


DEPARTMENT OF CORRECTION 	POLICY MANUAL	POLICY NUMBER: 201 v4.0	PAGE NUMBER: 1 of 13
		SUBJECT: Respectful Workplace	Adopted: 4-1-05 Revised: 3-15-11

Revision Summary

Revision date 06/06/22 version 4.0: Added language in section 07.07.00 to provide updates to a complainant.

01.00.00. POLICY OF THE DEPARTMENT

It is the policy of the Idaho Board of Correction that the Department of Correction create a respectful workplace through the elimination of workplace discrimination and other unacceptable workplace behaviors. The Department of Correction shall establish and maintain identification and reporting processes for the detection of workplace discrimination and other unacceptable behaviors, and shall provide education and training which promote a respectful workplace.

01.01.00. PURPOSE

The Department desires a workplace atmosphere where all employees, offenders, contractors, and visitors can expect to be treated with courtesy, dignity, and respect and with fairness, honesty, and impartiality.

This policy outlines expected conduct, prohibited discrimination, unwanted workplace harassment, the duty to report misconduct, and an effective complaint procedure for employees who believe that they have been the victims of prohibited conduct.

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03.00.00. REFERENCES

Attachment A, Flowchart.

Attachment B, Examples of Employment Discrimination and Harassment.

Civil Rights Act of 1964, Provisions of Title VII and Amendments.

Department Policy 205, Corrective and Disciplinary Actions.

Department Policy 217, Ethics and Standards of Conduct.

Department Policy 220, Workplace Relationships.

Department Policy 227, Administrative Investigations.

Governor's Executive Order 2004-05, Idaho Code of Fair Employment Practices.

Idaho Code, Title 67, Chapter 59.

Idaho Division Of Human Resources, Rule 190.

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04.00.0. DEFINITIONS

Board: The State Board of Correction.

Complainant: An individual or entity that makes an accusation, allegation, complaint, or charge against the Department or its employee.

Contractor: A person who has entered into a contract with the Board or Department, or a contract with the State of Idaho administered by the Board or Department to provide any service.

Department: The Idaho Department of Correction.

Disparate Impact: The result of an employment practice that appears neutral on the surface but when used has a negative impact on a protected class of people.

Disparate Treatment: The result of an employment practice whereby members of a protected group are denied the same employment, promotion, membership, or other employment opportunities as are available to other employees or applicants.

Employee: Any person that the Department hires, pays a wage in exchange for personal services, and assigns a position control number (PCN) authorized by the State Legislature.

Human Resource Services (HRS): The group within the Department of Correction authorized and directed to administer human resource functions and services for Department employees and management.

Illegal Discrimination: Discriminatory actions toward an individual based on gender, race, color, religion, national origin, age, disability, or any other status protected by law.

Offender: A person under the legal care, custody, supervision, or authority of the Board- including a person within or without the State pursuant to agreement with another state or contractor.

Office of Professional Standards (OPS): An authorized unit under the Director's Office, which conducts agency-wide investigations and provides assessment services for the Department.

Protected Class: Pursuant to federal law, a protected class is an individual or group protected from discrimination due to his/their race, color, religion, sex (gender), national origin, age (if 40 or older), military veteran status (limited), and physical or mental

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disabilities. (State and local laws may provide protections for characteristics such as pregnancy and retaliation.)

Quid Pro Quo: Literally “this for that”, a form of sexual harassment whereby an individual's submission to or rejection of sexual advances or conduct of a sexual nature is used as the basis for employment decisions affecting the individual.

Volunteer: An approved person who volunteers or donates time or services to the Board or a Department operation or facility.

05.00.00. SCOPE

These procedures guide all Idaho Department of Correction (IDOC) employees in proper conduct with leaders, co-workers, subordinates, clients and the public in the performance of duties and responsibilities.

06.00.00. RESPONSIBILITY

Contractors. All contractor employees working at IDOC sites are subject to compliance with these procedures.

Director. Approves procedures, delegates authority to managers to implement, enforce and authorize sanctions when procedures are violated.

Employees. To receive training, abide by procedures, and report violations.

Human Resource Services (HRS). Drafts procedures, interprets and assists staff and management in compliance of policy procedures.

Idaho Personnel Commission (IPC). Hears filed appeals of classified employees sanctioned by the Department for policy violations.

Managers. Trains, educates, instructs, ensure compliance, conducts preliminary investigations, and implements corrective or disciplinary actions for policy violations.

Office of Professional Standards (OPS). The Department's assigned office to conduct authorized investigations into policy violations. Issues findings of complaints to management.

Supervisors. Ensure assigned employees receive policy training; know what constitutes policy violations and how to report infractions. Ensures unit complies with policy and procedures. Reports received complaints to superiors.

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07.00.00. PROCEDURE

07.01.00. Respectful Workplace

A respectful workplace is where employees, by their behavior, actions and language, demonstrate their commitment to treating each other with honesty, courtesy, dignity and respect while conducting job-related duties legally and professionally.

Employees will interact with co-workers, superiors, subordinates, the public and offenders in a professional, business-like manner, free from illegal discrimination or harassment.

07.01.01. Expected Behaviors

Employees are expected to adhere to the Mission, Vision and Values creed as stated in the Department's Strategic Plan.

Courtesy, professional conduct and cooperation with integrity and honesty is valued and expected from every employee at every level within the Department.

All employees, customers, contractors, and visitors to the work areas should enjoy a work environment that is free from harassing or unwanted behaviors.

07.02.00. Prohibited Behaviors

Employees will adhere to this policy and refrain from participating in any of the following prohibited behaviors:

- Illegal discrimination;
- Illegal harassment;
- Sexual harassment;
- Misconduct of a sexual nature;
- Hostile work environment;
- General harassment;
- Retaliation;
- Workplace violence;
- Workplace harassment;
- Obstruction or non-cooperation with official investigation;
- False reporting; or
- Failure to report any witnessed violations of this policy.

Conduct that violates this policy is not tolerated. Employees found in violation of these

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procedures will be subject to corrective or disciplinary action up to and including dismissal.

07.02.01. Illegal Discrimination

Illegal discrimination prohibits employment decisions or any retaliation action based on an employee's:

- Race;
- Color;
- Religion;
- Gender (sex);
- Marital status;
- National origin;
- Age;
- Veterans status; or
- Disability.

Included are any other factors employers are prohibited, by law, from considering when making employment decisions. Employment practices include hiring, firing, transfer, promotion, benefits, compensation and any other terms and conditions of employment.

For purposes of this policy, prohibited discrimination includes discrimination on the basis of one's sexual orientation.

07.02.02. Illegal Harassment

Illegal harassment actions for protected class employees apply to sexual harassment, racial harassment, age harassment, religious harassment, national origin harassment, Veteran harassment, disability harassment, and retaliation harassment.

07.02.03. Sexual Harassment

Sexual harassment is a form of workplace gender harassment. Sexual harassment is unwelcome sexual advances, requests for sexual favors, or any other verbal or physical conduct or behavior of a sexual nature when:

- Submission to the conduct is made, either explicitly or implicitly, a term or condition of an individual's employment, or is used as a basis for any employment decision;
- The conduct is unwelcome and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating,

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hostile or offensive working environment; or

- The conduct is sufficiently severe, pervasive and hostile with continual occurrences to establish a pattern of behavior that significantly alters the condition of employment in an adverse manner, as seen by a reasonable person.

07.02.04. Hostile Work Environment

A hostile work environment is another type of sexual harassment that applies to protected class employees. It is where a work place has a pattern of unwelcome, unwanted or uninvited behavior that is so pervasive or severe that it unreasonably interferes with an employees work performance, or adversely alters working conditions in a significant manner, and creates an intimidating, hostile or offensive working environment. Hostile work environment situations are prohibited.

07.02.05. Misconduct of a Sexual Nature

Misconduct of a sexual nature is prohibited as it can affect any employee in the Department. It is conduct or behavior that is sexually suggestive or sexually related language, behavior or actions that are unwanted, adverse or derogatory. Misconduct of a sexual nature actions that do not rise to the level of illegal sexual harassment are prohibited by this policy and warrant investigation, resolution and sanctions.

07.02.06. General Harassment

General harassment is unnecessary unwanted behavior, action or language towards an employee by using disparaging remarks, intimidating, or taunting that to a reasonable person creates a demoralizing and uncomfortable work environment. The unwanted behavior can be a one-time occurrence or an on-going series of intimidation, either subtle or direct. It does not have to be illegal. It is the degree of violation that determines the severity of consequences.

07.02.07. Non-retaliation

This policy prohibits any retaliatory action against employee's who:

- Report charges of policy misconduct;
- Assist in an investigation;
- Report harassing behavior directed at persons other than the employee; or
- Are threatened by an authority person for refusal to submit to unwanted sexual favors or suggestions.

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07.02.08. Workplace Violence

Workplace violence is an act of aggression, physical assault, or threatening behavior that causes physical or emotional harm to employees, managers, customers and/or visitors. Threats or actions taken by an employee that impact the work environment, even when those threats or actions take place outside of the workplace, is considered workplace violence and a violation of this policy.

Workplace violence includes, but is not limited to:

- An act that is physically aggressive (e.g., hitting, shoving, and fighting);
- A communicated or suggested intent to harm another, endanger the safety of an employee(s), or destroy property;
- Obsessively directed behavior, which may threaten, reasonably alarm, or harass another person (e.g., making harassing phone calls, stalking, intensely focusing on a grudge or grievance, or pursuing a romantic relationship with another employee who has communicated that they do not share the same interest); and
- The inappropriate use, display, or possession of firearms, weapons, or any other dangerous devices.

07.02.09. Workplace Harassment

Behaviors, actions or language that is generally harassing or discriminatory in the workplace towards any employee is prohibited.

Employees conducting unwanted harassment actions occurring off-premise or during non-work hours or away from the job site, directed towards another employee is prohibited.

07.02.10. Discrimination and Harassment Examples

Attachment B contains examples and illustrations of the various prohibited behaviors, language or actions that have been identified in previous sanctions. They are not meant to be all-inclusive. Even one (1) instance of misconduct may constitute a sanctionable violation.

07.02.11. Prohibited Staff Behaviors Towards Offenders

In all interactions with offenders in the workplace, IDOC staff members must maintain a respectful and professional demeanor. Staff must refrain from harassing offenders based

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on any of the following factors:

- Race;
- Color;
- Religion;
- Gender (sex);
- Marital status;
- National or ethnic origin;
- Age;
- Veteran's status;
- Mental or physical disability;
- Sexual orientation.

However, each of the above factors may be taken into account in making legitimate correctional decisions, including, but not limited to housing, placement, security, programming, education, and treatment.

Examples of Prohibited Staff Behaviors toward Offenders:

- Racial or other slurs
- Name calling
- Offensive jokes or stories such as racist, ethnical, sexual, religious put downs
- Demeaning or derogatory oral or written statements
- Derogatory slang words
- Displaying or distributing posters, office décor, pictures, drawings, or cartoons that are crude or of a sexual, religious, ethnic or of a disability-related nature
- Direct sexual advances, sexual obscenities, sex talk, sexually suggestive sounds, noises or innuendoes
- Vindictive or humiliating words or acts
- Using foul language, swearing, and obscenities in front of offenders

07.03.00. Manager Responsibilities

Managers and supervisors are to have the courage to act, the knowledge to act properly, and the wisdom to act professionally and productively in establishing and maintaining a respectful workplace.

To ensure consistency in applying this policy, managers are responsible and accountable for:

- Setting the tone, example and expectation of a harassment-free work site;

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- Serving as role models for subordinates and train others to do likewise;
- Conducting initial training of this policy to their new employees;
- Conducting annual educational and training updates of this policy to all staff;
- Documenting and reporting all training conducted regarding respectful workplace in the training administration system (TAS);
- Enforcing this policy at all times;
- Training and holding their staff accountable for a respectful workplace culture;
- Acting promptly on all violations received and requesting investigations from OPS;
- Acting promptly to minimize unwarranted interruptions in the workplace due to allegations or staff difficulties in respectful workplace matters;
- Determining and taking appropriate action on violations by the perpetrator;
- Maintaining confidential matters in confidence and instructing affected parties to do likewise; and
- Conducting respectful workplace debriefings.

Managers and supervisors who know or should have known of workplace harassment behavior and who fail to report this behavior, or fail to take prompt, appropriate, corrective action, are subject to corrective or disciplinary action up to and including dismissal.

07.04.00. Employee Responsibilities

Employees have policy responsibilities and are accountable for:

- Fulfilling Department expectations by adhering to the conditions and procedures in the respectful workplace policy;
- Attending and documenting attendance at respectful workplace training;
- Telling the other party his unwanted behaviors are not in line with the respectful workplace policy, and ask him to cease, when warranted, or
- It is fully permissible to not confront the perpetrator during or after an unwanted situation and to report it later to a trusted superior;
- Reporting any policy violations to their superiors; and
- Cooperating with any informal or formal investigation of misconduct allegations.

Employees are to immediately report any subsequent or re-occurring inappropriate conduct by the same perpetrator, when known.

Employees violating this policy and procedure, or failing to report a violation will be subject to corrective or disciplinary action as outlined in Policy 205, Corrective/Disciplinary Action, up to and including dismissal.

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07.05.00. Reporting a Complaint or Violation

Any employee who alleges a violation of the respectful workplace may submit a written (preferred) or oral complaint.

Acts of violence should be immediately reported to the proper authorities. Any employee who witnesses a violation of these procedures shall report (orally or in writing) the impropriety to a supervisor, manager, or to any person of authority as soon as practical.

If an employee is uncertain that an incident or conduct is actually a violation of policy, then the employee should report questioned incidents to a supervisor or manager. The manager will be responsible for determining whether the incident or conduct is a violation.

07.06.00. Filing a Complaint

An employee desiring to file a complaint can do so orally, in writing, or both, to anyone in authority within the Department. The complaint does not have to follow any particular chain of command. Persons of authority are, but are not limited to:

- Immediate supervisor;
- Any supervisor;
- Any manager;
- Any sergeant;
- Any lieutenant;
- Any captain;
- Any deputy warden;
- Any warden;
- Any correctional manager;
- Any deputy administrator;
- The human resource services deputy administrator;
- Any Department human resource (HR) officer;
- The Department's legal office; and
- To whomever the employee feels comfortable with in filing his complaint.

Nothing in this policy precludes any person from filing a formal complaint with established agencies that handle discrimination complaints such as the Idaho Human Rights Commission or the Federal Equal Employment Opportunity Commission (EEOC). Timelines for filings vary therefore contact them directly to obtain their guidance.

Reports or complaints, whether oral or written, should include the following:

- The date, place and approximate time of the incident;

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- The name of the complainant;
- The name of the person alleged to have engaged in the prohibited conduct;
- A concise description of the alleged misconduct they believe violates the policy;
- A description of the remedy the employee desires, if known; and,
- The date of the complaint.

Any employee who (1) receives a complaint, or (2) witnesses a respectful workplace violation but is not the actual recipient, is to report the incident to a supervisor, orally or in writing. The validity of the infraction does not need to be determined at this point.

Should a complaint be against the employee's supervisor, employees are not required to follow any particular chain-of-command to report illegal discrimination or harassment infractions.

07.07.00. Formal Investigation and Conclusion

Reported or filed complaints will be taken seriously and will be promptly investigated.

Complaints will be investigated discreetly, impartially and in a confidential manner to the extent possible. Complainants may receive updates from IDOC once per week regarding the status of an investigation related to their complaint, but only to the extent the update will not jeopardize or interfere with the integrity of the investigatory process.

While preliminary inquiries are not formal investigations, managers are authorized to conduct preliminary inquiries before a formal investigation is requested to ensure there is probable cause before requesting the investigation.

Managers requesting a formal investigation will follow the procedures outlined in Policy 227, Administrative Investigations.

Any illegal harassment or discrimination matter reported will be reviewed for the appropriate manner for investigation. For formal investigations, a trained investigator will be assigned to conduct the investigation.

Substantiated complaints will require the manager to initiate immediate and appropriate corrective or disciplinary action in accordance with Policy 205, Corrective/Disciplinary Action.

The totality and circumstances of the situation is to be reviewed and becomes the basis for the severity and extent of the corrective or disciplinary action taken.

Unsubstantiated complaints will be closed after all parties are advised of the results of the

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investigation.

The affected parties will be informed that the investigation has concluded and that appropriate action has or will be taken. If the complaint involves persons outside the Department, appropriate measures will be taken to remedy the problem.

07.08.00. Confidentiality

Confidentiality will conform to the procedures in Policy 227, Administrative Investigations.

Investigation findings will not be revealed during the investigation or during any due process action resulting from the investigation, unless there is a need to know.

Breaches of confidentiality arising from the investigation or complaint may result in corrective or disciplinary action up to and including dismissal.

07.09.00. False Reporting

The Department prohibits any employee from reporting untrue or providing false information in any allegation of discrimination, illegal harassment, sexual harassment or harassment report, (or similar information), before, during or after an investigation.

Any employee found to have reported falsely or filed an unjustified allegation, or who furnished false information during the investigation will be subject to disciplinary action, up to and including dismissal.

07.10.00. Non-Retaliation for Exercising Right to File Complaint

The Department extends to all employees the non-retaliation provisions of the Civil Rights Act of 1964, Title VII, and amendments. The Department will not retaliate against employees who exercise their right to ensure that discrimination and harassment are identified and reported.

Non-retaliation provisions apply equally to an employee opposing these procedures because they believe they violate other granted benefits or procedures, or they refuse to abide by the sanctions issued for violating the procedures they considered non-binding.

08.00.00. FLOWCHART

See Attachment A for the flowchart depicting Sources of Respectful Workplace Complaints or Reports.

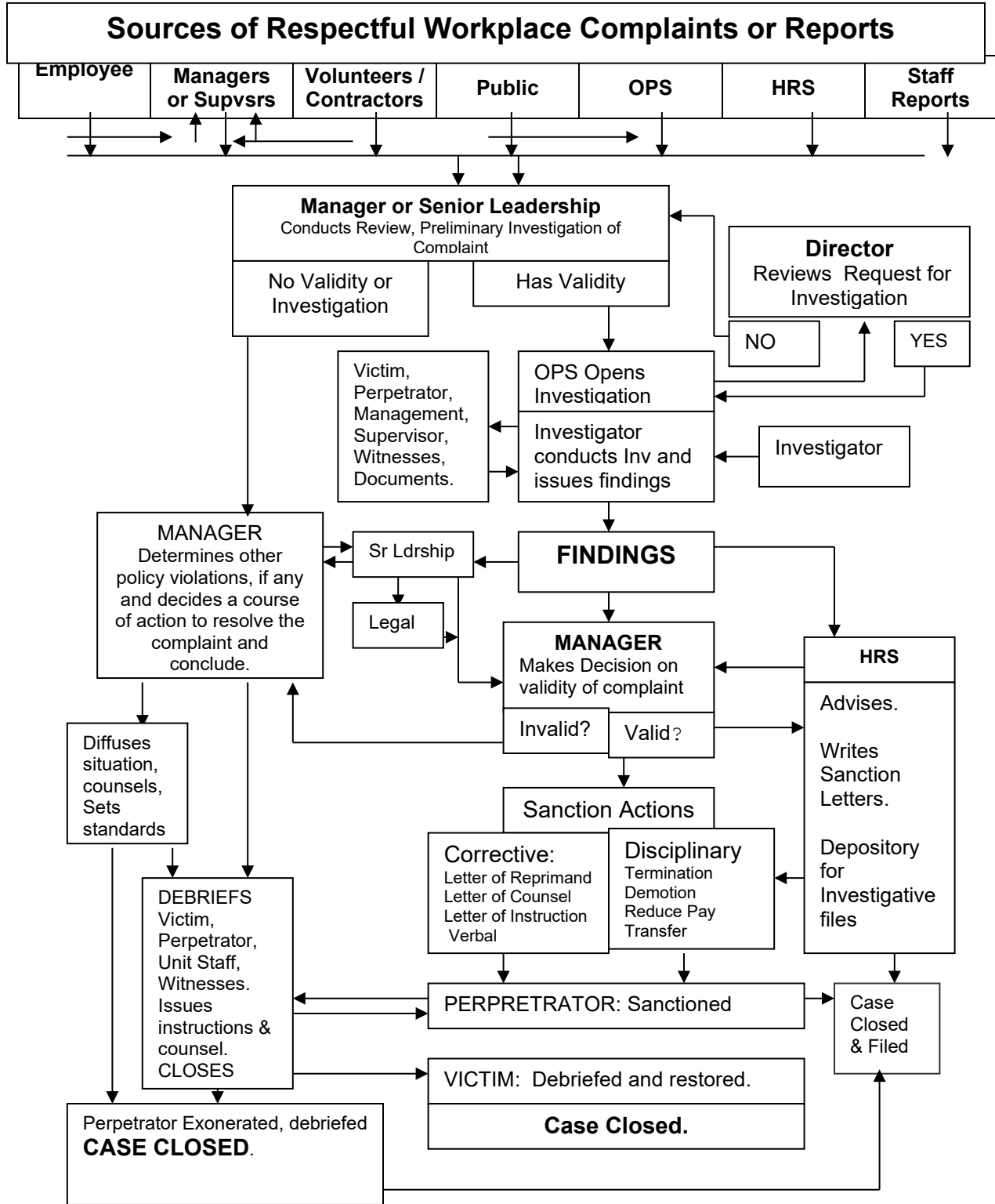
09.00.00. SIGNATURE

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Director, Idaho Department of Correction

Date

Idaho Department of Correction



Examples of Employment Discrimination and Harassment

The following examples of prohibited behavior are not meant to be all-inclusive of conduct that could possibly occur. Rather, these examples are offered to assist employees and managers to recognize past illegal harassment or discrimination conduct in order to determine if an employee's current conduct is similar.

1. Examples of Employment Discrimination: Managers responsible for employment-related decisions are to ensure their decisions follow legal and approved practices in the following areas:

Gender Biased Decisions. Employment decisions that systematically favor one gender over another in employment action become illegal when the non-favored gender is a protected class employee.

Job Interviewing. During employment interviews, asking applicants non-job related questions, such as what race or nationality they belong to, if they are married or have children, their age or date of birth, their disability, or their religion, is illegal. Interviewers must ask job-related questions only.

When Hiring or Promoting. Offering a position or a promotion to an unqualified non-protected class applicant over a qualified protected class applicant is illegal. Courts have declared employers who purposely non-select a protected class employee solely due to the employee's age, race, color, gender, ethnicity, religion, Veteran status or disability is a violation of federal laws.

It is also illegal when a qualified protected class employee fails to be promoted for an underutilized vacant position.

Workplace Relationships. It is illegal for an employer to have protected class employees, singularly or as a group, be subject to pervasive and/or on-going unwanted derogatory or demeaning illegal harassment. This includes racial harassment, sexual harassment, or derogatory conduct that is directed towards people who have an accent, speak another language, are disabled, are a veteran, are over forty (40) years old, or are of a different color, race or national origin.

Retaliation. It is illegal to retaliate against or ostracize an employee who assisted with or testifies on behalf of an employee who has filed an allegation of misconduct.

Training Opportunities. Arbitrarily or purposely excluding protected-class employees from internal or external training or educational opportunities when training is offered to other is illegal.

2. Examples of Illegal Harassment: Illegal harassment is pervasive offensive behaviors or conduct that creates a demeaning, intimidating or demoralizing work environment for protected-class employees. Conduct can be manifested orally, graphically, or through the submission of written statements, letters, e-mail, etc. Examples include but are not limited to:

- Stereotyping - placing others into a set category that may or may not be truly a representative of an individual's or a group's background, beliefs or conduct;
- Slurs – such as making derogatory remarks towards another employee that is considered or felt as a personal putdown or as inferior;
- Jokes or stories - that represent offensive and inaccurate attitudes and behaviors towards another person or group, stated publicly or privately in the workplace. Some examples are: obscene jokes, racist jokes/stories, religious put downs, ethnic jokes, jokes about the elderly, disability mocking, any gender bashing;
- Demeaning or derogatory oral or written statements that are purposely given to others to degrade or make one feel inferior;
- Hazing, i.e., unwanted conduct directed towards coworkers, or groups, that is unnecessary and/or demeaning to the employee's assigned duties, either as a right of passage or to newer employees;
- derogatory slang words for the purpose of belittling or causing someone to feel inferior; and
- Displaying or distributing posters, office décor, pictures, drawings, e-mails or
- Cartoons that are offensive to a reasonable person because they are crude or of a sexual, religious, ethnic or of a disability-related nature that reflects disparagingly upon any protected class person.

3. Examples of General Harassment: These examples are applicable to all employees. They can be verbal or physical conduct towards an employee that are unwanted, derogatory, or demeaning. The examples are not intended to constitute an all-inclusive list. Examples include:

- Stereotyping;
- Slurs;
- Intentional brushing against another employee's body;
- Grabbing or touching parts of another employee's body, especially when specifically told not to touch them;
- Silencing another employee, i.e., purposely ignoring or excluding an employee because of known or unknown reasons and the silencing action affects the work environment and productivity of that employee;
- Bullying;
- Threatening another employee orally, in writing or by conduct or gestures;
- Making racial, ethnic or sexually related jokes;
- Displaying inappropriate posters, pictures, calendars, or other pictorial images

- of a sexual nature;
- Making direct sexual advances;
- Making sexual obscenities towards others;
- Engaging in sex talk of a personal nature towards others;
- Making sexually suggestive sounds, noises or innuendoes;
- Inquiring from an employee about intimate sexual matters;
- On-going requests for a date that is unwanted;
- Targeting another employee or group with vindictive or humiliating words or acts meant to demean, degrade or embarrass another person;
- Loud angry outburst or obscenities directed towards another employee, a situation or a group of employees or by-standers;
- Using foul language, swearing, and obscenities in front of others;
- Asking unwanted questions about an employee's personal life;
- Intentional staring or leering at another employee for an unusual amount of time making the employee feel unreasonably uncomfortable;
- Unwanted kissing;
- Unwanted hugging;
- Unwanted body touching;
- Purposely taking, stealing, or defacing an employee's personal property or agency issued items; and
- Stalking, i.e., making repeated appearances at an employee's residence or other non-work locations, by phone, unsolicited letters, showing up unannounced, following an employee in his car, being or hanging around in the employee's working proximity with no business necessity.

4. Examples of Illegal Sexual Harassment: Illegal sexual harassment applies to protected-class employees. There are three (3) types of sexual harassment: quid pro quo; hostile work environment; and disparate treatment or impact. All are illegal sexual harassment. The recognized standard for illegal sexual harassment is the conduct must be sufficiently severe, prolonged or pervasive as to alter the conditions of employment.

Sexual harassment consists of making unwelcome sexual advances, requests for sexual favors or any conduct of a sexual nature, when:

- Submission to the conduct is explicitly or implicitly made a term or condition of employment;
- Submission to or rejection of the conduct is used as a basis for any employment decision;
- The conduct has the purpose or effect to unreasonably interfere with the work environment;
- The unwanted behavior creates a hostile, intimidating, or offensive work environment; or
- Behavior that degrades or demonstrates gender-biased conduct.

Merely making reference to sexual or gender matters, per se, may not rise to the level of illegal sexual harassment, as defined by the courts; however, it may be a violation of the Department's misconduct of a sexual nature procedure.

Additionally, it should be noted that the Equal Employment Opportunity Commission (EEOC) states that a person who is qualified for but denied an employment benefit because of another's submission to sexual harassment may be protected by the Civil Rights Act of 1964, provisions of Title VII and amendments.

4a. Examples of Quid Pro Quo: Quid Pro Quo is when an applicant is offered a job, or when an employee, in order to keep his job, is offered a job benefit that is conditioned upon the acceptance of sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature such as:

- A newly hired person is told that they are required to spend time with the boss that has sexual connotations in order to maintain the job, or
- Employees who do not submit to sexual advances by supervisors or managers are threatened with discharge, blocked promotions, arbitrary transfers, or poor performance evaluations.

4b. Examples of Hostile Work Environment: A hostile work environment is one type of sexual harassment of protected class employees. By substituting the term sexual harassment with racial, religious, age, veteran, or disability harassment in the cited examples, a hostile work environment covers more than just sexual harassment and encompasses all illegal discriminatory practices of protect-class employees from a hostile work environment.

- Examples for Hostile Work Environment are the same as listed in number three (3), General Harassment, with the added condition that the conduct is part of a larger cultural pattern that is sufficiently pervasive or so severe as to adversely alter the conditions of employment.

4c. Examples of Disparate Treatment or Impact: A protected class employee who is denied the same employment opportunity or benefits that is available to all other employees or applicants are disparate treatment. An example is:

- Requiring females to take an additional test for strength that males are not required to take (unless a Bona Fide Occupational Qualification (BFOQ) for females has been previously established).

5. Examples of Unwanted Physical Contact: Examples of unwanted or pervasive physical contacts between and employee and one (1) or more individuals are:

- Touching in inappropriate or private parts of the body;
- Hugging;

- Kissing;
- Caressing;
- Fondling;
- Fanny pats;
- Goosing;
- Performing unwanted massages or back-rubs;
- Sexual gestures or body movements of a sexual nature;
- Molestation;
- Indecent exposure;
- Assault; or
- Rape.

6. Examples of Unwanted Verbal Comments:

- On-going sexually suggestive or abusive talk;
- Jokes that are off-color, racial, religious, or ethnic in nature;
- Jokes that are sexual or gender-biased;
- On-going social requests or invitations;
- Asking unwanted personal questions about an employee's social or sex life;
- Repeated references to employee's private body parts;
- Insults of a sexual, racial, ethnic, or religious nature;
- Too many personal questions;
- Sexual innuendoes;
- Catcalls, whistles, or sexually suggestive sounds;
- Loud and abusive comments meant to intimidate or embarrass; or
- Sarcastic remarks about an employee's race, gender, religion, age, ethnicity, veteran status, marital status, or disability.

7. Examples of Visual Offenses:

- Obscene sent letters or e-mails;
- Posted sexually offensive cartoons or graphics;
- Lists of sexist jokes routed around;
- Displaying in work area pictures of fully or partially nude persons, including scantily clad or offensively clad persons;
- Displaying offensive, threatening, or demeaning drawings;
- Wearing T-shirts with offensive wording or logos;
- Using coffee mugs or other objects with offensive wording or pictures; or
- Any media that inappropriately raises the issue of sexually related matters, such as tattoos, magazines, and computer-generated images.

8. Example of Patterns:

- Sexual harassment can be an accumulation or a series of incidents of a sexual nature even when one (1) or more of the incidents, when considered on its own merit, might not be harassing. However, when the incident or sexual behavior establishes an on-going pattern of unwanted behavior, it rises to the level of unwanted patterned behavior;
- Sexual harassment is not applicable to unsolicited compliments of a socially acceptable nature, even when unwanted, or for consensual personal and social relationships without a discriminatory employment effect. Repeated requests to stop unwelcome actions would establish a pattern of unwanted behavior which does become prohibited;
- Prudence is expected when an employee experiences a first time hug or pat, even when unwelcome in the workplace. When this occurs the person committing the offense should be told that this behavior is unwanted and that they are expected to refrain from repeating the behavior again. This type of incident may violate only the provisions of the misconduct of a sexual nature provision, whereas, if it were repeated several times by the harasser after being warned not to continue, it could establish a pattern of unwanted behavior which rises to the level of illegal sexual harassment;
- Whether the offensive conduct creates a hostile work environment depends upon all of the circumstances, including:
 - ◆ The frequency of the misconduct;
 - ◆ The severity of the misconduct;
 - ◆ Whether it is physically threatening or humiliating, or a mere offensive utterance; or
 - ◆ Whether the misconduct unreasonably interferes with an employee's work performance.

9. Examples of Misconduct of a Sexual Nature: Misconduct of a sexual nature occurs when inappropriate conduct regarding sexual matters does not meet the stronger or higher criteria of illegal sexual harassment. These behaviors are a violation of the Department's standards and the intent of this policy.

Examples for Misconduct of a Sexual Nature are repeated in number three (3), General Harassment, and number four (4), Sexual Harassment, and

- The best course of action for an employee is to avoid all sexually offensive conduct in the workplace;
- An employee's personal conduct, while it might be acceptable to that employee, may be offensive to a co-worker or others; or
- An employee should govern his actions by displaying respectful behavior to everyone.

10. Examples of Illegal Retaliation:

- Being sanctioned for refusing to submit to illegal discrimination or harassment;
- Being sanctioned for complaining about prohibited harassment or discrimination; or
- Being sanctioned for supporting an employee making such a complaint or allegation.

10a. Examples of a Supervisor-to-Employee Retaliation:

- Undeserved or arbitrarily lowered performance ratings;
- Transferring, changing duties, and/or taking away or denying privileges;
- Taking unwarranted or unsubstantiated disciplinary action;
- Making an arbitrary dismissal;
- Ridiculing the complainant;
- Ridiculing the complainant's supporter; or
- Blaming complainant for the work unit problems.

10b. Examples of An Employee-to-Employee Retaliation:

- Escalating the prohibited conduct that the employee complained about;
- Threatening the employee for a negative response to the inappropriate advances;
- Threatening the employee for reporting the inappropriate behaviors; or
- Ostracizing and excluding the employee in a way that creates an intimidating stressful work environment.

11. Examples of a Managers Duty Towards the Recipient of a Respectful Workplace Violation:

- Keeping the employee informed of developments during and after the investigation;
- Conducting an outcome "debrief" for all affected employees;
- Listening to the harassed employee's concerns and fears;
- Determining and checking for available remedies (i.e. leaves, training, new positions etc);
- Having a recovery plan for the affected individuals (i.e. EAP, other counseling, administrative leave, training or re-training, close friend or co-worker to check on status, consultation or assistance from HRS); and
- Developing and monitoring a plan to prevent potential retaliation.

12. Examples of a Managers Duty Towards an Employee Perpetrator:

- Ensuring that the perpetrator is afforded mutual respect and considerations

under the circumstances;

- Answering all questions and concerns;
- Protecting the employee's employment interest to the extent possible;
- Maintaining professionalism towards the perpetrator;
- Documenting and administering appropriate corrective or disciplinary action;
- Informing the employee of the outcome and why;
- Educating the employee on respectful workplace and other related policies;
- Using EAP, when warranted;
- Arranging for individual or group training;
- Setting expectations with the employee;
- Evaluating the perpetrator's progress;
- Supervising closely; and
- Documenting the employee's performance in the official performance appraisal document and/or Performance Improvement Plan.