

**State of West Virginia Equal
Employment Opportunity Office
50 Dee Drive
Charleston, West Virginia 25311**

**PROCEDURE FOR HANDLING EQUAL
EMPLOYMENT OPPORTUNITY COMPLAINTS**

I. Definitions and Responsibilities

EEO Complaints - Complaints alleging discrimination in the workplace because of race, color, sex, age (40 and above), religion, national origin, or disability.

Complainant - Person alleging discriminatory conduct at any point within the employment process (application through termination), but not to include retirement benefits or workers' compensation. An EEO Complaint can also be filed by an agency Administrator who becomes aware of alleged discriminatory conduct in the workplace.

Respondent - Person accused of discriminatory conduct.

Administrator - The commissioner, director, or head of any state department, board, commission or agency.

EEO Counselor - An individual appointed by an agency to provide a non-threatening resource for employees to raise their EEO concerns. The EEO Counselor is trained to advise employees and management on proper EEO/AA procedures and is responsible for reporting EEO complaints to the agency EEO Coordinator and/or the State EEO Director.

EEO Coordinator - An individual appointed by an agency to coordinate the EEO activities of that agency. The Coordinator handles EEO complaints appropriately and notifies the Administrator and State EEO Director within two (2) working days of receiving notice of an EEO complaint. The EEO Coordinator provides the names of trained EEO investigators to the Administrator for appointment, ensures the State EEO Director is provided copies of documents pertaining to an investigation (as identified within this Procedure) and ensures the completed investigation report is returned for secure filing and closure. The Coordinator may also provide the same information to employees as the EEO Counselor. The Coordinator generally maintains the agency's affirmative action plan and monitors all affirmative action activities.

State EEO Director - An individual appointed by the Governor and authorized by Executive Order to direct all aspects of the statewide EEO Program. The Director has broad responsibilities to develop and implement a quality affirmative action and equal employment opportunity program throughout State government. The Director's specific responsibilities with respect to EEO complaints are as follows:

1. Coordinate communication of EEO policy to State employees in conjunction with EEO Counselors and Coordinators;
2. Refer employees with EEO concerns to the appropriate agency EEO Counselor and/or Coordinator;
3. Coordinate EEO training of Administrators, EEO Counselors and Coordinators;
4. Advise Administrators, EEO Counselors and Coordinators regarding EEO matters;
5. Establish written EEO complaint investigation procedures for use by agency EEO Coordinators and Counselors; and
6. Report periodically to the Governor regarding EEO activities throughout State government.

I. Complaint Procedure

A. *Purpose.* In each agency of State government, administrators, managers and supervisors at all levels are responsible for properly resolving EEO complaints. Therefore, the agency must ensure that each complaint is assigned to the appropriate EEO personnel. Although this procedure is designed to respond to formally-filed complaints, parties are encouraged to attempt informal resolution at the lowest possible level. In the event that the parties are unable to resolve the matter informally, the agency must:

1. Ensure that EEO Complaints are thoroughly investigated; and
2. Keep appropriate agency personnel and the State EEO Office informed about the complaint and subsequent findings.

B. *Confidentiality.* Confidentiality is of the utmost importance. Everyone involved in an investigation has a privacy interest that must be protected.

C. *Initial Contact.* During the initial contact with the Complainant, the Counselor should elicit the facts surrounding the complaint, witnesses, and the Complainant's suggested resolution to the complaint. For all complaints, the appropriate method to document the initial contact is the use of the Consultation Verification Form and the EEO Investigative Report Form.

Time Limit - The Complainant has the duty to promptly report an incident of EEO related harassment to the agency's EEO Coordinator/counselor or his or her immediate supervisor.

D. *Completed Consultation Verification and EEO Investigative Report Form.*

The EEO Counselor shall forward copies of the complaint documents to the EEO Coordinator within two (2) working days. Upon receiving notice of the complaint, the EEO Coordinator bears the responsibility for managing the complaint appropriately. The EEO Coordinator shall notify the Administrator and State EEO Director within two (2) working days of receiving notice of the complaint. The Administrator, EEO Counselor, EEO Coordinator and the State EEO Office shall consult with one another in order to determine the best course of action. Within (5) working days the appointing authority shall acknowledge in writing to the complainant the receipt of his/her complaint.

1. **Complaints Alleging Sexual Harassment** - The EEO Counselor or the immediate supervisor shall immediately notify the State EEO Office and the appointing authority (Administrator) of a complaint alleging sexual harassment. Within five (5) working days, the appointing authority shall acknowledge in writing to the complainant, the receipt of his/her complaint. For complaints alleging sexual harassment, these Procedures should be read in conjunction with West Virginia Division of Personnel Interpretive Bulletin DOP-B6, Prohibited Workplace Harassment.
2. **Federally Mandated Complaint Process** - State agencies that have a federally mandated complaint process should follow the procedures outlined for their agency. Copies of all complaint notifications and findings must be provided to the State EEO Office as soon as they are available. State agencies that do not have a federally mandated process shall follow the procedures established herein.

E. *Formal Investigation.* After consultation with the State EEO Director, the Administrator must determine whether a formal investigation should be commenced. However, parties are encouraged to attempt informal resolution of EEO complaints.

1. **Appointment of Investigators** - In the event that the parties are unable to informally resolve the complaint, the Administrator shall, in writing, appoint two (2) individuals to conduct an investigation. The Administrator shall consult with the agency EEO Coordinator regarding the appointment of trained EEO investigators.
2. **Notification to Complainant and Respondent** – The Administrator shall

notify the Complainant and Respondent in writing of the appointment of the investigators.

3. Notification to State EEO Director - The Administrator shall provide the State EEO Director a copy of the investigators appointment letters and the notification letters to the Complainant and Respondent.
4. The Investigation - Forty-five (45) calendar days are allotted to complete a formal investigation, beginning from the date of the appointment letter to the investigators. For assistance in conducting the investigation, see the State of West Virginia Equal Employment Opportunity Office, Guidelines for Conducting Equal Employment Opportunity Complaint Investigations.
5. Extensions - Should the investigators determine that they are unable to complete the investigation within forty-five (45) calendar days; they must promptly request an extension in writing from the State EEO Director. The request must state the reason(s) for the requested extension. The investigators shall immediately notify the Complainant and Respondent of the extension, if granted.

F. *Completion of the Formal Investigation.*

1. After review by the State EEO Director, the completed investigation report shall be presented to the Administrator for his/her decision. The Administrator shall have fifteen (15) calendar days from receipt of the report to render a decision. Should the Administrator determine that he or she is unable to render a decision within this time frame, he or she must promptly request an extension from the State EEO Director. The Administrator shall notify the Complainant and Respondent of the extension if granted.
2. The Administrator may share the investigative report with the agency attorney and the Employee Relations Section of the West Virginia Division of Personnel prior to reaching a final decision. Otherwise, the investigative report is to be held confidential.
3. Once the Administrator renders a decision, he/she shall notify the complainant in writing that appropriate action has been taken regarding the complaint. While the Complainant must be informed that appropriate action was taken, the agency may not disclose the specific details of any disciplinary action taken against the Respondent.

4. Within ten (10) working days after rendering a decision, the Administrator shall provide the State EEO Director a copy of the decision letter to the Respondent and the closure letter to the Complainant. The entire investigative file shall be retained by the agency EEO Coordinator for secured filing for a period of five (5) years after closure.

Joe Manchin III
Governor

Revised: April 25, 2007