

# Universal State Personnel System Policy **SEXUAL HARASSMENT**

*November 12, 2007*



The State of Colorado prohibits sexual harassment in the workplace and it cannot be tolerated. All employees, regardless of classification or status, should expect that they will be free from sexual harassment in state workplaces. Maintaining a workplace that is professional and free from sexual harassment is the responsibility of every employee, supervisor, and appointing authority. Sexual harassment, as well as retaliation for reporting sexual harassment, is prohibited by both federal and state law (Title VII of the Civil Rights Act of 1964, Colorado Anti Discrimination Act).

This Policy covers all employees in the state personnel system and anyone conducting business or otherwise having occasion to enter a state facility or participating in a state sponsored event. Persons other than employees in the state personnel system may also be covered by the individual sexual harassment policies of departments and should refer to those policies for instructions on reporting suspected sexual harassment.

For purposes of all state personnel system rules and policies, the word "department" includes institutions of higher education. However, institutions of higher education may have existing sexual harassment policies governing multiple groups (e.g., state personnel system, professional exempt, faculty, students, student employees). Institutions of higher education may retain in place their respective policies on sexual harassment if those policies substantially comply with this policy with respect to employees in the state personnel system.

Discrimination or harassment based on a protected characteristic, such as race, is a separate, but equally serious, problem and is also prohibited. For more information about reporting discrimination and harassment based on something other than sex, please contact your human resources office or as otherwise directed by your department's policies.

The State Personnel Board Rules, and the State Personnel Director's Rules and Technical Assistance, can be found on the DHR website.

## **Definitions.**

Sexual Harassment: Sexual harassment is a type of sex discrimination. It is defined as unwelcome sexual advances, requests for sexual favors, unequal treatment, and other unwelcome verbal and physical conduct based on an employee's sex when:

- A. Submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment; or
- B. Submission to or rejection of such conduct is used as the basis for making employment decisions about a person; or
- C. Such conduct has the purpose or effect of substantially and unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working or educational environment.

Sexual harassment may be perpetrated by men or women of the same or opposite sex as the recipient. It may be committed by individuals or groups of co-workers, supervisors, or subordinates. It may be directed toward, or committed by, third parties such as clients, customers, or vendors.

In determining whether sexual harassment exists, all relevant circumstances, including the context in which the conduct occurred, will be considered. Facts will be judged on the basis of what is reasonable to persons of ordinary sensitivity and not on the particular sensitivity or reaction of an individual.

Sexual harassment may include actions and or behavior such as:

- Sexually-oriented physical contact or gestures such as touching, patting, or repeated brushing against another's body.
- Unwelcome propositions or requests for social dates or sexual activity.
- Subtle pressures for sexual activity such as verbal teasing or abuse.
- Sexually-oriented slurs, jokes, bantering, or suggestive comments.
- Sexually-oriented posters, pictures, cartoons, or calendars displayed in the office
- Sexually-oriented emails or viewing of sex-oriented web sites in the office
- Sexually-oriented entertainment appearing at the office or any other work-related site or function (e.g., training conferences held away from the work site).

Hostile Work Environment: A type of sexual harassment defined as harassment or unequal treatment based on sex, which is so severe and/or pervasive that it has the purpose or effect of (1) creating an intimidating, hostile or offensive work environment or (2) unreasonably interfering with another's work performance to such a degree that it makes the work place unbearable or creates a constructive discharge situation. Behaviors which may constitute a hostile work environment would include all actions listed above under sexual harassment.

Quid Pro Quo: A type of sexual harassment. It occurs when (1) submission to unwelcome sexual conduct is made either an explicit or implicit term or condition of employment; or (2) submission to or rejection of unwelcome sexual conduct by an individual is used as the basis for tangible employment decisions affecting that individual such as making a significant change in employment status (for example hiring, firing, failing to promote, reassignment of significantly different responsibilities) or a decision causing a significant change in benefits.

Quid pro quo sexual harassment may include actions and/or behavior such as:

- A demand for sexual favors, accompanied by implied or overt promises of preferential treatment or threats concerning an individual's employment status, benefits or service.
- The loss of an employment opportunity or benefit to a qualified individual because of a refusal to submit to sexual advances or the granting of an employment or benefit to an unqualified individual because of submission to sexual advances.

Retaliation: An adverse action taken against an employee for making a report of sexual harassment or assisting or participating in a sexual harassment investigation. The forms that retaliation may take are varied. Forms of retaliation may include:

- Threats of reprisals
- Harassing behavior
- Changes in job duties, job location, or work schedules
- Denial of a tool or training that will assist in the ability to perform the job
- Verbal or written reprimands
- Poor performance evaluations
- Corrective or disciplinary action
- Probation, demotion or termination

Each of these acts may be illegal if done for the purpose of retaliating against an employee for making or participating in a report of sexual harassment. Employment actions, such as poor performance evaluations, however, may be necessary and may be taken for non-retaliatory reasons.

Complaint: A verbal complaint or written document prepared by a reporting employee or a witness to behavior or comments that allege sexual harassment in violation of this Policy.

EEO Office: The Equal Employment Opportunity Office of a state department. Not all departments will have an EEO Office, but they will have someone such as the human resources director designated to carry out EEO responsibilities. If a department does not have an EEO Office, the human resources director or his or her designee shall be responsible for carrying out this Policy.

Reporting Employee or Person: An employee or other person who reports or files a Complaint of alleged sexual harassment.

Responding Employee: An employee who is accused of improper conduct in a report or Complaint of sexual harassment.

### **Prohibitions.**

Sexual harassment in any form, including quid pro quo harassment and the creation of a hostile work environment, is strictly prohibited in state workplaces. Sexual harassment violates federal and state law and this policy. Employees in the state personnel system who are found to have engaged in any type of sexual harassment may be subject to corrective or disciplinary action, up to and including termination.

Retaliation against an employee in the state personnel system for either reporting sexual harassment or assisting or participating in an investigation of sexual harassment is strictly prohibited.

Employees in the state personnel system may not be retaliated against for making a report or complaint, reporting the observed behavior of other employees, or cooperating with a sexual harassment investigation. Retaliation is prohibited regardless of whether a report or complaint of harassment proves to be true or false. Employees in the state personnel system who are found to have engaged in retaliation may be subject to corrective or disciplinary action, up to and including termination.

Employees in the state personnel system who are found to have made an intentionally false or malicious report or complaint of sexual harassment or retaliation may be subject to corrective or disciplinary action, up to and including termination.

All state employees are expected to report all incidents of sexual harassment against an employee in the state personnel system. Supervisors or appointing authorities in the state personnel system who fail to act on reports or complaints of sexual harassment, who discourage employees from reporting sexual harassment, who have engaged in or encouraged retaliation, or who otherwise fail to follow the requirements of this policy may be subject to corrective action or discipline, up to and including termination.

### **Reporting Procedure Requirements**

Each department will specify in writing its reporting procedures in connection with this policy and effectively communicate that information to their respective employees along with this policy. The reporting procedures will include the position and contact information directing employees where to report incidents of sexual harassment.

Each department will establish in writing the procedure for state personnel system employees to report allegations of sexual harassment, retaliation, or intentional false or malicious reporting by state employees outside the state personnel system. The procedure will also state how supervisors or appointing authorities outside the state personnel system who have authority for state personnel system employees and who fail to act on reports or complaints of sexual harassment, who discourage employees from reporting sexual harassment, who have engaged in or encouraged retaliation, or who otherwise fail to follow the requirements of this policy will be addressed.