

1.1.C.10 Staff Anti-Harassment and Discrimination Policy

I Policy Index:



Date Signed: 12/13/2019
Distribution: Public
Replaces Policy: N/A
Supersedes Policy Dated: 01/02/2019
Affected Units: All Units
Effective Date: 12/13/2019
Scheduled Revision Date: November 2020
Revision Number: 16
Office of Primary Responsibility: DOC Administration

II Policy:

The Department of Corrections (DOC) is committed to maintaining a workplace free of harassing, discriminatory and offensive behavior. It is the policy of the DOC to treat all employees with dignity and respect, and to provide a workplace that is free from discrimination based on race, color, religion, national origin, sex, gender (including pregnancy, gender identity, gender expression, gender change or transgender status), age (40 or older), genetic information, disability, parental status, political affiliation, membership in an employee organization, marital status, reprisal or other non-merit factors. The DOC is committed to fair treatment and equal opportunity for all staff members.

III Definitions:

Staff Member:

For the purposes of this policy, a staff member is any person employed by the DOC, full or part time, including an individual under contract assigned to the DOC, an employee of another state agency assigned to the DOC, authorized volunteers and student interns.

IV Procedures:

1. Conduct and Retaliation:

- A. DOC staff members are expected to conduct themselves in a manner consistent with this policy, and to maintain a work environment free from discrimination. All staff members are responsible for treating fellow staff, offenders and the public with dignity and respect. Staff shall not practice discriminatory, harassing or offense behavior nor condone it in others.
- B. Supervisors are responsible for ensuring staff they supervise comply with this policy and for clearly identifying behavior that is unlawful, or inappropriate in the workplace with regards to discrimination, harassment, or offensive behavior.
- C. Staff found to have engaged in harassing, discriminatory or offensive behavior are subject to disciplinary action.
- D. Staff and offenders have the right to experience a workplace free from discrimination, harassment or offensive behavior.

- E. Staff who believe they have been subjected to discrimination, harassment or offensive behavior through the conduct of another staff member must contact their supervisor or Bureau of Human Resource contact to report the alleged conduct or act. Offenders may utilize the Administrative Remedy process or contact supervisory staff. Members of the public may file a complaint with the Secretary, Warden of the institution or the Director of the unit.
- F. The DOC shall not retaliate against another who has filed a complaint alleging discrimination or harassment, or who has participated in an investigation or lawsuit based on charges of discrimination or harassment.

2. Access to the Bureau of Human Resources (BHR) Anti-Harassment/Discrimination Policy:

- A. The BHR policy on Anti-Harassment/Discrimination applies to all DOC staff and may be viewed on the BHR website at: <http://bhr.sd.gov/forms/policies/default.aspx#harassment> and is included within [Attachment 1](#) of this policy.

3. Scheduled Review of the BHR Anti-Harassment/Discrimination Policy:

- A. The BHR Anti-Harassment/Discrimination policy and this policy will made available to staff during pre-service and annual in-service training and through electronic dissemination through Policy Tech upon annual review and approval by the Secretary of Corrections (See DOC policy 1.1.D.1 [Staff Training Requirements](#)).
- B. DOC training staff will review the BHR Anti-Harassment/Discrimination policy with staff during pre-service training and answer any questions presented.
- C. All staff have an affirmative responsibility to seek out their supervisor if they have questions regarding this policy or any related content.

4. Offenders:

- A. Harassment of staff members by offenders is prohibited by DOC policy. Offenders who harass a staff member may be subject to disciplinary action.
- B. Staff members are prohibited by DOC policy from harassing or discriminating against offenders (See DOC policy 1.1.C.1 [Staff Code of Ethics](#)).

5. Transgender Considerations:

- A. Gender identity and gender expression are not considered protected classes under current federal or state law. The DOC does consider discrimination and harassment based on gender identity or gender expression to be a form of sex-based discrimination or harassment.
 - 1. The DOC has zero tolerance for discrimination or harassment, including but not limited to, discrimination or harassment on the basis of sex (sex-based), and shall protect staff members from being harassed, discriminated against. No person shall be denied employment, promotion, or otherwise subjected to adverse or unlawful employment status treatment because of sex or gender.

V Related Directives:

DOC policy 1.1.C.1 -- [Staff Code of Ethics](#)
DOC policy 1.1.D.1 -- [Staff Training Requirements](#)
BHR State Employee Handbook

VI Revision Log:

New policy in August 2005.

Removed 2006-2009 revisions from Revision Log.

November 2010: Revised formatting of Section I.

January 2012: Deleted "Non-Public" and Replaced with "Public".

December 2012: Added "Discrimination" to policy title. Deleted "BOP" and Replaced with "BHR" throughout policy. Added "and/or when a revised version of this policy is signed by the Secretary of Corrections and becomes effective." to Section 2 C.

August 2013: Added "and Discrimination" to the title of the policy. Deleted "The DOC will follow the Anti-Harassment policy as established by the BHR" and Replaced with "The DOC is committed to maintaining a workplace free of harassing, discriminatory and offensive behavior. The DOC will investigate all complaints alleging a staff member has engaged in harassing, discriminatory or offensive behavior" in the "Policy" statement. Deleted "and/or when a revised version of this policy is signed by the SOC and becomes effective" and Deleted "The training officer will review the BHR Anti-Harassment/Discrimination policy with staff during the annual in-service training" in Section 2 C. Added Attachment 1 to the policy.

November 2013: Reviewed with no changes.

November 2014: Reviewed with no changes.

November 2015: Reviewed with no changes.

November 2016: Added "Staff are prohibited from engaging in discriminatory harassment. Supervisors and managers must make a good faith effort to eliminate and prevent discriminatory harassment from occurring in the their respective workplaces and/or areas" to the policy statement. Added Section 3.

November 2017: Reveiwed with no changes.

November 2018: Reveiwed with no changes.

December 2019: Revised policy statement and added new Section 1 and 3-5.

Mike Leidholt (original signature on file)

Mike Leidholt, Secretary of Corrections

12/12/2019

Date

Attachment 1: Bureau of Human Resources Anti-Harassment/Discrimination Policy

The State of South Dakota will not tolerate harassment, discrimination or offensive behavior based on race, color, religion, national origin, sex, pregnancy, age (40 years or older), genetic information, disability or any other legally protected status or characteristic.

Employees must not engage in harassment, discriminatory or offensive behavior. Additionally, because of the State's strong commitment to keeping the workplace free from harassing, discriminatory, and offensive behavior, employees must avoid any conduct that could be viewed as harassing, discriminatory or offensive even if the conduct does not violate federal or state law.

Harassment includes conduct that creates a hostile work environment or results in a "tangible employment action," such as hiring, firing, promotion or failure to promote, demotion, work pg. 7 State of South Dakota Employee Handbook January 2019 assignments, benefits, or compensation decisions.

This prohibition against harassment and discrimination also encompasses sexual harassment. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexually harassing nature, when: (1) submission to the harassment is made either explicitly or implicitly a term or condition of employment; (2) submission to or rejection of the harassment is used as the basis for employment decisions affecting an individual, or (3) the harassment has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Harassment or discriminatory or offensive behavior may take different forms and may be verbal, nonverbal, or physical in nature. To aid employees in identifying inappropriate conduct, the following examples of harassment or discriminatory or offensive behavior are provided (these examples are not all-inclusive):

- unwelcome physical contact such as kissing, fondling, hugging, or touching;
- demands for sexual favors; sexual innuendoes, suggestive comments, jokes of a sexual nature, sexist put-downs, or sexual remarks about a person's body; sexual propositions, or persistent unwanted courting;
- swearing, offensive gestures, or graphic language made because of a person's race, color, religion, national origin, sex, age or disability;
- slurs, jokes, or derogatory remarks, email, or other communications relating to race, color, religion, national origin, sex, age, or disability;
- calendars, posters, pictures, drawings, display, cartoons, images, lists, e-mails, or computer activity that reflects disparagingly upon race, color, religion, national origin, sex, age or disability; or
- refusing to hire someone because you know the applicant has the breast cancer gene.

An employee who has a complaint of harassment or discriminatory or offensive behavior by anyone, including supervisors, co-workers, or non-employees, should immediately notify his or her supervisor, a higher-level supervisor, the agency's human resource manager, or the EEO officer for the Bureau of Human Resources at (605) 773-4918.

The person who receives a harassment or discrimination complaint shall immediately report the matter to his or her supervisor (or a higher-level supervisor if his/her supervisor is allegedly involved in the harassment) and the agency's human resource manager.

The State will investigate all complaints. If the investigation supports charges of harassment, discrimination, a violation of this policy, or inappropriate behavior, appropriate corrective action will take place. The employee engaging in the improper behavior will be subject to discipline, up to and including termination.

The State will protect the privacy of harassment/discrimination allegations to the maximum extent possible, and information will only be shared with those individuals who need to know or if compelled by legal means. The State cannot guarantee complete privacy because it cannot conduct an effective investigation without revealing certain information to the alleged harasser and potential witnesses. However, the State will keep information as private as possible. pg. 8 State of South Dakota Employee Handbook January 2019

In addition to reporting alleged harassment or discrimination to the State, an employee may file a charge of discrimination based on race, color, religion, national origin, sex, disability, or protected activity with the South Dakota Division of Human Rights (Human Rights) or may file a charge of discrimination based on race, color, religion, national origin, sex, age, disability, genetic information, or protected activity with the United States Equal Employment Opportunity Commission (EEOC).

A charge of discrimination based on race, color, religion, national origin, sex, disability, or protected activity must be filed with Human Rights within 180 days of the violation or with the EEOC within 300 days of the violation. If the 180 days have passed, a charge of discrimination may still be filed through Human Rights within 300 days of the violation, however, the EEOC will have sole jurisdiction and may investigate the matter.

A charge of age discrimination or discrimination based on genetic information must be filed through Human Rights or with the EEOC within 180 days of the violation; however, the EEOC will have sole jurisdiction and will investigate the charge. These deadlines run from the last date of unlawful conduct and not from the date of the complaint to the State if resolved. Please contact the EEO officer for the Bureau of Human Resources at 605.773.4918, if you have any questions about harassment, unlawful discrimination, or this policy.