



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> May 29, 2018	<b>Authority:</b> Signature on File John E. Wetzel	<b>Effective Date:</b> June 5, 2018

## 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, ***applicants for employment***, visitors, contractors, ***interns, externs***, and individuals ***or*** groups who have business with or use the resources of the Department.

## III. POLICY

- A. ***Discrimination in any work setting is strictly prohibited. It is the policy of the Department to fully comply with applicable federal and state laws. Discrimination against any individual because of his/her race, color, religious creed, ancestry, union membership, age (40 years or older), sex, sexual orientation, gender identity or expression, national origin, AIDS or HIV status, or disability will not be tolerated.***
- B. All Department employees are held accountable for creating and maintaining a workplace free from discrimination and harassment. Employees who fail to comply with this policy will be subject to disciplinary action, ***up to and including termination of employment.***
- C. ***All individuals to whom this policy applies under Section 2 above, will be held responsible for any acts of discrimination they may commit within Department work settings or upon employees of the Department while in the performance of***

***their duties. Individuals who fail to comply with this policy will be subject to disciplinary action, including dismissal and termination of contract(s) and/or service(s).***

- D. ***This policy extends to conduct that occurs outside of the work setting when such conduct alters the conditions of employment by creating an abusive, hostile, intimidating, or offensive work environment. This includes conduct that occurs via electronic means, including, but not limited to, text messages, email, and social media.***
- E. 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, he/she must advise the ***Field Human Resource Officer (FHRO) or 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 ***knew or*** reasonably should have known that discrimination exists.
- F. ***All complaints of discrimination that are reported to a manager, supervisor, or FHRO must be reported to the Office of Equal Employment Opportunity (EEO) within three business days of receipt.***
- G. 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.
- H. Equal employment opportunity will be extended in all employment practices including, ***but not limited to,*** recruitment, interviewing, hiring, ***compensation,*** promoting, ***transferring,*** training, delegation, and discipline.
- I. 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.
- J. Employees transitioning from one gender to another may do so in accordance with the prescribed guidelines in ***Section 2*** of this procedures manual.
- K. ***The Department will not tolerate any*** retaliation against persons who have lodged a complaint, testified, assisted, or participated in any proceeding, investigation, or hearing regarding any allegation of discrimination. 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 *Manual* (if applicable)

*The* confidential procedures *manual* for this document, if any, ***is 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.

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## VIII. SUPERSEDED POLICY AND CROSS REFERENCE

### A. Superseded Policy

#### 1. Department Policy

1.6.1, Equal Employment Opportunity, issued **March 31, 2016**, by **Secretary John E. Wetzel**.

#### 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 **2016-04**, Equal Employment Opportunity

#### 2. ACA Standards

- a. Adult Correctional Institutions: 4-4053
- b. Adult Community Residential Services: 4-ACRS-7E-02, 4-ACRS-7E-03, 4-ACRS-7E-04, 4-ACRS-7E-05
- c. Correctional Training Academies: 1-CTA-1C-03, 1-CTA-2D-03



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

**Policy Subject:**

**Equal Employment Opportunity**

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**Signature on File  
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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.

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

### 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.<sup>1</sup>

### B. Procedures

1. Discrimination complaints by employees, applicants for employment, visitors, contractors, **interns, externs**, and individuals or groups who have business with or use the resources of the Department, shall be filed with the **Office of Equal Employment Opportunity (EEO), their immediate supervisor**, Field Human Resource Officer (FHRO), or Facility Manager at the facility where the alleged act of discrimination occurred. ***If a supervisor is the individual who receives a complaint of discrimination, that supervisor must immediately forward the complaint to the FHRO or Facility Manager. The Department's Office of EEO toll-free reporting line is 1-877-EEO-0846.***
2. ***The FHRO or Facility Manager must forward all discrimination complaints to the Office of EEO within three business days of receipt.***
3. ***All discrimination complaints shall be investigated by the Office of EEO unless written permission is granted by the Director of the Office of EEO for the investigation to be conducted at the facility.***
4. 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, **Bureau of Equal Employment Opportunity (OA-BEEO)**, will make the determination of whether the complaint should be investigated.
5. The **STD-486C, Discrimination Complaint Form** 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.
6. There is no requirement that a complaint be in writing or conform to a specific format.
7. Conflict of Interest

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 **OA-BEEO**, to determine whether the complaint should be investigated by another Department employee or the appropriateness of submitting a request to the **OA-BEEO** to conduct the investigation.

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<sup>1</sup> 4-4053, 1-CTA-1C03, 4-ACRS-7E-05

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8. When a discrimination complaint is filed, the EEO Specialist in the Office of EEO **or facility designee will conduct a prompt, thorough, and impartial investigation in accordance with Management Directive 410.10.**
9. The Office of EEO shall prepare a written analysis and recommended findings for **every** investigation and forward it, along with all supporting documentation, to the **Responsible Agency Official.**
10. The **Responsible Agency Official** shall determine whether to approve, modify, or disapprove the recommendation. The case file shall then be returned to the Office of EEO.
11. If **the EEO investigation** determines that discrimination occurred, and/or action is to be taken, the Office of EEO shall notify the Facility Manager/designee, FHRO, and Community Corrections Center (CCC) Regional Director, if applicable, **Office of Chief Counsel**, and appropriate Deputy Secretary of the findings and recommended actions. **The case file is then closed.**
12. If the Facility Manager/designee and/or CCC Regional Director determines, based upon the recommendations approved by the **Responsible Agency Official**, that disciplinary action is warranted, this shall occur in accordance with Department policy **4.1.1, “Human Resources and Labor Relations.”**
13. 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, **Office of Chief Counsel**, and appropriate Deputy Secretary. The case file is then closed.
14. 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 **Agency Official.**

- 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 **Agency Official** 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 OA-**BEEO** within the timeframe set forth in **Management Directive 410.10.**
15. Appeals
    - a. Complainants who are not satisfied with the Department’s decision concerning a request for reconsideration may file an appeal with OA-**BEEO.**



- 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 **Specialist** may explore opportunities for resolution. If a resolution is reached, the Department 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 his/her satisfaction with *the* resolution. All resolutions must be approved by the Director of the Office of EEO prior to implementation.

### **D. Mediation**

The **Office of EEO** 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. ***If the parties elect to pursue mediation, the Office of EEO must notify the OA-BEEO Director.***

### **E. Withdrawal**

The complainant may withdraw his/her complaint at any time. Requests for withdrawal of complaints must be submitted in writing to the **Office of EEO** on the **STD-486W**. The **Director of the Office of EEO** will confer with the Responsible **Agency** 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

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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.

**I. Acknowledgement/Availability of Policy**

1. ***Every newly hired employee shall sign an Equal Employment Opportunity Policy Acknowledgement of Receipt (Attachment 1-A) during New Employee Orientation.***
2. ***This policy shall also be posted in conspicuous places in each workplace.***

## **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.

**Designated Agency Official** – *Individual designated to review requests for reconsideration of discrimination complaints and provide a written determination.*

**Discrimination** – Unequal treatment based on membership in a class protected by law or Commonwealth policy *including race, color, religious creed, ancestry, union membership, age (40 years or older), sex, sexual orientation, gender identity or expression, national origin, AIDS or HIV status or disability.*

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, *the* director of a community corrections center, or the commander of a motivational boot camp.

**Gender Identity or Expression** – *An individual's internal sense of being male or female or both or neither regardless of sex assigned at birth.*

**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 conduct *that is* based on *membership in a class protected by law or Commonwealth policy including race, color, religious creed, ancestry, union membership, age (40 years or older), sex, sexual orientation, gender identity or expression, national origin, AIDS or HIV status or disability, constitutes harassment when:*

1. *enduring the offensive conduct becomes a condition of continued employment; or*

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<sup>1</sup>14-4053, 4-ACRS-7E-05, 1-CTA-1C-03

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Glossary of Terms**

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2. the conduct *is* severe or pervasive **enough** to create a work environment **that a reasonable person would consider intimidating, hostile, or abusive**.

**Responsible Agency Official – The Deputy Secretary for Administration.**

**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 **or rejection of** such conduct is made **either** 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 individual; 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 working environment.

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

**Tangible Employment Action** – A significant change in employment status. **Examples include** hiring, firing, **promotion, demotion**, a decision causing significant change in benefits, **compensation decisions, and work assignments**.

**Transgender** – **An** individual **whose** gender identity is different **than** the sex assigned at birth.