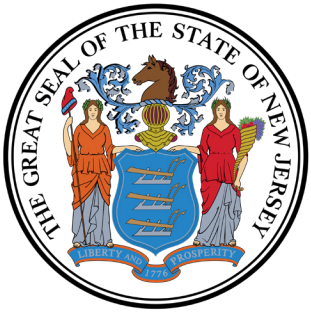
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Office of **Affirmative Action Programs**



New Jersey State
Policy Prohibiting Discrimination in the Workplace

EAST CAMPUS ROOM 204 • (908) 737-5980



NEW JERSEY STATE POLICY PROHIBITING DISCRIMINATION IN THE WORKPLACE

I. POLICY

a. Protected Categories

The State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender, pregnancy, marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability.

To achieve the goal of maintaining a work environment free from discrimination and harassment, the State of New Jersey strictly prohibits the conduct that is described in this policy. This is a zero-tolerance policy. This means that the State and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy,

regardless of whether the conduct satisfies the legal definition of discrimination or harassment.

b. Applicability

Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale, and interferes with work productivity. Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, and authorities (hereafter referred to in this section as "State Agencies" or "State Agency"). The State of New Jersey will not tolerate harassment or discrimination by anyone in the workplace including supervisors, coworkers, employees of Gubernatorial Transition Offices, or persons doing business with the State. This policy also applies to conduct that occurs in the workplace and conduct that occurs at any location that can be reasonably regarded as an extension of the workplace (any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed). This policy also applies to posts on any social media site and/or electronic device, personal or business that adversely affects the work environment defined by the State Policy.

This policy also applies to third-party harassment. Third-party harassment is unwelcome behavior involving any of the protected categories referred to in (a) above that is not directed at an individual but exists in the workplace and interferes with an individual's ability to do his or her job. Third-party harassment based upon any of the aforementioned protected categories is prohibited by this policy.

II. PROHIBITED CONDUCT

a. Defined

It is a violation of this policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories referred to in (a) above. This policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, transfer, assignment, layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions, and career development.

It is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background, or any other protected category set forth in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

Examples of behaviors that may constitute a violation of this policy include, but are not limited to:

- Discriminating against an individual with regard to terms and conditions of employment because of being in one or more of the protected categories referred to in (a) above;
- Treating an individual differently because of the individual's race, color, national origin, or other protected category, or because an individual has the physical, cultural, or linguistic characteristics of a racial, religious, or other protected category;
- Treating an individual differently because of marriage to, civil union to, domestic partnership with, or association with persons of a racial, religious, or other protected category; or due to the individual's membership in or association with an organization identified with the interests of a certain racial, religious, or other protected category; or because an individual's name, domestic partner's name, or spouse's name is associated with a certain racial, religious, or other protected category;
- Calling an individual by an unwanted nickname that refers to one or more of the above protected categories, or telling jokes pertaining to one or more protected categories;
- Using derogatory references with regard to any of the protected categories in any communication;
- Engaging in threatening, intimidating, or hostile acts toward another individual in the workplace because that individual belongs to, or is associated with, any of the protected categories; or
- Displaying or distributing materials, in the workplace or outside of the workplace that has an adverse impact on the work environment, including electronic communications, that contains derogatory or demeaning language or images pertaining to any of the protected categories.

b. Sexual Harassment

It is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example:

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

Examples of prohibited behaviors that may constitute sexual harassment and are, therefore, a violation of this policy include, but are not limited to:

- Generalized gender-based remarks and comments;

- Unwanted physical contact, such as intentional touching, grabbing, pinching, brushing against another's body, or impeding or blocking movement;

- Sexual physical contact that involves any form of coercion, force, or lack of consent, such as sexual assault;

- Verbal, written, or electronic sexually suggestive or obscene comments, jokes, or propositions, including letters, notes, e-mail, text messages, invitations, gestures, or inappropriate comments about a person's clothing;

- Visual contact, such as leering or staring at another's body; gesturing; displaying sexually suggestive objects, cartoons, posters, magazines, or pictures of scantily-clad individuals; or displaying sexually suggestive material on a bulletin board, on a locker room wall, or on a screen saver;

Explicit or implicit suggestions of sex by a supervisor or manager in return for a favorable employment action such as hiring, compensation, promotion, or retention;

- Suggesting or implying that failure to accept a request for a date or sex would result in an adverse employment consequence with respect to any employment practice such as performance evaluation, or promotional opportunity; or
- Continuing to engage in certain behaviors of a sexual nature after an objection has been raised by the target of such inappropriate behavior.

III. EMPLOYEE RESPONSIBILITIES

Any employee who believes that she/he or they have been subjected to any form of prohibited discrimination/harassment, or who witnesses others being subjected to such discrimination/harassment, should promptly report the incident(s) to a supervisor or directly to the State Agency's Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by the State Agency to receive workplace discrimination complaints. A person who wishes to take action about prohibited sexual physical contact can file a criminal complaint with law enforcement of the municipality where the incident occurred. That person can also make a criminal report and a report to his/her or their supervisor/manager and/or Equal Employment Opportunity/Affirmative Action Officer; one does not have to choose one or the other.
All employees are expected to cooperate with investigations undertaken pursuant to VI below. Failure to cooperate in an investigation may result in administrative and/or disciplinary action, up to and including termination of employment.

IV. SUPERVISOR RESPONSIBILITIES

Supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. Supervisors shall immediately refer allegations of prohibited discrimination/harassment to the State Agency's Equal Employment Opportunity/Affirmative Action Officer, or any other individual designated by the State Agency to receive complaints of workplace discrimination/harassment.

A supervisor's failure to comply with these requirements may result in administrative and/or disciplinary action, up to and including termination of employment. For purposes of this section and in the State of New Jersey Model Procedures for Processing Internal Complaints Alleging Discrimination in the Workplace ("Model Procedures"; N.J.A.C. 4A:7- 3.2.), a supervisor is defined broadly to include any manager or other individual who has authority to control the work environment of any other staff member (for example, a project leader). N.J.A.C. 4A:7-3.1(e)

V. DISSEMINATION

Each State Agency shall annually distribute the policy described in this section, or a summarized notice of it, to all of its employees, including part-time and seasonal employees. The policy, or summarized notice of it, shall also be posted in conspicuous locations throughout the buildings and grounds of each State Agency (that is, on bulletin boards or on the State Agency's intranet site). The Department of the Treasury shall distribute the policy to Statewide vendors/contractors, whereas each State Agency shall distribute the policy to vendors/contractors with whom the State Agency has a direct relationship.

VI. COMPLAINT PROCESS

Each State Agency shall follow the State of New Jersey Model Procedures for Processing Internal Complaints Alleging Discrimination in the Workplace with regard to reporting, investigating, and where appropriate, remediating claims of discrimination/harassment. See N.J.A.C. 4A:7-3.2 and N.J.S.A. 11A:7-3. Each State Agency is responsible for designating an individual, or individuals, to receive complaints of discrimination/harassment, investigating such complaints, and recommending appropriate remediation of such complaints. In addition to the Equal Employment Opportunity/ Affirmative Action Officer, each State Agency shall designate an alternate person to receive claims of discrimination/harassment.

All investigations of discrimination/harassment claims shall be conducted in a way that respects, to the extent possible, the privacy of all the persons involved.

The investigations shall be conducted in a prompt, thorough, and impartial manner. The results of the investigation shall be forwarded to the respective State Agency Head to make a final decision as to whether a violation of the policy has been substantiated.

Where a violation of this policy is found to have occurred, the State Agency shall take prompt and appropriate remedial action to stop the behavior and deter its reoccurrence. The State Agency shall also have the authority to take prompt and appropriate remedial action, such as moving two employees apart, before a final determination has been made regarding whether a violation of this policy has occurred.

The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment.

Each State Agency shall maintain a written record of the discrimination/harassment complaints received. Written records, consisting of the investigative report and any attachments, including witness statements, shall be maintained as confidential records to the extent practicable and appropriate and will maintain so indefinitely.

VII. PROHIBITION AGAINST RETALIATION

Retaliation against any employee who alleges that she/he or they were the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation.

Following are examples of prohibited actions taken against an employee because the employee has engaged in activity protected by this subsection:

- Termination of an employee;

- Failing to promote an employee;
- Altering an employee's work assignment for reasons other than legitimate business reasons;
- Imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or
- Ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees).

VIII. FALSE ACCUSATIONS AND INFORMATION

The burden is on the complainant to articulate a sufficient nexus between the alleged conduct to a protected category pursuant to the State Policy. An employee who knowingly makes a false accusation of prohibited discrimination/harassment or knowingly provides false information in the course of an investigation of a complaint, will be subjected to administrative and/or disciplinary action, up to and including termination of employment. Complaints made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

IX. CONFIDENTIALITY

All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigative process. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter.

In order to protect the integrity of the investigation, minimize the risk of retaliation against the individuals participating in the investigative process, and protect the important privacy interests of all concerned, the EEO/AA Officer/investigator shall request that all persons interviewed, including witnesses, not discuss any aspect of the investigation with others, unless there is a legitimate business reason to disclose such information.

X. ADMINISTRATIVE AND/OR DISCIPLINARY ACTION

Any employee found to have violated any portion or portions of this policy may be subject to appropriate administrative and/or disciplinary action which may include, but which shall not be limited to: referral for training, referral for counseling, written or verbal reprimand, suspension, reassignment, demotion, or termination of employment. Referral to another appropriate authority for review for possible violation of State and Federal statutes may also be appropriate.

XI. TRAINING

All State Agencies shall provide all new employees with training on the policy and procedures set forth in this section within a reasonable period of time after each new employee's appointment date. Refresher training shall be provided to all employees, including supervisors, within a reasonable period of time. All State Agencies shall also provide supervisors with training on a regular basis regarding their obligations and duties under the policy and regarding procedures set forth in this section.

State employees responsible for managing and investigating complaints of harassment or discrimination, in consultation with the Division of EEO/AA and another organization with expertise in response to and prevention of sexual violence, such as the Department of Law and Public Safety and the New Jersey Coalition Against Sexual Assault, shall receive additional training. Each State employee who receives such additional training shall complete a refresher course every three years.
Issued: December 16, 1999
Revised: June 3, 2005
Revised: September 5, 2013
Revised: September 11, 2019
Revised: August 19, 2020
See N.J.A.C. 4A:7-3.1, N.J.A.C. 4A:7-3.2 and N.J.S.A. 11A:7-3

STATE OF NEW JERSEY MODEL PROCEDURES FOR PROCESSING INTERNAL COMPLAINTS ALLEGING DISCRIMINATION IN THE WORKPLACE

Each State department, commission, State college or university, agency, and authority (hereafter referred to in this section as "State Agency") is responsible for implementing this model procedure, completing it to reflect the structure of the organization, and filing a copy of the completed procedure with the Division of EEO/AA.

1. All employees and applicants for employment should promptly report suspected violations of the New Jersey State Policy Prohibiting Discrimination in the Workplace, N.J.A.C. 4A:7-3.1 ("State Policy").

2. Complaints of prohibited discrimination/harassment can be reported to either Catricia Shaw (EEO/AA Officer), the Authorized EEO/AA Designee, or to any supervisory employee of the State Agency or through the State's Hotline (833-691-0404). To facilitate the reporting of a complaint, Discrimination Complaint Processing Forms (DPF-481) can be found on the Office of Affirmative Action Programs website or the New Jersey Civil Service Commission's ("NJCSC") website.

3. Complaints and allegations of discrimination/harassment should be reported promptly. Delays in reporting may not only hinder a proper investigation, but may also unnecessarily subject the victim to continued prohibited conduct.

4. Supervisory employees shall immediately report all allegations of prohibited discrimination/harassment to Catricia Shaw (EEO/AA Officer). Such a report shall include both alleged violations reported

to a supervisor and those alleged violations directly observed by the supervisor.

5. If reporting a complaint to any of the persons set forth in paragraphs 2 through 4 above presents a conflict of interest, the complaint may be filed directly with the Division of EEO/AA, P.O. Box 315, Trenton, NJ 08625. An example of such a conflict would be where the individual against whom the complaint is made is involved in the intake, investigative or decision-making process.

6. In order to facilitate a prompt, thorough, and impartial investigation, all complainants are encouraged to submit a Discrimination Complaint Processing Form (DPF-481). An investigation may be conducted whether or not the form is completed.

7. Each State Agency shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate. A copy of all complaints (regardless of the format in which submitted) must be submitted to the Division of EEO/AA, by the State Agency's EEO/AA Officer, along with a copy of the acknowledgement letter(s) sent to the person(s) who filed the complaint and, if applicable, the complaint notification letter sent to the person(s) against whom the complaint has been filed including the basis for the complaint and whether or not an investigation will be initiated. When a complaint on its face is insufficient to determine the nature and scope of the allegations the EEO/AA Officer shall interview the person submitting the complaint for additional information to determine whether the allegations implicate the State Policy. If after conducting the interview of a complainant, the EEO/AA Officer determines that an investigation is not warranted, a letter shall be sent to the complainant explaining the basis for the decision not to investigate. If a written complaint has not been filed, the EEO/AA Officer must submit to the Division of EEO/AA a brief summary of the allegations that have been made. Copies of complaints filed with the New Jersey Division on Civil Rights, the U.S. Equal Employment Opportunity Commission, or in court also must be submitted to the Division of EEO/AA.

8. During the initial intake of a complaint, the EEO/AA Officer or the EEO/AA Officer Authorized Designee will obtain information regarding the complaint, and determine if interim corrective measures are necessary to prevent continued violations of the State Policy. Interim corrective actions include, but are not limited to:

    a. Separation of parties;
    b. Removal of parties from the workplace; and
    c. Involvement of law enforcement, when appropriate, for instances involving bodily harm or serious bodily harm.

9. At the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place. The complainant shall have the burden to articulate a sufficient nexus between the alleged conduct to a protected category pursuant to the State Policy.

    In determining whether or not a thorough and impartial investigation is warranted, the EEO/AA Officer when reviewing complaints shall consider, but is not limited to considering, the following factors: the facts presented, whether the complainant articulated a sufficient nexus between the alleged conduct to a protected category as set forth in N.J.A.C. 4A:7-3.1(a), the time the incident(s) occurred, the time the incident was reported, and whether the complainant and/or respondent is a current State employee (regardless of when the incident occurred).

10. An investigative report will be prepared by the EEO/AA Officer or Designee when the investigation is completed. The report will include, at a minimum:
    a. A summary of the complaint;
    b. A summary of the parties' positions;
    c. A summary of the facts developed through the investigation;
    d. An analysis of the allegations and the facts.The investigative report will be submitted to the University President or Designee who will issue a final letter of determination to the parties.

11. The University President or Designee will review the investigative report issued by the EEO/AA Officer or authorized Designee, and make a determination as to whether the allegation of a violation of the State's Policy has been substantiated.

If a violation has occurred, the University President or Designee will determine the appropriate corrective measures necessary to immediately remedy the violation.

12. The University President or Designee will issue a final letter of determination to both the complainant(s) and the person(s) against whom the complaint was filed, setting forth the results of the investigation and the right of appeal to the NJCSC, as set forth in paragraphs 13 and 14 below. To the extent possible, the privacy of all parties involved in the process shall be maintained in the final letter of determination. The Division of EEO/AA shall be furnished with a copy of the final letter of determination.

A. The letter shall include, at a minimum:

1. A brief summary of the parties' positions;
2. A brief summary of the facts developed during the investigation; and
3. An explanation of the determination, which shall include whether:
4. The allegations were either substantiated or not substantiated; and
5. A violation of the State Policy did or did not occur.

b. The investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint referred to in paragraph 8 above is completed.
c. The time for completion of the investigation and issuance of the final letter of determination may be extended by the State Agency Head for up to 60 additional days in cases involving exceptional circumstances. The State Agency Head shall provide the Division of EEO/AA and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension.

13. A complainant who is in the career, unclassified, or senior executive service, or who is an applicant for employment, who disagrees with the determination of the University President or Designee, may submit a written appeal, within 20 days of the receipt of the final letter of determination from the University President or Designee, to the NJCSC, Division of Appeals and Regulatory Affairs ("DARA"), Written Record Appeals Unit, P.O. Box 312, Trenton, NJ 08625-0312.

The appeal shall be in writing and include all materials presented by the complainant at the State Agency level, the final letter of determination, the reason for the appeal, and the specific relief requested. Please be advised that there is a $20 fee for appeals. Please include a check or money order along with the appeal, payable to NJCSC. Persons receiving public assistance and those qualifying for NJCSC Veterans Preference are exempt from this fee.

a. Employees filing appeals which raise issues for which there is another specific appeal procedure must utilize those procedures. The NJCSC may require any appeal, which raises issues of alleged discrimination and other issues, such as examination appeals, to be processed using the procedures set forth in N.J.A.C. 4A:7-3.2 or a combination of procedures as the NJCSC deems appropriate. See N.J.A.C. 4A:2-1.7.

b. If an appeal under this chapter raises issues concerning the employee not receiving an advancement appointment, the NJCSC shall decide those issues in the course of its determination.

c. The NJCSC shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1(d).

d. The appellant shall have the burden of proof in all discrimination appeals brought before the NJCSC.

14. In a case where a violation has been substantiated, and no disciplinary action recommended, the party(ies) against whom the complaint was filed may appeal the substantiated determination to the NJCSC at the address indicated in paragraph 13 above within 20 days of receipt of the final letter of determination by the State Agency Head or Designee.

a. The burden of proof shall be on the appellant.

b. The appeal shall be in writing and include the final letter of determination, the reason for the appeal, and the specific relief requested.

c. If disciplinary action has been recommended in the final letter of determination, any party charged who is in the career service may appeal using the procedures set forth in N.J.A.C. 4A:2-2 and 3.

15. Where an appeal of a decision on a discrimination complaint has been filed with the NJCSC, the Director of the Division of EEO/AA shall be placed on notice of the appeal and given the opportunity to submit comments to the NJCSC regardless of whether or not the complaint was initially filed directly with the Director of the Division of EEO/AA.

16. Any employee or applicant for employment can file a complaint directly with external agencies that investigate discrimination/harassment charges in addition to utilizing this internal procedure. The time frames for filing complaints with external agencies indicated below are provided for informational purposes only. An individual should contact the specific agency to obtain exact time frames for filing a complaint. The deadlines run from the date of the last incident of alleged discrimination/harassment, not from the date that the final letter of determination is issued by the State Agency Head or Designee.

Complaints may be filed with the following external agencies:

Division on Civil Rights
N. J. Department of Law & Public Safety (Within 180 days of the discriminatory act)

Central Regional Office
140 East Front Street, 6th Floor, P.O. Box 090, Trenton, NJ 08625-0090
(609) 292-4605

Northern Regional Office
31 Clinton Street, 3rd Floor, P.O. Box 46001, Newark, NJ 07102
(973) 648-2700

South Shore Regional Office
1325 Boardwalk, 1st Floor
Tennessee Avenue and Boardwalk, Atlantic City, NJ 08401
(609) 441-3100

Southern Regional Office
5 Executive Campus, Suite 107, Cherry Hill, NJ 08034
(856) 486-4080

United States Equal Employment Opportunity Commission (EEOC)
(Within 300 days of the discriminatory act)
National Call Center – (800) 669-4000

*Newark Area Office
2 Gateway Center, 17th Floor, Newark, NJ 07102
(973) 645-4684

**Philadelphia District Office
801 Market Street, Suite 1300, Philadelphia, PA 19107-3127
(215) 440-2600

* Newark Area Office has jurisdiction over the State of New Jersey Counties of Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union and Warren.

** The Philadelphia District Office has jurisdiction over the State of New Jersey, Counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem.

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