

SUBJECT: Discrimination and Harassment Free Workplace	NUMBER: 50.010.01
DIVISION: Chief Human Resources Office	EFFECTIVE DATE: 10/10/2019
APPROVED: Signature on file with the Chief Human Resources Office	

POLICY STATEMENT: Oregon state government as an employer is committed to a discrimination and harassment free work environment. This policy outlines types of prohibited conduct and procedures for reporting and investigating prohibited conduct.

AUTHORITY: ORS 174.100, 240.086(1); 240.145(3); 240.250; 240.316(4); 240.321; 240.555; 240.560; SB 726 (2019; to be added to ORS 659A), SB 479 (2019; to be added to ORS 243); 659A.029; 659A.030, 659A.082 and 659A.112; Title VII; Civil Rights Act of 1964; Executive Order EO-93-05; Rehabilitation Act of 1973; Employment Act of 1967; Americans with Disabilities Act of 1990; and 29 CFR §37.

APPLICABILITY: All employees, including limited duration and temporary employees, board and commission members, elected officials, volunteers, interns, others working in an agency, and prospective employees unless this policy conflicts with an applicable collective bargaining agreement.

ATTACHMENTS: None

DEFINITIONS: Also refer to State HR Policy 10.000.01, Definitions

Collective Bargaining Agreement (CBA): A written agreement between Oregon state government (Department of Administrative Services) and a labor union. References to CBAs contained in this policy are applicable only to employees covered by a CBA.

Complainant: A person (or persons) allegedly subjected to, or who witnessed or observed, discrimination, workplace harassment or sexual harassment and who files a complaint with their immediate supervisor, another manager, or the agency, board, or commission human resources section, executive director, or chair, or the DAS Chief Human Resources Office.

Contractor: An individual or business with whom Oregon state government has entered into an agreement or contract to provide goods or services. Qualified rehabilitation facilities who by contract provide temporary workers to state agencies are considered contractors. Contractors are not subject to ORS 240 but must comply with all federal and state laws.

Designated individual: An individual designated by the agency who is responsible for receiving reports of discrimination, harassment or sexual assault.

Discrimination: Making employment decisions related to hiring, firing, transferring, promoting, demoting, benefits, compensation, and other terms and conditions of employment, based on or because of an employee’s protected class status. (See also *Workplace Harassment*.)

Employee: Any person employed by the state in one of the following capacities: management service, unclassified executive service, unclassified or classified unrepresented service, unclassified or classified represented service, or represented or unrepresented temporary service. This definition includes board and commission members, and individuals who volunteer their services to state government.

Higher Standard: Applies to managers and supervisors. Managers/supervisors are held to a higher standard and are expected to be proactive in creating and maintaining a discrimination and harassment free workplace. Managers/supervisors must exercise appropriate measures to prevent and promptly correct any discrimination, workplace harassment or sexual harassment they know about or should know about.

Non-disclosure agreement: An agreement between the employer and employee not to disclose information related to complaints or personnel actions related to violations of the Statewide Discrimination and Harassment Free Workplace policy.

Non-disparagement agreement: An agreement between the employer and employee not to make negative statements about the other related to complaints or personnel actions related to violations of State HR Policy 50.010.01 (Discrimination and Harassment Free Workplace).

Manager/Supervisor: Those who supervise or have authority or influence to effect employment decisions.

Protected Class Under Federal Law: Race; color; national origin; sex (includes pregnancy-related conditions); religion; age (40 and older); disability; a person who uses leave covered by the Federal Family and Medical Leave Act; a person who uses military leave; a person who associates with a protected class; a person who opposes unlawful employment practices, files a complaint or testifies about violations or possible violations; and any other protected class as defined by federal law.

Protected Class Under Oregon State Law: All federally protected classes, plus: age (18 and older); physical or mental disability; injured worker; a person who uses leave covered by the Oregon Family Leave Act; marital status; family relationship; sexual orientation; whistleblower; expunged juvenile record; and any other protected class as defined by state law.

Sexual Harassment: Unwelcome, unwanted or offensive sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment, or is used as a basis for any employment decision (granting leave requests, promotion, favorable performance appraisal, etc.); or
- (2) Such conduct is unwelcome, unwanted or offensive and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Examples of sexual harassment include but are not limited to: unwelcome, unwanted or offensive touching or physical contact of a sexual nature, such as closeness, impeding or blocking movement, assaulting or pinching; gestures; innuendoes; teasing, jokes, and other sexual talk; intimate inquiries; persistent unwanted courting; sexist put-downs or insults; epithets; slurs; or derogatory comments. (*See also Workplace Harassment.*)

Sexual assault: Unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat or intimidation; or a sexual offense has been threatened or committed as described in ORS 163.305 to 163.467 or 163.525. (*See also Workplace Harassment.*)

Sexual Orientation under Oregon State Law: An individual's actual or perceived heterosexuality, homosexuality, bisexuality or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth.

Workplace Harassment: Conduct that constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault or that is prohibited by ORS 659A.082 or 659A.112.

Workplace Intimidation: Unwelcome, unwanted or offensive conduct based on or because of an employee's protected class status.

Workplace intimidation may occur between a manager/supervisor and a subordinate, between employees, and among non-employees who have business contact with employees. A complainant does not have to be the person harassed, but could be a person affected by the offensive conduct.

Examples of intimidation include, but are not limited to, derogatory remarks, slurs and jokes about a person's protected class status.

Volunteer: Any individual who is performing work on behalf of Oregon state government or a state agency and is not paid for their service. This may include interns, externs and other categories of unpaid workers.

POLICY:

Oregon state government is committed to a discrimination, harassment, and intimidation free work environment. This policy outlines types of prohibited conduct and procedures for reporting and investigating prohibited conduct.

- (1) **Workplace Harassment (Discrimination), Sexual Harassment, Sexual Assault, and Workplace Intimidation.** Oregon state government provides a work environment free from workplace harassment (unlawful discrimination) or workplace intimidation based on or because of an employee's protected class status. Additionally, Oregon state government provides a work environment free from sexual harassment. Employees at every level of the organization, including state temporary employees and volunteers, must

conduct themselves in a business-like and professional manner at all times and not engage in any form of discrimination, workplace harassment, workplace intimidation, sexual assault, or sexual harassment.

- (2) **Higher Standard.** Managers/supervisors are held to a higher standard and are expected to be proactive in creating and maintaining a discrimination and harassment free workplace. Managers/supervisors must exercise appropriate measures to prevent and promptly correct any discrimination, workplace harassment, workplace intimidation, sexual assault, or sexual harassment they know about or should know about.
- (3) **Designated Individual.** Each agency shall designate an individual and an alternate who are responsible for receiving reports of prohibited conduct under this policy (discrimination, workplace harassment, sexual harassment, sexual assault, workplace intimidation or employment or settlement agreements containing prohibited provisions) occurring within the agency. Each agency must notify employees of who the agency designated individual and alternate are any time it is required to provide a copy of the Discrimination and Harassment Free Workplace policy to employees under this policy or whenever a new designated individual or alternate is selected. Agencies must inform the DAS Chief Human Resources Office (CHRO) who the agency has selected as the designated individual and alternate. CHRO will maintain a list of these individuals.
- (4) **Reporting.** Anyone who is subject to or aware of what they believe to be discrimination, workplace harassment, workplace intimidation, sexual harassment, sexual assault, or related employment or settlement agreements containing prohibited provisions should report that behavior to the designated individual or alternate.

Those individuals making a report of what they believe to be discrimination, workplace harassment, workplace intimidation, sexual harassment or sexual assault may also report that behavior to their immediate supervisor, another manager, or the agency, board, or commission human resources section, executive director, chair, or DAS CHRO.

A report of discrimination, workplace harassment, sexual harassment, workplace intimidation, or sexual assault is considered a complaint. Any supervisor or manager, or the agency, board, or commission human resources section, executive director, or chair receiving a complaint should promptly notify the agency's designated individual or alternate.

Upon receipt of a report of prohibited discrimination, workplace harassment, sexual harassment, workplace intimidation, or sexual assault, the designated individual or alternate shall provide a copy of this policy to the employee. The designated individual and alternate shall maintain appropriate records of all complaints.

- (a) A complaint may be made orally or in writing.
- (b) An oral or written complaint should contain all of the following:
- (A) The name of the complainant and the name of the person that was subjected to the discrimination, workplace harassment, sexual harassment, workplace intimidation, or sexual assault if they are not the same person.
 - (B) The names of all parties involved, including witnesses.
 - (C) A specific and detailed description of the conduct or action the employee believes constitutes discrimination, workplace harassment, sexual harassment, workplace intimidation or sexual assault.

(D) The date or time period in which the alleged conduct occurred.

(E) A description of the desired remedy.

(c) A report should be made to the designated individual within five (5) years of the occurrence; however, failure to report within five years does not remove the agency's responsibility for coordinating and conducting an investigation.

(5) Other Reporting Options.

(1) Nothing in this policy prevents any person from filing a formal grievance in accordance with a CBA; a formal complaint with the Bureau of Labor and Industries (BOLI) or the Equal Employment Opportunity Commission (EEOC); or if applicable, the U.S. Department of Labor (USDOL) Civil Rights Center. However, some CBAs require an employee to choose between the complaint procedure outlined in the CBA and filing a BOLI or EEOC complaint.

(2) A complaint filed with BOLI alleging an unlawful employment practice as described in ORS 659A.030, 659A.082 to 659A.865, 659A.112 or section 2 of SB726 (2019) must be filed no later than five years after the occurrence of the alleged unlawful employment practice.

(3) Nothing in this policy prevents any person from seeking remedy under any other available law, whether civil or criminal.

(4) An employee or claimant must provide advance notice of claim against the employer as required by ORS 30.275.

(6) Filing a report with the U.S. Department of Labor (USDOL) Civil Rights Center. An employee whose agency receives federal financial assistance from the U.S. Department of Labor under the Workforce Innovation and Opportunity Act, Mine Safety and Health Administration, Occupational Safety and Health Administration, or Veterans' Employment and Training Service, may file a complaint with the State of Oregon Equal Opportunity Officer or directly through the USDOL Civil Rights Center. The complaint must be written, signed and filed within 180 days of when the alleged discrimination or harassment occurred.

(7) Investigation. The agency designated individual or alternate will notify the agency, board, or commission human resources section, executive director, or chair, or the DAS Chief Human Resources Office as applicable, to coordinate and conduct, or delegate responsibility for coordinating and conducting, an investigation.

(a) All complaints will be taken seriously and an investigation will be initiated as quickly as possible.

(b) The agency, board or commission may need to take steps to ensure employees are protected from further potential discrimination or harassment.

(c) To the extent possible, the agency will handle complaints in a discreet and confidential manner.

(d) All parties are expected to cooperate with the investigation and keep information regarding the investigation confidential.

- (e) The agency, board, or commission will notify the accused and all witnesses that retaliating against a person for making a report of discrimination, workplace harassment, sexual harassment, workplace intimidation or sexual assault will not be tolerated.
- (f) The agency, board, or commission will notify the complainant and the accused when the investigation is concluded.
- (g) Immediate and appropriate action will be taken if a complaint is substantiated.
- (h) The agency, board, or commission will inform the complainant if any part of a complaint is substantiated and action has been taken. The complainant will not be given the specifics of the action.
- (i) The complainant and the accused will be notified by the agency, board, or commission if a complaint is not substantiated.
- (j) Unless the victim has signed a waiver of the employer's responsibility to conduct follow up contacts with the victim, the employer shall follow up with the victim of the alleged workplace harassment once every three months for the calendar year following the date on which the employer received a report of workplace harassment to determine whether the alleged harassment has stopped or if the victim has experienced retaliation.

(8) Documentation.

- (A) Any of the individuals or entities outlined in (1)(4) that receive reports of discrimination, workplace harassment, workplace intimidation, sexual harassment, sexual assault, or related employment or settlement agreements containing prohibited provisions must document such reports.
- (B) Any supervisor, manager or employee who observes or experiences what they believe to be incidents of discrimination, workplace harassment, workplace intimidation, sexual harassment, or sexual assault should also document such incidents.
- (C) Agencies must maintain records of workplace harassment including:
 - i. The date of the incident.
 - ii. The date the complaint was received by the designated individual or alternate.
 - iii. The dates the investigation was started and closed.
 - iv. The investigation report.
 - v. The outcome of the investigation and any actions taken by the agency.
 - vi. The dates the agency followed up with the victim, or a signed waiver of the employer's responsibility to conduct follow up contacts with the victim.

(9) Penalties. Conduct in violation of this policy will not be tolerated.

- (a) Employees engaging in conduct that violates this policy may be subject to disciplinary action up to and including dismissal.
- (b) State temporary employees and volunteers who engage in conduct that violates this policy may be subject to termination of their working or volunteer relationship with the agency, board, or commission.
- (c) An agency, board, or commission may be liable for discrimination, workplace harassment, sexual harassment, workplace intimidation, or sexual assault if it knows of or should know of conduct in violation of this policy and fails to take prompt, appropriate action.

- (d) Managers and supervisors who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action may be subject to disciplinary action up to and including dismissal.

(10) Prohibited employment or settlement agreements.

(A) Agencies may not require, coerce, or enter into an agreement with an employee or prospective employee, as a condition of employment, continued employment, promotion, compensation or the receipt of benefits, that contains a nondisclosure provision, a non-disparagement provision or any other provision that has the purpose or effect of preventing the employee from disclosing or discussing conduct that:

- i. Constitutes discrimination prohibited by ORS 659A.030, including conduct that constitutes sexual assault; or
- ii. Constitutes discrimination prohibited by ORS 659A.082 or 659A.112; and(b)(A) That occurred between employees or between an employer and an employee in the workplace or at a work-related event that is off the employment premises and coordinated by or through the employer; or
- iii. Occurred between an employer and an employee off the employment premises.

(B) Exceptions:

- i. An agency may enter into a settlement, separation or severance agreement that includes one or more of the following, only when an employee claiming to be aggrieved by conduct described under section (10)(A) of this policy requests to enter into the agreement:
 1. A provision described in section (10)(A) of this policy;
 2. A provision that prevents the disclosure of factual information relating to a claim of discrimination or conduct that constitutes sexual assault; or
 3. A no-rehire provision that prohibits the employee from seeking re-employment with the employer as a term or condition of the agreement.
- ii. An agreement entered into under subsection (i) of this section must provide the employee at least seven days after executing the agreement to revoke the agreement.
- iii. The agreement may not become effective until after the revocation period has expired.
- iv. If an employer makes a good faith determination that an employee has engaged in conduct prohibited by ORS 659A.030, including sexual assault, conduct prohibited by ORS 659A.082 or 659A.112, or conduct prohibited by this section, the employer may enter into a settlement, separation or severance agreement that includes one or more of the following:
 1. A provision described in section (10)(A) of this policy;
 2. A provision that prevents the disclosure of factual information that relates to a claim of discrimination or conduct that constitutes sexual assault; or
 3. A no-rehire provision that prohibits the employee from seeking re-employment with the employer as a term or condition of the agreement.
- v. For violations that occur after October 1, 2020, an employee may file a complaint under ORS 659A.820 for violations of this section and may bring a civil action under ORS 659A.885 and recover relief as provided by ORS 659A.885(1) to (3).
- vi. This section does not apply to an employee who is tasked by law to receive confidential or privileged reports of discrimination, sexual assault or harassment.

- (11) A victim of workplace harassment may voluntarily disclose information regarding an incident of workplace harassment that involves the victim.
- (12) **Resources.** Individuals who believe they are the victim of workplace harassment should contact their immediate supervisor, another manager, or the agency, board, or commission human resources section, executive director, or chair, or the DAS Chief Human Resources Office for information related to legal resources, counseling, and support services, including the employee assistance program.
- (13) **Retaliation.** This policy prohibits retaliation against anyone who files a complaint, participates in an investigation, or reports observing discrimination, workplace harassment, workplace intimidation, sexual assault, or sexual harassment.
- (a) Anyone who believes they have been retaliated against because they filed a complaint, participated in an investigation, or reported observing discrimination, workplace harassment or sexual harassment, should report this behavior to the employee's supervisor, another manager, or the agency, board, or commission human resources section, executive director, or chair, or the DAS Chief Human Resources Office as applicable. Complaints of retaliation will be investigated promptly.
- (b) Employees who violate this policy by retaliating against others may be subject to disciplinary action, up to and including dismissal.
- (c) State temporary employees and volunteers who retaliate against others may be subject to termination of their working or volunteer relationship with the agency, board, or commission.
- (14) **Policy Notification.**
- (A) An employer shall:
- i. Make the policy available to employees within the workplace;
 - ii. Provide a copy of the policy to each employee at the time of hire and in any orientation materials provided to the employee at the time of hire; and
 - iii. Require any supervisor or individual who is designated by the employer to receive complaints to provide a copy of the policy to an employee at the time that the employee discloses information regarding prohibited discrimination, harassment, intimidation or sexual assault.
- (B) All employees including board/commission members, state temporary employees, and volunteers shall:
- i. Be required to complete harassment and discrimination training upon their initial hire or appointment, and annually thereafter.
 - ii. Be given directions to read the policy.
 - iii. Be provided an opportunity to ask questions and have their questions answered. Questions regarding this policy may be directed to the employee's immediate supervisor, another manager, or the agency, board, or commission human resources section, executive director, or chair, or the DAS Chief Human Resources Office as applicable.
- Sign an acknowledgement indicating the employee has read the policy and had the opportunity to ask questions. The agency, board or commission must keep signed acknowledgements on file, or use an electronic acknowledgment system to comply with this requirement.