

US Virgin Islands Code
Title 24 - Labor
Chapter 17 - Discrimination in Employment

Subchapter I - General Provisions

§ 451. Unlawful practices

(a) In addition to other remedies, any person who has been discriminated against as defined in this section may bring an action for compensatory and punitive damages in any court of competent jurisdiction. The court in such action shall award to the plaintiff reasonable attorney's fees and costs of the action, in addition to any judgment in favor of the plaintiff.

(b) For the purposes of this section, the terms "because of sex" or "as to sex" include, but are not limited to:

(1) because of sexual harassment and;

(2) because of or as to pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under disability benefit, sick leave, and medical benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 460 of this chapter pertaining to bona fide occupational classifications shall be interpreted to permit otherwise.

451a. Retaliation against employees prohibited

(a) An employer shall not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report, verbally or in writing, a violation or a suspected violation of this chapter, regulation or rule promulgated pursuant to law of this territory or the United States to a public body, unless the employee knows that the report is false, or because an employee is requested by a public body to participate in an investigation, hearing or inquiry held by that public body, or a court action.

(b) In addition to the remedies provided in sections 453 through 455 of this chapter, a person who alleges a violation of this section may bring a civil action for appropriate injunctive relief, or actual damages, or both, within ninety days after the occurrence of the alleged violation of the provisions of this section.

(c) An action commenced pursuant to subsection (b) of this section may be brought in the Superior Court division where the alleged violation occurred, the Superior Court division where the complainant resides, or the division where the person against whom the civil complaint is filed resides or has his principal place of business.

(d) As used in subsection (b) of this section, "damages" means damages for injury or loss caused by each individual violation of the provisions of this section, including reasonable attorney fees.

(e) An employee shall show by a preponderance of the evidence that he or a person acting on his behalf was about to report or did report, verbally or in writing, a violation or a suspected violation of this chapter, or the law of the United States, to a public body.

§ 451b. [Renumbered.]

§ 452. Enforcement agency; investigations; conciliation

The Department of Labor, hereinafter referred to as the “department”, shall have jurisdiction over the subject of employment practices and discrimination made unlawful by this chapter. When it shall appear to it that an unlawful employment practice or discrimination may have been committed, the department shall make a prompt investigation in connection therewith. If it determines after such investigation that further action is warranted, the department shall immediately endeavor to eliminate the unlawful employment practice or discrimination complained of by conference, conciliation and persuasion.

§ 453. Complaint

(a) Any person claiming to be aggrieved by an alleged unlawful employment practice or discrimination may file with the department a verified complaint in writing which shall state the name and address of the person, employer, or employment agency alleged to have committed the unlawful practice or discrimination complained of and which shall set forth the particulars thereof and contain such other information as may be required by the department. The Attorney General may, in like manner, make, sign and file such complaint.

(b) No complaint shall be filed after the expiration of one hundred and eighty days after the alleged act of unlawful employment practice or discrimination.

§ 454. Investigation; conciliation; hearing

(a) After the filing of any accusation, an investigation shall be made and an attempt to eliminate such practice or discrimination shall be made as provided in section 402 of this title, unless such attempt has previously been made.

(b) In case of failure to eliminate such practice or discrimination, or in advance thereof, if in the judgment of the department, circumstances warrant, a written accusation, together with a copy of such complaint as the same may have been amended, shall be issued and served requiring the person, employer, or employment agency named in such accusation, hereinafter referred to as “respondent” to answer the charges of such accusation at a hearing.

§ 455. Order

If the department finds, after hearing, that a respondent has engaged in any unlawful employment practice or discrimination, as defined in this chapter, the department shall state its findings of fact and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful employment practice or discrimination and to take such affirmative action including (but not limited to) hiring, reinstatement or upgrading of employees, with or without back pay, as, in the judgment of the department, will effectuate the purpose of this chapter, and including a requirement for report of the manner of compliance. If the department finds that a respondent had not engaged in any such unlawful employment practice or discrimination, the department shall state its findings of fact and shall issue and cause to be served on the complainant an order dismissing the said accusation as to such respondent. A copy of its order shall be delivered in all cases to the Attorney General, and such other public officers as the department deems proper.

§ 456. Rules and regulations

The department shall make such rules and regulations, with the approval of the Governor, not inconsistent with this chapter, for the carrying out of the provisions of this chapter and for the efficient enforcement thereof.

§ 457. Review

(a) Any person aggrieved by a final order of the department granting or denying in whole or in part the relief sought may obtain a review of such order by filing in a court of competent jurisdiction, within 30 days of its issuance, a written petition praying that such decision of the department be modified or set aside.

(b) No objection that has not been urged before the department shall be considered by the court unless the failure or neglect to urge such objection is excused because of extraordinary circumstances. The findings of the department, as to the facts, if supported by substantial evidence, shall be conclusive.

§ 458. Enforcement

The department may petition any court of competent jurisdiction for the enforcement of any order issued pursuant to this chapter and for appropriate temporary relief or restraining order and shall certify and file in the court a transcript of the record in the proceedings, including the pleading and testimony upon which the order was entered and the findings and order of the department. Upon such filing, the court shall cause notice to be served upon the person against whom the order is directed. Thereupon the court shall have jurisdiction of the proceeding and of the question determined therein, and may grant such temporary relief or restraining order as it deems just and proper, or issue a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the department. The department shall not be required to give bond as a condition to filing or maintaining any action for an injunction or restraining order.

§ 459. Stay

The commencement of proceedings under sections 407 or 408 of this title shall not operate as a stay of the department's order, unless specifically ordered by the court.

§ 460. Construction

Nothing contained in this chapter shall be construed to conflict with the laws relating to child labor, nor to prohibit the establishment and maintenance of bona fide occupational qualifications, nor to prevent the termination or change of the employment of any person who is unable to perform his duties, nor to bar any organization operated for charitable or educational purposes, which is operated, supervised or controlled by, or in connection with, a religious organization, from giving preference to persons of the same religion or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained.

§ 461. Penalty

Whoever shall wilfully resist, prevent or interfere with the department or any of its agents or representatives in the performance of duties pursuant to this chapter, or who shall, in any manner, wilfully

violate an order of the department, shall be fined not more than \$200 for the first offense, and for the second and any subsequent offense, shall be fined not more than \$500.

§ 462. Definition

For the purposes of this chapter, the term “employer” includes individuals, corporations, other legal entities, and all departments, offices, boards, institutions, branches, independent instrumentalities, and other agencies of the Government of the Virgin Islands.

Subchapter II - Limited Use of Criminal Records in Hiring Practices

§ 465. Prohibited inquiry, investigation and use

(a) No employer, whether a public agency or private individual or corporation, may ask any applicant for employment to disclose, through any written form or orally, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, or participation in, any pretrial or post trial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law; nor may any employer seek from any source whatsoever, or use, as a factor in determining any condition of employment, including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or post trial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law.

(b) As used in this section, a conviction includes a plea, verdict, or finding of guilt regardless of whether sentence is imposed by the court.

(c) Nothing in this subchapter prevents an employer from asking an applicant about an arrest for which the employee or applicant is out on bail or on his or her own recognizance.

(d) Nothing in this subchapter prohibits the disclosure of the information authorized for release to a government agency employing a peace officer.

§ 466. Exceptions

(a) Persons seeking employment or persons already employed as peace officers or persons seeking employment for positions in the Department of Justice or other criminal justice agencies are not covered by this subchapter.

(b) Nothing in this subchapter prohibits an employer at a health facility, as defined in 19 V.I.C. § 221(1) from asking an applicant for employment either of the following:

(1) With regard to an applicant for a position in with regular access to patients, to disclose an arrest under any section specified in title 14 V.I.C., chapter 86.

(2) With regard to an applicant for position with access to drugs and medication, to disclose an arrest under any section specified title 19 V.I.C., chapter 29.

§ 467. Handling of criminal records

(a) It is unlawful for a peace officer or employee of a law enforcement agency with access to criminal offender record information maintained by a local enforcement criminal justice agency to knowingly disclose, with intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or post trial diversion program, to any person not authorized by law to receive that information.

(b) It is unlawful for any other person authorized by law to receive criminal offender record information maintained by a local law enforcement, or criminal justice agency to knowingly disclose any information received therefrom pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or post trial diversion program, to any person not authorized by law to receive that information.

(c) It is unlawful for any person, who knowing he is not authorized by law to receive or possess criminal justice records information maintained by a local law enforcement criminal justice agency, pertaining to an arrest or other proceeding that did not result in a conviction, including information pertaining to a referral to and participation in any pretrial or post trial diversion program, to receive or possess that information.

(d) Nothing in this subchapter requires the Department of Justice to remove entries relating to an arrest not resulting in conviction from summary criminal history records forwarded to an employer pursuant to law.

§ 468. Penalties

(a) In any case where a person violates this subchapter, the applicant may bring an action to recover from that person actual damages or \$200, whichever is greater, plus costs, and reasonable attorney's fees, as a civil penalty and, as a criminal penalty, imprisonment not to exceed six months or a fine not to exceed \$500, or both.

(b) The remedies under this section are in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law.

§ 469. Exceptions

This subchapter does not apply if:

- (1) state or federal law requires an applicant to be rejected based on criminal history;
- (2) the employment requires a satisfactory criminal background as an established bona fide occupational position or a group of employees;
- (3) a standard fidelity or equivalent bond is required and a conviction of one or more specified criminal offenses would disqualify the applicant from obtaining such a bond; or
- (4) the employment is within a facility that provides programs, services, or direct care to minors or vulnerable adults including the educational system or child care.