

State of Maryland Department of Health and Mental Hygiene

Parris N. Glendening, Governor - Martin P. Wasserman, M.D., J.D., Secretary



POLICY NUMBER: DHMH 02.06.03
Cross-Reference: Office of Community Relations

TITLE: POLICY ON COMPLAINTS OF ALLEGED DISCRIMINATION IN CONNECTION WITH EMPLOYMENT

I. EXECUTIVE SUMMARY

It is the policy of the Department of Health and Mental Hygiene (DHMH) to provide a formal complaint procedure for employees and/or potential employees with respect to processing complaints alleging discrimination in employment. In policy and in spirit, DHMH intends that all of its employees and candidates for employment receive fair and impartial treatment in all phases of employment.

The following definitions shall apply to the indicated words as use throughout this official Policy of DHMH:

- A. Fair Practices Officer - shall mean the Executive Director of the Office Community Relations (OCR) or successor, and shall also mean the designee of Fair Practices Officer specifically appointed by the Fair Practices Officer to act on their behalf during a specific investigation.
- B. Complainant - shall include a person making a complaint of discrimination, but shall not include the OCR or any staff member thereof or designee, when assisting in the making of a complaint in his or her official capacity. Complainant includes a person making a complaint alleging a violation of federal or state employment discrimination provisions.
- C. Executive Director - shall mean the Executive Director, OCR, of DHMH.
- D. Discrimination in Employment - shall mean:
 - 1. To fail or refuse to hire or discharge any individual or otherwise discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment, because of an individual's race, color, religion, age, sex, disability, national origin, or other non-merit factor, except where sex, age, or physical or mental condition are bona fide qualifications of employment.

2. To limit, segregate, or classify employees in any way which would deprive or tend:
 - a. To deprive an individual of employment opportunities; and,
 - b. Otherwise adversely affect the status of an employee because of such individual's race, color, religion, political opinions or affiliations, age, sex, disability, national origin, or other non-merit factor, except where physical or mental condition are bona fide qualifications of employment.
 3. To abuse, restrain, intimidate, harass, interfere with coerce, discriminate against, institute reprisal against, or otherwise defame an employee because of an individual's race, color, religion, age, sex, disability, national origin or other non-merit factor.
- F. Investigation - shall mean an investigation of discriminatory employment practices pursuant to the Annotated Code of Maryland, State Personnel and Pensions, Section 5-207(c); and COMAR 17.04.08.04 (1997).
- G. Party - shall include a complainant or a respondent.
- H. Respondent - shall mean a person, agency, or part of an agency accused of discriminatory conduct in connection with employment.
- I. Secretary - shall mean the Maryland State Secretary of Health and Mental Hygiene or his successor.
- J. EEO Designee - shall mean the individual(s) assigned to equal employment activities within the DHMH who are assisting the Fair Practices Officer in processing complaints of discrimination.

III. POLICY STATEMENTS

A. Implementation

Below is the written procedure for implementing the "Complaints of Alleged Discrimination in connection with Employment Policy" for DHMH.

1. Authority - The Fair Practices Officer or designee, shall consistent with the Annotated Code of Maryland, State Personnel and Pensions, Section 5-207, report directly to the Secretary for administering this policy as it relates to a proper and expedient investigation of all complaints charging discrimination in employment.

B. Scope of Rules

The following shall constitute the practices and procedures, and shall govern proceedings in the OCR, or its designee, in reference to complaints of alleged discrimination in employment.

1. Liberal Constructions of Provisions

- a. This policy shall be liberally construed by the Executive Director, or designee, to discharge its functions and to secure just and expeditious determinations of all matters before the OCR, or its designee, in reference to complaints of alleged discrimination in employment.
- b. The Executive Director, or designee, may, upon notice to all parties, in the interest of justice, relax the application of this policy in a manner that is not inconsistent with State law.

2. Complaint - Who May Make a Complaint

- a. Any person alleging to have been aggrieved by unlawful discrimination under the Equal Employment Opportunity (EEO) legal mandates adhered to by DHMH may file a complaint with the OCR, or its designee.
- b. A complaint that any department, division, unit, or person has or is engaged in unlawful discrimination under the EEO legal mandates adhered to by DHMH may be made on behalf of any person. The person making the complaint must provide the OCR, or its designee, with the information outlined under Section C(1) of this policy.
- c. OCR, or its designee, may make and file a complaint in its name in the same manner as if the complaint had been filed by an individual, when it has received reliable information that the person has been engaged in or is engaging in unlawful discriminatory practice under the EEO mandates adhered to by DHMH. All such complaints shall be over the signature of the Executive Director.

3. Complaint Form

- a. A complaint form may be filed on a form provided by the OCR, by letter, or by other written means.

- b. Complaint forms will be made available to all persons at all facilities or at the OCR.
- c. Complaints filed on forms provided by other agencies and/or organizations shall be deemed complaints filed with the OCR.
- d. Appropriate assistance in filling out forms will be rendered to persons who allege to have been aggrieved or to persons filing on another's behalf by personnel of the OCR, the different personnel officers of DHMH or from EEO designees.

C. Complaint - Contents and Permitted Amendments

- 1. Each complaint shall contain the following -
 - a. The full name and address of the person(s) making the complaint. This person shall hereinafter be referred to as the complainant.
 - b. The full name and address of the department, division, unit, or person(s) against whom the complaint is made. The above named shall hereinafter be referred to as the respondent.
 - c. A clear and concise statement of facts constituting the alleged act(s) of discrimination, including possible pertinent dates.
 - d. A statement as to whether the race, color, religion, national origin, disability, political affiliation or opinion, sex, and/or age of the complainant gave rise to the alleged discrimination.
 - e. The signature of the complainant and date, on the original.
- 2. Notwithstanding the provisions of paragraph one of this section, a complaint is deemed filed when the OCR, or its designee, receives a written statement sufficiently precise to identify the parties and to describe generally the action(s) complained. A complaint may be amended by the OCR, or its designee, after approval from the complainant, as follows:
 - a. To cure technical defects or omissions;

- b. To clarify and amplify allegations made therein; or,
- c. To allege additional acts which constitute unlawful discrimination under EEO legal mandates adhered to by DHMH which are related to or growing out of the subject matter of the original filing date.

D. Complaint - Time of Filing

Consistent with the Annotated Code of Maryland, State Personnel and Pensions, Section 5-211(b), and COMAR 17.04.08.03(B), the complaint shall be filed within 30 days after the complainant first knew or reasonably should have known of the alleged violation that is the basis for the complaint. If the alleged unlawful discriminatory practice is of a continuing nature, the date of the occurrence of said unlawful practice shall be deemed to be any date subsequent to the commencement of the unlawful practice up to and including the date when the unlawful practice shall have ceased.

E. Complaint - Manner of Filing

- 1. The complaint may be filed by personal delivery, or ordinary mail to OCR, with any representative OCR, or its designee.
- 2. A complaint filed with a Federal, State, or local civil rights agency within the time frame specified in Section D of this policy shall be deemed as compliance with that rule.

F. Complaint - Withdrawal

- 1. A complaint filed by an alleged aggrieved person may be withdrawn at any time by the alleged aggrieved person.
- 2. A complaint filed on behalf of an alleged aggrieved person may be withdrawn at any time by the alleged aggrieved person.
- 3. A complaint filed on behalf of an alleged aggrieved person may only be withdrawn with the consent of the Executive Director.
- 4. A complaint filed by the OCR or its designee may only be withdrawn with the consent of the Executive Director.

G. Complaint - Service

Within 10 working days after a complaint is filed, OCR or its designee, shall acknowledge its receipt by informing all parties in writing.

H. Investigation

1. During the preliminary investigation by OCR, or its designee, of complaints made on behalf of any person alleged to have been aggrieved, the office staff, or designee, shall verify the reliability and authorization of such complaint by the person whose behalf the complaint is made. The office staff, or designee, shall keep such information confidential. Should the investigation reveal that the complaint was based upon reliable information, the office staff, or designee, shall then refer the matter to the Executive Director for possible action.
2. Consistent with the Annotated Code of Maryland, State Personnel and Pensions, Section 5-207(c)(2), and COMAR 17.04.08.04(B), OCR, or its designee, shall investigate or cause an investigation to ascertain all facts surrounding the allegations(s). The staff, or designee, shall initially solicit information from all parties and utilize interrogatories or depositions to facilitate a prompt investigation.
 - a. In the event that any party refuses to comply with the request by OCR, or its designee, for information in furtherance of an investigation or refuses to answer an interrogatory by the staff of OCR, or its designee, a factual inference adverse to the party so refusing may be drawn and facts sought to be proved by the way of the request or interrogatory may be taken as admitted by the party to whom the request or interrogatory was directed. However, whenever a person refuses to give the requested information or to answer the submitted interrogatory on the ground that to do so will tend to incriminate, then no such inference may be drawn and no such fact may be taken as admitted against any such person exercising their rights against self-incrimination under the Fifth Amendment to the US Constitution. Refusal to answer an interrogatory or to supply requested information by a person not a party to the complaint shall not be a basis for any such inference or admission.
 - b. A rebuttal presumption may arise against a party failing to answer inquires propounded by OCR, or its designee, as aforesaid and the party may be considered to have waived the right to introduce evidence on the specific subject matter of the unanswered inquiry or interrogatory during future proceedings on that complaint. However, no such

presumption shall arise and no such waiver shall be deemed to have occurred in the event that a party refuses to answer on the ground that to do so may tend to incriminate him.

3. At the discretion of the Executive Director of OCR, administration intervention may be requested to obtain answers to interrogatories and any other inquires. No coercion or administrative sanction may be applied to require an answer from a person who refuses to answer on the ground that to do so may incriminate.

I. Conciliation

1. In conciliating a case in which a determination of probable cause has been made, OCR staff ,or designee, shall attempt to achieve a just resolution. Disposition of a case pursuant to this section shall be in writing, and notice thereof shall be sent to all appropriate parties.
2. Should a respondent fail or refuse to confer with OCR, or designee, or fail or refuse to make a good faith effort to resolve any dispute, OCR, or designee, may terminate its efforts to resolve the dispute. In such event, the respondent shall be notified promptly, in writing, that such efforts have been unsuccessful and will not be resumed except upon the respondent's written request within the time specified on such notice. If no request is forthcoming within the specified time, OCR shall proceed as outlined in Section J of this policy, and COMAR 17.04.08.04(c).

J. Case Review

1. In case of failure to settle or adjust a complaint by conciliation and conference, the Executive Director shall request that the Secretary, or designee, review the merits of the OCR or designee's findings as it relates to the EEO standards and regulations of DHMH, and EEO legal mandates adhered to by DHMH.
2. If the review by the Secretary, or designee, finds that an unlawful practice is being or has been committed, appropriate action shall be taken. All orders shall be in writing and shall have the signature of the Secretary or his designee. A copy of all orders shall be written and shall be sent to the complainant, the respondent, and OCR and its designee.
3. If the review finds that a discriminatory act has not been committed, such a decision shall be issued.

K. Appeals

OCR, or its designee, shall notify all parties of their right to appeal the written findings within 10 days of date of issue by filing an appeal with the Department of Budget and Management. If additional evidence is provided by the appeal that warrants a further investigation, it shall be so ordered by the Executive Director. If additional evidence is not provided, the Executive Director shall follow the procedure outlined in Section J of this policy.

L. Remedial Action

After a determination that an unlawful employment activity occurred, the following actions may be taken:

1. Remedial personnel action on behalf of the aggrieved person, placing that person in the position into which they would have been placed but for the discriminatory employment practice.
2. Remedial action, correcting or removing a condition found to be a continuing cause of discriminatory action.
3. Under proper circumstances, demotion of a person promoted as a result of prohibited discriminatory action.
4. Under proper circumstances promotion of a person refused promotion as a result of discriminatory action.
5. Under proper circumstances, discharge of a person hired as a result of prohibited discriminatory action.
6. Under proper circumstances, hiring of a person refused employment as a result of discriminatory action.
7. Under proper circumstances, official reprimand of a respondent to be made a permanent record in the respondent's personnel file.
8. In the case of aggravated, persistent discriminatory personnel practices, disciplinary action under the rules governing DHMH.
9. Sanctions permitted by Sections P and Q of this policy, as a result of breach of confidentiality, false or frivolous complaint, or willful giving of false or misleading information during the course of an investigation.

M. Reprisal

No complaint and/or witnesses shall be subjected to restraint, intimidation, harassment, interference, coercion, discrimination or reprisal. Upon notification, any such action shall be investigated formally by OCR and the findings of the facts will be forwarded to the Secretary with recommendations for immediate remedial action.

N. Compliance Review

At the expiration of one year from the date of a conciliation agreement, and at other times in its reasonable discretion, OCR, or its designee, shall investigate or determine if the terms of the agreement have been and are being complied with by the respondent. If the agreement is violated or being violated, the Executive Director may extend the review period for 12 months and require the respondent to submit monthly progress reports.

O. Confidential Investigation

During an investigation of a complaint of discriminatory employment practices, the nature and substance of such investigation shall remain confidential, and no party or member of the staff of OCR, or its designee, or other employee of DHMH shall disclose the results of any such investigation, or part thereof. Nothing in this rule shall prevent the giving of evidence or the answering of inquiries propounded by a party or OCR during the course of an investigation. Upon resolution of any complaint, the findings and results of the investigation may be made public upon approval by the Secretary of such findings and results.

P. Breach of Confidentiality

Any party, staff member of OCR, or its designee, or other employee of DHMH who breaches the confidentiality of an investigation in violation with Section N of this policy, shall be subject to disciplinary proceedings under the personnel regulations applicable to DHMH.

Q. Frivolous or False Complaints and Giving False and Misleading Information During an Investigation

Any employee of DHMH who shall deliberately make a frivolous or false complaint under these rules and/or any who shall deliberately give false or misleading information during the course of an investigation under these rules shall be subject to disciplinary action under personnel rules applicable to DHMH.

IV. REFERENCES

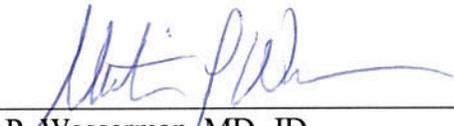
Annotated Code of Maryland, State Personnel and Pensions Section 5-207(c)
COMAR 17.04.08.04 (1994)

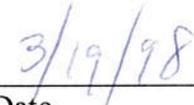
Annotated Code of Maryland, State Personnel and Pensions Section 5-211(b)
COMAR 17.04.08.03(B)

Annotated Code of Maryland, State Personnel and Pensions Section 5-207(c)(2)
COMAR 17.04.08.04(c)

Article 76A, Annotated Code of Maryland, Public Information Act

Approved: _____


Martin P. Wasserman, MD, JD
Secretary


Date