

GENERAL DISTRIBUTION

**WEST VIRGINIA
DIVISION OF CORRECTIONS
& REHABILITATION**

NUMBER: 131.00

DATE: 19 October 2020

**SUBJECT: PROHIBITED WORKPLACE
HARASSMENT**

POLICY DIRECTIVE

PURPOSE:

To comply with state and federal laws prohibiting harassment and ensure employees work in an environment which is free from unlawful workplace harassment and discrimination as well as non-discriminatory hostile workplace harassment.

REFERENCE:

WV Code §5-11-1 *et. seq.*; and WV Division of Personnel Policy DOP-P6 Prohibited Workplace Harassment.

RESPONSIBILITY:

No additional written instructions on this subject are required.

CANCELLATION:

Any previous written instruction on the subject including DJS Policy 149.00, dated 01 July 2017.

APPLICABILITY:

All facilities and work units within the Division of Corrections and Rehabilitation. This Policy is to be reviewed in all employee orientation, on-the-job, basic, and in-service training. This Policy is available for general distribution.

DEFINITIONS:

Employee: For the purpose of this Policy, this includes full time, part-time, temporary, provisional, probationary, and permanent status employees of the State of West Virginia; contractors and their employees; and volunteers.

Equal Employment Opportunity (EEO) Counselor: An employee appointed by the Superintendent or work unit supervisor/director to advise employees and management concerning proper EEO procedures and to function as a liaison with the Department of Homeland Security (DHS) EEO Director.

POLICY:

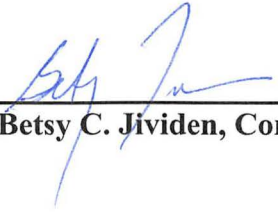
- I. Illegal harassment is prohibited by the West Virginia Human Rights Act and Title VII of the Civil Rights Act of 1964 where such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- II. Superintendents, and work unit supervisors and directors as appropriate, shall have the responsibility to monitor the work environment to ensure that it is free of harassment. They shall also select and appoint EEO Counselors comprised of employees from their respective facility/unit.
- III. Employees shall promptly report allegations or observations of harassment to an EEO Counselor at their facility or work unit, their immediate supervisor or human resource staff.
 - A. To ensure confidentiality, information regarding illegal EEO related harassment is to be reported by confidential memo; it is not to be reported on an incident report.
 - B. The person receiving the complaint shall forward the complaint to the DHS EEO Director within two (2) working days.
 - C. When an EEO Counselor, or any supervisor, receives an EEO complaint alleging an employee may be in imminent danger due to another employee's actions or behavior, or a complaint alleging sexual harassment, the person receiving the complaint shall immediately notify the DHS EEO Director and the complainant's Superintendent or work unit supervisor/director.
 - D. Confidentiality is of the utmost importance, and everyone involved in an investigation has a privacy interest that must be protected. To that end, employees involved in an investigation in any capacity are not to discuss or divulge information from or regarding the investigation with any other person, except their representative or legal counsel, unless authorized by the DHS EEO Director, Assistant Commissioner, Deputy Commissioner, or Commissioner. However, it is to be understood that should a grievance or other legal action occur from information that arises during an investigation, employees involved in an investigation may be required to testify.
- IV. All employees shall receive a copy of the WV Division of Personnel Policy DOP-P6 Prohibited Workplace Harassment (**Attachment #1**) and sign the "Policy Acknowledgement Form" on page 8 of the policy.
 - A. The Division of Personnel policy will be included in pre-service/orientation training for all employees.

- B. Signed "Policy Acknowledgement Forms" will be maintained in each employee's personnel file.
- V. Facilities and work units will display in staff locations the "Prohibited Workplace Harassment Poster" (**Attachment #2**).

ATTACHMENT(S):

- #1 WV Division of Personnel Policy DOP-P6 Prohibited Workplace Harassment (9 pages)
- #2 Prohibited Workplace Harassment Poster

APPROVED SIGNATURE: _____


Betsy C. Jividen, Commissioner

10-16-20
Date

POLICY



West Virginia Division of Personnel

PROHIBITED WORKPLACE HARASSMENT

NOTE: This policy replaces Interpretive Bulletin DOP-B6 (Prohibited Workplace Harassment).

- I. PURPOSE:** The purpose of this policy is to prescribe a work environment where illegal harassment based on sex (with or without sexual conduct), race, color, religion, national origin, ancestry, age, disability, and protected activity (i.e., opposition to prohibited discrimination or participation in the complaint process) or status explicitly defined as protected under applicable State and federal law as well as nondiscriminatory hostile workplace harassment does not occur. Employees have the right to be free from harassment while in a State government workplace, and the State has the legal obligation to ensure that such harassment does not occur and that effective means of redress are available. This policy shall cover all independent contractors, volunteers, and employees of the State of West Virginia, including executive, administrative, classified, non-classified, exempt, and temporary employees, and employees of county health departments affiliated with the West Virginia Division of Personnel.

II. DEFINITIONS

- A. **Appointing Authority:** The executive or administrative head of a unit of State government who is authorized by statute to appoint employees in the classified or classified-exempt service.
- B. **Discriminatory Hostile Work Environment Harassment:** Illegal harassment based on sex (with or without sexual conduct), race, color, religion, national origin, ancestry, age, disability, and protected activity (i.e., opposition to prohibited discrimination or participation in the complaint process), or status explicitly defined as protected under applicable State and federal law.
- C. **Employee:** Any person who lawfully occupies a permanent or temporary position with the State, or any affiliated political subdivision, and who is paid a wage or salary including, but not limited to, executive, administrative, classified, non-classified, exempt, seasonal and temporary employees, and employees of county health departments affiliated with the West Virginia Division of Personnel. For the purpose of this document, "employee" shall also include authorized students and interns performing services for an employer under direct supervision irrespective of receipt of wages.
- D. **Employer:** The State or any affiliated political subdivision including, but not limited to, executive, administrative, classified, non-classified, exempt, and county health departments affiliated with the West Virginia Division of Personnel.
- E. **Equal Employment Opportunity (EEO) Coordinator/Counselor:** The agency employee selected by an appointing authority to advise employees and management concerning proper EEO procedures and to function as a liaison with the State EEO Office.
- F. **Hostile Work Environment Sexual Harassment:** A type of illegal sexual harassment based on gender that is sufficiently severe and pervasive as to alter the conditions of the employee's employment and create a hostile and abusive working environment.
- G. **Independent Contractor:** Any entity or person responsible for the performance of work under a contract.



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- H. Nondiscriminatory Hostile Workplace Harassment: A form of harassment commonly referred to as “bullying” that involves verbal, non-verbal or physical conduct that is not discriminatory in nature but is so atrocious, intolerable, extreme and outrageous in nature that it exceeds the bounds of decency and creates fear, intimidates, ostracizes, psychologically or physically threatens, embarrasses, ridicules, or in some other way unreasonably over burdens or precludes an employee from reasonably performing her or his work.
- I. Quid Pro Quo Sexual Harassment: Meaning “this for that” or “something for something,” a type of illegal sexual harassment in which the satisfaction of a sexual demand is used as the basis of a tangible employment action.
- J. Retaliation: Adverse action pertaining to any aspect of employment (hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment) taken against an individual for participating in a complaint and/or investigation process. For the purpose of this policy, retaliation shall also include actions taken against such an individual by the accused or other employees.
- K. Sexual Harassment: A type of illegal harassment which involves any unsolicited and unwelcome sexual advances, requests for sexual favors, or other verbal, written, or physical conduct of a sexual nature when:
 - 1. Submission to such conduct is made either explicitly or implicitly as a term or condition of an individual’s employment;
 - 2. Submission to or rejection of such conduct is used as the basis for personnel actions affecting an employee; or,
 - 3. Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance by creating an intimidating, hostile, or offensive working environment.
- L. State EEO Office: The State agency authorized by Executive Order to direct all aspects of the statewide EEO program to prevent unlawful employment discrimination and to promote diversity in West Virginia State government.
- M. Third-party Harassment: Hostile Environment or Quid Pro Quo Harassment in which:
 - 1. An employee is harassed by a non-employee such as a client or vendor;
 - 2. An employee harasses a non-employee with whom the agency has a business relationship; or,
 - 3. An employee believes that a hostile environment exists due to a sexual relationship involving two other employees.
- N. Volunteer: Any authorized individual directly engaged in the performance of services for a State employer without promise, expectation, or receipt of compensation.
- O. Workplace: A worksite where service or work is performed in connection with an independent contractor’s, volunteer’s, or employee’s public employment or service, including sites of social

functions and conferences. The workplace includes, but is not limited to, facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas provided by the State, even if not owned, leased, or operated by the State.

- P. Work-/service-related Activity: Includes, but is not limited to, conducting work/service, representing the State or the agency, receiving awards, speaking as a State or agency representative, and participating in receptions when invited as a result of State employment/service.

III. POLICY

- A. Illegal harassment is prohibited by the West Virginia Human Rights Act and Title VII of the Civil Rights Act of 1964 where such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- B. Although some harassment may not violate existing discrimination laws, such behavior can result in a tort claim for intentional infliction of emotional distress. As such, all forms of harassment are prohibited.
1. This policy extends to employees while engaged in any work-/service-related activity which includes the performance of agency business.
 2. Further, this prohibition applies to independent contractors and volunteers while engaged in any work-/service-related activity in a workplace owned, leased, or operated by a public agency or entity.
 3. Any employee found to be in violation of this policy will be subject to disciplinary action up to and including dismissal.
- C. Management is potentially liable for acts of harassment in the workplace whether or not the source or target of harassment is another employee or a non-employee.
1. Liability for such acts can be imputed on the employer, unless the employer demonstrates that immediate and appropriate corrective action was taken upon notice of the improper conduct.
 2. Employees may also be held personally liable for harassment.
 3. Employees who experience third-party harassment shall also have standing to file claims for discrimination or harassment where employment opportunities or benefits are granted or a hostile environment is created because of an individual's submission to the employer's sexual advances or requests for sexual favors.
- D. Illegal harassment prohibited by State and federal anti-discrimination laws which includes words, conduct, or action, usually repeated or persistent, directed at a specific person that annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose.



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- E. There are two legally recognized types of sexual harassment claims: (1) Quid Pro Quo Sexual Harassment, and (2) Hostile Work Environment Sexual Harassment. Such harassment involves verbal and/or physical conduct which may include, but is not limited to:
1. Sexually explicit or implicit propositions;
 2. Improper questions about an employee's private life;
 3. Sexually discriminatory ridicule, insults, jokes, or drawings;
 4. Undesired, intentional touching such as embracing, patting, or pinching;
 5. Remarks directed against one's sex as a class or group;
 6. Threatened, attempted, or actual sexual assault or rape;
 7. Repeated sexually explicit or implicit comments or obscene and suggestive remarks that are unwelcome or discomfiting to the employee;
 8. Offers of tangible employment benefits in exchange for sexual favors, or threats or reprisals for negative responses to sexual advances; and/or,
 9. Sexual harassment by a supervisor of an employee of the same sex.
- F. Although the scope of The Civil Rights Act of 1964 does not extend to protect employees that are not members of a protected class from unlawful employment discrimination, an employee can still impute liability upon an employer for the infliction of emotional distress if the employer fails to take corrective action when an employee provides notice of nondiscriminatory workplace harassment that has subsequently created a hostile work environment for the employee.
- G. Nondiscriminatory Hostile Workplace Harassment consists of unreasonable or outrageous behavior that deliberately causes extreme physical and/or emotional distress. Such conduct involves the repeated unwelcome mistreatment of one or more employees often involving a combination of intimidation, humiliation, and sabotage of performance which may include, but is not limited to:
1. Unwarranted constant and destructive criticism;
 2. Singling out and isolating, ignoring, ostracizing, etc.;
 3. Persistently demeaning, patronizing, belittling, and ridiculing; and/or,
 4. Threatening, shouting at, and humiliating particularly in front of others.

IV. COMPLAINT AND INVESTIGATION

- A. It is important to note that **Nondiscriminatory** Hostile Workplace Harassment claims are not within the jurisdiction of the State EEO Office.

1. Employees must address such complaints through their manager/supervisor, the West Virginia Public Employees Grievance Procedure, or litigation.
 2. Complaints regarding illegal harassment shall be handled in accordance with established EEO procedures.
 3. All information shall be held in strictest confidence and shall be disclosed only to appropriate individuals on a need-to-know basis to investigate and resolve the matter.
- B. While an individual alleging illegal harassment has a duty to promptly report the incident or complaint to the agency's EEO Coordinator/Counselor or his or her immediate supervisor, the individual also has the right to file such complaints with the West Virginia Human Rights Commission and/or the United States Equal Employment Opportunity Commission (EEOC).

V. RESPONSIBILITIES

- A. Employees have the responsibility to:
1. Refrain from all forms of harassment.
 2. Promptly report allegations or observations of harassment to the appropriate individuals (i.e., supervisor, manager, EEO Coordinator/Counselor, or human resources).
 3. Fully cooperate in and not interfere with any employer-authorized investigation.
 4. Not retaliate against those who participate in the complaint and/or investigation process.
 5. Participate in required training.
 6. Acknowledge understanding of and compliance with this policy by signing the Prohibited Workplace Harassment Acknowledgment Form (Appendix A).
- B. Appointing authorities have the responsibility to:
1. Monitor the work environment to ensure that it is free of harassment.
 2. Promptly investigate complaints of harassment.
 3. Enforce this policy and take immediate and appropriate action to address violations.
 4. Ensure that complainants, falsely accused individuals, and/or persons interviewed regarding complaints suffer no adverse impact in their employment or retaliation.
 5. Ensure that confidentiality is maintained by keeping all information regarding a complaint of harassment in a separate, confidential file with access restricted to appropriate individuals on a need-to-know basis.



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6. Ensure that all employees receive appropriate training and that supervisory personnel complete Division of Personnel training on the Prohibited Workplace Harassment policy.
7. Ensure that all required reports are provided to the State EEO Office.
8. Post the Prohibited Workplace Harassment Poster (Appendix B) at conspicuous locations throughout the agency.
9. Communicate this policy to all employees through inclusion in the orientation process of all new employees, and by making it readily available at all work locations.
10. Maintain the signed Prohibited Workplace Harassment Acknowledgment Form (Appendix A) in each employee's agency personnel file.

VI. REFERENCES

A. Federal

1. U.S. Const., amend. XIV.
2. Executive Order 11246 of 1965, as amended.
3. 8 USC 1324 et seq., (Immigration Reform and Control Act of 1986).
4. 29 USC 206(d) et seq., (Equal Pay Act of 1963, as amended).
5. 29 USC 621, et seq., (Age Discrimination in Employment Act of 1967, as amended).
6. 29 USC 701 et seq., (Rehabilitation Act of 1973).
7. 29 USC 791 et seq., (Rehabilitation Act of 1992).
8. 29 USC 2601 et seq., (Family and Medical Leave Act of 1993).
9. 38 USC 4301 et seq., (Uniform Services Employment and Re-employment Rights Act of 1994).
10. 42 USC 1981 et seq., (Civil Rights Act of 1991).
11. 42 USC 12101 et seq., (Americans with Disabilities Act of 1990).
12. 42 USCA 12101 et seq., (Americans with Disabilities Act Amendments Act of 2008).
13. 42 USC 2000e(k) (Pregnancy Discrimination Act of 1978).
14. 42 USC 2000d-2000d-7, (Civil Rights Remedies Equalization Act of 1986).
15. 42 USC 2000e et seq., (Title VII of the U.S. Civil Rights Act of 1964, as amended).
16. 42 USC 2000ff et seq., (Genetic Information Nondiscrimination Act of 2008).
17. 29 CFR 1600-1699 (EEOC Uniform Guidelines).

B. State

1. West Virginia Code § 5-11-1 et seq., West Virginia Human Rights Act.
2. West Virginia Code § 5-15-1 et seq., White Cane Law.
3. West Virginia Code § 21-3-19, Discrimination for use of tobacco products prohibited.
4. West Virginia Code § 21-5-17, Employers prohibited from discharging employees for time lost as volunteer firemen or emergency medical service attendant.
5. West Virginia Code § 21-5-18, Employers prohibited from discharging employees for time lost as emergency medical service personnel.
6. West Virginia Code § 21-5E-1 et seq., Equal Pay for Equal Work for State Employees.

7. West Virginia Code § 23-5A-3, Termination of Injured Employee Prohibited; re-employment of injured employees.
8. West Virginia Code § 52-3-1, Discrimination for Jury Service.
9. Executive Order No. 3-94 (April 30, 1994).

VII. EFFECTIVE DATE: May 1, 1993 (this effective date pertains to the original DOP-P6 Policy, Sexual Harassment Prohibited).

VIII. REVISIONS

A. Previous Revisions

1. Pertaining to the original DOP-P6 Policy, Sexual Harassment Prohibited: July 15, 1994, October 20, 1994, and January 1, 2004.
2. Pertaining to the Interpretive Bulletin: January 1, 2005 and December 1, 2006.

B. Latest Revision: December 1, 2011.

IX. POLICY NUMBER: DOP-P6.

Approved and Issued By:



Sara P. Walker, Director of Personnel

Date Signed: November 29, 2011.



PROHIBITED WORKPLACE HARASSMENT

POLICY ACKNOWLEDGMENT FORM

I, _____, certify that I have received a copy of the West Virginia Division of Personnel Prohibited Workplace Harassment policy (DOP-P6).

I understand that illegal harassment based on sex (with or without sexual conduct), race, color, religion, national origin, ancestry, age, disability, and protected activity (i.e., opposition to prohibited discrimination or participation in the complaint process,) or status explicitly defined as protected under applicable State and federal law, as well as nondiscriminatory hostile workplace harassment, is prohibited and will not be tolerated in the workplace. Further, I understand my responsibility to promptly report allegations of illegal harassment, fully cooperate in and not interfere with any authorized investigation, and not retaliate against those who participate in the complaint and/or investigation process.

My signature acknowledges my receipt of the policy and my understanding of its contents and requirements. My signature does not indicate that I agree or disagree with the content of the policy. However, I understand I must abide by the terms of the policy and I am aware that with any violation of this policy, I will be subject to disciplinary action, up to and including dismissal.

Employee's Name (Print)

Employee's Signature

TO BE COMPLETED BY SUPERVISOR

I, _____, certify that I have discussed with and provided the above listed employee a copy of the West Virginia Division of Personnel Prohibited Workplace Harassment policy (DOP-P6).

Supervisor's Name (Print)

Supervisor's Signature

Date

Distribution: Original – Human Resources
Copy – Employee

PROHIBITED WORKPLACE HARASSMENT

Illegal harassment based on sex (with or without sexual conduct), race, color, religion, national origin, ancestry, age, disability, genetics, and protected activity (i.e., opposition to prohibited discrimination or participation in the complaint process), or status explicitly defined as protected under applicable State and federal law, as well as nondiscriminatory hostile workplace harassment (bullying), is prohibited in the workplace.

If you feel you are a victim of illegal harassment, you have a duty to promptly report the incident to your agency's Equal Employment Opportunity (EEO) Coordinator/Counselor or your supervisor. In addition, you have the right to file a complaint/grievance with the:

- West Virginia Equal Employment Opportunity Office: 304-558-0400
- West Virginia Public Employees Grievance Board: 304-558-3361
- West Virginia Human Rights Commission: 304-558-2616
- United States Equal Employment Opportunity Commission: 800-669-4000; 800-669-6820(TTY)

If you feel you are a victim of nondiscriminatory hostile workplace harassment, you should immediately notify your manager or human resources office. You may also file a grievance with the West Virginia Public Employees Grievance Board.

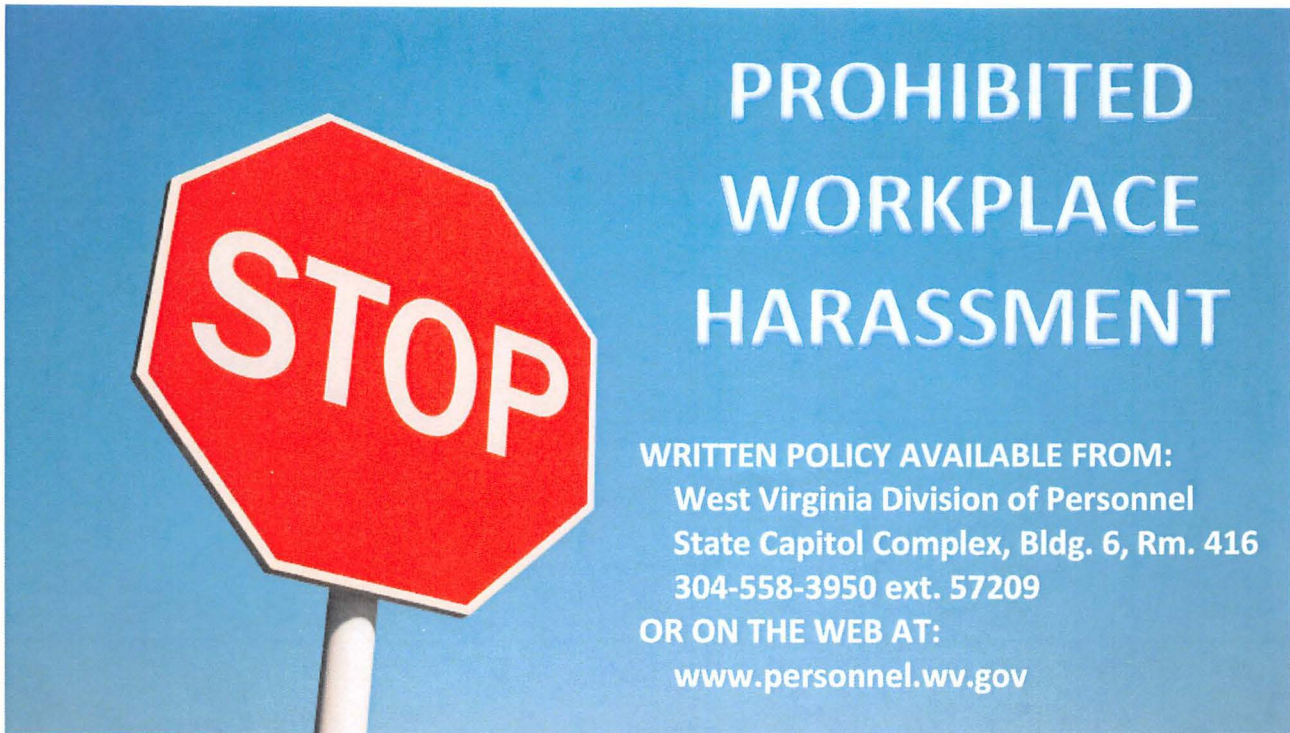
If you believe you have witnessed harassment of another, please report the incident(s) to your agency EEO Coordinator/Counselor, supervisor, or human resources office.

If you have questions about the West Virginia Division of Personnel's statewide Prohibited Workplace Harassment policy, you may contact the Employee Relations Section at 304-558-3950 ext 57209.

WRITTEN POLICY AVAILABLE FROM

West Virginia Division of Personnel
State Capitol Complex, Building 6, Room 416
304-558-3950 ext. 57209

OR ON THE WEB AT: www.personnel.wv.gov



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