

MINNESOTA DEPARTMENT OF NATURAL RESOURCES

DIVISION OF ENFORCEMENT

DIRECTIVE

DIRECTIVE NUMBER: A-2-24

SUBJECT: Harassment, Sexual Harassment, and Discrimination Prohibited

EFFECTIVE DATE: 5-22-2024

SPECIAL INSTRUCTIONS: Replaces A-2-99

APPENDIX: None

REFERENCE: MMB HR/LR Policy #1436, MMB HR/LR Policy #1329, 42 U.S.C. 2000e, et al. Equal Employment Opportunities, M.S. Ch. 43A State Personnel Management, M.S. Ch. 363A Human Rights

DISTRIBUTION: All Division Employees

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This directive is for division use only and does not modify or supersede any law and should not apply to any criminal or civil proceeding except for civil proceedings related to departmental administrative actions. This directive should not be viewed as creating a higher standard of safety or care in any evidentiary sense. Violations of this directive may form the basis for departmental administrative action.

I. PURPOSE

The purpose of this Directive is to ensure a work environment free from harassment, sexual harassment, and discrimination based on protected class.

II. POLICY

It is the policy of this Division that any form of harassment or discrimination based on protected class is strictly prohibited. Individuals who believe they have been subject to harassment or discrimination based on protected class or retaliation as described in this policy, are encouraged to file a report with an appropriate authority, as set forth in Section IV of this policy.

Any form of retaliation directed against an individual who opposes or reports protected class harassment or discrimination, or who participates in any investigation concerning protected class harassment or discrimination, is strictly prohibited and will not be tolerated.

Violations of this policy by state agency employees will be subject to discipline, up to and including discharge. Violations of this policy by third parties will be subject to appropriate action.

III. DEFINITIONS

- A. **Complainant:** An individual who reports protected class harassment, discrimination, sexual harassment, or retaliation.
- B. **Protected class:** Protected classes under this policy are as follows:
1. Race
 2. Color
 3. Creed
 4. Religion
 5. National origin
 6. Sex* (includes pregnancy, childbirth, and related medical conditions)
 7. Marital status
 8. Familial status
 9. Receipt of public assistance
 10. Membership or activity in a local human rights commission
 11. Disability
 12. Age
 13. Sexual orientation
 14. Gender identity
 15. Gender expression
 16. For employees, genetic information
- C. **Age:** The prohibition against harassment and discrimination based on age prohibits such conduct based on a person's age if the person is over the age of 18.
- D. **Disability:** A physical, sensory, or mental impairment which materially limits one or more major life activities; a record of such an impairment; or being regarded as having such an impairment.
- E. **Familial status:** The condition of one or more minors living with their parent(s) or legal guardian, or the designee of the parent(s) or guardian with the written permission of the parent(s) or guardian. This also protects those who are pregnant or those who are in the process of securing legal custody of a minor from being harassed or discriminated against on that basis.
- F. **Genetic information:** Includes information about an individual's or their family members' genetic tests, family medical history, an individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or their family member, and the genetic information of a fetus carried by an individual or a pregnant family member, and the genetic information of any embryo legally held by the individual or their family member using an assisted reproductive technology.
- G. **Marital status:** Whether a person is single, married, remarried, divorced, separated, or a surviving spouse, and includes protection against harassment and discrimination on the basis of the identity, situation, actions, or beliefs of a spouse or former spouse.

- H. **Membership or activity in a local human rights commission:** Participation in an agency of a city, county, or group of counties that has the purpose of dealing with discrimination on the basis of race, color, creed, religion, national origin, sex, age, disability, marital status, status with regard to public assistance, sexual orientation, or familial status, as defined by M.S. 363A.03, subd. 23.
- I. **Protected class harassment or harassment based on protected class:** Unwelcome conduct or communication that is based on actual or perceived membership in a protected class, including stereotypes of protected classes, that has a negative effect or is likely to have a negative effect on the complainant and/or on the workplace or public service environment.
- J. **Public service environment:** A location where public service is being provided.
- K. **Sexual harassment:** Unwelcome sexual advances, unwelcome requests for sexual favors, or other unwelcome verbal, written, or physical conduct or communication of a sexual nature.
- L. **Third party:** Individuals who are not state agency employees, but who have business interactions with state agency employees, including, but not limited to:
 - 1. Applicants for state employment
 - 2. Vendors
 - 3. Contractors
 - 4. Volunteers
 - 5. Customers
 - 6. Business partners
 - 7. Unpaid interns
 - 8. Other individuals with whom state agency employees interact in the course of employees' work for the state, such as advocates, lobbyists, and representatives of individuals or entities with business with any branch of Minnesota state government

IV GENERAL STANDARDS AND EXPECTATIONS

A. Prohibition of Protected Class Harassment and Discrimination

- 1. Harassment of or discrimination against any employee or third party based on protected class in the workplace or public service environment, or which affects the workplace or public service environment, is strictly prohibited. Harassment of or discrimination against an individual because of their relationship or association with members of a protected class is also strictly prohibited.
- 2. Protected class harassment and discrimination may take different forms including verbal, nonverbal, or physical conduct or communication. Conduct based on protected class may violate this policy even if it is not intended to be harassing. Protected class harassment and discrimination under this policy includes, but is not limited to, the following behavior when it is based on actual or perceived membership in a protected class, including stereotypes of protected classes:
 - a. Offensive jokes, slurs, derogatory remarks, epithets, name-calling, ridicule or mockery, insults or put-downs.
 - b. Display or use of offensive objects, drawings, pictures, or gestures.

- c. Physical assaults or threats.
- d. Unwelcome touching or comments about a person's hair, body, clothing, or personal effects related to the person's protected class.
- e. Repeatedly or deliberately misgendering a person, including using gendered personal references that do not align with another person's identity.
- f. Repeatedly or deliberately mispronouncing a person's name, related to the person's protected class, including use of an unwelcome nickname, or shortening a name without permission.
- g. Repeated or deliberate comments, behavior, or other interactions that communicate hostility or bias toward a person who might identify as being a member of a protected class.
- h. Following, stalking, intimidation.
- i. Malicious interference with work performance.
- j. Implicit or explicit preferential treatment or promises of preferential treatment for submitting to the conduct or communication.
- k. Implicit or explicit negative treatment or threats of negative treatment for refusing to submit to the conduct or communication.
- l. Discriminatory conduct based on an individual's actual or perceived protected class that segregates, separates, limits or restricts the individual from employment opportunities, including, but not limited to, hiring, promotion, compensation, disciplinary action, assignment of job duties, benefits or privileges of employment.

B. Prohibition of Sexual Harassment

1. Sexual harassment of any employee or third party in the workplace or public service environment, or which affects the workplace or public service environment, is strictly prohibited.
2. Sexual harassment under this policy is any conduct or communication of a sexual nature which is unwelcome. The victim, as well as the harasser, can be of any gender. The victim does not have to be of the opposite sex as the harasser. Sexual harassment includes, but is not limited to:
 - a. Unwelcome sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, degrading sexual remarks, threats.
 - b. Unwelcome sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, obscene gestures.
 - c. Unwelcome physical contact, such as rape, sexual assault, molestation, or attempts to commit these assaults; unwelcome touching, pinching, or brushing of or by the body.
 - d. Preferential treatment or promises of preferential treatment for submitting to sexual conduct, including soliciting or attempting to solicit an individual to submit to sexual activity for compensation or reward.
 - e. Negative treatment or threats of negative treatment for refusing to submit to

sexual conduct.

- f. Subjecting, or threatening to subject, an individual to unwelcome sexual attention or conduct.

C. Employee and Third-Party Responsibilities and Complaint Procedure

1. Sexual harassment, harassment, and discrimination based on protected class will not be tolerated. All employees and third parties are expected to comply with this policy.
2. Employees and third parties are strongly encouraged to report all incidents of protected class harassment, sexual harassment, and discrimination, whether the individual is the recipient of the behavior, an observer, or is otherwise aware of the behavior. Individuals are encouraged to report incidents as soon as possible after the incident occurs. Individuals may report incidents to:
 - a. Any of the agency's managers or supervisors.
 - b. The agency's affirmative action officer.
 - c. The agency's human resources office.
 - d. Agency management, up to and including the agency head.
3. If the report concerns an agency head, the complainant may contact Minnesota Management and Budget's (MMB's) Deputy Commissioner of Enterprise Employee Resources.
4. To ensure the prompt and thorough investigation of a report, the complainant may be asked to provide information in writing, which may include, but is not limited to:
 - a. The name, department, and position of the person(s) allegedly causing the harassment or discrimination.
 - b. A description of the incident(s), including the date(s), location(s), and the identity of any witnesses.
 - c. The name(s) of other individuals who may have been subject to similar harassment or discrimination.
 - d. What, if any, steps have been taken to stop the harassment or discrimination.
 - e. Any other information the complainant believes to be relevant.
5. Individuals are encouraged to use the agency's internal complaint procedure, but may also choose to file a complaint externally with the Equal Employment Opportunity Commission (EEOC), the Minnesota Department of Human Rights (MDHR), or other legal channels.

D. Manager/Supervisor Responsibility

1. Managers and supervisors must:
 - a. Model appropriate behavior.
 - b. Treat all reports of protected class harassment, sexual harassment, and discrimination seriously.
 - c. Appropriately respond to a report or problem when they receive a report of protected class harassment, sexual harassment, or discrimination, or when they are otherwise aware a problem exists.

- d. Immediately report all allegations or incidents of protected class harassment, sexual harassment, or discrimination to human resources or the agency Affirmative Action Officer.
 - e. Comply with their agency's complaint and investigation procedures and/or the agency's Affirmative Action Plan.
 2. Managers and supervisors who knowingly participate in, allow, or tolerate harassment, sexual harassment, discrimination, or retaliation are in violation of this policy and are subject to discipline, up to and including discharge.

E. Human Resources Responsibilities

1. Agency human resources must:
 - a. Model appropriate behavior.
 - b. Distribute the Harassment, Sexual Harassment, and Discrimination Prohibited Policy to all employees, through a method whereby receipt can be verified.
 - c. Treat all reports of protected class harassment, sexual harassment, and discrimination seriously.
 - d. Comply with the agency's complaint and investigation procedures and/or the agency's Affirmative Action Plan.

F. Affirmative Action Officer or Designee Responsibilities

1. Agency Affirmative Action Officer/designee must:
 - a. Model appropriate behavior.
 - b. Treat all reports of protected class harassment, sexual harassment, and discrimination seriously.
 - c. Comply with the agency's complaint and investigation procedures and/or the agency's Affirmative Action Plan.
 - d. Keep the agency apprised of changes and developments in the law and policy.

G. Investigation and Discipline

1. State agencies will take seriously all reports of protected class harassment, sexual harassment, discrimination and retaliation, and will take prompt and appropriate action. When conducting an investigation, managers and supervisors, human resources, and Affirmative Action Officers must follow their agency's investigation procedures.
2. State agencies will take prompt and appropriate corrective action when there is a violation of this policy.
3. Employees who are found to have engaged in conduct in violation of this policy will be subject to disciplinary action, up to and including discharge.
4. Third parties who are found to have engaged in conduct in violation of this policy will be subject to appropriate action. Appropriate action for policy violations by third parties will depend on the facts and circumstances, including the relationship between the third party and the agency. Agencies may contact MMB's Enterprise

Director of Human Resource Management for assistance in determining appropriate action for third parties. MMB may refer agencies to the appropriate resources, which may include, for example, the Department of Administration with respect to policy violations by vendors or contractors.

5. Employees who knowingly file a false report of protected class harassment, sexual harassment, discrimination, or retaliation will be subject to disciplinary action, up to and including discharge.

H. Non-Retaliation

1. Retaliation against any person who opposes protected class harassment, sexual harassment, or discrimination, who reports protected class harassment, sexual harassment, or discrimination, or who participates in an investigation of such reports, is strictly prohibited. Retaliation also includes conduct or communication designed to prevent a person from opposing or reporting protected class harassment, sexual harassment, or discrimination or participating in an investigation. Retaliation will not be tolerated. Any employee who is found to have engaged in retaliation in violation of this policy will be subject to discipline, up to and including discharge. Third parties who are found to have engaged in retaliation in violation of this policy will be subject to appropriate action.

By Authority of:

Rodmen Smith

**COL Rodmen Smith
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