



<b>RESPECTFUL WORKPLACE AND ANTI-DISCRIMINATION POLICY - Statewide</b>	
<b>DHR-STW-Policy #: DHR-STW-104.1</b>	<b>Authority: 29 Del. C. Chapter 59 and 90D; 19 Del. C. Chapters 711, 712, 716, 717 and 720; Merit Rule 2.1; Executive Order #30</b>
<b>Effective Date: July 25, 2022</b>	<b>Revision Date: March 19, 2024</b>
<b>Supersedes: Supersedes: June 24, 2019, Respectful Workplace and Anti-Discrimination Policy; June 2017 Policy on Anti-Discrimination, Workplace Harassment and Retaliation P17-001; Dec. 18, 2002 - Revised Oct. 2005 Policy on Sexual Harassment Prevention</b>	<b>Signature:</b> 
<b>Application: Executive Branch Agencies</b>	

**1. Policy Purpose Statement**

The State of Delaware (State) strives to create and maintain a work environment where 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. Managers and supervisors are 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 are covered by and are expected to comply with this policy and to take appropriate measures to assure 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 such as outside vendors, contractors, 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. Elected Agencies and Judiciary Members are encouraged to adopt and administer this policy with their employees.

### 3. Definitions and Acronyms

- **Complainant** - An individual 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, partially substantiated, or unsubstantiated. Substantiated means that the research and/or evidence through corroboration verifies the allegation. Partially substantiated means that the research and/or evidence through corroboration verifies some but not all the allegations asserted in the complaint. Unsubstantiated means that research and/or evidence failed to find sufficient evidence to support or verify the Complainant's claim.
- **Investigator** - A DHR employee or other designee assigned 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 and if so, to conduct an investigation.
- **Protected Class** - Protected classes under this policy are a person's race, protective hairstyle, 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, and that would reasonably discourage the individual from making a complaint.
- **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 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 offensive or unwelcome comments 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.

##### 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/or 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 exhaustive 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.
- **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 forms 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. Procedures

An employee may obtain information from their Supervisor, their Agency's Human Resources (HR) representative, Agency EEO officer, or the Employee & Labor Relations (ELR) section representative at DHR about the filing of a discrimination or harassment complaint.

### 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 considering 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 their employment status. An employee who is the recipient of unwelcome conduct should attempt to communicate to the offender their 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 alleged harassment as soon as possible. Complaints are to be submitted individually by the employee alleging harassment or discrimination.<sup>1</sup> **The process in this Respectful Workplace Anti-Discrimination Policy 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 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 afterward, 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 enrolled in one of the State's health plans. 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 (based on protected class). 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 appropriate action may be taken. If a supervisor or manager becomes aware of allegations of harassment or

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<sup>1</sup> This policy does not contain provisions for group complaints.

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 Labor Relations (LR) or HR representative.

- 1) An employee (Complainant) who believes they have 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 LR or HR representative
  - Employee & Labor 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) Complainants making verbal complaints will be required to complete the Respectful Workplace and Anti-Discrimination Complaint Form (Complaint Form). To proceed with an inquiry into the complaint, the Complainant must submit a written and signed Complaint Form containing sufficient details to investigate whether a violation of this policy may have occurred. The Complainant may obtain the Complaint Form online or from their Agency LR or 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 the employee with this policy and complaint form and also report allegation(s) in writing to their Agency's LR or 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, their Agency's DHR representative must notify in writing the ELR 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.). If the complaint is received by ELR, they shall notify the DHR representative assigned to the Complainant's agency within five (5) business days.
- 5) Within five (5) business days of receiving the written complaint from a Complainant, ELR will review and act upon the complaint. If multiple process requests (complaints or grievances) are filed on the same issue, ELR may consolidate the submissions to address the issue more effectively and efficiently. 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 under this policy and, if so, to conduct the investigation. There may be circumstances when a complaint may be investigated under the [Standards of Conduct Policy](#). With harassment complaints involving an outside vendor, consultant, or similar independent contractor, the Investigator will notify the outside vendor, consultant, or similar independent contractor of the complaint, and the matter 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; 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 their 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 this or other State policy. 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 the 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 but no longer than ninety (90) business days of receiving a complaint, the Investigator will conclude the investigation. The Investigator prepares a full written report (Report) that consists of their findings, conclusion, and recommendations. Based on the findings and criteria in this policy, the complaint investigation will result in one of the following conclusions: substantiated, partially substantiated, or unsubstantiated. If it is determined that a violation of this policy has occurred, the Investigator will work collaboratively with the 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. If additional time is needed to complete the investigation, the Complainant and Respondent will be notified.
- 10) The designated agency management representative shall review the report within five (5) business days and return to the Investigator who will share the Report with the DHR Secretary or designee (ELR) for review and finalization.
- 11) If the investigation is unsubstantiated, or partially substantiated, 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, the Investigator will meet with the Complainant and the Respondent separately and notify each of the investigative conclusion (whether it was substantiated, partially substantiated, or unsubstantiated).
- 13) Any corrective action is to be administered within thirty (30) business days of the latter of these meetings by the Respondent's supervisor/manager. If additional time is needed, the Complainant and Respondent will be notified.
- 14) Any disciplinary action(s) shall be processed in accordance with Merit Rules, relevant statutes, and/or CBAs, where applicable.
- 15) Filing a harassment complaint according 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**

- 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.
- 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.
- The Delaware Department of Safety and Homeland Security, Division of State Police maintains an investigative process conducted by the Office of Professional Regulation for employees in the Division of State Police, and Section 5.c. Complaint Procedure numbers 1) through 12) shall not apply.
- The State is not required to provide training under this subsection to applicants, independent contractors, or employees employed less than 6 months continuously. The Department of Education (DOE) is responsible for the development of policies in compliance with the Federal Code, applicable State Code, and Title 14 of the Delaware Code and applicable regulations.

Delaware State Housing Authority (DSHA) is responsible for the development of policies in compliance with Federal Code, applicable State Code, and 29 Del. C. §86 and authority in 31 Del. C. § 4013.

## **7. Dissemination and Training**

### **a. Dissemination**

- Employees must read and acknowledge receipt of this policy in the Delaware Learning Center, or if not applicable by other means, within designated timeframe.
- The Agency HR office may provide a review of this policy and procedure to current employees.
- Agency DHR Leads will review this policy with anyone listed in Policy Section 2. Scope that does not receive DLC messages.
- Thew DDOL Sexual Harassment Notice shall be posted by each State agency on its premises where notices to employees and applicants for employment are customarily posted.
- The DDOL Sexual Harassment Notice shall be distributed, physically or electronically, to all new employees at the commencement of employment.
- Each agency is to post the contact information of their designated EEO Officer.

### **b. Training**

- The State shall provide all employees interactive training to prevent sexual harassment and other forms of discrimination in this policy and procedures within one (1) year of commencement of employment and thereafter every two (2) years.
- The State shall provide all supervisors (newly hired and promoted) additional interactive supervisory training to prevent sexual harassment and other forms of discrimination in this policy and procedures within one (1) year of commencement of employment in the position and thereafter every two (2) years.

- Successful completion of this training shall be documented in the Delaware Learning Center.
- Each agency is responsible for their employees adhering to these requirements.
- 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 to DHR annually discrimination and harassment complaints, with sexual harassment complaints, tracked separately.

## 9. Associated Policy/Regulations/Information

- 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.
- Making a complaint according 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.
- 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.
- [Standards of Conduct Policy and Procedures](#)

## 10. Appendices and Forms Associated with this Policy

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

## 11. Policy Owner

- **Division Name:** Division of Employee and Labor Relations
- **Policy Administrator:** Director of the Division of Employee and Labor Relations
- **Website:** <https://dhr.delaware.gov/labor/index.shtml>

*This policy is not intended to create any individual right or cause of action not already existing and recognized under State or Federal law. If there is a conflict with, i.e., the law or regulation and this policy, the law and/or regulation govern.*