North Carolina Department of Public Safety

UNLAWFUL WORKPLACE HARASSMENT AND PROFESSIONAL CONDUCT POLICY

POLICY

Unlawful workplace harassment and retaliation are strictly prohibited.

The Department of Public Safety is committed to providing a workplace environment that reasonably accommodates all qualified employees and agents of the Department so that they may fulfill their essential job functions and carry out the mission of the Department of Public Safety in a professional manner and to the best of their ability. All employees and agents of the Department are expected to act in a manner consistent with standards of personal conduct that contributes to a professional working environment in all departmental workplaces. The Department has ZERO TOLERANCE for violations of the unlawful workplace harassment policy and for retaliation.

Prohibited unlawful workplace harassment includes unwelcome or unsolicited speech or conduct based upon race, sex, creed, religion, national origin, age, color, political affiliation[1], genetic information[2], or disabling condition and which creates a hostile work environment or constitutes quid pro quo sexual harassment.

1. Direct appeal to the Office of Administrative Hearings on the basis of political affiliation is provided only to employees who have achieved career status pursuant to G.S. 126-1A.
2. Complaints relating to Genetic Information are limited to the agency's internal grievance process and may be simultaneously filed with the Equal Employment Opportunity Commission (EEOC).

DEFINITIONS

1. **Aggrieved individual:** Any individual, including any applicant, agent or employee (whether current or former, full-time or part-time, permanent, temporary or probationary), who reasonably believes that he or she has been subjected to conduct by any employee or agent of the Department in violation of the departmental unlawful workplace harassment policy.

2. **Complainant:** An aggrieved individual who files a complaint or (if appropriate) on whose behalf a complaint is made with the Department, which states allegations concerning the possible violation of the Department's unlawful workplace harassment policy.

3. **Respondent:** An individual against whom allegations are filed with the Department concerning a possible violation of the Department's unlawful workplace harassment policy.

4. **Hostile work environment:** An environment that a reasonable person would find hostile or abusive and one which the person who is the object of the harassment in fact perceives to be hostile and abusive. Hostile work environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, the severity of the conduct, and whether the conduct is physically threatening or humiliating, or unreasonably interferes with an employee's work performance.

5. **Quid Pro Quo sexual harassment:** Unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct when (1) submission to such conduct is made either explicitly or implicitly a term or condition of employment, or (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting the individual.

6. **Vendor/Contractor:** Conduct towards an outside vendor or contractor that would constitute unlawful workplace harassment toward an employee could constitute unacceptable personal conduct.

7. **Retaliation:** Adverse action taken against an employee for engaging in legally protected activity, including an employee's opposition to conduct or action the employee reasonably believes constitutes unlawful workplace harassment.

8. **Interim Measures/Steps:** Temporary measures taken for the good of the agency pending completion of an investigation or remedial action. These measures are generally taken to minimize workplace disruption and assist in the timely resolution of a complaint investigation or completion of remedial action. Interim steps, including temporary reassignment or suspension of an employee, are not disciplinary actions. Interim measures do not indicate that any determination regarding the truth of the allegations or employee wrongdoing has been made.

PROFESSIONAL AND ACCEPTABLE PERSONAL CONDUCT

It is the responsibility of every employee and agent of the Department to conduct himself or herself in a manner that contributes to a workplace environment that is not only free of unlawful workplace harassment but also advances the mission and goals of the Department and fosters a harmonious working environment that encourages all employees to perform at their best. The Department recognizes that unprofessional and unacceptable personal conduct affecting the workplace contributes to low employee morale, absenteeism, turnover and loss of productivity. It also erodes the public's trust and the agency's credibility in the community.

Every employee and agent of the Department is expected to conduct himself or herself in a professional manner in the workplace. Whenever there is a failure to abide by acceptable personal conduct standards the Department may take action, including disciplinary action, even if the conduct at issue does not rise to the level of *illegal* discrimination or harassment under state and federal law.

Examples of Prohibited and Legally Dangerous Conduct

The Department recognizes that a determination of whether particular speech or conduct violates the law is determined by many factors, including whether the speech or conduct was offensive to the person who experienced it. HOWEVER, the Department reminds all employees that engaging in any of the below listed activities may constitute unacceptable personal conduct without regard to whether it violates state or federal law, and the Department may take disciplinary action up to and including dismissal for engaging in it.

1. Threats of physical violence or harm; displaying items that imply such a threat;
2. Slurs, epithets, humiliating and derogatory jokes or comments concerning national origin, ethnicity, race, color, handicap, age, religion, creed or gender;
3. Off-color, sexually suggestive, sexist or risque email, stories, jokes, items, songs, personal accounts, or pictures;
4. Questioning others about personal matters, including the nature, existence or details of relationships with spouses or lovers, sexual preferences or history;
5. Physical touching other than handshakes, including rubbing, hugging, stroking, kissing or grabbing any part of someone else's body or personal items on their body without their consent;
6. Sexually aggressive conduct, including bumping, cornering or touching in any manner the area around (or clothing on) someone's buttocks, upper leg, thigh, crotch, chest or breasts; and
7. Sexual advances, requests for sexual favors, comments containing sexual language or references with sexual innuendo or implications, obscene gestures.

IMMEDIATE DUTY TO REPORT AND ZERO TOLERANCE

Every departmental employee has a duty to report immediately conduct which he or she reasonably believes constitutes unlawful workplace harassment. The Department has a ZERO TOLERANCE policy for workplace harassment. The failure of an employee to report conduct that reasonably appears to violate the unlawful workplace harassment policy negatively impacts the Department's ability to identify and eliminate unlawful workplace harassment. Therefore, it is imperative that every employee report conduct he or she reasonably believes may violate the unlawful workplace harassment policy.

DIRECT REPORTING TO EEO OFFICE

A complaint or allegation concerning possible violation(s) of the unlawful workplace harassment policy may be submitted directly to the Department's EEO Office by filing online at http://www.dps.gov or by phone (919) 733-4080 or facsimile (919) 716-3958. No employee is required to submit a complaint of (or allegations concerning) unlawful workplace harassment to a supervisor against whom the allegations are made or

involve. Upon receipt of a complaint, the EEO Office will advise an appropriate level of management regarding the complaint.

AN AGGRIEVED PARTY MUST REPORT COMPLAINTS WITHIN 30 DAYS OF CONDUCT

Any aggrieved individual who thinks that he or she has been subjected to conduct in violation of the unlawful workplace harassment policy must report it to an appropriate manager or the Department's EEO Office within 30 days of the alleged harassing conduct.

DUTY TO INVESTIGATE ALLEGATIONS

The Department is legally obligated to investigate all allegations that concern possible violations of the unlawful workplace harassment policy. Any supervisor who becomes aware of allegations that reasonably may constitute a violation of the unlawful workplace harassment policy must report the allegations to the EEO Office immediately by phone (to be followed by a written report) or facsimile report.

1. A supervisor must report the alleged violation even if the allegations concern conduct that occurred more than 30 days before the supervisor became aware of them.
2. A supervisor must report the allegations even if the supervisor receives the information from an individual who is not under his or her supervision or chain of command
3. A supervisor must report the allegations even if the witness or complainant requests that the supervisor NOT report the matter.

   The Department is aware that an employee may advise a supervisor of allegedly inappropriate conduct of another employee and then request that the supervisor take no action. In some cases an employee may request that they be allowed to resolve the matter directly with the offending party and without a report to the EEO Office or the chain-of-command. While the Department is sympathetic to an employee's desire for privacy, nevertheless, due to the serious legal implications of the situation and the Department's legal duty to investigate, the supervisor must report the allegations. It is the responsibility of the EEO Office to determine if the allegations require investigation or if other resolution efforts are appropriate.

PROMPT INVESTIGATION, INTERIM MEASURES AND REMEDIAL ACTION

Complaints of alleged workplace harassment or retaliation will be promptly investigated and, as warranted, remedial action will be taken. Pending completion of an investigation, interim steps, such as temporary employee reassignment(s) and shift changes, may be taken. Interim measures are neither disciplinary action nor an indication of belief regarding the truth of allegations or the outcome of the investigation. If possible, the EEO Office and Personnel should be consulted prior to implementing an

interim measure. However, when circumstances make such contact impracticable, appropriate level managers should take those steps reasonably believed necessary at the time, as directed by their chain-of-command and consistent with departmental policy.

If the individual chooses to file an internal complaint with the Department's EEO Office, a thorough investigation shall be conducted and recommendations made, as appropriate. During the review of a claim of discrimination at the departmental level, an attorney will not represent the agency. While the employee may wish to consult an attorney or other individuals or organizations for advice and/or information during the grievance process, the agency shall only communicate with the employee.

UNSUBSTANTIATED COMPLAINTS

It is recognized that the very nature of workplace harassment circumstances may make it difficult or impossible to substantiate a particular complaint. Nevertheless, every aggrieved individual is strongly encouraged to report violations of the unlawful workplace harassment policy without regard to whether he or she is personally aware of corroborating evidence. The failure to report workplace harassment severely restricts the ability of the Department to identify and take remedial action to stop such conduct from continuing, and to prevent further harm. The Department recognizes that the inability to corroborate or substantiate a complaint does not necessarily mean the complaint was untruthful. However, where it is determined that an individual has made a complaint in willful disregard of the truth or has been intentionally dishonest, that individual may be subject to disciplinary action, as is true when any employee provides false, misleading, or known to be inaccurate or incomplete information in an investigation.

INFORMATION FOR THE RESPONDENT

An individual who is the subject of allegations of unlawful workplace harassment must be informed of the complaint, the specific allegations, the identity of the complainant(s), and given an opportunity to respond to the allegations. Additionally, at the conclusion of the investigation, the respondent is entitled to be advised that the investigation has concluded and its outcome.

CONFIDENTIALITY

By their nature, allegations concerning conduct that may violate the unlawful workplace harassment policy may have serious implications for the personal and professional lives of affected employees. The Department recognizes the concern employees have regarding their privacy and the confidentiality of personnel information. The Department also recognizes that both the accuser and accused deserve a fair investigation. Therefore, employees are directed that no confidential personnel or investigation information may be released other than as necessary to conduct the investigation or agency business in compliance with departmental policy and directives, and other applicable legal standards. Further, managers are admonished to be cautious regarding the transmittal of the sensitive information relative to allegations of unlawful

workplace harassment so that the information does not inadvertently become known. Managers should NOT disclose the existence or nature of such allegations to anyone unless that individual has a business need to know the information or the manager is under an affirmative obligation to disclose the information (e.g., court order). Questions concerning whether information should be disclosed may be directed to the Department's Legal or EEO Office, or to appropriate counsel in the Attorney General's Office.

ANONYMOUS COMPLAINTS

Complaints that are submitted without identifying the complaining individual make it difficult, if not impossible, for the Department to adequately investigate, respond or take appropriate action. Employees with complaints are strongly encouraged to contact the EEO Office directly if there are specific concerns about filing a complaint.

FREE SPEECH

The Department respects the constitutionally protected right of free speech. However, conduct or language that constitutes unlawful workplace harassment is NOT legally protected as free speech.

CULTURAL DIVERSITY AND NOTICE TO OTHERS WHEN OFFENDED

The Department recognizes that on occasion employees engage in conversation or conduct with (or within sight or hearing of) co-workers at the workplace concerning current affairs or other matters of personal interest. Additionally, the Department appreciates that the workplace brings together culturally diverse individuals who may have differing viewpoints and sensitivities. As a result, a conversation, music, conduct or a personal item that one individual finds enlightening or amusing may be offensive to someone else who sees, hears or is exposed to it.

The lawful balancing of free speech with the prohibitions on unlawful workplace harassment (and admonitions regarding professional conduct) does not guarantee that one will never be exposed in the workplace to any word or conduct that one may find personally offensive. Nevertheless, the Department desires for all employees to work in an environment that is reasonably culturally sensitive and one that enhances work performance. Therefore, employees are encouraged to promptly and politely advise an offending co-worker (or the co-worker's manager) when exposed to speech, conduct or any matter that is personally offensive, so that the situation may be resolved as quickly and amicably as possible. Managers are encouraged to consult as needed with the Department's Legal or EEO Office when conflicts arise resulting from social and cultural diversity in the workplace.

WARNING TO SUPERVISORY LEVEL EMPLOYEES

Supervisors are held to a higher liability standard for conduct constituting illegal harassment or discrimination of subordinate level personnel. Any individual who is or reasonably appears to be in a position of workplace authority or control over another may be held to be a supervisor for purposes of determining liability for harassment or discrimination, (e.g. correctional sergeants over correctional officers). Therefore, it is imperative that supervisory level personnel carefully manage all interpersonal relationships with subordinate personnel, at the work site and away from work.

RELATIONSHIPS BETWEEN EMPLOYEES

While the Department does not prohibit romantic or personal relationships between employees, supervisory level personnel are strongly discouraged from seeking to date, dating, or engaging in romantic or intimate personal relationships with subordinate level personnel. Such relationships have a significant potential for creating disruption at the work site, including generating complaints of favoritism and allegations of harassment by the subordinate if the relationship fails. Also, a relationship involving supervisory personnel and subordinate level personnel may create problems within the work unit by questioning the Department's philosophy of fair play in providing equal opportunity to all qualified individuals. The Department will not tolerate workplace disruption related to such relationships whether involving similarly ranked employees or supervisors and subordinates. Further, management may transfer or make other work assignment changes to minimize potential workplace disruption or liability.

COMPLAINT PROCEDURES

1 Any individual who wishes to file a grievance under this policy must submit a written complaint to the Department within 30 calendar days of the alleged harassing action.

2. The Department will investigate within 60 calendar days from receipt of the written complaint, if warranted and appropriate. The complainant's cooperation is essential in order for the Department to fairly investigate the allegations. A complainant's refusal to cooperate **may** be grounds to close the investigation. The complainant and respondent are encouraged to submit any relevant information and the names of potential witnesses for consideration by the investigator. However, the investigator or appropriate personnel in the EEO Office will determine in an exercise of independent discretion what information should be considered and which witnesses will be interviewed.

3. The Department will provide the complaining party with a written response at the conclusion of the investigation.

4. The individual may file a simultaneous complaint under Title VII with the Equal Employment Opportunity Commission (EEOC).

5. If the complaining party wishes to appeal the Department's grievance investigation, the appeal should be made directly to the Office of Administrative Hearings (OAH) after the Department's 60 calendar days to respond has expired or within 30 days after receiving the Department's investigation response. A fee must be paid to OAH when the petition is filed, unless it is waived by OAH. A copy of the appeal must be served on the Department's General Counsel to the Secretary, who is the agent for service of process for the Department of Public Safety.

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Adopted March 1, 2013

Kieran J. Shanahan, Secretary
North Carolina Department of Public Safety