

# Guide for Individuals Filing an Unfair Labor Practice Charge on Their Own Behalf under the State Employment Relations Act

## PERB'S LAW & RULES

This is a tool for private sector employees only. If you are an employee of the State of New York or other public employer (such as a county, city, town, village, school district, a public authority, commission, or public benefit corporation), PERB may be able to hear your claim, but under the Taylor Law, not the State Employment Relations Act. Public employees can bring charges under the Taylor Law, but you need to file on a different form. You can find that form [here](#).

If you are thinking about filing a charge with the Public Employment Relations Board (“PERB”):

You can read the State Employment Relations Act (“SERA”) (Article 20 of the Labor Law, as amended), at: <https://www.perb.ny.gov/new-york-state-employment-relations-act/>. Under the SERA, PERB only has jurisdiction over certain claims, certain private sector employees (such as farm laborers), and certain private sector employers (such as agricultural employers). Reading the law will help you decide if you have a claim that you can file with PERB.

- PERB cannot hear claims of employment-related discrimination based on race, creed, color, national origin, sexual orientation, military status, sex, age, marital status, disability, or familial status. You may have a claim that can be heard by the New York State Division of Human Rights. <https://dhr.ny.gov/complaint>.
- Your charge must allege a violation of the State Employment Relations Act (Article 20 of the Labor Law). We encourage you to read the State Employment Relations Act in full, which is available on our website at <https://www.perb.ny.gov/new-york-state-employment-relations-act/>.
  - Unfair labor practices by an **employer** are defined in Section 704 of the State Employment Relations Act.
  - Additional unfair labor practices by an **agricultural employer** are defined in Section 704-b of the State Employment Relations Act.
  - Unfair labor practices by a **farm laborer** or an **employee organization** representing farm laborers are defined in Section 704-b of the State Employment Relations Act.

You can research PERB’s SERA Rules of Procedure (“Rules”) at: <http://www.perb.ny.gov/sera-rule/>. The Rules describe the procedures for filing an unfair labor practice charge with PERB. See Part 252 for the Rules covering non-FLFLPA Unfair Labor Practices, and Part 263.34 – 263.45 for FLFLPA Unfair Labor Practices.

## **FILING A CHARGE**

If you decide to file an unfair labor practice charge, the form is available on our website at: <http://www.perb.ny.gov/wp-content/uploads/2020/02/ULPC-A.pdf>.

Please read and follow the instructions on the form carefully. Here are some tips to help you complete the form fully and accurately.

- **Items 1 to 7** – Fill out as clearly and completely as possible.
- **Item 8** – VIOLATIONS ALLEGED and DETAILS OF ALLEGED VIOLATION(S): Identify the specific subsections of the State Employment Relations Act that you are alleging have been violated.
  - Here you should state the facts of your case, preferably in numbered or lettered paragraphs. Tell us what happened, how it harmed you, and why you believe it violated the State Employment Relations Act. You should include the names, and, where known or relevant, the titles and work locations of the individuals involved in the alleged unfair labor practice(s), the DATE and the place of the occurrence of each particular act alleged, and the particular actions constituting each alleged violation.
  - You may attach exhibits and other documents, but you must label and explain each exhibit and document. Your statement may NOT consist solely of attachments.

## **WHAT HAPPENS AFTER I FILE MY CHARGE?**

Your charge will be assigned a case number. Always use this number when writing or calling PERB.

The Director of Public Employment Practices and Representation (“Director”) will review your charge and any documents you submit. The Director will determine whether the facts you allege may constitute an unfair labor practice as set forth in section 704 and/or 704-b of the State Employment Relations Act.

If the Director determines that the facts you allege MAY constitute an unfair labor practice, she will assign your case to an administrative law judge for processing, and you will receive a Notice of Conference that contains information about the next steps. **Such an assignment does not mean that the Director has found that an unfair labor practice has occurred, and the other party or parties will have the opportunity to reply to your allegations.**

If the Director determines that the facts you allege do not, as a matter of law, constitute a violation, the Director may dismiss the charge. If the Director dismisses your charge, you may appeal her decision by filing exceptions with the Board. Part 253.48 of the Rules covers filing exceptions with the Board concerning non-FLFLPA matters, and Part 263.67 covers filing exceptions for FLFLPA matters.

Alternatively, the Director may allow you to amend your charge to fix such deficiency in the charge. If the deficiency is not cured, the director may dismiss the charge or deem the charge, or any part thereof, withdrawn. All amended charges must be SIGNED. Attachments included with your original charge need not be resubmitted.