

Virginia Administrative Code

Title 1. Administration • Agency 45. Department of Law • Chapter 20. Office of Civil Rights

1 VAC 45-20-10. Policy.

The purpose of this chapter is to supplement the Virginia Human Rights Act (§ 2.2-3900 et seq.) of the Code of Virginia, which safeguards all individuals within the Commonwealth from unlawful discrimination.

Statutory Authority: § 2.2-520 of the Code of Virginia.

Historical Notes: Former 22VAC25-10-10 derived from VR402-01-02 § 1, eff. July 4, 1990; amended and renumbered, Virginia Register Volume 33, Issue 15, eff. May 5, 2017.

1 VAC 45-20-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the Virginia Human Rights Act, Chapter 39 (§ 2.2-3900 et seq.) of Title 2.2 of the Code of Virginia.

"Complaint" means a written statement by a person or by the division alleging an act of discrimination prohibited by § 2.2-3901 of the Code of Virginia.

"Complainant" or "charging party" means a person who claims to have been injured by a discriminatory practice.

"Designee" means an individual designated by the director to act in his stead pursuant to this chapter.

"Director" means an individual designated by the Attorney General to oversee the division and perform the duties and responsibilities outlined in the Act.

"Discharge" means an actual or constructive termination or separation of an employee from employment.

"Office" means the Office of Civil Rights of the Department of Law.

"Hearing officer" means a person qualified from the list of hearing officers maintained by the Executive Secretary of the Supreme Court of Virginia.

"Respondent" means a person against whom a complaint of violation of the Act is filed. In addition those terms and any other referring to people will be considered masculine or feminine.

Statutory Authority: § 2.2-520 of the Code of Virginia.

Historical Notes: Former 22VAC25-10-20 derived from VR402-01-02 § 2, eff. July 4, 1990; amended and renumbered, Virginia Register Volume 33, Issue 15, eff. May 5, 2017.

1 VAC 45-20-30. Complaints by or on behalf of persons claiming to be aggrieved.

A. A complaint on behalf of a person claiming to be aggrieved may be made by any person, agency, or organization; however, the complaint shall be made in writing. The written complaint need not identify by name the person on whose behalf it is made. The person making the complaint, however, shall provide the Office with the name, address, and telephone number of the person on whose behalf the complaint is made. During the Office's investigation, the Director shall verify the complaint with the person on whose behalf the complaint is made. The division may reveal the identity of complainants to federal, state, or local agencies that have agreed to keep such information confidential.

B. The complainant shall provide the division with notice of any change in address and with notice of any prolonged absence from his current address.

C. A complaint shall be filed with the division not later than 180 days from the day upon which the alleged discriminatory practice occurred.

Statutory Authority: § 2.2-520 of the Code of Virginia.

Historical Notes: Former 22VAC25-10-30 derived from VR402-01-02 § 3, eff. July 4, 1990; amended and renumbered, Virginia Register Volume 33, Issue 15, eff. May 5, 2017.

1 VAC 45-20-40. Where to make a complaint.

A complaint may be filed in person at or by mail to 202 North 9th Street, Richmond, VA 23219 between the hours of 9 a.m. and 5 p.m., Monday through Friday; by FAX to (804) 225-3294; or by email to CivilRights@oag.state.va.us. Telephone calls may be made to (804) 225-2292 in order to receive information on how and where to file complaints. Complaints shall not be accepted over the telephone.

Statutory Authority: § 2.2-520 of the Code of Virginia.

Historical Notes: Former 22VAC25-10-40 derived from VR402-01-02 § 4, eff. July 4, 1990; amended and renumbered, Virginia Register Volume 33, Issue 15, eff. May 5, 2017.

1 VAC 45-20-50. Contents of complaint.

A. Each complaint shall contain the following:

1. The full name, address, and telephone number of the person making the complaint;
2. The full name and address of the person against whom the complaint is made;
3. A clear concise statement of the facts, including pertinent dates, constituting the alleged unlawful discriminatory practices;
4. The date of filing and the name of the agency in cases where complaints alleging unlawful discriminatory practices have been filed before a local, state, or federal agency charged with the enforcement of discrimination laws; and
5. Any documentation the complainant believes will support the claim.

B. Notwithstanding the provisions of subsection A of this section, a complaint shall be considered filed when the Office receives a written statement that identifies the parties and describes generally the action or practices complained of.

C. A complaint may be reasonably and fairly amended by the complainant or the director at any time prior to a hearing. Except for the purposes of notifying the respondent as specified in subsection D of this section, amended complaints will be considered as having been made as of the original filing date.

D. When an amendment is filed, the Office shall forward a copy of the amendment to the respondent within five working days of the amendment. The respondent shall within 10 working days after receiving the amendment file an answer to the amendment.

Statutory Authority: § 2.2-520 of the Code of Virginia.

Historical Notes: Former 22VAC25-10-50 derived from VR402-01-02 § 5, eff. July 4, 1990; amended and renumbered, Virginia Register Volume 33, Issue 15, eff. May 5, 2017.

1 VAC 45-20-60. Filing referrals to state and federal agencies.

A. Complaints that are under the jurisdiction of another state agency are considered filed with that agency when received by the Office provided the time limit for filing with the other agency has not expired.

B. The Office has established interagency agreements with the following state agencies:

1. Department of Professional and Occupational Regulation-Real Estate Board;
2. Department of Labor and Industry;
3. Department of Human Resources Management; and
4. Department of Human Resources Management, Office of Employee Dispute Resolutions.

If the Office or his designee determines that the complaint is not within the Office's jurisdiction, but possibly in the jurisdiction of one of the interagency agreement agencies, the complaint shall be sent to the appropriate agency within 15 working days of the determination. The complainant shall be notified of this action and a reason provided. Once the complaint has been forwarded and the complainant notified, the Office shall close the case. In the event the complaint is not under the jurisdiction of the agency to which it was referred or if additional evidence is submitted the case will be reopened.

C. Persons filing under Title VII of the Civil Rights Act of 1964, as amended, or the Fair Labor Standards Act shall be notified within 15 days that they should also file with the appropriate federal agency within the appropriate time period if the statute of limitations has not already expired.

D. All complaints shall be dated and time-stamped upon receipt.

Statutory Authority: § 2.2-520 of the Code of Virginia.

Historical Notes: Former 22VAC25-10-60 derived from VR402-01-02 § 6, eff. July 4, 1990; amended and renumbered, Virginia Register Volume 33, Issue 15, eff. May 5, 2017; Errata, 33:18 VA.R 2029 May 1, 2017.

1 VAC 45-20-70. Notice of complaint.

Within 15 days after the perfecting of a complaint, the director shall notify the respondent of the complaint by mail.

Statutory Authority: § 2.2-520 of the Code of Virginia.

Historical Notes: Former 22VAC25-10-70 derived from VR402-01-02 § 7, eff. July 4, 1990; amended and renumbered, Virginia Register Volume 33, Issue 15, eff. May 5, 2017.

1 VAC 45-20-80. Investigations by the director or his designee.

A. During the investigation of a complaint, the Director may utilize the information gathered by government agencies. The Director shall accept a statement of position or evidence submitted by the complainant, the person making the complaint on behalf of complainant, or the respondent. The Director may submit a request for information to the respondent that, in addition to specific questions, may request a response to the allegations contained in the complaint. The Director's or his designee's request for information shall be mailed within 30 working days of receipt of the complaint. A response to the request for information shall be submitted within 21 working days from the date the request is postmarked.

B. The complainant and respondent shall provide such additional information deemed necessary by the Director or his designee to conduct an investigation.

C. The Director may require a fact-finding conference held in accordance with § 2.2-4019 of the Code of Virginia with the parties prior to a determination of a complaint of discrimination. The conference is an investigative forum intended to define the issues, to determine the elements in dispute, and to ascertain whether there is a basis for a negotiated settlement of the complaint.

D. The Director's or his designee's authority to investigate a complaint is not limited to the procedures outlined in subsections A, B, and C of this section.

Statutory Authority: § 2.2-520 of the Code of Virginia.

Historical Notes: Former 22VAC25-10-80 derived from VR402-01-02 § 8, eff. July 4, 1990; amended and renumbered, Virginia Register Volume 33, Issue 15, eff. May 5, 2017.

1 VAC 45-20-90. Dismissal; procedure and authority.

A. When the Director determines that the complaint (i) is not timely filed or (ii) fails to state a claim under the Act, the Director shall dismiss the complaint.

B. When the Director determines after investigation that there is not reasonable cause to believe that the Act has been violated, the Director shall dismiss the complaint. If the complainant disagrees with the Director's decision, the Division can be petitioned within 10 working days for a review of the decision.

C. Upon receiving a petition for review, the Office shall determine whether to:

1. Issue a final determination to the parties in accordance with § 2.2-4023 of the Code of Virginia;
2. Refer the matter to the appropriate federal agency when applicable; or
3. Hold a formal hearing in accordance with 1 VAC4 5-20-110.

Statutory Authority: § 2.2-520 of the Code of Virginia.

Historical Notes: Former 22VAC25-10-90 derived from VR402-01-02 § 9, eff. July 4, 1990; amended and renumbered, Virginia Register Volume 33, Issue 15, eff. May 5, 2017.

1 VAC 45-20-100. Settlement.

A. When the Director determines that there is reasonable cause to believe that an unlawful discriminatory practice has occurred or is occurring, the Director shall endeavor to eliminate such practice by informal methods of conference, conciliation, and negotiation.

B. When conciliation or negotiated settlement is successful, the terms of the agreement shall be reduced to writing and signed by the complainant, respondent, and the Director within 10 working days of the settlement.

Statutory Authority: § 2.2-520 of the Code of Virginia.

Historical Notes: Former 22VAC25-10-100 derived from VR402-01-02 § 10, eff. July 4, 1990; amended and renumbered, Virginia Register Volume 33, Issue 15, eff. May 5, 2017.

1 VAC 45-20-110. Formal hearing.

A. When conciliation efforts fail or when the Director determines that the conciliation process will not be in the best interest of the complainant or the Commonwealth, the director shall set the matter for formal hearing conducted in accordance with § 2.2-4020 of the Code of Virginia or refer the complaint to the appropriate federal agency.

B. Notice of the time and place of the hearing shall be mailed to the parties at least 20 working days before the date of the hearing.

C. All hearings shall be open to the public.

D. A case shall be heard by a hearing officer appointed by the Division from a list obtained from the Supreme Court of Virginia.

E. The hearing officer shall not be bound by statutory rules of evidence or technical rules of procedure.

F. Both the complainant and the respondent shall appear and be heard in person, but may be assisted by counsel or by an authorized representative.

G. All testimony shall be given under oath or affirmation.

H. The order of presentation shall be established by the hearing officer with the burden of proof being placed on the complainant.

I. Where any party fails to appear at a fact-finding conference or hearing conducted pursuant to this chapter, the Office shall proceed in accordance with the provisions of § 2.2-4020.2 of the Code of Virginia.

J. Irrelevant, immaterial, and unduly repetitious evidence shall, at the discretion of the hearing officer, be excluded. The rules of privilege shall be given effect.

K. The hearing officer may accept relevant documents or other evidence into the record as exhibits. Documents to be submitted at the hearing by a party shall be distributed to the division and the other party no later than five working days prior to the hearing. Documents not submitted in accordance with this rule shall only be admitted when the hearing officer determines that just cause exists.

L. Before the hearing concludes, the parties shall be given an opportunity to present an oral closing argument of their cases and proposed findings and conclusions in accordance with the provisions of § 2.2-4020 of the Code of Virginia.

M. The hearing shall be recorded by an official reporter and one transcript shall be purchased by the Office. After the division has received the transcript, the Office's copy shall be made available for review within five (5) working days upon request to the Office during regular business hours.

Statutory Authority: § 2.2-520 of the Code of Virginia.

Historical Notes: Former 22VAC25-10-110 derived from VR402-01-02 § 11, eff. July 4, 1990; amended and renumbered, Virginia Register Volume 33, Issue 15, eff. May 5, 2017.

1 VAC 45-20-120. Findings and recommendations.

A. The hearing officer shall submit a recommended decision with findings of fact and conclusions of law in writing to the Office. The recommended decision of the hearing officer shall be filed with the Office within 90 days of the date of completion of the hearing.

B. If the Office accepts the hearing officer's findings that the respondent has not engaged in a discriminatory practice, the Office shall issue an order dismissing the complaint. A copy of the order shall be furnished to the complainant and the respondent.

C. If the Office accepts the hearing officer's findings that the respondent has committed an unlawful discriminatory practice, the Office shall state its findings and may issue recommendations to the respondent to eliminate the discriminatory practice, including:

1. Hiring, reinstating, promoting, or upgrading the position of the complainant, with or without back pay, and providing such fringe benefits as the complainant has been denied;
2. Restoring or admitting the complainant to membership in a labor organization, a training program, a guidance program, or other occupational training program, using the objective criteria for admission of persons to such programs;
3. Leasing, renting, or selling property at issue to the complainant;

4. Extending to the complainant the full and equal enjoyment of the goods, services, facilities, privileges, or accommodations of the respondent;
5. Admitting the complainant to a public accommodation or an educational institution;
6. Reporting as to the manner of compliance;
7. Posting notices in a conspicuous place setting forth requirements for compliance with this chapter or other information that the division deems necessary to explain the Act;
8. Revising personnel policies and procedures, including the undertaking of affirmative efforts; and
9. Reimbursing attorney's fees to complainant.

D. If the Office rejects the hearing officer's recommended decision, the Office shall state its own finding of facts and/or conclusions of law based on the record.

E. Copies of the Office's final decision, including where applicable, any recommendations, shall be furnished to the complainant and respondent within 15 working days.

Statutory Authority: § 2.2-520 of the Code of Virginia.

Historical Notes: Former 22VAC25-10-120 derived from VR402-01-02 § 12, eff. July 4, 1990; amended and renumbered, Virginia Register Volume 33, Issue 15, eff. May 5, 2017.

1 VAC 45-20-130. General.

A. If the Office fails to act by dates specified in this chapter, neither the rights of the complainant nor the respondent shall be prejudiced.

B. If the complainant or the respondent fails to comply with the provisions stated in this chapter, except where good cause is shown, the failure may be deemed a waiver of any rights provided in this chapter.

C. After the initial filing, all correspondence relative to the case shall be by certified mail, hand delivered, or by a carrier that will furnish a receipt.

Statutory Authority: § 2.2-520 of the Code of Virginia.

Historical Notes: Former 22VAC25-10-130 derived from VR402-01-02 § 13, eff. July 4, 1990; amended and renumbered, Virginia Register Volume 33, Issue 15, eff. May 5, 2017.