DISCRIMINATION COMPLAINTS

Number 3.3

Effective Date: September 13, 2015

Supersedes: Policy 3.3, dated July 1, 1999

Subject: DISCRIMINATION COMPLAINTS

Applicable To: All classified, exempt, appointed, and temporary employees of the Executive Branch of the State of Vermont

Issued By: Department of Human Resources

Approved By: Justin Johnson, Secretary of Administration

PURPOSE & POLICY STATEMENT

The State of Vermont is opposed to discrimination, and contractually and legally bound to prohibit unlawful discrimination in the workplace on the basis of race, color, religion, creed, ancestry, sex, marital status, age, national origin, disability, sexual orientation, gender identity, workers compensation, nursing mothers (breastfeeding), credit history, flexible work arrangements, parental and family leave, membership or non-membership in a Union, and any other factor that is prohibited by law. The purpose of this policy is to establish protocols for reporting and investigating allegations of prohibited discrimination. Sexual harassment is covered separately in Policy 3.1. Reasonable accommodation for qualified disability and the Americans with Disability Act (ADA)/ADA Amendments Act are covered by Policy 3.2.

Many of the above-listed forms of discrimination are unlawful under state and federal law. All are prohibited by the collective bargaining agreements between the State of Vermont and its respective Unions. Additionally, it is unlawful to retaliate against an employee for filing a complaint of prohibited discrimination, reporting prohibited discrimination, or acting as a witness for a person who has filed a complaint of prohibited discrimination. Allegations of prohibited discrimination and retaliation as described above will be appropriately addressed by management, including investigation where necessary.

All employees, including but not limited to non-supervisory staff, supervisors, managers, and appointing authorities, are expected to comply with this policy and take appropriate measures to ensure that discrimination does not occur. Disciplinary action, up to and including dismissal, may be taken against any employee who engages in discrimination or who otherwise violates this policy, applicable state and federal laws, or the collective bargaining agreements.

In addition, every manager and supervisor within the State of Vermont is responsible for providing a workplace free from discrimination. This duty includes disseminating this policy so that all employees are aware that they are not required to endure discrimination; discrimination will not be allowed; this policy, the collective bargaining agreement prohibitions, and state and federal discrimination laws will be enforced. Managers are responsible for ensuring that all new employees receive a copy of this policy; for posting this policy in prominent and accessible locations in the work place; and striving to provide employees with diversity training. Any manager or supervisor who does not respond to discrimination complaints consistent with the terms of this policy may be subject to disciplinary action.

DEFINITIONS

Discrimination - As used in this policy, the term discrimination is intended to include all forms of mistreatment or denial of privileges based upon impermissible factors as established by state or federal law, applicable regulations, or applicable collective bargaining agreements.

Victim - Throughout this policy, the term victim means the actual or alleged target of the discriminatory behavior. The term victim is not interchangeable with the term complainant because not all victims complain, nor are all complainants victims.

Complainant - An individual who brings allegations of discrimination to the attention of State officials.

REPORTING AND RESOLUTION OF COMPLAINTS

The State, through this policy, commits itself to take necessary action to deter discrimination in the workplace. However, the fulfillment of this commitment will, in large part, depend on the willingness of employees to report prohibited behavior. A timely response to discrimination is essential to protect victims from further unwelcome behavior and provides the best opportunity to initiate a thorough and effective investigation. It also ensures that the person responsible for objectionable behavior understands its impact on others.

Therefore, all employees are encouraged to report any incidents of discrimination, based upon any of the prohibited factors, that they experience, witness, or of which they are aware. In some instances, such as where discriminatory or offensive behavior may be unintentional, informal and direct objection can be the best way to remedy a problem. In such instances, employees may identify objectionable actions to those who commit them, and try to resolve issues informally, but are not required to.

The following process allows employees to freely report incidents of discrimination, free from threats of reprisal, and protects the rights of all parties involved.

These Reporting and Resolution of Complaints procedures may be expanded upon by individual departments and agencies. Any specific departmental policies and procedures must first be reviewed and approved by the Department of Human Resources.

TO FILE A COMPLAINT

1. Any employee who believes (s)he has been the subject of discrimination shall report the alleged act(s) as soon as possible to any one of the following:

- an immediate supervisor;
- any agency management staff; or
- any member of the Department of Human Resources.

2. Employees who witness discriminatory acts are encouraged to report their observations to any of the appropriate state officials identified in this policy.

NOTE: Any employee represented by a Union, may consult with VSEAtheir respective Union to request its assistance. (S)he may also file a complaint of discrimination in accordance with the grievance procedures of the applicable Collective Bargaining Agreement ("CBA"). The employer shall ensure that complainants and respondents are advised of their right to Union representation under the circumstances required by the CBA.

COMPLAINT PROCESSING PROCEDURE

1. Referral to the Appropriate Authority

All complaints received by a supervisor, manager, or any other state official will be immediately referred to the Human Resources personnel assigned to support the Agency/Department of the employee who is the alleged victim or complainant of the discriminatory conduct.

2. Agency/Department Response

The Human Resources officerpersonnel assigned to support the Agency/Department will notify the appointing authority promptly, and the Department of Human Resources, to ensure a timely and complete review of the complaint. The Department of Human Resources and appointing authorities shall ensure that an investigation is conducted, as warranted, when any instance of discrimination comes to their attention, even in the absence of a complaint. The steps to be taken upon receipt of a complaint are:

a. Investigation

The responsibility for determining whether to investigate a complaint, who will investigate if warranted, and the scope of the investigation is with the appointing

authority, in conjunction with Human Resources. If in a single incident there are multiple victims employed by more than one department, or the individual accused of discrimination is a State employee not under the supervision of the same departmental head as the victim(s), the departments will coordinate with each other and the Department of Human Resources to identify a single responsible entity to conduct the investigation, where warranted. If the complaint is made against the head of an agency or department, the complaint will be forwarded to the Commissioner of Human Resources.

The investigator assigned may be an employee from the same department, the Department of Human Resources, or may be someone hired on a personal services contract to conduct the investigation.

b. Notification to Complainant, Victim, and Accused

The appointing authority shall issue written notices to complainants, victims, and those accused of discriminatory acts.

For a complainant who is not a victim, the notice should acknowledge the complaint and state that the agency is taking action and that any retaliation should be reported to the agency or Department of Human Resources.

For a complainant who is a victim, the notice should also state that the State will endeavor to prevent any additional prohibited activity, that an investigation will be done promptly, and that a written response will be provided when the investigation is completed.

If the complainant identifies specific State employee(s) accused of wrong doing, written notices should be provided to such accused employees. Departments should seek assistance from the Department of Human Resources before sending these notices.

3. Contents of Investigation Report

At a minimum, a report of an investigation into allegations of discrimination will include:

- a summary of the allegations and how they were brought to the attention of State officials;
- summaries of interviews with any alleged victims;
- summaries of interviews of any employees accused of or suspected of wrongdoing;
- summaries of interviews of any other witnesses who may possess information relevant to a fair resolution of the complaint; and
- any documents or other tangible evidence, or photographs or descriptions of such evidence, as appropriate.

4. Notification to Interested Parties

The victim will be provided a notice that the investigation is completed, and the appointing authority will identify and take steps to promptly remedy any discrimination and prevent its recurrence.

The use of this procedure does not preclude any victim of discrimination harassment from pursuing any other legal remedy. To explore other remedies, employees may also contact the following:

Equal Employment Opportunity Commission
1 Congress Street, Boston, MA 02114
617-565-3200 (Voice/TDD)

Vermont Attorney General's Office
109 State Street, Montpelier, VT 05609-1001
802-828-3171

Vermont Human Rights Commission
14-16 Baldwin St., Montpelier, VT 05633-6301
802-828-2480 (Voice); 877-294-9200 (TTY)
Human.rights@vermont.gov

Vermont State Employees' Association, Inc.
155 State Street, Montpelier, VT 05601
802-223-5247

Vermont Troopers' Association, Inc.
7 Baldwin Street, Montpelier, VT 05601
802-419-4829

Approved:

Justin Johnson
Secretary of Administration

9/11/2015
Date