

## **SYNOPSIS OF THE DIVISION OF HUMAN RIGHTS (DHR) INVESTIGATIVE PROCESS**

During the 1987 General Assembly Session, the Human Rights Council referred to now as the Division of Human Rights was created by the Virginia Human Rights Act (1987 General Assembly Senate Bill 666, and amended by the 2011 General Assembly House Bill 1291) and empowered to enforce the policy of the Commonwealth to safeguard individuals from unlawful discrimination. The mission of DHR is to promote and preserve the human rights of individuals in the Commonwealth by raising the awareness of human rights, accepting complaints, and providing conflict resolution and mediation for the resolution of complaints.

On March 29, 1994, the Equal Employment Opportunity Commission (EEOC) designated the Human Rights Council referred to now as the Division of Human Rights as a Fair Employment Practices Agency. 29 CFR Part 1601. Under this workshare agreement, charges filed with the Division are considered simultaneously filed with the EEOC and vice versa.

DHR's purpose is to safeguard all individuals within the Commonwealth from unlawful discrimination on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age or disability in places of public accommodation, including educational institutions, in real estate transactions; in employment; to preserve the public safety, health and general welfare; and to further the interests, rights and privileges of individuals within the Commonwealth, and to protect citizens of the Commonwealth against unfounded charges of unlawful discrimination. (Virginia Human Rights Act, Chapter 39)

### **I. Intake**

Intake is the most crucial point in the entire process. It is the point at which the Division determines whether the complaint has enough information for it to be accepted procedurally (within applicable statute of limitations period) and substantively (alleges a basis covered by federal or state law).

It is also an important stage because all notification to the parties emanates from the Intake Officer and (s)he is the first point of contact for the parties. The Intake Officer sets the tone for the rest of the complaint process, must be mindful of time constraints, and makes sure the EEO Managers have a secure foundation in the complaint basis.

### **II. Mediation**

Mediation is the first step in the complaint resolution process. We offer this forum to the Complainant and Respondent to potentially obviate the need for a lengthy investigation. The process is totally voluntary and has helped the Council dispose of several complaints that would otherwise be in the investigation inventory.

Mediation is not a fact-finding forum; therefore, we notify parties that attorneys may be present, but only in a silent, advisory role, except in private, confidential sessions. The parties are

introduced to the concept of mediation in a timely manner to make an informed decision about participation. All information discussed and written during the mediation remains confidential and notes are destroyed at its conclusion.

All staff members were formally trained in mediation techniques in January 1995, and the mediation policy was implemented on February 1, 1995. In addition, the senior EEO manager has received general, as well as advanced, mediation training. New staff members will be trained as time and the budget permits.

### **III. Investigations**

Should the parties not wish to participate in mediation or the mediation process fails to produce a resolution, the case moves to the investigative stage. To maintain the confidentiality of the mediation, the EEO Manager, having no former participation in the mediation, receives the case for investigation.

This is the point at which the EEO Manager reviews the documentation and witnesses affidavits, conducts on site visits, if necessary, analyzes the evidence, applies the applicable law, and reaches a determination based on the preponderance of the evidence. The EEO Manager will also attempt to conciliate the case if the parties are amenable to the option. Conciliation differs from mediation in that conciliation efforts take place after some kind of fact or fault finding has occurred. Respondents are more conciliatory when they are shown that any part of their business practices is suspect.

### **IV. Determination**

If conciliation is not reached, the EEO Managers will issue a Basis for Determination, which outlines in detail all of the procedures followed during the course of the investigation.

The Assistant Attorney General reviews the determination to make sure that the EEO Manager's decisions are in accordance with the applicable law. Once that determination is made, the Director signs the determination, the original goes to the Complainant, and copies are sent to the Respondent and the case file.

### **V. Appeal**

If the Complainant disagrees with the Director's "No Reasonable Cause" decision, the Complainant may make a written appeal to the Chairperson within 10 working days after (s)he receives the determination. The Complainant is normally granted an appeal and the Chairman appoints three members of the Council to review the appeal. A date is scheduled for the appeal to take place. As a formality, notice of the appeal is sent to the Respondent. Respondent plays no part in the appeal process.

The Council confirms the appeal date with the panel of Council members who are to sit for the appeal. The Complainant is reminded that (s)he can not present new evidence, but must show

that based on the evidence presented during the investigation, the Council should have found in his/her favor. A copy of the appeal letter is included for your review.

After the panel reviews the appeal, the panel must make a decision within 30 days after the appeal is heard and provide notice to the parties of its decision. If the panel votes to overturn the Director's decision, the case goes back to the EEO Manager for re-investigation, based on the panel's recommendations. If the Council votes to affirm the Director's decision, the case is officially closed.

## **VI. Public Hearing**

When conciliations efforts fail, the Director shall set the matter public hearing or refer to the case to the applicable federal agency. Hearing forum comes into play after there has been no conciliation after the determination phase, and the Director issues a cause finding.

The spirit of the worksharing agreement with the EEOC requires that the Council exercise its state law to its fullest extent before a referral takes place. Therefore, the public hearing process can be a vital part of the investigative process in those cases where "Reasonable Cause" to believe that the Virginia Human Rights Act has been violated.

A date is set by the Council for the hearing. A hearing officer is selected from the Virginia Supreme Court's list of available hearing officers. Space is secured in the General Assembly Building and all parties are given notice of the date and time of the hearing. A court reporter is present during the hearing. Both parties are required to be present at the hearing. The hearing officer hears the evidence presented and renders an opinion. Council members review the opinion and it is their responsibility to secure a majority to either agree or disagree with the hearing officer's opinion.

Sections 11 and 12 of the Regulations describe the procedures. The Council members play a vital role in this process because the Council members must make a decision either to affirm or refute the hearing officer's decision.

## **VII. Final Closure**

At this point, all administrative appeals and hearings have been exhausted. The case is closed. If the case was dual filed, notification goes to the EEOC.

## **VIII. EEOC Review**

During the EEOC review, the Charlotte District Office Field Office assigns contract credit for cases meeting EEOC's standards. If the case does not meet the EEOC's standards, it is rejected and the Council may have an opportunity to correct the deficiency.