



# State of Delaware Office of Management and Budget Human Resource Management

## POLICY ON ANTI-DISCRIMINATION, WORKPLACE HARASSMENT AND RETALIATION

**Policy Number:** P17-001

**Effective Date:** 04/01/2017

**Supersedes:** State Agency Discrimination Complaint Policy and Procedure

**Application:** All Executive Branch State Employees

**Merit Rule:** 2.1

**Authority:** Executive Order #6

### PURPOSE AND SCOPE

To establish a policy with uniform procedures for the Executive Branch of the State of Delaware outlining its position and practice with regard to anti-discrimination, harassment and retaliation in the workplace and to outline the method of reporting and resolving complaints.

### DEFINITIONS

**Protected Class:** This policy prohibits unequal and unlawful treatment of an individual on the basis of a person's race, color, national origin, gender, age (40 and over), sex, pregnancy, marital status, sexual orientation, gender identity or expression, religion, creed, disability, or veteran's status, and victims of domestic violence, sexual assault and/or stalking, family responsibility, or any other category protected by state and/or federal civil rights laws.

**Prohibited Activities:** Any unwelcome verbal, written, physical conduct, or electronic communication that either degrades or shows hostility or aversion towards a person because of that person's protected class.

**Harassment:** Unwelcome conduct that is based on an individual's protected class. Harassment becomes unlawful where 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 or hostile.

**Retaliation:** Any act of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against an individual or individuals that has an adverse employment action for exercising rights under this policy.

**Third-Party Individuals:** These individuals include contractors, volunteers and other third-party, non-state employees. Any discrimination, harassment, or retaliation claims made by a third-party, must be addressed through the third-party's employer and/or DDOL or EEOC.

**Workplace:** Any location, either permanent or temporary, where an employee performs any work-related duty. This includes but is not limited to the buildings and the surrounding perimeters, including the parking lots. It includes all state-owned and leased space, including vehicles, and any location where state business is conducted.

## **POLICY**

The State of Delaware is firmly committed to the principle of providing a working environment free of discrimination and harassment based on a person's race, color, national origin, age, sex, marital status, gender identity, sexual orientation, pregnancy, religion, creed, disability, veteran's status or any other category protected by applicable state and/or federal law.

State employees are strictly prohibited from engaging in any form of discrimination, harassment or retaliation. Examples of prohibited behaviors may include, but are not limited to:

- Discriminating against an individual with regard to terms and conditions of employment because of being in one or more of the protected categories referred to;
- Engaging in threatening, intimidating, or hostile acts toward another individual in the workplace because the individual belongs to, or is associated with, any of the protected categories;
- Displaying or distributing material (including electronic communications) in the work place that contains derogatory or demeaning language or images pertaining to any of the protected categories;
- Unwelcome touching or near-touching, which can encompass leaning over, cornering, hugging, pinching, sexual innuendos, teasing and other sexual talk such as jokes, personal inquiries, persistent unwanted attention and sexist remarks; (See also [Sexual Harassment Prevention Policy](#)); or
- Slurs, jokes or remarks that are derogatory, demeaning, threatening or suggestive to a class of persons or a particular person or that promote stereotypes of a class of persons.

The State will not tolerate such conduct by State employees or any third-party individual on its workplace. Any employee, who after a complete and impartial investigation, is found to have engaged in such conduct will be subject to appropriate disciplinary action, up to and including termination.

No employee shall be subjected to retaliation for reporting, testifying, assisting or participating in any manner in an investigation, proceeding or hearing resulting from a complaint of discriminatory or harassing behavior. No employee shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with that person's right to file a complaint of harassment or discrimination.

State agencies shall provide all new employees with training on this policy and procedure within a reasonable period of time after the employee's first date of employment with the State, not to exceed the first 90 days of employment. Refresher training shall be provided to all employees, including supervisors, within a reasonable period of time, but not to exceed every three (3) years. All state agencies shall also provide supervisors with training on a regular basis regarding their obligations and duties under this policy and procedure. The Office of Management and Budget may assign mandatory training in furtherance of this policy.

While the State of Delaware is committed to the principles embodied in this policy, it is not intended to state contractual terms and does not constitute a contract between the State and its employees. Furthermore, this statement constitutes only the policy of the State of Delaware. A finding violation of this policy does not mean that the conduct violates state and/or federal laws.

## **PROCEDURE**

An employee who believes they have been discriminated against, harassed or subjected to retaliation on any of the bases set forth in this policy should utilize the following procedures:

1. Promptly report the incident and details related to the complaint to the department's Human Resources Manager, their Division Director, their supervisor, or any individual designated by the department to receive such reports.

Under no circumstances is the individual alleging workplace discrimination, harassment or retaliation required to file a complaint with the alleged harasser.

2. Any supervisor or manager receiving a complaint must notify their Human Resources Manager or other individual that has been designated by the department to receive such complaints within one (1) business day of receipt of the complaint. Supervisory personnel who allow workplace discrimination, harassment or retaliation to continue or fail to take appropriate action upon learning of such conduct will be subject to corrective action. Such corrective action includes, but is not limited to, mandatory referral to EAP, training, disciplinary action, up to and including termination.
3. The department Human Resources Manager must also be notified, in addition to any other individual designated by the department to receive such complaints. If your agency does not have a Human Resources Manager, if the complaint crosses agencies, or if the complaint involves a Cabinet Secretary or Deputy Secretary, the Office of Management and Budget shall be notified, and a determination will be made as to the appropriate individual(s) to investigate the complaint.
4. The Human Resources Manager or designee shall conduct a neutral and thorough investigation of reported workplace discrimination complaints within a reasonable timeframe. All employees are expected to cooperate with administrative investigations. Failure to cooperate in an administrative investigation may result in disciplinary action, up to and including termination of employment.
  - a. Any employee found to have knowingly and willfully filed false charges of discrimination, harassment or retaliation will be subject to appropriate disciplinary action.
5. Objectives of the investigation include whether the complaint can be substantiated on the basis of facts, recommending appropriate action and suggestions for preventing future occurrences.
6. The relevant parties will be informed if the complaint has been substantiated or unsubstantiated. If the complaint is substantiated, the department shall take appropriate action recommended by Agency Human Resources or designed and/or the Office of Management and Budget.

Corrective action may include, but is not limited to, mandatory participation in counseling, training, disciplinary action, up to and including termination. Disciplinary action(s) shall be processed in accordance with Merit System Rules and/or collective bargaining agreements, where applicable.

Making a complaint pursuant to this policy will not extend the timeframes, prescribed by statute, by which any person must file a formal complaint through the Merit Rules, the Department of Labor's (DDOL) Office of Anti-Discrimination, the Equal Employment Opportunity Commission (EEOC), a Collective Bargaining Agreement, if applicable, or any court or regulatory body.

The statute of limitations for filing a charge with DDOL or EEOC under State and Federal law is (300) days from the date of the discriminatory action. Making a complaint pursuant to this policy will not extend the time by which any person must file a formal complaint with the Delaware Department of Labor, the Federal Equal Employment Opportunity Commission. No provision of this policy is intended to create any individual right or legal cause of action that does not already exist under state or federal law.

Questions regarding this policy may be directed to Human Resource Management, Employee Relations (302)739-4195.