

DAS DEPARTMENT OF ADMINISTRATIVE SERVICES STATEWIDE POLICY	NUMBER 50.010.01	SUPERSEDES 50.010.01 01/01/2022
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	Division Chief Human Resources Office	Authority ORS 174.100, 240.086(1); 240.145(3); 240.250; 240.316(4); 240.321; 240.555; 240.560; 659A.375; 243.317, 243.319; 243.321; 659A.029; 659A.030, 659A.082 and 659A.112; Title VII; Civil Rights Act of 1964;; Rehabilitation Act of 1973; Employment Act of 1967; Americans with Disabilities Act of 1990; and 29 CFR §37.
Policy Owner CHRO Policy Unit		
SUBJECT Discrimination and Harassment Free Workplace	APPROVED SIGNATURE 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.

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, sexual harassment, or sexual assault 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. A complainant does not have to be the person harassed but could be a person affected by the offensive conduct.

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, sexual 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.

Gender Identity: an individual's gender-related identity, whether or not that identity is different from that traditionally associated with the individual's assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.

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

Manager and Supervisor: Those who supervise or have authority or influence to affect employment decisions.

Non-Disclosure Agreement: Any agreement by which one or more parties agree not to discuss or disclose information regarding any complaint of work-related harassment, discrimination or sexual assault, including the amount or terms of a settlement.

Non-Disparagement Agreement: Any agreement by which one or more parties agree not to discredit or make negative or disparaging written or verbal statements about any other party or the agency.

No-Rehire Provision: An agreement that prohibits an employee from seeking reemployment with the agency and allows a state agency to not rehire that individual in the future.

Protected Class Under Federal Law: Race; color; national origin; sex (includes pregnancy- related conditions); religion; age (40 and older); disability; sexual orientation; gender identity; 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 or Paid Leave Oregon; marital status; family relationship; whistleblower; expunged juvenile record; and any other protected class as defined by state law.

Respondent: An individual against whom a complaint is filed against.

Sexual Harassment: A form of workplace harassment and includes, but is not limited to, the following types of conduct:

- Unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature when such conduct is directed toward an individual because of that individual's sex and submission to such conduct is made either explicitly or implicitly a term or condition of employment; or submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.
- Unwelcome verbal or physical conduct that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating or offensive working environment.

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. (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: All property and facilities owned, leased, rented or otherwise occupied by the Oregon state government including grounds, buildings, parking structures and lots, vehicles and other equipment and any site where an employee enters on behalf of the employee's employment with Oregon state government, including an agency-sponsored off-site event, traveling on behalf of the agency.

Workplace Harassment: Conduct that is unwelcome, unwanted, or offensive and based on or because of an employee's protected class status.

Workplace harassment may occur between a manager or supervisor and a subordinate, between employees, and between non-employees and employees when the non-employees have business contact with employees.

Workplace harassment can be based on national origin, age, sex, race, disability, religion, sexual orientation, gender identity or gender expression. It may also encompass other forms of unwelcome, hostile, intimidating, threatening, humiliating or violent behavior that is not necessarily illegal, but still prohibited by this policy.

Examples of harassment 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 and harassment free work environment. This policy outlines types of prohibited conduct and procedures for reporting and investigating prohibited conduct.

- (1) **Discrimination and workplace harassment (discrimination), sexual harassment and sexual assault.**
Oregon state government provides a work environment free from unlawful discrimination and workplace harassment on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, age, expunged juvenile record, performance of duty in a uniformed service or physical or mental disability, or any other characteristic protected by local law, regulation or ordinance.

All employees, including limited duration and temporary employees, board and commission members, elected officials, volunteers, interns, others working in an agency and prospective employees are

entitled to a respectful and productive work environment free from behavior, action or language that constitutes workplace harassment, discrimination, sexual harassment and sexual assault.

Any conduct at work that a reasonable person in the individual's circumstances would consider unwelcome, intimidating, hostile, threatening, violent, abusive or offensive is prohibited. Employment actions, including hiring, promotion, termination and compensation decisions based on a protected class is also prohibited.

The following examples, while not all inclusive, represent prohibited behavior based on an individual's protected class status:

- Physical harassment, including but not limited to unwelcome physical contact such as touching, impeding or blocking movement, or any physical interference with work.
- Verbal harassment, including but not limited to disparaging or disrespectful comments, jokes, slurs, innuendoes, teasing and other sexual talk such as jokes, persistent unwanted advances and derogatory insults.
- Nonverbal harassment, including but not limited to suggestive or insulting sounds, obscene gestures, leering or whistling.
- Visual harassment, including but not limited to displays of explicit or offensive calendars, circulation of derogatory content, posters, pictures, drawings or cartoons.
- Sexual harassment, including but not limited to unwelcome sexual advances, requests for favors in exchange for conduct of a sexual nature, submission to unwelcome conduct of a sexual nature in exchange for a term of employment, or other conduct of a sexual nature.

(2) **Higher standard.** Managers and 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 without avoidable delay any discrimination, workplace harassment, workplace intimidation, sexual assault or sexual harassment they know about or should know about.

(3) **Designated individual.**

- (a) 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 or employment or settlement agreements containing prohibited provisions) occurring within the agency.
- (b) 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.
- (c) 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, sexual harassment, sexual assault, or related employment or settlement agreements containing prohibited provisions should document and report that behavior to the designated individual or alternate.

Those individuals making a report of what they believe to be discrimination, workplace harassment, 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 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 shall document the complaint and promptly notify the agency's designated individual or alternate.

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

- (a) A complaint may be made verbally or in writing.
- (b) A verbal or written complaint should contain the following:
 - (A) The name of the complainant and the name of the person that was subjected to the discrimination, workplace harassment, sexual harassment or sexual assault if they are not the same person.
 - (B) The names of all parties involved and any 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.
- (d) Unless the employee subjected to the alleged harassment has signed a waiver of the employer's responsibility to conduct follow up contacts with the employee, the employer shall follow up with the employee of the alleged workplace harassment once every three (3) months for the twelve (12) calendar months following the date of which the employer received a report of workplace harassment to determine whether the alleged harassment has stopped or if the employee subjected to the alleged harassment has experienced retaliation. The follow up contact applies regardless of the outcome of the investigation.

(5) Other reporting options.

- (a) 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.

- (b) A complaint filed with BOLI alleging an unlawful employment practice as described under this policy must be filed no later than five years after the occurrence of the alleged unlawful employment practice.
- (c) Nothing in this policy prevents any person from seeking remedy under any other available law, whether civil or criminal.
- (d) 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) **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 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.

(8) **Prohibited employment or settlement agreements.**

- (a) Agencies shall not require a former, current or prospective employee to enter into any agreement if the purpose or effect of the agreement prevents the employee from disclosing or discussing conduct constituting discrimination, harassment, sexual harassment or sexual assault.

- (b) An employee claiming to be aggrieved by discrimination, harassment, sexual harassment or sexual assault may, however, voluntarily request to enter into a settlement, separation, or severance agreement which contains a non-disclosure, non-disparagement, or no-rehire provision and will have at least seven days to revoke any such agreement. The agency shall not offer a settlement on the condition of a request for these terms.
- (9) An employee subjected to alleged workplace harassment may voluntarily disclose information regarding an incident of workplace harassment that involves the employee subjected to the alleged harassment.
- (10) **Resources.** Individuals who believe they are the subject 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.
- (11) **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, sexual harassment, or sexual assault 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.
- (12) **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, sexual harassment or sexual assault.

- (b) All employees including board and 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.