

STATE OF HAWAII DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT POLICIES AND PROCEDURES	POLICY NO. 601.001	NO. of PAGES 8 2 Attachments
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TITLE: DISCRIMINATION/HARASSMENT-FREE WORKPLACE POLICY	APPROVED: <i>James K Nishimoto</i> James K. Nishimoto, Director	

I. POLICY

The State and its appointing authorities are committed to promoting and maintaining a productive work environment free of any form of discrimination or harassment based on a person’s protected class and retaliation for engaging in protected activity. The State and its appointing authorities do not tolerate workplace discrimination, harassment or retaliation and are required to and will take appropriate action when discrimination, harassment or retaliation occurs.

The State and its appointing authorities will act to curb protected class discrimination or harassment without regard to its severity or pervasiveness and does not require that discrimination or harassment rise to the level of unlawfulness before taking action. Every State employee is responsible for assuring that work in the Executive Branch is conducted in an atmosphere that respects the dignity of every State employee, and people with whom the State conducts business. State employees are expected to avoid behavior that could reasonably be perceived as discrimination or harassment prohibited under this Policy. In addition, State employees are expected to avoid retaliation against an individual who makes a complaint, participates in or provides information for an investigation relating to discrimination and/or harassment, or makes a request for reasonable accommodation.

A violation of this Policy may result in disciplinary action, up to and including termination, in accordance with applicable state laws, rules, policies, and collective bargaining agreements.

The State and its appointing authorities will also make reasonable accommodations upon request, if needed, to the extent required by law, for employees who are disabled, including pregnancy-related disabilities, breastfeeding or expressing, victims of sexual or domestic abuse, or for bona fide religious purposes. Any employee who believes he/she needs accommodation for any of these reasons should contact his/her manager, Departmental Human Resources Officer (or his/her designee), Departmental EEO or Civil Rights Compliance Officer, or the Executive Branch Equal Employment Opportunity Office (587-1162 or eeo@hawaii.gov). For reasonable accommodations related to disability, see Policy & Procedure 601.002, Reasonable Accommodations for Employees and Applicants with Disabilities.

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II. PURPOSE

The purpose of this Policy is to assure compliance with all federal and state laws and to prevent protected class-based discrimination and harassment and retaliation in the workplace.

This Policy is intended to protect all applicants for employment, employees, and individuals providing services to the State on a non-paid basis (e.g. volunteers or interns) from discriminatory or harassing conduct by employees or non-employees and to prevent employees from engaging in discriminatory or harassing conduct directed to any individual.

III. DEFINITIONS

“Discrimination” means any employment action taken because of a person’s protected class.

“Gender identity or expression” includes a person’s actual or perceived gender, as well as a person’s gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person’s sex at birth.

“Genetic information” includes information about an individual’s genetic tests and the genetic tests of an individual’s family members, as well as information about any disease, disorder, or condition of an individual’s family members (i.e. an individual’s family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

“Protected class” includes:

- race,
- color,
- sex, including gender identity or expression,
- sexual orientation,
- condition of pregnancy,
- act of breastfeeding or expressing milk,
- religion,
- national origin,
- ancestry,
- age,
- disability,

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- genetic information,
- marital or civil union status,
- arrest and court record (except as permitted by applicable laws),
- income assignment for child support,
- national guard absence,
- uniformed service,
- veteran status,
- citizenship (except as permitted by applicable laws),
- credit history or credit report (unless directly related to a bona fide occupational qualification),
- domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status, or
- any other classification protected under applicable state or federal laws.

"Retaliation" means an adverse action taken in response to or in an attempt to prevent an individual from engaging in protected activity.

- "Adverse action" means any action that is likely to dissuade a reasonable person from opposing protected class discrimination, including, but not limited to, employment actions such as termination, refusal to hire, and denial of promotion; other actions affecting employment such as threats, unjustified negative evaluations, unjustified negative references, or increased surveillance; and any other action such as an assault or unfounded civil or criminal charges that are likely to deter reasonable people from pursuing their rights.
- "Protected activity" means opposition to a practice believed to be unlawful discrimination, participation in an employment discrimination proceeding, or making a request for reasonable accommodation.
- There must be a causal connection between the adverse action and the protected activity, meaning that the adverse action was taken because of the protected activity. If there is a legitimate, non-retaliatory reason for the adverse action, it is will not be retaliation.

"Unlawful harassment" means any unwelcome behavior based on a person's protected class which is sufficiently severe or pervasive and has the purpose or effect of either unreasonably interfering with the person's work performance or creating an intimidating, hostile, or offensive work environment.

IV. SCOPE

This Policy applies to all employees and applicants in the Executive Branch under the jurisdiction of the Department of Human Resources Development,

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whether civil service or exempt employees, full-time or part-time employees, permanent or temporary employees.

V. PROHIBITED CONDUCT

- A. It is a violation of this Policy to engage in protected class discrimination or harassment. Protected class discrimination or harassment does not have to rise to the level of severe or pervasive conduct or unlawful discrimination to violate the Policy.
1. Protected class characteristics may not be used as a basis for taking employment action or making an employment decision that results in a significant change in benefits, or terms and conditions of employment.
 2. Harassing or offensive conduct directed at individuals based on protected class characteristics is prohibited under this Policy, and includes, but is not limited to:
 - a. Unwanted physical contact, sexually suggestive or offensive touching, patting, hugging, brushing against a person's clothing or body, or pinching;
 - b. Requests for sexual favors, threats or adverse actions for refusing sexual favors, threats or adverse actions for refusing a sexual advance, or promises of employment benefits in exchange for sexual favors;
 - c. Lewd descriptions, sexual jokes, comments about physical attributes, pressure for sexual activity, such as repeated and unwanted attempts at a romantic relationship, or sexually explicit questions;
 - d. Displays of demeaning or insulting objects, pictures, or photographs relating to any protected class;
 - e. Demeaning, insulting, or intimidating written, recorded, or electronically transmitted messages (such as email, text messages, voicemail, and Internet materials) relating to any protected class; and/or
 - f. Derogatory comments, slurs, jokes, profanity, anecdotes, and/or offensive questions based on or directed at any protected class.
- B. Retaliation is prohibited. Retaliation includes, but is not limited to, any adverse action taken in response to or in an attempt to prevent an individual from taking any of the following actions:

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1. Opposing a practice believed to be unlawful discrimination;
2. Participating in a complaint investigation or proceeding; or
3. Making a request for reasonable accommodation.

VI. PROCEDURES

A. REPORTING PROCEDURES

1. The State and its appointing authorities encourage employees to report discrimination, harassment, and/or retaliation, regardless of the identity of the alleged offender or whether the offender is an employee of the Executive Branch, before it becomes severe or pervasive so that steps may be taken to stop the offending behavior before it rises to the level of unlawful behavior.
2. Conduct that violates the Discrimination/Harassment-Free Workplace Policy should be reported to the employee's manager, the Departmental Human Resources Officer (or his/her designee), the Departmental EEO or Civil Rights Compliance Officer, or the Executive Branch Equal Employment Opportunity Office (587-1162 or eeo@hawaii.gov).
3. Anyone who observes or experiences discrimination, harassment or retaliation prohibited under this Policy is encouraged, if at all possible, to make it clear to the offender that he or she finds such behavior offensive. **Employees are not required, however, to make a complaint to the offender.**
4. A complaint or report may be made either orally or in writing and may be made using the Discrimination Complaint Form (see Attachment A). A complaint or report, whether oral or written, should include: name of the alleged offender(s), including position and department, if known, a summary of the offensive acts, the dates, times and places of the incidents, the names of witnesses to the events, desired remedy or relief and copies of documents, if any, that support the complaint or report.

B. CONFIDENTIALITY

The State and its appointing authorities will take appropriate steps to

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protect the confidentiality of discrimination, harassment and retaliation complaints, investigations, and reports, whether substantiated or unsubstantiated. However, complete confidentiality cannot be guaranteed and information regarding complaints, investigations and reports shall be shared with appropriate individuals and agencies on a “need to know” basis, with due consideration for the safety and security of individuals involved in the investigation.

C. RESPONSIBILITIES

1. Department Responsibilities

- a. In alignment with this Discrimination/Harassment-Free Workplace Policy, department or agency heads are responsible for developing and enforcing their own discrimination/harassment free workplace investigation and enforcement processes within their own departments or agencies.
- b. Should a conflict exist, this Discrimination/Harassment-Free Workplace Policy shall take precedence over all policies and/or procedures that are developed by the departments or agencies. This Policy does not prohibit departments or agencies from providing more protection than allowed under this Policy when it is required in conjunction with federal grants.
- c. Departments are responsible for assuring that all of its employees are provided a copy or have access to a copy of this Policy and for maintaining documentation that the Policy has been provided or made available to its employees. Attachment B to this Policy may be used as documentation.
- d. Departments shall forward a report of any and all complaints of discrimination, harassment or retaliation, whether made internally or to the Equal Employment Opportunity Commission or Hawaii Civil Rights Commission, to designated persons within their department or agency and, in addition, to the Executive Branch Equal Employment Opportunity Office.
- e. Departments are responsible for making sure all complaints are investigated promptly. Departments may take appropriate interim action while an

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investigation is pending, including placing an accused person on leave or temporarily in another position.

- f. If the Department finds that an employee violated the Discrimination/Harassment-Free Workplace Policy, the Department will take appropriate corrective action, up to and including termination of the employee, in accordance with applicable State laws, rules, policies, and collective bargaining agreements. If the person found to have violated the Policy is not employed by the State or its appointing authorities, other appropriate action shall be taken, including notice to the actual employer or prohibiting the person from the worksite.

2. Managers' and Supervisors' Responsibilities

- a. Managers and supervisors are responsible for maintaining a workplace free of harassment, discrimination and retaliation. Managers and supervisors who witness or receive reports of offending conduct shall take immediate and appropriate action to ensure any discriminatory behavior ceases, and shall forward all such reports to the designated persons within their department.
- b. Managers and supervisors, as assigned within their departments, shall investigate complaints of alleged violations of this Policy in a fair and impartial manner.

3. Employee Responsibilities

- a. Employees are expected to conduct themselves appropriately while at work and during work-related functions and refrain from any acts of discrimination, harassment based on a person's protected class or retaliation for engaging in a protected activity.
- b. Employees who experience or observe any conduct that violates this Policy, have a responsibility to report the incident(s) in order to correct and prevent unlawful harassment, discrimination or retaliation.

D. REFERRING COMPLAINTS TO EXTERNAL AGENCIES

1. In addition to the procedures described above, employees may make complaints about discrimination, harassment, or retaliation in the workplace to other appropriate agencies, including but not limited to, the federal Equal Employment

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Opportunity Commission (www.eeoc.gov) and the Hawai'i Civil Rights Commission (<http://labor.hawaii.gov/hcrc>).

2. Employees wishing to file complaints with other agencies should contact that agency to obtain information on their specific procedures and should not wait for resolution of a complaint made to the employer. Agencies may have time limitations for filing complaints. For example, complaints of unlawful discriminatory practices must be filed with the Hawai'i Civil Rights Commission no later than one hundred eighty (180) days after the discriminatory practice has occurred or with the Equal Employment Opportunity Commission no later than three hundred (300) days from the date: (1) the alleged unlawful discriminatory act occurred; or (2) the last occurrence in a pattern of ongoing discriminatory conduct.

VII. AUTHORITIES AND REFERENCES

Title VII of the Civil Rights Act of 1964 as amended

The Pregnancy Discrimination Act

The Age Discrimination in Employment Act of 1967

The Equal Pay Act of 1963

Titles I and II of the Americans with Disabilities Act of 1990 as amended

Sections 102 and 103 of the Civil Rights Act of 1991

Sections 503 and 504 of the Rehabilitation Act of 1973

The Genetic Information Nondiscrimination Act of 2008

The Immigration Reform and Control Act of 1986

Chapter 378, Hawaii Revised Statutes

VIII. ATTACHMENTS

Attachment A: Discrimination Complaint Form, HRD Form 613

Attachment B: Discrimination/Harassment-Free Workplace Policy Acknowledgment Form