

## Mission Statement

*To provide accurate information regarding the legal rights of our customers; to inform the customer about the hearings & appeals process; to conduct timely hearings and to render fair & impartial decisions.*

## DUE PROCESS

**D**ue Process mandates that parties be given the *right* to notice that an action is being taken in their case, the *right* to confront and cross-examine one another, the *right* to an attorney & introduce evidence, preferably at the Formal Hearing Level. All documents which are offered into evidence must be copied, given to the opposing side, and marked as an exhibit with an identifiable number. (See [Formal Hearing Brochure](#))



The Federal Rules of Civil Procedure and Evidence are *recognized* at all wrongful discharge hearings. Hearings are conducted in the English language, however, upon request an interpreter can be provided by the Department in either party's first language.

The Hearing Officer, Examiner, or Administrative Law Judge should first explain why the matter is before that Forum, explain to the parties their rights and must ask questions first. Parties are allowed to give opening and closing arguments. The presiding Hearing Officer controls the hearing. At the end of such hearing, the officer should explain that the outcome will be mailed to the parties. The Examiner's determination will be based upon the credible testimony and exhibits accepted.

No communications are allowed between the presiding officers with any of the parties throughout the agency's proceedings; these conversations are deemed *ex parte* communications and are not permissible or allowed. Hearing officers should recuse themselves if related to a party or witness, or have any close connection, association or affiliation with either party. This prevents, in large measure, the appearance of impropriety, or a later charge of bias.

### STEPS THE CUSTOMER CAN TAKE IF IN DISAGREEMENT WITH THE DECISION RENDERED

If the customer believes they did not receive a fair hearing, he/she can:

- Request in writing-within a specific time period governed by each Division's rules & regulations-that the Commissioner review & grant reconsideration for the administrative decision rendered by the Unit;

- On Reconsideration any party dissatisfied with the presiding officer's determination may be allowed to submit any *new evidence* not available or known before the formal hearing stage. After all the facts, documents and rule of law have been reviewed, the matter may be reopened.

The Agency's FINAL ORDER can be appealed by a dissatisfied party to the *Superior Court* or an appropriate circuit court on petition within 30 calendar days of the Final Administrative Order.

Once put on notice, the Unit must prepare the *file* and the *record* for the Attorney General's office which represents the VIDOL before the court. If an Employer fails to appear, the Attorney General (AG) also carries out the Enforcement of all Default Judgments entered. However, the Commissioner must request the AG to do so.

For more details log on to our web site:

[www.vidol.gov](http://www.vidol.gov)



## V.I. DEPARTMENT OF LABOR

### THE WRONGFUL DISCHARGE ACT

ACT 5227

TITLE 24 VIRGIN ISLANDS CODE §76

#### §76. GROUNDS FOR DISCHARGE

- (a) Unless modified by union contract, an employer may dismiss any employee:
- (1) who engages in a business which conflicts with his duties to his employer or render him a rival of his employer;
  - (2) whose insolent or offensive conduct toward a customer of the employer injures the employer's business;
  - (3) whose use of intoxicants or controlled substances interferes with the proper discharge of his duties;
  - (4) who willfully and intentionally disobeys reasonable and lawful rules, orders and instructions of the employer; provided, however, the employer shall not bar an employee from patronizing the employer's business after the employee's working hours are completed;
  - (5) who performs his work assignments in a negligent manner;
  - (6) whose continuous absences from his place of employment affect the interest of his employer;
  - (7) who is incompetent or inefficient, thereby impairing his usefulness to his employer;
  - (8) who is dishonest; or
  - (9) whose conduct is such that it leads to the refusal, reluctance or inability of other employees to work with him.
- (b) The Commissioner may by rule or regulation adopt additional grounds for discharge of an employee not inconsistent with the provisions enumerated in subsection (a) of this section.
- (c) Any employee discharged for reasons other than those in subsection (a) of this section shall be considered to have been wrongfully discharged; however, nothing in this section shall be construed as prohibiting an employer from terminating an employee as a result of the cessation of business operations or as a result of a general cutback in the workforce due to economic hardship, or as a result of the employee's participation in concerted activity that is not protected by this title. - Added Dec. 29, 1986, No. 5227, §2, Sess. L. 1986

## JURISDICTION

Establishing "Jurisdiction" determines if the Department of Labor has authority to adjudicate cases and render decisions.

### *What determines Jurisdiction?*

► Did the Complainant (the charging party) file the complaint in a timely manner?

-The Complainant has thirty (30) calendar days from the date of termination to file a written complaint.

\*This may be waived by the Commissioner.

► Was the Complainant employed in a supervisory capacity?

-The United States Court of Appeals for the Third Circuit held that the Wrongful Discharge Act is pre-empted by federal labor law when applied to supervisors. The Department of Labor must abide by the mandates of the Court.

(1) Did the Complainant belong to a union?

(2) Did a cessation of business operations or a general cutback in the workforce occur due to economic hardship?

(3) Did the employee participate in concerted activity that is not protected by this title?

► Was the Complainant employed longer than six (6) months?

► Did The Complainant agree to resolve the dispute through a Dispute Resolution Agreement?

► Did the employer employ five (5) or more employees?

"Employer" includes any person acting in the interest of an employer directly or indirectly that has employed five (5) or more employees for each working day in each of the twenty (20) or more calendar weeks in the two (2) year period preceding a discharge but not a "public employer" as defined in chapter 14 of Title 24. Amended Feb. 1, 2001, No. 6391, § 3(b)(4)



## THE HEARINGS AND APPEALS UNIT



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