

RULES AND REGULATIONS
(FINAL DRAFT)
REVISED 3/17/2009

UNITED STATES DEPARTMENT OF LABOR

TITLE 29 V.I.R.R.

APPROVED:

_____ Day of _____, 2009

JOHN P. De JONGH, JR.
GOVERNOR

ALBERT BRYAN, JR,
Commissioner
Department of Labor

Copy below is hereby certified to be a true and correct copy of Rules and Regulations adopted pursuant to authority granted in 29 V.I.C. Section 711(a) and 3 V.I.C. Section 358, by:

United States Virgin Islands Department of labor

Albert Bryan, Jr.
Commissioner

The copy below interprets or applies to 29 V.I.C. Chapter 12 as it relates to the Virgin Islands Department of Labor.

The above Rules and Regulations pertaining to the
United States Virgin Islands
Department of labor are hereby approved:

Approved:

_____ Day of _____, 2009 _____

Albert Bryan, Jr.
Commissioner

Pursuant to the powers vested in me by Section II of the Revised Organic Act of 1954, the above Rules and Regulations of the United States Virgin Islands Department of Labor are hereby:

Approved:

_____ Day of _____, 2009

John P. De Jongh, Jr.
Governor

CERTIFICATION

Having found compelling circumstances pursuant to 3 V.I.C. Section 938, the public interest requires that these Rules and Regulations of the United States Virgin Islands Department of Labor become effective without delay of prior publication. These Rules and Regulations shall become effective upon this:

_____ Day of _____, 2009

John P. De Jongh, Jr.
Governor

**Title 29 Virgin Islands Rules and Regulations Chapter 12
Virgin Islands Department of Labor**

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SECTION 708.

SPECIAL REQUIREMENTS FOR GRANTING OF BENEFITS

{ For inclusion to the EDC R&R dated 12/22/04 }

Sections	708-1. Purpose and Authority
	708-2. Compliance with Labor Laws
	708-3. Virgin islands Employment Service
	708-4. Unemployment Insurance Contributions
	708-5. Employment of Residents
	708-6. Occupational Safety and Health Administration

§ 708-1. Purpose and Authority

The purpose of these rules and regulations is to clarify the procedures and intent of the Department of Labor's participation in the Government of the United States Virgin Islands Economic Development Act, Title 29 of the Virgin Islands Code, Chapter 12, as amended, thru, and in conjunction with the United States Virgin Islands Economic Development Authority, (formerly known as the Industrial Development Commission), and its Economic Development Commission. In cooperation with the Economic Development commission and in partnership with Virgin Islands employers, job seekers, policy makers, planners, educators, and others, the Department of Labor is to further its effectiveness by fostering, promoting, and supporting the protection of the welfare and rights of wage earners, improvement of their working conditions, labor relations, job training, the development, expansion and diversification of the economy, establishment and preservation of opportunities of gainful employment for residents of the United States Virgin Islands.

Pursuant to 3 V.I.C. § 358 and 29 V.I.C. § 711 (a), the Commissioner of the Department of Labor, with the approval of the Governor, establishes the following Rules and Regulations. Said Rules and Regulations set forth the procedures for carrying out the Department of Labor's responsibilities in the administration enforcement of Title 29, Chapter 12, V.I.C. § 708-1 through § 712, and § 715, inclusively, and Virgin Islands statues under the jurisdiction of the Department of Labor as they may impact the Economic Development Act. Based upon its experiences in the administration of these laws, the Department of Labor, with the approval of the Governor, may from time to time amend and revise these Rules and Regulations.

§ 708-2. Compliance with Laws

It is the purpose of the Virgin Islands Department of Labor to foster, promote, support and enhance the employable skills, working conditions, labor relations, and opportunities for profitable employment for resident wage earners in the United States Virgin Islands. In doing this the Department of Labor shall enforce all applicable laws, rules and regulations to further good labor relations and protect our citizens in the work place.

Each beneficiary, or applicant, as specified in Subchapter IV of this chapter, shall comply with all applicable laws and rules and regulations of the Government of the United States Virgin Islands. Each beneficiary, or applicant, will file, in a timely manner, all required Department of Labor reports and information, with applicable payment in full, and maintain a position of compliance with the Economic Development Commission's Economic Development Program through the administration of the laws and rules and regulations by the Department of Labor.

Each beneficiary shall file with the Department of Labor a copy of all proposed Employment contracts or Agreements, Statement of Conditions of Employment, Employment Policies, Labor Dispute Resolution, Employment Severance Agreements or other agreement impacting the working conditions and rights of employees, prior to implementation. Severance Pay is based upon the length of service that is payable to an employee on termination of employment. A Severance Agreement and subsequent payment is not intended to be a form of coherence of an employee to waive their lawful rights, contrary to Public Policy or law.

EDC applicants and beneficiaries shall provide to the Department of labor each proposed Agreement, Contract or amendment thereto, affecting conditions of employment, or a Severance Agreement prior to implementation. The agreement, contract or amendment thereto, shall not require, attempt to limit, amend, reduce, or do away with, any of the lawful rights of United States Virgin Islands job seekers and employees as a condition of employment or continued employment. The employer, EDC Beneficiary, or applicant for EDC Benefits, shall not aid, abet, incite, compel, or coerce any employee to waive any of their protected rights to gain and/or to recommend that employees waive their protected rights under the Virgin Islands Code and /or Federal Statute, or to recognize as enforceable, any Employment Contract, Working conditions Agreement, or Severance Agreement, which impedes or attempts to have employees or job seekers waive their rights in order to gain or retain employment in the United States Virgin Islands. The employer shall not implement any Agreement, Contract or amendment thereto affecting the working conditions or rights or employees without prior approval of the Commissioner of Labor.

Each employer shall file a notice of vacancy with the Department of Labor employment security Agency (SIC) Job Services prior to taking any other actions to fill the vacancy. The Department shall respond to the filing of each Registration of Vacancies with twenty (20) working days by referring applicants or notification of the lack of qualified applicants. If changes are necessary to the vacancy information filed, the employer shall make such corrections and resubmit the documents(s) to the Department of Labor. The Department of Labor will then, within twenty working days, refer applicants to the employer or notify them that no applicant is available for referral.

Each beneficiary, or applicant, shall allow Department of Labor representatives on to all premises, with full access to review, and be provided with copies of all, beneficiary records, electronic, paper, minutes, notes or other media of the employer's records, and to obtain direct information, verbal and written statements, from officers, owners, major stockholders, investors, personnel or contractors and suppliers of the business, that may enable the monitoring of the beneficiary's compliance with applicable laws, rules and regulations. Each Beneficiary, or Applicant for Benefits, shall cooperate with representatives of the Labor Department, who shall have authority to obtain information from employees of the EDC Beneficiary at the employer's site, at the Department of Labor, or any other facility selected by the Department of Labor representative(s). Employer's time spent being interviewed by the representatives of the Department of Labor shall be official time and paid by the employers as regular work hours.

Refusal of entry to the place(s), access to, and/or copies of records, access to interview officers, owners, major stockholders, partners and/or employees of the beneficiary organization, or any other obstruction to the conduct of the duties of the Representatives of the Labor Department, including submission of false statements, documents, or records, as described in 29 V.I.C. § 725, Title 24 V.I.C. 5 and other parts of the Virgin Islands Code or Rules and

Regulations, and a violation of Title 29 Chapter 12, Section 711, will constitute a breach of the Economic Development Commission (EDC) Certificate and respective law or Rules and Regulations. Such breach of the terms of the EDC Certificate, law and/or Rules and Regulations, shall be reported to the Economic Development Commission for appropriate action. The Commissioner of Labor may hold a hearing to address the violation. If a violation is found to have occurred the Commissioner of Labor may take appropriate action including imposition of a fine not to exceed \$5,000 for each incident, plus cost of the investigation.

The Department of Labor will provide, or approve, all forms necessary for the administration of these Rules and Regulations and other applicable laws under the jurisdiction of the Labor Department. Upon the findings and recommendations of the Labor Department representative conducting the compliance review of each EDC benefits applicant, or beneficiary, the Commissioner of Labor will certify as to the degree of compliance found, and recommendations as to approval, denial, modification or revocation of EDC benefits.

§ 708-3. Virgin Island Employment Service

Any beneficiary applying for permission to hire foreign employees authorized to work in the United States of America or nonresidents of the United States Virgin Islands, in accordance with subsection (a) of this section, shall submit a specification of the number of nonresident workers required and their occupational classifications and wage rates, to the Commissioner of Labor for review prior to any grant of permission to hire said foreign employees or nonresidents. Upon receiving said information and material, the Commissioner shall promptly supply same to all labor unions operating in the United States Virgin Islands and at the expense of the beneficiary, to give public notice of such employment opportunity and assist beneficiaries in the recruitment of residents of the United States Virgin Islands..

It shall be the responsibility of the Commissioner of Labor to provide an evaluation of those residents available in the labor market, or workforce, to determine if they possess the necessary skills suitable for employment by the beneficiary. All beneficiaries employing foreign employees or non-residents shall annually prepare, and file with the Commissioner of Labor, a complete roster of all foreign employees or nonresidents, the date of their hiring and a detailed description of the positions held by such foreign employees or nonresidents, with related skills and experience for each. .

- (a) A beneficiary may not employ a person who is not a resident of the United States Virgin Islands for at least one year from the date of employment or the opening of the business in the Virgin Islands unless:
 - (1) after hiring a non-resident employee, at least eighty percent (80%) of the beneficiary's required number of employees shall be residents of the Virgin Islands for at least one year prior to the date of employment or the date the business opened; or
 - (2) the Department of Labor has certified that:
 - (A) the beneficiary required the Department's assistance in filling the vacancy; and

- (B) the Department was unable, allowing at least twenty (20) working days after receipt of the beneficiary's written request for placement services, to refer any qualified applicants to the beneficiary for employment interviews.
- (C) it shall be the intention of the Beneficiary to train resident employees to replace those non-residents hired due to the lack of skilled or trained residents at the time of hire.

(b) The Commissioner of Labor shall report all violations of the resident employment provisions of this subchapter to the commission and appropriate authorities.

In accordance with Title 24 Section 99, and other applicable Sections, laws or rules and regulations, each beneficiary shall contribute to the Economic Development Commission's, "Labor Administrative and Training Fund" an annual payment of ten thousands dollars (\$10,000) per non-resident employee, for training of job seekers to fill positions held by non-residents or vacant or projected positions within the Economic Development Commission beneficiary firms. The contributions shall be deposited into the special account for the exclusive use of the Department of Labor, Office of the Commissioner, for training of potential employees to fill vacancies or projected positions at Economic Development commission beneficiary firms. The Chief Executive Officer of the Economic Development Commission shall submit a quarterly report of the balance of the Labor Administrative and Training Fund to the Commissioner of Labor on or before the tenth day after the end of each quarter. Each Beneficiary will enter into an agreement with the Economic Development Commission and the Labor Department to develop a training program for the resident employees of the beneficiary firm to provide upward mobility, through training and education, into higher level positions within the firm or another firm.

Each beneficiary, in accordance with Virgin Islands Code Title 27, Section 303b, and Title 29, Section 708 (k), shall file with the Department of Labor, Employment Security Agency, a written notice of Registration of Vacancies and availability of employment within their business, and that of all subcontractors or consultant firms employed by the beneficiary. The notice shall include the number of employees required, the occupational qualification, skills, licenses, or other experience required for such positions, the date employment is to commence, if the position is full time or part time, the respective wage rate, benefits, and other special requirements and conditions of the position. Each beneficiary, their subcontractors or consultant firms, shall not hire any employee unless that candidate was referred to the beneficiary by the Department of Labor or until the Division of Employment Service has been notified of such vacancy and given ten (10) working days in which to refer candidates to fill the position from the unemployed job seekers in the Virgin Islands. In accordance with *The Personal Responsibility and work Opportunity Reconciliation Act of 1996*, all employers have twenty (20) days within which to file a Report of New Hire with the Department of Labor, Bureau of Labor Statistics for each position they fill. Title 16, Chapter 13, Subchapter I, Section 378(g) of the Virgin Islands Code, established a penalty for failure to report all new hires.

The Department of Labor conducts legal and procedural compliance reviews of Economic Development Commission (EDC) beneficiaries. The Department of Labor will conduct continuous review for compliance with residency, employment levels, and reporting on the Employers Quarterly Wage and contribution Report (VIESA) and the Quarterly Affidavit of EDC Beneficiary Regarding Residency of Employees, in accordance with Title 29 VIC 710 (a).

EDC Beneficiary employers shall file their quarterly reports in accordance with the Rules and Regulations of the EDC and the Labor Department. A copy of the Quarterly Wage and Contribution Report and Affidavit of EDC Beneficiary Regarding Residency of Employees and other documents will be provided to the Commissioner of Labor, at the time the Quarterly Reports are filed with the Unemployment Insurance Division and EDC. Failure to file the Quarterly Reports will be cause for the Commissioner of Labor to conduct an investigation and hearing into the non-compliance and issue fines and penalties as determined appropriate by the Commissioner.

Employers shall report employees on the Employers Quarterly Wage and Contribution Report in accordance with law, rules and regulations. Bona fide members of a partnership are not employees of the partnership within the meaning of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the collection of Income Tax at Source of Wages (chapters 21, 23, 24, respectively, subtitle C, Internal Revenue Code of 1954). Such a partner who devotes his time and energies in the conduct of the trade or business of the partnership, or in providing services to the partnership as an independent contractor, is, in either event, a self-employed individual rather than an individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee unless previously approved as an employee partner by the EDC Board of Governors.. (Sections 1402(a) and 3121(d)(2) of the Code). Remuneration received by a partner from the partnership is not wages with respect to employment and therefore is not subject to the taxes imposed by the Federal Insurance contributions Act and the Federal Unemployment Tax Act, as administered by the United States Virgin Islands Department of Labor.

The Commissioner, as soon as the Department of Labor becomes aware of any violation of the above employment vacancy notification by the beneficiary, shall notify the Economic Development Commission that the beneficiary is not in compliance with this requirement. The Commissioner shall investigate the alleged violations and if it is found that there is a violation the EDC may place the beneficiary into a suspended category until corrective action is taken. If the beneficiary continues to violate this provision of the law or rules and regulations, the Commissioner of Labor shall recommend to the EDC to revoke, suspend or modify the certificate. The Commissioner of Labor shall take other actions to cause the enforcement of those laws, rules and regulations under the jurisdiction of the Labor Department, such as site visits, requests for copies of records, interviews, subpoena of records and persons and other actions necessary to carry out the Department's mandate. The Commissioner shall notify the Economic Development Commission of the cost of investigation and reporting of the findings and recommendations of such investigation of violation of rules and regulations or laws of the United States Virgin Islands. Those costs will be recovered from the violation entity and paid into the specific account for the reimbursement of the Labor Department expenses.

§ 708-4. Jobs Program. Each Beneficiary whose capital investment is in excess of \$500,000.00 shall file with the Commissioner of Labor an affidavit that it has employed at least two individuals from the Human Services Jobs Program. The Commissioner shall notify the EDC if the beneficiary does not comply with this requirement.

REVISIONS TO: § 708-4. EMPLOYMENT PRACTICES

In the case of an applicant or beneficiary whose investment, pursuant to subsection (a) of Section 708 of Title 29 V.I.C., is in excess of \$500,000.00 agree in writing to employ at least

two individuals from the Job Training Program, administered by the Department O Labor. The Virgin Islands Department of Labor Unemployment Insurance Division administers Title 24 chapter 12, Sections 301 through 319. Their employer Handbook is designed to aid in the administration of the applicable law.

The following definitions shall be utilized in determining who is an employee and who is an employer for employment practices and compliance purposes under the EDC Program and Labor Laws of the United States Virgin Islands. No definition shall be inconsistent with 24 V.I.C. Chapter 3 §62.

1. Employee, under a general rule of construction, is an individual as defined under the common-law rule for employer – employee relationships. An employee is a person who is subjected to the will and control of the employer’s need not only as to what shall be done, but how it shall be done; however, the employer need not exercise this control. The employer has the right to direct and control the employee in the way he works, both as to the final results and as to the details of when, where and how the work is to be done. As a general rule, if the work promotes, advances, or aides the employer’s trade or business, and is not performed by a recognized independent contractor, then the services are considered to be employment and the wages paid are taxable regardless of the amount of time employed and/or the amount of earnings. Also, if the employee is not in a temporary relationship with the employer and the employee is economically dependent on the business for which they labor. The common-law agency doctrine applicable in determining the “employer-employee relationship”, is also known as the “master-servant relationship”. Bona fide members of a partnership are not employees of the partnership within the meaning of the Federal Insurance Contributions Act, the Federal Unemployment Tax Act, and the Collection of Income Tax at Source of Wages (chapters 21, 23, 24, respectively, subtitle C, Internal Revenue Code of 1954) unless previously approved as an employee partner by the EDC Board of Governors. Such a partner who devotes his time and energies in the conduct of the trade or business of the partnership, or in providing services to the partnership as an independent contractor, is, in either event, a self-employed individual rather than an individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee. (Sections 1402(a) and 3121(d)(2) of the Code).

2. Employer is the person, partnership, and/or corporation for whom the service is performed. Common law recognizes a master-servant relationship in the exercise of will and control by the employer over the employees. The employer can direct what services will be performed, when and where they will be performed, and can set standards for the quality of work to be rendered. The employer supervises and controls the employees, supplies major tools and equipment required to perform the work assigned, and has the power to hire and fire the employee. However, the employer does not have to exercise this control; it is sufficient that he has the right to do so.

3. Independent Contractor is not subject to the will and control of the employer. The employer does not have the right to control the manner or method of performance, although the results to be accomplished are controlled. Independent contractors hold themselves out to the public as such. Generally, they furnish materials as well as labor and use their own tools in the performance of the work. Services performed by independent contractors cannot be summarily terminated without recourse. A contract for labor only will be normally considered a contract for employment.

How the worker is treated determines employment status, not a written contract. Any officer of a corporation performing services for the corporation is an employee of the corporation during all of the tenure of office, regardless of whether compensation for such services is received. Compensation, other than dividends upon shares of stock and board of director fees, shall be presumed to be payment for services performed.

(a) Beneficiaries are to employ a minimum of ten (10) persons on a full time basis in such enterprise; and all employees in such enterprise shall, subject to the exceptions in section 711 of Title 29 VIC, be residents of the United States Virgin Islands (as defined in section 703(e) of Title 29 VIC). The beneficiary may employ less than ten (10) persons if approved by the Commission, with the prior recommendation of approval from the Commissioner of Labor.

(b) Shareholders, members, partners, grantors, trust beneficiaries or other owners who are employees of the beneficiary shall not be counted for the purpose of meeting the minimum employment requirement of this section nor the percentage hiring of residents, percentage of management, supervisory and/or technical positions to be held by residents and training of employees requirements of sections 710 through 712 of this subchapter unless the employee was a resident of the United states Virgin Islands, (as defined in section 703(e) of the Title 29 VIC) at the earlier of the time that the employee became a shareholder, member, partner, grantor, trust beneficiary or other owner of the beneficiary, or became an employee of the beneficiary. unless previously approved as an employee partner by the EDC Board of Governors..

(c) It is the responsibility of each beneficiary to notify the EDC and Labor Department of the status of each employee who is affected by this section and report their percentage of ownership. Employees, who were Virgin Islands residence at the time of their hiring, who, after such hiring, obtain 15% or greater percent ownership interest in the EDC firm, shall not be considered to be part of the minimum of ten (10) resident employees required to be hired by the EDC firm. If changes occur in the status of the employees the beneficiary will immediately notify the EDC and Labor Department. The employer shall immediately thereafter take such action to assure continued compliance with the minimum hiring requirements for their firm.

ADD new section:

§708-5 -- 29 CFR 1910 OSHA GENERAL INDUSTRY AND BUSINESSES; CONSTRUCTION ACTIVITY, 29 CFR 1926, is enforced by the US Department of Labor, division of OSHA, for Virgin Islands private sector safe and healthful workplace in the United States Virgin Islands. Public Sector workplace safety is enforced by the United States Virgin Islands Department of Labor Occupational Safety and Health Division, through Title 24 Chapter 2.

1. All Economic Development Commission Beneficiaries shall take reasonable steps to insure a safe and healthy work environment for each of their employees. They shall submit to the Department of Labor all information requested concerning employee safety and health.

2. All Economic Development Commission Beneficiaries shall comply with all applicable OSHA laws administered in the Virgin Islands of the United States.

SECTION 709a.

DISCRIMINATION

Sections

709a-I. Definitions for the Purpose of Title 29 Chapter 12,
Chapter 12, V.I.C. § 709a

709b-I. Effect of Current Federal and Local Statutes

§ 709a-1. Definitions for the Purpose of Title 29, Chapter 12, V.I.C. § 709a

- (a) The term “Commission” means the Virgin Islands Economic Development Commission as established by 29 V.I.C. § 704.
- (b) The term “Public Body” means all of the following:
 - (1) A territorial office, employee, agency, department, division, bureau, board, commission, council, authority, or other body in the executive branch of the territorial government.
 - (2) An agency, board, commission, council, member or employee of the legislative branch of territorial government.
 - (3) Any other body which is created by the territory or which is primarily funded by or through territorial authority, or any member or employee of that body;
 - (4) A law enforcement agency or any member or employee of a law enforcement agency;
 - (5) The judiciary and any member or employee of the judiciary.
- (c) The term “Commissioner” means the Commissioner of Labor, Government of the United States Virgin Islands.
- (d) The term “person” includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representative, mutual companies, joint stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.
- (e) The term “employee” means an individual employed by a beneficiary or any contractor, subcontractor, or any other agent of the beneficiary who receives compensation directly or indirectly from the beneficiary, except that the term “employee” shall not include any person elected to public office by qualified voters, or any such person chosen by such officer to be on such officer’s personal staff, or an appointee on the policy making level of an immediate advisor with respect to the legal power of the office.
- (f) The term “employer” means a person who has two (2) or more employees for each working day in each of twenty (20) or more calendar weeks in the current or preceding calendar year, and any agent of such a person.
- (g) The term “employment agency” means any person regularly undertaking with or without compensation, to procure employees for an employer, or to procure for employees opportunities to work for an employer, and includes an agent of such person.

- (h) The term “Department” means the United States Virgin Islands Department of Labor; Office of the Commissioner, Division of Labor Relations.
- (i) The term “Division” for the purpose of the section means the United States Virgin Islands Department of Labor, Division of Labor Relations.
- (j) The term “religion” includes all aspects of religious observance and practices, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate an employee’s or prospective employee’s religious observance or practices without undue hardship on the conduct of the employer’s business.
- (k) The term “Director” means the Director of the Department of Labor’s Division of Labor Relations and the coordinator and liaison for all EEOC related matters.
- (l) The term “Hearing Officer” as used herein shall include the Commissioner of Labor or any other person conducting the Employment Discrimination Hearing.
- (m) The term “Employment Discrimination Rules and Regulations” as used herein shall mean the Rules and Regulations for Title 24, Virgin Islands Code, Chapter 17, adopted March 18, 1981.

§ 709b-1. Effect of Federal and Local Statutes for the Purpose of Title 29.
Chapter 12, V.I.C. § 709B.

All Federal and Virgin Islands Statutes that have taken effect since March 18, 1981, date of the **RULES AND REGULATIONS FOR TITLE 24, VIRGIN ISLANDS CODE, CHAPTER 17, EMPLOYEMENT DISCRIMINATION**, that append, amend, or alert these Rules Regulations shall have full force and effect upon this Subchapter entitled **DISCRIMINATION**.

Such statutes include but are not limited to:

- Age Discrimination in Employment Act, 29 U.S.C. § 621, et seq., as amended, by the Older Workers Benefit Protection Act;
- Americans With Disabilities Act, 42 U.S.C. §§ 12101-12213;
- Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001, et seq.;
- Fair Labor Standards Act, 29 U.S.C. § 201 et seq.;
- Family and Medical Leave Act, 29 U.S.C. § 2601, et seq.;
- National Labor Relations Act, 29 U.S.C. § 151, et seq.,
- Occupational Safety and Health Act, 29 U.S.C. § 651, et seq.;
- Rehabilitation Act, 29 U.S.C. § 701, et seq.;
- Title VII, 42 U.S.C. § 2000(e), et seq., as amended by the Civil Rights Act of 1991;
- Worker Adjustment Retraining and Notification Act, 29 U.S.C. § 2101, et seq.;
- Title 10 Virgin Islands code, entitled Civil rights; and/or,
- any other Federal or Virgin Islands Statutes, or rules and Regulations, that affords employee protections of any kind whatsoever.

The Virgin Islands Code, and Title 10 of the Virgin Islands Code, Section I, state in part, “.... Whereas the Legislature finds and hereby declares that practices of racial discrimination

against any of the inhabitants of the United States Virgin Islands because of race, creed, color, or national origin not only threatens the rights and proper privileges of its inhabitants but menaces and threatens the foundations of a free and democratic territory and menaces and threatens the peace, order, health, safety, and general welfare of its inhabitants;...

Now, therefore, it is declared to be the public policy of the United States Virgin Islands that all natural persons within its jurisdiction shall be entitled to the full and equal accommodations, advantages, facilities, and privileges of any place of public accommodations, resort, or amusement, and to the equal opportunity and treatment in employment in any and all businesses and industrial establishments, and to membership in all labor organizations, and to equal privileges in the purchase, lease, or rental of real estate, and in the purchase of any commodity or service offered for sale; subject only to conditions or limitations imposed by law and applicable in like manner to all person. In order to implement this public policy, it is the intent of this chapter to prevent and prohibit discrimination in any form based upon race, creed, color, or national origin, whether practiced directly or indirectly, or by subterfuge in any and all places of public accommodations, resort, or services, and in the employment of persons, or their working conditions, or obtaining union membership, and to prohibit clubs from establishing a private clientele of either members or guests, which they have selected, and with which persons alone will they transact their business and commerce.

Whereas the Legislature finds and hereby declares that practices of racial discrimination against any of the inhabitants of the United States Virgin Islands because of race, creed, color or national origin not only threatens the rights and proper privileges of its inhabitants but menaces and threatens the foundations of a free and democratic territory menaces and threatens the peace, order, health, safety, and general welfare of its inhabitants, and..."

Title 24, Virgin Islands Code, states in part that the Department of Labor shall make such rules and regulations to carry out provisions of Title 24 and for the efficient enforcement thereof. The Commissioner of Labor will review and monitor all Contracts, Agreements, Employee Handbooks, Personnel Manuals, Policies, Practices and Procedures affecting any employee/employer lawful relationship and rights, and public policy. The Commissioner shall assure that no employer hires, sets the salary, promotes, or offers other compensation and/or benefits that may be considered as having a sex, age, national origin or other discriminatory differential act in nature to adversely affect any employee. If any instrument, agreement, document, policy, practice, or procedure is found to be in violation of the law, rules and regulations, or public policy, the commissioner shall declare them not enforceable.

No employer shall cause an employee, or complainant to suffer loss, denial or disparate treatment from a discriminatory practice or aid, abet, incite, compel, or coerce a Virgin Islands Resident to release their Civil Rights, or other rights, under Federal or Virgin Islands Law, or rights to damages of any kind that could be awarded in conjunction with these or any other statutory claims including, without limitation, any compensatory damages (including all forms of back-pay or front-pay), attorneys' fees, liquidated damages, punitive damages, treble damages, emotional distress damages, pain and suffering damages, consequential damages, incidental damages, statutory fines or penalties, and/or costs or disbursements, as a condition of employment, to obtain or retain employment, or to receive a severance pay upon termination, or voluntary termination, of employment, that encompasses any and all claims grounded in contract or tort theories including, but not limited to:

- assault;
- battery;
- breach of contract;
- breach of employee handbooks, manuals or other policies;
- breach of express or implied promises;
- breach of fiduciary duty;
- breach of the implied covenant of good faith and fair dealing;
- defamation, including libel and slander, discharge defamation and self-defamation;
- equitable estoppel;
- false imprisonment;
- fraud;
- intentional or negligent infliction of emotional distress;
- intentional or negligent misrepresentation;
- interference with contractual relations;
- interference with prospective contractual relations;
- invasion of privacy;
- negligence;
- negligent hiring, retention of supervision;
- promissory estoppel;
- tortious interference with contractual relations;
- whistleblower claims;
- wrongful discharge;
- wrongful discharge in violation of public policy; and/or,
- any other contract or tort theory based on either intentional or negligent conduct of any kind.

All natural person within the jurisdiction of the United States Virgin Islands, without regard to race, creed, color, or national origin, and subject only to the conditions and limitations established by law and applicable in like manner to all persons, are entitled to – equal treatment with respect to employment, pay and working conditions in any and all business and industry, and with respect to union membership. No law shall be enacted which shall deprive any person of life, liberty, or property without due process of law or deny to any person therein equal protection of the laws.

Like every contract, there must be a meeting of the minds in order for an employment manual to be considered a valid contract, i.e., the parties must have a distinct and common intention that each party communicates to the other. There also needs to be consideration, and an employee's continued employment after receipt of the handbook or personnel manual may constitute legally sufficient consideration. To avoid creating a contract or the impression of a contract through an employee handbook, employers may include in the handbook a disclaimer stating that the employee may be terminated at the employer's will. An employee who is discharged in violation of a statute, public policy, or the terms of an express or implied contract is considered to have been wrongfully discharged and may bring an action for breach of contract or in tort.

An employee who is covered by a collective bargaining agreement or an express employment contract may be discharged only in accordance with the terms of the agreement or contract. Generally, an employer can discharge an employee for any reason that is not contrary to law, the terms of a written or implied contract, or public policy. Similarly, an employee who is not

covered by an employment contract or collective bargaining agreement may quit at any time and without notice. The elements of an implied employment contract are the same elements as an express employment agreement; thus, there must be a definite offer, acceptance, and consideration. In the Virgin Islands the Wrongful Discharge Act specifies lawful reasons for dismissal of an employee who is not covered by a Union Contract.

The difference between the two contract forms is that an express contract is an actual agreement with explicit terms often placed in writing. An implied contract, on the other hand, is a contract inferred by a transaction, which allows a party to make a reasonable or necessary assumption that a contract exists between the parties by tacit understanding.

An *Employee Handbook*, personnel manual or policy and procedures document, depending on the circumstances, can create contractual Obli-Contractual exceptions to Collective Bargaining Agreements. Where an employee is subject to a collective bargaining agreement, the written agreement will usually cover the grounds upon and the manner by which the employee can be discharged, within the law. The presence of a collective bargaining agreement generally supersedes actions for breach of implied contract and violation of public policy. An employee who is governed by a collective bargaining agreement and who is discharged in a manner that is inconsistent with the terms of that agreement may seek redress through his or her union as specified in the agreement's grievance procedures. The elements of an Express Employment Contract are the same elements required of any other contract. The employer must present a definite offer or continued employment, the employee must accept that offer, which means there must be a meeting of the minds as to what was offered and what was accepted, and there must be legally sufficient consideration.

If these elements exist, an express employment contract is created. An employer who then terminates an employee in derogation of the terms of the express contract may be liable for a breach of contract; similarly, an employee who quits also may be sued by his employer for breach of contract. An implied contract, originally, may arise in an employment-at-will context but is inferred by a court from the relationship between the employer and the employee and the circumstances surrounding the parties' transactions.

If an employee signs a disclaimer stating that he understands the Employee Handbook or other manuals or documents setting out policies and procedures that are not intended to constitute an employment contract, the requisite meeting of the minds is lacking. Consequently, the employment remains at will, regardless of whether the employee actually read or understood the disclaimer. However, there is a split of authority on whether or not a disclaimer creates an at-will employment relationship where the employee does not agree to the disclaimer. Promissory estoppel, first applied to employment contracts is not a contractual theory but a quasi-contractual or equitable doctrine designed to prevent the harm resulting from the reasonable and detrimental reliance of an employee upon the false representations of his employer.

The test in such cases is whether or not the employer should have reasonably expected its representation to be relied upon by its employee, and, if so, whether the employee's expected action or forbearance actually resulted and was detrimental to the employee. However, a promise of future benefits or career opportunities without a specific promise of continued employment is not sufficient to support a promissory estoppel exception to the employment-at-will doctrine. The courts have held that a promise of job security, discussions of future career

development with the particular employer, or praise with respect to job performance do not, in and of themselves; invoke the promissory estoppel exception to the employment-at-will doctrine.

Originally, there is no public policy exception to the employment-at-will doctrine. Courts may use the doctrine of promissory estoppel as an exception to the employment-at-will doctrine to prevent the harm resulting from the reasonable and detrimental reliance of an employee on the false representations of his employer. An arbitration agreement must not limit the remedies that an employee would have available in court. Pre-dispute waiver of remedies or substantive protections written into an arbitration agreement by the employer are not enforceable and are against public policy and unconscionable to the welfare of the people. Employees shall retain the right to elect arbitration at the time a dispute arises, or a reasonable time thereafter. There shall be nothing in the agreement to unfairly limit the employees' access to arbitration due to economic reasons. If an employee cannot afford arbitration the employer shall absorb the expense, if both parties agree to arbitration. An employee shall not forgo the substantive rights afforded by any statute. Arbitration only submits the employees' statutory rights to resolution in an arbitral, rather than a judicial, forum.

If the Commissioner of Labor finds that, public policy, and/or the community good or welfare, warrant an exception to the *Employment-At-Will Doctrine* when an employee is discharged or disciplined for a reason which is prohibited by statute the act shall be subject to judicial review. Henceforth, the right of employers to terminate employment-at-will for any cause no longer includes the discharge of an employee where the discharge is in violation of a statute and thereby contravenes public policy and/or community good.

The Virgin Islands has a long standing public policy that finds it is against public policy and community good and welfare for an employer to discharge an employee in contravention of anti-discrimination laws. An employer may be liable for back pay, compensatory and punitive damages, or other damages if he discharges an employee in violation of statute and/or public policy. It remains unclear whether a discharged employee can base a public policy tort claim on a statute that provides a specific private right of action to the employee. For example, under law an employee has a private right of action for damages if he is terminated because of prohibited discrimination, in retaliation for whistle blowing, or other protected rights, under the Virgin Islands Wrongful Discharge Act.

The Commissioner of Labor, the Director of the Division of Labor Relations, and other representatives of the Department of Labor, shall monitor the activities of employers to assure compliance with, and enforcement of the Law and Rules and Regulations, under the jurisdiction of the Labor Department. Record maintenance is essential for regulatory compliance and audits. As such, Employers, shall keep in the virgin islands and present immediately upon demand of the Commissioner of Labor or his representative, complete and current records with the;

1. number, names, and addresses or employees in his employ;
2. status of employee with respect to legal residence;
3. classification and wage rate of each employee and payrolls showing number of hours worked each day and compensation received by each employee, and whatever deductions have been made from his wages.

If a violation (s) of law, or rules and regulations, is found by a party other than the Department of Labor, that violation shall be reported to the Commissioner of Labor by the

respective reporting party. If the violation (s) is found to be under the jurisdiction of the Department Labor, the Commissioner shall conduct an investigation to determine the validity of the finding (s). The Commissioner of Labor shall then report to the EDC the finding (s) and indicate the need for a **Show Cause Hearing** be conducted by the Board of Directors of the EDC. The Commissioner of Labor, or his designee, shall be the party presenting the finding (s) at the **Show Cause Hearing**.

Any person claiming to be aggrieved by an unlawful discriminatory practice may personally or by agent file with the Commissioner of Labor a written and verified complaint of the practice. A person filing a complaint as the agent of a person claiming to be aggrieved, must file with the complaint a statement signed by the person claiming to be aggrieved authorizing the agent to file the complaint. The Department of Labor shall provide assistance in preparing and filing complaints to any aggrieved party. The Attorney General of the United States Virgin Islands may also file, on behalf of the Virgin Islands, a separate complaint concerning the alleged violation (s) of law. Any complaint shall file their complaint within 180 days from the day of the alleged unlawful discriminatory practice or its reasonable discovery. If the alleged unlawful practice is of a continuing nature the last date of this practice shall be deemed to be the last date on which the practice continued, or the date of the filing of the complaint.

The Commissioner, or Director of Labor Relations, or his designated representative, shall have the power to reasonably and fairly amend the complaint, after consultation with the complainant. The complainant may also amend the complaint and must file a copy with the Commissioner of Labor. The original complaint and all amendments shall be treated together as a single complaint. A complaint may be amended in any way provided the amended complaint is filed within the time established limits. Based upon the finding of the lack of timeliness, facts presented in the complaint, jurisdiction being in another forum, or after an investigation of the allegations, the Commissioner may find that the complaint shall be dismissed.

A complaint may be administratively closed by the Commissioner of Labor or his designee at any stage prior to setting the case for public hearing for any of the following reasons:

1. For failure of the complainant to cooperate with the Department of Labor's investigation.
2. Upon the Commissioner's inability to locate the complainant after three attempts.
3. For lack of jurisdiction.
4. In the absence of any remedy available to the complainant.
5. When the complainant files a suit in District Court on the same issues against the respondent named in the complaint filed with the Department of Labor.
6. When the commissioner has not completed his administrative processing within one hundred eighty (180) days from the filing of the complaint and the person aggrieved requests in writing a notice of the right to bring a civil action in District Court, the Commissioner or his designee will administratively close the complaint and issue the Notice to the parties.
7. The parties will be notified by mail of the Commissioner's dismissal or administrative closure and of complainant's right of appeal. The Commissioner may vacate a dismissal or administrative closure of a complaint within one hundred eighty (180) days of the date of the original letter of notification when the dismissal or administrative closure was inappropriate due to an administrative error or the finding of additional information to warrant reopening.

8. Any person aggrieved by dismissal of a complaint may obtain judicial review by filing a petition in the District Court or proper venue within thirty (30) days after the mailing or delivery of the notice of dismissal.

Investigation of allegations of discrimination, not dismissed prior to service of the complaint upon the respondent, shall permit the respondent an opportunity to present an oral or written statement of its position. Investigations shall be accomplished by methods including, but not limited to, fact-finding conferences, personal interviews, written interrogatories, tests, requests for production of documents, books or papers, electronic records, media, or other materials and reviews of investigations of other civil rights agencies and other information as necessary for the conduct of the investigation. If the respondent refuses to cooperate with the investigation, information needed may be subpoenaed. The Commissioner of Labor may issue subpoenas to compel cooperation and production of records and materials.

If the Commissioner of Labor finds that a beneficiary, contractor, or any agent or employee under the control of the beneficiary, has willfully practiced discrimination in any form protected by law, the Commissioner shall, within five working days, certify his finding(s) to the EDC, which shall revoke the beneficiary's certificate without need for further proceedings under section 722 of Title 29 Virgin Islands Code.

The Commissioner of Labor, within 60 days of the completion of an investigation into the allegations of discrimination, may issue to the complainant employee a **Right-To-Sue Letter** to allow the commencement of a civil action in the District Court of the Virgin Islands. A civil action shall be commenced by an employee within 90 days of the date upon which the **Right-To-Sue Letter** is issued. The Commissioner of Labor, within 90 days of the date on which the Commissioner notifies the parties in writing that conciliation efforts have failed, may file a civil action against the employer on behalf of the People of the Virgin Islands.

If the Commissioner of Labor finds that an employer has failed to maintain complete, and/or submit true and accurate business records and/or reports, relative to employer/employee relationship and actions resulting there from, and documents and reports required by and made to the Department of Labor, the Commissioner, upon a finding of fact, may issue a civil penalty against the employer up to Five Thousand dollars (\$5,000.00), per incident, per employee of the business, with the maximum not to exceed One Hundred Twenty-Five Thousand Dollars (\$125,000.00), per incident investigated by the Department of Labor, or his authorized representative, and the related finding(s). The employer shall also reimburse the Department of Labor for the cost of the investigation.

If the civil penalty and/or cost of the investigation are not paid within 30 days of the final determination, the Commissioner of Labor shall impose an interest penalty in the amount of one per cent per month on the unpaid balance of the civil penalty and/or investigation costs, until paid in full. Assessment of penalties and interest under this section shall be subject to a three-year statute of limitations commencing at the time of the occurrence of the violation or the date in which the Commissioner becomes aware of the violation, whichever is later. Funds collected from penalties levied by the Commissioner shall be covered into the Department of Labor, Office of the Commissioner, Division of Labor Relations, employer and employee training fund for Labor Relations and other areas as determined by the Commissioner. Failure to pay penalty and/or investigation costs assessed within ninety (90) days of imposition the Commissioner may

request the Attorney General of the Virgin Islands to enforce the assessments(s). Pending payment of the assessments, the Commissioner will notify the EDC of the compliance violation.

SECTION 710 EMPLOYMENT OF RESIDENTS

Section	710-1. Purpose and Authority
	710-2. Where to File the Affidavit
	710-3. Filing of Agreement; Scholarship Fund
	710-4. Investigations; Remedial Action

§ 710-1. Purpose and Authority

The Purpose of these Rules and Regulations are to clarify the procedures and intent of the Department of Labor's participation in the Government of the United States Virgin Islands Economic Development Program, Title 29 of the Virgin Islands Code, Chapter 12, as amended, through the Economic Development Authority for employment of residents under the program.

Pursuant to 3 V.I.C. Section 358 and 29 V.I.C. Section 711(a), the Department of Labor, with the approval of the Governor, establishes the following Rules and Regulations. Said Rules and Regulations set forth the procedures for carrying out the Department of Labor's responsibilities in the administration and enforcement of Title 24 Chapters 1, 4, 5, 5, 7, and other applicable sections, and Virgin Islands statutes under the jurisdiction of the Department of Labor. Based upon its experiences in the administration of these laws, the Department of Labor may from time to time amend and revise these Rules and Regulations as they pertain to the Labor Department.

§ 710-2. Where to File the Affidavit

Pursuant to Title 29 Virgin Islands Code Section 710 and applicable laws governing the employment of residents and non-residents, Economic Development Commission Program beneficiaries shall employ at least ten employees of which eighty percent ((80%) shall be a bono fide resident of the Virgin Islands and a legal resident of the United States. The beneficiary shall also have at least twenty percent (20%) of employees in management, supervisory and/or technical positions filled by residents of the Virgin Islands, unless granted a waiver by the Commission. Such waiver shall be granted only when the Commissioner of Labor has certified that the Department of Labor;

1. Has been unable to recruit individuals to fill the position,
2. Was unable to train individuals to fill the positions.
3. The beneficiary demonstrates to the Commissioner that the beneficiary's training program has failed to provide individuals capable of filling the positions and that the beneficiary has made a public effort to recruit and train personnel for the positions from the residents of the Virgin Islands, or
4. The Economic Development commission makes a finding that the economic position of the beneficiary is such that the beneficiary cannot comply with the requirement without further erosion of its financial position or that the beneficiary cannot comply for such other practical reasons that the commission has established by its rules and regulations.

Requests for waiver of residency shall be presented to the Commissioner of Labor in Affidavit form, signed by a principal of the beneficiary company, contain all information relative

to justification for the request and the period of time needed in which to correct the situation and to come back into compliance by hiring a resident into the position in less than one year from the date of approval of the request.

If the Commissioner of Labor finds that a beneficiary has submitted false, misleading or insufficient information, or has violated the intent of the law, the beneficiary may be subjected to a Civil Penalty not to exceed twenty-five thousand dollars (\$25,000.00), with the assessment of damages and costs, for each incident.

§ 710 3. Filing of Agreement, Territorial Scholarship Fund

In addition to the transfer of funds to the Territorial Scholarship Fund, each beneficiary employing non-residents shall file with the Department of labor an agreement to fund a training program for resident job seekers to fill vacancies or the positions held by nonresidents and to transfer to the Economic Development Commission's Labor Administrative and Training Fund ten thousand dollars (\$10,000.00) per non-resident employee, per year, for the Department of Labor to conduct the training for job seekers, and develop an internship, to obtain the skills necessary to assume clerical and managerial positions held by non-residents.

§ 710-4. Investigations: Remedial Action

The Commissioner, and or his designee, shall monitor beneficiaries' compliance and progress in converting their staff to a full Virgin Islands resident staff. Beneficiaries shall make available to the Department of labor all records, information, beneficiary controlled property, and persons with knowledge or information of the operation of the beneficiary, as requested by the Commissioner, or his designated representative. The Commissioner, or his designated representative, shall have the power and authority to enter any beneficiaries' place of employment and gather such facts as are essential to determine whether or not the employer is covered by any provision of this rules and regulations. The Commissioner or his designated representative shall investigate, review, gather facts, inspect facilities and records, receive copies, and access, all records, in written, electronic, or other media, and to interview employees of the beneficiary to verify compliance and actions to hire, train, advance, and retain Virgin Islands residents on its staff.

The Wrongful Discharge Act of the United States Virgin Islands as enacted does not state a preference for Administrative or Judicial review as the forum for declaring the discharged employee to have been wrongfully discharged. It does however have the presumption that the employee has been wrongfully discharged if the reason for the discharge was not one of the enumerated reasons. The Act gives the employee the right to seek a determination on the wrongfulness of the discharge through either or both the administrative and judicial processes. An employee who has initiated an administrative claim for wrongful discharge is not barred from filing simultaneously or subsequently a wrongful discharge action in court.

Failure to comply with foregoing requirements shall be a violation of the Virgin Islands Code, Titles 29 and 24, and these rules and regulations. The Commissioner of Labor in finding a violation of the foregoing requirements shall impose a fine not to exceed five thousand dollars (\$5,000.00), with assesses damages and costs, per day, until compliance is assured and all violations have been corrected.

SECTION 711.**POWERS AND DUTIES OF THE COMMISSIONER OF LABOR**

Section	711-1. Power and Duties of the Commissioner of Labor
	711-2. Where to submit information and material
	711-3. Requesting Department assistance in filling a vacancy
	711-4. Approval or denial

§ 711-1. Power and Duties of the Commissioner of Labor

(a) The Commissioner of Labor shall appoint qualified and responsible employees of the Department of Labor to administer, supervise, investigate and enforce, or cause to be enforced the provisions of sections 708 through 712 and 715 of this subchapter. To further these responsibilities the Commissioner may promulgate rules and regulations, conduct investigations and institute such remedial acts as may be required to enforce the laws and rules and regulations under the jurisdiction of the Labor Department. The Commissioner of Labor shall require employers to submit to investigation and production such documents, information, and access to employees as determined necessary to conduct a timely review of the compliance of each employer. If the Commissioner finds that the employer is, or has been, in violation of applicable laws, or rules and regulations, within the jurisdiction of the Labor Department, the Commissioner of labor may impose a fine not to exceed twenty five thousand dollars (\$25,000.00), and investigative and administrative costs, for each violation. All fines and costs collected as a result of the finding of violation of the law and/or rules and regulations administered by the Labor department shall be deposited into the special account established for training programs administered by the Labor Department.

§ 711-2. Where to Submit Information and Material

All information for the Virgin Islands Department of Labor is to be submitted to the office designated by the respective function within the Labor Department, on the island so identified as being the activity responsible for the information requested. If no specific address, office, or employee is given in the instructions for completing and submitting information the Office of the Commissioner in the respective district of the Virgin Islands shall be the location to which the information is to be submitted.

Applicants for EDC benefits shall provide a copy of their application to the Commissioner of Labor. They shall include in their application a copy of their Virgin Islands Business License, proof of registration with the Division of Labor Relations Employment Insurance, Job Services, Workman's Compensation and the Bureau of Labor Statistics. If these requirements have not been completed this shall be so stated in the application and as soon as compliance is achieved documentation shall be sent to the Labor Department. In accordance with Virgin Islands Code Title 27, Section 303b, as an employer identifies a Job Vacancy, or the creation of a new job position, the employer shall notify the Department of Labor and request their assistance in finding applicants for these positions. When a position is filled the employer shall notify the Bureau of Labor Statistics of the filing of the position through the New Hire Reporting process per Title 16, Chapter 13, Subchapter I, Section 378(g) and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104-193).

The Commissioner of Labor, or his representative, shall investigate all noncompliance matters where an individual or business has not submitted the required information or material to

Department of Labor. The Commissioner of Labor may hold a hearing to obtain information as to the allegations of noncompliance. Based upon the results of the investigation and or hearing, the Commissioner of Labor may issue a **Notice of Finding (s) of Noncompliance**. If violation of the law is found to be within the jurisdiction of the Labor Department, the Commissioner of Labor may take corrective action and impose fines not to exceed, per violation, twenty-five thousand dollars (\$25,000.00) and institute recovery of damages and costs, as documented and issued as a ***Finding of Fact***. The Commissioner of Labor shall then refer the **Finding (s) of Noncompliance** to the Department of Licensing and Consumer Services (DCLA), Lieutenant Governor's office, Bureau of Internal Revenue (BIR), Economic Development Commission (EDC), or other appropriate agencies for action within their jurisdiction. The agencies will notify the Labor Department of the actions taken as a result of the Labor Department's referral(s).

§ 711-3. Requesting Department's Assistance in Filling Vacancy

Each applicant, beneficiary, contractor or subcontractor of a beneficiary, shall give written notification to the Commissioner of Labor, Division of Job Services of their need to fill a vacancy within their business. The written notification shall be in all the prescribed form and manner as required by the Labor Department. Such written notification shall be at least twenty (20) working days prior to the identification and interviewing of any candidate(s) for the respective vacant position or proposed new position, which are not referred to the employer by the Labor department. The applicant, beneficiary, contract or subcontractor shall provide a written statement as to the number of employees needed in each proposed or vacant position, the occupational classification of such workers, the applicable wage rate, education, experience, special licenses or skills necessary, or other criteria the successful candidate will need to perform the assigned duties. Applicants, beneficiaries, contractors, subcontractors or other affected parties shall adhere to these Rules and Regulations, Act 5174, Title 24, of the Virgin Islands Code, and other applicable laws as they govern employment practices.

§ 711-4. Approval or Denial

The Commissioner of Labor shall have the authority to approve or deny an employers request for certification of non-resident workers, a request to waive the 80% requirement in resident hiring, employee or employer residency affidavits or claims, suitable skills to perform duties of vacant positions, a determination as to the employer's Unemployment Insurance Tax rate, a petition to waive or reduce penalties or interest imposed as a result of nonpayment of Unemployment Insurance Tax, or other matters under the jurisdiction of the Commissioner of Labor.

SECTION 712

TRAINING OF EMPLOYEES

Section	712-1. Delegation of Authority
	712-2. Where to Submit Occupational Training Program
	712-3. Approval of the Plan
	712-4. Monitoring of the Plan
	712-5. Investigations: Remedial Action
	712-6. Interpretation of Rules
	712-7. Separability

§ 712-1. Delegation of Authority

Pursuant to 3 V.I.C. § 358 and 29 V.I.C. § 711(a), the Department of Labor, with the approval of the Governor, establishes the following Rules and Regulations. Said Rules and Regulations set forth the procedures for carrying out the Department of Labor's responsibilities in the administration and enforcement of Title 29, Chapter 12, V.I.C. § 708 through § 712, and § 715, inclusively, and Virgin Islands statutes under the jurisdiction of the Department of Labor. Based upon its experiences in the administration of these laws, the Department of Labor may from time to time amend and revise these Rules and Regulations. The Commissioner of Labor, or his designee, shall exercise responsibilities and authority over these rules and regulations and other applicable law.

§ 712-2. Where to Submit Occupational Training Program

Each Beneficiary shall submit to the Department of Labor and carry out the following processes to develop and carryout a strategic training program for Virgin Islands resident employees into management positions. Training refers to those activities which develop/enhance an individual's knowledge, skills and abilities in occupationally-specific areas, and may include workplace literacy, safety, high performance skills, technical, on-the-job, or computer assisted instruction, higher education and other non-traditional learning initiatives.

The employer shall develop an ***Employee Handbook*** and distribute to all employees within sixty (60) days of issuance of the EDC Benefits Certificate. The ***Employee Handbook*** contents will be discussed with all employees, at least annually, to assure their understanding. Any changes to the Handbook shall be reviewed with employees for possible suggestions, and when finalized, distributed to each employee.

A copy of the ***Employee Handbook***, and amendments, shall be sent to the Labor Department for review, prior to official issuance. This partnership shall be an effort to improve morale and productivity and to limit job turnover, as employers help their firms to effectively use employee skills, provide training opportunities to enhance those skills, and boost employees' satisfaction with their jobs and working conditions.

The ***Employee Handbook*** will contain an appendix entitled, ***Employee Training and Advancement***, the training plan will assure compliance with applicable federal and Virgin Islands law, Rules and Regulations, and identify the needed training, education, experience, skills, or other aspects of the position for the candidate to be successful in the position. The training plan will also have a defined and measurable timetable, for obtaining skills, licenses or passing courses to enable the specific employee to advance into the target management position. The training plan should take into account the work environment and backgrounds of the individual employees. Managers could utilize an overview of differences in working and living in the Virgin Islands as compared to other parts of the world. Training and communicating with employees as to the desired skills and work ethic desired by the employer is vital to a successful training and affirmative advancement program.

As each training plan is prepared it shall be submitted to the Department of Labor and the UVICELL program for review and inclusion into its database of position knowledge, education and skills needed for specific positions. The Department of Labor, with input from UVICELL,

will review and communicate suggested changes to the employer to improve its training program and to identify programs and instructors.

Employers may use on-the-job (OJT) training for advancement of employees in combination with external training and/or educational programs. The OJT programs shall define measurable objectives and timelines for the employee to accomplish the desired upward progress. The Employment and Placement manager should oversee the hiring and separation of employees. They should also coordinate the training program to assure Equal Employment Opportunity and advancement as the employee become qualified.

Each employer shall include in its *Employee Handbook* a defined description of tuition opportunities offered to employees to continue or advance their education and skills. The training program shall be tailored for each position, with a clear delineation or requirements and expectations of employee transitioning into the projected position.

Every position shall have a detailed job description, with defined qualifications, core competencies required, performance measurement guidelines, performance evaluation schedules based upon the type of evaluation. When employees are evaluated they will be apprised of their performance, any needed improvement, and opportunities to advance within the company.

Performance evaluations shall be at least annually or more often if needed, for purposes of promotion, training needs, evaluation of progress in an on-the-job program, or when requested for special purposes. The evaluation will have a rating sheet insert and documentation of the rating panels' basis of rating and their decision, especially when the decision is negative to the employee. Special care will be used to assure that EEOC concerns are addressed during this process. Evaluations and Rating Sheets shall be maintained in the employee's personnel file, and kept for three years after their employment ends.

The training plan for each employee should be reviewed with each employee prior to finalization. All employees will be given an opportunity, based upon evaluation of his or her professional growth desires and potential, to enter the management trainee program. The on-the-job training program should include a mentoring or shadowing program to aid the employee in their program to become a manager, supervisor, or other management position.

Employers will identify annual employment needs by position and qualifications. This information shall be part of the annual budget, with clearly defined salary scales and monetary differentials between positions. These differences will be detailed as to levels to education and skill levels, which support and clarify such differences in salary and/or benefits. Efforts will be made to employ a 100% Virgin Islands Staff within the five years.

Employers will identify those employees who have distinct roles that would enable them to be eligible for rotation, advancement to supervisory positions, and other specialized training and advancement opportunities.

When a position is to be created, or becomes open, the Employer shall immediately notify the Department of Labor, with all necessary information, for the department to review and refer candidates for the position, who are Virgin Islands Residents. Once any position is filled the employer will inform the Labor Department via the New Hire Report.

§ 712-2. Beneficiaries, in accordance with Title 29 Section 708(n)

§ 712-4. Monitoring of the Training Plan

The Commissioner, or his designated representative, shall investigate all allegations of violation of these Rules and Regulations and Law within the jurisdiction of the Labor Department. The investigation shall be initiated within ten (10) working days of receipt of the written and complete allegation. The investigative report will be filed as soon as a complete investigation is conducted and reported to the Commissioner of Labor. If the investigation finds that the allegations are without merit or lack evidentiary support the complainant shall be so notified and afforded an opportunity to amend the complaint with additional evidence, within ten (10) days.

§ 712-5. Investigations; Remedial Action

The Commissioner, or his designated representative, shall investigate all allegations of violation of these Rules and Regulations and Law within the jurisdiction of the Labor Department. The investigation shall be initiated within ten (10) working days of receipt of the written and complete allegation. The investigative report will be filed as soon as a complete investigation is conducted and reported to the Commissioner of Labor. If the investigation finds that the allegations are without merit or lack evidentiary support the complainant shall be so notified and afforded an opportunity to amend the complaint with additional evidence, within ten (10) days.

§ 712-6. Interpretation of Rules and Regulations

The Commissioner of Labor shall publish an interpretation of the Rules and Regulations, Sections 708 through 712 and 715, as necessary, to aid in the compliance and improvement of the overall goal of assisting the wage earners to better themselves and their working environments, the service to employers and others. Such publication shall also be posted on the Labor Department's Website, www.vidol.gov.

§ 712-7 Separability

The provisions of these Rules and Regulations are hereby declared to be separable. In the event one or more of its provisions are held to be invalid, or unconstitutional, the validity of the other provisions shall not be affected or nullified thereby.

Subchapter IV. Industrial Development Benefits

SECTION 715 CERTIFICATE MODIFICATIONS, EXTENSION OR RENEWALS; REOPENING OF INDUSTRIES

Section 715a. Process to Submit Certification Application

- (a) All beneficiaries shall prepare and submit proper application or reapplication, for renewals, extensions, modification or reopening of benefits granted to the respective beneficiary. The Commissioner of labor shall require each beneficiary submitting application or reapplication to submit and/or make available for review all required documentation to

determine that the beneficiary has been in and continues to be in compliance with all applicable law and rules and regulations under the department of Labor's

- (b) Any recipient of industrial development benefits, granted either pursuant to this chapter or under previously existing law, may be granted an extension, modification or renewal of those benefits subject to the conditions stated herein.
 - (1) Benefits granted hereunder shall be pursuant to the provisions of this chapter only, and not pursuant to the provisions of any previous law.
 - (2) Enterprises operating under certificates granted pursuant to pre-existing law as of the effective date of this chapter shall be eligible for mediation of said certificates to obtain any enhanced industrial development benefits available under.
 - (3) The Commissioner of Labor shall certify the applicant's compliance with all labor laws, rules and regulations prior to extension, modification or renewal of benefits.
 - (4) All benefits granted under this section shall be subject to the approval of the Governor.
- (c) Certificate extensions, modifications or renewals shall be for a period or periods approved by the Commission, however, no extension, modification or renewal of any exemption or subsidy benefit shall exceed an aggregate duration of more than five years at one hundred percent (100%) of benefits, or ten years at fifty percent (50%) of benefits, or proportionate graduations thereof, at the applicant's option.
- (d) The Commission shall not grant any extension or modification of benefits under an existing certificate or grant a new certificate unless it is determined at the time of the application or reapplication for same that the industry or business of the applicant is deserving of the benefits applied for and that it will or continues to promote the industrial development of the United States Virgin Islands. However, the commission shall not grant any extension or modification under an existing certificate if that industry or business is expanded as a result of a merger of similar business or acquisition of an existing business.

In making such determination the Commission shall consider all of the following:

- (1) The amount of additional investment utilized in improving or expanding existing equipment or facilities.
- (2) Increase in employment of United States Virgin Islands residents and the progressive nature, or lack thereof, of the applicant's employment practices in general, including the scope and effectiveness of employee training programs

designed to qualify United States Virgin Islands residents for employment or promotion within the applicant's industry or businesses.

- (3) Whether the industry or business continues to be compatible with the ecology of the United States Virgin Islands.
- (4) Such other criteria which are required to be applied in determining qualification for the initial industrial development certificate under this chapter as are appropriate, as determined by the Commission.
- (e) Notwithstanding the other provisions of this section, and consistent therewith, it is specifically contemplated that this section may be utilized to permit the granting of exemption and subsidy benefits for the continuation or reopening of businesses or industries which have previously enjoyed such benefits but which the Commission deems to be of a particular importance to the economy of the United States Virgin Islands and finds could not otherwise continue or reopen.

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