

GOVERNMENT OF THE VIRGIN ISLANDS
DEPARTMENT OF LABOR

RULES AND REGULATIONS
FOR
TITLE 24, VIRGIN ISLANDS CODE
CHAPTER 17

EMPLOYMENT DISCRIMINATION

DATED 3/18/81

I.) JUAN LUIS, GOVERNOR OF THE VIRGIN ISLANDS OF THE UNITED STATES DO HERBY CERTIFY AND AFIRM THAT:

Because of compelling circumstances, the public interest requires the adoption of the following regulations:

Title 24, Virgin Islands Code, Chapter 17

- § 456-1 Purpose and Authority;
- § 456-2 Definitions and Purpose of chapter 17;
- § 456-3 General Procedural Regulations;
- § 456-4 Submission of Information;
- § 456-5 Where to Make a Charge;
- § 456-6 Form of Charge;
- § 456-7 Contents of Charge and Amendment of Charge;
- § 456-8 Filing of Charge;
- § 456-9 Withdrawal of Charge by Charging Party;
- § 456-10 Service of Charge;
- § 456-11 Answering the Charge;
- § 456-12 Failure to Answer A Charge;
- § 456-13 Investigation of a Charge;
- § 456-14 Access to and Production of Evidence, Testimony of Witnesses: Procedure and Authority;
- § 456-15 Dismissal of Charge; Procedure and Authority;
- § 456-16 Negotiated Settlement: Procedure and Authority;
- § 456-17 Reasonable Cause Determination: Procedure and Authority;
- § 456-18 The Hearing;
- § 456-19 Confidentiality;
- § 456-20 Preliminary and Temporary Relief: Procedure and Authority;
- § 456-21 Conciliation: Procedure and Authority;
- § 456-22 Determination at Hearing;
- § 456-23 Interpretation of Rules;

Copies of which I do approve to become effective on this date without the delay of prior publication. The compelling circumstances are as follows:

The department of Labor has jurisdiction over the enforcement of the employment discrimination laws, Title 24, Chapter 17, of the Virgin Islands Code. Presently, there are no Rules and Regulations to supplement the laws as to assist the Department of Labor in its efforts to enforce the laws. This lack of Rules and Regulations has created confusion and serious problems for all parties involved: the employer who must obey the law, the employee who is protected by the law, and the Department of Labor who must advise and explain the law, investigate allegations of violations of the law, and enforce the law.

Employees who believe they have been discriminated against are often unaware as to what to do or where to go for assistance. Employers who are charged with discrimination are often unaware of the Department of Labor's investigatory responsibilities and powers and thus, challenge the Department with hostility, instead of working with the department to resolve the problem. And the Department of Labor finds its efforts stalled, or frustrated, as a result of the ignorance or confusion of the parties.

The above listed rules and Regulations will not only serve to eliminate any confusion or lack of understanding and the problems to result thereof; but, said rules and Regulations will minimize the role of discretion in an investigation , and thus, guarantee maximum fairness and objectivity in a thorough investigation of any charge of discrimination in employment.

DATED: 3/18/81

JUAN LUIS
GOVERNOR

GOVERNMENT OF
THE VIRGIN ISLANDS OF THE UNITED STATES

PROPOSED RULES AND REGULATIONS
FOR
TITLE 24, VIC., CHAPTER 17

CHAPTER 17- EMPLOYMENT DISCRIMINATION

§ 456-1 Purpose and Authority

Pursuant to 24 V.I.C. Section 456, the Department of Labor with approval of the Governor, establishes the following Rules and Regulations. Said Rules and Regulations set forth the procedures for carrying out the Department of Labor's responsibilities in the administration and enforcement of Title 24, Chapter 17 (Sections 451-461). Based upon its experiences in the administration of these laws, the Department of labor may from time to time amend and revise these procedures.

SUBPART A - DEFINITIONS

§ 456-2 Definitions for the Purpose of Chapter 17

- (a) The term "Person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, association, corporations, legal representatives, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.
- (b) The term "Employer" means a person who has two (2) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of such person.
- (c) The term "Employment Agency" means any person regularly undertaken with or without compensation, to procure employees for an employer, or to procure for employees opportunities to work for an employer, and includes an agent of such person.

- (d) The term “Employee” means and individual employed by an employer, except that the term “employee” shall not include any person elected to public office by qualified voters, or any such person chosen by such officer to be on such officers personal staff, or an appointee on the policymaking level of an immediate adviser with respect to the legal power of the office.
- (e) The term “Department” means the Virgin Islands Department of Labor, Division of Labor Relations.
- (f) The term “Religion” includes all aspects of religious observance and practices, as well as belief; unless an employer demonstrates that he is unable to reasonably accommodate an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business.
- (g) The term “Equal Employment Opportunity Commission” means the Federal Agency established pursuant to the Civil rights Act of 1964, as amended; with whom the V.I. Department of Labor has a work-agreement for the administration and enforcement of employment discrimination laws and for the processing of discrimination charges.
- (h) The term “Director” means the Director of the Department of Labor’s Division of Labor Relations and the coordinator and liaison for all EEOC related matters.

SUBPART B – PROCEDURE FOR PREVENTION
UNLAWFUL EMPLOYMENT PRACTICES

§ 456-3 General Procedural Regulations

- (a) Service and filing of papers;
 - i.) Charges, complaints and accompanying notices of hearing final orders, hearing officers’ decisions, and subpoenas of the Commissioner, may be served personally or by registered mail or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return of the individual so serving the same, setting forth the manner of such service, shall be proof of the same, and the return post office receipt when registered and mailed as foresaid shall be proof of service of the same.
 - ii.) Whenever the rules require or permit the service of pleadings or other papers upon a party, a copy shall also be served on any attorney or the representative of the party who has entered a written appearance in the proceedings on behalf of the party. If a party is represented by more than one attorney or representative, service upon one of such persons, in addition to the party, shall satisfy this requirement.

iii.) Process of papers of the Commissioner other than those specifically named in subsection (a) of this section may be forwarded by certified mail. The return post office receipt thereof shall be proof of service of the same. Service of papers by a party or other parties shall be made by registered mail, or certified mail, or in any manner provided for the service of papers in a civil action by the law of the Virgin Islands in which the hearing is pending. When service is made by registered mail, or by certified mail, the return post office receipt shall be proof of service. When service is made in any manner provided by such law, proof of service shall be made in accordance with such law.

(b) Date of service; filing of proof of service:

- i.) The date of service shall be the day when the matter served is deposited in the United States mail or is delivered in person, as the case may be.
- ii.) The person or party serving the papers or process on the other parties shall submit a written statement of service thereof to the commissioner stating the names of the parties served and the date and manner of service. Proof of service shall be required by the Commissioner's agent only if subsequent to the receipt of the statement of service a question is raised with respect to proper service. Failure to make proof of service does not affect the validity of the service.

(c) Time; additional time after service by mail:

- i.) In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run, is not be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day, which is neither a Saturday, Sunday, nor a legal holiday. When the period of time prescribed or allowed is less than 7 days, intermediate Saturday and holidays shall be excluded from the computation.
- ii.) When the act of any of these rules requires the filing of a motion, brief, exception, or other papers in any proceedings, such documents must be received by the Commissioner or the officer designated to receive such matter before the close of business of the last day of the time limit, if any, for such filing or extensions of time that may have been granted.

(d) Unauthorized Communication

- i.) No person who is a party to, an agent of a party to, or who intercedes in, an on the record proceeding shall make an unauthorized ex parte communication to the hearing officer concerning the disposition on the merits of the substantive and procedural issues in the proceeding, nor shall the hearing officer make any such ex parte communication to any of the parties.

(e) Penalties and Enforcement

- i.) Upon notice and hearing, the Commissioner may censor, suspend, or revoke the privilege of practice before the agency of any person who knowingly and willfully makes or solicits the making of prohibited ex parte communication. To the extent permitted by law the Commissioner may, under appropriate circumstances, deny or limit remedial measures otherwise available under the act to any party who shall, directly or indirectly, knowingly or willfully make or solicit the making of an unauthorized communication. However, before the Commissioner institutes formal proceedings under this section, he shall first advise the person or persons concerned, in writing that he proposes to take such action and that they may show cause, within a period to be stated in such written advice, but not less than seven (7) days from the date thereof, why he should not take such action.

§ 456-4 Submission of Information

The Department shall receive information concerning alleged violations of Chapter 17 from any person. The appropriate Department personnel shall render assistance in the filing of a charge setting forth said allegations.

§ 456-5 Where to make a Charge

A charge shall be made at the office of the Department of labor, Division of labor Relations.

§ 456-6 Form of Charge

A charge shall be in writing, signed by the person claiming to be aggrieved, and verified.

§ 456-7 Contents of Charge and Amendment of Charge

(a) Each charge should contain the following:

- (1) The full name, address, and telephone number of the person claiming to be aggrieved; hereinafter referred to as the Charging Party;
- (2) The full name, address, and telephone number of the person against whom the charge is made, if known; hereinafter referred to as the Respondent;

- (3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged unlawful employment practices;
- (4) If known, the approximate number of employees of the Respondent;
- (5) A statement disclosing whether or not the Charging party desires that the Department forward a copy of said charge tot the Federal Equal Employment Opportunity Commission for filing with that office, pursuant to a work sharing agreement between the Department and the Federal Government.

(b) Notwithstanding the provisions of paragraph (a) of this section, a charge is sufficient when the Department receives from the Charging Party a written statement sufficiently precise to identify the parties, and to describe generally the action or practices complained of.

(c) A charge may be amended to cure technical defects or omissions, including failure to verify the charge, or to clarify and amplify the allegations. Such amendments and amendments alleging additional acts which constitute unlawful employment practices related to or growing out of the subject matter of the original charge relate back to the date the charge was first received.

(d) The Charging Party has the responsibility to provide the Department of Labor with notice of any change in address and with notice of any prolonged absence from that current address, so that he or she can be located during the Department's consideration of the charge.

§ 456-8 Filing of the Charge

- (a) The timeliness of a charge shall be measured for the purposes of satisfying the filing requirements of Chapter 17 (24 V.I.C. at section 453, ad amended) by the date on which the charge is received by the Department
- (b) The Department shall forward all charges not subject to its jurisdiction because of timelines to the Federal Equal Employment Opportunity Commission at the request of the Charging Party, pursuant to a work sharing between the Department and the Federal Government.

§ 456-9 Withdrawal of a Charge by Charging Party

A Charging may be withdrawn only by the charging Party and only with the consent of the Director of Labor Relations, hereinafter referred to as the Director.

§ 456-10 Service of the Charge

The Department shall serve Respondent with a copy of the charge within a reasonable time after the filing of the charge.

§ 456-11 Answering the Charge

The Respondent, or his duly authorized representative, shall answer the charge within twenty (20) days after service upon Respondent of a copy of the charge. The answer shall be in writing, signed and verified.

§ 456-12 Failure to Answer a Charge

If Respondent fails to file an answer to a charge within twenty (20) days after service upon Respondent of a copy of the charge, the Department may deem this failure to answer as an admission to the truth of the charge.

§ 456-13 Investigation of Charge

- (a) Subsequent to the filing of a charge, the Department shall initiate and investigation. The Department may seek the assistance of the Federal Equal Employment Opportunity Commission pursuant to the work sharing agreement between the Department and the Federal Government
- (b) As part of the Department's investigation, the Department's investigations, the Department may require the Charging Party to answer interrogatories relative to the charge and / or provide a sworn statement which include:
 - (1.) A statement of each specific harm that the person has suffered and the date on which the harm occurred.
 - (2.) For each harm, a statement specifying the act, policy or practice which is alleged to be unlawful; and,
 - (3.) For each act, policy or practice alleged to have harmed the Charging Party, a statement of the fact which led to Charging Party to believe that the act, policy, or practice is discriminatory.
- (c) The Department may require the Respondent to answer interrogatories relative to the charge.
- (d) Witnesses shall be examined orally under oath, except that for good cause shown after the issuance of charge, testimony may be taken by deposition in the manner of effect prescribed for by the commissioner.
- (e) As part of the Department's investigation, and at the discretion of the Director, the Department may require a fact finding conference with the parties prior to the Department's determination on the charge of discrimination. The conference is intended to define the issues, to determine which elements are disputed, to resolve those issues that can be resolved and to ascertain whether there is the basis for negotiated settlement of the charge.

- (f) The Department's authority to investigate is not limited to the procedures outlined in paragraph (a), (b), and (c) of this section.

§ **456-14** Access to and Production of evidence; Testimony of Witness: Procedure and Authority.

- (a) To effectuate the purpose of Title 24, Chapter 17, the Commissioner of Labor hereby delegates the authority to the Director, upon the written application of the appropriate investigating officer, to sign and issue a subpoena requiring:
 - (1.) The attendance and testimony of witnesses;
 - (2.) The production of evidence, including, but not limited to books, records, correspondence, or documents in the possession or under the control of the person subpoenaed; and
 - (3.) Access to evidence for the purpose of examination and the right to copy.
- (b) The Subpoena shall identify the person or evidence subpoenaed, the person to whom and the place, date, and time at which it is returnable, or the nature of the evidence to be examined or copied, and the date and time when access is requested. A subpoena shall be returnable to the duly authorized investigating officer, the director, or any other duly authorized Department representative.
- (c) Any person served with a subpoena, whether ad testificandum or duces tecum, who does not intend to comply therewith shall, within five (5) days after date of service of the subpoena upon him, petition in writing to revoke the subpoena. All such petitions to revoke subpoena shall be filed with the Commissioner. Petitions to revoke subpoenas served during a hearing shall be filed with the Hearing Officer. Notice of filing of petitions to revoke subpoenas shall be given by the Commissioner or the Hearing Officer, as the case may be, to the Director.
- (d) A petition to revoke a subpoena shall separately identify each portion of the subpoena with which the petitioner does not intend to comply and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached to the petition.
- (e) The Commissioner or the Hearing Officer, as the case may be, shall review the petition and make a final determination consisting of a simple statement of procedural or other grounds for the ruling on the petition to revoke. The petition

to revoke, any answer filed, thereto, and any ruling thereon shall become part of the official record only upon the request of the party aggrieved by the ruling.

- (f) Persons compelled to submit data or evidence at a public proceeding are entitled to the return of the original copies of the data or evidence submitted by them. Persons compelled to submit data or evidence in the nonpublic investigative stages of the proceedings may be limited, for good cause, by the Commissioner to inspection of the official transcript of their testimony, but shall be entitled to make copies of documentary evidence or exhibits which they have produced.
- (g) Upon the failure of any person to comply with a subpoena issued under this section, the District Court of the Virgin Islands, upon application of the Director, through the Attorney General, shall have jurisdiction to issue such person an order requiring such person to appear before the Director or Hearing Officer, there to produce evidence as ordered, or there to give testimony concerning the matter under investigation or in question. Any failure to obey such order of the Court may be punished by the Court as contempt thereof.
- (h) Witnesses summoned before the Hearing Officer shall be paid the same fees and mileage that are paid witnesses in the Courts of the Virgin Islands.

§ 456-15 Dismissal of a Charge: Procedure and Authority

- (a) Where a charge on its face, or as amplified by the statement of the Charging party discloses, or where after investigation, the Director determines that the charge is not timely filed, or otherwise fails to state a claim under Title 24, Chapter 17, the Director shall dismiss the charge.
- (b) Where the Director determines, after investigation, that there is not reasonable cause to believe that Title 24, Chapter 17 has been violated, the Director shall dismiss the charge.
- (c) Where the Charging Party fails to provide requested necessary information, fails to or refuses to appear or to be available for interviews or conferences, fails to or refuses to provide information requested, or otherwise fails to cooperate to the extent that the department is unable to resolve the charge, and after due notice, the Charging party has had thirty (30) days in which to respond, the director shall dismiss the charge.
- (d) Where the Charging Party cannot be located after reasonable efforts were made, and the Charging Party did not respond within thirty (30) days to notice sent by the Department to the

Charging Party's last known address, the Director shall dismiss the charge.

- (e) Where a Respondent has made a settlement offer of full relief to the Charging Party, and the Charging Party fails to accept such an offer within thirty (30) days after actual notice of the officer, the Director shall dismiss the charge.
- (f) Written notice of disposition pursuant to paragraphs (a), (b), (c), (d), or (e) of this section may be issued by the Director to the Charging Party and the Respondent.
- (g) All dismiss made by the Director pursuant to either paragraph (a), (b), (c), (d), or (e) of this section may be reviewed by the Commissioner upon request for such a review by the Charging Party. The Commissioner's written notice of his decision will then become the final order of the Department. Any appeal to a court of competent jurisdiction shall be made within thirty (30) days of receipt of said final order of the Department.

§ 456-16 Negotiated Settlement: Procedure and Authority

During an investigation and prior to an issuance of a determination as to reasonable cause, the Department shall encourage the parties to settle the charge on terms that are mutually agreeable. The Department shall limit its undertaking in such settlements agreement not to process that charge further. Such settlements shall note that the Department has made no judgment on the merits of the charge. Such a settlement agreement shall not affect the processing of any other charge, the allegations of which are like or related to the individual allegations settled.

In the alternative the Department may facilitate a settlement an agreement between the Charging Party and the respondent by permitting the withdrawal of the charge pursuant to Section 456-8.

§ 456-17 Reasonable Cause Determination: Procedure and Authority

- (a) Where a charge has not been settled, dismissed, or withdrawn, and following the Department's investigation of the charge, the Director shall determine whether reasonable cause exists to believe that Title 24, Chapter 17 has been violated. A determination as to reasonable cause shall be based on and limited to evidence obtained by the Department, and shall be based on and limited to evidence obtained by the Department, and shall not reflect any judgment on the merits of allegations not addressed in the determination. The Director shall provide prompt notification of its determination to the Charging Party and to the Respondent.
- (b) Where reasonable cause has been found to exist, the Department shall require the Respondent to answer the charges at a Hearing. The Director shall set the date for the

Hearing and cause notice thereof to be served upon all parties. A notice of Hearing and cause notice thereof to served upon all parties. A notice of hearing shall state the date, time and place of the Hearing, and shall advise the parties that a failure to appear will result in an adverse Order by Default against them. Notice of Hearing shall be made no less than five (5) days prior to the date upon which the hearing is scheduled to be held.

§ 456-18 The Hearing

The Hearing shall be conducted in accordance with the Rules and Regulations as set forth in Chapter Three (3) of Title 24 of the Virgin Islands Code.

§ 456-19 Confidentiality of Investigative Materials

- (a) Neither a charge nor information obtained pursuant to the Department's investigation shall be made matters of public information by the Department prior to a Hearing. This provision does not apply to such earlier disclosures to Charging Parties or their attorneys, to Respondents or their attorneys, or to witnesses where disclosure is deemed necessary for securing appropriate relief. This provision also does not apply to disclosures to representatives of interested Federal or other local authorities as may be appropriate or necessary to the carrying out of the Department's function under Chapter 17 and under its agreement with the Equal Employment Opportunity Commission.
- (b) After a hearing, except for public documents, such as charges, complaints, answers and transcripts and exhibits of record, all written or other material submitted to the Commissioner during the investigation procedure, shall not be made available to any other party or public for viewing or copying, unless the Commissioner is authorized by the party submitting such material, or the Commissioner is otherwise required by law to make such material available.

**SUBPART C – PROCEDURES TO RECTIFY
UNLAWFUL EMPLOYMENT PRACTICES**

§ 456-20 Preliminary or Temporary relief: Procedure and Authority

The Director shall, upon the basis of a preliminary investigation, make an initial determination as to whether or not prompt judicial action is necessary to carry out the purpose of Chapter 17. Where the Director has determined that prompt judicial action is necessary, he shall recommend such action to the Attorney General.

§ 456-21 Conciliation: Procedure and Authority

(a) Where the Director has determined that there is reasonable cause to believe that Chapter 17 has been violated, and prior to a hearing, the Department shall further endeavor to resolve the charge by such informal methods of conferences, conciliation and persuasion. In conciliating a charge where a determination of reasonable cause has been made, the Department shall attempt to achieve a just resolution of all violations found and to obtain an agreement that the Respondent will eliminate any unlawful employment practice and provide the appropriate affirmative relief.

(b) Where such conciliation attempts are successful, the terms of conciliation agreement shall be reduced to writing and shall be signed by the Director and the parties. Copies of the signed agreement shall be sent to all parties.

(c) Proof of compliance with Chapter 17 in accordance with the terms of the conciliation agreement shall be presented to the Director before the case will be closed.

(d) Nothing that is said or done during and as part of the endeavors of the Department to eliminate unlawful employment practice by the informal methods of conference, conciliation, and persuasion may be made a matter of public information by the Department or used as evidence at a subsequent proceeding without the written consent of the persons concerned. This provision does not apply to such disclosure to the representatives of interested Federal or other local agencies as may be appropriate and necessary to the carrying out of the Department's functions under Chapter 17, or under its agreement with the Equal Employment Opportunity Commission. Factual information obtained by the Department during such informal endeavors, if such information is otherwise obtainable by the Department pursuant to Title 24, Section 454, for disclosure purpose will be considered by the Department as obtained during the investigatory process.

§ 456-22 Determination at Hearing

The decision rendered by the Hearing Officer may reviewed by a court of competent jurisdiction pursuant to Title 24 at Section 457.

§ 456-23 Interpretation of Rules

(a) These rules and regulations shall be liberally construed to effectuate the purpose and provisions of Chapter 17.

(b) Whenever the words Chapter 17 appear, they shall be construed to mean those provisions referred to as they may in the future be modified, altered, amended, or codified.

The attached copy is hereby certified to be a true and exact copy of the Rules and Regulations adopted pursuant to the provisions of Title 24 V.I.C §456.

Charlotte Amalie, St. Thomas
U. S. Virgin Islands

Dated this 27th day of February, 1981.

Richard M. Upson
Commissioner of Labor

Approved: 3/18/81

Juan Luis, Governor
UNITED STATES VIRGIN ISLANDS