

	<b>DEPARTMENT OF PUBLIC SAFETY</b>	<b>EFFECTIVE DATE:</b> <b>5/2/2023</b>	<b>POLICY NO.:</b> <b>ADM.03.13</b>
	<b>DEPARTMENT ADMINISTRATION  POLICY AND PROCEDURES</b>	<b>SUPERSEDES (Policy No. &amp;  Date):</b> <b>ADM.03.13 – 04/04/2011</b>	
	<b>SUBJECT:</b> <b>DISCRIMINATION AND HARASSMENT IN EMPLOYMENT</b>		<b>Page 1 of 12</b>

## 1.0 PURPOSE

To provide guidance for the prohibition of all forms of harassment in the workplace and to provide guidance for reporting complaints.

## 2.0 SCOPE

This statewide policy applies to all Department Law Enforcement Officers (LEOs). To the extent that any Department of Public Safety (PSD), Sheriff Division (SD), Narcotics Enforcement Division (NED) or Internal Affairs Office (IAO) policies or directives conflict with this statewide policy, ADM.03.13 shall take precedence. If any part of this policy is found to be in conflict with law or otherwise rendered invalid, the remainder of this policy shall be considered severable and remain in effect.

## 3.0 REFERENCES, DEFINITIONS & FORMS

### .1 References

- a. Title VII of the Civil Rights Act of 1964, as amended.
- b. Omni Crime Control and Safe Street Act of 1968, as amended.
- c. Section 504 of the Rehabilitation Act, (29 U.S.C. s 794).
- d. Title 11 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 collective bargaining agreements that pertain to discrimination.
- h. State of Hawaii Personnel Rules, Title 14, Subtitle 1, 14-1-8 Equal Employment Opportunity.

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- i. Hawaii Fair Employment Practices Laws, HRS §378.

.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.
- 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

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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 Forms

PSD 0050, Discrimination Complaint

**4.0 POLICY**

It is the policy of the PSD that discrimination and harassment of employees and volunteers are prohibited and shall not be tolerated or condoned by the Department. Employees or volunteers of the Department engaged in such activity may be subject to corrective action up to and including immediate discharge.

Every employee or volunteer of the Department is mandated to carry out this policy in accordance with the provisions contained herein.

**5.0 PROCEDURES**

.1 RESPONSIBILITIES

a. Civil Rights Compliance Office (CRCO)

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.

b. Supervisor Responsibilities

1. Managers and supervisors are responsible for maintaining a workplace free of unlawful harassment and discrimination. Managers and supervisors who witness or receive reports of

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harassment shall take immediate and appropriate action to ensure that the harassing behavior ceases.

2. Supervisors shall ensure compliance with this policy. All actions or inactions by supervisors will be examined to ascertain the extent of their efforts to control discriminatory behavior.
3. A supervisor who is aware of actions pertaining to discriminatory conduct in another element shall notify the respective commander (division level or higher) of the involved employee(s)
4. Supervisors shall take immediate action to stop on-view violations and report them to the Personnel Management Office (PMO).
5. It is the responsibility of all commanding officers and supervisors to take the necessary steps, including training and appropriate disciplinary action, to ensure and maintain an environment that is free from discrimination.
6. 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.

c. Individual Responsibilities

1. Employees are expected to conduct themselves appropriately while at work and during work-related functions.
2. Not be discriminatory in their activities or contact with employees, prospective employees, or members of the public.
3. Maintain an environment that promotes equal employment opportunities and prohibits discriminatory practices.
4. Be prohibited from engaging in conduct that is based upon discriminatory inferences or assumptions.
5. 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,

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or the CRCO in order to correct and prevent any further impropriety.

.2 Complaints

a. Members of the Public

1. Any member of the public who feels subjected to discrimination should make a complaint to the immediate supervisor of the alleged offender.
2. Complaints may also be reported directly to the department's Civil Rights Compliance Officer (CRCO), First Deputy, or Internal Affairs Office (IAO).
3. All complaints received by the PSD shall be immediately reported to the PMO either verbally or in writing.

b. Department Employees/Volunteers

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.

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.3 Investigation of the complaint:

- a. 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 investigated and shall also conduct initial and/or follow-up investigations of staff conduct within a reasonable period of time.
- b. All completed agency/facility/unit/work group investigations are to be forwarded to the CRCO for review, follow-up, and/or disposition.
  1. Investigations shall be conducted with appropriate safeguards ensuring discretion, confidentiality, and protection from embarrassment and to ensure that the conduct is not repeated.
  2. 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 ensure compliance with collective bargaining agreements.
  3. 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.
  4. Appropriate corrective action up to and including discharge shall be taken as warranted.
  5. 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.
- c. These departmental procedures do not prohibit an employee or volunteer from filing discrimination or harassment complaints with the

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appropriate State or Federal agencies prior to filing an internal complaint or after the completion of the internal complaint.

1. 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.
2. 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.
3. Mail the completed form and documents to the CRCO at 1177 Alakea Street, Honolulu, HI 96813, fax the documents to (808) 587-3483, or send them through Inter-Office mail (PSD/CRCO).
4. If there are any questions regarding a complaint, call the CRCO at (808) 587-1390.

d. 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.

1. 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.
2. 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.

.4 Disciplinary Actions

- a. PSD employees who engage in any discriminatory conduct are subject to disciplinary action up to and including termination.

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- b. Failure by a supervisor to stop any discriminatory conduct may be cause for disciplinary action.

.5 Discrimination By Agencies That Receive Federal Financial Assistance

- a. The PSD receives Federal financial assistance for certain functions; therefore, the Department and all of its employees are subject to these employment practices.

- b. 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:

- a) In employment practices:

- i) A State agency has never hired a woman in its protective services division despite receiving applications from qualified women.
- ii) A law enforcement agency refuses to make a sign language interpreter available to a deaf employee during staff meetings.
- iii) An employee is mimicked and/or teased about his/her accent.

- b) In delivery of services:

- i) A LEO stops and interrogates all Hispanic males driving through the airport.
- ii) An office subcontracts a grant to an agency, which repeatedly denies employment to older persons.

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- iii) One of the correctional facilities changes its policy to allow only male visitors to the facility.
- iv) 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 Americans With Disabilities Act (ADA)

- a. 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.
- b. 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.
- c. 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.
- d. Major life activities mean 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 "major bodily functions, such as the immune system, normal cell growth, and the endocrine system.
- e. The term "substantially limits" means considering the extent, duration, and impact of the impairment on a major life activity. The impairment

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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;

- f. 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.
  - g. 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.
  - h. 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.
  - i. It is recommended that the CRCO be contacted whenever there is a situation regarding a person with a disability.
- .7 Non-Intimidation For Reporting Discrimination/Sexual Harassment
- a. 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.
  - b. 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.

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.8 Training

- a. The commander of the Training Division (TSD) shall ensure that the content of this directive is incorporated into the basic recruit training curriculum, as well as provide in-service training regarding discrimination and/or related courses.
- b. PSD employees, including contract hires, volunteers, and interns, shall receive nondiscrimination training no later than 30 days from the first day of hire.
- c. Element commanders shall ensure that all in-service and roll call training is consistent with this policy.

.9 Violations And Consequences

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

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APPROVAL RECOMMENDED:



05/02/2023

Deputy Director for Administration Date



05/02/2023

Deputy Director for Corrections Date



05/02/2023

Deputy Director for Law Enforcement Date

APPROVED:



05/02/2023

DIRECTOR Date

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