

Office of Fair Practices

Discrimination Complaint Procedure

Maryland Department of Labor

.01 PURPOSE

- A. The Maryland Department of Labor (MD Labor) recognizes that legitimate problems, differences of opinion, complaints, and grievances will exist in the daily relationship between MD Labor 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 MD Labor 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. §2-302 of the State Personnel and Pensions Article
- H. §5-211 of the State Personnel and Pensions Article

- I. Workforce Innovation and Opportunity Act
- J. 29 CFR §30, §31, §32, and §38
- K. Title IX of the Education Amendments of 1972, as amended, Pub. Law 92-318, 86 Stat. 373 (20 U.S.C. §1681 et seq.)
- L. Civil Rights Act of 1991, P.L. 102-166
- M. Americans with Disabilities Act of 1990, as amended, Pub. Law 101-336, 104 Stat. 337 (42 U.S.C. §12101 et seq.)
- N. Americans with Disabilities Act Amendments Act of 2008, Pub. Law 110-325, 122 Stat 3553 (42 U.S.C. §12101 et seq.)
- O. COMAR 17.04.08.04
- P. §11-106 of the State Personnel and Pensions Article
- Q. MD Labor Nondiscrimination Policies

.03 POLICY

- A. It is the policy of MD Labor 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 MD Labor employee, applicant, client, claimant, or other beneficiary may file a complaint against MD Labor or an MD Labor 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 their 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 OFP staff member assigned to investigate the complaint shall make every effort to resolve the complaint at the lowest possible level.

- F. All MD Labor employees involved in the processing, investigation, and/or resolution of the complaint shall exercise confidentiality (except to the extent necessary to carry out the provisions of this procedure) throughout 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 MD Labor Office of Fair Practices (OFP) during the course of investigating or attempting to resolve a complaint.
- H. Any MD Labor 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 MD Labor.
 - (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, 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 age, sex, 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 MD Labor Secretary who is charged with the implementation of and compliance with the nondiscrimination and equal opportunity regulations within MD Labor 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 OFP staff member receiving a complaint that is not within the jurisdiction of this Department shall refer the complaint accordingly.
- C. The OFP staff member receiving a complaint in writing that is not within the jurisdiction of this Department shall notify the complainant in writing that the complaint is not within the jurisdiction of the Department 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 MD Labor and, where specified, makes recommendations to the Secretary with regard to the final departmental resolution and disposition of complaints of alleged discrimination.

B. Director of the 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 MD Labor 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. MD Labor 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. MD Labor 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 (e.g., the 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 MD Labor 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 regarding complaints filed with the EEOC, MCCR, or other fair employment agencies.

07. FILING A COMPLAINT OF DISCRIMINATION

A. Who may file

- (1) Any employee of MD Labor who feels that they have been subjected to unlawful discrimination in any term, condition, or privilege of that individual's employment.
- (2) Any applicant for employment with MD Labor.
- (3) Any applicant for, client, claimant, other beneficiary of, or participant in any program or service provided or funded by or through MD Labor.
- (4) Any individual or group/class of individuals who believes that the individual or the group/class has been subjected to discrimination prohibited by the nondiscrimination mandates governing MD Labor's operation.

B. Right to File

- (1) No employee, applicant for employment, claimant, or client (individual or organization) seeking service or assistance from MD Labor or any participant in any MD Labor 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 within one (1) year after the complainant knew or reasonably should have known of the alleged violation of the State's Fair Employment Practices Policy (SPP Title 5-211(b)).

A complaint filed under SPP Title 5-211(a)(2) alleging harassment in violation of § 20-606(a)(5) of the State Government Article must be filed within 2 years after the alleged violation that is the basis for the complaint. This includes, but is not limited to, sexual harassment complaints and bullying/harassment complaints that include a protected status basis.

Under WIOA, the complaint should be filed within 180 calendar days of the date the alleged discriminatory act or retaliation occurred. However, the CRC can extend the filing deadline if the complainant can show "good cause".

- (2) The complaint shall be in writing and contain at minimum: 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 or OFP 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.
- (5) Filing an anonymous complaint will make it difficult for the Fair Practices Officer or OFP Director to conduct a thorough investigation, as there is no one to contact for more information.

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 (MCCR), the Equal Employment Opportunity Commission (EEOC), the U.S. Department of Labor's (USDOL) Civil Rights Center (CRC), local fair employment agencies or take action through the courts or other appropriate state and federal enforcement agencies.
- (2) The OFP staff member assigned to investigate 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 either the Fair Practices Officer, the OFP Director, or the OFP staff member assigned to investigate 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 OFP Director shall notify other enforcement agency(s) of the withdrawal of the complaint.
- (4) If the Fair Practices Officer or OFP Director has reason to believe that the complaint is being withdrawn for any of the reasons stated in E (2) above, they may elect to continue the investigation.
- (5) If the Fair Practices Officer or OFP Director has reason to believe that it would be inappropriate or inadvisable to discontinue the investigation, they may elect to continue the investigation.
- (6) The Fair Practices Officer or OFP Director 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.

F. Confidentiality of the Complaint Investigation

- (1) Information obtained as a part of an investigation of a complaint is confidential within the meaning of Title 4 of the General Provisions Article of the Maryland Annotated Code.
- (2) After a complaint is filed, the complainant's name and basic information about the allegations of discrimination will be disclosed to the respondent.

08. PROCESSING A COMPLAINT OF DISCRIMINATION

This section describes the appropriate steps for the receipt, assignment, investigation, and resolution of a complaint alleging discrimination against an MD Labor employee or an MD Labor 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 OFP Director or OFP staff member assigned to investigate 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 MD Labor, complete the appropriate MD Labor complaint form(s);
- (f) Forward a copy of the complaint to the OFP Director; 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 MD Labor Division of Workforce Development and Adult Learning) shall be advised of their right to file with the USDOL Civil Rights Center (CRC) (located at 200 Constitution Avenue, N.W., Suite N-4123, Washington, DC 20210).
- (ii) Complainants who elect to file a complaint relating to a WIOA-funded program or activity with MD Labor 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 USDOL Civil Rights Center (CRC) within 30 days of the expiration of the 90-day investigation period.
- (iv) MD Labor 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 MD Labor, the OFP staff member assigned to investigate the complaint shall investigate the complaint in accordance with the provisions of this section.
- (2) The OFP Director or the OFP staff member assigned to investigate the complaint shall first attempt an informal resolution of the allegations (i.e., alternate dispute resolution (ADR), including mediation, as appropriate).
- (3) The OFP Director or OFP staff member assigned to investigate the complaint shall document efforts to resolve the complaint and whether or not those efforts were successful.
- (4) The OFP shall confidentially retain documentation unless otherwise required by law.
- (5) Where informal resolution attempts are successful, the OFP Director or the OFP staff member assigned to investigate the complaint may request that the complainant withdraw the complaint. The OFP staff member assigned to investigate 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 OFP staff member assigned to investigate the complaint shall initiate a formal investigation of the allegations.
- (7) The OFP Director or the OFP staff member assigned to investigate 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 rests with the complainant); and
 - (f) That the investigator shall base a decision strictly on the documented evidence.
- (8) The OFP Director or the OFP staff member investigating the complaint shall conclude their investigation of the complaint 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).

The time period may be extended to an additional 30 days if the complainant provides written authorization to the OFP Director or the OFP staff member investigating the complaint. Therefore, the investigation should not exceed 90 days.

- (9) The OFP staff member investigating the complaint shall forward a copy of their findings to the OFP Director. The OFP Director shall recommend a proposed decision to the head of the principal unit. The head of the principal unit shall issue a written decision to the complainant and may grant any appropriate relief. Any disciplinary action must be carried out within 30 days. (SPP 11-106(b))

Under WIOA, the OFP staff member investigating the complaint will issue a written Notice of Final Action to the complainant within 90 days of the date on which the complaint was filed.

- (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);
 - (d) If appropriate, a description of resolution(s); and

- (e) Where probable cause is concluded, recommendation(s) may be included as to action(s) appropriate to remedy the specific violation(s) found.
- (11) The written Notice of Final Action shall include:
 - (a) A decision of each issue raised in the complaint and an explanation of the reasons underlying the decision; or a description of how the parties resolved the issue(s).
 - (b) Notice that the complainant has a right to file a complaint with the USDOL Civil Rights Center (CRC) (located at 200 Constitution Avenue, N.W., Suite N-4123, Washington, DC 20210) within 30 days of the date on which the Notice of Final Action is received if the complainant is dissatisfied with the recipient's final action on the complaint.

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 engaged in discriminatory behavior and practices;
 - (d) Training for individual(s) found to have engaged in discriminatory behavior and practices 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 OFP staff member assigned to investigate 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 OFP staff member assigned to investigate 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, Office of the Statewide Equal Employment Opportunity Coordinator (OSEEOC) (located at 301 West Preston Street, Room 607, Baltimore, MD 21201) 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 MD Labor Division of Workforce Development) may file a complaint with the USDOL Civil Rights Center (CRC) (located at 200 Constitution Avenue, N.W., Suite N-4123, Washington, DC 20210) within 30 days after the Department notifies the complainant of its proposed remedies.
- (7) Where the OFP Director or the OFP staff member assigned to investigate the complaint decides that there is no probable cause to believe that the alleged discrimination occurred, the OFP staff member assigned to

investigate the complaint shall notify the complainant and the respondent accordingly.

- (8) Where the complainant does not accept the decision of no probable cause, the OFP or the OFP staff member assigned to investigate the complaint shall proceed according to section C (6).

D. Complaints Received that are not filed against MD Labor

- (1) The OFP staff member shall determine the appropriate jurisdiction of the complaint.
- (2) The OFP staff member assigned to investigate the complaint shall refer individuals who are not MD Labor clients or staff and who are filing complaints against employers other than MD Labor to the appropriate enforcement agency.
 - (a) The OFP staff member processing the complaint shall maintain a copy of the referral form in the appropriate complaint file(s).
 - (b) No further action is required by MD Labor or the administrative entity.
- (3) Individuals who are MD Labor 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 accordingly.
 - (a) The OFP staff member processing the complaint shall inform the OFP Director and log the details of the complaint accordingly.
 - (b) The OFP Director shall decide if further MD Labor follow-up action(s) are required.