

**SUBJECT
CLAIMS OF
DISCRIMINATION
TO INCLUDE SEXUAL
HARASSMENT**

**POLICY NUMBER
3.05**



POLICY MAINTENANCE ADMINISTRATOR: Chief, Bureau of Personnel Services

PURPOSE/SCOPE: To establish department policy and procedures for resolving claims of unlawful discrimination, including sexual harassment claims.

I. AUTHORITY

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq.

Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e et seq.

Civil Rights Restoration Act of 1987, 20 U.S.C. 1681-1688

Section 20.055, Florida Statutes, Agency inspectors general

Section 110.105, Florida Statutes, Employment policy of the state

Section 112.044, Florida Statutes, Public employers, employment agencies, labor organizations; discrimination based on age prohibited; exceptions; remedy

Section 119.071(2)(n), Florida Statutes, General exemptions from inspection or copying of public records

Chapter 760, Florida Statutes, Discrimination in the Treatment of Persons; Minority Representation

Chapter 60L-36, Florida Administrative Code, Conduct of Employees

Chapter 60L-40, Florida Administrative Code, Sexual Harassment, Equal Employment Opportunity and Affirmative Action

Governor's Executive Order 17-319, Preventing Sexual Harassment in State Agencies, effective December 12, 2017

Governor's Executive Order 19-10, Reaffirming Commitment to Diversity in Government, effective January 8, 2019

Governor's Executive Order 19-11, Ethics, Open Government, and Preventing Sexual Harassment, effective January 8, 2019

II. RELATED POLICIES <http://hsmvsafetynet/hsmvpolicies/Pages/PolicyIndex.aspx>

MP 3.06, Disciplinary Process

MP 6.06, Workplace Safety and Security

Executive Director	Effective Date 09/01/1983
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MP 7.04, Employee Assistance Program (EAP)

MP 11.07, Internal Audit and Investigations

III. DEFINITIONS

- A. Complainant – A Member or an applicant for employment with the department alleging unlawful discrimination.
- B. Hostile Work Environment – Severe and persistent unwelcome comments or conduct (including sexual harassment) based on age, race, color, gender, sexual orientation, religion, national origin, disability, veteran status, marital status, or on any other legally protected characteristic, that unreasonably interferes with a member's or a group of members' work performance.
- C. Intake Officer – The Chief of Personnel Services or designee and the General Counsel or designee have been designated by the Executive Director to receive, assess, and facilitate resolution of claims of discrimination.
- D. Office of Employee Relations (OER) – Section within the Bureau of Personnel Services designated to assist complainants with questions about unlawful discrimination, provide information to the Intake Officer and the Inspector General as needed, track the filing of claims of unlawful discrimination, assist with ensuring their prompt and proper handling, and keep a record of their ultimate resolution.
- E. Reasonable Accommodation for Medical Reasons – Change in the work environment which results in an equal employment opportunity for an individual with a disability. An accommodation is not reasonable if it would fundamentally alter the nature of the Department's mission, cause significant difficulty or expense, or otherwise impose an undue hardship.
- F. Reasonable Accommodation for Religious Reasons – Changes in the work environment made to accommodate a member's sincerely held religious belief, practice, or observance that conflicts with a work requirement. An accommodation is not reasonable if it would fundamentally alter the nature of the Department's mission, cause significant difficulty or expense, or otherwise impose an undue hardship.
- G. Sexual Harassment – Type of unlawful discrimination consisting of unwelcome sexual advances, requests for sexual favors, and other oral, written, or physical conduct of a sexual nature, including displays of sexually-oriented images, when this conduct explicitly or implicitly affects an individual's employment and

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unreasonably interferes with an individual's work performance or creates a hostile work environment. A victim of sexual harassment and a perpetrator of sexual harassment may be a woman or a man. A victim of sexual harassment does not have to be the opposite sex of a perpetrator of sexual harassment. A perpetrator of sexual harassment can be a victim's supervisor, an agent of the victim's employer, a supervisor in another area, a co-worker, or a non-employee, such as a vendor. A victim of sexual harassment does not have to be the person harassed but could be anyone affected by the offensive conduct.

- H. Unlawful Discrimination – Actions that create barriers, deny access, make employment decisions, or create a hostile work environment on the basis of age, race, color, sex, pregnancy, gender identity, sexual orientation, religion, national origin, disability, veteran status, marital status, genetic information, or on any other basis protected under the law. Such actions may be directed towards, or affect, one person or a group of people. Intent to discriminate is not necessary for unlawful discrimination to occur. Examples of unlawful discrimination include, but are not limited to, slurs, derogatory comments, gestures, physical behaviors, or “jokes” about age, race, color, gender, sexual orientation, religion, national origin, disability, veteran’s status, marital status, or any other basis protected under the law. In addition, subjecting a member, as a condition of employment, to any training, instruction, or any other required activity that espouses, promotes, advances, inculcates, or compels such member to believe any of the concepts enumerated in section 760.10(8)(a), Florida Statutes, constitutes discrimination based on race, color, sex, or national origin.

IV. POLICY

Discrimination based on age, race, color, sex, pregnancy, gender identity, sexual orientation, religion, national origin, disability, veteran status, marital status, genetic information, or on any other basis protected under the law is illegal and against department policy. The department is committed to eliminating unlawful discrimination in the workplace. Furthermore, reasonable accommodations to applicants and employees who need them for medical or religious reasons will be provided as required by law.

The department will provide initial education to new members no later than 30 days after the start of employment through new member training courses. The new member training courses address claims of discrimination, including sexual harassment, and are required to be completed by the new member no later than 30 days from the course assignment date.

Recurring mandatory training will be provided to all members on an annual basis thereafter, and are required to be completed no later than 90 days from course

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assignment date. In addition, the department will provide specific training for supervisors.

Upon receipt of a claim of unlawful discrimination, the department will initiate a prompt review while maintaining the greatest degree of confidentiality possible. Where violations are confirmed, disciplinary or administrative action up to and including dismissal, will be taken in accordance with department Policy 3.06, Disciplinary Process at <http://hsmvsafetynet/hsmvpolicies/Pages/PolicyIndex.aspx>.

Retaliation against any member who makes a report of unlawful discrimination, provides information as a witness, or opposes unlawful discrimination is prohibited. Any member who retaliates against a complainant will be subject to discipline or administrative action. Any member against whom such retaliatory action has allegedly been taken may file a complaint with the Intake Officer.

V. ROLES AND RESPONSIBILITIES

A. Members

1. Upon employment, all new members will receive information and training regarding this policy. New members must complete the training within 30 days from the date it is assigned by the department.
2. All current members are required to participate in mandatory recurring annual training courses that provide information on identifying and avoiding acts of unlawful discrimination.
3. By completing the assigned training courses, new members and current members acknowledge receipt of, and agree to comply with, all associated policies, procedures and related training information.
4. The new member and recurring annual training courses may be provided through the department's online training system, or in instructor-led classroom settings, as determined by the department.
5. Non-supervisory members must report any incidents of unlawful discrimination they reasonably suspect, or that have been reported to them, to the Intake Officer at (850) 617-3202.
6. Members with complaints related to unlawful discrimination may also contact the following:

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Florida Commission on Human Relations at 4075 Esplanade Way, Room 110, Tallahassee, FL 32399. Telephone: (850) 488-7082 or Toll-Free: (800) 342-8170, Fax: (850) 487-1007, web address <http://fchr.state.fl.us>.

United States Equal Employment Opportunity Commission (EEOC) at the Miami District EEOC Office, Miami Tower, 100 SE 2nd Street, Suite 1500, Miami, Florida 33131. Telephone: (800) 669-4000, Fax: (305) 808-1855, web address: <http://www.eeoc.gov>. EEOC Tampa Office: 501 East Polk Street, Suite 1000, Tampa, FL 33602. Telephone: (800) 669-4000, Fax: (813) 228-2841, web address: <http://www.eeoc.gov>.

B. Supervisors

1. Supervisors are responsible for identifying and reporting incidents of unlawful discrimination which they know of, reasonably suspect, or are reported to them. Supervisors shall not undertake investigation of such incidents. Rather, supervisors must report such incidents to their chain of command and OER at (850) 617-3202. OER will then advise the supervisor or refer them to the Intake Officer or the Inspector General based on the circumstances.
2. Supervisors are required to set the standard for non-discriminatory behavior and ensure members are aware of the different types of unlawful discrimination.
3. Supervisors who allow unlawful discrimination, are aware of it and fail to report it, or who participate in it, will be subject to disciplinary or administrative action, up to and including dismissal.
4. Supervisors will complete additional specialized training, specific to their roles as supervisors, as assigned by the department.

VI. PROCEDURES

- A. Complaints of unlawful discrimination shall be reported to the Intake Officer who will ensure that the complaint is processed promptly. The confidentiality of any member who reports discrimination or participates in a discrimination investigation will be protected to the greatest possible extent.
- B. To ensure the prompt and thorough investigation of a complaint of discrimination or sexual harassment, the complainant should provide as much of the following information as is possible:

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1. The name, department and position of the person or persons allegedly committing harassment.
 2. A description of the incident(s), including the date(s), location(s) and the presence of any witnesses.
 3. The effect of the incident(s) on the complainant's ability to perform their job or other terms or conditions of their employment.
 4. The names of other individuals who might have been subject to the same or similar harassment.
 5. What steps, if any, the complainant has taken to try to stop the harassment.
 6. Any other information the complainant believes to be relevant to the harassment complaint.
- C. The Intake Officer will promptly consult with appropriate department managers and the Inspector General to evaluate the claim to determine whether further inquiry or investigation is necessary. If an investigation is necessary, the department will, to the extent practicable, take action to eliminate contact between the complainant and subject during the investigation.
- D. OER will initiate an inquiry no later than the next business day following receipt of a claim and refer the claim to the Inspector General for investigation, if necessary. Investigative activities will be handled by the Inspector General in accordance with department Policy 11.07, Internal Audit and Investigations, and will be prompt, thorough and impartial.
- E. After evaluation of the complaint of discrimination, disciplinary or administrative action will occur and appropriate parties will be notified. Any necessary corrective or preventative action shall be effective and commenced promptly. OER will further ensure the complainant is notified of the steps the department has taken and offer them assistance from the state's Employee Assistance Program pursuant to department Policy 7.04.