STATE OF NORTH CAROLINA

OFFICE OF STATE PERSONNEL

Approved Classification: _____

Effective Date: _____

Analyst: _____

POSITION DESCRIPTION FORM (PD-102R-92)

(This Space for Personnel Dept. Use Only)

1. Present Classification Title of Position Discrimination Investigator	7. Present 15 Digit Position No. Proposed 15 Digit Pos. No.
2. Usual Working Title of Position Investigator	8. Department, University, Commission, or Agency Department of Labor
3. Requested Classification of Position Discrimination Investigator	9. Institution & Division Standards & Inspections
4. Name of Immediate Supervisor Tiffany Lathan	10. Section and Unit Employment Discrimination Bureau
5. Supervisor's Position Title & Position Number Bureau Chief	11. Street Address, City and County 111 Hillsborough Street Raleigh NC Wake County
6. Name of Employee N/A	12. Location of Workplace, Bldg. and Room No. Old Revenue Building 6th Floor

CERTIFICATION: Signatures indicate agreement with all information provided, including designation of essential functions.

Supervisor's Certification: I certify that (a) I am the Immediate Supervisor of this position, that (b) I have provided a complete and accurate description of responsibilities and duties and (c) I have verified (and reconciled as needed) its accuracy and completeness with the employee.

Signature Tiffany Lathan Title: Bureau Chief Date: 6-11-14

Employee's Certification: I certify that I have reviewed this position description and that it is a complete and accurate description of my responsibilities and duties.

Signature _____ Title: Investigator Date: 6/11/14

Section or Division Manager's Certification: I certify that this position description, completed by the above named immediate supervisor, is complete and accurate.

Signature _____ Title: Deputy Comm. for S&I Date: 6/11/14

Department Head or Authorized Representative's Certification: I certify that this is an authorized, official position description of the subject position.

Signature _____ Title: _____ Date: _____

I. A. Primary Purpose of Organizational Unit:

The Employment Discrimination Bureau (EDB) enforces the North Carolina Retaliatory Employment Discrimination Act (REDA), N.C. General Statute §95-240 to 249. The mission of the EDB is to foster a safe, healthy, fair and productive North Carolina by providing responsive, effective and efficient services and administering fairly our regulatory mandates. With respect to REDA the mission is to eliminate workplace discrimination in North Carolina because of employees' protected activities related to occupational safety and health, workers' compensation, wage and hour laws, mine safety and health, genetic information or testing, carrying the sickle cell anemia trait, National Guard Service discrimination, participating in the Juvenile Justice System, Domestic Violence, agriculture workers exposed to pesticides and control of potential drug paraphernalia products. The goals of the EDB in this respect are: to effectively enforce REDA and to effectively educate employers, employees, and the public about REDA, how to comply with REDA and to educate employers and employees on the interplay with other related laws and regulations. With respect to the enforcement of REDA, the Office must fully and fairly investigate all relevant aspects of complaints filed with it by employees and their representatives. A major enforcement strategy is the attempt to settle cases at any point in the investigative process. The Office must also facilitate resolution of all meritorious complaints by conciliation and settlement or litigation as required by REDA.

B. Primary Purpose of Position:

The primary purposes of the EDB Discrimination Investigator are to:

1. Use a variety of enforcement techniques to investigate, research, and analyze all cases assigned, to complete those investigations in a timely manner, and to make recommendations as to appropriate disposition and remedies in those cases. Receive, analyze, and appropriately respond to inquiries from workers, attorneys, employers, unions, the public, trade associations, other North Carolina Department of Labor employees, and other state and federal agencies;
2. Make violation determinations; compute economic loss; initiate conciliation and settlement efforts;
3. Balance a varied workload of case files which have time limits, and cover vast areas of North Carolina geography; and
4. Testify in depositions, assist in trial preparation, and testify in trials as required.

C. Work Schedule:

When in the office, the Discrimination Investigator will work normal office hours schedule within the flex-time hours established by the department. Office duties may require some afterhours work to call employees who are not available during normal office hours, and to prepare for trial. When investigating cases, the Discrimination Investigator may work unconventional and irregular hours which will be dependent upon the availability of both employer and employee witnesses. For example, a first shift employee may be available only after 5:00 PM, while an employer may only be willing to make a third shift supervisor available for interviews during the supervisor's normal shift, which could start as late as midnight. Employees who work 12 hour shifts or rotating shifts (e.g., first shift one week; second, the next week; and third shift the following week) may be available only on their rotating days off.

II. A. Description of Responsibilities and Duties (Order of Importance):

1. 60% Conducts Investigations
   - Requires thorough knowledge of the North Carolina Retaliatory Employment Discrimination Act (REDA) as well as statutes enforced by the U. S. Occupational Safety and Health Administration (OSHA).
   - Reviews and analyzes complaints to clarify and establish jurisdictional issues, timeliness of filing, and the applicable statute(s) that may have been violated.
   - Must possess outstanding oral and written communication skills and the ability to adapt interview techniques to effectively communicate with all types of witnesses.
   - Conducts preliminary research and coordination with other NCDOL departments such as the Occupational Safety and Health Division (OSH) and the Wage & Hour Bureau to determine if any other complaints have been filed. Reviews pertinent databases to determine if other investigations have been conducted by EDB regarding the same employer or filed by the same complainant.
   - Coordinates with other state and federal agencies such as the Employment Security Commission, the Industrial Commission, the Secretary of State and the Equal Employment Opportunity Commission to obtain pertinent information pertaining to the complaint.
   - Develops and implements an investigation plan regarding the actions that need to be taken to establish the elements of the alleged offense. Must be able to identify witnesses to be interviewed, questions to be asked and documentation to be obtained.
   - Conducts detailed interviews of complainants, respondents, and witnesses to obtain information relating to the alleged offense in order to make a determination on the merits of the complaint. Prepares detailed notes, written statements and/or memorandum for record.
   - Overcome barriers to obtaining information necessary to conduct a thorough and fair investigation including but not limited to:
     - Uncooperative or otherwise difficult attorneys for the complainant and respondent.
     - Obtaining and protecting confidential business information and medical records.
     - Dealing with hostile or uncooperative witnesses.
     - Dealing with employers whose corporate headquarters is located out of state.
     - Being creative in locating witnesses through the use of postal records, DMV records or the interview of other witnesses.
   - Conducts extensive opening conferences with complainants and respondents setting forth the purpose of the investigation and expectations of how the investigative process will work as well as the possible remedies that may occur as a result of the investigation.
   - Identify unique or complex cases and consults and/or coordinates with NCDOL OSHA, legal department, Wage & Hour Bureau or other agencies to obtain support, or opinions on issues arising from the complaint, or discusses other investigations in relation and relevance to EDB.
   - Analyzes all information provided by the respondent and complainant in order to determine if the four elements of a violation of REDA occurred and determine by the greater weight of the evidence if a violation of REDA occurred. Consideration should include but is not be limited to:

- Termination notices, reprimands, warnings
- Performance appraisal
- Pay statements
- Medical records
- Job descriptions
- Company policies
- Charges or claims with other agencies
- Collective bargaining agreements
- Evidence of disparate treatment

- Calculates economic loss of the complainant
- Prepares an Activity log which documents all calls, messages, e-mails, faxes, or correspondence received/sent during the investigation. This information should be detailed with pertinent investigation information.
- Makes recommendations to the Bureau Chief to determine whether or not to litigate on a merit finding.
- Prepares appropriate closing letters to the Complainant and Respondent.
- Conducts closing conferences with complainants and respondents articulating the decision and the rationale of the decision, responds to all questions and explains further actions that may be taken.
- Responds to requests to reopen a file and complete follow- up steps as necessary.
- Cooperate with all internal OSH reviews and Federal OSHA appeals.

2. <u>20% Preparation of Reports and Other Paperwork</u>
   - Prepare a complete Report of Investigation (ROI) to include testimonial evidence and factual statements. Include an analysis of the given evidence and four elements of a violation, discussing the greater weight of the evidence, and detail the findings of the investigation.
   - Prepare forms and/or reports as required by Federal OSHA in cases related to Occupational Safety and Health.
   - Complete OSHA IMIS entries for all OSHA cases.
   - Complete an OSHA complaint form for calls related to safety & health when acting as the Information Officer of the Day (IOD). Mail the completed complaint form and questionnaire to the Complainant to sign and return.
   - Complete the Information Officer call log to document all IO calls received and returned.
   - Prepare other reports as required by the Bureau Chief.

3. <u>13% Investigator of the Day (IOD)</u>
   - Attempt to calm callers or walk-ins that may be distressed or hostile.
   - Listen carefully to the caller or walk-in's situation and answer all questions. Screen their complaints by determining if the four essential elements (protected activity, respondent's knowledge, adverse employment action and a causal relationship between the protected activity and the adverse employment action) are present on their face. Explore the employers' defenses. If it appears that EDB has coverage, mail, e-mail or fax the appropriate complaint form and questionnaire to the complainant. If it is an OSHA related complaint, prepare a complaint form with the complainant's name, address, telephone number, respondent's name, address, telephone number, date of filing, date of adverse action, and a brief summary of the alleged retaliation. Mail this partially completed form and questionnaire to the complainant for his/her signature and date. The IOD must log the date of the OSHA call in the call log.

- If there is no EDB protected activity or adverse employment action, do not complete or send a complaint form to the complainant.
- Determine if the alleged complaint is timely (filed within 180 days of the adverse employment action) prior to mailing / emailing complaint form.
- Discuss the REDA process involved in filing a complaint, the investigation and possible remedies.
- Refer the caller or walk in to the proper agency if EDB does not have jurisdiction.
- Support and answer questions from other departments regarding EDB calls and inquiries.

4. 1.0% Other Duties
   - Handle occasional public speaking engagements
   - Research legal and procedural issues if necessary
   - Serve as Acting Bureau Chief in the absence of the Bureau Chief with responsibilities as described in Procedures Manual, including assignment of cases, review of case files and recommendations.

5. 1% Trial Preparation and Testimony
   - Assist attorneys from Attorney General's Office with trial preparation, including gathering of additional documentary and testimonial evidence and finding of additional witnesses.
   - Work with attorneys from Attorney General's Office to prepare investigator's testimony for trial, including extensive case file review, etc. as required by subpoenas issued by third parties, testify in litigation related to REDA.
   - Work with attorneys from the Attorney General's Office to prepare and analyze responses to discovery requests.
   - Serve as a witness in depositions taken by the parties in litigation related to REDA.
   - Provide necessary information for issuance of subpoenas.
   - Work with Legal Affairs office, within NCDOL to help make a determination as to whether a case should go to court.

6. 5% Settlement
   - When case file is assigned to an investigator, Early Resolution (Settlement) should be explored.
   - Serve as facilitator of settlement between the parties, while acknowledging that REDA cases involve not only the interests of the particular parties in a case, but also the broader interests of the public as represented by the department;
   - Prepare settlement agreements in accordance with established procedure;
   - Pursue non-traditional settlement remedies such as a letter of reference or an apology;
   - Negotiates & prepares settlement agreements when appropriate and delivers the checks or settlement agreement as necessary.

B. Other Position Characteristics:

1. Accuracy required in Work

   The Discrimination Investigator must be accurate in financial calculations. Payment of inaccurate damages could affect the competitive status of an employer. If a mistake is made in a calculation and the employee is overpaid, there is no procedure in which the employer can recover the overpayment in a settlement economic loss calculation. Similarly, if a mistake is made and the employee does not receive the full remedy to which the employee is entitled, and the case is resolved by settlement, there is no procedure by which the

underpayment can be recouped by the employee. Furthermore, it is necessary to produce accurate, well-written reports, letters, emails, etc., as anything less could negatively impact the reputation and professionalism of the Department of Labor, the Commissioner, and employees.

2. Consequence of Error

The consequences of Discrimination Investigator error are significant and may have lasting effects on Complainants as well as Respondents. Error by the investigator in gathering and analyzing evidence as to the validity of the allegations may result in dismissal of a legitimate case. Such error in a case in which an employee was fired could result in permanent reduced ability of the employee to obtain other employment because of a bad work record (having been fired), as well as significant financial damages such as lost wages and benefits, and economic damages such as lost homes, cars, credit ratings, etc. In a case in which the investigator erred and the complainant continued to work with the respondent, the results would be continuation of the discrimination against the complainant. In addition, error by the investigator could have significant impacts on respondents including: damaged reputation (in cases in which the press becomes involved), financial loss due to additional attorney's fees, payment of damages to the employee-complainant, and loss of productive time of managers, employees, and other respondent witnesses. Erroneous recommendations, evidence, or calculations could have significant impact upon the public perception of the integrity of the department and the legal system. Investigator error could also have a significant impact on the rights of other employees if a valid complaint is dismissed, as there would be a chilling effect on the willingness of other employees in the workplace to make safety and health, wage and hour, etc., complaints. Significant error in the investigation of an Occupational Safety and Health complaint could result in the loss by the State of North Carolina of state plan status under the Federal Occupational Safety and Health Act, which in turn would result in a loss of millions of federal dollars to the State of North Carolina and potentially in increased workplace injuries and fatalities due to lesser enforcement. Judicious use of varied investigative tactics is necessary since using shortcut methods may mean loss or tainting of evidence. Finally, error could result in a significant loss of taxpayer monies due to wasted time of the investigator and other state employees.

Errors may also impact the Department of Labor's reputation among businesses and the public.

3. Instructions Provided to Employee

The Discrimination Investigators are provided with general policies and basic procedures. Because each case is unique, the investigator must adapt the policies and procedures to fit the specific circumstances and facts of the individual cases. The investigator is expected to exercise independent judgment in the adaptation of the policies and procedures to the individual cases and to request guidance as appropriate from the Bureau Chief. Broad priority categories are established by the Bureau Chief. The investigator must assess individual cases to determine where they fit within the priorities and schedule investigations accordingly. The investigator must decide which of a variety of investigative tactics will achieve the best possible results in the shortest time. The Bureau Chief provides technical advice, guidance on complex, novel, difficult, and ethical issues. The Bureau Chief sets policy relating to issues which arise in multiple cases.

4. Guides, Regulations, Policies and References Used by Employee

The Discrimination Investigators use as guidance the Retaliatory Employment Discrimination Act enforced by Employment Discrimination Bureau (EDB), and will use regulations adopted pursuant to the act. In addition, investigators may use (but not limited to): Standard Operating Procedures, NCDOL EDB OSH Discrimination Manual, Federal OSHA Discrimination Manual, Workers' Compensation Act of North Carolina,

Occupational Safety and Health Act of North Carolina, Wage and Hour Act, Mine Safety and Health Act, Domestic Violence Act, National Guard Reemployment Rights, North Carolina Pesticide Law, Drug Paraphernalia Control Act, Juvenile Code, North Carolina Administrative Code, North Carolina General Statutes, North Carolina Supreme Court and Court of Appeals Reports, USDOL Standard Industrial Classification Codes, Code of Federal Regulations, Physician's Desk Reference, Employment Discrimination Law Desk Reference Manual, and various North Carolina Bar Association and other Continuing Legal Education materials.

5. Supervision Received by Employee

The work of the Discrimination Investigator is performed independently under the supervision of the Bureau Chief. The majority of the investigative work is performed in office via telephone conferencing. When necessary, travel to varied locations throughout North Carolina is performed without the presence of the Bureau Chief. Reports on completed investigations are reviewed by the Bureau Chief to ensure accuracy, adherence to policy and procedure, and for concurrence with recommendations. The work of the investigators is occasionally observed by the Bureau Chief during investigation.

6. Variety and Purpose of Personal Contacts

The investigators have direct personal contact with a wide variety of individuals in all fields of work, ranging from corporate executive officers to blue collar workers, as well as teen-aged workers. When serving as Information Officer, the investigators may have telephonic, in person, or written contact with employees, family members of employees, employers, attorneys, trade associations, members of the press, members of the General Assembly or its staff, and the general public. The basic purpose of the contacts as Information Officer is to respond to questions, providing information and appropriate referrals, and taking complaints. In the course of investigations, the investigators will also have direct personal written, telephonic, and in person contact with a wide variety of individuals in all possible emotional states for the purpose of gathering information pertinent to the investigation. It is common for the investigators to deal with witnesses and others who exhibit one of more of the following characteristics: hostility, fear, lack of rationality, inability to communicate in an articulate manner, uncooperative behavior, obfuscating, reluctance, vulnerability, physical pain, anger, and/or disability such as visual or hearing impairment which must be accommodated, etc. Investigators may have personal contact with employees of any public or private sector employer in North Carolina. Investigators may also have personal contact with individuals for whom English is a second language, and their interpreters. Investigators will have direct personal contact with employer witnesses ranging from first line supervisors and employees to safety officials, company nurses, company engineers, managers and executive officers and human resources personnel. Investigators also have direct personal contact with employees within the department and employees of other State agencies, for the purpose of obtaining information necessary to a complete investigation, including: the N.C. Industrial Commission, the N.C. Employment Security Commission, the N.C. Human Relations Commission, and the N.C. Department of Justice, among others. Investigators will have direct personal contact with employees of United States government agencies, for the purpose of obtaining or sharing information necessary to a complete investigation, including the Occupational Safety and Health Administration, the Equal Employment Opportunity Commission, the Office of Federal Contract Compliance, Department of Labor Wage and Hour Office, the Wage and Hour Administration, the Mine Safety and Health Administration, and the National Labor Relations Board. Investigators will have direct personal contact with attorneys for the purpose of gathering information necessary for investigations, achieving settlements, and arranging witness interviews with Respondent-Employers, individual Respondents, and others. Investigators will have direct contact with physicians (and their staff) that treated Employee-Complainants, and they may have occasion to interview physicians and other medical personnel. Investigators may have a wide variety of

personal contacts with other individuals and businesses, as necessary, to gather evidence related to both the substance of an investigation and the remedies. Such contacts could include banks, social services offices, rehabilitation experts, state, county and local law enforcement agencies, etc.

7. Physical Effort
   The work of the Discrimination Investigator may involve long and irregular hours interviewing witnesses in difficult physical circumstances (temperature extremes, noise, construction sites, etc.). The investigators may write extensively in long hand as well as type, using computers. Considerable reading of materials of widely varying legibility is required. The work involves the normal physical effort associated with travel. In addition, walking is involved. The EDB has no control over the employer locations to which an investigator may go or the physical conditions at the employer's place of business. Therefore, other physical effort such as stair climbing may be involved. Most of the time, this position is a desk job.

8. Work Environment and Conditions
   Most of the work of the Discrimination Investigator is done in an office setting at their desk. The Discrimination Investigator may travel throughout North Carolina. Interview locations range from automobiles to fast food restaurants to business offices and public libraries to homes (from trailers to houses) of witnesses. Work conditions include a high level of stress in dealing with angry, hostile, threatening, and otherwise emotional employers, employees, and witnesses. Duties may involve long hours on the telephone. A single screening call from a possible Complainant to the Investigator serving as Information Officer may take an hour or more. Some travel is required. Hazards are limited to those normally associated with travel.

9. Machines, Tools, Instruments, Equipment and Materials Used
   Computer and printers; telephones; DVD; scanners; facsimile machine; flash drives, photocopier; camera; micro cassette tape recorder; calculator; shredder; electric hole punch; & stapler.

10. Visual Attention, Mental Concentration and Manipulative Skills
    Investigators may have extensive reading and analysis of documents. Documents requiring the most thorough visual attention include computerized materials; medical records; handwritten notes and records, such as may be found in personnel files; and time, payroll, and other employment records. Intensive mental concentration is frequently required for taking of witness statements and examination of documents in widely varied settings, sometimes in trying circumstances such as noise, temperature extremes, presence of children, etc. Manipulative skills primarily involve ability to use computer or take handwritten statements, and use calculator accurately.

11. Safety for Others
    Safe driving skills are necessary to avoid injury to self and others on the highways. Wearing of appropriate personal protective equipment is necessary to ensure the investigator's own safety, encourage wearing of personal protective equipment by others with whom the Investigator has contact, and protect others from injury in the workplaces entered by the Investigator. The investigator must maintain the confidentiality of information relating to the investigations, as well as related investigations by other divisions in the department and other agencies. Investigators may be required to wear personal protective equipment such as ear protection, eye protection, hard hats, and safety shoes.

12. Dynamics of Work

The work of the Discrimination Investigator may, therefore, be significantly impacted by judicial decisions, development of rules, and other developments such as administrative positions taken by the department, as well as alterations in internal work methods and procedures. The work of the Discrimination Investigator may be significantly impacted by legislative, judicial and administrative changes in the substance and procedures of the underlying laws which establish the basic employee protected activities enforced by REDA. The individual cases investigated by the Discrimination Investigators will vary considerably in complexity and scope.

III. A. Knowledge, Skills, and Abilities & Training and Experience Requirements

1. Knowledge
   - Thorough Knowledge: Retaliatory Employment Discrimination Act; North Carolina common law employment at will doctrine.
   - Working Knowledge: Retaliatory Employment Discrimination Act; North Carolina common law employment at will doctrine; Workers' Compensation Act; North Carolina Wage & Hour Act; North Carolina Occupational Safety and Health Act.
   - Basic Knowledge: Law and procedures relating to N.C. Private Personnel Services Act; N.C. Employment Security laws; N.C. Public Records Act and Trade Secrets Act; U.S. Wage and Hour Act, U.S. Occupational Safety and Health Act, U.S. National Labor Relations Act, U.S. Surface Transportation and International Safe Container Acts' discrimination provisions; discrimination provisions of the seven major U.S. environmental laws, as enforced by the U.S. Department of Labor; Title VII of the U.S. Civil Rights Act, U.S. Age Discrimination in Employment Act; U.S. Americans with Disabilities Act; U.S. Family & Medical Leave Act; Section 704 of the U.S. Rehabilitation Act; U.S. Polygraph Protection Act; rules of evidence as applicable to investigations; business personnel practices, procedures, and record keeping; interpretation of medical records.

2. Skills
   - Communication Skills: Excellent active listening; clearly and effectively conveying information (orally and in writing) to individuals, taking into account the audience and nature of the information. Persuades others to accept recommendations.
   - Investigations: Knowledge of investigative principles and techniques. Ability to investigate and analyze operations and practices, background information, and other evidentiary materials. Ability to draft clear and comprehensive reports including investigative findings and recommendations.
   - Critical Thinking: Identify and analyze problems; determine accuracy and relevancy of information. Identifies rules and principles to explain facts, data or other information. Analyze information and make correct inferences or draw accurate conclusions.
   - Report Writing: Investigators must be able to write detailed and informative Reports of Investigations (ROI) with their findings.

3. Abilities
   - Ability to exercise tact and diplomacy in dealing with individuals from different backgrounds in a wide variety of emotional states; ability to assess communication skills of persons with whom investigator is communicating and adjust own language as appropriate; ability to exercise empathy; ability to interview and obtain statement from witnesses and other individuals; ability to organize and manage a large number of cases in different locations and of differing complexity; ability to work independently; ability to recognize novel, complex, and unique questions and issues; ability to learn quickly about the work and work practices of a variety of employers; ability to interpret complex problems, data, laws, and regulations, and the relationships between laws and regulations and their potential impact on particular sets of facts; ability to organize and evaluate evidence from a

variety of sources, in a variety of forms, and with varying degrees of reliability; ability to assess weight and relevance of evidence and to determine the need for further evidence gathering and analysis; ability to effectively manage/resolve conflicts; ability to prepare comprehensive reports; ability to recognize mistakes and notify the Administrator and recommend solutions; ability to recognize potential for improvement in procedures and policies and make recommendations for change; ability to work effectively with peers and in teams.

B. Training and Experience

1. Required Minimum Training
   Bachelor's degree from an accredited college or university with a major in occupational safety or health, industrial engineering, criminal justice, industrial relations/labor relations, law, or a related curriculum.

2. Additional Training/Experience
   Two years of experience in discrimination investigations, legal or regulatory investigations, including Occupational Safety and Health investigations, or other relevant investigatory experience.

3. Equivalent Training and Experience
   An equivalent combination of education and experience.

C. License or Certification Required by Statute or Regulation: Must possess a valid North Carolina driver's license.