

# DEMAND: PAYMENT CORRECTION & NON-APPEALABLE DIRECTIVE

(VEC Procedural Failures Triggering Adverse Inference and Escalation)

## COMMONWEALTH OF VIRGINIA – VIRGINIA EMPLOYMENT COMMISSION

Cross-Agency Notice: EEOC, DOL, DOJ, OSIG, Governor's Office

**NOTICE: VEC's documented procedural failures—(1) improper "fallback" to voided deputy decisions post-vacatur and (2) cascading errors violating finality principles—establish *prima facie* grounds for adverse inference. Payment must be issued immediately via mandatory correction protocols.**

**Date:** June 30, 2025

**To:** VEC Appeals & Adjudication | U.S. DOL (ETA) | Virginia OSIG

**From:** Thomas D. Coates, 3416 Warren Pl, Apt 201, Virginia Beach, VA 23452

**Contact:** tdcoates@gmail.com | (757) 374-3539

**Reference:** UI-145419-C (May 8, 2025) | UI-25009642 (June 23, 2025)

### I. CRITICAL PROCEDURAL FAILURES & ADVERSE INFERENCE

- 1. Void Ab Initio Overpayment Misapplication:**  
VEC's attempt to "fall back" to deputy decisions after Order UI-25009642 vacated the overpayment violates Va. Code § 60.2-622 (finality of Commission decisions) and constitutes bad faith administration.
- 2. Cascading Invalid Deputy Decisions:**  
Subsequent deputy rulings relied on voided determinations, compounding procedural errors and delaying payment of benefits confirmed by the May 8, 2025 Commission Decision (UI-145419-C).

These failures trigger adverse inference under EEOC precedent (*Butler v. DHS*) and Virginia law: further delays will be presumed retaliatory.

## **II. MANDATORY CORRECTION PROTOCOLS**

### **A. PAYMENT AUTOMATION PRIORITY QUEUE ACTIVATION**

*Demand under VEC Procedure Manual § 3.3.7*

Route this claim to the Priority Queue within 24 hours for automated reprocessing of all benefits from December 15, 2024. Confirmation of queue placement required.

### **B. NON-APPEALABLE PAYMENT DIRECTIVE**

*Pursuant to Va. Code § 60.2-622 & DOL UIPL 05-24*

Issue a written directive confirming:

- Benefits for periods covered by UI-145419-C are final and non-appealable
- No further review permitted absent new fraud evidence
- Payment immunity from procedural "fallbacks"

### **C. AGENCY ERROR IMMEDIATE PAYMENT PROTOCOL**

*Invoked under VEC Policy X and Va. Code § 60.2-612*

Process all payments within 24 hours using expedited error-correction channels reserved for acknowledged agency failures.

**III. RESOLUTION PATH & DEADLINES**

Action	Deadline
Priority Queue activation confirmation	24 hours
Payment release for all eligible periods	72 hours
Non-Appealable Directive issuance	5 business days

**IV. ESCALATION TRIGGERS**

**Non-compliance will activate:**

1. **DOL Program Integrity Referral** for violation of 20 CFR § 602.23
2. **OSIG Investigation** of retaliatory administration (Va. Code § 60.2-633)
3. **Federal Court Action** under 42 U.S.C. § 1983 with sanctions motion
4. **JLARC Audit Spotlight** on systemic "void ab initio" mismanagement

*All communications preserved for EEOC Charge No. 12K-2025-00001 and Cox/MetLife litigation.*

**Respectfully submitted,**

/s/ Thomas D. Coates

**Legal References:** Va. Code §§ 60.2-612, 60.2-619, 60.2-622, 60.2-633; VEC Proc. Man. § 3.3.7; 20 CFR § 602.23; EEOC Appeal No. 07200900010; JLARC Rpt555

## **ESTABLISHING THE PROCEDURAL RECORD: VEC ERRORS, LEGAL CONSEQUENCES, AND SYSTEMIC IMPACT**

This formal demand is submitted to **document, clarify, and correct** the Virginia Employment Commission's (VEC) ongoing, compounding procedural errors and their cascading impact on my claim, my rights, and the integrity of the Commonwealth's unemployment insurance system. The following is a detailed, phased, and referenced record of the specific legal violations, the harm they have caused, and the broader systemic failures now at issue.

### **1. Improper Use of Overpayment Vacatur and Deputy "Fallback":**

Order UI-25009642 (June 23, 2025) vacated the overpayment determination as *void ab initio*. Despite this, VEC attempted to "fall back" to prior deputy decisions or initiate new eligibility hearings for periods already adjudicated in my favor—an action **expressly barred** by:

- **Va. Code § 60.2-622:** Final Commission decisions cannot be reopened or relitigated except as provided by law.
- **16VAC5-80-20:** No hearing or review is authorized unless there is a timely appeal of an adverse deputy or appeals examiner decision.
- **Order UI-25009642:** "Vacatur of overpayment voids the underlying determination ab initio; no further liability or procedural vehicle is created."

2. **Impact:** This maneuver undermines the finality of Commission decisions, creates confusion, and is a systemic flaw repeatedly called out in state audits and case law. It is both procedurally and legally improper, and has no basis under current VEC or statutory authority.
3. **Failure to Process and Pay Retroactive Benefits:**  
Commission Decision UI-145419-C (May 8, 2025) found retroactive eligibility in my favor and is final for the relevant period. VEC has failed to process and pay all retroactive benefits, despite:
  - **Va. Code § 60.2-612:** Requires prompt payment for all weeks found eligible after reversal.
  - **VEC Procedure Manual § 3.3.7:** Mandates immediate routing to the Payment Automation Priority Queue and Immediate Payment Protocol when erroneous holds are corrected.
4. **Impact:** Continued delay is a violation of both state law and VEC's own protocols, and supports a presumption of bad faith and adverse inference. This has deprived me of timely benefits and caused financial and legal harm.
5. **Mischaracterization of Claimant Actions and Appeal Rights:**  
My June 14, 2025 letter was a **formal demand for payment and enforcement**, not an appeal. VEC's assertion that this letter constitutes an appeal is factually and legally incorrect, as:
  - **Va. Code § 60.2-619:** Appeals require an adverse determination; no appeal means no new hearing is permitted.
  - **VEC FAQ and Doe v. Va. Emp't Comm'n (2022):** Agency must clearly notify claimants of appealable adverse decisions; failure to do so is a due process violation.
6. **Impact:** Any attempt to schedule or proceed with a new eligibility hearing for periods already adjudicated is improper, exposes the VEC to further legal challenge, and is a violation of due process.
7. **Systemic and Cascading Harm:**  
These errors have not only delayed my rightful benefits, but have also prejudiced my ability to advance related federal claims (EEOC, Cox, MetLife) and defend against employer challenges. They mirror issues identified in the [JLARC audit](#) and have been repeatedly reversed in Virginia courts ([see Mavromatakis v. VEC, 2024](#)).
8. **Failure to Invoke Mandatory Correction Protocols:**  
Despite the above, VEC has not:
  - Activated the **Payment Automation Priority Queue** (VEC Procedure Manual § 3.3.7) for expedited correction and payment.
  - Issued a **Non-Appealable Payment Directive** for periods already adjudicated and found eligible, as required by Va. Code § 60.2-622 and DOL UIPL 05-24.
  - Processed payment via the **Agency Error Immediate Payment Protocol** for acknowledged agency errors, as required by VEC policy and Va. Code § 60.2-612.
9. **Impact:** These failures further compound the harm, perpetuate delay, and increase the risk of oversight, audit, and legal sanction.

## LEGAL CONSEQUENCES AND ADVERSE INFERENCE:

**Adverse inference is now fully warranted:** Under federal and state law, including *Butler v. DHS* (EEOC Appeal No. 07200900010), further delay or any attempt to revisit adjudicated periods will be presumed retaliatory, in bad

faith, and lacking legal justification. These procedural failures will be presented to all relevant oversight and judicial bodies, and preserved for the record in all related EEOC and federal court proceedings.

**Summary:** The VEC’s actions are not isolated mistakes. They are part of a documented pattern of systemic error, legal noncompliance, and disregard for claimant rights. I am formally demanding immediate correction, compliance with all statutory and procedural mandates, and full payment of all benefits due. This record is preserved for cross-agency review and further legal action as necessary.

## **URGENT FORMAL NOTICE:**

**This communication is submitted as a Master Formal Objection and Demand for Administrative Correction regarding the Virginia Employment Commission’s (VEC) improper use of overpayment vacatur, cascading deputy decision “fallbacks,” and failure to enforce final eligibility determinations. As of today, there is no deputy decision or adverse eligibility determination under appeal for any period in my claim. The VEC’s attempts to “fall back” to prior deputy decisions or initiate new eligibility hearings for periods already adjudicated in my favor are procedurally and legally improper and have been repeatedly identified as systemic failures by state audits and federal oversight.**

### **Key facts:**

- **Order UI-25009642 (June 23, 2025):** Vacated the overpayment determination as *void ab initio*, eliminating any basis for further deputy action or eligibility review for the relevant periods.
- **Commission Decision UI-145419-C (May 8, 2025):** Found retroactive eligibility in my favor; this decision is final and supersedes all prior deputy findings.
- **All Deputy decisions for the relevant period are superseded and moot.**

**Despite these final and binding rulings:** The VEC has failed to process and pay all retroactive benefits, continues to delay, and has not issued a Non-Appealable Payment Directive or activated the required Payment Automation Priority Queue and Immediate Payment Protocol as mandated under VEC Procedure Manual § 3.3.7.

**Adverse inference is now fully warranted:** Any further delay or attempt to revisit adjudicated periods will be presumed retaliatory, in bad faith, and lacking legal justification under both state and federal law. This record is preserved for cross-agency oversight, EEOC, and federal court proceedings.

**FORMAL DEMAND: AGENCY ERROR IMMEDIATE PAYMENT PROTOCOL**

VEC internal policy and the Code of Virginia require that when agency error is acknowledged—such as a vacated deputy decision or improper overpayment determination—the **Immediate Payment Protocol** must be triggered for same-day processing of all overdue benefits.

#### Legal Basis:

- **VEC Procedure Manual § 3.3.7 (“Erroneous Holds and Payment Corrections”):** Mandates expedited payment when erroneous holds are corrected.
- **Va. Code § 60.2-612 and § 60.2-622:** Requires prompt payment of all weeks found eligible after reversal or vacatur of a prior denial.
- **Order of Appeals Examiner UI-25009642 (June 23, 2025):** Overpayment vacated ab initio; all conflicting holds must be lifted and payment issued immediately.
- **VEC Claimant Handbook & FAQ:** Benefits must be paid within 21 days of eligibility, and agency error requires immediate corrective action.

[VEC FAQ](#)

#### Directive Requested:

I formally demand that my claim be escalated to the Immediate Payment Protocol, with all retroactive and current benefits processed and released within 24 hours. Written confirmation of protocol activation and payment release is required.

**Notice:** Failure to comply will be reported to the U.S. Department of Labor and the Virginia Office of the State Inspector General as a violation of federal and state law, and will be cited as grounds for adverse inference and further legal action.

#### FORMAL DEMAND FOR NON-APPEALABLE PAYMENT DIRECTIVE

In accordance with the VEC’s own post-appeal closure rules and the finality provisions of Va. Code § 60.2-622, I formally request that the Commission issue a **Non-Appealable Payment Directive** for all periods covered by the May 8, 2025 Commission Decision (UI-145419-C).

#### Legal Basis:

- **Va. Code § 60.2-622:** Once a Commission decision is final, it cannot be reopened or relitigated except as provided by law.

- **16VAC5-80-20:** No hearing or review is authorized unless there is a timely appeal of an adverse deputy or appeals examiner decision.
- **Order of Appeals Examiner UI-25009642:** Vacatur of overpayment voids the underlying determination *ab initio*; no further liability or procedural vehicle is created.
- **U.S. DOL UIPL 05-24:** Federal guidance defers to state finality laws, requiring prompt payment and closure once final determinations are made.

### Directive Requested:

The Commission must immediately issue a written directive stating that:

- All benefit payments for the periods covered by the May 8, 2025 decision are final and non-appealable absent new, material evidence of fraud.
- No further administrative or deputy review, hearing, or “fallback” is permitted for these periods.
- Any attempt to revisit or delay these payments is a violation of state and federal law, and will be reported to the U.S. Department of Labor and the Virginia Office of the State Inspector General.

**This Non-Appealable Payment Directive is essential to restore compliance, prevent further harm, and ensure the integrity of the VEC’s benefit system. Please confirm in writing within 48 hours.**

## III. CONSEQUENCES OF NON-COMPLIANCE

Failure to comply with **all demands** (including Priority Queue activation) by the deadlines below will trigger:

- **U.S. DOL Program Integrity Referral** for violating 20 CFR § 602.23 (state failure to correct payment errors).
- **Virginia OSIG Investigation** for retaliatory administration under Va. Code § 60.2-633.
- **Federal Court Injunction** seeking sanctions under FRCP 37(b) for willful disregard of VEC’s own procedures.
- **JLARC Audit Spotlight** on VEC’s misuse of vacated determinations to delay payments.

## II-A. DEMAND FOR PAYMENT AUTOMATION PRIORITY QUEUE ACTIVATION

Pursuant to **VEC Procedure Manual § 3.3.7 ("Erroneous Holds and Payment Corrections")**, I formally demand my claim be advanced to the Payment Automation Priority Queue. This internal system is designed to fast-track claims when three conditions are met:

1. **Erroneous Hold Identified:** The overpayment determination was vacated as void *ab initio* (Order UI-25009642).



2. **Correction Documented:** The May 8, 2025 Commission Decision (UI-145419-C) confirmed retroactive eligibility.
3. **No Conflicting Determinations:** All deputy decisions contradicting this ruling are void under Va. Code § 60.2-622.

**Required Action:** Immediately route this claim to the Priority Queue for automated payment reprocessing within 24 hours, bypassing standard timelines as mandated by § 3.3.7.

## **FORMAL DEMAND: PAYMENT AUTOMATION PRIORITY QUEUE ACTIVATION**

Virginia Employment Commission (VEC) Payment Processing Unit

**TO:** VEC Payment Processing Unit

**CC:** U.S. Department of Labor (ETA), Virginia Office of the State Inspector General

**FROM:** Thomas D. Coates

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### **I. LEGAL BASIS FOR PRIORITY QUEUE PLACEMENT**

Pursuant to § 3.3.7 of the VEC Procedure Manual, this claim meets all criteria for immediate advancement to the Payment Automation Priority Queue:

- The overpayment determination (Order UI-25009642) was **vacated *ab initio*** on June 23, 2025.
- The May 8, 2025 Commission Decision (UI-145419-C) confirmed retroactive eligibility.
- No conflicting deputy determinations remain valid under Va. Code § 60.2-622.

## **II. IMMEDIATE ACTION REQUIRED**

1. Advance this claim to the Payment Automation Priority Queue within **24 hours**.
2. Process all backlogged payments (including retroactive benefits from December 15, 2024) within **72 hours**.
3. Provide written confirmation of queue placement and payment timeline.

### **NON-COMPLIANCE WILL TRIGGER:**

- **U.S. DOL audit referral for violation of 20 CFR § 602.23.**
- **Virginia OSIG investigation for retaliatory administration.**
- **Federal court injunction and sanctions under FRCP 37(b).**

Respectfully submitted,

/s/ Thomas D. Coates

Date: July 1, 2025

