



POLICY STATEMENT
Commonwealth of Pennsylvania • Department of Corrections

Policy Subject: Sexual Harassment		Policy Number: 1.6.2
Date of Issue: July 12, 2016	Authority: Signature on File John E. Wetzel	Effective Date: July 19, 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 facilities operated under the jurisdiction of, or conducting business with the Department of Corrections.

III. POLICY

Sexual Harassment in any Department work setting is strictly prohibited. ***It is the policy of the Department that sexual harassment of employees, applicants for employment, visitors, contractors, and individuals or groups who have business with or use the resources of the Department, will not be tolerated.*** Sexual harassment is a violation of federal and state law. Therefore, all federal and state laws relating to sexual harassment and/or sexual discrimination will be enforced. Any employee and/or agent of the facility, including a volunteer, contractor, and/or vendor must be advised that he/she is subject to disciplinary action, including dismissal and termination of contract(s) and/or service(s), if found guilty of sexual harassment charges.¹

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.

¹ 4-ACRS-7E-04, 1-CTA-1C-14

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 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.

The Department ensures that all internal discrimination complaints will be investigated and resolved within the prescribed guidelines established in Management Directive 410.10 and Section 1 of this procedures manual.

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.

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**

1.6.2, Sexual Harassment, issued September 10, 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. 4.1.1, Human Resources and Labor Relations
- b. Management Directive 505.30, Prohibition of Sexual Harassment in Commonwealth Work Settings
- c. Management Directive 410.10, amended, Guidelines for Investigating and Resolving Internal Discrimination Complaints
- d. Department of Corrections Code of Ethics

- e. Executive Order 2002-4, Prohibition of Sexual Harassment in the Commonwealth
2. ACA Standards
- a. Adult Correctional Institutions: 4-4056
 - b. Adult Community Residential Services: 4-ACRS-7E-04
 - c. Correctional Training Academies: 1-CTA-1C-14, 1-CTA-3A-09



PROCEDURES MANUAL
Commonwealth of Pennsylvania • Department of Corrections

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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.

**1.6.2, Sexual Harassment Procedures Manual
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Section 1 – Sexual Harassment¹

A. General

Any person who believes that he/she has been sexually harassed 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.

B. Procedures²

1. Any employee, ***applicants for employment, visitors, contractors, and individuals or groups who have business with or use the resources of the Department***, who believes that he/she is the victim of sexual harassment should ***report*** immediately to his/her supervisor or someone in the employee's direct line of supervision. If the concern involves the ***individual's*** direct supervisor or someone in the ***individual's*** direct line of supervision, or if the ***individual*** is uncomfortable for any reason discussing such matters with the supervisor and/or others in the direct line of supervision, or is not satisfied after ***reporting information*** to such individuals, the employee may take his/her concerns to the facility's Field Human Resource Officer (FHRO) ***or Facility Manager at the facility where the alleged act of discrimination occurred***, or the Department's Office of Equal Employment Opportunity (EEO). The Department's Office of EEO toll-free reporting line is 1-877-EEO-0846.
2. ***If a complaint is filed beyond 90 calendar days of the alleged act of discrimination, the Office of EEO in consultation with the EEO Division of the Bureau of Workforce Planning, Development, and EEO in the PA Office of Administration, will make the determination of whether the complaint should be investigated.***
3. ***The STD-486C, EEO Discrimination Complaint Form and the DOC Discrimination Complaint Questionnaire (Attachment 1-A) are 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.***
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 sexual harassment complaint is reported to or comes to the attention of the FHRO or a ***Facility Manager/designee***, he/she shall immediately notify the Director of the Office of EEO that a complaint has been filed.

¹ 4-4056

² 4-ACRS-7E-04

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 Department's Office of EEO.***
 - b. ***Where there is a perceived or actual conflict of interest with a complaint filed with the Department's Office of EEO, the Office of EEO shall consult with the Bureau of Workforce Planning, Development, and EEO in the Pennsylvania Office of Administration to determine whether the complaint should be investigated by another agency employee or the appropriateness of submitting a referral to that office to conduct the investigation.***
7. The Facility Manager/designee shall initiate a review of the complaint and assign the complaint for investigation to commence within one working day of becoming aware of the allegation(s).
 8. When a sexual harassment complaint is filed, the FHRO/designee or the EEO Specialist in the **Department's** 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.
 9. When the investigation is conducted by the FHRO/designee, the completed **case file** shall be forwarded to the **Department's** Office of EEO **for review. The case file shall be sent along with required documentation to the Superintendent and the Director of the Department's Office of EEO.**
 10. ***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 opinion, conclusions, or determinations shall be made by the investigator or reviewer or included in the investigative report.***
 11. ***The original documents shall be maintained in the facility's Human Resource Office or the Bureau of Community Corrections (BCC) at Central Office. The Office of EEO shall review the investigation and determine whether additional information is needed.***
 12. 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 BCC Regional Director of the region where the incident occurred** for investigation.

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13. The Office of EEO shall prepare a written analysis and recommended finding for the investigation and forward it, along with all supporting documentation, to the Deputy Secretary for Administration.
14. The Deputy Secretary for Administration shall determine whether to approve, modify, or disapprove the recommendation. The case file shall then be returned to the **Department's** Office of EEO.
15. If it is determined that sexual harassment occurred and/or action is to be taken, the **Department's** Office of EEO shall notify the Facility Manager/designee, FHRO, and appropriate Deputy Secretary of the findings and recommended action(s).
16. If the Facility Manager/designee 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.**"
17. When the **Department's** Office of EEO receives documentation that corrective action has been taken, the case file **shall be** closed.
18. If the charges are not substantiated, the **Department's** Office of EEO **shall** notify the complainant, the alleged offender(s), Facility Manager/designee, FHRO, and appropriate Deputy Secretary and the case file **shall be** closed.

C. 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.

1. ***The request for reconsideration must be in writing and filed within 20 calendar days of notification of the outcome.***
2. ***The Department's designated individual shall review the request and other appropriate information as expeditiously as possible and provide written notification to complainant(s) of the determination, and if appropriate, the right to and procedure for filing an appeal to the EEO Division of the Bureau of Workforce Planning, Development, and EEO in the PA Office of Administration.***

D. Appeals

1. ***Complainants who are not satisfied with the Department's decision concerning a request for reconsideration may file an appeal to the EEO Division of the Bureau of Workforce Planning, Development, and EEO in the PA Office of Administration.***
2. ***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 (attached to Management Directive 410.10).

E. 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, agency Equal Opportunity Specialists may explore opportunities for resolution. If a resolution is reached, the agency Equal Opportunity Specialist should request that the complainant execute Form STD-486W, Equal Employment Opportunity Discrimination Complaint Withdrawal Form (attached to Management Directive 410.10); requesting closure of the complaint based on satisfaction with the resolution. All resolutions must be approved by the Director of the Department's Office of EEO prior to implementation.

F. Mediation

The agency Equal Opportunity Specialist 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. Both parties must agree to participate for mediation to occur. Upon request, the Office of EEO will review the case with the Office of Chief Counsel and the EEO Division of the Bureau of Workforce Planning, Development, and EEO in the PA Office of Administration to determine if mediation is an option.

G. Withdrawal

The complainant may withdraw his/her complaint at any time. Requests for withdrawal of complaints must be submitted in writing to the agency Equal Opportunity Officer, on the standard Form STD-486W, Equal Employment Opportunity Discrimination Complaint Withdrawal Form (attached to Management Directive 410.10). The agency Equal Opportunity Officer will confer with the Responsible Agency Official and, depending upon the allegations and circumstances, the agency may continue its investigation.

H. Other Avenues of Recourse

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

- 1. Equal Employment Opportunity Commission**
- 2. Pennsylvania Human Relations Commission**
- 3. Pennsylvania State Civil Service Commission**

I. Transfer to Legal Office

The procedures outlined in this policy 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 agency Legal Counsel who will direct all further investigation and/or handling of the matter.

J. Disciplinary Sanctions

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

K. Acknowledgement/Availability of Policy

1. Every newly ***hired*** employee shall sign a **Sexual Harassment Policy Acknowledgement of Receipt (Attachment 1-B) during New Employee Orientation.**
2. This policy shall also be posted in conspicuous places in each workplace by the Bureau of Human Resources (BHR).

L. Training³

1. Sexual harassment training shall be provided ***to every employee in their pre-service training program*** at or near the beginning of employment with the Department. Additional training will occur periodically as set forth in Department training policies, but no less than once every three years.
2. Periodic training in the prevention of sexual harassment and the Department's obligation in complying with discrimination laws and Department policy shall be provided to every supervisor and manager.

³ 4-ACRS-7E-04, 1-CTA-3A-09

Department – The Pennsylvania Department of Corrections.

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

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, *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 must be filed within 90 calendar days of the alleged act of discrimination.

Sexual Harassment

1. Unwelcome sexual advances, requests for sexual favors, and/or other verbal, visual, or physical conduct of a sexual nature when:
 - a. submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - b. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - c. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
2. Prohibited sexual harassment may include actions by members of the opposite sex as well as members of an employee's own sex. Prohibited sexual harassment may include actions that are overtly sexual or facially neutral if such actions constitute gender-based discrimination.

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