

Anatomy of a WV Human Rights Commission Charge/Complaint

What to Do and Expect Once You've Been Served



Thursday, November 14, 2024



Presenters



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Agenda:

- The investigative process
- After the investigation
- Tips for successfully challenging claims (and a few tips for avoiding them to begin with)



A Brief Overview of the WVHRC/EEOC



What sorts of employment claims do these entities investigate and prosecute?

- Disability discrimination
 - Failure to hire
 - Retaliatory discharge
 - Failure to accommodate
- Age discrimination
- Gender discrimination
- Harassment

**It All Starts With a
Charge/Complaint**

But wait – Here are some things you can do, before you ever even get a charge, to position yourself for the best defense against one!

- Have strong anti-harassment/discrimination policies
 - Must be clear, easy to read, and accessible to your employees
 - Must be enforced (more on that next)
- Have processes in place that create safeguards against discrimination
 - Hiring processes/disciplinary processes
- Train your employees and supervisors regularly on these policies
 - Document the training
- Train managers/supervisors on civility, managing people and their responsibilities under the WVHRC/EEOC

WVHRC

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

██████████
Complainant,
v. ██████████ Docket Number ██████████
██████████
Respondent,

COMPLAINT

██████████
residing at: ██████████
charges: ██████████
whose address is: ██████████

With an unlawful practice within the meaning of the West Virginia Human Rights Act (Art. 11, Chapter 5, Code of West Virginia) as amended, and specially within the meaning of Section (9) of said Act, because of my RACE___, RELIGION___, COLOR___, NATIONAL ORIGIN___, ANCESTRY___, SEX_X, AGE_X, BLINDNESS___, DISABILITY___, or REPRISAL___.

Date of incident, on or about: December 12, 2023, and prior to

The facts on which the aforesaid charge is based are as follows:

- I. The Complainant ██████████ is a person within the meaning of W.Va. Code §5-11-3(a).
- II. The Respondent, ██████████, is a person and an employer within the meaning of W.Va. Code §5-11-3 (a) and (d).
- III. The Complainant has initiated this complaint with the West Virginia Human Rights Commission alleging that she has experienced unlawful discrimination in violation of the West Virginia Human Rights Act because of her sex, female, and age, 44. .
- IV. It is alleged that the Respondent has violated the anti-discrimination provisions of the West Virginia Human Rights Act based upon the following information and in the following manner:

- A. The Complainant is a member of protected classes.
- B. Persons who are not in the same protected classes as the Complainant were paid more for the same or similar job.
- C. On or about December 12, 2023, the Respondent terminated the Complainant's employment.
- D. Other employees, who are not members of the same protected classes as the Complainant, were not terminated.
- V. The Complainant has been discriminated against in violation of the West Virginia Human Rights Act Because of her sex, female, and age, 44.

I have not commenced any action, civil or criminal, based upon the grievance set forth above, except

██████████)



EEOC

<small>EEOC Form 3 (3/19)</small> CHARGE OF DISCRIMINATION <small>This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</small>		Charge Presented To: EEOC FEPA	Agency(ies) Charge No(s): [REDACTED]
Pennsylvania Human Relations Commission <small>State or Local Agency, if any</small>		and EEOC	

THE PARTICULARS ARE *(If additional paper is needed, attach extra sheet(s))*:

1. On October [REDACTED], I was hired by Respondent as a Licensed Practical Nurse. My direct supervisor was [REDACTED], Registered Nurse. On December [REDACTED], I applied for a religious exemption from taking the COVID-19 vaccine per Respondents policy. The original deadline for submission of exemption requests was December [REDACTED]. On or around January [REDACTED], all employees given notice of a new COVID-19 vaccine requirement. Per policy, employees had until February [REDACTED] to apply for exemption. On February [REDACTED], director of nursing [REDACTED] told me that they had not received my original exemption request from December [REDACTED]. On March [REDACTED], I called our [REDACTED] hotline as I was concerned about my request approval. Two days later, I received a response saying that the [REDACTED] could not tell me if I had been approved as vaccine exemptions were being handled by a separate committee. The deadline for exemption request approval was March [REDACTED]. I received a letter from Respondent denying my exemption without reason. On March [REDACTED], my religious exemption was denied, and I was immediately discharged by Respondent. 2. Respondent discharged me as my vaccine exemption request was denied and I did not plan on receiving a COVID-19 vaccine. Respondent did not provide reason for denying my request. However, a coworker who also filed for vaccine exemption was allowed to edit her request as she did not provide enough initial information. I was not extended this same courtesy. 3. I believe I was discriminated against due to my

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<small>I want this charge filed with both the EEOC and the State or Local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.</small>	<small>NOTARY - When necessary for State and Local Agency Requirements</small> <small>I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.</small> <small>SIGNATURE OF COMPLAINANT</small> <small>SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE</small> <small>(month, day, year)</small>
<small>I declare under penalty of perjury that the above is true and correct.</small> Digitally Signed By: [REDACTED] <small>Charging Party Signature</small>	



First Things, First:

- Put your insurance carrier on notice of the claim so that if you have coverage, you can get help
- Decide whether to hire a lawyer (shameless plug incoming)
- Take steps to gather and preserve all evidence related to the claim
- Talk to witnesses
- Look at documentation, videos, and other materials, if any

What's Next?



**Mediation/Alternative
Dispute Resolution (ADR)**

vs.



Position Statement

Position Statements: 101

An effective position statement is thorough, organized, and factual. It should clearly demonstrate the employer's commitment to fair treatment and provide a well-supported response to the allegations.

Effective Position Statements

- Understand the Complaint:
 - Review the allegations thoroughly to ensure a clear understanding of the issues raised
- Be Factual and Concise:
 - Stick to the facts – avoid emotional language or personal opinions
 - Use clear and direct language to communicate your points
- Organize the Statement:
 - Introduction: Briefly state the purpose and provide context
 - Company overview: Include relevant background information about your organization
 - Summary of allegations: Outline the specific complaints being addressed

Effective Position Statements (cont'd)

- Respond to Each Allegation:
 - Address each point made in the complaint individually
 - Provide evidence or documentation to support your responses, such as:
 - Policies
 - Employee records
 - Correspondence
 - Witness statements
- Highlight Relevant Policies:
 - Reference company policies related to discrimination, harassment, and equal opportunity
 - Include any training programs or initiatives aimed at promoting a diverse and inclusive workplace
- Show Compliance Efforts:
 - Detail any steps taken to investigate the complaint internally
 - Mention any actions taken to remedy the situation, if applicable

Effective Position Statements (cont'd)

- **Be Professional:**
 - Maintain a professional tone throughout the document
 - Avoid blaming the complainant or making personal attacks
- **Review and Revise:**
 - Proofread for clarity, grammar, and punctuation
 - Consider having another person review the statement for objectivity and completeness
- **Timeliness:**
 - Ensure the position statement is submitted by the EEOC deadline to avoid complications
- **Consult Legal Counsel:**
 - If necessary, involve legal counsel to review the position statement to ensure compliance with laws and regulations

You've Submitted Your Position Statement, Now What?!?



Discovery



May 8, 2024

[Redacted]

Docket Number: [Redacted]

RE: [Redacted]

Dear [Redacted]

Enclosed please find a copy of the Commission's Investigatory Interrogatories in the above-referenced matter. Please submit your response to these requests within ten (10) days from receipt of this letter.

Should you have any questions, please do not hesitate to contact me at (304) 558-2616 from 8:30 a.m. to 4:30 p.m. Monday through Friday, or email me at: Chase.B.Armstrong@wv.gov

Thank you for your cooperation in this matter.

Sincerely,


Chase Armstrong - Investigator I

Human Rights Commission • 1321 Plaza East, Suite 108A • Charleston, West Virginia 25301
304.558.2616 • 304.558.0085 (fax)



1. Please provide the Respondent's full name and address. Please provide the name, address, telephone number, and job title of each person answering or assisting in the answering of these interrogatories on Respondent's behalf.
2. Please provide your quarterly wage reports for the previous four quarters.
3. Please provide a copy of your progressive discipline policy.
4. Please provide the complainant's complete personnel and disciplinary record.
5. Please provide all documents sent or received in response to the complainant's claim, if any, for unemployment compensation.
6. Please provide the demographics for the employees of the respondent including age, sex, title, and length of employment.
7. Please provide a list, including last known contact information, of witnesses who have information related to the allegations described in the Complaint, including, but not limited to employees and/or visitors including job title if any, and a brief description of the knowledge you believe they possess.
8. Please provide a description of events pertaining to the Complainant which preceded his/her termination. Please specify events which caused, or are connected with, his/her termination.
9. Please state what steps of progressive discipline were taken against the complainant and provide any documentation relating to the progressive discipline. If the complainant did not receive progressive discipline, please state in complete detail why progressive discipline was not given.

10. Please provide all documentation obtained or generated during your investigation of the allegations that led to the Complainant's termination. Please include witness statements, investigative notes, the final investigative report, and the letter of termination.
11. Please provide your policy for investigating and resolving any complaints or incidents of harassment, bullying, or discrimination.
12. Please provide the date, time, and circumstances involved in any report by the complainant, or any other individual, of harassment, bullying, or discrimination within the preceding three (3) years.
13. Please provide the results of any investigative action, including any corrective action, related to any report or complaints of harassment, bullying, or discrimination within the preceding three (3) years.
14. Describe all investigations and corrective/disciplinary actions that resulted from any discrimination or harassment complaints made by the Complainant. Please include the identity of all witnesses and all information gathered from each witness. Also produce all related documentation and contact information for each witness listed.
15. Provide the name, sex, and date of birth of the employee who replaced the Complainant's position following termination.
16. Please provide the name and last known contact information for the individual(s) that supervised the Complainant over the last year of her employment.
17. Please provide the name and last known contact information for every individual involved in the decision to terminate the Complainant.



Protective Orders – Should you insist on one? Who do they protect?

STATE OF WEST VIRGINIA HUMAN RIGHTS COMMISSION

██████████
Complainant,
v
██████████
Respondents.

Docket No. ██████████

Protective Order

Upon Respondents' request to preserve the confidentiality of their personnel files and confidential and/or personally identifiable information of their current and former employees, it is hereby ORDERED that the information provided by Respondents in response to the Commission's Interrogatories and Request for Production of Documents is to be produced subject to the following provisions:

1. Such information and documents shall be provided to the West Virginia Human Rights Commission and may be made available to the Commission's counsel, the Commission's staff, or experts employed by the Commission to assist in the investigation, evaluation, or development of this case, and other parties whose access to the information is necessary for the resolution of this claim.

2. Such information and documents shall be used only for purposes of investigation, evaluation and development of this case and shall not be made available to any person other than those described above.

3. Any information and documents provided during the investigation which constitute confidential and/or personally identifiable information of Respondents' current or former employees, or are portions of personnel files kept by Respondents (other than the Complainant's personnel file), shall not be made available for public inspection, or to any party other than parties whose access to the information is necessary for the resolution of this claim.

4. Any information and documents produced by Respondents are covered by this Protective Order, or copies thereof, may be used in any motion, memorandum, or pleading used in this case, and may be marked and used as exhibits during the course of these proceedings, if otherwise proper.

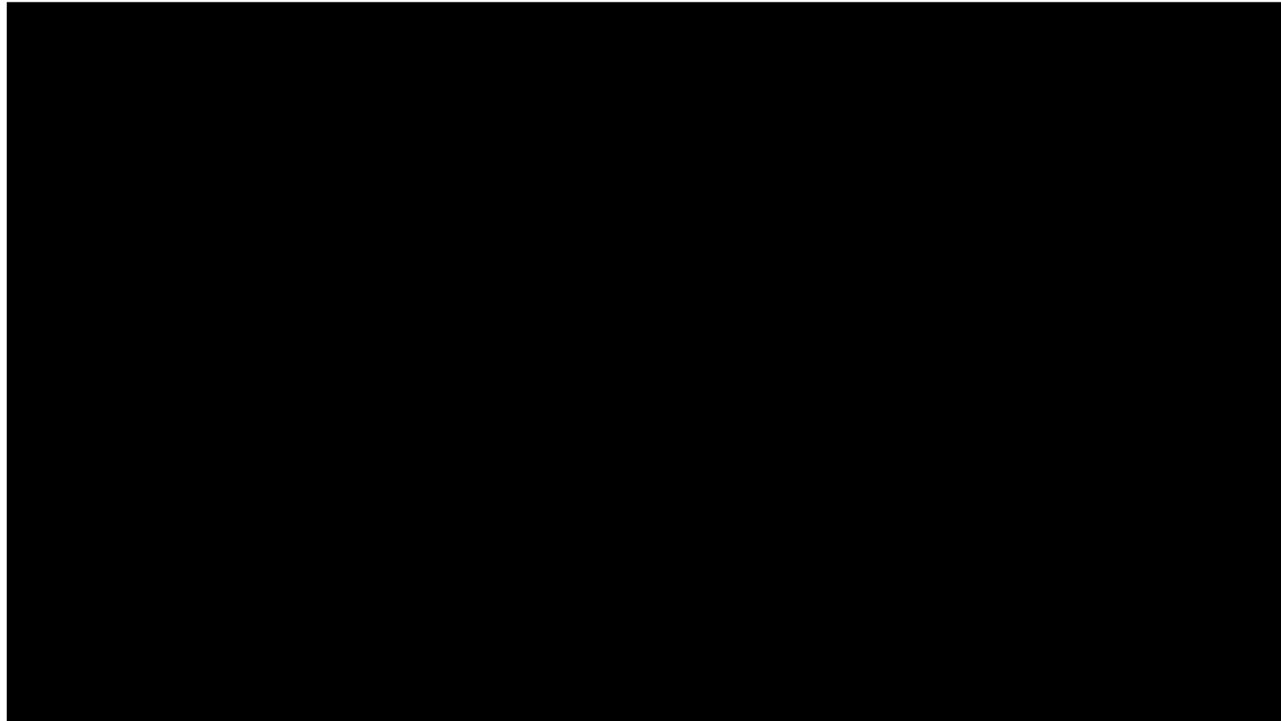
2. ...shall not be made available to any person other than those described above.

4. ...may be used in any motion, memorandum, or pleading...

Interview Tips

- Even though it is an informal proceeding, you should be professional and prepared!
- Tell the truth
- Do not guess or speculate
- Don't rush; pause before answering to make sure you understand the question
- Don't answer any questions you don't understand. You can ask for clarification
- Work with your lawyer ahead of time to anticipate questions and identify potential evidence
- Be very careful when volunteering

Witness Interviews



Determination/Outcomes

No Probable Cause

Probable Cause

Right to Sue

So, the Commission Found Probable Cause, Now What?

- You're now in litigation before the Commission
 - Complainant is Represented by the Attorney General's Office
 - Formal Complaint
 - Answer
 - Discovery
 - Written Discovery
 - Depositions
 - Motions Practice
 - Hearing before ALJ
 - Appeal Rights

Top 10 Takeaways:

10. The best defense is a good offense (make sure you have policies and have trained your people on them and make sure you have good, clear documentation)
9. Put your carrier on notice (if applicable) and consider whether to hire a lawyer
8. Locate and preserve related documents
7. Interview potential witnesses (if you haven't already)
6. Prepare a strong response to the charge/complaint
5. Review WVHRC discovery with your lawyer and prepare a thorough response with reasonable objections
4. Work with your lawyer to prepare for WVHRC interview
3. Answer questions slowly, clearly and thoughtfully
2. Don't be afraid to ask for help
1. Be kind and professional: remember this isn't the end of the world

Questions?



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