

SUBJECT: Discrimination and Harassment Free Workplace

NUMBER: 50-010-01

DIVISION: Chief Human Resources Office

EFFECTIVE DATE: 4/6/18

APPROVED: Signature on file with 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; 659A.029; 659A.030; 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, volunteers, and others working in an agency, unless this policy conflicts with an agency's collective bargaining agreement.

ATTACHMENTS:

None

DEFINITIONS:

See also State HR Policy 10.000.01, Definitions; and OAR 105-010-0000

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 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, chair, or 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.

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.

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 on behalf of 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.

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: Sexual harassment is 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.

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

Harassment 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 harassing behavior 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:

(1) Oregon state government 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.

(a) Discrimination, Workplace Harassment and Sexual Harassment. Oregon state government provides a work environment free from unlawful discrimination or workplace harassment 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 or sexual harassment.

(b) 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 or sexual harassment they know about or should know about.

(c) Reporting. Anyone who is subject to or aware of what they believe to be discrimination, workplace harassment or sexual harassment should report that behavior to their immediate supervisor, another manager, or the agency, board, or commission Human Resources section, Executive Director, Chair, or DAS Chief Human Resources Office as applicable. A report of discrimination, workplace harassment or sexual harassment is considered a complaint. A supervisor or manager receiving a complaint should promptly notify the Human Resources section, Executive Director or Chair, as applicable.

(A) A complaint may be made orally or in writing.

(B) An oral or written complaint should contain the following:

(i) the name of the complainant and the name of the person that was subjected to the discrimination or harassment if they are not the same person;

(ii) the names of all parties involved, including witnesses;

(iii) a specific and detailed description of the conduct or action that the employee believes is discriminatory or harassing;

(iv) the date or time period in which the alleged conduct occurred; and

(v) a description of the desired remedy.

(d) Other Reporting Options. 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 United States 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.

- (e) **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 (WIOA), Mine Safety and Health Administration (MSHA), Occupational Safety and Health Administration (OSHA), Veterans' Employment and Training Services (VETS), 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.
- (f) **Investigation.** The agency, board, or commission Human Resources section, Executive Director, or Chair, or DAS Chief Human Resources Office as applicable, will 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) Complaints will be dealt with in a discreet and confidential manner, to the extent possible.
 - (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 or sexual harassment 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.
- (g) **Penalties.** Conduct in violation of this policy will not be tolerated.
- (A) Employees engaging in conduct in violation of this policy may be subject to disciplinary action up to and including dismissal.
 - (B) State temporary employees and volunteers who engage in conduct in violation of 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 or sexual harassment 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.

- (E) An employee who engages in harassment of other employees while away from the workplace and outside of working hours may be subject to the provisions of this policy if that conduct has a negative impact on the work environment and/or working relationships.
- (F) If a complaint involves the conduct of a contracted employee or a contractor, the agency, board, or commission Human Resources section, Executive Director, Chair, or designee must inform the contractor of the problem behavior and require prompt, appropriate action.
- (G) If a complaint involves the conduct of a client, customer or visitor, the agency, board or commission should follow its own internal procedures and take prompt, appropriate action.
- (h) Retaliation.** This policy prohibits retaliation against anyone who files a complaint, participates in an investigation, or reports observing discrimination, workplace harassment 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, the Human Resources section, the Executive Director, or the Chair, 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.
- (i) Policy Notification.** All employees including board/commission members, state temporary employees and volunteers shall:
 - (A) be required to complete harassment and discrimination training upon their initial hire or appointment, and annually thereafter
 - (B) be given a copy or the location of Statewide Policy 50.010.01, Discrimination and Harassment Free Workplace
 - (C) be given directions to read the policy
 - (D) 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 DAS Chief Human Resources Office as applicable
 - (E) sign an acknowledgement indicating the employee 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.