



**POLICY STATEMENT**  
Commonwealth of Pennsylvania • Department of Corrections

<b>Policy Subject:</b>  Equal Employment Opportunity		<b>Policy Number:</b>  1.6.1
<b>Date of Issue:</b>  March 31, 2016	<b>Authority:</b>  Signature on File John E. Wetzel	<b>Effective Date:</b>  April 7, 2016

**I. AUTHORITY**

The Authority of the Secretary of Corrections to direct the operation of the Department of Corrections is established by Sections 201, 206, 506, and 901-B of the Administrative Code of 1929, 71 P.S. §§61, 66, 186, and 310-1, Act of April 9, 1929, P.L. 177, No. 175, as amended.

**II. APPLICABILITY**

This policy is applicable to all employees, visitors, contractors, and to those individuals/groups who have business with or use the resources of the Department.

**III. POLICY**

- A. ***The Department is an Equal Opportunity Employer and shall not discriminate against any individual because of race, color, religious creed, ancestry, union membership, age, gender, sexual orientation, gender identity or expression, national origin, AIDS or HIV status, or disability in accordance with Executive Order 2003-10.***
- B. ***All Department employees are held accountable for creating and maintaining a workplace free from discrimination and harassment (including sexual harassment). Employees who fail to comply with this policy will be subject to disciplinary action.***
- C. ***When a manager or supervisor knows or has reason to know that an incident of discrimination has occurred, or has been alleged to have occurred in the facility, he/she must advise the Facility Manager/designee, or Bureau of Community Corrections (BCC) Director/designee of the allegations. A manager or supervisor***

*will be subject to appropriate disciplinary action, up to and including termination of employment, if he/she fails to act when he/she reasonably should have known that discrimination exists in the facility.*

- D. All Department managers and supervisors shall actively participate in implementing, planning, and monitoring equal employment opportunity practices. Management performance relating to the success of the Department's Equal Employment Opportunity Plan will be evaluated in the same manner as other Department programs are evaluated.**
- E. Equal employment opportunity will be extended in all employment practices including recruitment, interviewing, hiring, promoting, training, delegation, and discipline.**
- F. The Department ensures that all internal discrimination complaints will be investigated and resolved within the prescribed guidelines established in Management Directive 410.10 and in Section 1 of this procedures manual.**
- G. Employees transitioning from one gender to another may do so in accordance with the prescribed guidelines in Section 2 of this procedures manual.**
- H. Retaliation against persons who have lodged a complaint, testified, assisted, or participated in any proceeding, investigation, or hearing regarding any allegation of discrimination is expressly prohibited. Retaliation includes, but is not limited to: harassing behavior, isolation, changing work assignments, making demands that appear work-related but have a retaliatory purpose, directing, prompting, or encouraging others to commit retaliatory acts.**

#### **IV. PROCEDURES**

All applicable procedures are contained in the procedures manual that accompanies this policy document.

#### **V. SUSPENSION DURING AN EMERGENCY**

In an emergency or extended disruption of normal facility operation, the Secretary/designee may suspend any provision or section of this policy for a specific period.

#### **VI. RIGHTS UNDER THIS POLICY**

This policy does not create rights in any person nor should it be interpreted or applied in such a manner as to abridge the rights of any individual. This policy should be interpreted to have sufficient flexibility to be consistent with law and to permit the accomplishment of the purpose(s) of the policies of the Department of Corrections.

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## VII. RELEASE OF INFORMATION AND DISSEMINATION OF POLICY

### A. Release of Information

#### 1. Policy

This policy document is public information and may be released upon request.

#### 2. Confidential Procedures (if applicable)

Confidential procedures for this document, if any, are not public information and may not be released in its entirety or in part, without the approval of the Secretary of Corrections/designee. Confidential procedures may be released to any Department of Corrections employee on an as needed basis.

### B. Distribution of Policy

#### 1. General Distribution

The Department of Corrections policy and procedures shall be distributed to the members of the Central Office Executive Staff, all Facility Managers, and Community Corrections Regional Directors on a routine basis. Distribution of confidential procedures to other individuals and/or agencies is subject to the approval of the Secretary of Corrections/designee.

#### 2. Distribution to Staff

It is the responsibility of those individuals receiving policies and procedures, as indicated in the "General Distribution" section above, to ensure that each employee expected or required to perform the necessary procedures/duties is issued a copy of the policy and procedures either in hard copy or via email, whichever is most appropriate.

## VIII. SUPERSEDED POLICY AND CROSS REFERENCE

### A. Superseded Policy

#### 1. Department Policy

1.6.1, Equal Employment Opportunity, issued **September 17, 2010, by Acting Secretary Shirley Moore Smeal.**

#### 2. Facility Policy and Procedures

This document supersedes all facility policy and procedures on this subject.

**B. Cross Reference(s)**

1. Administrative Manuals
  - a. DC-ADM 008, Prison Rape Elimination Act (PREA)
  - b. 4.1.1, Human Resources and Labor Relations
  - c. Management Directive 410.10, Guidelines for Investigating and Resolving Internal Discrimination Complaints
  - d. Executive Order 2003-10, Equal Employment Opportunity
2. ACA Standards
  - a. Administration of Correctional Agencies: 2-CO-1C-09, 2-CO-1C-09-1
  - b. Adult Correctional Institutions: 4-4053, 4-4054
  - c. Adult Community Residential Services: 4-ACRS-7E-02, 4-ACRS-7E-03, 4-ACRS-7E-04, 4-ACRS-7E-05
  - d. Correctional Training Academies: 1-CTA-1C-03, 1-CTA-2D-03
  - e. Correctional Industries: 2-CI-6D-3



**PROCEDURES MANUAL**  
Commonwealth of Pennsylvania • Department of Corrections

**Policy Subject:**

**Equal Employment Opportunity**

**Policy Number:**

**1.6.1**

**Date of Issue:**

**March 31, 2016**

**Authority:**

**Signature on File  
John E. Wetzel**

**Effective Date:**

**April 7, 2016**

Release of Information:

**Policy Document:** This policy document is public information and may be released upon request.

**Procedures Manual:** The procedures manual for this policy may be released in its entirety or in part, with the prior approval of the Secretary/designee. Unless prior approval of the Secretary/designee has been obtained, this manual or parts thereof may be released to any Department employee on an as needed basis only.

**1.6.1, Equal Employment Opportunity Procedures Manual  
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## **Section 1 – Discrimination Complaints**

### **A. General**

Any person who believes that he/she has been discriminated against because of membership in a protected class as defined in the glossary of this procedures manual, may file a discrimination complaint. Complaints should be filed within 90 calendar days of the alleged act of discrimination.<sup>1</sup>

### **B. Procedures**

1. Discrimination complaints by employees, ***applicants for employment, visitors, contractors, and individuals or groups who have business with or use the resources of the Department***, shall be filed with the Field Human Resource Officer (FHRO) ***or Facility Manager*** at the facility where the alleged act of discrimination occurred. If the employee is not comfortable with the investigation being conducted by the facility, the complaint may be filed directly with the Office of Equal Employment Opportunity (EEO).
2. If a complaint is filed beyond 90 calendar days of the alleged act of discrimination, the Office of EEO in consultation with the Office of Administration ***EEO Division (OA-EEO)*** within the OA will make the determination of whether the complaint should be investigated.
3. ***The DC-001, Complaint Questionnaire (Attachment 1-A)*** is available in the Human Resource Office at each facility, on DOCNet, or by calling the Department's Office of EEO toll-free number at 1-877-EEO-0846. ***The STD-486, Discrimination Complaint Form, may also be used to submit a written complaint, in accordance with Management Directive 410.10.***
4. ***There is no requirement that a complaint be in writing or conform to a specific format. However, where a verbal complaint is received, and it is determined that an investigation is warranted, every effort must be made to obtain a written complaint. Discriminatory conduct reported on a DC-121, Part 3 Employee Report of Incident, shall be handled in accordance with this policy.***
5. When a discrimination complaint is reported to or comes to the attention of the FHRO or a Community Corrections Center (CCC) Regional Director, he/she shall immediately notify the Director of the Office of EEO that a complaint has been filed.
6. ***Conflict of Interest***
  - a. ***If the employee is not comfortable with the investigation being conducted by the facility or Community Corrections staff, because of a perceived or actual conflict of interest, the complaint may be filed directly with the Office of EEO.***

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<sup>1</sup> 4-4054, 4-ACRS-7E-03

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**Section 1 – Discrimination Complaints**

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- b. **Where there is a perceived or actual conflict of interest with a complaint filed with the Office of EEO, the Office of EEO shall consult with the Governor's Office of Administration, Bureau of EEO to determine whether the complaint should be investigated by another Department employee or the appropriateness of submitting a request to that office to conduct the investigation.**
7. When a discrimination complaint is filed, the FHRO, **Facility Director/designee**, or the EEO Specialist in the Office of EEO shall investigate the complaint by interviewing the complainant, the accused, the witnesses, and reviewing any and all pertinent documentation, including other evidence.
8. When the investigation is conducted by the FHRO or **Facility Director/designee**, a copy of the complete **case file** shall be forwarded to the Office of EEO for review. **The case file shall be sent along with required memos to the Facility Manager and the Director of the Office of EEO.**
9. **The case file shall include all information related to the investigation: the complaint, chronology of events, acknowledgement of complaint, investigative plan, correspondence, witness and interview statements, all documents/documentary evidence related to the investigation, and a written report of the findings. No conclusions or determinations shall be included in the investigative report.**
10. The original documents shall be maintained in the facility's Human Resource Office or the CCC Regional Office. The Office of EEO shall review the investigation and determine whether additional information is needed.
11. Complaints filed with the Office of EEO shall be investigated by an EEO Specialist in the Office of EEO, or when deemed appropriate, returned to the FHRO of the facility where the incident occurred or to the CCC Regional Director of the region where the incident occurred, for investigation.
12. The Office of EEO shall prepare a written analysis and recommended findings for all investigations and forward it, along with all supporting documentation, to the Deputy Secretary for Administration.
13. The Deputy Secretary for Administration shall determine whether to approve, modify, or disapprove the recommendation. The case file shall then be returned to the Office of EEO.
14. If it is determined that discrimination occurred, and/or action is to be taken, the Office of EEO shall notify the Facility Manager/designee, FHRO, and CCC Regional Director, if applicable, and appropriate Deputy Secretary of the findings and recommended actions.



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15. If the Facility Manager/designee and/or CCC Regional Director determines, based upon the recommendations approved by the Deputy Secretary for Administration, that disciplinary action is warranted, this shall occur in accordance with Department policy 4.1.1, “Human Resources and Labor Relations.”
16. When the Office of EEO receives documentation that corrective action has been taken, the Office of EEO will notify the complainant and the case file will be closed.
17. If the charges are not substantiated, the Office of EEO will notify the complainant, the alleged offender(s), the Facility Manager/designee, FHRO and/or CCC Regional Director, if applicable, and appropriate Deputy Secretary. The case file is then closed.

**18. Request for Reconsideration**

***Complainants who are not satisfied with the outcome of the investigation may file a request for reconsideration with the Department’s designated individual.***

- a. ***The request for reconsideration must be in writing and filed within 20 calendar days of notification of the outcome.***
- b. ***The Department’s designated individual shall review the request and other appropriate information as expeditiously as possible and provide written notification to complainants of the determination, and if appropriate, the right to and procedure for filing an appeal to OA-EEO within the timeframe set forth in Management Directive 410.10.***

**19. Appeals**

- a. ***Complainants who are not satisfied with the Department’s decision concerning a request for reconsideration may file an appeal with OA-EEO.***
- b. ***The appeal must be in writing and filed within 20 calendar days from the date of the written notification of the reconsideration determination, preferably on the standard form STD-486A, Equal Employment Opportunity Discrimination Complaint Appeal Form, in accordance with Management Directive 410.10.***

**C. Informal Resolution**

***Parties may resolve complaints on an informal basis. Upon receipt of a complaint, prior to implementation of (or at any time during) a formal investigation, a Department Equal Opportunity Officer may explore opportunities for resolution. If a resolution is reached, the Department Equal Opportunity Officer should request that the complainant execute the STD-486W, EEO Discrimination Complaint Withdrawal Form, in accordance with Management Directive 410.10, requesting closure of the complaint based on his/her satisfaction with said resolution. All resolutions must be approved by the Director of the Office of EEO prior to implementation.***

**D. Mediation**

*The Department Equal Opportunity Officer must inform the complainant of the availability of the Commonwealth's mediation program. Participation in this program is optional and does not preclude the right to an investigation or other avenues of recourse. For mediation to occur, both parties must agree to participate. Upon request, the Office of EEO will review the case with the Office of Chief Counsel and OA, Bureau of EEO to determine if mediation is an option.*

**E. Withdrawal**

*The complainant may withdraw his/her complaint at any time. Requests for withdrawal of complaints must be submitted in writing to the Department Equal Opportunity Officer, on the STD-486W. The Department Equal Opportunity Officer will confer with the Responsible Department Official and depending upon the allegations and circumstances, the Department may continue its investigation.*

**F. Disciplinary Sanctions**

Any employee who is found to have engaged in discrimination is subject to appropriate disciplinary action up to and including termination in accordance with **Department policy 4.1.1.**

**G. Other Avenues of Recourse**

*At any time the complainant may elect to file a complaint with the following agencies within the required timeframes. Contact information and filing requirements are available on DOCNet:*

1. *Equal Employment Opportunity Commission;*
2. *Pennsylvania Human Relations Commission; and/or*
3. *Pennsylvania State Civil Service Commission.*

**H. Transfer to Legal Office**

*The procedures outlined in this manual apply only to internal investigations. Whenever a complaint or action is filed in any court or outside agency, the investigation must be transferred to the Office of Chief Counsel who will direct all further investigation and/or handling of the matter.*

## **Section 2 – Gender Transition Guidelines**

### **A. General**

Employees who seek to transition from one gender to another are protected from discrimination in Executive Order 2003-10 and **Section 1** of this procedures manual. The employee and employer must maintain open communication and engage in an interactive process before, during, and after the gender transition. Guidelines for this process are set forth in the **Gender Transition Guidelines (Attachment 2-A)**.

### **B. Procedures**

1. The employee who is transitioning to another gender must provide a presentation date in writing. The **Confirmation of Gender Presentation Date form (Attachment 2-B)** must be provided to the facility designee and will be signed by both parties.
2. Notification of gender change of transitioning security staff must be given to Commissioned Officers seven to ten days prior to the pre-determined gender presentation date. This notification is necessary for proper shift assignments, in accordance with Department policy **DC-ADM 008, “Prison Rape Elimination Act (PREA).”**
3. The employee, Facility Manager, Field Human Resource Officer (FHRO), and the facility designee will engage in an interactive process to develop a plan of action.
4. The Office of Equal Employment Opportunity (EEO) will be notified, kept apprised of the interactive process, and retain the **Confirmation of Gender Presentation Date** in a confidential file.
5. Once the presentation date occurs, the employee will follow all standards and policies for the identified gender.

**1.6.1, Equal Employment Opportunity Procedures Manual  
Glossary of Terms**

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**Department** – The Pennsylvania Department of Corrections.

**Discrimination** – *Unequal* treatment based on *membership in a class protected by law or Commonwealth policy*.

1. *A facially neutral policy that results in a disproportionate negative impact on a specific protected class may constitute discrimination.*
2. Discrimination may involve single *or continuing actions*.

**Discrimination Complaint** – *A written or verbal notification alleging unlawful employment discrimination. A complaint is considered filed when it is received by the proper official or office.*

**Equal Employment Opportunity** – A system of employment practices within an employing organization or generally under which an individual is not excluded from any participation, advancement, or benefits because of membership in a protected class. This includes, but is not limited to, recruitment, selection, appointment, promotion, training, delegation, discipline, and separation.<sup>1</sup>

**Facility** – A state correctional facility, central office bureau or office, community corrections center, or a motivational boot camp.

**Facility Manager** – The superintendent of a state correctional facility, the director of a central office bureau/office, a director of a community corrections center, or the commander of a motivational boot camp.

**Filing Period** – All *internal* complaints of discrimination *should* be filed within 90 calendar days of the alleged act of discrimination.

**Gender Identity** – *The individual's internal sense of being male or female. The way an individual expresses his or her gender identity is frequently called "gender expression" and may or may not conform to social stereotypes associated with a particular gender.*

**Gender Transition Guideline** – *A preliminary plan that the self-identified transgender employee seeking to transition from one gender to another and the employer follow for the transition to occur in the workplace.*

**Harassment** – *Any unwelcome verbal or physical conduct based on one of the protected classes that is so objectively offensive as to alter the conditions of the victim's employment. This standard is met when:*

1. *the conduct culminates in a tangible employment action; or*
2. the conduct *was sufficiently* severe or pervasive to create a *hostile* work environment.

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<sup>1</sup>4-4053, 1-CO-1C-09, 4-ACRS-7E-05, 1-CTA-1C-03, 2-CI-6D-03

**1.6.1, Equal Employment Opportunity Procedures Manual  
Glossary of Terms**

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***Hostile Work Environment – Conduct that has the purpose or effect of unreasonably interfering with an individual’s work performance or of creating an intimidating, hostile, or offensive work environment.***

**Protected Class** – A class defined by law or Commonwealth policy as protected from discrimination or harassment. Classes **currently** protected are: race, color, religious creed, ancestry, union membership, age, gender, sexual orientation, gender identity or expression, national origin, AIDS or HIV status, or disability. Discrimination and harassment are prohibited on the basis of these classes.

***Sexual Harassment – Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:***

- 1. submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment;***
- 2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; and/or***
- 3. such 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.***

***Substantiated – An allegation that was investigated and determined to have occurred.***

***Tangible Employment Action – To effect a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits.***

***Transgender – Individuals that self-identify with a gender identity that is different from the sex assigned to them at birth.***