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## ADMINISTRATION POLICY

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<b>Title:</b>	NON-DISCRIMINATION POLICY AND COMPLAINT PROCEDURES		
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<b>Notes:</b>	Policy based on State of California Department of Consumer Affairs policy		

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## Policy Statement

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It is the policy of EnviroCert International, Inc. (ECI) that all laws, rules, and regulations prohibiting harassment, discrimination, and/or retaliation for protesting illegal discrimination based on one or more of protected group categories are enforced and promoted (see the attachment entitled “Basis of Discrimination – Protected Group Categories”). All policies and practices in employment, development, advancement, and treatment of its employees, applicants, licensees, and consumers must be free of unlawful discriminatory practices.

### BACKGROUND

ECI is committed to providing equal employment-related opportunities to all employees, applicants, professional certificate holders, and consumers on the basis of merit and to prevent discrimination, harassment, and retaliation in the workplace.

Consistent with this commitment, ECI protects consumers with disabilities from discrimination based on disability by providing them with equally effective opportunities for access to our programs, activities, and/or services.

Moreover, the ECI enforces a zero tolerance policy against discrimination, harassment, and retaliation, which means that inappropriate behavior, and policy violations will be addressed seriously. ECI will take corrective action(s), up to and including formal discipline, when policy violations occur, even if the violation(s) is/are not so serious as to be unlawful.

### PURPOSE

The purpose of this policy is to provide all ECI employees, applicants, professional certificate holders, and consumers with a uniform method to address allegations and complaints of discrimination in the workplace. The procedures are intended to effectively resolve complaints at the lowest organizational level while assuring that allegations and complaints receive full consideration and appropriate remedy, as applicable, without fear of reprisal or retaliation. The subject procedures for resolving discrimination complaints shall be adopted by all offices, boards, bureaus, divisions, programs, commissions, or committees.

Complaints of discrimination, which ECI has authority to investigate, must allege that the complainant was discriminated against and/or experienced harassment on the basis of one or more of the protected group categories/characteristics (see Attachment entitled “Basis of Discrimination - Protected GroupCategories.”).

## **APPLICABILITY**

This policy applies to all employees, applicants, professional certificate holders, consumers, governmental officials, contractors, consultants, and temporary staff of ECI, and any of its offices, boards, committees, and other constituent agencies. Within this policy, the generic acronym “ECI” applies to all of these entities, and the term “employee” applies to all employees, job applicants, governmental officials, contractors, consultants, and temporary staff of ECI.

## **DEFINITIONS**

*Access* - Consumers with disabilities must be provided access or an equally effective opportunity to participate in or benefit from ECI's programs, activities, and services. Title II of the Americans with Disabilities Act is intended to protect qualified individuals with disabilities from discrimination on the basis of disability in the provision of programs, activities, and/or services. A consumer may use this internal complaint process to file a complaint of discrimination if the consumer alleges ECI has not provided a reasonable accommodation that provides the consumer an equally effective opportunity to participate in or benefit from ECI's programs, activities, and services.

*Discrimination* - Any act, policy, or decision which makes or has the effect of creating a non-job related distinction or different treatment for an individual or a group of people on the basis of one or more of their protected group categories/characteristics. (See the attachment entitled “Basis of Discrimination – Protected Group Categories.”)

*Equal Employment Opportunity (EEO) Counselor* - An employee, volunteers, or outside consultant trained to assist the EEO Manager in the resolution of discrimination complaints.

*Equal Employment Opportunity (EEO) Investigator* - An employee, volunteers, or outside consultant trained to assist the EEO Manager in the investigation and resolution of discrimination complaints.

*Harassment* - A form of unlawful discrimination that occurs when unwelcome conduct is based upon a person’s protected group category/characteristic.

*Internal Complaint* - Process uses trained EEO Investigators. ECI has 90 days from the date the complaint of discrimination, harassment, or retaliation on the basis of mental disability, physical disability, medical condition, and denial of reasonable accommodation is filed to issue a final

decision. For all other formal complaints of discrimination, harassment, or retaliation, ECI has 180 days from the date the complaint is filed to issue a final decision.

*Jurisdiction* - A term for determining if the complaint is covered by civil rights legislation and whether ECI has the power to act on a complaint in order to investigate it or attempt resolution.

*Nexus* - The causal connection or tie between the protected group category/characteristic and the alleged discrimination.

*Prima Facie* - A term that means, "at first glance." It is the first consideration of the allegations as presented in a complaint of discrimination. It is used to describe the requirement of the complainant to tie together the issue of how he or she has been adversely affected and the reasons stated for the discriminatory action. This creates a rebuttable presumption that the complainant was unlawfully discriminated against by putting forth enough evidence to raise an inference that the allegation of discrimination is true. The complainant establishes a prima facie case by demonstrating the nexus between the protected group category/characteristic and the alleged discrimination.

*Protected Group Categories or Protected Characteristics* - Includes race, color, religion, sex, pregnancy (including childbirth, breastfeeding, and related medical conditions), gender, gender identity, gender expression, sexual orientation, marital status, national origin (including language use restrictions), ancestry, mental and physical disability, medical condition (cancer/genetic characteristics), age (40 and above), genetic information, military or veteran status, political affiliation or opinion, denial of reasonable accommodation, medical/family care leave, or pregnancy disability leave, and/or retaliation for protesting illegal discrimination related to one of the aforementioned categories. Access and language access have been recently added to the protected group categories. (See Attachment entitled "Basis of Discrimination - Protected Group Categories.")

*Retaliation* - An adverse employment action or undesirable change in a person's employment situation due to the person having filed or participated in a discrimination complaint proceeding or otherwise opposed illegal discrimination.

*Zero Tolerance* - Means: 1) inappropriate behavior and policy violations will be addressed seriously, and 2) appropriate corrective action(s) or disciplinary action(s) will be taken when policy violations occur, even if violations are not so serious as to be unlawful.

## **RESPONSIBILITY**

### Employees

An employee who perceives the comments, gestures, or actions of another employee, Director, manager, or director, to be discriminatory and offensive should immediately communicate to

that person that such behavior is not appropriate and is unwelcome. Failure to confront the person, however, does not interfere with the employee's right to file a discrimination complaint.

An employee who believes he/she has experienced discrimination or witnessed discrimination has the responsibility to report it to the appropriate Director or to the ECI Board of Director President and to provide all relevant information in a manner that allows ECI the opportunity to resolve the complaint at the lowest level possible. Allegations of discrimination or other confidential information obtained by any employee shall be handled as sensitively as possible and only people who have a business need-to-know will be informed of the investigation.

An employee or applicant for employment may file a discrimination complaint internally or externally. The complainant decides which level or type of complaint to file. The employee may contact the EEO Office at any time to consult with staff to determine if his/her concerns constitute discrimination.

An employee who receives a complaint of discrimination, harassment, and/or retaliation, from an applicant, consumer, or licensee must report it to the appropriate Director or the EEO Office and provide all relevant information in a manner that allows ECI the opportunity to resolve the complaint at the lowest level possible.

### Managers and Directors

It is management's responsibility to:

- Promote a discrimination-free work environment, and take appropriate action to prevent or stop any and all forms of discrimination, including sexual harassment;
- Ensure that all employees are informed of the Department's discrimination complaint process prior to the employee's need to know, and again if a complaint is brought forth;
- Ensure that once a complaint is discussed or filed, the complainant is not subjected to retaliation or harassment;
- Maintain discretion by not unnecessarily disclosing allegations of discrimination or other confidential information to others; and
- Ensure that subordinate managers/Directors and employees attend training as a preventive measure, to sensitize them to conduct and/or behavior that constitute discrimination and inform them of the consequences of such actions.

When a discrimination complaint is filed or brought to the Manager's/Director's attention, it is his/her responsibility to:

- Give the employee's complaint his/her complete attention and serious regard, because employees should not be discouraged from reporting such complaints;
- Provide the complainant with a copy of the Department's *Non-Discrimination Policy and Complaint Procedures* and/or the *Sexual Harassment Prevention Policy*, as applicable.

- Promise the complainant discretion, but refrain from promising confidentiality and anonymity. Allegations of discrimination, or other confidential information obtained by any employee, shall be handled as sensitively as possible. Only people who have a business need to know will be informed of the investigation;
- Provide the complainant with a copy of the *Discrimination Complaint Process Statement of Rights* (Attachment D);
- Contact the EEO Office immediately. The EEO Manager will provide assistance to resolve the issue or determine if other action is necessary;
- Record and document the complaint and perform an immediate preliminary investigation to determine the validity of the complaint;
- Provide a copy of the preliminary investigation report to the EEO Office regardless of the findings;
- In coordination with the EEO and the ECI Administration Manager, initiate appropriate and immediate action against the respondent where discrimination is found;
- Ensure that the complainant is made aware of the actions taken against the respondent (within guidelines of the Information Practices Act) to give the victim a sense of redress; and
- Protect the employee(s) complaining of discrimination or sexual harassment from any reprisal or retaliation.

### Equal Employment Opportunity (EEO) Manager

The EEO Manager is responsible for:

1. Providing leadership in resolving complaints of discrimination by working with managers and Directors;
2. Providing EEO counseling; and
3. Investigating complaints, as necessary.

Once a complaint is received, the EEO Manager is responsible for:

1. Determining if the Department has jurisdiction; and
2. Developing and implementing a plan to resolve each individual complaint which can include:
  - a. EEO counseling; and/or
  - b. Procedures for complaint investigation and findings.

### EEO Investigator

The identification of qualified and capable persons to serve as EEO Counselors and EEO Investigators is critical to the success of ECI's discrimination complaint process. Those who conduct investigations must maintain the role of neutral fact finder. The EEO Investigator's responsibility is to assemble enough information to provide a basis for deciding whether the action was or was not discriminatory. Therefore, he/she should never act in such a way as to

leave an impression of personal interest in the outcome of the investigation. The EEO Investigator should also avoid becoming the intermediary between the complainant and ECI in any efforts on their part in seeking a resolution of the complaint during an investigation. Neutrality is a critical and essential factor in the investigative process. The EEO Investigators cannot communicate any personal judgment or opinion on the merits of any complaint they investigate. The EEO Investigator must maintain the employee's concerns in the strictest confidence.

## **HISTORY**

This constitutes the first formal policy by ECI for Non-Discrimination.

## **UPDATES**

N/A

## **WEBSITE ADDRESS**

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## **Procedures**

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A complaint can be received directly from the complainant, with or without the Director's knowledge. A Director can forward a complaint, or it can be brought to the attention of the EEO Manager, by a third party. Employees are urged to resolve complaints at the lowest possible organizational level. However, they may bypass the internal complaint process and file an external complaint of discrimination.

### **Internal Complaint Process**

To initiate a complaint of discrimination, an employee, applicant, licensee, or consumer, may:

1. Complete a *Sexual Harassment/Non-Discrimination Complaint Form* (Attachment F); and
2. Submit the complaint form to the Board of Directors President.

### **In an initial review, the EEO Manager will:**

1. Review the complaint to determine whether the allegations fall within the EEO Office's jurisdiction and if merited, assign the case to an EEO Investigator.

2. If merited, notify the complainant in writing that the complaint will be investigated and provide the complainant with a *Discrimination Complaint Process Statement of Rights* document (Form HR-409.01) labeled Attachment E in this policy; or
3. Recommend this be tendered to legal counsel immediately.

**Next, the assigned EEO Investigator will:**

1. Investigate all aspects of the complaint.
2. Prepare and submit a report of findings to the EEO Manager.

**In a final review, the EEO Manager will:**

1. Evaluate the evidence and make a determination on the allegation(s).
2. Submit the report with recommendations for resolution to the Executive Director for review and approval, if applicable.
3. The Executive Director will make a recommendation to the Board of Directors for approval.
4. Notify the complainant and respondent of the findings.
5. Notify the Board of Directors of any further actions.

**Additional Information**

**Access to Records**

The EEO Office shall have access to all information deemed necessary to determine the validity of a complaint in all stages of the process. The cooperation and assistance of all employees, Directors, and managers involved is required. If an employee of ECI refuses or threatens to refuse to cooperate in an investigation, ECI may continue to investigate the complaint.

**Confidentiality**

ECI's goal to protect the integrity of an investigation requires all participants to use discretion in their discussions regarding a complaint. Participants should only divulge information to persons on a need to know basis. All involved persons will be advised throughout an investigation that only those people who have a business need to know will be informed of the investigation. The information contained within an investigation will become public information if it is to be used as a basis for an administrative or legal action.

However, some issues such as sexual harassment or those that involve potential criminal activity (abuse, rape, property damage, etc.), necessitate the EEO Manager or the EEO Investigator to advise the complainant that the information provided must be referred to the appropriate authority in order to remedy the conduct of the offending party.



Federal and State EEO regulatory agencies may require a report on discrimination complaints filed with ECI. The identity of the complainant and other involved persons may be released to those agencies.

### **Other Complaints**

The discrimination complaint procedure is separate and distinct from the employee grievance procedure. An employee will not be allowed a parallel review under both the employee grievance and discrimination complaint procedures.

Complaints or issues that do not allege discrimination are handled through the employee grievance procedure or other applicable processes.

The grievance procedure is used to address terms and conditions of employment such as working hours, out of class claims, overtime requirements, etc. If a grievance is found to meet the discrimination complaint criteria, the grievance process will cease at that point.

### **Prima Facie Case**

The complainant must establish a causal connection or nexus between the basis or protected group category/characteristic and the issue or act of discrimination. It is important to note that treatment that may be perceived as “unfair” may not necessarily be unlawful or a violation of ECI’s *Non-Discrimination Policy and Complaint Procedures*. Certain employment actions may be harsh, insensitive, or unjust, but they do not become unlawful or violate ECI’s policies unless the unfair treatment is motivated in part because of a person’s protected status.

### **Release Time**

The complainant may use a reasonable amount of time based on the complexity and sensitivity of the issues, as determined by the EEO Manager, to discuss the complaint with a trained EEO Counselor or EEO Investigator.

### **Retaliation and Intimidation**

No person shall intimidate, threaten, coerce, or discriminate against any individual because they: (1) opposed an employment practice made unlawful by the laws (Federal and State) prohibiting employment discrimination; or (2) made a complaint or testified, assisted, or participated in any manner in any investigation, proceeding, or hearing regarding possible violations of the laws.

### **Right to Representation**

The complainant has the right to representation at each step of the process by a person of his/her choosing. The person selected cannot impede the complaint procedures or represent a conflict of interest.

## Time Lines

### a. Filing a Complaint

The complainant must complete a *Sexual Harassment/Non-Discrimination Complaint Form* (Attachment A), and submit it to the EEO Office. An employee or applicant has the right to file a discrimination complaint immediately after such incident occurs and has up to 365 calendar days (one year) to file the complaint. This period may be extended up to 90 days if a person allegedly aggrieved by the discrimination first obtained knowledge of the facts after the expiration of the one-year period.

Individuals may also file external complaints, either separately or concurrently, within each agency's regulatory timeframe.

### b. Responding to Complaints

Upon receipt of a *Sexual Harassment/Non-Discrimination Complaint Form* (Attachment A), the Executive Director will review the complaint and notify the complainant within 10 days whether the allegation(s) meets the criteria to be handled through the discrimination complaint procedure. ECI has 90 days from the date the complaint of discrimination, harassment, or retaliation on the basis of mental disability, physical disability, medical condition, and denial of reasonable accommodation is filed, to issue a final decision. For all other complaints of discrimination, harassment or retaliation, the Department has 180 days from the date the complaint is filed to issue a final decision on a formal discrimination complaint. This time frame may be extended upon mutual written agreement with the EEO Manager and the complainant.

## VIOLATIONS

Failure to follow any of the provisions of this policy will result in appropriate corrective and/or disciplinary action, up to and including letters of reprimand, suspension, demotion, and/or dismissal.

In certain circumstances, individuals may be sued in their personal capacity, and could be required to provide for the cost of their own legal defense.

ECI also recognizes that false accusations can have a serious effect on an innocent person's reputation and character and, therefore, any individual found to have filed a false accusation or

complaint may also be subject to disciplinary action. Each complaint will be evaluated on a case-by-case basis.

All employees who testify in EEO investigations are required to cooperate with the investigation and tell the truth. Employees are expected to maintain discretion by not unnecessarily disclosing allegations of discrimination or other confidential information to others.

Directors and managers may be subject to disciplinary action for failure to take appropriate and expedient corrective action to ensure a discrimination-free work environment.

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## Related Documents

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### ECI Documents

Employment Handbook

Sexual Discrimination Policy

### Other Documents

### Related Links

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## Appendix

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- A Sexual Harassment/Non-Discrimination Complaint Form and Instructions (HR-404.01)
- B Annual Acknowledgement of Receipt and Understanding of Non-Discrimination Policy and Complaint Procedures (HR-406.01)
- C Discrimination Complaint Process (Flowchart) (HR-407.01)
- D Basis of Discrimination – Protected Group Categories (HR-408.01)
- E Discrimination Complaint Process Statement of Rights Form (HR-409.01)