

WORKPLACE HARASSMENT PREVENTION

PURPOSE

To establish workplaces where employees are not harassed or discriminated against due to race, color, creed, religion, sex, national origin, age, sexual orientation or gender identity, or physical or mental disability and to ensure employees have procedures available so that alleged violations of this policy can be investigated and addressed.

SCOPE

This policy applies to all employees under the authority of the Governor and Lieutenant Governor of Indiana. Separately elected officials are encouraged to adopt this or a similar policy concerning workplace harassment.

STATEMENT OF POLICY

The State of Indiana (hereinafter the State) will strive to maintain an environment free from sexual harassment and harassment based on race, color, creed, religion, sex, national origin, age, sexual orientation or gender identity, or physical or mental disability and to implement this policy in a consistent and vigorous manner.

Each employee has the right to work in a professional environment that promotes equal opportunities and prohibits sexual harassment and harassment based on race, color, creed, religion, sex, national origin, age, sexual orientation or gender identity, and physical or mental disability, hereinafter referred to as protected status or protected class. Workplace harassment whether verbal, physical or environmental is unacceptable and will not be tolerated in State Government. The State will not tolerate workplace harassment whether engaged in by fellow employees, supervisors, officers, or by outside clients or other non-employees who conduct business with the State. The State encourages reporting of all incidences of alleged harassment regardless of who the offender may be or the offender's status.

REFERENCES

Governor's Affirmative Action Statement, April 26, 2005

Americans with Disabilities Act of 1990, as amended – 42 U.S.C. Chapter 126 §12101 et seq. (Pub. L. 101-336) (ADA). IC 22-9-5

Rehabilitation Act of 1973, as amended – 29 U.S.C. §794

Age Discrimination in Employment Act of 1967, as amended – 29 U.S.C. Chapter 14 §621 (Pub. L. 90-202) (ADEA), IC 22-9-2

Title VII of the Civil Rights Act of 1964, as amended – 42 U.S.C. Chapter 21 Subchapter VI §2000e (Pub. L. 88-352) (Title VII)

Pregnancy Discrimination Act – is an amendment to Title VII of the Civil Rights Act of 1964

National Origin Harassment – 29 C.F.R. §1606 et seq.

EFFECTIVE DATE July 1, 2005

Supersedes Sexual Harassment Policy dated Feb 2005

APPROVAL



Debra F. Minott, State Personnel Director

Date June 6, 2005

DEFINITIONS

Designated Contacts means those persons identified in paragraph A.1. of these Procedures as persons to whom allegations of harassment may be presented.

Employee means any person under the authority of the Governor or Lieutenant Governor who observes or experiences harassment in the workplace.

Employer means any supervisory or managerial employee to whom an allegation of harassment is presented.

Harassment Based on Protected Class is defined as verbal or physical conduct that slanders or shows hostility or hatred toward an individual because of his/her protected status that: 1) has the purpose or effect of creating an intimidating, hostile, or offensive working environment; 2) has the purpose or effect of unreasonably interfering with an individual's work performance; or 3) otherwise adversely affects an individual's employment opportunities. The behavior need not be intentional in order to be considered harassment.

Examples of such conduct include, but are not limited to: using code words ("those kind," "those people,"); verbal abuse; inflammatory comments; jokes; gestures; repeated reference to a person's protected class; assault; display in the workplace of suggestive objects or pictures; distribution of materials in the workplace that contain suggestive language or pictures; treating a person differently because of his/her protected status. This behavior is not acceptable in the workplace itself and in other work-related settings such as business trips and business-related social events.

Protected Class means race, color, creed, religion, sex, national origin, age, sexual orientation or gender identity, and physical or mental disability.

Sexual Harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) 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. The behavior need not be intentional in order to be considered sexual harassment.

Examples of conduct of a sexual nature include, but are not limited to: unwanted sexual advances; demands for sexual favors in exchange for favorable treatment or continued employment; repeated sexual jokes, flirtations, advances or propositions; verbal abuse of a sexual nature; graphic, verbal commentary about an individual's body, sexual prowess or sexual deficiencies; leering; whistling; touching; pinching; assault; coerced sexual acts; suggestive, insulting, obscene comments or gestures; display in the workplace of sexually suggestive objects or pictures. This behavior is unacceptable

in the workplace itself and in other work-related settings such as business trips and business-related social events.

RESPONSIBILITIES

Employees are responsible for:

- complying with the prohibitions of this policy against harassment;
- attending training on this topic annually and as required by the employer;
- reporting harassment to appropriate officials;
- not retaliating against any person for reporting a complaint under this policy; and
- cooperating in any investigations into allegations of harassment.

Employers are responsible for:

- distributing the Policy Statement and Responsibilities/Procedures on Workplace Harassment Prevention to subordinates;
- complying with the prohibitions of this policy against harassment;
- ensuring subordinates and self attend training on this topic annually;
- establishing a workplace free of harassment by enforcing the provisions of this policy and acting promptly when prohibited conduct, objects, or pictures are discovered;
- processing any allegations of harassment brought to the employer's attention;
- not retaliating against any person for reporting a complaint under this policy; and
- implementing any disciplinary or other action imposed as a result of an investigation into harassment.

Designated Contacts are responsible for:

- investigating or assigning an investigator to investigate any allegations of harassment submitted to such contact promptly, completely, and thoroughly;
- making appropriate recommendations concerning discipline or other actions necessary to remedy the harassment; and
- advising all affected parties of the outcome of the investigation.

PROCEDURES

A. Reporting a Complaint

While the State encourages individuals who believe they are being harassed to firmly and promptly notify the offender that his/her behavior is unwelcome, the State also recognizes that power and status disparities between an alleged harasser and a target may make such a confrontation impossible. In the event that such informal, direct communication between individuals is either ineffective or impossible, the following steps should be followed in reporting a workplace harassment complaint:

1. Notification of Appropriate Staff or Agency

Individuals who believe they have been sexually harassed or harassed because of their status in a protected class, or individuals (including third parties) who have knowledge of sexual harassment or harassment based on protected class may report the incident

and/or alleged harasser to the following persons or agencies who have been identified and trained to receive complaints of workplace harassment:

Agency AA/EEO/ADA Coordinator
Agency Human Resources Director
Agency Head
Supervisor

Employee Relations Specialists
Employee Relations Division, State Personnel Department
(317) 232-3080

Indiana Civil Rights Commission (ICRC)
(317) 232-2600

Equal Employment Opportunity Commission (EEOC)
(317) 226-7212 OR (800) 669-4000

2. Description of Misconduct

An accurate, written record of objectionable behavior or misconduct is needed to resolve a complaint of workplace harassment. Verbal reports of harassment must be reduced to writing by either the complainant or the individual(s) designated to receive complaints and signed by the complainant. Individuals who believe they have been or currently are being harassed should maintain a record of objectionable conduct to effectively prepare and corroborate their allegations.

While the State encourages individuals to keep written notes in order to accurately record offensive conduct or behavior, it must be recognized that, in the event an investigation develops from the reported incident, the confidentiality of the complainant's written notes may not be recognized under Indiana law, and the notes may have to be disclosed.

3. Time Frame for Reporting Complaints

The State encourages a prompt reporting of complaints so that rapid response and appropriate action may be taken. However, due to the sensitivity of these problems and because of the emotional toll such misconduct may have on an individual, no limited time frame will be instituted for reporting workplace harassment complaints. Late reporting of complaints will not in and of itself preclude the State from taking remedial action.

4. Protection Against Retaliation

The State will not in any way retaliate against an individual who makes a report of workplace harassment nor permit any supervisor, officer, or employee to do so. Retaliation is a serious violation of this policy and should be reported immediately. Any person found to have engaged in misconduct constituting retaliation against another

individual for the good faith reporting of harassment may be disciplined up to and including dismissal.

B. Investigating the Complaint

1. Confidentiality

Any allegation of workplace harassment that is reported will be promptly investigated in as discreet a manner as practicable to protect the privacy of persons involved. The State will use its best efforts to maintain confidentiality throughout the investigatory process to the extent appropriate under the circumstances. In most cases, the alleged harasser must be notified of the complaint made against him/her in order that he or she can be afforded the right to respond.

2. Identification of Investigators

Complaints will be investigated by the appropriate agency head or designee who may ask for assistance from the State Personnel Department. In addition, other individuals may be included in reviewing the investigation and outcome at the discretion of the agency head or designee or the designee of the State Personnel Director.

3. Investigation Process

In pursuing the investigation, the investigator will identify him/herself to the involved parties and notify the alleged harasser of the investigation and the nature of the complaint. The investigator will thoroughly investigate the matter as s/he sees fit, while keeping the complainant informed regarding the status of the investigation.

C. Resolving the Complaint

A report of the findings of the investigation shall be compiled with all supporting documentation attached and forwarded to the agency head's designee and to the Employee Relations Division of the State Personnel Department. Such report must also include a determination whether a violation of this policy has been substantiated or not substantiated. In determining whether the alleged conduct constitutes a violation of this policy, the totality of the circumstances, such as the nature of the conduct and the context in which the alleged incident(s) occurred will be considered.

1. Sanctions

If the investigation results in a finding that a violation of this policy has been substantiated, then disciplinary action may be imposed up to and including dismissal from employment.

If the investigation results in a finding that no violation of this policy has been substantiated, but the conduct is inappropriate or unprofessional or violates another policy, then disciplinary action may be taken; however, there should be no reference to the phrases "sexual harassment" or "harassment based on race, color, creed, religion, sex, national origin, age, sexual orientation or gender identity, or physical or mental disability" in such disciplinary action.

The findings and determination for action shall be communicated to the complainant and the alleged harasser. The State's findings do not in any way affect the complainant's right to pursue a complaint for sexual harassment or harassment based upon protected class with any appropriate state or federal authority.

It is the responsibility of all state employees to cooperate fully with any investigation covered under this policy. Failure to cooperate with investigations may result in disciplinary actions.

Although the State's ability to discipline a non-employee harasser is limited, any state employee who has been subjected to workplace harassment by a non-state employee should file a complaint so that the situation can be investigated and action may be taken.

2. False Accusations

If an investigation results in a finding that the complainant falsely accused another of workplace harassment knowingly or in a malicious manner, the complainant may be disciplined up to and including dismissal from employment.

D. Maintaining a Written Record of the Complaint

The State will maintain a complete written record of each complaint and how it was investigated and resolved. Written records shall be maintained by the State Personnel Department and by the Agency employing the harasser and by the Agency employing the complainant (if different). If disciplinary action is taken, a record of that disciplinary action shall be maintained in the harasser's personnel file in accordance with any applicable retention schedules.

REFERENCES

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