

	DEPARTMENT OF PUBLIC SAFETY DEPARTMENT ADMINISTRATION POLICY AND PROCEDURES	EFFECTIVE DATE: APR 7 2011	POLICY NO.: ADM.03:13
		SUPERSEDES (Policy No. & Date): ADM.03.13 of 2/2/2005	
SUBJECT: DISCRIMINATION AND HARASSMENT IN EMPLOYMENT		Page 1 of 9	

1.0 PURPOSE

To provide guidance for the Americans with Disabilities Act and Title VII of the Civil Rights Act of 1964; the interpretation and assignment of responsibility for the prohibition of harassment or discrimination based on sex, race, religion, ancestry/national origin, color, disability, sexual orientation, age, marital status, income assignment for child support, national guard participation, arrest and court record, uniformed service, citizenship status, breastfeeding, credit history/report, and genetic information.

2.0 REFERENCES AND DEFINITIONS

.1 References

- a. Title VII of the Civil Rights Act of 1964, as amended.
- b. Omni Crime Control and Safe Street Act of 1968, (42 U.S.C s 3789d©(1)).
- c. Section 504 of the Rehabilitation Act, (29 U.S.C. s 794).
- d. Title II of the Americans with Disabilities Act of 1990, as amended.
- e. Age Discrimination Act of 1967, as amended.
- f. Department of Public Safety (PSD) Affirmative Action Plan, 2003-2004.
- g. Applicable sections of the collection bargaining agreements that pertain to discrimination.
- h. State of Hawaii Personnel Rules, Title 14, Subtitle 1, 14-1-8 Equal Employment Opportunity.
- i. Hawaii Fair Employment Practices Laws, Chapter 378, HRS.

.2 Definitions

- a. **Discrimination.** Unfair treatment of a person or a group, usually because of prejudice about race, gender, age, religion or another protected class.
- b. **Unlawful Harassment.** Unwelcome or unsolicited speech or conduct based on a protected category.

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- c. Complainant: An employee, volunteer, applicant, or visitor who makes a report of discrimination and/or unlawful harassment.
- d. Respondent: An employee, volunteer, applicant, or visitor accused of discrimination and/or unlawful harassment.
- e. Retaliation: Adverse treatment of an employee, volunteer, applicant, or visitor because they report discrimination and/or harassment, or provide information related to such complaint.
- f. Sexual Harassment: Unwanted sexual advances or offensive visual/verbal/physical conduct of a sexual nature.
- g. Third Party Harassment: Allows a third party to file harassment charges based on a protected class when they witness an act of harassment perpetrated on another and can demonstrate that the act of harassment created a hostile or intimidating work environment.
- h. Hostile Work Environment: Unwelcome comments or conduct based on sex, race or other legally protected characteristics unreasonably interferes with an employee's work performance or creates an intimidating, hostile or offensive working environment.
- i. Reasonable Person's Standard: The perception of the victim takes precedence over the intention of the accused. Therefore, illegal harassment should be analyzed from a reasonable person's perspective.

A hostile work environment incident that does NOT meet the preceding criteria is not within the scope of the CRCO and shall be administered through your chain of command. The CRCO shall complete the investigation into this incident when it is identified during a discrimination complaint investigation.

Examples of such a hostile work environment are favoritism, management style, and personality conflict.

3.0 POLICY

- .1 It is the policy of the PSD that every employee shall treat every other employee, volunteer, applicant, and visitor with respect. Mutually respecting our differences will help foster an atmosphere free of discrimination and/or harassment.

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- .2 Discrimination and harassment of employees and volunteers of the PSD are prohibited and shall not be tolerated or condoned by the Department. Employees or volunteers of the Department engaged in such activity of discrimination or harassment may be subject to corrective action up to and including immediate discharge.
 - a. Departmental managers, supervisors and employees shall create and promote a positive working atmosphere that is free of discrimination and other factors that could create a hostile, offensive, or oppressive working environment on the basis of any protected category.
 - b. No employee or volunteer shall engage in an act of discrimination or harassment of any other employee, volunteer, applicant, or visitor. In turn, an act of discrimination or harassment of an employee or volunteer by an applicant and/or visitor is not acceptable and corrective measures shall be pursued.
- .3 Every employee or volunteer of the Department is mandated to carry out this policy in accordance with the provisions contained herein.

4.0 PROCEDURES

- .1 Employees or volunteers who feel that they have been or are being subjected to discrimination or un-welcomed harassment should immediately report such conduct to their supervisor or to the Civil Rights Compliance Office (CRCO) by completing PSD Form 0050, Discrimination Complaint Form. If the supervisor is the person responsible for this behavior, then such conduct shall be reported to the next higher supervisor or to the CRCO. The filing of a discrimination complaint is confidential.
- .2 Any employee or volunteer who witnesses what he/she knows to be discriminatory or harassing conduct, has a duty to report it to a supervisor.
- .3 Complaints filed with a supervisor shall be reported in writing up the chain of command by the supervisor receiving the report of discrimination or harassment. The supervisor shall call the CRCO for guidance and assistance, if necessary.
- .4 Investigation of the complaint:

The agency/facility/unit/work group shall send a copy of the complaint to the CRCO and conduct a preliminary investigation of a complaint whenever a complaint is filed with them. Further, the CRCO may refer case(s) to be

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investigated and shall also conduct initial and/or follow-up investigations of staff conduct within a reasonable period of time.

All completed agency/facility/unit/work group investigations are to be forwarded to the CRCO for review, follow-up, and/or disposition.

- a. Investigations shall be conducted with appropriate safeguards insuring discretion, confidentiality, and protection from embarrassment and to insure that the conduct is not repeated.
 - b. The objective of any specific investigation shall be to immediately cease any alleged discrimination or harassment actions while simultaneously compiling details to confirm the validity of the complaint. An alleged violator may be issued a cease and desist order, temporarily transferred to another shift or work site, or placed on a leave with or without pay pending investigation. Interaction with the PSD Labor Relations Unit is recommended to insure compliance with collective bargaining agreements.
 - c. Transcripts of taped interviews and findings and recommendations of the CRCO investigator shall document all investigations. These documents shall be submitted to the Director of PSD for approval and implementation of corrective actions through the Departmental Disciplinary process.
 - d. Appropriate corrective action up to and including discharge shall be taken as warranted.
 - e. The CRCO shall inform the complainant of the results of the investigation. In addition, the complainant will be informed to immediately report any recurring discrimination or harassment action.
- .5 These departmental procedures do not prohibit an employee or volunteer from filing discrimination or harassment complaints with the appropriate State or Federal agencies prior to filing an internal complaint or after the completion of the internal complaint.
 - .6 Employees and volunteers who feel they have been discriminated against or harassed, may file with the Department's CRCO within a reasonable period of time, preferably sixty (60) calendar days. The attached Discrimination Complaint form is to be used by the Complainant or superiors when filing an internal complaint.

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- a. To aid the CRCO investigation, submit copies of any and all relevant reports, memos, letters, etc. and a list of witnesses with their statements to support the claim.
 - b. Mail the completed form and documents to the CRCO at 919 Ala Moana Boulevard, Room 133, Honolulu, HI 96814, fax the documents to 587-3483, or send them through Inter-Office mail (PSD/CRCO).
 - c. If there are any questions regarding a complaint, call the CRCO at 587-1228.
- .7 The Federal Equal Employment Opportunity Commission and/or the Hawaii Civil Rights Commission may be contacted prior to filing an internal formal complaint if an employee would like to file the complaint outside of the Department.
- a. To file a complaint with the Equal Employment Opportunity Commission, the Complainant should contact them in writing or in person. The statute of limitations for filing under Title VII of the Civil Rights Act of 1964 is 300 calendar days from the date of the last incident.
 - b. To file a complaint with the Hawaii Civil Rights Commission, the Complainant should contact them in writing or in person. The statute of limitations for filing under state law is 180 calendar days.

5.0 DISCRIMINATION BY AGENCIES THAT RECEIVE FEDERAL FINANCIAL ASSISTANCE

The PSD receives Federal financial assistance for certain functions; therefore, the Department and all of its employees are subject to these employment practices. The Office of Justice Programs (OJP) and the Office of Community Oriented Policing Services (COPS) are two of the grant-making components within the United States Department of Justice. The Department of Justice, Civil Rights Division is the designated office responsible for enforcing the Federal civil rights laws that prohibit discrimination on the basis of race, color, and national origin.

- .1 Examples of actions that might be considered discriminatory are as follows:

In employment practices:

- a. A State agency has never hired a woman in its protective services division despite receiving applications from qualified women.
- b. A law enforcement agency refuses to make a sign language interpreter available to a deaf employee during staff meetings.

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c. An employee is mimicked and/or teased about his/her accent.

In delivery of services:

- a. A deputy sheriff stops and interrogates all Hispanic males driving through the airport.
- b. An office subcontracts a grant to an agency, which repeatedly denies employment to older persons.
- c. One of the correctional facilities changes its policy to allow only male visitors to the facility.
- d. A law enforcement agency and/or a correctional facility fail to provide direct access to 911 emergency telephone services for persons and/or inmates with hearing or speech impairments who use teletypewriter (TTY) equipment.

.2 Employees and the public have the right to file a complaint with the Department of Justice, Civil Rights Division. Employees may choose to file with PSD's CRCO.

6.0 **AMERICANS WITH DISABILITIES ACT (ADA)**

This anti-discrimination statute is designed to eliminate barriers, which prevent qualified individuals with disabilities from the same employment opportunities that are available to other applicants and to recognize that people with disabilities have the right to equal access to any state sponsored conferences, workshops, and other services, which are available to the public.

The law requires reasonable accommodation to be made for known physical or mental limitations of an otherwise qualified employee with a disability, unless the department can demonstrate that the accommodation would impose an undue hardship on the departmental operations.

A person with a disability means an individual who has a physical or mental impairment, which substantially limit one or more of the person's major life activities, has a record of such impairment, or is regarded as having such an impairment.

Major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, concentrating, and sleeping. Major life activities also include the operation of

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"major bodily functions, such as the immune system, normal cell growth, and the endocrine system.

The term "substantially limits" means considering the extent, duration, and impact of the impairment on a major life activity. The impairment must substantially limit a major life activity to be considered a disability. Impairments that are episodic or in remission are considered disabilities if the impairment would substantially limit a major life activity when the condition is considered in its active state.

A qualified person with a disability is an individual who with or without a reasonable accommodation can perform the essential functions of a particular job.

Reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things are usually done, to enable a qualified individual with a disability to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to a similarly situated employee without a disability.

Although an employee may request an accommodation, the department is required to provide only those accommodations that are reasonable. A reasonable accommodation is an individual matter. An accommodation is determined to be reasonable as long as it does not impose an "undue hardship" on the operation of the program or department. This is done on a case-by-case basis.

It is recommended that the CRCO be contacted whenever there is a situation regarding a person with a disability.

7.0 **RESPONSIBILITIES**

.1 Management

Under the Federal Equal Employment Opportunity Commission guidelines, management is responsible for its acts and those of its agents and supervisory employees with respect to discrimination or harassment regardless of whether the specific acts complained about were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of the occurrence, unless it can show that it took immediate and appropriate corrective action.

.2 Supervisor Responsibilities

- a. Managers and supervisors are responsible for maintaining a workplace free of unlawful harassment and discrimination. Managers and supervisors who

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witness or receive reports of harassment shall take immediate and appropriate action to ensure that the harassing behavior ceases.

- b. Failure by a manager or supervisor to maintain proper control over any discriminatory acts may be cause for disciplinary action against the manager or supervisor.

.3 Individual Responsibilities

Employees are expected to conduct themselves appropriately while at work and during work-related functions.

Employees who experience or observe any job-related harassment or discrimination or believe they have been treated improperly according to this policy and procedures have a duty and responsibility to report the incident(s) to their supervisor, manager, or the CRCO in order to correct and prevent any further impropriety.

8.0 NON-INTIMIDATION FOR REPORTING DISCRIMINATION/SEXUAL HARASSMENT

- .1 There shall be no intimidating, retaliating, threatening, coercing, or discriminating against an employee because he/she has filed a complaint, testified, assisted, or participated in any manner in any investigation, proceeding or hearing under the rights or privileges secured by Title VI, Title VII, and/or other regulations, including the State Whistleblower's Act.
- .2 Any improper act as noted above should be reported by the employee to the supervisor, the CRCO, or the Director. Persons found in violation of intimidating, retaliating, threatening, coercing, or discriminating will be subject to disciplinary action, which may include dismissal from employment.

9.0 VIOLATIONS AND CONSEQUENCES

Employees who violate this policy shall be subject to the terms and conditions of settlement agreements with the Federal Equal Employment Opportunity Commission and/or the Hawaii Civil Rights Commission. Corrective measures not covered by either commission shall be subject to the departmental disciplinary procedures.

Departmental discipline shall be designed to correspond with the severity of the offense.

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10.0 SCOPE

This policy applies to all employees, applicants, and volunteers of the Department.

APPROVAL RECOMMENDED:

Martha Turney
Deputy Director for Administration

April 4, 2011
Date

[Signature]
Deputy Director for Corrections

4/6/11
Date

[Signature]
Deputy Director for Law Enforcement

4/6/11
Date

APPROVED:

Jodie Maesaka-Ahata
Director

4/7/2011
Date



State of Hawaii
Department of Public Safety
Civil Rights Compliance Office

DISCRIMINATION COMPLAINT FORM

1. COMPLAINANT INFORMATION

Name: _____

Address: _____

Email Address: _____

Home Phone: _____ Business Phone: _____

2. COMPLAINANT STATUS (check applicable box)

Employee Job Title: _____ Branch/Facility: _____

Non-Employee specify whether: Applicant Inmate Other _____

3. ALLEGED DISCRIMINATION (check applicable box)

Race Color Sex Religion Age Marital Status Disability

National Origin/Ancestry Arrest/Court Record Sexual Orientation

Citizenship Status National Guard Service Uniformed Service Retaliation

Child Support Breast Feeding Sexual Harassment Credit History/Report

Genetic Information Pregnancy Other (specify) _____

4. COMPLAINT

Explain briefly, how and why you believe you were discriminated against. Be specific. Include names, dates, and places. To assist the Civil Rights Compliance Office in determining if unlawful discrimination has been committed, please provide any relevant reports, memos, letters, emails, etc. that may help support your complaint.

