

## **Non-Employee Discrimination Complaint Procedures**

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, and Title IX of the Education Amendments of 1972, 40 C.F.R. 7.100 (Prohibition on Intimidation and Retaliation), and any other applicable federal or state law (the “Acts”), as they relate to any program or activity that is administered by the Hawaii Department of Agriculture (“HDOA”), 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 HDOA 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 providing for in HDOA’s controlling statutes.

These Non-Employee Discrimination Complaint Procedures update the policy and procedures, including complaint forms, by which the State of Hawai‘i Department of Agriculture 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.

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

- (1) This policy applies to non-employees affected by decisions made by HDOA programs. Any non-employee who in good faith believes she or he has been discriminated against by the HDOA, 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 HDOA Acting Non-Discrimination Coordinator Morris Atta, at 1428 S. King St., Honolulu, HI 96814. A Discrimination Complaint Form is available on-line at: <http://hdoa.hawaii.gov/blog/main/discriminationcomplaints/>
- (2) 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.
- (3) Complaints shall be in writing and signed by the complainant(s). The complaint shall identify the complainant and shall include:
  - a. The complainant’s contact information including first and last name, address, city, state, zip code, phone number, and e-mail address (as appropriate);

- b. 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);
  - c. Identification of the protected classification upon which the alleged violation is based;
  - d. A specific and a detailed description of conduct that the complainant perceived as discrimination;
  - e. 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;
  - f. A specific description of any adverse impact alleged to have occurred or which will occur; and
  - g. Clearly identify the alleged parties who committed the alleged discriminatory activity.
- (4) The complaint shall be delivered by mail or in person to the HDOA Office of the Chairperson at 1428 S. King St., Honolulu, HI 96814 or email at: [hdoa.titlevi@hawaii.gov](mailto:hdoa.titlevi@hawaii.gov). Faxed complaints should be sent to: (808) 973-9613.
- (5) Allegations received 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 HDOA Office of the Chairperson.
- (6) 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 HDOA investigate allegedly unlawful discrimination, the complainant may submit a verbal complaint to the Non-Discrimination Coordinator by calling HDOA's main office phone number: (808) 973-9560.
- (7) 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 complainant) has been received by the HDOA Office of the Chairperson.
- (8) Upon request, HDOA 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.
- (9) HDOA will acknowledge receipt of a complaint within ten (10) calendar days of receiving a complaint. The HDOA Non-Discrimination Coordinator will review the

complaint form to determine jurisdiction and verify the complainant(s) intent to proceed with the complaint.

- (10) Within thirty (30) calendar days of acknowledging receipt of the Complaint, HDOA will notify the complainant whether the facts warrant HDOA conducting a full investigation into the allegations. If warranted, HDOA will further advise the complainant if HDOA will conduct the full investigation, or if the Complaint will be forwarded to another agency for investigation.
- (11) The HDOA 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. HDOA 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 HDOA tolerate such actions. Retaliation is a serious violation of this policy and law and must be reported to the HDOA Non-Discrimination Coordinator immediately.
- (12) To request language or accessibility for completing the complaint form please contact the HDOA Office of the Chairperson at (808) 973-9560 or email: [hdoa.info@hawaii.gov](mailto:hdoa.info@hawaii.gov). Please allow sufficient time for HDOA to meet accommodation requests.
- (13) For Hawai'i Department of Agriculture employee complaints, please contact: HDOA Human Resources Office at (808) 973-9481 or email: [hdoa.hr@hawaii.gov](mailto:hdoa.hr@hawaii.gov).

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

- (1) At HDOA's discretion, discrimination complaints against HDOA may be sent to a third party agency to request assistance with the investigation.
- (2) The HDOA Non-Discrimination Coordinator 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.

- (3) “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 HDOA caused harm due to a discriminatory action.
- (4) If more information is needed to resolve the case, the HDOA Non-Discrimination Coordinator 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 HDOA Non-Discrimination Coordinator assigned to the case. If the HDOA Non-Discrimination Coordinator is not contacted by the complainant(s) or does not receive the additional information from the complainant(s) within thirty (30) calendar days, the HDOA 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.
- (5) 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 HDOA’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.
- (6) A complainant who is dissatisfied with the decision of the HDOA 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](mailto:DLIR.HCRC.INFOR@hawaii.gov).

### III. PROCEDURE FOR INVESTIGATION OF DISCRIMINATION COMPLAINTS INVOLVING HDOA SUBRECIPIENTS

- (1) The HDOA will investigate discrimination complaints against its subrecipients (i.e., consultants, vendors, and contractors).
- (2) For discrimination complaints filed against the HDOA subrecipients (i.e., consultants, vendors, and contractors) the HDOA will assume jurisdiction and will investigate and determine the case.
- (3) The HDOA shall follow the steps provided in Article II, PROCEDURE FOR INVESTIGATION OF DISCRIMINATION COMPLAINTS INVOLVING HDOA.

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

- (1) At HDOA's discretion, discrimination complaints against HDOA may be sent to a third party agency (TPA) for assistance with the investigation. If a TPA is utilized, HDOA maintains responsibility for the grievance process.
- (2) The HDOA Non-Discrimination Coordinator will identify and notify a TPA of the discrimination complaint being filed against HDOA within seventy-two (72) hours or three (3) calendar days of receipt of the complaint. The TPA will follow the HDOA grievance procedures for investigating the complaint.
- (3) For discrimination complaints filed against the HDOA that have been referred to and accepted by the TPA, the HDOA 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 HDOA will provide the specified number of days in which the complaint evaluation will be extended in writing to the complainant.
- (4) "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 HDOA caused harm due to a discriminatory action.
- (5) 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 HDOA and HDOA 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.
- (6) After the investigation is completed and the investigation report has been reviewed and adopted by HDOA, HDOA will issue a letter summarizing the investigative findings, and whether or not there was a violation of the HDOA's nondiscrimination policy. In instances where there was no finding, HDOA will notify the complainant of such and that the case is closed. In cases where there appeared to be a violation, HDOA 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.

- (7) A complainant dissatisfied with the HDOA 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](mailto:DLIR.HCRC.INFOR@hawaii.gov).

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Hawai'i Department of Agriculture  
 1428 S. King Street  
 Honolulu, Hawaii 96814  
 Phone: (808) 973-9560 • FAX: (808) 973-9418  
 Email: hdoa.titleVI@hawaii.gov

## Non-Employee Discrimination Complaint Form

<b>Section I:</b>		
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"/>
<b>Section II:</b>		
Does the complainant have a representative?	Yes* <input type="checkbox"/>	No <input type="checkbox"/>
<i>*If you answered "yes" to this question, provide representative's contact information.</i>		
Name of Representative (First and Last Name):		
Address:		
Telephone (Home):	Telephone (Work):	
Electronic Mail Address:		
Please confirm that you have provided permission to the representative to represent you in this matter.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>Section III:</b>		
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"/> _____.		
<b>Date of Alleged Discrimination (Month, Day, Year):</b> _____.		
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 need, please use and attach separate sheet.		

**Section III (continued):**

<b>Section IV:</b>		
Describe the harm alleged to have occurred, or which will occur, because of the alleged discrimination. If more space is need, please use the back of this form or use and attach separate sheet.		
<b>Section V:</b>		
Identify the parties alleged to be subjected to, or potentially impacted by, the alleged discrimination.		
<b>Section VI:</b>		
Have you previously filed a discrimination complaint with this agency?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
If yes, please provide any reference information regarding your previous complaint.		



<b>Section VII:</b>
<p>Have you filed this complaint with any other Federal, State, or local agency, or with any Federal or State court?</p> <p><input type="checkbox"/> Yes    <input type="checkbox"/> No</p> <p>If yes, name all that apply:</p> <p>Federal Agency:</p> <p>Federal Court:</p> <p>State Court:</p> <p>State Agency:</p> <p>Local Agency:</p>
<p>If yes, please provide information about a contact person at the agency/court where the complaint was filed.</p>
Name:
Title:
Agency:
Address:
Telephone:
<b>Section VIII:</b>
Name of agency complaint is against:
Name of person complaint is against:
Title:
Location:
Telephone Number (if available):

You may attach any written materials or other information that you think is relevant to your Complaint. Your signature and date are required below.

\_\_\_\_\_

Signature of Complainant

\_\_\_\_\_

Date

Please submit this form in person at the address below, or mail this form to:

Hawai‘i Department of Agriculture  
1428 S. King Street, Honolulu, HI 96814

Non-Discrimination Coordinator, (808) 973-9560, [hdoa.titlevi@hawaii.gov](mailto:hdoa.titlevi@hawaii.gov)

A complaint form can also be found online at:

<http://hdoa.hawaii.gov/blog/main/discriminationcomplaints/>

For Hawai‘i Department of Agriculture employee complaints, please contact: HDOA Human Resources Office at (808) 973-9481 or email [hdoa.hr@hawaii.gov](mailto:hdoa.hr@hawaii.gov).

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