

May 18, 2023

DC Office of Human Rights  
Office of the General Counsel  
411 4th Street, NW, Suite 570N, 5th Floor  
Washington, DC 20001

**Re: Docket No. 23-097 DC(N), R [REDACTED] *Neloms v. DC Department of Motor Vehicles* and Docket No. 23-096 DC(N), B [REDACTED] *Horsley v. DC Department of Motor Vehicles*, Opposition to Motion to Dismiss (filed concurrently in both cases)**

## INTRODUCTION

Under 4 DCMR § 105.1, individuals who believe they endured employment discrimination by a District agency “shall consult” an equal employment opportunity (EEO) counselor within 180 days of the discriminatory conduct. Complainants, Ms. Neloms and Mr. Horsley, sent two timely emails to two EEO counselors, but the Department of Motor Vehicles (DMV) argues that those messages do not count because the EEO counselors never responded to them—and therefore, this Office lacks jurisdiction. The DMV’s interpretation of the regulation means that whether an employee “consults” an EEO counselor depends on whether the counselor responds to the employee’s outreach. Such a reading would allow the DMV to divest this Office of jurisdiction by telling its EEO counselors to strategically delay responding to complaints. The regulation’s text and structure preclude such a self-serving construction. Indeed, if adopted, the DMV’s position would not only defy the Council’s intent but also the Fifth Amendment’s Due Process Clause.

## BACKGROUND

On December 17, 2021, Prince George’s County Public School District notified Ms. Neloms and Mr. Horsley that their children’s schools would be closed between December 20, 2021, and January 14, 2022, due to the worsening COVID-19 pandemic. Realizing that childcare would be nearly impossible to obtain, Ms. Neloms and Mr. Horsley, who are both DMV Hearing Examiners, asked their direct supervisor to allow them to telework with an agency laptop during the school closure, just as they had done successfully for more than a year at the start of the pandemic, and as the DMV continued to allow examiners to do for reasons unrelated to family responsibilities. Ms. Neloms’s and Mr. Horsley’s supervisor denied their telework request on December 23.

On June 16, 2022, 175 days after their request was denied, Ms. Neloms and Mr. Horsley emailed Breanna Lewis, a District of Columbia EEO Counselor, writing,

“My colleague and I have a discrimination matter to discuss with our agency. We would like to know your availability in assisting in the matter? If you require additional information, please do not hesitate to contact us.” Emails at 2, attached as Ex. A. Receiving no response, Ms. Neloms and Mr. Horsley sent the same email message to another EEO Counselor, Keneysha Anthony, on June 21, 2022. *Id.* at 1. Neither counselor responded. On December 19, 2022, Ms. Neloms and Mr. Horsley filed the attached formal complaint with Office of Human Rights, alleging discrimination based on family responsibility. Ex. B.

## ARGUMENT

“The DC OHR’s and EEOC’s procedural requirements are to be read broadly and flexibly in the employee’s favor in light of their remedial purposes and because they are designed for lay persons.” *Estenos v. PAHO/WHO Fed. Credit Union*, 952 A.2d 878, 885-86 (D.C. 2008). One such procedural requirement is 4 DCMR § 105.1, which provides that an individual “who believes that he or she has been discriminated against because of . . . family responsibilities . . . in connection with any aspect of District government employment shall consult an EEO counselor within one hundred eighty (180) days of the occurrence of the alleged unlawful discriminatory practice.” The District contends that an employee who timely contacts multiple EEO counselors fails this requirement if the counselors never respond. The regulation’s text and purpose, and the United States Constitution, all preclude the District’s outlandish interpretation, which would empower the District to unilaterally stymie claims against it.

Starting with the text, Ms. Neloms’s and Mr. Horsley’s actions fit comfortably within what it means to “consult” an EEO counselor. Merriam-Webster defines “consult” as meaning, among other things, “to ask the advice or opinion of.” *See Consult*, MERRIAM-WEBSTER.COM DICTIONARY, MERRIAM-WEBSTER.<sup>1</sup> This definition appears under the section for uses of “consult” as a transitive verb—meaning a verb used with a direct object. That is how § 105.1 uses it: with “EEO counselor” as the direct object of “consult.”

“To ask the advice or opinion of” describes exactly what Ms. Neloms and Mr. Horsley did: they sent emails to two separate EEO counselors, each stating that they had “a discrimination matter to discuss” with DMV, inquiring about the counselors’ “availability in assisting in the matter.” and inviting the counselors to contact them should they need more information. Ex. A at 1-2. Contrary to DMV’s assertions, the

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<sup>1</sup> <https://www.merriam-webster.com/dictionary/consult> (last visited Accessed May 18, 2023).

emails were not an “attempt” to consult the EEO counselors. *See* MTD at 2, 3. The messages “ask the advice or opinion” of the counselors; nothing more was required.

The DMV cites no definition contrary to Complainants’. To the extent the DMV suggests “consult” can mean only to have a bilateral conversation and not merely “to ask” (as defined in Merriam-Webster), the DMV seems to reach this conclusion based on inaccurately rephrasing the regulation as requiring that a complainant “consult *with*” a counselor, MTD at 2 (emphasis added); *see also id.* at 3 (same phrase); *id.* at 2 (“[I]t was essential the Complaint speak *with* an EEO Counselor.” (emphasis added)), even though that phrase does not appear in § 105.1. Obviously, rewriting the regulation is not a valid way to interpret it.

Further supporting Complainants’ plain-meaning approach, § 105.2 and § 105.4 both detail what a counselor is responsible for once they’ve been “consulted by” a complainant. The use of the word “by,” as opposed to “with,” again suggests that a complainant’s responsibility is discharged once they contact a counselor.

DMV’s motion highlights the requirements § 105 imposes on EEO counselors and argues that its counselors’ failure to take those steps somehow changes the fact that Ms. Neloms and Mr. Horsley consulted them. MTD at 2-3. But those are requirements of the *counselors*, not of Complainants. For example, § 105.4 states that the “[t]he EEO Counselor shall, insofar as is practicable, conduct the final interview with the complainant and/or his or her representative not later than thirty (30) days after first being consulted by the complainant.” That the EEO counselor failed to comply with the mandatory language of § 105.4 (or any of the other subsections of § 105) has no relevance to whether Ms. Neloms and Mr. Horsley did what was required of them by § 105.1. Indeed, a final interview is something to which a complainant is “entitled,” *Jones v. District of Columbia*, 314 F. Supp. 3d 36, 50 (D.D.C. 2018), not something they are responsible for bringing about unilaterally. That the counselors here “completely dropped the ball,” by “fail[ing] to begin the informal EEO process” is not a reason to deny Ms. Neloms and Mr. Horsley access to formal process as well. *See Niskey v. Kelly*, 859 F.3d 1, 9 (D.C. Cir. 2017) (reaching this conclusion in the context of a Title VII employment discrimination action).

The DMV is incorrect that an EEO counselor must conduct an interview or issue an exit letter for this Office to have jurisdiction. MTD at 2-3. The provisions DMV cites for this proposition, §§ 105.6-105.7, provide only that complaints are untimely if filed more than fifteen days after a final interview occurs. Here, there was no final interview, so the filing of Ms. Neloms’s and Mr. Horsley’s formal complaint is not constrained by these subsections. Nor does the EEO counselors’ failure to conduct a counseling process and issue an exit letter leave Ms. Neloms and Mr. Horsley without a statute of limitations, as the DMV suggests. MTD at 2, 3. D.C.

Code § 2-1403.04 states that complaints “shall be filed with the Office [of Human Rights] within 1 year of the occurrence of the unlawful discriminatory practice, or the discovery thereof . . .” That deadline controls regardless of the EEO counselors’ conduct, and Ms. Neloms and Ms. Horsley met it.

Were the DMV’s position correct, the District would be able to short-circuit all OHR complaints brought against it by simply refusing to respond to initial reports within 180 days of the offending event. The regulations require agencies to comply with certain procedures once an employee notifies them of a complaint. Under the DMV’s view, agencies are exempt from those obligations if they choose not to respond to the complaint. Indeed, complainants’ ability to petition for redress of their grievances would rest entirely in the hands of the District.

In fact, if § 105 operates to extinguish complainants’ rights whenever an EEO counselor fails to fulfill their responsibilities, as DMV argues, then the regulation is unconstitutional. The Office should reject the DMV’s position to avoid running afoul of the Fifth Amendment’s Due Process Clause. *See, e.g., In re Bright Ideas Co., Inc.*, 284 A.3d 1037, 1049 (D.C. 2022) (applying canon of constitutional avoidance to interpretation of regulation). The Supreme Court addressed a similar scenario in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982). There, an employee filed a timely discrimination charge with the Illinois Fair Employment Practices Commission, triggering the Commission’s statutory responsibility to schedule a factfinding conference within 120 days, but the Commission did not do so. *Id.* at 426. The employer argued that the Commission’s failure to meet its own deadline stripped the Commission of jurisdiction because the statute said that factfinding conferences “shall” occur in 120 days, making the deadline mandatory. *Id.* The Illinois Supreme Court agreed, but the United States Supreme Court reversed, holding that the regulation would deprive a discrimination plaintiff of a property interest without due process if it were allowed to strip the plaintiff of a claim just because a state EEO agency failed to carry out its own statutory responsibilities after being contacted by the plaintiff. *Id.* at 430.<sup>2</sup>

Much like Logan, Ms. Neloms and Mr. Horsley have a state-created cause of action under the District of Columbia Human Rights Act. And if the DMV were correct that the requirement to “consult” in § 105.1 meant that complainants’ ability to exhaust was extinguished whenever EEO counselors failed to respond, the regulation would impermissibly “destroy[] a complainant’s property interest, by operation of law.” *Logan*, 455 U.S. at 436.

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<sup>2</sup>The Supreme Court analyzed Logan’s claim under the Fourteenth Amendment, but “[t]he procedural due process protections under the Fifth and Fourteenth Amendments are the same” and “only the Fifth Amendment applies to the District of Columbia.” *English v. District of Columbia*, 717 F.3d 968, 972 (D.C. Cir. 2013).

In sum, DMV's position should be rejected because it conflicts with the plain meaning of § 105.1's text, the regulatory context, basic principles of fairness, and the constitutional guarantee of procedural due process.

Sincerely,



Laura K. Follansbee  
Scott Michelman  
Michael Perloff  
American Civil Liberties Union Found. of the District of Columbia  
*Counsel for Complainant*<sup>3</sup>

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<sup>3</sup> Counsel would like to acknowledge the assistance of Intake Specialist Jada Collins in cite-checking and proofreading this submission.

# **Exhibit A**



EEO Matter

Neloms, R [Redacted]

Tue 6/21/2022 8:27 AM

To: Anthony, Keneysha (DPR) [Redacted]

Cc: Horsley, B [Redacted]

Good morning:

My colleague and I have a discrimination matter to address with our agency. We would like to know your availability in assisting in the matter?

If you require additional information, please do not hesitate to contact us.

Thank you,

R [Redacted] Neloms, [Redacted]

Hearing Examiner

District of Columbia Department of Motor Vehicles  
Adjudication Services  
955 L'Enfant Plaza, SW  
Washington, DC 20024

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EEO matter

Neloms, R [REDACTED]

Thu 6/16/2022 9:05 AM

To: Lewis, Breanna (MPD) [REDACTED]

Cc: Horsley, B [REDACTED]

Good morning:

My colleague and I have a discrimination matter to address with our agency. We would like to know your availability in assisting in the matter?

If you require additional information, please do not hesitate to contact us.

Thank you,

R [REDACTED] Neloms, [REDACTED]  
Hearing Examiner

District of Columbia Department of Motor Vehicles  
Adjudication Services  
955 L'Enfant Plaza, SW  
Washington, DC 20024

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# **Exhibit B**

DISTRICT OF COLUMBIA OFFICE OF HUMAN RIGHTS

R. NELOMS, and

B. HORSLEY,

Complainants,

v.

DISTRICT OF COLUMBIA

Respondent.

Case No. \_\_\_\_\_

**COMPLAINT**

(Discrimination based on family responsibilities)

**INTRODUCTION**

Amidst a record-setting spike in community COVID-19 cases in December of 2021, District of Columbia Department of Motor Vehicles (“DMV”) Hearing Examiners Ms. R. Neloms and Mr. B. Horsley (“the Parents”) each found themselves scrambling to figure out who would supervise their children when Prince George’s County Public Schools shifted to virtual learning with only a weekend of notice. The school district notified parents at 4 PM on December 17 that their children’s schools would be closed between December 20 and January 14. Realizing that childcare would be nearly impossible to obtain in the ongoing—and worsening—pandemic, Ms. Neloms and Mr. Horsley immediately (and then again, by email) asked their direct supervisor to allow them to telework with an Agency laptop during the school closure, just as they had done successfully between March 2020 and June 2021. But Ms. Neloms’s and Mr. Horsley’s supervisor denied their telework request. The Parents also raised the issue with other supervisors and with DMV Human Resources (“HR”) through their Union Vice President.

A week and a half after the Parents’ supervisor denied their initial request, the DMV offered the Parents a telework agreement that required them to purchase their own cost-prohibitive

equipment and explicitly barred them from being solely responsible for a dependent during their telework hours. Yet, between March 2020 and June 2021, the DMV provided all Hearing Examiners with Agency laptops for telework and imposed no such restriction on Examiners' dependent-care responsibilities. And, later in January 2022, just weeks after trying to impose on the Parents a restriction on providing dependent care while teleworking, the DMV issued each Hearing Examiner an Agency laptop to take home and use only when the DMV was closed for inclement weather. As during the period from March 2020 through June 2021, the DMV imposed no restrictions on employees' inclement weather telework, provided that they fulfilled their duties.

That the DMV issued the Hearing Examiners laptops for telework during the early stage of the COVID-19 pandemic without dependent-care restrictions, and then again for inclement weather, but denied the Parents' request to telework under the same terms in order to care for their children during a school closure, raises a powerful inference that the DMV denied the Parents' request *because* it stemmed from family responsibilities. Additionally, the DMV's policy regarding telework had a disparate impact on the Parents based on their family responsibilities and failed to provide them a reasonable accommodation. Such discrimination is unlawful. The District of Columbia Human Rights Act prohibits employers from "discriminat[ing] against any individual, with respect to his or her compensation, terms, conditions, or privileges of employment" "based upon . . . actual or perceived . . . family responsibilities." D.C. Code § 2-1402.11(a)(1)(A). The DMV violated D.C. law when it prohibited the Parents from teleworking with Agency laptops to care for their children, both before and after permitting extensive telework with Agency equipment for other reasons. Ms. Neloms and Mr. Horsley now assert their right to be free from discrimination in employment based on family responsibilities.

## **JURISDICTION**

1. This action arises under the District of Columbia Human Rights Act (DCHRA). This Office has jurisdiction because all the alleged misconduct occurred in the District of Columbia; Ms. Neloms and Mr. Horsley have not commenced an action based on the misconduct at issue in any other forum; and Ms. Neloms and Mr. Horsley contacted two EEO Counselors within 180 days of the discriminatory event, 4 DCMR § 105.1—specifically, on June 16, 2022, and again on June 21, 2022. They received no responses.
2. Ms. Neloms’s and Mr. Horsley’s claims are timely because they are filed within one year of the challenged discriminatory conduct, D.C. Code § 2-1403.04(a), which occurred beginning on December 20, 2021.

## **PARTIES**

3. Complainant R. Neloms is a single mother and is employed as a Hearing Examiner by the DMV. One of her daughters, who was 10 years old during the events described herein, is enrolled in Prince George’s County Public Schools and was so enrolled at all relevant times.
4. Complainant B. Horsley is a father of three young children—aged 5, 4, and 2 at the relevant times—and is also a Hearing Examiner employed by the DMV. At all relevant times, Mr. Horsley’s children were enrolled in kindergarten, pre-kindergarten, and an Employee Childcare Center, all within the Prince George’s County Public School System.
5. Respondent District of Columbia (“the District”) is a municipal corporation and is the local government for the territory that is the seat of the United States government. The District is responsible for the actions of employees of the District of Columbia Department of Motor Vehicles, who are the District’s agents.

## FACTS

### **A. DMV Permits Hearing Examiners To Telework During the First Fifteen Months of the COVID-19 Pandemic.**

6. Along with 19 other Hearing Examiners, Ms. Neloms and Mr. Horsley adjudicate parking tickets, photo enforcement tickets, and minor moving infractions. Hearing Examiners evaluate many of the tickets in their “queues” based only on written materials. Other tickets are adjudicated via hearings, which are often conducted virtually via WebEx software. Still others are discussed in person with one of six Hearing Examiners who are designated to handle “walk-in” customers on a rotating basis (although walk-in service was suspended from March 2020 to July 2021). Supervisors regularly rotate Hearing Examiners on or off “walk-in” status in order to accommodate team members’ absences from work.
7. Hearing Examiners are considered non-essential employees.
8. Under D.C. Department of Human Resources policy, non-essential employees, unlike essential employees, are eligible for telework.<sup>1</sup>
9. Beginning in March 2020, Hearing Examiners—including Ms. Neloms and Mr. Horsley—were permitted to primarily telework from their homes.
10. Cassandra Claytor, the Chief Hearing Examiner, sent the Hearing Examiners a telework agreement outlining various telework parameters, which differed from those in the District government’s standard telework application and agreement.
11. In particular, unlike the standard telework agreement used throughout the District’s government, the DMV agreement required that employees provide their own equipment and

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<sup>1</sup> See “Essential and Emergency Employees: District Personnel Instruction No. 12-59,” D.C. Dep’t of Human Resources (effective Jan. 4, 2017), *available at* <https://edpm.dc.gov/issuances/essential-and-emergency-employees>.

prohibited them from having “sole responsibility for providing dependent care during work hours” (referred to below as the “no-parenting provision”).

12. Nonetheless, beginning in March 2020, the Hearing Examiners were given Agency laptops to use for telework purposes, and Jeremy Grey of the D.C. Department of Human Resources stated to Ms. Neloms via email that the District was suspending the no-parenting provision during the COVID-19 emergency.
13. The Hearing Examiner team, including Ms. Neloms and Mr. Horsley, operated efficiently in the remote environment—not only timely resolving new cases, but also clearing backlogged tickets from its “queues.”

**B. The DMV Requires Hearing Examiners To Return to Work in Summer of 2021, Even When Daycare and Summer Camp Options Remained Limited.**

14. On May 18, 2021, a DMV HR Representative, Montii Osei-Djan, sent an email to employees “identified as working remotely due to childcare” (except for Mr. Horsley, who was inadvertently excluded), explaining that they would be required to return to the office full-time before July 12, 2021.
15. Ms. Osei-Djan then contacted both Ms. Neloms and Mr. Horsley by phone and email and conveyed that they would actually be required to return on the first business day after their children’s schools closed for the summer.
16. Ms. Neloms told Ms. Osei-Djan that returning to work would pose a childcare challenge since the COVID-19 pandemic was ongoing, and summer camp and daycare options remained limited and were only open for restricted hours in Maryland.
17. Ms. Osei-Djan responded that she was simply relaying the message from the DMV’s Director that “you all have had a year to figure it out” and that there would be “no exceptions.” Based on the context, Ms. Neloms interpreted “you all” to refer to parents.

18. Because Ms. Neloms was expected to work from 8:30 AM to 4:30 PM each day, and those hours would not permit her to drop her child off at the available daycares, she asked Ms. Osei-Djan whether the DMV would permit her to alter her hours. Ms. Osei-Djan said that no such concessions were being made.
19. Thus, Ms. Neloms was unequivocally required to return to in-person work on her regular schedule.
20. Even though Mr. Horsley was left off the initial email communication, he had a similar phone conversation with Ms. Osei-Djan on or around May 19, 2021, in which he explained the childcare difficulties that returning to work would cause him and other parents. Mr. Horsley even pointed out that D.C. law provides protection for people with family responsibilities.
21. Ms. Osei-Djan explained that she was just a messenger for the Director's position, which was inflexible.
22. Based on this conversation, Mr. Horsley believed that if he refused to return to in-person work, he would lose his job.
23. Both Mr. Horsley and Ms. Neloms returned to in-person work in June 2021 out of fear of termination.
24. Because of continued childcare and camp closures, Mr. Horsley and his wife were forced to alternate using their personal leave to ensure that their young children were not illegally left home alone during the summer vacation. As a result, Mr. Horsley depleted almost all the personal leave that he accrued during the early pandemic, and eventually, in September 2021, was forced to take unpaid leave.
25. Ms. Neloms is a single mom. When DMV insisted that she return to work, and refused to offer her flexible hours, Ms. Neloms had to rely on her 26-year-old daughter and a family friend to

drop off and pick up her 10-year-old. This arrangement persisted until Ms. Neloms's 10-year-old was able to return to in-person learning in the fall of 2021.

**C. The DMV Repeatedly Denies the Parents' Request for Telework Accommodation During the Winter 2021-22 Prince George's County School Closure.**

26. In December of 2021, the Washington D.C. metro area, including Prince George's County, experienced a record-breaking surge in COVID-19 cases and deaths as a result of the prolific Omicron variant.<sup>2</sup>
27. Around 4:30 PM on Friday, December 17, 2021, Ms. Neloms was leaving the office when she received an email from the CEO of Prince George's County Public Schools, explaining that due to a "stark rise in COVID-19 cases throughout [the] school system, all students would transition to virtual learning" beginning three days later, on Monday, December 20, 2021, and to continue through January 14, 2022.
28. Mr. Horsley received the same email message while still at the office.
29. Ms. Neloms returned to the office, and she, Mr. Horsley, and another coworker affected by the closure asked their direct supervisor, Remigia Davis, Supervisory Hearing Examiner, for permission to engage in "situational telework" using the same employer-issued laptops that they used between March 2020 and June 2021.
30. The District uses the term "situational telework" to mean an ad hoc use of telework when a temporary need to work from home arises, as opposed to a routine telework schedule providing that an employee will work from home on the same predetermined days each week.

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<sup>2</sup> See Andrew Beaujon, *Omicron Is Smashing Case Records in DC, Maryland, and Virginia*, The Washingtonian, Dec. 29, 2021, available at <https://www.washingtonian.com/2021/12/29/dc-maryland-and-virginia-omicron-case-records-smashing>.



31. Ms. Davis told the Parents that she could not provide an immediate solution and would need to speak with them again later.
32. On Sunday, December 19, the day before virtual learning was scheduled to begin, Mr. Horsley emailed Ms. Davis on behalf of himself, Ms. Neloms, and the third parent mentioned previously. In the email, the Parents “request[ed] to be assigned to situational telework during the closure,” and to be allowed to use the laptops the DMV provided employees from March 2020 through June 2021 so that they could work from home.
33. Also on December 19, Ms. Neloms emailed Wanda Butler, the DMV Adjudication Services Administrator, explaining she would be absent due to the school closure.
34. Mr. Horsley also emailed Ms. Butler, explaining that he would need to be on leave that week due to the school closure and noting that he and his wife were “trying to figure out how to manage this next 5-6 weeks as I do not have enough leave to cover that extended time period.”
35. The next day, Kevin Donahue, the City Administrator, issued an order reinstating a mask requirement in District Government buildings and authorizing the expansion of “situational telework until January 31, 2022” at the discretion of Agency Directors, so long as it did not “interfere with the agency’s delivery of services to constituents.”
36. On that same day, Denis D’Arbela, President of DMV employees’ local union, sent a letter to several Directors of D.C. government agencies (including the Director of DMV), stating that the Prince George’s County Public School District had closed its educational campuses, and imploring the Directors to “immediately institute situational telework policies and practices for all nonessential employees.”
37. A few days later, Ms. Neloms sent Ms. Davis another email, explaining that she would continue to be absent, and asking for an update on the Parents’ situational telework request.

38. Responding to Mr. Horsley's December 19 email, on December 23, Ms. Davis denied the Parents' request and explained that even though "the Director granted situational telework for agency employees due to the public health emergency," "the agency has not expanded the telework policy to include [the Parents'] current request for telework." As a result, the Parents "would be required to utilize [their] personal leave for the days that [they were] unable to work."

39. Despite further follow up and expression of concern by the DMV Employees' Union Vice President, Joseph Davis, the DMV did not change its position.

**D. The DMV Imposes Burdensome Conditions on Situational Telework Requests Arising from Family Responsibilities but Permits Situational Telework Freely in Other Contexts.**

40. On January 3, 2022, with Prince George's County schools still closed, the Parents' direct supervisor, Ms. Davis, contacted all Hearing Examiners and explained that due to inclement weather, "the office will be closed and we will be teleworking for the day." Despite denying Parents telework for the school closure, Ms. Davis instructed the Hearing Examiners to work that day and take a computer-based training course that did not require them to use the specialized DMV software installed on Agency devices.

41. Because the Hearing Examiners were required to return their Agency laptops in June 2021, they had to work on their personal devices.

42. The next day, January 4, Ms. Davis sent Ms. Neloms and Mr. Horsley each an email, explaining that the DMV was "considering telework on a case by case [*sic*] basis" and that a "telework agreement" was attached.

43. The attached agreement was not the same as the District government's standard, District-wide telework agreement form (a form with which Mr. Horsley is familiar), but was the same as the telework agreement distributed to the Hearing Examiners in March 2020.
44. As discussed above, the telework agreement DMV delivered contained, under a section entitled "Limitations," what amounted to a no-parenting provision: "Employees cannot have sole responsibility for providing dependent care during work hours."
45. The District's standard telework application and agreement contains no such term, nor does it impose any other limitation on specific activities that might occur in an employee's home while the employee is teleworking.
46. Unlike in March 2020, the DMV did not suspend the no-parenting provision in the agreement it sent the Parents on January 4, 2022.
47. The agreement Ms. Davis sent to the Parents also explained that "DCDMV will not provide any equipment associated with teleworking," and that the teleworking "employee is responsible for all maintenance and repairs on employee-owned equipment required for teleworking."
48. The DMV's sudden unwillingness to provide the Parents with the same laptops that they used earlier in the pandemic meant that the Parents would need to purchase new laptops to telework.
49. The software that the Hearing Examiners use operates properly only on certain devices, meaning that parents who did not have, for example, a PC, or a computer that met the DMV's specific performance requirements, would need to obtain a new device.
50. Additionally, the use of personal devices raises privacy concerns for both employees and the members of the public with whom the Hearing Examiners interact. The DMV can access the programs that Hearing Examiners use and the data that a computer stores for those programs,

potentially giving the DMV access to information on its employees' personal devices. Additionally, the Hearing Examiners handle potentially sensitive client information as part of their role. Requiring them to adjudicate tickets on a personal device may render that information vulnerable to security threats.

51. Because the telework agreement required Mr. Horsley to expend significant resources on a computer and barred him from serving as the sole caregiver for his children, it did not address his needs, and so he did not sign the form.
52. By the time Ms. Neloms received the non-standard telework agreement from Ms. Davis, Ms. Neloms had painstakingly located and paid for childcare from January 10 to January 14. As a result, she saw no reason to sign a telework agreement that would require her to purchase expensive equipment and would not permit her to supervise her child during that time.
53. About a week and a half after the Parents' children returned to in-person learning, Ms. Davis sent all Hearing Examiners an email entitled "Laptop Pickup," explaining that "[d]ue to the possibility of snow this weekend, the agency will be issuing each of you laptops to use in the event of inclement weather and a telework posture is declared by DCHR or the DMV Director."
54. The email asked that the Hearing Examiners come to "the conference room and pickup [*sic*] a laptop and sign the assignment form."
55. When Ms. Neloms and Mr. Horsley each arrived in the conference room, they were met by IT professionals from the main DMV office, who gave them each a laptop and asked them to sign a form acknowledging that they were taking the District's property into their possession.
56. The Hearing Examiners were not asked to sign any telework agreement, and no restrictions were placed on their ability to supervise their children during inclement weather.

57. The laptops provided for inclement weather were the same as the ones that the DMV had issued when all employees were permitted to telework between March 2020 and June 2021.

58. The DMV has allowed Hearing Examiners to retain these laptops for almost 11 months.

**E. The Discrimination Unfairly Required Ms. Neloms and Mr. Horsley To Expend Personal Leave and Caused Them Dignitary and Emotional Harm.**

59. The DMV has not explained why it barred the Parents from adopting the same telework arrangement that the DMV permitted during the early days of the pandemic and that it continued to allow for inclement-weather closures of the DMV.

60. The Parents are easily able to perform their job responsibilities while teleworking with their children at home, and they are no less productive at their jobs while teleworking than when working in person. None of the communications from the Parents' supervisors or the DMV's HR representatives regarding the Parents' telework request during the winter of 2021-22 ever so much as intimated that the telework arrangement between March 2020 and June 2021 yielded poor employee performance.

61. During Prince George's County winter school closure, Mr. Horsley and his wife took turns using their personal leave. In order to care for his children during this period, Mr. Horsley used 38 hours of personal leave—almost an entire week—in addition to the paid and unpaid leave that he had been required to take earlier in 2021.

62. Because Mr. Horsley had to use so much leave during summer 2021 and the winter 2021-22 school closure, he is now unable to take more than two paid days off if the need arises.

63. Being denied an otherwise-permissible telework arrangement just because he wanted to use it to fulfill his family responsibilities left Mr. Horsley feeling angry and unvalued.

64. To avoid leaving her daughter home alone while she engaged in virtual learning, Ms. Neloms took personal leave between December 20 and December 23, 2021, and between January 3 and January 7, 2022. She returned to work on January 10.
65. Because of the DMV’s refusal to allow Ms. Neloms to telework, she used 72 hours—nine full days—of personal leave to care for her daughter during the winter 2021-22 Prince George’s County school closure. She also paid for childcare for the week of January 10-14—an expense she would not have incurred had the DMV permitted her to telework.
66. The DMV’s inflexibility in responding to Ms. Neloms’s telework request related to her family responsibilities left her feeling as though her dedication to the Agency over many years was totally unappreciated. The DMV’s failure to accommodate her reasonable and feasible situational telework request has had a direct impact on her morale at work.

### **CLAIMS FOR RELIEF**

#### **Claim 1: Violation of D.C. Human Rights Act: Intentional Discrimination**

67. The D.C. Human Rights Act of 1977 (DCHRA) prohibits employers from “discriminat[ing] against any individual, with respect to his or her compensation, terms, conditions, or privileges of employment” “based upon . . . actual or perceived . . . family responsibilities.” D.C. Code § 2-1402.11(a)(1)(A).
68. Section 2-1401.02(12) of the DCHRA defines “family responsibilities” as “the state of being . . . a contributor to the support of a person or persons in a dependent relationship[.]”
69. Ms. Neloms and Mr. Horsley are members of a protected class because they are contributors to the support of their minor children.
70. DMV was aware of Ms. Neloms’s and Mr. Horsley’s family responsibilities. Ms. Neloms and Mr. Horsley raised their concerns about the disproportionate burden that the DMV was placing

on parents during the summer of 2021 and on multiple occasions during the winter 2021-22 school closure. The Parents' Union Vice President also attempted to raise the issue with the DMV's Director via an HR representative with respect to the winter 2021-22 telework denial.

71. Nonetheless, the DMV and its agents persisted in rejecting Parents' request to telework in order to fulfill their family responsibilities during the winter 2021-22 pandemic-driven school closure, and then proposed a "no-parenting" condition on telework that expressly foreclosed Parents' ability to fulfill their family responsibilities.
72. Whereas DMV provided laptops for all Hearing Examiners to telework during the early part of the pandemic and again in late January 2022 for use during inclement weather, the DMV forced the Parents to use significant personal leave when their children's schools closed in the winter of 2021-22, leaving them without childcare.
73. Thus, by denying Ms. Neloms and Mr. Horsley telework arrangements for the purpose of carrying out family responsibilities, even as DMV allowed telework for other reasons for employees in their department, DMV discriminated against Ms. Neloms and Mr. Horsley with respect to the terms and conditions of their employment because of their family responsibilities.
74. DMV's refusal to allow Ms. Neloms and Mr. Horsley situational telework in order to ensure their children's wellbeing during a public emergency forced them to deplete substantial personal leave and incur out-of-pocket expenses, and caused them both to feel stressed, anxious, angry, and devalued.

**Claim 2: Violation of D.C. Human Rights Act: Disparate Impact**

75. The DCHRA provides that “[a]ny practice which has the effect or consequence of violating any of the provisions of this chapter shall be deemed to be an unlawful discriminatory practice.” D.C. Code § 2-1402.68.
76. The DMV’s telework policies during December 2021 and January 2022 had a disproportionate adverse effect on individuals with family responsibilities.
77. By adopting a policy of allowing situational telework for reasons other than family responsibilities, while either forbidding parents to telework based on childcare needs or requiring that they do so only upon agreeing not to serve as the sole caregiver for their children and not use Agency equipment (thus requiring that parents purchase laptops), the DMV adopted a policy that disproportionately burdened individuals with family responsibilities, in violation of the D.C. Human Rights Act.
78. The DMV’s telework policy during December 2021 and January 2022 caused the Parents stress and anxiety, and unfairly required them to use personal leave and incur otherwise unnecessary expenses.

**Claim 3: Violation of D.C. Human Rights Act: Failure to Accommodate**

79. Ms. Neloms and Mr. Horsley are members of a protected class because they contribute to the care of their minor children.
80. The Parents notified their supervisors and their Agency’s HR representatives on multiple occasions that the Prince George’s County Public School closure required them to stay home to fulfill their family responsibilities.
81. The Parents proposed that they be temporarily permitted to return to the telework arrangement that was in place for over fifteen months and did not adversely affect performance. The ease



with which the DMV provided Agency laptops for inclement weather purposes—with no dependent care restrictions—only a few weeks after denying the Parents’ request underscores the reasonableness of their request.

82. Nonetheless, the DMV and its agents denied the Parents’ request that they be allowed to work from home with Agency laptops so that their children would not be left home alone.

83. The District thus, in violation of the DCHRA, denied Ms. Neloms and Mr. Horsley a reasonable accommodation for their family responsibilities.

84. This failure to accommodate the Parents’ family responsibilities required the Parents to unfairly expend personal leave and incur expenses, and caused them to feel anxious, stressed, and unappreciated.

#### **PRAYER FOR RELIEF**

WHEREFORE, Complainants Neloms and Horsley request that this Office:

- (a) FIND that Respondent District of Columbia violated Ms. Neloms’s and Mr. Horsley’s rights under the DCHRA by preventing them from engaging in situational telework when their children’s schools closed due to a new wave in the ongoing COVID-19 pandemic;
- (b) ORDER that Respondent restore Ms. Neloms’s and Mr. Horsley’s personal leave that they were required to expend between December 20, 2021 and January 14, 2022 to fulfill their family responsibilities;
- (c) ORDER that Respondent permit situational telework for employees for the purpose of fulfilling their family responsibilities, to the same extent and on the same terms that Respondent permits situational telework for other purposes or reasons, and without restrictions on employees’ ability to fulfill their family responsibilities while teleworking;

- (d) AWARD Ms. Neloms and Mr. Horsley compensatory damages against the District of Columbia in an amount appropriate to the evidence adduced at the hearing;
- (e) AWARD Ms. Neloms and Mr. Horsley their costs, reasonable attorneys' fees, and reasonable expenses in this action as provided in D.C. Code §§ 2-1403.16(b) & 2-1403.13(a)(1) and 4 DCMR § 207; and
- (f) GRANT Ms. Neloms and Mr. Horsley such other and further relief as this Office may deem just and proper.

December 19, 2022

Respectfully submitted,

*/s/ Laura K. Follansbee*

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<sup>3</sup> Counsel would like to acknowledge the assistance of Intake Specialist Ruby Rorty in the investigatory work reflected in this Complaint and the assistance of Paralegal Elaine Stamp in the Complaint's preparation.