



<b>Approved by:</b> Juan Williams, Commissioner	<b>Policy Number:</b> 12-008 (Rev. 01/10/20)
<b>Signature:</b> 	<b>Supersedes:</b> 11-009, 10-021
<b>Application:</b> Executive Branch Agencies, All Employees	<b>Effective Date:</b> October 3, 2012
<b>Authority:</b> T.C.A. § 4-3-1703, T.C.A. § 4-21-101, T.C.A. § 8-30-104, T.C.A. § 8-50-104	<b>Rule:</b> Chapter 1120-07

## Workplace Discrimination and Harassment<sup>1</sup>

The State of Tennessee is firmly committed to the principle of fair and equal employment opportunities for its citizens and strives to protect the rights and opportunities of all people to seek, obtain, and hold employment without being subjected to illegal discrimination and harassment in the workplace. It is the State's policy to provide an environment free of discrimination and harassment of an individual because of that person's race, color, national origin, age (40 and over), sex, pregnancy, religion, creed, disability, veteran's status or any other category protected by state and/or federal civil rights laws.

### Definitions

#### A. *Workplace Discrimination and Harassment*

This policy prohibits unequal and unlawful treatment of an individual on the basis of a person's race, color, national origin, age (40 and over), sex, pregnancy, religion, creed, disability, or veteran's status or any other category protected by state and/or federal civil rights laws. This policy further prohibits 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 race, color, national origin, age (40 and over), sex, pregnancy, religion, creed, disability, or veteran's status or any other category protected by state and/or federal civil rights laws.

To aid employees in identifying prohibited behavior, the following specific examples of workplace discrimination and harassment are provided. These examples are not exhaustive; they illustrate, however, the types of conduct that violate this policy:

<sup>1</sup> While the State of Tennessee is committed to the principles embodied in this policy, the policy itself is not intended to state contractual terms and does not constitute a contract between the State and its employees, applicants for employment, or parties who do business with the State. This policy supersedes all policies that conflict with the terms of this policy.

Furthermore, this statement constitutes ONLY the policy of the State of Tennessee. A finding violation of this policy does not mean that the conduct violates state and/or federal laws.

- Undermining a person's authority or work performance because of the person's protected characteristics, such as age or religion;
- Using stereotypes or assumptions to guide decision-making about a person's career;
- Unwelcome touching or near-touching, which can encompass leaning over, cornering, hugging, or pinching, sexual innuendos, teasing and other sexual talk such as jokes, personal inquiries, persistent unwanted courting and sexist put-downs;
- Slurs and jokes about a class of persons, such as disabled persons or a racial group;
- Distributing via electronic means epithets, 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;
- Display of explicit or offensive calendars, posters, pictures, drawings or cartoons that are sexually suggestive or that reflect disparagingly upon a class of persons or a particular person; or
- Derogatory remarks about a person's national origin, race, language, or accent.

*B. Hostile Work Environment*

Hostile work environment harassment occurs when a victim is subjected to severe or pervasive comments or conduct based on race, color, national origin, age (40 and over), sex, pregnancy, religion, creed, disability, veteran's status or any other category protected by state and/or federal civil rights laws; resulting in a work environment that a reasonable person would consider hostile. A hostile work environment may also be created by innuendoes, touching, electronic communications or other conduct.

*C. Sexual Harassment*

Sexual harassment involves any unwelcome sexual advance, request for sexual favors, or verbal, written, electronic, or physical conduct of a sexual nature by a manager, supervisor, co-worker, or non-employee (third party). Managerial harassment occurs when a manager or a supervisor gives or withholds a work-related benefit in exchange for sexual favors from the victim or takes an adverse action against an employee for refusing a request for sexual favors. In some circumstances, threatening to take such actions may also be a violation of this policy. Certain actions may also create a hostile work environment. (See the definition for "Hostile Work Environment" above.)

*D. Retaliation, Materially Adverse Action, and Protected Activity*

Retaliation occurs when any materially adverse action is taken against an individual because he or she has engaged in protected activity under this policy.

A materially adverse action is any action that may deter a reasonable person from engaging in protected activity under this policy.

Protected activity includes: filing or threatening to file complaint(s) or report(s) of discrimination or harassment; participating in any investigation concerning discrimination or harassment; or being associated or perceived to be associated with a person who initiates a complaint or participates in the

investigation of a complaint. Protected activity also includes making a request for a reasonable accommodation due to disability or religion.

*E. Interference*

Investigation interference is strictly prohibited under this policy. Interference is any action that would impact or compromise the integrity of a workplace discrimination investigation. Prohibited actions include, but are not limited to, actual or attempted threats, coercion, intimidation, and manipulation of witnesses or potential witnesses in an investigation.

*F. Third Parties*

Third parties are individuals who are not state employees but who have business interactions with state employees. Such individuals include, but are not limited to, customers, such as applicants for state employment or services, vendors, contractors, or volunteers.

**Conduct Prohibited by the State of Tennessee**

The State of Tennessee strictly forbids and will not tolerate discrimination or harassment of any employee, applicant for employment, or third party on the basis of an individual's race, color, national origin, age (40 and over), sex, pregnancy, religion, creed, disability, veteran's status or any other category protected by state and/or federal civil rights laws. The fact that an alleged offender meant no harm or was teasing will not excuse conduct that violates this policy.

The State of Tennessee strictly forbids and will not tolerate any form of retaliation or interference directed against an employee, applicant for employment, or third party who engages in protected activity under this policy.

**How to Report Incidents of Discrimination or Harassment**

If an employee, applicant for employment, or third party believes he/she has been subjected to discriminatory or harassing conduct that violates this policy, or observes conduct that violates this policy, he or she is encouraged to report those incidents as soon as possible after the event occurs.

Employees and applicants for employment may file a complaint with their department's human resources director, the department head, their supervisor(s), or any individual designated by the department to receive such reports. Under no circumstances is the individual alleging workplace discrimination or harassment required to file a complaint with the alleged offender. The individual may also contact the Department of Human Resources, Office of General Counsel, EEO Division, at [Workplace.Harassment@tn.gov](mailto:Workplace.Harassment@tn.gov).

Individuals who wish to file a complaint are encouraged, but are not required, to submit the complaint in writing and to include a description of the incident(s) as well as the date(s), time(s), place(s) and any witnesses. Individuals may also use the attached Intake/Referral Form to file complaints.

If a complaint involves an executive director, assistant commissioner, deputy commissioner, or the commissioner, an employee or applicant for employment may file the complaint directly with the Department of Human Resources, Office of General Counsel, EEO Division.

### **How to Report Retaliation and Interference Incidents**

If an employee, applicant for employment, or third party believes he/she has been subjected to retaliation or interference for engaging in protected conduct under this policy, or observes retaliation or interference, he/she is encouraged to report those incidents as soon as possible after the event occurs.

Any employee, applicant for employment, or third party who makes complaints of workplace discrimination or harassment or provides information related to such complaints will be protected against retaliation and interference. If retaliation or interference occurs, the employee, applicant for employment, or third party is encouraged to report the conduct in the same manner as he or she would report a workplace discrimination or harassment complaint.

Reports can be made using the attached Intake/Referral Form.

### **How Complaints are Investigated and Resolved**

It is the State's policy to promptly investigate allegations of workplace discrimination and harassment as defined by this policy. The affected department shall conduct a review of all reported complaints of workplace discrimination, harassment or retaliation/interference as soon as practicable. If possible, this review shall include an interview with the complainant to determine if the conduct at issue violates this policy. If the department determines that the conduct falls within the terms of this policy, the department shall conduct a thorough and neutral investigation, which includes an interview with the alleged offender (if possible) and any other witness(es) who have direct knowledge of the circumstances of the allegations. If the department determines that the conduct best falls within the terms of another policy, the department will review the complaint following the procedures established in that policy.

The department retains the sole discretion to determine whether a violation of this policy has occurred and to determine what level, if any, of disciplinary action is warranted.

If a complaint involves an executive level employee (such as an executive director, assistant commissioner, deputy commissioner, or commissioner), the Department of Human Resources, Office of General Counsel, EEO Division will investigate the complaint on behalf of the department and report the results to the appropriate agency or authority. The EEO Division may also investigate workplace discrimination and harassment complaints involving non-executive level employees, pursuant to an agreement between the department and the Department of Human Resources.

### **How Confidentiality is Treated**

To the extent permitted by law, the State will try to maintain the confidentiality of each party involved in a workplace harassment investigation, complaint or charge, provided it does not interfere with the department's ability to investigate the allegations or to take corrective action. However, state law may prevent the state from maintaining confidentiality of investigations. Therefore, the State does not guarantee confidentiality.

### **Directive to Supervisory Personnel**

Supervisory personnel who receive a complaint alleging workplace discrimination or harassment or learn by any means of conduct that may violate this policy must immediately report any such event to the department's human resources director, EEO officer or to the person designated by the agency to receive the information.

### **Corrective Action for Violation of this Policy**

Any employee who engages in conduct that violates this policy or who encourages such conduct by others will be subject to corrective action. Such corrective action includes, but is not limited to, mandatory participation in counseling, training, disciplinary action, up to and including termination, and/or changes in job duties or location.

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 participation in counseling, training, disciplinary action, up to and including termination, and/or changes in job duties or location.

All employees shall review and acknowledge this policy on an annual basis. Questions regarding this policy may be directed to the Office of the General Counsel.

**Attachment 1 – Employee Acknowledgement Form**

Workplace Discrimination and Harassment

**Employee Acknowledgement**

I, \_\_\_\_\_, hereby certify that I have received a copy of the Workplace Discrimination and Harassment policy. I understand that violation of this policy may subject me to discipline, up to and including termination.

\_\_\_\_\_  
Employee Signature\*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Human Resources Office Signature

\_\_\_\_\_  
Date

\* By acknowledging this policy via the Edison system, I agree that my acknowledgement is the equivalent to my handwritten signature.

**Attachment 2 - Intake/Referral Form**

**Statement Concerning Confidentiality**

Pursuant to Tennessee Code Annotated § 10-7-503(a)(2)(A), "all state . . . records . . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law." Accordingly, the State cannot and does not guarantee the confidentiality of this document or any notes, files, reports, or other documents, whether created by the State or received from the complainant, accused, or witnesses.

NAME OF COMPLAINANT OR PERSON REPORTING EVENT:

\_\_\_\_\_

EMAIL/TELEPHONE NUMBERS OF COMPLAINANT OR PERSON REPORTING EVENT:

EMAIL: \_\_\_\_\_

WORK: \_\_\_\_\_

PREFERRED: \_\_\_\_\_

NAME OF AGENCY AND DIVISION INVOLVED:

\_\_\_\_\_

NAME OF ACCUSED PERSON(S):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

RELATIONSHIP OF ALLEGED ACCUSED TO YOU (I.E. DIRECT SUPERVISOR, CO-WORKER):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



**DOHR Policy:**  
**Workplace Discrimination and Harassment**

**Policy Number:** 12-008  
(rev. 01/10/20)

EXPLAIN WHY YOU BELIEVE THESE EVENTS OCCURRED:

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WERE OTHER EMPLOYEES TREATED DIFFERENTLY THAN YOU? IF YES, DESCRIBE HOW:

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IF YOU ANSWERED YES TO THE PREVIOUS QUESTION, PLEASE PROVIDE THE NAMES OF THE EMPLOYEES WHO WERE TREATED DIFFERENTLY:

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PLEASE LIST BELOW ANY PERSONS (WITNESSES, FELLOW EMPLOYEES, SUPERVISORS, OTHERS) WHO MAY HAVE ADDITIONAL INFORMATION TO SUPPORT OR CLARIFY THIS COMPLAINT. EXPLAIN WHAT INFORMATION EACH CAN PROVIDE.

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WHAT EXPLANATION DO YOU THINK THE AGENCY OR ACCUSED WILL GIVE AS TO WHY YOU WERE TREATED IN THIS MANNER?

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PLEASE IDENTIFY ANY OTHER INFORMATION (INCLUDING DOCUMENTARY EVIDENCE SUCH AS DIARIES, JOURNALS, RECORDINGS, EMAILS, VOICEMAILS, CORRESPONDENCE, ETC.) THAT YOU THINK IS RELEVANT TO THIS MATTER.

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WHAT DO YOU WANT TO HAPPEN AS A RESULT OF THIS COMPLAINT?

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WOULD YOU BE OPEN TO PARTICIPATING IN MEDIATION WITH THE ACCUSED ABOUT THE INCIDENT(S)?

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SIGNATURE OF COMPLAINANT: \_\_\_\_\_

DATE: \_\_\_\_\_

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IF COMPLETED BY SUPERVISOR OR AGENT OF STATE AS A RESULT OF INTERVIEWING A COMPLAINANT,  
PLEASE PROVIDE THE FOLLOWING INFORMATION:

PRINTED NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

AGENCY AND/OR DIVISION: \_\_\_\_\_

WORK TELEPHONE NUMBER: \_\_\_\_\_

DATE COMPLAINT RECEIVED: \_\_\_\_\_

DATE FORM COMPLETED: \_\_\_\_\_

REASON FOR DELAY, IF ANY, BETWEEN THE DATE THE COMPLAINT WAS RECEIVED AND THE DATE THE  
FORM WAS COMPLETED:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

NAME AND TITLE OF PERSON TO WHOM THE FORM WAS FORWARDED FOR ACTION:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATE ON WHICH THE FORM WAS FORWARDED:

\_\_\_\_\_