



September 29, 2023

TO: All Deputies, Division Chiefs, Staff Officers, District Health Officers, and Administrators of Attached Agencies

FROM: Kenneth S. Fink, MD, MGA, M.PH *KF*
Director of Health

SUBJECT: **Non-Employee Discrimination Complaint Procedures**

SCOPE:

All divisions, branches, and programs designated within the Hawai'i State Department of Health, including administratively attached agencies (HDOH).

PURPOSE:

These procedures provide guidance for all complaints filed under Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA) of 1990, as amended by the ADA Amendments Act of 2008, 45 C.F.R. Part 84 (Nondiscrimination on the Basis of Handicap); the Age Discrimination Act of 1975, Section 13 of the Federal Water Pollution Control Act of 1972, and Title IX of the Education Amendments of 1972, 40 C.F.R. Part 7, and any other applicable federal or state law (the "Acts"), as they relate to any program or activity that is administered by the HDOH, or its consultants, contractors and vendors. In addition to these procedures, complainants have the right to file a formal complaint with other State or Federal agencies or to seek private counsel for complaints alleging discrimination.

These procedures shall neither prevent, unduly hinder, nor disrupt HDOH from carrying out its administrative or regulatory duties including, but not limited to, permitting, rulemaking or enforcement operations. These procedures do not apply to departmental hiring decisions or actions. These procedures do not replace or function in lieu of statutory rights of appeal provided for in HDOH's controlling statutes.

These Non-Employee Discrimination Complaint Procedures update the policy and procedures, including complaint forms, by which HDOH shall resolve all non-employee discrimination complaints filed with the Department. This rescinds any and all previous non-employee discrimination complaint procedures and complaint forms.

SECTION I. NON-DISCRIMINATION NOTICE

The Non-Employee Non-Discrimination Notice will be placed in a conspicuous area where the public is allowed (e.g., waiting room, reception area, etc.), and on the HDOH website. The copy of the Notice will be provided to anyone requesting the Notice, in a format that is reasonably producible (e.g., electronic, paper, email, etc.).

SECTION II. PROCEDURE FOR SUBMISSION OF DISCRIMINATION COMPLAINTS

A. This policy applies to non-employees affected by decisions made by HDOH programs. Any non-employee who in good faith believes he or she has been discriminated against by the HDOH, on the basis of race, color, national origin, age, disability, or sex, or any other class as protected under applicable federal or state law, or intimidated or retaliated against for exercising his or her rights, may submit a written complaint to the HDOH Non-Discrimination Coordinator at 1250 Punchbowl Street, Floor 3, Honolulu, Hawaii 96813. A Discrimination Complaint Form is included as Attachment A and is also available on-line at: <http://health.hawaii.gov>.

B. Formal complaints shall be filed within ninety (90) calendar days of the latest incident of alleged discrimination, or the date when the alleged discrimination became known to the complainant(s), or where there has been a continuing course of conduct, the date on which the conduct was discontinued or the latest instance of the conduct.

C. Complaints shall be in writing and signed by the complainant(s), unless the complainant's disability prevents him or her from filing a written complaint, in which case the complaint may be submitted verbally due to the needs of the individual's disability (e.g., personal interview, tape recording, etc.). The complaint shall include:

1. The complainant's contact information, including first and last name, address, city, state, zip code, phone number, and e-mail address (as appropriate);
2. Whether the complainant has a representative, and if so, the representative's contact information, including first and last name, address, city, state, zip code, phone number, and e-mail address (as appropriate);
3. Identification of the protected classification upon which the alleged violation is based;
4. Clear Identification of the alleged parties who committed the alleged discriminatory activity, including the division, branch, or program the complaint is against, if known;
5. A specific and a detailed description of the conduct that the complainant perceived as discrimination;
6. The date of the alleged discriminatory activity, or the date range (including the latest date) if the alleged discriminatory activity resulted

- from a continuing course of conduct; and
7. A specific description of any adverse impact alleged to have occurred or which will occur; and
 - a. The complaint shall be delivered by mail or in person to the HDOH Non-Discrimination Coordinator, at 1250 Punchbowl Street, Third Floor, Honolulu, Hawaii 96813, or by email at doh.nondiscrimination@doh.hawaii.gov. Faxed complaints should be sent to (808) 586-4368.
 - b. In instances where a complainant is unable to submit a written complaint, or requires assistance filing a complaint due to limited English proficiency or disability, but requests that HDOH investigate allegedly unlawful discrimination, the complainant may submit a verbal complaint to the Non-Discrimination Coordinator by calling HDOH's main office phone number: (808) 586-4400.
 - c. Allegations received by telephone will be reduced to writing and forwarded to the complainant(s) for confirmation or revision, signature and return for processing. Allegations received by fax or email shall be followed up by a hard copy of the fax or email complaint with original signature(s). Telephone, faxed, and emailed complaints will be acknowledged but will not be processed until the written complaint (confirmed or revised and signed by complainant) has been received by the Non-Discrimination Coordinator.
 - d. Upon request, HDOH will provide translation assistance at no cost for those complainants with limited English proficiency. A complainant with limited English proficiency may also obtain assistance from another person in completing the Complaint form, but the form must be signed and confirmed by the complainant.
 - e. HDOH will acknowledge receipt of a complaint within ten (10) calendar days of receiving a complaint. The Non-Discrimination Coordinator will review the complaint form to determine jurisdiction and verify the complainant's intent to proceed with the complaint.
 - f. Within thirty (30) calendar days of acknowledging receipt of the Complaint, HDOH will notify the complainant whether the facts warrant HDOH conducting a full investigation into the allegations. If warranted, HDOH will further advise the complainant if HDOH will conduct the full investigation, or if the Complaint will be forwarded to another agency for investigation.

- g. The HDOH does not intimidate, threaten, coerce, or discriminate against any individual or group for the purpose of interfering with any right or privilege guaranteed under federal anti-discrimination laws, or because an individual has filed a complaint or has testified, assisted, or participated in any way in an investigation, proceeding, or hearing related to federal anti-discrimination laws, or has opposed any practice made unlawful by federal anti-discrimination laws. HDOH employees shall not retaliate, intimidate, threaten, coerce, or discriminate against an individual or group for the purpose of interfering with any right or privilege granted by the Acts, or because an individual has filed a complaint or has testified, assisted, or participated in any way in an investigation under this policy or has opposed any practice made unlawful by the Acts, nor will HDOH tolerate such actions. Retaliation is a serious violation of this policy and law and must be reported to the HDOH Non-Discrimination Coordinator immediately.
- h. To request language or accessibility for completing the complaint form please contact the HDOH Non-Discrimination Coordinator at (808) 586-4400 or email: doh.nondiscrimination@doh.hawaii.gov. Please allow sufficient time for HDOH to meet accommodation requests.
- i. For Hawai'i Department of Health employee complaints, please contact: HDOH Human Resources Office at (808) 586-4520 or email: doh.hroeeo-ra@doh.hawaii.gov.

SECTION III. PROCEDURE FOR INVESTIGATION OF DISCRIMINATION COMPLAINTS INVOLVING THE HDOH

- A. At HDOH's discretion, discrimination complaints against HDOH may be sent to an appropriate delegate of the HDOH Non-Discrimination Coordinator, including a third-party agency to request assistance with the investigation.
- B. The HDOH Non-Discrimination Coordinator or delegate has one hundred and eighty (180) calendar days to investigate the complaint, unless it is determined that based upon the complexity of the complaint that additional time is needed. If it is determined that additional time is needed for the issuance of the written decision, the specified number of days in which the complaint evaluation will be extended will be provided in writing to the complainant.
- C. "Preponderance of the Evidence" is the standard by which non-employee discrimination complaints must be proved. This standard requires that, for a finding of discrimination, the evidence and testimony must show that it is more likely than not (that is, more than 50% likely) that HDOH caused harm due to a discriminatory action.

D. If more information is needed to resolve the case, the HDOH Non-Discrimination Coordinator or delegate may contact the complainant(s). The complainant(s) has no later than thirty (30) calendar days from the date of contact to send any requested information to the HDOH Non-Discrimination Coordinator or delegate assigned to the case. If the HDOH Non-Discrimination Coordinator or delegate is not contacted by the complainant(s) or does not receive the additional information from the complainant(s) within thirty (30) calendar days, the HDOH Non-Discrimination Coordinator may administratively close the case. A case may also be administratively closed if the complainant(s) no longer wishes to pursue her or his case.

E. After the investigation is completed, the parties will be notified of the outcome. A letter shall be issued summarizing the investigative findings, and whether or not there was a violation of the HDOH's nondiscrimination policy. In instances where there was no finding, the parties will be informed of such and that the case is closed. In cases where there appeared to be a violation, the parties shall be informed that appropriate action shall be taken to ensure that the alleged act(s) of discrimination stops. Complainants shall be notified of her or his right to pursue other avenues of recourse.

F. A complainant who is dissatisfied with the decision of the HDOH Non-Discrimination Coordinator may file a complaint with the Hawai'i Civil Rights Commission at (808) 586-8636, or via email at DLIR.HCRC.INFOR@hawaii.gov.

SECTION IV. PROCEDURE FOR INVESTIGATION OF DISCRIMINATION COMPLAINTS INVOLVING HDOH SUBRECIPIENTS

A. The HDOH will investigate discrimination complaints against its subrecipients (i.e., consultants, vendors, and contractors).

B. For discrimination complaints filed against the HDOH subrecipients (i.e., consultants, vendors, and contractors) the HDOH will assume jurisdiction and will investigate and determine the case.

C. The HDOH shall follow the steps provided in Section III, PROCEDURE FOR INVESTIGATION OF DISCRIMINATION COMPLAINTS INVOLVING THE HDOH.

SECTION V. PROCEDURE FOR INVESTIGATION OF DISCRIMINATION COMPLAINTS BY A THIRD-PARTY AGENCY

A. At HDOH's discretion, discrimination complaints against HDOH may be delegated to a third-party agency (TPA) for assistance with the investigation. If a TPA is utilized, HDOH maintains responsibility for the grievance process.

B. The HDOH Non-Discrimination Coordinator will identify and notify a TPA of the discrimination complaint being filed against HDOH within seventy-two (72) hours

or three (3) calendar days of receipt of the complaint. The TPA will follow the HDOH grievance procedures for investigating the complaint.

C. For discrimination complaints filed against the HDOH that have been referred to and accepted by the TPA, the HDOH has one hundred and eighty (180) calendar days to have the complaint investigated, unless it is determined that based upon the complexity of the complaint that additional time is needed. If it is determined that additional time is needed for the issuance of the written decision, the HDOH will provide the specified number of days in which the complaint evaluation will be extended in writing to the complainant.

D. "Preponderance of the Evidence" is the standard by which non-employee discrimination complaints must be proved. This standard requires that, for a finding of discrimination, the evidence and testimony must show that it is more likely than not (that is, more than 50% likely) that HDOH caused harm due to a discriminatory action.

E. If more information is needed to resolve the case, the TPA may contact the complainant(s). The complainant(s) has no later than thirty (30) calendar days from the date of contact to send any requested information to the investigator assigned to the case. If the investigator is not contacted by the complainant(s) or does not receive the additional information from the complainant(s) within thirty (30) calendar days, the TPA will notify HDOH and HDOH may administratively close the case. A case may also be administratively closed if the complainant(s) no longer wishes to pursue her or his case.

F. After the investigation is completed and the investigation report has been reviewed and adopted by HDOH, HDOH will issue a letter summarizing the investigative findings, and whether or not there was a violation of the HDOH's nondiscrimination policy. In instances where there was no finding, HDOH will notify the complainant of such and that the case is closed. In cases where there appeared to be a violation, HDOH will notify the complainant that appropriate action shall be taken to ensure that the alleged act(s) of discrimination stops. Complainants shall be notified of her or his right to pursue other avenues of recourse.

G. A complainant dissatisfied with the HDOH decision may file a complaint with the Hawai'i Civil Rights Commission at (808) 586-8636, or via email at DLIR.HCRC.INFOR@hawaii.gov.

SECTION VI. COMPLAINT FORM

The Non-Employee Discrimination Complaint form is attached as an exhibit. Please submit this form for Non-Employee Complaints in person or at the address below, or mail this form to:

Hawai'i State Department of Health
Non-Discrimination Coordinator
1250 Punchbowl Street, Third Floor
Honolulu, HI 96813
Phone: (808) 586-4400
Email: doh.nondiscrimination@doh.hawaii.gov

A non-discrimination complaint form can also be found online at:
<http://health.hawaii.gov>

The Hawaii Department of Health is committed to providing meaningful access. To request translation, interpretation, modifications, accommodations, or other auxiliary aids or services, contact the HDOH Non-Discrimination Coordinator at (808) 586-4400 or email: doh.nondiscrimination@doh.hawaii.gov. Please allow sufficient time for HDOH to meet accommodation requests.

APPROVED: _____



Director of Health

Date: _____

9/29/2023



Non-Employee Discrimination Complaint Form

Section I:			
Name of Complainant (First and Last Name):			
Address:			
Telephone (Home):	Telephone (Work):		
Electronic Mail Address:			
Accessible Format Requirements?	Large Print <input type="checkbox"/>	Audio Tape <input type="checkbox"/>	
	TDD <input type="checkbox"/>	Other <input type="checkbox"/>	
Section II:			
Does the complainant have a representative?	Yes* <input type="checkbox"/>	No <input type="checkbox"/>	
<i>*If you answered "yes" to this question, please provide your representative's contact information.</i>			
Name of Representative (First and Last Name):			
Address:			
Telephone (Home):	Telephone (Work):		
Electronic Mail Address:			
Please confirm you have provided permission to the representative to represent you in this matter.	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
Section III:			
I believe the discrimination I experienced was based on (check all that apply):			
Race <input type="checkbox"/>	Color <input type="checkbox"/>	National Origin <input type="checkbox"/>	Sex <input type="checkbox"/>
Age <input type="checkbox"/>	Disability <input type="checkbox"/>	Retaliation <input type="checkbox"/>	Other <input type="checkbox"/> _____
Date of the Alleged Discrimination (Month, Day, Year): _____			
Explain as clearly as possible what happened and why you believe you were discriminated against. Describe all persons who were involved. Include the name and contact information of the person(s) who discriminated against you (if known) as well as names and contact information of any witnesses. If more space is needed, please use and attach a separate sheet.			



Section IV:

Describe the harm alleged to have occurred, or which will occur, because of the alleged discrimination. If more space is needed, please use the back of this form or use and attach a separate sheet.

Section V:

Identify the parties alleged to be subjected to, or potentially impacted by, the alleged discrimination.

Section VI:

Have you previously filed a discrimination complaint with this agency

Yes

No

If yes, please provide any reference information regarding your previous complaint.



Section VII:

Have you filed this complaint with any other Federal, State, or local agency, or with any Federal or State court?

Yes

No

If yes, name all that apply: _____

If yes, please provide information about a contact person at the agency/court where the complaint was filed:

Name:

Title:

Agency/Court:

Address:

Telephone:

Section VIII:

Name of HDOH division or attached agency complaint is against (if known):

Name of person complaint is against:

Title:

Location:

Telephone Number (if available):

You may attach any written materials or other information you think is relevant to your Complaint.

Your signature and date are required below.

Signature of Complainant

Date