PROCEDURES

#### *A STEP-BY-STEP GUIDE*

This Guide outlines the requirements and procedures for filing and processing Claims of Unfair Employee Relations Practice (“UERP”) by an individual employee, a group of employees, an employee organization, or an employer within the jurisdiction of the Los Angeles City Employee Relations Board (“ERB” or “Board”). It is not intended to discourage the filing of such Claims; rather, its purpose is to explain how UERP Claims are processed to individuals who may be unfamiliar with the complex and time-consuming procedures that are required.

This Guide does not modify any provision of the Los Angeles City Employee Relations Ordinance (“Ordinance” or “ERO”), which is § 4.860 through § 4.890 of the Los Angeles Administrative Code, or of the Employee Relations Board’s Rules (“Rules”). Copies of the Ordinance and the Rules are available from the Board’s office or may be downloaded from the Board’s website at <http://erb.lacity.org>.

#### **1. Representation for Claims of UERP.**

The ERB does not provide representation for parties that file UERP Claims (called the “Claimant” or “Claimants”) or for the party or parties against which the Claim is filed (called the “Respondent” or “Respondents”). Although the ERB’s Executive Director can assist with the preparation and filing of the Claim, Claimants are responsible for their own representation throughout the UERP process. Claimants may choose to represent themselves, have someone else represent them, or retain an attorney or other professional advocate for that purpose. However, if the Claim is filed by an individual employee or group of employees, neither the ERB, the City, the Claimant’s Department, nor any employee organization or union is legally obligated to provide such representation. Please note that the proceedings outlined in this Guide can take a year or more to complete.

#### **2. No Mandatory Paid Time Off for UERP Claims.**

Nothing in the ERO entitles a Claimant to paid time off to file or pursue a UERP Claim, and it is the Board’s understanding that it is the City’s policy not to grant paid time off to employees for these purposes. Claimants therefore may be required to use accumulated leave or take time off without pay to file and pursue a UERP Claim.

## **UNFAIR EMPLOYEE RELATIONS PRACTICE CLAIMS & PROCEDURES**

### **3. Unfair Employee Relations Practices Defined.**

Not every wrong that occurs in the workplace constitutes an Unfair Employee Relations Practice within the meaning of the law. Rather, a UERP is a violation of the rights of a regular employee, an employee organization, or management under the ERO. UERP Claims are governed by § 4.860 (a) and (b) of the Ordinance. Please note that grievances generally do not constitute UERPs.

### **4. Standing to File a UERP Claim with the ERB.**

UERP Claims may be filed by an employee organization, an individual regular employee within the meaning of § 4.801 of the ERO, a group of such employees, or by management. Persons not covered by the Ordinance may not file a UERP Claim.

### **5. Forms for Filing UERP Claims.**

UERP Claims must be filed on forms provided by the Board, specifically an ERB-3 form for Claims against management or an ERB-4 form for Claims against an employee organization. The Claimant must file an original and eight copies of a Claim with the ERB and simultaneously serve one copy of the Claim directly on each Respondent.

The UERP Claim forms are available from the Board's office or may be downloaded from the ERB's website at <http://erb.lacity.org/erbfm.htm>.

### **6. Time Limit for Filing a UERP Claim.**

A UERP Claim must be filed within 90 days of the date on which the Claimant became aware of, or should have known of, the act or conduct on which the UERP Claim is based. That time limit can be extended by the Board in certain circumstances.

### **7. The Burden of Proof.**

The Claimant bears the initial burden of proof that the ERO has been violated. The Claimant must establish by at least a preponderance of the evidence (i.e., that it is more likely than not) that the Respondent or Respondents engaged in the acts alleged in the Claim and that those acts constitute a violation of the Ordinance.

### **8. Review by the ERB's Executive Director.**

The Board's Executive Director will review every UERP Claim to assure that it complies with the ERO and the ERB's Rules. The Executive Director will determine whether the Claim states a "prima facie" case, meaning the facts alleged in the Claim, if proved, would constitute a violation of the Ordinance. If the Executive Director determines that the Claim as submitted does not provide sufficient information to establish a possible violation of the ERO, the Claimant may be asked to provide additional information or to amend the Claim. The Executive Director may also reject a UERP Claim for failure to state a violation of the Ordinance.

### **9. Appeal of Executive Director's Decision.**

If the Executive Director rejects the Claim, the Claimant may appeal that decision to the Board by filing a written request for such review, which will be placed on the agenda for consideration by the ERB at a regular monthly meeting. At that meeting the Claimant will be permitted to address the Board to argue why the UERP Claim should not be rejected.

## UNFAIR EMPLOYEE RELATIONS PRACTICE CLAIMS & PROCEDURES

If the Board agrees, the Claim will be processed in accordance with these procedures. If it agrees with the Executive Director's analysis, the Claim will be dismissed without further processing.

### **10. Mandatory Meeting with Charged Party.**

The Claimant is required to meet with the Respondent within 14 calendar days from the date on which the UERP Claim was filed to review and discuss the Claim and to try to resolve it. The 14-day period may be extended by mutual agreement between the Claimant and the Respondent, or by the ERB's Executive Director for good cause. A Claimant's failure or refusal to meet with the Respondent may constitute grounds for dismissal of the Claim.

### **11. Response to the UERP Claim.**

If the UERP Claim remains unresolved after the 14-day meeting between the parties, the Respondent must submit a written Response to the Claim explaining why it believes the Claim should be denied in whole or in part. The Response must be submitted to the ERB and to the Claimant within 21 calendar days from the date on which the Claim was filed unless the Claimant agrees to a longer period or ERB's Executive Director grants an extension for that purpose; if the time for the 14-day meeting was extended, the time for the Response will be extended automatically.

### **12. Preliminary Consideration by the Employee Relations Board.**

The UERP Claim and the Response to it will be scheduled for preliminary consideration by the Board at one of its regular monthly meetings. Copies of the Claim and Response will be provided to the Board Members about a week before the meeting to allow them time to review the documents. At the Board meeting both the Claimant and the Respondent will have an opportunity to address the Board to further explain their positions, and the Board Members may ask questions of them. After hearing the parties' presentations, the Board Members will discuss the matter among themselves, in open session, and decide whether to send the UERP Claim to hearing or to dismiss it without a hearing. On rare occasions the Board may issue an immediate order, finding that a violation of the ERO occurred and directing the Respondent to take appropriate corrective action. A Claim will be dismissed if the Board determines that the facts alleged do not constitute a violation of the law, because the violation is insignificant ("de minimis"), because the violation has been corrected and the matter is therefore moot, or for other valid reasons.

### **13. Deferral to Arbitration**

If the allegations raised in a UERP Claim are also subject to the grievance and arbitration procedures established in a Memorandum of Understanding ("MOU"), or if the UERP Claim requires the interpretation of the terms of an MOU, the ERB may defer the matter to arbitration. That is, the UERP Claim will be held in abeyance until the parties have completed the contractual grievance and arbitration process; if the Board then determines that the decision of the arbitrator addresses and correctly resolves the matter, the UERP Claim may be dismissed without further processing. Similarly, if the matter in dispute was decided by an arbitrator prior to the filing of the UERP Claim, the ERB may dismiss the Claim on that basis.

## **UNFAIR EMPLOYEE RELATIONS PRACTICE CLAIMS & PROCEDURES**

### **14. The Hearing Officer & Court Reporter.**

If the ERB sends a UERP Claim to hearing, it will select and appoint a Hearing Officer to conduct the hearing and to prepare a Report and Recommendation(s) to the Board. The Board will also arrange for a Court Reporter to attend the hearing and to prepare a written verbatim transcript of the proceedings and testimony. The services of the Hearing Officer, who is a professional neutral with expertise in labor law, and of the Court Reporter will be paid by the Board. The Claimant and the Respondent will be allowed to review a copy of the transcript in the ERB's office, or they may purchase a copy from the Court Reporter.

### **15. Mediation of UERP Claim.**

If the Board sends the UERP Claim to hearing, it may also direct the Claimant and the Respondent to participate in mediation to attempt to resolve all or part of the Claim prior to the hearing. The mediation may be conducted by a Mediator from the California State Mediation & Conciliation Service or by the ERB's Executive Director; an ERB Board Member or the Hearing Officer may serve as the Mediator if the parties both agree not to challenge that person's neutrality if the matter is not settled and proceeds to hearing. There is no charge to the parties for mediation by any of these individuals.

### **16. Hearing Dates.**

The Board's staff will contact the Hearing Officer, the Claimant, and the Respondent to schedule a mutually convenient hearing date or dates. The hearing may not be held for several months, however, due to the limited availability of the Hearing Officer, the parties, and/or their representatives. Many UERP hearings are completed in one day, although some take considerably longer. The Claimant and the Respondent or their representatives will be required to attend every day of the hearing.

### **17. Amendments & Withdrawals of UERP Claims.**

The ERB or the Hearing officer may allow a party to amend a UERP Claim or a Response to the Claim at any time. The Claimant may withdraw the Claim with the approval of the Board, although if the withdrawal is without the concurrence of the Respondent, it will be "with prejudice," meaning that the Claimant cannot then file a new charge based on the same facts.

### **18. The Hearing.**

A UERP hearing is very much like a trial in civil court, although somewhat less formal. The Hearing Officer's role is very similar to that of a judge. He or she will hear the parties' arguments, listen to and assess the testimony of witnesses, review documents and other evidence, and make rulings on motions, objections, and the admissibility of evidence. Because it bears the burden of proof, the Claimant usually will be required to present its case first at every phase of the hearing.

The Claimant and the Respondent will be expected to make opening statements, briefly explaining their positions to the Hearing Officer. Each party will then have an opportunity to call witnesses to testify under oath regarding relevant facts and to authenticate documents and other evidence; each witness will be subject to cross-examination by the opposing party. After the Claimant's presentation has been completed, the Respondent will be given an opportunity to present its evidence and witnesses. When the Respondent has

## **UNFAIR EMPLOYEE RELATIONS PRACTICE CLAIMS & PROCEDURES**

completed its case, the Claimant will have an opportunity to call additional witnesses and present additional evidence to rebut the Respondent's arguments, and the Respondent will then have an opportunity to rebut that testimony and evidence. This will continue until both parties are satisfied that they have had a full and adequate opportunity to present all relevant testimony and evidence, subject to the discretion of the Hearing Officer.

### **19. Post-Hearing Briefs.**

In some instances the Hearing Officer will permit the parties to argue orally at the conclusion of the hearing, summarizing the relevant evidence and explaining why the UERP Claim should be sustained or denied. Generally, however, the Hearing Officer will direct the parties to submit post-hearing briefs within 30 days or more of the receipt of the Court Reporter's transcript of the hearing. Briefs are written arguments summarizing the testimony and evidence and citing applicable statutes and case law in support of a party's position. A copy of each party's brief must be sent to the Hearing Officer and to the opposing party.

### **20. Reply Briefs.**

In some cases the Hearing Officer may allow the parties to submit reply briefs to respond to the arguments raised in the opposing party's opening brief. When reply briefs are permitted, they are generally due within 30 days of the receipt of the opening briefs.

### **21. The Hearing Officer's Report & Recommendations.**

After receiving the transcript and parties' briefs, the Hearing Officer will prepare a written Report and Recommendation(s) for the Board's consideration. The Report is usually submitted to the ERB within 30 to 60 days from the Hearing Officer's receipt of the parties' briefs. In the report, the Hearing Officer will summarize the evidence and testimony, cite applicable law and explain how it applies to the case, make findings of fact and conclusions of law, and recommend a decision to the Board. The Hearing Officer may recommend that the ERB dismiss the Claim, or that it find that the law was violated and that it order an appropriate remedy for each such violation.

### **22. Consideration of the Hearing Officer's Report.**

Upon receipt of the Hearing Officer's Report & Recommendations, the ERB will provide a copy to both parties and schedule the matter for consideration at a Board meeting.

### **23. "Exceptions" to the Hearing Officer's Report.**

Written Exceptions to the Hearing Officer's Report and Recommendations may be filed by either party to argue that the ERB should overrule the Hearing Officer and reach a different conclusion. Exceptions must be filed with the Board no later than 21 calendar days prior to the date on which the Board is scheduled to consider the Hearing Officer's Report and Recommendations. A copy of each party's exceptions must be sent to the opposing party.

### **24. Rebuttal to Exceptions.**

Either party may file a written Rebuttal to the opposing party's Exceptions. Rebuttals must be filed with the Board no later than 14 calendar days prior to the Board's scheduled consideration of the Hearing Officer's Report and Recommendations. A copy of each party's Rebuttal must be sent to the opposing party.

## UNFAIR EMPLOYEE RELATIONS PRACTICE CLAIMS & PROCEDURES

### **25. Consideration of the UERP Claim by the ERB.**

Copies of the Hearing Officer's Report and Recommendations, any Exceptions to the Report, and any Rebuttals to the Exceptions will be sent to the Board Members for their review about a week prior to the Board meeting at which the matter is to be considered. At that meeting, each party will be given an additional opportunity to address the Board, summarizing their position and arguing in support of or against the Hearing Officer's findings and recommendations. The Board may ask questions of the parties. The Board Members will then discuss the matter among themselves, in open session, and attempt to reach consensus on whether to adopt the Hearing Officer's Report & Recommendations in whole or in part, to overturn the Hearing Officer's Report & Recommendations, or to take some other appropriate action to correct any proven violations of the Ordinance. In some cases the Board may ask the Hearing Officer to clarify or modify his or her Report & Recommendations before reaching its final decision.

### **26. The Board's Written Decision.**

The Board's Executive Director will prepare a draft Decision and Order summarizing the Board's action. The draft will be scheduled for consideration at a regular monthly Board meeting. A copy of the draft will be provided to the parties prior to that meeting at which the matter is to be considered so that they may submit written comments or address the Board orally at the meeting. If the Board adopts the Executive Director's draft Decision and Order, with or without modification, it will be published and provided to all interested parties.

### **27. Posting of an Order.**

The Board may direct the Respondent to post a copy of the Board's written order in all locations where affected employees work.

### **28. Appeals of the ERB's Decision and Order.**

Decisions of the Employee Relations Board regarding UERP Claims are final and binding on all parties, subject to appeal by either party to the California Court of Appeals and ultimately to the California Supreme Court.

---

### **EMPLOYEE RELATIONS BOARD**

200 North Main Street  
Room 1100 – City Hall East  
Los Angeles, California 90012  
Telephone: (213) 473-9700  
Fax: (213) 473-7751  
<http://www.erb.lacity.org/>