

Committee on Government Services, Consumer and Veterans Affairs
31st Legislature of the Virgins Islands
Remarks by Catherine Hendry, Esq., Commissioner
January 22, 2016

Good Morning...Honorable Senator Justin Harrigan, Sr., Honorable Members of the Committee on Government Services, Consumer and Veterans Affairs, Distinguished Senators, ladies and gentlemen, and listening and viewing audiences. I am Catherine Hendry, Esq., Commissioner of the Virgin Islands Department of Labor with Kendra Roach, Assistant Commissioner of Labor.

I am pleased to be here today to discuss **Bill number 31-0179** - An Act amending title 3 Virgin Islands Code, chapter 25, subchapter IV, section 531 relating to the time for filing appeals to the Public Employees Relations Board for alleged discrimination. The bill seeks to define the time in which a public employee may file an appeal of any personnel action that he believes is based on discrimination on Non-Merit Factors with the Public Employee Relations Board, commonly referred to as PERB.

Title 3 Virgin Islands Code, chapter 25, subchapter IV, section § 531 (a) & (b) entitled, "Discrimination on Account of Nonmerit Factors; Appeals", describes what nonmerit factor means, and reads as follows:

"(a) No question in any form of application or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations or race, age or sex of any applicant, nor shall any inquiry be made concerning such opinions or affiliations, and all disclosure thereof shall be discountenanced. No discriminations shall be exercised, threatened, or promised by any person in the government service against or in favor of any person in recruitment, examination, appointment, training, promotion, retention or any other personnel action, because of political or religious opinions or affiliations or because of race, age or sex, national origin, or any other nonmerit factor.

(b) Any applicant or employee who has reason to believe that he has been discriminated against because of religious or political opinions or affiliations or race, age or sex or national origin in any personnel action may appeal to the Board. The appellant and the person responsible for the alleged discriminatory action shall have the right to be heard and to present evidence. If the Board finds that there was discrimination on any of the above nonmerit factors it shall order appropriate corrective action and its decision shall be final."

Under Title 24, Virgin Islands Code, the Virgin Islands Department of Labor-Division of Labor Relations administers programs and activities relative to Fair Employment Practices, Equal Employment Opportunity Commission (EEOC) complaints, Wage and Hour, Labor Relations, Child Labor Laws, Plant Closing, and Wrongful Discharge complaints. Title 24, Virgin Islands Code, chapter 17- Discrimination in

Employment, §453(b) states as follows: “No complaint shall be filed after the expiration of one hundred and eighty days after the alleged act of unlawful employment practice or discrimination.” In addition, Title 24, Virgin Islands Code, Rules & Regulations § 456 – 8 (a) & (b) Filing of the charge, reads as follows:

(a) “The timeliness of a charge shall be measured for the purposes of satisfying the filing requirements of chapter (24 V.I.C. § 453, as 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 untimeliness to the Federal Equal Employment Opportunity Commission (EEOC) at the request of the Charging Party, pursuant to a work-sharing agreement between the Department and the Federal Government.”

This provides individuals defined steps with specific timelines for an orderly and efficient procedural process for obtaining redress for their grievance under appropriate Virgin Islands and Federal laws.

Bill 31-0179 amends the Personnel Merit System section of the Virgin Islands law by **affording 180 days** in which an appeal may be filed with PERB on a charge of non-merit factor discrimination. I wholeheartedly support this measure as it will provide the appellant with:

- Additional time and an orderly process to understand what he is required to present in his appeal;
- Definitive timeline and steps in which to prepare his case and gather documentation;
- More time to thoroughly understand the law and the burden of proof, to seek legal advice, or to engage in mediation.

It should be noted that Title 24, chapter 14 of the Virgin Islands Code deals specifically with public employee labor relations, under § 379(a) entitled, “PERB Review of Alleged Violations”, does provide for a timeline of 180 days for a public employee to file a claim with PERB. It reads as follows:

“379(a) Any party aggrieved by the action of another, which action is believed to be a violation of this chapter [Public Employee Labor Relations], may complain of such violation in writing to the PERB and shall state in the complaint any relief sought. No fee shall be charged for the filing of any complaint. No complaint shall be considered which is filed more than 180 days after the alleged violation is known to the complaining party.”

Any improvement made to the process for the filing of an appeal based on non-merit discrimination with the Virgin Islands PERB will assist the appellant in having a timeline and reducing the tensions that naturally flow from government regulations and therefore will help achieve the overall goal of anti-discrimination laws.

It is recommended that Section 1 of Bill No. 31-0179 and the Bill Summary be amended to reflect that the bill relates to the filing of an appeal, and that the discrimination is specific to non-merit factors.

In conclusion, this bill and the amendment it hopes to achieve is in alignment with and adheres to the Local/Federal EEOC discrimination filing provisions. The Department of Labor supports this measure, and I hope that the information presented is helpful in considering Bill No. 31-0179. We would like to thank you for this opportunity to offer this testimony. We will now answer any questions you may have regarding my testimony.

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