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## **Non-Employee Discrimination Complaint Procedure**

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 Age Discrimination Act of 1975, Section 13 of the Federal Water Pollution Control Act of 1972, Title IX of the Education Amendments of 1972, 40 CFR section 7.100 (Prohibition on Intimidation and Retaliation), and any other applicable federal or state law related to non-discrimination rights (Law), as they relate to any program or activity administered by the State of Hawaii, Agribusiness Development Corporation (ADC), or its consultations, contractors, and vendors. In addition to these procedures, complainants' alleging discrimination may file a formal complaint with any State or Federal agency that addresses such discrimination or seek private counsel.

These procedures shall neither prevent, unduly hinder, nor disrupt ADC from carrying out its administrative or regulatory duties including but not limited to permitting, licensing, leasing, rulemaking, or enforcement operations. These procedures do not apply to ADC hiring decisions or actions. These procedures do not replace or function in lieu of statutory rights as provided for in ADC controlling statutes, By-Laws, and Land Management Policies and Procedures Manual.

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

### **I. PROCEDURES FOR SUBMISSION OF DISCRIMINATION COMPLAINTS**

- a. This policy applies to non-employees affected by decisions made by ADC programs. Any non-employee who in good faith believes they have been discriminated against by ADC, 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 their rights, may submit a written complaint to ADC Non-Discrimination Coordinator Mark Takemoto, at 235 S. Beretania St., Suite 205, Honolulu, HI 96813. A Discrimination Complaint Form is available at <https://dbedt.adc@hawaii.gov>. Contact the ADC Non-Discrimination Coordinator to provide reasonable accommodations if necessary to complete the Discrimination Complaint Form.

- b. Formal complaints shall be filed within ninety 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). The complaint shall identify the complainant(s) and shall include:
  - 1. The complainant's contact information including first and last name, address, city, state, zip code, telephone 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, telephone number, and e-mail address (as appropriate);
  - 3. Identification of the protected classification upon which the alleged violation is based;
  - 4. A specific and detailed description of conduct that the complainant perceived as discrimination;
  - 5. 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;
  - 6. A specific description of any adverse impact alleged to have occurred or which will occur; and
  - 7. Clearly identify the alleged party(ies) who committed the alleged discriminatory activity.
- d. The complaint shall be delivered by mail or in-person to the ADC business address at: 235 S. Beretania St., Suite 205, Honolulu, HI 96813, or via email at [dbedt.adc@hawaii.gov](mailto:dbedt.adc@hawaii.gov), or via facsimile (FAX) at (808) 586-0189.
- e. Allegations submitted by FAX or email shall be followed up by a hard copy of the FAX or email complaint with original signature(s). FAX or email copies of a complaint will be acknowledged but will not be processed until the original of the FAX or email transmittal of the complaint with original signature(s) has been received by the ADC business office located at 235 S. Beretania St., Suite 205, Honolulu, HI 96813.
- f. 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 ADC investigate allegedly unlawful discrimination, the complainant may submit a verbal complaint to the Non-Discrimination Coordinator by calling ADC's main office telephone number at (808) 586-0186.
- g. When necessary to accommodate the complainant, allegations received by telephone will be reduced to writing and forwarded to the complainant(s) for confirmation or revision, signature and return for processing. Telephone complaints will be acknowledged but will not be processed until the written complaint (confirmed or

revised and signed by the complainant(s)) has been received by the ADC business office located at 235 S. Beretania St., Suite 205, Honolulu, HI 96813.

- h. Upon request, ADC 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.
- i. ADC will acknowledge receipt of a complaint within ten calendar days of receiving a complaint. The ADC Non-Discrimination Coordinator will review the complaint form to determine jurisdiction and verify the complainant(s) intent to proceed with the complaint.
- j. Within thirty calendar days of acknowledging receipt of the complaint, ADC will notify the complainant whether the facts warrant ADC conducting a full investigation into the allegation(s). If warranted, ADC will further advise the complainant if ADC will conduct the full investigation, or if the Complaint will be forwarded to another agency for investigation.
- k. ADC 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 or state 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 or state anti-discrimination laws, or has opposed any practice made unlawful by federal or state anti-discrimination laws. ADC employees shall not retaliate, intimidate, threaten, coerce or discriminate against any individual or group for the purpose of interfering with any right or privilege granted by Law, nor will ADC tolerate such actions. Retaliation is a serious violation of this policy and law and must be reported to the ADC Non-Discrimination Coordinator immediately.
- l. To request language or other accommodation for completing the complaint form, contact the ADC business office at (808) 586-0186 or email [dbedt.adc@hawaii.gov](mailto:dbedt.adc@hawaii.gov). Please allow sufficient time for ADC to meet accommodation requests.
- m. For ADC employee discrimination complaints, please contact DBEDT human resources officer Steven Sung at (808) 586-2562 or by email: [steven.s.sung@hawaii.gov](mailto:steven.s.sung@hawaii.gov).

## II. PROCEDURE FOR INVESTIGATION OF DISCRIMINATION COMPLAINTS INVOLVING ADC

- a. At ADC's discretion, discrimination complaints against ADC may be sent to a third-party agency to request assistance with the investigation.
- b. The ADC Non-Discrimination Coordinator has one-hundred-eighty calendar days to

investigate the complaint(s), 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 specific 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 ADC caused harm due to a discriminatory action.
- d. If more information is needed to resolve the case, the ADC Non-Discrimination Coordinator may contact the complainant(s). The complainant(s) has/have no later than thirty calendar days from the date of contact to send any requested information to the ADC Non-Discrimination Coordinator assigned to the case. If the ADC Non-Discrimination Coordinator is not contacted by the complainant(s) or does not receive the additional information from the complainant(s) within thirty calendar days, the ADC Non-Discrimination Coordinator may administratively close the case. A case may also be administratively closed if the complainant(s) no longer wish to pursue the 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 ADC’s non-discrimination policy. In instances where there was no finding of violation, the parties will be informed of such and that the case is closed. In cases where there was a finding of violation, the parties shall be informed that appropriate action shall be taken to ensure that the alleged act(s) of discrimination stop. Complainant(s) shall be notified of their right to pursue other avenues of recourse.
- f. A complainant who is dissatisfied with the decision of the ADC Non-Discrimination Coordinator may file a complaint with the Hawaii Civil Rights Commission at (808) 586-8636, or via email at [DLIR.HCRC.INFOR@hawaii.gov](mailto:DLIR.HCRC.INFOR@hawaii.gov).

### III. PROCEDURE FOR INVESTIGATION OF DISCRIMINATION COMPLAINT INVOLVING ADC SUB-RECIPIENTS

- a. ADC will investigate discrimination complaints against its sub-recipients (i.e., consultants, vendors, and contractors).
- b. For discrimination complaints filed against ADC sub-recipients (i.e. consultants, vendors, and contractors), ADC will assume jurisdiction and will investigate and determine the case.

- c. ADC shall follow the steps provided in Section II, PROCEDURE FOR INVESTIGATION OF DISCRIMINATION COMPLAINTS INVOLVING ADC.

#### IV. PROCEDURE FOR INVESTIGATION OF DISCRIMINATION COMPLAINTS BY A THIRD-PARTY AGENCY

- a. At ADC's discretion, discrimination complaints against ADC may be sent to a Third-Party Agency (TPA) for assistance with the investigation. If a TPA is utilized, ADC maintains responsibility for the grievance process.
- b. The ADC Non-Discrimination Coordinator will identify and notify a TPA of the discrimination complaint being filed against ADC within seventy-two hours or three calendar days of receipt of the complaint. The TPA will follow the ADC grievance procedures for investigating the complaint.
- c. For discrimination complaints filed against ADC that have been referred to and accepted by the TPA, ADC has one-hundred-eighty 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, ADC will provide the specific 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 (this is, more than 50% likely) that HDOA 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/have no later than thirty 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 calendar days, the TPA will notify ADC and ADC may administratively close the case. The case may also be administratively closed if the complainant(s) no longer wish to pursue the case.
- f. After the investigation is completed and the investigation report has been reviewed and adopted by ADC, ADC will issue a letter summarizing the investigative findings, and whether or not there was a violation of ADC's non-discrimination policy. In instances where there was no finding of violation, ADC will notify the complainant of such and that the case is closed. In cases where there was a finding of violation, ADC will notify the complainant(s) that appropriate action shall be taken to ensure that the alleged act(s) of discrimination stop. Complainant(s) shall be notified of their right to pursue other avenues of recourse.

- g. A complainant who is dissatisfied with the ADC decision may file a complaint with the Hawaii Civil Rights Commission at (808) 586-8636, or via email at [DLIR.HCRC.INFOR@hawaii.gov](mailto:DLIR.HCRC.INFOR@hawaii.gov).

ADC is committed to providing meaningful access to ADC programs, services, and activities. To request translation, interpretation, modifications, accommodations, or other auxiliary aids or services, contact the ADC Non-Discrimination Coordinator at (808) 586-0186 or email [dbedt.adc@hawaii.gov](mailto:dbedt.adc@hawaii.gov). Please allow sufficient time for ADC to meet accommodation request.