

SEXUAL HARASSMENT

Number 3.1

Effective Date: September 13, 2015

Supersedes: Policy 3.1, dated March 1, 1996

Subject: SEXUAL HARASSMENT

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 prohibits sexual harassment. Sexual harassment violates an individual's basic civil rights, undermines the integrity of the workplace, and adversely affects workers and clients whether or not they are direct subjects of harassment. Sexual harassment is a form of discrimination on the basis of sex and/or gender identity and is, therefore, prohibited in the work place, or at any employer-sponsored event or activity during or after business hours, by both state and federal law as well as the collective bargaining agreements between the State of Vermont and the exclusive bargaining entities for State employees. It is also unlawful to retaliate against an employee for filing a complaint of sexual harassment or for cooperating in an investigation of sexual harassment.

All employees, including but not limited to staff, supervisors, managers, and appointing authorities, are expected to comply with this policy and take appropriate measures to ensure that sexual harassment does not occur, and are encouraged to report it when it does. Disciplinary action, up to and including dismissal, will be taken against any employee who engages in sexual harassment or who otherwise violates this policy.

In addition, every manager and supervisor within the State of Vermont is responsible for providing a work place free from sexual harassment. 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 training designed to educate the work force about what sexual harassment is and how to prevent it in the workplace. Any manager or supervisor who fails to treat sexual harassment complaints in a manner consistent with the terms of this policy may be subject to disciplinary action up to and including dismissal.

DEFINITION OF SEXUAL HARASSMENT

The prohibition of sexual harassment is found in the Vermont Statutes at Title 21 § 495h. Sexual harassment is a form of discrimination based on sex (and/or gender identity), and is defined in Title 21 § 495d(13). Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, when:

- a) submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
- b) submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or
- c) the conduct has the purpose or effect of unreasonably interfering with an individual's work performance or of creating an intimidating, hostile, or offensive work environment.

Sexual harassment can be verbal, physical, auditory, and/or visual. It can be either subtle or overt. Sexual harassment refers to behavior that is not only unwelcome, but which can also be personally offensive, fails to respect the rights of others, lowers morale and interferes with work effectiveness, or violates a person's sense of well-being.

Both men and women can be the victims of sexual harassment and sexual harassment can occur in instances where the parties are both opposite and same sex. It can occur in situations where one person has authority (or the appearance of authority) over another, and can also occur between persons at the same managerial or pay grade, that is persons who are equals in terms of responsibility.

PROHIBITED CONDUCT

Managers, supervisors, and employees with the appearance of authority shall not threaten or insinuate, either explicitly or implicitly, that an employee's submission to or rejection of sexual harassment will in any way affect the employee's employment, evaluations, wages, advancement, assigned duties, shifts, or any other condition of employment or career development. Sexual harassment by co-workers is also unlawful and prohibited by applicable federal and state laws and the collective bargaining agreements, even though the loss to the victim may not involve the tangible benefits outlined above. Persons found to have engaged in such behaviors may be subject to disciplinary action up to and including dismissal.

Employees should be aware of the growing role of social media as a platform for illegal and offensive behavior, including the compiling or sharing of images or words via computer or cell phone, or posts on Facebook, Twitter and the like.

REPORTING AND RESOLUTION OF COMPLAINTS

The State strives to take quick and effective actions to ensure that sexual harassment does not occur or persist. However, the fulfillment of that commitment will in large part depend on the willingness of employees to report prohibited behavior. A timely response to sexual harassment is essential to protect victims from further unwelcome behavior and provides the best opportunity to initiate a thorough and effective investigation.

Therefore, all employees are encouraged to report any incidents of sexual harassment they experience, witness, or know of. Employees may identify objectionable actions to those responsible for them and to try to resolve issues informally, but they are not required to do so.

The following process will allow employees to freely report incidents of sexual harassment, free from threats of reprisal, and will protect 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 sexual harassment shall report the alleged act(s) as soon as possible to any one of the following:

- an immediate supervisor; or
- 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 their 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. All complaints will be referred immediately to the Human Resources personnel assigned to support the respective Agency/Department. Human Resources will coordinate with the appointing authority to ensure that a timely and complete review of the complaint is made. The appointing authority will identify and take steps to promptly remedy any harassment and prevent its recurrence.
2. The appointing authority shall issue a written response to the complainant acknowledging the complaint and providing notice, if applicable, that any prohibited activity is expected to cease. An investigation, where warranted, will be done promptly, and a written response will be provided to the complainant.
3. Complainants should be notified that confidentiality cannot be guaranteed.
4. The Department of Human Resources and appointing authorities shall ensure that, when warranted, an investigation is conducted when any instance of sexual harassment comes to their attention, even in the absence of a complaint.
5. If the appointing authority or any member of the agency/department personnel unit is named in the complaint, the complainant or his or her representative must bring the complaint to the attention of either the Secretary of Administration or the Commissioner of Human Resources to determine the appropriate personnel to be responsible for responding to the charge.
6. Any intimidation, harassment, or interference for filing a complaint or assisting in an investigation, and/or intentionally filing a false complaint of sexual harassment will be subject to appropriate discipline, up to and including dismissal.

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

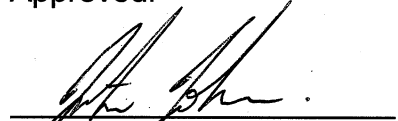
Equal Employment Opportunity Commission
1 Congress Street, Boston, MA 02114
617-565-3200 (Voice/TDD)

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