

June 18, 2018

SCHAC Administrative Interpretation 2

Subject: The “one year” statute of limitations found in S.C. Code Ann. §31-21-140(A) is only applicable to an Aggrieved Party bringing a private action without first seeking an administrative remedy from the Commission. Those who choose to file a complaint with the SC Human Affairs Commission, and the Commission itself, are not subject to the same statute of limitations.

Summary: Aggrieved Parties that do not file complaints through SC Human Affairs Commission are subject to the statute of limitations found in S.C. Code Ann. §31-21-140(A). Aggrieved Parties that file complaints through SC Human Affairs Commission are subject to the statute of limitations found in S.C. Code Ann. §31-21-130(C)(2) and at S.C. Code Regs. §65-220(H)(4). The SC Human Affairs Commission is not beholden to either set of statute of limitations due to existing obligations to Fair Housing Law.

Discussion: Fair Housing Law provides options for Aggrieved Parties to have their matter adjudicated. Aggrieved Parties may file a private lawsuit directly in court, or they may file a charge with the Commission first. Aggrieved Parties who file Complaints via a private lawsuit are subject to the one-year statute of limitations identified by S.C. Code Ann. §31-21-140(A). However, Aggrieved Parties that select to file a charge with the Commission are not subjected to the same statute of limitations under the Fair Housing Law. Indeed, the Commission’s regulations contemplate a tolling of the year-long statute of limitations throughout the pendency of the Commission’s investigation. See S.C. Code Reg. §65-220(H)(4). This tolling is necessary due to various expectations and related deadlines for the Commission found in the South

Carolina Fair Housing Law and regulations¹. Because of these various legal requirements on the Commission's investigatory process, the Commission may occasionally require more than a year from the date of an alleged violation to complete an investigation, which would illogically result in barring the Aggrieved Party from a private right to sue. Therefore, both the Commission's promulgated regulations and this official interpretation provide that Aggrieved Parties who choose to file complaints with the Commission are not subject to the same statute of limitations that would apply to private lawsuits filed by any Aggrieved Party who has not sought relief through the Commission. Additionally, the "one-year" statute of limitations rule does not apply to administrative hearings or suits filed by the Agency pursuant to the mandate in S.C. Code Ann. § 31-21-130(C)(2).

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¹ See for example, the 180 deadline for an aggrieved party to file a complaint found at S.C. Code Ann. §31-21-120 (B); the agency's 100 day investigation deadline (which may be extended when necessary) at S.C. Code Ann. §31-21-120 (E); the agency's one year deadline to reach a final administrative decision following a complaint being filed (which may be extended when necessary) at S.C. Code Ann. §31-21-120 (F); the time for parties to elect for the Agency to commence and maintain a civil action, following a reasonable cause determination, found at S.C. Code Ann. §31-21-130 (C)(2); the computation of this one year statute for complainants excludes any time during which a proceeding is pending under the Fair Housing Law with respect to a complaint or charge based on the alleged discriminatory housing practice per S.C. Code Reg. § 65-220(H)(4).