

IV. LEGISLATION – POLICIES – RULES – GUIDELINES

B.1 Policies – Policy Against Sexual and Other Discriminatory Workplace Harassment and Sexual Harassment by a Third Party

The state Respectful Workplace policy was updated on November 7, 2019 and it is recommended that the Board adopt this new policy as a replacement for the Policy Against Sexual and Other Discriminatory Workplace Harassment and the Sexual Harassment by a Third Party Policy, found in the Board Handbook. Staff must review these policies annually.

The link to the State of Idaho’s Respectful Workplace Policy can be found at <https://dhr.idaho.gov/PDFs/Section9RespectfulWorkplaceFINAL11.2019.pdf> and is included in this Board Document in its entirety.

Idaho Division of Human Resources
Executive Branch Statewide Policy
Section 9: Respectful Workplace
Updated: November 7, 2019

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9A. General Information

The State of Idaho (State) is committed to a work environment in which all individuals are treated with dignity and respect. Every employee has the right to work in a professional atmosphere promoting equal employment opportunities and prohibiting unlawful discriminatory practices, including harassment.

9B. Equal Employment Opportunity

It is the policy of the State to ensure equal employment opportunity for all individuals. Discrimination or harassment based on race, color, religion, sex, national origin, age, disability, marital status, citizenship, genetic information, pregnancy, military status, or any other characteristic protected by law is prohibited.

This policy may not be used as a basis for excluding and/or separating individuals by any protected characteristic from participating in business-related social activities or discussions to avoid allegations of harassment. The law and this policy prohibit disparate treatment based on any protected characteristic regarding terms, conditions, and/or privileges of employment.

9C. Individuals and Conduct Covered

This policy applies to all employees of the State of Idaho, including agency leadership, as well as individuals in contact with State employees (e.g., applicants, outside businesses, clients, consultants, contractors, customers, elected officials, etc.).

Prohibited conduct as outlined in this policy is unacceptable in the workplace and in any work-related setting outside of the workplace, including business-related meetings, trips, or events.

9D. Definitions of Harassment

Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), and/or the Americans with Disabilities Act of 1990 (ADA).

The Equal Employment Opportunity Commission (EEOC) defines harassment as unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Harassing conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures (e.g., written or graphic material that is displayed on the employer's premises and/or circulated in the workplace during business or while using company equipment via email, phone, voicemail, text message, social networking media, etc.), and interference with work performance. Harassment includes "off-work" activities as well.

Harassment can occur in a variety of circumstances, including, but not limited to, the following:

The harasser can be the victim's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.

The victim does not have to be the person harassed, but can be anyone affected by the offensive conduct.

Unlawful harassment may occur without economic injury to, or discharge of, the victim.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when, for example: (1) submission to such conduct is made either explicitly or implicitly a term or condition of

employment; (2) submission to or rejection of such conduct is used as the basis for employment decisions; or (3) such conduct results in unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

Sexual harassment may involve individuals of the same or different gender. Example behaviors may include but are not limited to: unwanted sexual advances or requests for sexual favors; jokes and innuendo or verbal abuse of a sexual nature; commentary regarding an individual's body, sexual prowess or deficiencies; leering, whistling, or touching; insulting or obscene comments and gestures; display of sexually suggestive

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pictures or objects; and other visual, verbal, or physical conduct that is sexual in nature.

9E. Respectful Workplace Defined

The examples outlined in this policy concerning sexual and other forms of workplace harassment, are illustrative of conduct that may constitute harassment, but are not an exhaustive list. Other acts may constitute harassment depending on the circumstances of the specific situation. A single incident may or may not constitute harassment but would require investigation of the facts, on a case-by-case basis.

9F. Reporting Procedure

Individuals who believe they are subject to or have witnessed any of the types of prohibited conduct outlined in this policy should promptly advise the offender that his or her behavior is unwelcome and request that it be discontinued. Often, this will result in a quick resolution to the problem. The State recognizes, however, that an individual may prefer to pursue the matter through a more formal process, and/or may be uncomfortable approaching the alleged harasser.

Individuals who believe that they have been subject to, or have witnessed, conduct prohibited by this policy should discuss their concerns with an immediate supervisor, human resources, or a member of management. Agency problem-solving procedures for employees must designate a specific person(s) to receive and investigate complaints, pursuant to Division of Human Resources Rule 200.05. Employees have the right to file a complaint with the State of Idaho Division of Human Resources and/or the State of Idaho Human Rights Commission.

The State encourages prompt reporting of concerns so that action can be taken before relationships become irreparably strained. All complaints of harassment, discrimination, or retaliation must be investigated promptly. The investigation may involve individual interviews with the parties involved and/or those individuals who may have observed the alleged conduct or have other relevant knowledge. Employees are expected to fully cooperate with the individual(s) conducting the investigation.

9G. Agency Responsibility

Any reported allegations of harassment, discrimination, or retaliation must be investigated promptly. Agency heads and/or designees are responsible for coordinating discussions with necessary agency employees, human resources staff, and legal

counsel as appropriate. Individuals responsible for conducting investigations are expected to disclose any conflicts of interest.

If it is determined that discrimination or harassment prohibited by this policy has occurred, management shall immediately act to reasonably ensure that the discrimination or harassment is stopped and does not reoccur.

Agency heads must ensure that established problem-solving and due process procedures are followed in accordance with state statute, and Division of Human Resources rules, when applicable. Each agency's problem-solving procedure must
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provide an optional alternative procedure for employees to file allegations of sexual harassment or discrimination, as outlined in DHR Rule 200.05.

9H. Retaliation Prohibited

The State encourages employees to promptly report all perceived incidents of discrimination or harassment. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Retaliation against any individual who makes a good-faith complaint regarding discrimination or harassment, or who participates in the investigation of a related complaint, is expressly prohibited. Acts of retaliation should be reported immediately and must be investigated and addressed promptly.

9I. Corrective Action

If it is determined that discrimination or harassment prohibited by this policy has occurred, management shall immediately take action necessary to reasonably ensure that the discrimination or harassment is stopped and does not reoccur. Corrective action may include, but is not limited to, training, referral to counseling, and/or disciplinary action as appropriate based on the circumstances.

Complaints of harassment, discrimination or retaliation not made in good faith may be the subject of appropriate disciplinary action.

9J. Confidentiality

The State recognizes and respects an employee's right to privacy. An employee's complaint will remain confidential throughout the investigatory process to the extent consistent with allowing adequate investigation and appropriate corrective action.

Employees are also expected to maintain confidentiality during the investigative process to ensure a fair and unbiased investigation.

9K. Training

All state employees must receive in-person training regarding discrimination and harassment avoidance within 30-days of initial hire, online annually thereafter and inperson again every three years from their hire date. If employees are unable to attend in-person within their first 30-days, they must receive written approval from their supervisor to attend either via live-stream (as available) or online.

Suggested motion: I move that the Commission replace its Policy Against Sexual and Other Discriminatory Workplace Harassment and the Sexual Harassment by a Third Party Policy with the State's Respectful Workplace Policy.

MSC _____
