

Office of Fair Practices

Discrimination Complaint Procedure

Department of Labor, Licensing and Regulation

.01 PURPOSE

- A. The Department of Labor, Licensing and Regulation (DLLR) recognizes that legitimate problems, differences of opinion, complaints and grievances will exist in the daily relationship between DLLR as an employer and its employees or applicants for employment and beneficiaries of departmental services. It is the responsibility of administrators, supervisors, program directors, appointing authorities and employees to establish and maintain a climate conducive to equal opportunity and within which employee problems or complaints relating to or arising out of discrimination in employment or in the delivery of services on the basis of ancestry, race, color, creed, religion, political affiliation or belief, sex, sexual orientation, national origin, age, marital status, physical or mental disability, citizenship of beneficiaries or status as a WIOA participant are promptly identified, discussed and given fair and timely consideration.
- B. This directive provides standardized procedures for the filing and processing of complaints against an employee, policy of or program operated by, through, or funded by DLLR alleging discrimination in employment or in the delivery of services.

.02 REFERENCES

- A. Civil Rights Act of 1964, Titles VI and VII, as amended, Pub. Law 88-352, 78 Stat. 252 (42 U.S.C., §2000)
- B. Maryland Code of Fair Employment Practices Act (Title 20 – formerly Article 49B the Annotated Code of Maryland)
- C. Governor's Code of Fair Employment Practices, Executive Order 01.01.2017.16
- D. Age Discrimination in Employment Act of 1967, as amended, Pub. Law 90-202, (29 U.S.C, §621 et seq.)
- E. Age Discrimination Act of 1975, as amended, Pub. Law 94-135, 89 Stat. 728 (42 U.S.C., §6101)
- F. Rehabilitation Act of 1973, as amended, Section 504, Pub. Law 93-112, 87 Stat. 390 (29 U.S.C 794)
- G. §5-211 of the State Personnel and Pensions Article
- H. Workforce Innovation and Opportunity Act
- I. 29 CFR §30, §31, §32, and §38

- J. Title IX of the Education Amendments of 1972, as amended, Pub. Law 92-318, 86 Stat. 373 (20 U.S.C. §1681, et seq.)
- K. Civil Rights Act of 1991, P.L. 102-166
- L. Americans with Disabilities Act of 1990, as amended, Pub. Law 101-336, 104 Stat. 337 (42 U.S.C. §12101 et seq.)
- M. Americans with Disabilities Act Amendments Act of 2008, Pub. Law 110-325, 122 Stat 3553 (42 U.S.C. §12101 et seq.)
- N. DLLR Non-Discrimination Policies

.03 POLICY

- A. It is the policy of DLLR not to discriminate in its employment practices or in the delivery of services provided by or through any program or activity under its authority.
- B. Through this complaint process, any DLLR employee, applicant, client, claimant or other beneficiary may file a complaint against DLLR or a DLLR activity or program alleging discrimination in employment or in the delivery of services.
- C. Any employee, applicant for employment, client, claimant or beneficiary seeking service(s) has the right to present his or her complaint through this procedure free from interference, coercion, restraint, discrimination or retaliation.
- D. The complainant has the right to representation at any stage in the consideration of the complaint.
- E. Where appropriate, the individual assigned the complaint shall make every effort to resolve the complaint at the lowest possible level (refer to the Mediation Procedure).
- F. All Department employees involved in the processing, investigation and/or resolution of the complaint shall treat confidentially (except to the extent necessary to carry out the provisions of this procedure) all phases of the complaint process, including the identity of the complainant and respondent.
- G. Program directors and administrators shall make all appropriate records, files and Department employees available to the appropriate enforcement agency, or the DLLR Office of Fair Practices (OFP) during the course of investigating or attempting to resolve a complaint.

- H. Any DLLR employee who interferes with the implementation of this directive shall be appropriately disciplined.

#### .04 DEFINITIONS

- A. As used in this directive, the following terms are defined as indicated.

- B. Terms Defined

- (1) Complaint means a written statement that alleges a violation of the nondiscrimination provisions of those mandates that govern the activities of DLLR.
- (2) Complainant means the person(s) filing a complaint of alleged discrimination or on whose behalf a complaint is filed.
- (3) Department means the Maryland Department of Labor, Licensing and Regulation, its subdivisions and programs.
- (4) Discrimination in employment means any action in hiring, promotion, reclassification, discharge, suspension or any other personnel action with this Department that limits, segregates or otherwise adversely affects an employee's or applicant's status, financial compensation, benefits or dignity on the basis of ancestry, race, color, creed, sex, sexual orientation, national origin, age, political affiliation, religion, marital status, citizenship, or mental or physical disability or because of other non-merit factors except where such factors can be proven to be bona fide occupational qualifications.
- (5) Discrimination in service means any action in providing service to a claimant, client or other beneficiary of this Department (individual or corporation) that limits, segregates or otherwise adversely affects the service or benefits received or the dignity of the individual on the basis of race, color, sex, national origin, age, religion, political affiliation, citizenship, mental or physical disability or status as a WIOA participant (where applicable) except where such factors are bona fide eligibility criteria for that particular service.
- (6) Fair Practices Officer means the individual appointed by the DLLR Secretary who is charged with the implementation of DLLR's Affirmative Action Program and the promotion of nondiscrimination within DLLR as

specified in the Governor's Code of Fair Employment Practices and §5-207 of the State Personnel and Pensions Article.

- (7) No Probable Cause means that based on a review of the evidence, there is no reason to believe that the respondent was engaged in the alleged discriminatory act(s).
- (8) Probable Cause means that based on a preponderance of the evidence, there is reason to believe that the respondent was engaged in the particular alleged discriminatory act(s).
- (9) Respondent means the individual, program or activity against whom a complaint of discrimination is filed.
- (10) WIOA means the Workforce Innovation and Opportunity Act any entity to which WIOA funds are extended either directly or indirectly including State Employment Security Agencies.

#### .05 SCOPE

- A. The jurisdiction of this Department extends to any complaint in which an act of discrimination is alleged to have been committed by an employee or agent of this Department in the course of that individual's duties with the Department or when discrimination has allegedly occurred as a result of a policy or procedure of this Department.
- B. The individual receiving a complaint that is not within the jurisdiction of this Department shall refer the complaint in accordance with the Directive - Jurisdiction of Agencies.
- C. The individual receiving a complaint in writing that is not within the jurisdiction of this Department shall notify the complainant in writing that DLLR has no jurisdiction and shall make the appropriate referral(s).

#### .06 RESPONSIBILITIES

##### A. Fair Practices Officer

The Fair Practices Officer has the overall responsibility for the implementation of and compliance with this procedure within DLLR and, where specified, makes recommendations to the Secretary with regard to the final departmental resolution and disposition of complaints of alleged discrimination.

B. Director Office of Fair Practices

The OFP Director is responsible for overseeing the application of this directive and for providing related consultation, technical assistance and training to other appropriate DLLR personnel in carrying out their responsibilities under this directive. The OFP Director is responsible for the receipt, processing and coordination of all complaints and for monitoring the implementation of appropriate settlement agreements.

C. DLLR Administrators

All administrators and supervisors are responsible for advising employees under their supervision and applicants for service of the existence of this directive and for assuring cooperation in the implementation of this directive.

D. DLLR Principal Counsel

The Principal Counsel for the Department interprets relevant legal principles and represents the Department before enforcement agencies receiving complaints of discrimination filed against the Department, for example - the federal Equal Employment Opportunity Commission (EEOC) or the Maryland Commission on Civil Rights (MCCR). The Principal Counsel may also assist in the preparation of settlement agreements.

E. Director of the DLLR Office of Human Resources

The Director of the Office of Human Resources carries out relevant merit system provisions; assists in the preparation and implementation of settlement agreements; and compiles requested personnel related data with regard to the complaints filed with EEOC, MCCR or other fair employment agencies.

07. **FILING A COMPLAINT OF DISCRIMINATION**

A. Who may file

- (1) Any employee of DLLR who feels that he or she has been subjected to unlawful discrimination in any term, or condition or privilege of that individual's employment;
- (2) Any applicant for employment with DLLR,
- (3) Any applicant for, client, claimant or other beneficiary of or participant in any program or service provided or funded by or through DLLR, or

- (4) Any individual or group/class of individuals who believes that the individual or the group/class has been subjected to discrimination prohibited by those nondiscrimination mandates governing DLLR's operation.

B. Right to File

- (1) No employee, applicant for employment, claimant or client (individual or organization) seeking service or assistance from DLLR or any participant in any DLLR program may be subjected to threat, abuse, restraint, intimidation, harassment, interference, coercion, discrimination or retaliation for filing a complaint of alleged discrimination or for participating in a complaint investigation.
- (2) Any alleged violation of B (1) shall be investigated and handled in accordance with this procedure.

C. How to File

- (1) The complaint should be filed promptly but not later than 180 days of the alleged discriminatory act, within 180 days of the complainant's knowledge of the act, or in the case of a continuing pattern of discrimination, within 180 days of the most recent act that appears to perpetuate the alleged pattern (30 days if filed under §5-211 of the State Personnel and Pensions Article).
- (2) The complaint shall be in writing and contain: the complainant's name and address, the name and address of the person (or other means of contacting the complainant), office, agency or program against whom/which the complaint is filed, a clear concise description of the act(s) considered to be a violation and must be signed by the complainant or the complainant's authorized representative.
- (3) The complaint may be filed with the Fair Practices Officer, the OFP Director, or the Human Resources Director.
- (4) The Department shall not deny the complainant an investigation if it can be shown that an administrative procedure or circumstance(s) beyond the complainant's control prevented the filing of the complaint within the time limitation as stated in this directive.

D. Right to File With Enforcement Agencies

- (1) By filing a complaint alleging discrimination with the Department, the complainant in no way relinquishes the right to seek redress through the Maryland Commission on Civil Rights, the federal Equal Employment Opportunity Commission, the U.S. Department of Labor's (DOL) Civil Rights Center (CRC), local fair employment agencies or take action through the courts or other appropriate State and federal enforcement agencies.
- (2) The individual assigned the complaint shall advise the complainant of the right to file with other appropriate enforcement agencies.

E. Withdrawal of Complaint

- (1) The complainant may request to withdraw the complaint of discrimination at any time during the process by submitting a written request to the Fair Practices Officer or the OFP Director or the individual assigned the complaint.
- (2) The complainant must certify that this withdrawal is not made as a result of threat, abuse, restraint, intimidation, harassment, interference, coercion, discrimination or retaliation.
- (3) As appropriate, the Fair Practices Officer or the OFP Director shall notify other enforcement agency(s) of the withdrawal of the complaint.
- (4) If the Fair Practices Officer or the OFP Director has reason to believe that the complaint is being withdrawn for any of the reasons stated in E(2) above, the Director or Fair Practices Officer may elect to continue the investigation.
- (5) If the Fair Practices Officer or the OFP Director has reason to believe that it would be inappropriate or inadvisable to discontinue the investigation, Director or Fair Practices Officer may elect to continue the investigation.
- (6) The Director or the Fair Practices Officer shall document the reasons why it has been determined that the investigation should be continued - that threat, abuse, restraint, intimidation, harassment, interference, coercion, discrimination or retaliation caused the complainant to withdraw the complaint; or other compelling reasons.

.08 PROCESSING A COMPLAINT OF DISCRIMINATION

This section describes appropriate steps for the receipt, assignment, investigation and resolution of a complaint alleging discrimination against a DLLR employee or a DLLR program or activity.

A. Receipt and Assignment

- (1) Local offices and administrative units receiving complaints shall refer the complaint to the OFP Director.
- (2) The OFP Director shall assign complaints received directly from a complainant to an OFP staff member for processing.
- (3) The Director or OFP staff member assigned the complaint shall:
  - (a) Determine the appropriate jurisdiction;
  - (b) Document the complaint on the appropriate complaint form(s) and logs;
  - (c) Place a copy of the complaint in the appropriate office/unit complaint file. **Complaint forms and related documents are to be maintained in a separate file and are not to be filed in employee or beneficiary personnel or benefit files.**
  - (d) For complaints that are determined to be under the authority of DLLR, complete the appropriate DLLR complaint form(s) attached to this directive.
  - (e) Furnish a copy of the written complaint to the complainant and the respondent;
  - (f) Forward a copy of the complaint to the OFP Director and appropriate departmental administrators; and
  - (g) Acknowledge receipt and advise the complainant in writing of additional filing right(s) with other appropriate local, State or federal enforcement agencies.

In addition to other filing rights, where appropriate,

- (i) Employees, beneficiaries of or participants in WIOA funded programs (including all programs of the DLLR

Division of Workforce Development) shall be advised of their right to file with the DOL Civil Rights Center (CRC) (located at 200 Constitution Avenue, N.W. Suite N4123, Washington, D.C 20210).

- (ii) Complainants who elect to file a complaint relating to a DOL funded program or activity with DLLR shall allow the Department 90 days to process the complaint.
- (iii) If by the end of the 90 days, the Department has not completed its processing of a complaint filed by an employee or beneficiary of or participant in a WIOA funded program or has failed to notify the complainant of a resolution, the complaining party or an authorized representative may file a complaint with the Directorate of Civil Rights within 30 days of the end of the 90 days.
- (iv) DLLR beneficiaries of or participants in federally funded programs other than WIOA funded programs shall be advised of their right to file with the federal funding agency.

B. Informal Resolution and Investigation

- (1) Where the complainant elects to have the complaint processed by DLLR, the individual assigned the complaint shall investigate the complaint in accordance with the provisions of this section.
- (2) The OFP Director or the individual assigned the complaint shall first attempt an informal resolution of the allegations (re: Mediation/ADR as appropriate).
- (3) The OFP Director or individual assigned the complaint shall document efforts to resolve the complaint and whether or not those efforts were successful.
- (4) The OFP shall retain documentation in a confidential manner unless otherwise required by law.
- (5) Where informal resolution attempts are successful, the OFP Director or the individual assigned the complaint may request that the complainant withdraw the complaint, and if appropriate with the concurrence of the Fair Practices Officer, the individual assigned the complaint shall notify

other enforcement agency(s) regarding the withdrawal. The Department shall then administratively close the complaint.

- (6) Where informal resolution attempts are unsuccessful, and where warranted, the OFP Director or the individual assigned the complaint shall initiate a formal investigation of the allegations.
- (7) The OFP Director or the individual assigned the complaint shall advise the complainant and respondent of their rights under this procedure, including:
  - (a) That both parties have the right to an impartial investigator and decision-maker;
  - (b) That both parties may be represented at any point in the investigative process;
  - (c) That both parties have the right to have the Department produce relevant documents, witnesses and other material;
  - (d) That both parties may call and question witnesses and present evidence;
  - (e) That both parties may seek a resolution or mediation at any time during the process (the choice whether to use ADR (resolution, mediation, etc. rests with the complainant); and
  - (f) That the investigator shall base a decision strictly on the documented evidence.
- (8) The OFP Director or the individual investigating the complaint shall render a final written decision (notice) or offer a resolution within 60 days of the date the complaint was filed (within 30 days if filed under §5-211 of the State Personnel and Pensions Article).
- (9) The individual investigating the complaint shall forward a copy of her or his decision to the OFP Director. With the concurrence of the OFP Director, the final written decision shall be forwarded to the complainant, the respondent, the Fair Practices Officer and the appropriate program administrator.
- (10) The decision shall include:
  - (a) A summary of each allegation (issue) and response(s);

- (b) Conclusions of probable cause or no probable cause;
- (c) For each allegation (issue), findings, determinations and facts that formed the basis of the conclusion(s); and
- (d) If appropriate, a description of resolution(s);
- (e) Where probable cause is concluded, recommendation(s) may be included as to action(s) appropriate to remedy the specific violation(s) found.

C. Remedies and Sanctions

- (1) Where a decision is made that there is probable cause to believe that the alleged discrimination did occur, the OFP Director, the appropriate program administrator, and in some cases the Director of Human Resources and/or the Principal Counsel shall determine and recommend appropriate remedies to correct the violations found and prevent recurrence of those violations.
- (2) Remedies shall be tailored to the specific circumstances and violations and may include:
  - (a) Provision of service, benefit or employment opportunity denied;
  - (b) Monetary payment for loss of employment opportunity or benefit;
  - (c) Appropriate disciplinary action(s), up to and including termination, against the individual(s) found to have discriminated;
  - (d) Training for individual(s) found to have discriminated and for other appropriate individuals;
  - (e) Nullification of an adverse action;
  - (f) Removal of adverse records or documents from personnel files; and
  - (g) Preparation of statement of no retaliation.
- (3) Should the proposed remedies be acceptable to all parties, if appropriate, the OFP Director or the individual assigned the complaint may request that the complainant withdraw or not pursue any complaint filed with another enforcement agency.

- (4) The OFP Director and, as appropriate, the Director of the Office of Human Resources, the Principal Counsel and the appropriate program administrator shall prepare a written Settlement Agreement that contains the specified remedies. Appropriate signatures will be assigned depending on the nature of the Agreement. At a minimum, the complainant and the respondent will sign.
- (5) The Agreement shall include a stated time frame for implementation of the remedies.
- (6) Should the complainant or respondent be dissatisfied with the recommended remedies, and no resolution appears probable, the OFP Director or the individual assigned the complaint shall inform the complainant of additional filing rights and time frames for filing as appropriate.
  - (a) Complaints filed under §5-211 of the State Personnel and Pensions Article, may be appealed to the Maryland Department of Budget and Management within 10 days after receiving a decision or proposed remedy.
  - (b) Employees and beneficiaries of or participants in WIOA funded programs (including all programs of the DLLR Division of Workforce Development) may file a complaint with the U.S. Department of Labor's Civil Rights Center within 30 days after the Department notifies the complainant of its proposed remedies.
  - (c) Section .08 A (4) (f) describes additional filing rights.
- (7) Where the OFP Director or the individual assigned the complaint makes a decision that there is no probable cause to believe that the alleged discrimination occurred, the individual assigned the complaint shall notify the complainant and the respondent.
- (8) Where the complainant does not accept the decision of no probable cause, the OFP or the individual assigned the complaint shall proceed according to section C (6).

D. Complaints Received that are not Filed Against DLLR

- (1) The OFP staff member shall determine the appropriate jurisdiction of the complaint.

- (2) The individual assigned the complaint shall refer individuals who are not DLLR clients or staff and who are filing complaints against employers other than DLLR to the appropriate enforcement agency using the DLLR/OFP 121 Form (refer to Jurisdictions of Agencies).
  - (a) The individual processing the complaint shall maintain a copy of the referral form in the appropriate complaint file(s).
  - (b) No further action is required by DLLR or the administrative entity.
- (3) Individuals who are DLLR Job Service (JS) clients and are filing complaints against employers and about positions to which JS has referred them, shall be referred to the appropriate enforcement agency using the DLLR/OFP 121 Form.
  - (a) The individual processing the complaint shall forward a copy of the DLLR/OFP 121 and details regarding the allegations to the OFP Director.
  - (b) The individual processing the complaint shall enter the details of the complaint on the appropriate log.
  - (c) The OFP Director shall decide if further DLLR follow-up action(s) are required.