



## State of Delaware Department of Human Resources

### RESPECTFUL WORKPLACE AND ANTI-DISCRIMINATION POLICY<sup>1</sup>

**Policy #:** To be assigned.

**Effective Date:** June 24, 2019

**Application:** Executive Branch Agencies

**Authority:** 29 Del. C. Chapter 90D (as applicable); 19 Del. C. Chapters 711, 712, 716, 717 and 720 (as applicable); Merit Rule 2.1; Executive Order #30

**Supersedes:** Policy on Anti-Discrimination, Workplace Harassment and Retaliation P17-001 June 2017; Policy on Sexual Harassment Prevention Dec. 18, 2002 -Revised Oct. 2005

**Signature:**

A handwritten signature in black ink, appearing to be "A. Salem", written over a horizontal line.

#### 1. POLICY PURPOSE STATEMENT

The State of Delaware (State) strives to create and maintain a work environment in which people are treated with dignity, decency and respect. The accomplishment of this goal is essential to the mission of the State. The work environment of the State is characterized by mutual trust and the absence of intimidation, oppression and exploitation. Employees must work and learn in a safe, respectful and stimulating atmosphere. For that reason, the State will not tolerate unlawful discrimination or harassment of any kind. Each manager and supervisor is responsible for fostering a workplace environment free of discrimination and harassment. Through enforcement of this policy and education of employees, the State seeks to prevent, correct and discipline behavior that violates this policy.

All employees, regardless of their positions, are covered by and are expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this policy. Based on the seriousness of the offense, disciplinary action may include, but not be limited to, written reprimand, suspension or termination of employment.

#### 2. SCOPE

This policy applies to all employees, and for this policy includes unpaid interns, joint employees and apprentices, and includes workplace conduct by individuals not directly connected to the State (e.g., outside vendors, consultants, customers or constituents).

Conduct prohibited by this policy is unacceptable in the workplace and in any work-related setting outside the workplace, including business trips, business meetings and business-related social events.

The terms of this policy supersede any statewide or related Executive Branch Agency policy and procedure.

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### 3. DEFINITIONS

- Complainant: A person who makes a complaint and begins the complaint process.
- Discrimination: Unlawful discrimination is the unjust or prejudicial treatment of individuals, based on their membership in a protected class.
- Equal Employment Opportunity (EEO) Officer: A Department of Human Resources (DHR) employee designated to manage EEO responsibilities at an Agency.
- Harassment: Unwelcome conduct that is based on an individual's [protected class](#). Harassment becomes unlawful when: 1) enduring the offensive conduct becomes a condition of continued employment; or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or abusive. The behavior need not be intentional in order to be considered harassment.
- Investigation Findings: Complaint investigations will result in one of the following conclusions: substantiated or unsubstantiated. Substantiated means that the research and/or evidence through corroboration verifies the allegation. Unsubstantiated means that research and/or evidence failed to find sufficient evidence to support or verify the Complainant's claim.
- Protected Class: Protected classes under this policy are a person's race, color, national origin, gender, age, sex, creed, pregnancy, marital status, family responsibilities, sexual orientation, gender identity or expression, veteran's status, religion, genetic information, disability, status as a victim of domestic violence, sexual assault and/or stalking, or any other category protected by applicable state and/or federal laws.
- Respondent: The party against whom a complaint is made, and who is responsible for providing a response to the complaint under this policy.
- Retaliation: An act of reprisal, interference, restraint, penalty, discrimination, intimidation or harassment against any individual(s) taken because that individual(s) has exercised rights under this policy, or state or federal anti-discrimination laws.
- Sexual Harassment: Conduct defined in 19 Del. C. § 711A(c) which includes when an employee is subjected to unwelcome sexual advances, requests for favors, and/or other verbal or physical conduct of a sexual nature when: 1) submission to such conduct is made explicitly or implicitly a term or condition of employee's employment; 2) submission to or rejection of such conduct is used as the basis for employment decisions affecting an employee; or 3) such conduct has the purpose or effect of

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unreasonably interfering with an employee’s work performance or creating an intimidating, hostile or offensive work environment.

**4. POLICY**

The State promotes a safe and respectful work environment in compliance with all applicable state and federal anti-discrimination and anti-harassment laws and regulations and enforces this policy in accordance with the following standards:

**a. Discrimination**

It is a violation of this policy to discriminate in the provision of employment opportunities, benefits or privileges; to create discriminatory work conditions; or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, the person’s protected class.

**b. Harassment**

The State prohibits harassment of any kind and will take prompt and effective action in response to alleged violations of this policy. Unlawful harassment is when enduring the offensive conduct becomes a condition of continued employment or the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or abusive. This conduct may result in a **hostile work environment**. A hostile work environment can be created by anyone in the work environment, whether it be supervisors, other employees or third parties, including constituents and customers.

The following illustrations of harassment are intended to be examples and are not exhaustive when determining whether there has been a violation of this policy:

- **Verbal harassment** includes comments that are offensive or unwelcome regarding a person’s membership in a protected class, including jokes, slurs and negative stereotyping.
- **Nonverbal harassment** includes distribution, display or discussion of any written or graphic material that ridicules, denigrates, insults, belittles or shows hostility, aversion or disrespect toward an individual or group because of membership in a protected class, including inappropriate staring, touching, hand gestures, posters, cartoons and other nonverbal conduct.

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**c. Sexual Harassment**

The State prohibits sexual harassment and will take prompt and effective action in response to alleged violations of this policy.

Sexual harassment occurs when unsolicited and unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature:

- Is made explicitly or implicitly a term or condition of employment;
- Is used as a basis for an employment decision; and/or
- Unreasonably interferes with an employee’s work performance or creates an intimidating, hostile or otherwise offensive environment.

Types of sexual harassment:

- **“Quid pro quo” harassment**, where submission to harassment is used as the basis for employment decisions. This can be providing employee benefits such as raises, promotions and better working hours directly linked to compliance with sexual advances. Examples: A supervisor promising an employee a raise if s/he goes on a date with her/him; a manager telling an employee s/he will fire her/him if s/he does not have sex with her/him.
- **“Hostile work environment,”** where the harassing conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile or offensive. A hostile work environment can be created by anyone in the work environment, whether it be supervisors, other employees or third parties, including constituents and customers. Hostile work environment harassment may include comments of a sexual nature, unwelcome sexual materials or unwelcome physical contact as a regular part of the work environment. Texts, e-mails, cartoons or posters of a sexual nature; vulgar or lewd comments or jokes; or unwanted touching or fondling all fall into this category.

Sexual harassment may take different forms. The following illustrations of sexual harassment are intended to be examples and are not exclusive when determining whether there has been a violation of this policy:

- **Verbal sexual harassment** includes innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks and threats; requests for any type of sexual favor (this includes repeated, unwelcome requests for dates); and verbal abuse or “kidding” that is oriented toward a prohibited form of harassment, including that which is sexual in nature and unwelcome.

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- **Nonverbal sexual harassment** includes the distribution, display or discussion of any written or graphic material, including calendars, posters and cartoons that are sexually suggestive or show hostility toward an individual or group because of sex; suggestive or insulting sounds; leering; staring; whistling; obscene gestures; content in letters and notes, facsimiles, e-mail, photos, text messages, tweets and internet postings; or other form of communication that is sexual in nature and offensive.
- **Physical sexual harassment** includes unwelcome, unwanted physical contact, including touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing, fondling, and assault.

**d. Retaliation**

The State prohibits retaliation and will take prompt and effective action in response to alleged violations of this policy. No tangible hardship, loss or penalty may be imposed on an employee in response to:

- Filing or responding to a complaint of discrimination or harassment;
- Appearing as a witness in the investigation of a complaint; or
- Serving as an investigator of a complaint.

**e. Violation**

Appropriate disciplinary action will be taken against any employee who violates this policy. Based on the seriousness of the offense, disciplinary action may include, but not be limited to, written reprimand, suspension or termination of employment.

**f. EEO Officer**

DHR shall designate an employee to serve as the Agency’s [EEO Officer](#).

**5. COMPLAINT PROCEDURES**

An employee may obtain information from her/his Supervisor, her/his Agency’s Human Resources (HR) representative, Agency EEO officer, or an Employee Relations (ER) section representative at DHR about the filing of a discrimination or harassment complaint.

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**a. Complaint Process**

The State will treat courteously any person who invokes this complaint procedure, and the State will handle all complaints swiftly and as confidentially as possible in light of the need to conduct a fair and thorough investigation. Filing a complaint in good faith will not be used against the employee or have an adverse impact on the individual’s employment status. An employee who is the recipient of unwelcome conduct should attempt to communicate to the offender her/his objection to the conduct whenever possible. If the employee is not comfortable addressing the conduct with the offender, or if that has occurred and the conduct continues, an aggrieved employee is encouraged to report incidents of harassment as soon as possible. Complaints are to be submitted individually by the employee alleging harassment or discrimination.<sup>2</sup> This process shall not serve as an appeal following the disposition of an administrative decision (grievances pursuant to Merit Rules or a Collective Bargaining Agreement (CBA), discrimination charges filed at the Delaware Department of Labor (DDOL) or Equal Employment Opportunity Commission (EEOC)). Filing a false or malicious complaint is an abuse of this policy and will be treated as a violation.

**b. Confidentiality and Employee Assistance Program**

During the complaint process, the confidentiality of the information received, the privacy of the individuals involved and the wishes of the Complainant will be protected to as great a degree as is possible. The expressed wishes of the Complainant for confidentiality will be considered in the context of the State’s legal obligation to act on allegations of discrimination, harassment or retaliation, and the obligation to conduct a fair and thorough investigation. During the investigation and afterwards, all parties, including witnesses when applicable, will be required to maintain strict confidentiality. In addition, any notes or documents written by or received by the person(s) conducting the investigation will be kept confidential.

The Employee Assistance Program (EAP) provides confidential counseling services to State employees who are enrolled in one of the State’s health plans covered. Individuals wishing to discuss an incident confidentially or seeking information and/or advice of a personal nature are encouraged to contact the EAP. The role of the EAP in such cases will be limited to personal counseling and treatment for the person who is then an EAP client. Contacting the EAP will not qualify as notification to the State of a potential harassment or discrimination issue.

**c. Complaint Procedure**

The State has established the following procedure for filing a complaint of harassment, sexual harassment, discrimination or retaliation. The State will treat all aspects of the procedure confidentially to the extent reasonably possible. Prompt reporting of complaints is encouraged, so that prompt response and

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<sup>2</sup> This policy does not contain provisions for group complaints.

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appropriate action may be taken. If a supervisor or manager becomes aware of allegations of harassment or discrimination, from personal observation, as a result of a Complainant or another individual coming forward, the supervisor or manager shall discuss the concern or incident with the employee and attempt to resolve the matter in consultation with Agency HR.

- 1) An employee (Complainant) who believes s/he has been harassed, discriminated or retaliated against may initiate the complaint process by filing a complaint in writing with any of the following:
  - Supervisor
  - Manager
  - Agency’s Equal Employment Opportunity Officer
  - Agency’s Human Resources representative
  - Employee Relations section representative of the Department of Human Resources.

For this complaint procedure, the employee alleging workplace harassment, discrimination or retaliation is not required to file a complaint with the alleged offender.

- 2) In order to proceed with an inquiry into the complaint, the Complainant must submit a written and signed complaint containing sufficient details to investigate whether a violation of this policy may have occurred. Complainants making verbal complaints will be asked to complete the Respectful Workplace and Anti-Discrimination Complaint Form (Complaint Form, Appendix A) for this policy. The Complainant may obtain the Complaint form online or from her/his Agency HR representative.
- 3) If a supervisor or manager becomes aware of allegations of harassment or discrimination, either from personal observation or as a result of a Complainant or other individual coming forward, and attempts at resolving the matter with the employee are not successful, the supervisor or manager shall provide employee with this policy and complaint form and report in writing to the Agency’s HR representative as soon as reasonably possible.
- 4) Upon receiving a Complainant’s written complaint or being advised by a supervisor or manager of an alleged violation of this policy, and no later than five (5) business days, the Agency’s HR representative must notify in writing the ER section of DHR of the complaint and must consider any measures for the protection of the Complainant or alleged victim (i.e., transferring work location of the subject of the complaint, contacting law enforcement, etc.).
- 5) Within five (5) business days of receiving the written complaint from a Complainant directly or through an Agency’s HR representative, DHR will review and act upon the complaint. If multiple appeals (complaint and grievance) are filed on the same issue, DHR may offer to consolidate the

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appeals to effectively and efficiently address the issue. An employee or other party will be assigned as an investigator (hereinafter “Investigator”) to begin an inquiry to determine whether there is a reasonable basis for moving forward with an investigation of the alleged violation of this policy. With harassment complaints involving an outside vendor, consultant or similar independent contractor, DHR will notify the outside vendor, consultant or similar independent contractor of the complaint, which will be addressed jointly with the outside entity’s employer. Harassment complaints involving a customer will be handled with the customer directly on a case-by-case basis.

- 6) During the investigation, the Investigator will interview the Complainant, the Respondent and any witnesses; review relevant documents and other media; and conduct other investigative actions to determine whether the alleged conduct occurred. Interviews may only be recorded with prior written consent of both the Investigator and the individual being interviewed, or her/his representative. If either party refuses the recording, no participants will be allowed to record the interview or subsequent proceedings. The investigation will adhere to any relevant statute, Merit Rule or CBA term.
- 7) If a harassment complaint involves an employee who has been charged with criminal misconduct, DHR is to conduct an investigation to determine whether the employee’s conduct violated any of the State’s administrative standards. The Investigator shall work with the Deputy Attorney General (DAG) assigned to the criminal complaint upon the initiation and throughout the progress of the administrative investigation. As the Investigator takes measures to coordinate with the DAG, it may cause the investigation to exceed time limits imposed on such complaints.
- 8) State employees shall cooperate fully with any investigation covered under this policy. Failure to cooperate with investigations may result in disciplinary action.
- 9) As soon as reasonably possible and within sixty (60) business days of receiving a complaint, the Investigator will conclude the investigation. If additional time is needed to complete the investigation, the Complainant and Respondent will be notified. The Investigator prepares a full written report (Report) with a report summary (Summary) that consists of her/his findings, conclusion and recommendations for the designated Agency management representative. Based on the findings and criteria in this policy, the complaint investigation will result in one of the following conclusions: substantiated or unsubstantiated. If it is determined that harassment or discrimination in violation of this policy has occurred, Agency HR will work collaboratively with Agency management representative to determine appropriate corrective action. Corrective action may include, but is not limited to, mandatory referral to EAP, additional training, and disciplinary action up to and including termination.

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- 10) The designated Agency management representative shall review the report within five (5) business days and provide to Agency HR who will share the Report and Summary with the DHR Secretary or designee for review and finalizing.
- 11) If the investigation is unsubstantiated or if it is determined that there has been no violation of this policy, the DHR representative or designated Agency management representative may still recommend action (e.g., additional training, voluntary EAP referral, etc.).
- 12) Within five (5) business days of the determination, Agency management representative and/or the DHR Agency HR representative or designee will meet with the Complainant and the Respondent separately and notify each of the investigation’s conclusion, whether it was substantiated or unsubstantiated. Any corrective action is to be administered within thirty (30) business days of the latter of these meetings. If additional time is needed, the Complainant and Respondent will be notified.
- 13) Any disciplinary action(s) shall be processed in accordance with Merit Rules, relevant statutes and/or CBAs, where applicable.
- 14) Filing a harassment complaint pursuant to this policy will not extend the time frames prescribed by statute by which an employee may file a formal complaint through the Merit Rules, the DDOL’s Office of Anti-Discrimination, the EEOC, a Collective Bargaining Agreement (CBA), if applicable, or any court or regulatory body.

**6. EXCLUSIONS OR EXCEPTIONS**

- a. The Legislative and Judicial Branches, and Offices of Elected Officials are excluded, but are encouraged to adopt this policy.
- b. If a complaint is filed against an employee in a law enforcement position whose classification is covered by the Law Enforcement Officers’ Bill of Rights (LEOBR), agencies are to follow LEOBR investigative and other procedures, and Section 5.c. Complaint Procedure numbers 1) through 12) shall not apply.
- c. The Delaware Department of Correction maintains a separate investigative process conducted by ranking Correctional Officers at facilities, and Section 5.c. Complaint Procedure numbers 1) through 12) shall not apply.
- d. The Delaware Department of Safety and Homeland Security, Division of Delaware State Police maintains an investigative process conducted by the Office of Professional Regulation for employees

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in the Division of State Police, and Section 5.c. Complaint Procedure numbers 1) through 12) shall not apply.

**7. DISSEMINATION AND TRAINING**

**a. Dissemination**

- 1) This policy shall be disseminated to all employees with acknowledgement of receipt within thirty (30) business days of its effective date.
- 2) This policy shall be posted at each State facility and available in electronic format.
- 3) The DDOL Sexual Harassment Notice (Appendix B) shall be distributed, physically or electronically, to all new employees at the commencement of employment and to existing employees by July 1, 2019.<sup>3</sup>
- 4) Each Agency is to post the contact information of their designated EEO Officer.

**b. Training**

- 1) The State shall provide all new employees training on this policy and procedures within one (1) year of commencement of employment and thereafter every two (2) years.
- 2) The State shall provide all existing non-supervisory employees training on this policy and procedures by December 31, 2019 and thereafter every two (2) years.
- 3) The State shall provide all new supervisors (newly hired and promoted) supervisory training on this policy and procedures within one (1) year of commencement of employment in the position and thereafter every two (2) years.
- 4) The State shall provide all existing supervisors supervisory training on this policy and procedures by December 31, 2019 and thereafter every two (2) years.

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<sup>3</sup> Per Title 19 *Del.C.* §711A (f), DDOL is required to provide an information sheet on sexual harassment for employers to distribute to employees.

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- 5) Successful completion of this training shall be documented in the Delaware Learning Center.
- 6) Each Agency is responsible for their employees adhering to these requirements.
- 7) Each covered employee is responsible for attending required trainings within the designated time frame.

## **8. DATA REPORTING**

All agencies are required to:

- Keep records of complaints of harassment; and
- Track and report annually to DHR discrimination and harassment complaints, with sexual harassment complaints tracked separately.

## **9. ASSOCIATED POLICY/REGULATIONS/INFORMATION**

- a. The procedures under this policy do not preempt or supersede any legal procedures or remedies otherwise available to a target of discrimination or harassment under state or federal law.
- b. Making a complaint pursuant to this policy will not extend the time frames, prescribed by statute, by which any person must file a formal complaint through the Merit Rules, the DDOL’s Office of Anti-Discrimination, the EEOC, a CBA, if applicable, or any court or regulatory body.
- c. The deadline for filing a charge with the DDOL or the EEOC under state and federal laws is three hundred (300) days from the date of the alleged discriminatory action.

## **10. APPENDICES AND FORMS**

- [Respectful Workplace and Anti-Discrimination Complaint Form](#)
- [Delaware Sexual Harassment Notice from Department of Labor](#)

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