

PURPOSE

State classified employees are protected from prohibited discrimination based on any of the following factors:

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|---------------------|-------------------------------|
| Age | Partisan Consideration |
| Color | Race |
| Disability | Religion |
| Genetic Information | Sex |
| Height | Sexual Orientation |
| Marital Status | Gender Identity or Expression |
| National Origin | Weight |

In certain instances, some of the above factors may properly be the basis for employment-related actions. For example, Civil Service Rule 1-8.4 recognizes that there may be the need for bona fide occupational qualifications. Also, certain disabilities may render a person incapable of performing the essential components of a particular job, despite reasonable accommodations and Civil Service Rule 1-8.1(a).

Prohibited discrimination may take a number of forms, including discriminatory harassment. The Department of Human Services has an obligation to investigate reports of discriminatory harassment and to take prompt and appropriate remedial action if necessary.

The department will take appropriate steps to assure that a person who in good faith reports, complains about, or participates in an investigation of a discriminatory harassment allegation will not be subjected to retaliation. The department also will take appropriate steps to assure that a person against whom such an allegation is made is treated fairly.

This policy outlines the procedure for the Department of Human Services to investigate reports of discriminatory harassment.

Note: Filing a complaint of discriminatory harassment with the department does not preclude the complainant from filing an action with the Michigan Department of Civil Rights or the Equal Employment Opportunity Commission.

Discriminatory Harassment Coordinator

The department's primary responsibility for investigating complaints rests with the Office of Equal Opportunity and Diversity Programs (OEODP). Staff from OEODP are designated as the department's discriminatory harassment coordinators.

DEFINITIONS

Discriminatory Harassment

Discriminatory harassment means unwelcome advances, requests for favors, and other verbal or physical conduct or communication based on religion, race, color, national origin, age, sex, sexual orientation,

gender identity or expression, height, weight, marital status, partisan considerations, genetic information, or disability under any of the following conditions:

- Submission to the conduct or communication is made a term or condition, either explicitly or implicitly, to obtain employment.
- Submission to or rejection of the conduct or communication by a person is used as a factor in decisions affecting the person’s employment.
- The conduct or communication has the purpose or effect of substantially interfering with a person’s employment or creating an intimidating, hostile, or offensive employment environment.

Sexual Harassment

Sexual harassment is covered under the general term discriminatory harassment.

There are two basic categories of sexual harassment. The categories and examples outlined below are intended to provide a general understanding of prohibited behavior and should not be construed as including all behavior which could be seen as sexual harassment.

Category I – Quid Pro Quo

This includes conduct by a supervisor or manager, which constitutes unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature where:

- Submission to such conduct is made, either explicitly or implicitly, a term or condition of employment or,
- Submission to or rejection of such conduct by an employee is used as the basis for an employment decision (e.g., promotions, raises, assignments) and causes severe fear for the employee.

Category II – Hostile Environment

This includes conduct by any employee, supervisor, manager, customer, volunteer and business contacts, which constitutes unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature where such conduct has the purpose or effect of unreasonably interfering with an employee’s work performance or creating an offensive working environment, and causes undue stress or fear for the employee. Examples of hostile environment can be, but are not limited to, jokes of a sexual nature, sexually suggestive objects and pictures, or posters and calendars with graphic commentaries of a sexual nature in the work place.

As stated above, these examples are not an exhaustive list of behaviors which could be seen as discriminatory harassment. Questions as to specific cases where discriminatory harassment is suspected may be directed to the discriminatory harassment complaint investigator in the OEODP.

Other Forms of
Hostile Work
Environment

This includes conduct by employees, supervisors, managers, customers and volunteers, which constitutes unwelcome verbal or physical conduct, where such conduct has the purpose or effect of substantially interfering with an employee's employment or creating an offensive working environment.

Note: Reports of alleged harassment by non-employees from another organization will be sent to that organization for investigation.

**REPORTING
REQUIREMENTS**

Civil Service Commission Rules require classified employees to report to management in writing in either of the following circumstances:

- a. If the employee is subjected to discriminatory harassment in the workplace by a supervisor, manager, co-worker, or other person.
- b. If the employee witnesses a supervisor, manager, co-worker, or other person in the workplace engaging in discriminatory harassment of another person.

**Supervisors and
Managers**

A supervisor or manager who witnesses any employee engaged in discriminatory harassment of another person is obligated to report the behavior to the OEODP, the bureau/office director, local office director or Office of Labor Relations. If supervisors or managers are unsure whether the behavior meets the definition of discriminatory harassment, they should contact the discriminatory harassment coordinator for advice.

A supervisor or manager receiving a complaint or report of discriminatory harassment must contact the discriminatory harassment coordinator.

FILING REPORTS

Reports (complaints) of discriminatory harassment shall be made in writing. [Form DHS-4689, Discriminatory Harassment Report](#), shall be used to file formal complaints. This form is available electronically as an MS Word template or may be obtained from the discriminatory harassment coordinator.

Complaints may be filed at the local office, district office, residential care, or bureau and office level. The person designated to receive complaints is the office director, OEODP or Office of Labor Relations.

If the report or complaint is about the office director, then it should be directed to the next higher level of supervision. If the complainant does not follow the department policy and chooses to discuss the concerns with a supervisor or manager not designated to take complaints, then that supervisor or manager must report the incident to the discriminatory harassment coordinator. The discriminatory harassment coordinator determines if an investigation is necessary.

Note: If an employee becomes aware of prohibited discrimination other than discriminatory harassment, the employee may use the steps provided in this procedure to report the discrimination.

**Represented
Bargaining Unit
Members**

Where the complainant is a member of a bargaining unit represented by a labor organization, the complainant shall be advised that he/she may consult with the union steward regarding the complaint. The complainant shall be informed of the right to file a grievance alleging discriminatory harassment.

Reporting Deadline

Employees are encouraged to report any discriminatory harassment immediately. However, in any event, the employee must report any discriminatory harassment within 180 calendar days after the alleged harassment, per Civil Service regulations.

**INVESTIGATION
PROCESS**

Investigations, in most cases, will be conducted by a three person investigative team consisting of the discriminatory harassment complaint investigator, a representative from the Office of Labor Relations and the office director from the office where the complaint is filed, depending on the nature of the allegation. Investigations will be conducted promptly, thoroughly and fairly, affording both the complainant and the accused a full opportunity to participate. The accused will be notified as soon as possible of the allegations and the investigative findings. If an allegation of discriminatory harassment is substantiated, appropriate corrective action will follow.

In most cases, investigations shall be concluded within thirty (30) work days from the date of the complaint. Some investigations may take longer due to the complexity of the case. The complainant and the accused shall be kept apprised of the progress of the investigation as well as the outcome.

In investigating a charge of discriminatory harassment, the complaint investigator shall:

- a. Specifically detail the unwelcome conduct, which is alleged to constitute discriminatory harassment. Include the type(s) of conduct, the frequency of occurrence, witnesses and the date(s) of occurrences or the time period over which the conduct occurred.
- b. Identify the specific context(s) in which the conduct occurred. Include the nature and general description of the work place and the specific location and circumstances in which the conduct occurred. Obtain any physical evidence such as copies of a document. Ascertain if the complainant told the alleged harasser by word or behavior that the conduct was unwelcome and what the complainant did about the conduct of the alleged harasser.

- c. If the complainant needs immediate protection and/or intervention, appropriate action will be taken. Actions which might be taken include, but are not limited to, a change of physical location of the workstation of the alleged harasser and/or complainant, no-contact orders to both parties, temporary reassignment of the alleged harasser and/or complainant, or suspension of the alleged harasser during the pendency of the investigation.
- d. Identify the relationship of the alleged harasser(s) to the employer and complainant at the time(s) of the alleged harassment, i.e., was the alleged harasser(s) the supervisor of the complainant, an agent of the employer in some way, a coworker or a non-employee.

Note: If the alleged harasser is an employee of one state department and the complainant is an employee of another state agency, the complaint should be referred to the department/agency of the alleged harasser for investigation.

- e. Obtain a statement from the alleged harasser(s). Warn the alleged harasser(s) of the necessity of confidentiality and that retaliation against the complainant or witnesses is forbidden and if substantiated, is a separate basis for investigation and potential discipline.

Individuals being interviewed for alleged discriminatory harassment have the right to be advised that they are being interviewed for the purpose of investigating a discriminatory harassment claim against them. The alleged harasser may have the right to written notice and representation in any disciplinary conference under applicable collective bargaining agreements or appointing authority policy.

- f. Obtain statements that are signed by the witnesses, who are named by the complainant or alleged harasser, or other persons, if any, who can refute, corroborate or support any of the complainant's or alleged harasser's allegations. Advise witnesses of the need for confidentiality and protection from retaliation.

Upon conclusion of the investigation, notify the complainant and alleged harasser of the results of the investigation.

- a. Where the complaint is substantiated or where there is reasonable cause to believe the allegations are true, appropriate corrective action reflecting the severity of the conduct shall be taken.
- b. If the complaint investigator does not substantiate the complaint or determines there is not reasonable cause to believe the allegations of the complainant, the report shall be maintained only in the OEODP's confidential files.

Note: Complete reports are subject to provisions of FOIA. FOIA requests should be forwarded to Legal Affairs and Financial Integrity.

Steps in Conducting an Investigation

- A. Review the complainant's statement of discrimination to determine the reason for the complaint and to gain an understanding of the issues presented.
- B. Open and organize a file for the complaint. Make a chronology of activity concerning this complaint.
- C. Commence an investigation within **15** work days of the date the employer had a reasonable basis to believe that an investigation was necessary, per applicable contract requirements.
- D. Plan the investigation by making lists of witnesses to interview and evidence and documents to be gathered. Focus on the scope of the inquiry.
- E. Plan the order and content of interviews carefully. Review collective bargaining agreements and department policy concerning investigatory interviews. Prepare a list of questions. Conduct interviews and document findings.
- F. Determine additional or clarifying information needed from the complainant, alleged harasser, employer and witness(es).
- G. Gather supporting documentation and evidence. Visit the work site, if necessary.
- H. Analyze the information.
- I. Make a determination of findings in a timely manner, usually not to exceed 30 work days from the complaint date.
- J. Form DHS-4689A, Confidential Discriminatory Harassment Report--Findings of Fact, provides the outline for the written report:
 - Brief summary of complaint.
 - Investigative plan description.
 - Statement of the complainant's allegation.
 - Statement of the alleged harasser.
 - Statements from witnesses.
 - Description of other evidence.

- Statement of the policy and law regarding discriminatory harassment.
 - Findings of fact.
- K. The conclusions will be entered on form DHS-4689B, Confidential Discriminatory Harassment Report--Recommendations and Conclusions.
- L. The supervisor will be notified if there is to be discipline imposed on the alleged harasser by the Office of Labor Relations.

PRESERVATION OF RECORDS

To assure department-wide compliance with this policy, the discriminatory harassment complaint investigator monitors all reported incidents of discriminatory harassment and their resolution. All records of each incident are kept within OEODP for three years. OEODP then destroys the records by shredding them.

LEGAL BASIS

Title VII of the Civil Rights Act of 1964, as amended; Michigan Elliott-Larsen Civil Rights Act of 1976; Persons with Disabilities Civil Rights Act of 1976, as amended; Michigan Civil Service Rule 1-8, 9-1; Michigan Civil Service Regulation 1.03; Executive Directive 2007-24, Equal Opportunity in State Government; and department work rules.