

# EEO Complaints: What to Consider Before You File

Discrimination **ALONE** is not against the law; however, when discrimination is **based on your membership in a protected category** regarding an **employment matter**, it is against the law!

## Office of Workforce Engagement – Diversity & Inclusion Unit

### What is Employment Discrimination?

Employment discrimination occurs when an employer treats an employee or applicant for less favorably due to their **protected class/category** and may occur in many aspects of **employment practices**.

### Theories of Discrimination:

**Disparate Impact:** Unintentional discrimination that occurs when a policy or practice appears to be neutral but disproportionately affects a particular group of people based on their protected category and often leads to unequal outcomes

**Disparate Treatment:** Intentional discrimination against individuals based on their protected class, resulting in unequal treatment as compared to other

### Protected Categories (Bases)

- **Race**
- **Color**
- **National Origin** (Hispanic, German, etc.)
- **Religion**
- **Sex** (including pregnancy, sexual harassment, orientation, gender identity or expression)
- **Age** (40 and older)
- **Disability**
- **Genetic Information**
- **Veteran Status**
- **Political Affiliation**
- **Retaliation** (filing a compliant, complaining to employer, participation in investigation)

### WHY Do You Think You Were Treated Differently Than Others?

Ask yourself, was the action taken against me because of my (list one or more protected categories) and only because of my Race, for example:

The **issue (the employment action(s))** in question) and the **basis (your status in a protected group)**.

### WHAT is the issue (employment action)?

Is the problem related to a matter dealing with my employment:

- Hiring and/or promotion
- Pay (unequal wages and compensation)
- Reasonable Accommodation
- Discharge, Termination, or Layoff
- Retaliation
- Job Training
- Benefits
- Disclosing Medical Information
- Hostile Work Environment

### WHEN did the incident Occur?

Generally, the time limit for filing a complaint of discrimination is **180 calendar days** from the **last** act of discrimination.

Contact the **Diversity & Inclusion Unit** within the DHRM's Office of Workforce Engagement for additional timelines.

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### WHO is involved?

**YOU** are, if you are:

- 1) A **current** Commonwealth of Virginia **employee**
- 2) A **former** Commonwealth of Virginia **employee**
- 3) An **applicant** for employment in the Commonwealth of Virginia

### **Who took, or failed to take the action giving rise to the complaint?**

Was it your supervisor, a co-worker, a visitor, a contract worker, vendor, etc. ?

### FINALLY....

**Now that you have considered all the facts and information, ask yourself:**

If it were not for my **protected category(ies)** would this action have been taken? If **no**, the issue **does not** meet EEO complaint criteria. If **yes**, you **may** have an EEO claim.

## Burden of Proof in the EEO Complaints

### Who has to prove discrimination occurred?

The burden of proof rests on the **employee (complainant)** at all times. However, there is a three-step process used to decide whether or not discrimination has occurred.

- 1) Employee (complainant) must establish a **prima facie case** of discrimination
  - employees must show that:
    - They are a **member of a protected class**
    - Suffered an **adverse employment action**
- A **similarly situated individual** of a different protected class was treated **more favorably**
- 2) Employer (respondent) must provide a legitimate non-discriminatory reason for it's actions
- 3) Employee (complainant) must prove that the employer's reason is a pretext to hide discrimination

## CONTACT US

### The Diversity & Inclusion Unit Can Help!

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