

**1038            SEXUAL HARASSMENT POLICY**

**I.            Purpose**

The Department of Human Services (DHS) does not tolerate sexual harassment in any form. The purpose of this policy is to define workplace sexual harassment, prohibit it in all forms, and provide procedures for lodging and investigating sexual harassment claims.

**II.            Actions Defined as Sexual Harassment**

(A) Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Sexual harassment can occur but is not limited to when:

- (1) Submission to the sexual conduct is either an explicit or implicit term or condition of employment; and/or,
- (2) Submission to or rejection of the sexual conduct is used as a basis for employment decisions affecting the person who did the submitting or rejecting; and/or,
- (3) The conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

**Note:** Actions that may be defined as sexual harassment are not limited to the "supervisor to employee" situation, but may include actions of co-workers, actions of the same or opposite sex, and actions of individuals external to DHS, but who have contact with employees in the work environment.

(B) Though sexual harassment encompasses a wide range of conduct, some examples of specifically prohibited conduct include the following:

- (1) Physical assaults of a sexual nature, such as rape, sexual battery, molestation, or attempts to commit these assaults, and intentional physical conduct that is sexual in nature, such as touching, pinching, patting, grabbing, intentionally brushing against another employee's body, poking, or touching another employee's body.
- (2) Unwelcome sexual advances, propositions, or other sexual comments such as sexually oriented gestures, noises, remarks, jokes, or comments about a person's sexuality or sexual experience.
- (3) Preferential treatment or promises of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward.

- (4) Subjecting, or threats of subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of the employee's job more difficult because of that employee's sex.
- (5) Sexual discriminatory displays or publications anywhere in DHS workplace by a DHS employee.
- (6) Retaliation for sexual harassment complaints.

**Note:** Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

- (C) For more guidance, please see the Federal Guidelines (29 CFR Ch XIV, subsection 1604.11), Section 703 of Title VII of the Civil Rights Act of 1964, as amended, and the Arkansas Civil Rights Act at Ark. Code Ann. § 16-123-101(1).
- (D) Sexual harassment can be physical or psychological in nature. An aggregation of a series of incidents can constitute sexual harassment even if one of the incidents considered on its own would not be harassing. DHS employees are prohibited from harassing other employees whether or not the incidents of harassment occur on DHS premises and whether or not the incidents occur during working hours.

### III. Responding to Conduct in Violation of Policy

- (A) If a DHS employee believes that he or she has been subjected to sexual harassment or any unwelcome sexual attention, he or she may, but is not required, address the situation directly and immediately to the harasser. If the inappropriate conduct does not cease, or if the employee is unable to or uncomfortable with addressing the alleged harasser directly, he or she should follow the processes listed within this policy.
- (B) Administrators and supervisors must:
  - (1) Take all complaints or concerns of alleged or possible harassment or discrimination seriously no matter how minor or who is involved.
  - (2) Ensure that harassment or inappropriate sexually oriented conduct is immediately reported as outlined in Section V so that a prompt investigation can occur.
  - (3) Take any appropriate action to prevent retaliation or prohibited conduct from recurring during and after any investigations or complaints.
- (C) Supervisors or managers who knowingly allow or tolerate sexual harassment or retaliation, including the failure to immediately report such misconduct to the DHS HR Office, are in violation of this policy and subject to discipline. Any employee who

believes that he or she has been harassed or that his or her supervisor has not addressed these concerns is encouraged to follow the complaint procedures outlined below.

#### IV. Sexual Harassment Complaints

- (A) No employee, to effect resolution of a complaint, shall be required to solely or independently confront the person allegedly conducting or causing the action believed to be sexual harassment.
- (B) All employees must be given the opportunity through established investigative steps and processes, including DHS's grievance procedure, to resolve sexual harassment complaints. This policy does not change the DHS grievance procedure (DHS Policy 1086 "Employee Grievance").

#### V. Complaint Submission/Reporting

Employees may contact anyone in their chain of command, their HR Liaison, the HR Chief, or Compliance Officer to report complaints. In addition, employees may submit a complaint using the DHS Form 2808: Employee Complaint of Discrimination. The person receiving the complaint must submit the report to the Office of Security and Compliance (OSC) at [DHSintegrity@dhs.arkansas.gov](mailto:DHSintegrity@dhs.arkansas.gov).

Upon submission of the complaint, an internal investigation will be conducted. DHS will protect the confidentiality of complaints to the extent reasonably possible. DHS will take immediate and appropriate corrective action when it determines that a violation has occurred.

OSC will forward their results to the alleged harasser's Division Director or Office Chief, or the Deputy—if a Division Director or Office Chief is the accused harasser—and the Office of Human Resources (OHR). The Division or Office will then take appropriate disciplinary action if needed.

#### VI. Discipline

Employees who violate this policy are subject to appropriate discipline, up to and including termination. Employees who violate this policy may also be subject to civil damages or criminal penalties.

This policy does not change discipline procedures in DHS Policy 1084 Employee Discipline.

#### VII. Confidentiality

All inquiries, complaints, and investigations are treated confidentially. Information is revealed strictly on a need-to-know basis. Information contained in a formal complaint is kept as confidential as possible. However, the identity of the complainant may be revealed to the respondent and witnesses as necessary to thoroughly investigate any claim of sexual harassment.

VIII. Response to Federal and Regulatory Agencies

The OSC is responsible for responding to federal and regulatory agencies regarding sexual harassment allegations., OSC must maintain documents associated with the investigation in accordance with the DHS Records Retention Policy.

The procedures available under this policy do not preempt or supersede any legal procedures or remedies otherwise available to a victim of sexual harassment under local, state, or federal law.