

## Discrimination Complaint Procedures

Procedures	
<b>Purpose:</b>	The purpose of these procedures is to establish a process for the review and resolution of discrimination complaints.
<b>Related Policy:</b>	01.01.150 VDH Non-Discrimination Policy
<b>Related Forms and Resources:</b>	Discrimination Complaint Form
<b>Scope of Work:</b>	<p>These procedures apply to the submission of complaints or grievances by members of the public for alleged discrimination or retaliation and the review and resolution of those complaints and grievances by appropriate VDH staff.</p> <p>These procedures do not apply to:</p> <ul style="list-style-type: none"> <li>• Safety Events governed by <u>04.02.101 Safety Events Policy</u></li> <li>• Complaints or grievances regarding discrimination in employment practices governed by <u>Office of Human Resources (OHR) #2.05 Equal Employment Opportunity Policy</u></li> <li>• Conduct governed by <u>OHR #2.35 Civility in the Workplace Policy</u></li> </ul>
<b>Responsibilities:</b>	<p>The Non-Discrimination Coordinator's responsibilities are as follows:</p> <ul style="list-style-type: none"> <li>• Review all complaints fairly, in a timely manner, and in accordance with these procedures and any applicable laws or regulations.</li> <li>• Coordinate with appropriate human resources or other agency staff to address consistent Complaints or founded discrimination.</li> <li>• Coordinate for the provision of any needed training to agency staff on discrimination, retaliation, or other appropriate topics.</li> </ul>
<b>Procedure:</b>	<p><b>I. Filing of a Discrimination Complaint</b></p> <p>A. General. Complaints may be filed with VDH via the following means:</p> <ul style="list-style-type: none"> <li>• Mail: ATTN: Non-Discrimination Coordinator, VDH, 109 Governor St., Richmond, VA 23219</li> <li>• E-mail: <a href="mailto:Civil_Rights@VDH.Virginia.gov">Civil_Rights@VDH.Virginia.gov</a></li> <li>• Online: <a href="https://redcap.link/VDHComplaint">https://redcap.link/VDHComplaint</a></li> <li>• Telephone: (804) 914-2770 (TTY: 1-800-828-1120)</li> <li>• Fax: (804) 864-7002</li> </ul> <p>The Complaint must state the problem or action alleged to be discriminatory and the remedy or relief sought. Complainants may receive assistance from VDH with filing a discrimination complaint alleging that the Complainant may have been discriminated against on the basis of disability, age, race, color, religion, sex, national origin (including English proficiency), or any other protected status.</p>

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Complainants may file complaints on behalf of someone else if they are legally authorized to do so (parent, legal guardian, attorney, power of attorney, etc.) and must include appropriate documentation of their authorization to represent the Impacted Party. If the documentation is not included, VDH will send a request for the documentation, and require it to be returned within 14 calendar days. The time period within which VDH must issue a decision will begin when the Complainant has provided adequate documentation.

VDH will provide, at no cost, translation or alternative communication services to any Complainant who requires communication assistance to file a discrimination Complaint due to a disability or limited English proficiency.

**B. Timely Filing.** A Complaint must be filed with VDH within 90 calendar days of the date of the alleged discrimination. The Complaint is deemed “filed” when it is received by VDH, whether submitted by mail or electronic means. If a Complainant shows good cause, VDH may extend the timeframe for filing a Complaint.

1. If a Complaint is filed more than 90 calendar days from the date of the alleged discrimination, the Complainant must include an explanation of good cause. If the Complaint does not include an explanation of good cause, the Non-Discrimination Coordinator will request, in writing, that the Complainant submit justification of good cause for untimely filing. The Complainant must submit the justification of good cause within 14 days of VDH’s request. If the Complainant does not submit the justification within 14 days of the request, the Complaint will be closed due to untimely filing.

2. If a Complainant provides a good cause explanation but the Non-Discrimination Coordinator finds that it does not meet the standard for good cause, the Non-Discrimination Coordinator will notify the Complainant in writing that the Complaint is closed and the reason for the closure.

3. Good cause may include:

- a. The Complainant or Impacted Party was seriously ill, which prevented a timely filing;
- b. There was a death or serious illness in the Complainant or Impacted Party’s immediate family;
- c. An accident caused important records to be destroyed;
- d. Documentation was difficult to locate within the time limits;
- e. An attempt was made to resolve the dispute before filing a Complaint;
- f. The Impacted Party or the Complainant lacked capacity to understand the timeframe for filing a Complaint;
- g. The Complainant sent the complaint to another government agency in good faith within the time limit; or
- h. Unusual or unavoidable circumstances prevented a timely filing.

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C. Logging and Record Retention. The Non-Discrimination Coordinator will log all information related to the Complaint in the VDH Discrimination Complaint Log and will assign a Complaint Reference Number. Complaint records must be maintained for three (3) years after the last action related to the Complaint.

### II. Review and Determination

A. Initial Review. The initial review of a Complaint will determine whether the Complaint should be investigated further, closed, or referred elsewhere.

1. The Non-Discrimination Coordinator will perform an initial complaint review and will assess the following points to determine if the Complaint is valid and needs further investigation:

- a. Was the Complaint filed in a timely manner or is there good cause for the late filing?
- b. Was the Complaint filed by the Impacted Party or someone who has proper authorization to pursue the Complaint on behalf of the Impacted Party?
- c. Is the Complainant's issue within VDH's legal, contractual, and/or authority to review?
- d. Is it a civil rights claim?

2. A Complaint would be invalid if:

- a. VDH does not have legal authority to investigate the Complaint;
- b. The Complaint fails to state a violation of civil rights laws or regulations;
- c. The Complaint was not filed timely and good cause did not exist to accept the grievance;
- d. The Complainant did not submit proper authorization to represent the Impacted Party;
- e. The Complaint is speculative, conclusory, or incoherent, or lacks sufficient detail to infer discrimination and the Complainant does not provide the information that the VDH Non-Discrimination Coordinator requests within 14 calendar days of the request, unless the Complainant requests additional time to provide the requested information. The time period that the Complainant took to submit the response will not be counted in the total number of days VDH has to make a decision on the Complaint;
- f. The Complaint has been investigated by another federal, state, or local civil rights agency or through other internal grievance procedures, and there was a comparable resolution process pursuant to legal standards that are acceptable to VDH or, if still pending, VDH anticipates that there will be a comparable resolution process pursuant to legal standards that are acceptable to VDH. VDH will advise the Complainant that of the right to re-file the Complaint with VDH within 60 days of the completion of the other entity's action if there has been no decision on the merits of the case; or

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	<p>g. The same or similar allegations based on the same operative facts have been filed by the Complainant against the same recipient in state or Federal court. VDH will advise the Complainant of the right to re-file within 60 days of the termination of the court proceeding if there has been no decision on the merits of the case or settlement of the court complaint.</p> <p>3. Within five business days of the Complaint being filed, the VDH Non-Discrimination Coordinator will notify the Complainant in writing if (i) proof of authorization is needed, if filing a complaint on behalf of someone else; (ii) good cause is needed due to untimely filing; (iii) additional information is needed to process the Complaint; (iv) the Complaint is invalid and the reason why; or (v) the Complaint will be investigated.</p> <p><b>B. Investigation.</b> All valid, timely Complaints will be investigated. This investigation may be informal, but it will be thorough, affording all interested parties an opportunity to submit evidence relevant to the Complaint. The Non-Discrimination Coordinator will provide the party alleged to have engaged in discrimination a copy of the Complaint and any other documents submitted by the Complainant. The party has the right submit to Non-Discrimination Coordinator a written response within 14 calendar days of receipt of the Complaint materials, unless granted an extension. Following receipt of the response, the Non-Discrimination Coordinator may contact other individuals to gather the necessary facts to complete a thorough investigation.</p> <p><b>C. Written Decision.</b> The Non-Discrimination Coordinator will prepare a written decision on all Complaints that are investigated.</p> <p>1. Within 90 calendar days of the Complaint being filed with VDH, the Non-Discrimination Coordinator will issue a written decision to the Complainant and the party who was alleged to have engaged in discrimination. The 90-day period will be extended if good cause or additional information was requested by VDH (e.g., if VDH requested good cause and the Complainant replied 7 days after the request was made, the decision deadline would be 97 days from when the Complaint was received). Additionally, in complex matters, the Non-Discrimination Coordinator may extend the time period to make a decision up to an additional 30 calendar days if agreed to in writing by the Complainant prior to the expiration of the initial 90-day period.</p> <p>2. The Non-Discrimination Coordinator will use the preponderance of the evidence standard when determining whether the alleged discrimination has occurred. A preponderance of the evidence exists if it is more likely than not that discrimination occurred.</p> <p>3. The Non-Discrimination Coordinator will fully explain the rationale for the decision and include:</p> <p style="padding-left: 20px;">a. VDH's jurisdiction to make a decision on the Complaint;</p>
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	<p>b. An identification of all relevant parties to the Complaint; c. A summary of the alleged discriminatory action(s); d. A summary of the response received from the party alleged to have engaged in discrimination; e. A summary of any other information gathered during the investigation; f. Whether there are sufficient facts to conclude, by a preponderance of the evidence, that discrimination occurred; and g. If discrimination was found to have occurred, the corrective action plan VDH will follow to address the discrimination.</p> <p>The decision will also inform the Complainant that if they are not satisfied with the VDH determination, then the Complainant has the right to pursue further administrative or legal remedies. The decision will include the contact information for the federal Office for Civil Rights.</p> <p>As needed or required, the Impacted Individual will be informed of the Complaint and will be provided a copy of VDH's final decision.</p> <p>D. Anticipated litigation. If the Non-Discrimination Coordinator becomes aware, at any point during or after the investigation of a Complaint, that a Complainant intends or is likely to seek legal recourse against VDH or the Commonwealth due to the alleged discrimination, the Non-Discrimination Coordinator should notify the Division Director for General Services in VDH's Office of General Services. If a legal claim is made against VDH or the Commonwealth, the Division Director for General Services should notify the Division of Risk Management within the Virginia Treasury, as needed.</p> <p><b>III. Resolution and Corrective Action</b></p> <p>A. Corrective Action Plan: If a Complaint investigation finds that discrimination occurred, the Non-Discrimination Coordinator will work with the appropriate VDH work unit to develop a corrective action plan.</p> <ol style="list-style-type: none"> <li>1. If a VDH employee, volunteer, or intern engaged in discrimination, the Non-Discrimination Coordinator will refer the investigation findings and corrective action plan to the employee's division director and VDH's Office of Human Resources.</li> <li>2. If the Complaint involves a VDH vendor, contractor, or subcontractor, the Non-Discrimination Coordinator will refer the investigation findings and corrective action plan to VDH's Office of Procurement and General Services, as well as the applicable VDH contract manager.</li> <li>3. If the Complaint involves a privacy violation, such as a violation of the Health Insurance Portability and Accountability Act (HIPAA), the Non-Discrimination Coordinator will also consult VDH's Privacy Officer to develop the corrective action plan.</li> </ol>
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	<p>B. Training Approval. The corrective action plan should include nondiscrimination training on relevant discrimination topics that, prior to use, has been reviewed and approved by the Non-Discrimination Coordinator.</p> <p>C. Implementation Timeline. Time periods for the implementation of the corrective action plan and nondiscrimination training shall be designated by the Non-Discrimination Coordinator.</p> <p>D. Complaint Resolution. VDH, in its sole discretion, shall determine when a satisfactory Complaint resolution has been reached. If the Complainant remains unsatisfied with the resolution, this does not preclude the Complainant from pursuing any additional investigation, appeal, or other remedy to which they are legally entitled.</p>
<p><b>Quality Control and Quality Assurance</b></p>	<p>The Non-Discrimination Coordinator may delegate oversight of the investigation to appropriate Office or District leadership, but shall review the decision and any corrective action plan before sending to the Complainant to ensure the Complaint was investigated adequately.</p> <p>If a Complainant appeals to VDH, in writing, the closure of a Complaint due to the rejection of good cause for filing beyond the 90-day limit, the State Health Commissioner shall, within 14 calendar days, determine whether the good cause should be accepted or if the Complaint will remain closed.</p> <p>If a Complainant is not satisfied with the decision, resolution, or corrective action plan communicated by the Non-Discrimination Coordinator, the Complainant may, in writing and within 7 calendar days of receipt of the decision, request amendment to the decision or corrective action plan. The Non-Discrimination Coordinator shall, within 7 calendar days of receipt of the amendment request, send the Complainant (i) the amended decision or (ii) notification that the original decision stands and justification for rejecting the requested amendments. Any amendments to the original decision or corrective action plan shall be approved by the State Health Commissioner before being sent to the Complainant. An amended decision shall constitute the final action taken by VDH on a Complaint.</p> <p>If a Complainant wishes to file a grievance alleging retaliation based on submission of a Complaint, the grievance must be filed within 30 days of the alleged retaliation. If a Complainant believes they have been subject to retaliation before filing of the discrimination Complaint, they should file the retaliation grievance with the discrimination Complaint and must file the retaliation grievance within 30 days of the alleged retaliation. The grievance will be filed, investigated, and resolved by Non-Discrimination Coordinator in accordance with the Complaint procedures.</p>
<p><b>Frequency of Revisions and Reviews</b></p>	<p>This procedure should be reviewed for necessary updates no less often than annually.</p>

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### Procedure Approval

Reviewer: \_\_\_\_\_  
  
Joseph Hilbert  
Deputy Commissioner for Governmental and Regulatory Affairs

Date: 10/3/23

Approver: \_\_\_\_\_  
  
Karen Shelton, MD  
State Health Commissioner

Date: 10/5/23

### Contact(s):

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