


Title: SEXUAL HARASSMENT PREVENTION POLICY

Effective: February 8, 2005

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Authority: California Government Code Sections 12920 et seq. and 19702 et seq.; Title VII of the Civil Rights Act of 1964; Americans with Disabilities Act of 1990



CLIFF ALLENBY, Director
Department of Developmental Services

2-8-05

Date

I. SEXUAL HARASSMENT PREVENTION POLICY DIRECTIVE

Policy

The Department of Developmental Services (DDS) is committed to providing a workplace in which all individuals are treated with respect and professionalism. Consistent with this commitment, it is the policy of DDS to provide a workplace that is free from all forms of discrimination and harassment, including sexual harassment for all employees and applicants. A DDS employee is defined to include volunteers, interns, and other DDS representatives. This Sexual Harassment Policy ("Policy") prohibits not only behavior that rises to the level of sexual harassment in violation of Title VII of the Civil Rights Act of 1964 and the Fair Employment and Housing Act, but also unprofessional and disrespectful behavior that, while not unlawful, may contribute to a hostile working environment.

Departmental Standard

To avoid unlawful sexual harassment from occurring, it is the expectation that all DDS employees comply with the above policy which prohibits sexual harassment in the workplace and is more inclusive than federal and state law. A DDS employee may violate this Policy by engaging in a single act of unprofessional or disrespectful sexual conduct, even if the conduct would not constitute sexual harassment under state or federal law. Because all forms of sexual harassment are unprofessional and

disrespectful, and may damage an individual's career and well-being, DDS will strictly enforce this Policy.

This Policy applies to all work-related conduct, and may include conduct that occurs off-duty, if such conduct negatively affects the working environment. This Policy also applies to conduct that occurs in any location that can reasonably be regarded as an extension of the workplace, such as any off-site social or business function, or any other non-DDS facility where DDS business is being conducted.

This Policy is intended to apply to behavior by non-DDS employees, including, but not limited to, contractors, volunteers, interns, and other third parties.

Consequences of Violations

Any individual who violates this Policy, even if such conduct does not violate state or federal law, will be subject to appropriate corrective and/or disciplinary action, up to and including termination from state service, regardless of job level or classification. In addition, the possibility of civil liability exists.

Retaliation Prohibited

This Policy prohibits DDS employees from engaging in any act of retaliation or reprisal against individuals who claim a violation of this Policy, pursuing such a claim, or cooperating in any way in the investigation of such claims, regardless of the outcome of any investigation. Any individual who engages in acts of retaliation or reprisal in violation of this Policy will be subject to appropriate corrective and/or disciplinary action, up to and including termination from state service, regardless of job level or classification.

II. EXAMPLES OF CONDUCT THAT MAY VIOLATE THIS POLICY

Sexual harassment generally is defined under state and federal law as unsolicited and unwelcome sexual advances, requests for sexual favors, and other verbal, physical, or visual conduct of a sexual nature that interferes with work performance by creating an intimidating, hostile, or offensive working environment.

Such conduct may constitute sexual harassment if:

- submission to the conduct or communication is made either explicitly or implicitly a term or condition of employment; or

- submission to or rejection of the conduct or communication is used as a basis for employment or service decisions affecting the individual; or
- the conduct or communication has the potential to affect an individual's work performance negatively and/or create an intimidating, hostile, or offensive work environment.

Examples of conduct that may constitute sexual harassment under the law, contribute to a hostile working environment, or violate this Policy include, but are not limited to:

- unwelcome sexual advances or sexual pressure;
- demands for sexual favors in exchange for employment benefits, whether express or implied;
- making or threatening reprisals after a negative response to sexual advances;
- verbal conduct such as derogatory or demeaning comments, slurs, sexually explicit jokes, comments about an individual's body or physical appearance, suggestive or obscene remarks, or practical jokes;
- physical conduct such as leering, sexual gestures, impeding or blocking movements, pinching, grabbing, patting, intentionally brushing up against another individual, rape, or assault;
- visual conduct such as displaying sexually-suggestive objects, cartoons, pictures, or posters; and/or,
- posting, sending, or downloading derogatory, demeaning, or sexually suggestive or explicit materials in any form via electronic mail or the internet.

Conduct in violation of this Policy may be directed against a particular individual or individuals of the opposite or same sex as the individual(s) engaging in the conduct.

III. RESPONSIBILITIES OF SUPERVISORS AND MANAGERS

Supervisors and managers are responsible for setting the tone to promote a working environment that is free from discrimination, harassment, retaliation, and unprofessional or disrespectful conduct. Managers and supervisors are expected to:

- **adhere to and enforce this Policy;**
- **communicate this Policy to the employees under their supervision and management;**
- **refrain from engaging in, condoning, tolerating, or leaving uncorrected conduct that violates this Policy;**
- **take pro-active steps to prevent unprofessional or disrespectful conduct, including, but not limited to, review and discuss this Policy with staff on a regular basis and maintaining appropriate documentation of such discussions;**
- **attend required training on this Policy and ensure employees under their supervision and management attend required training and sign and date a training copy of this Policy after each training session; and,**
- **take immediate and appropriate corrective action to stop conduct that violates this Policy and document measures taken.**

When a supervisor or manager becomes aware of conduct that may violate this Policy, the supervisor or manager is required to notify his/her immediate supervisor and the worksite EEO Coordinator.

The failure by a supervisor or manager to take immediate and appropriate action to correct violations of this Policy will result in appropriate corrective and/or disciplinary action, up to and including termination from state service, regardless of job level or classification.

Management Inquiries

The Director, Deputy Directors, and Executive Directors at the developmental centers (DC) and community facilities (CF) or their designees may initiate an investigation if they are made aware of behavior which appears to be discriminatory in nature, even though a complaint has not been filed. This does not preclude an employee from filing a formal complaint while an inquiry is being conducted. If the employee is not satisfied with the outcome of the management inquiry, he or she may file a formal complaint as described below in section V.

IV. RESPONSIBILITIES OF EMPLOYEES

All DDS employees are expected to behave in a respectful and professional manner, adhere to this Policy, and attend required training on this Policy.

Employees are strongly encouraged to report any alleged violations of this Policy so DDS may take appropriate corrective action to remedy the situation. Employees who believe they have witnessed or been the victim of conduct that violates this Policy should report the incident immediately, pursuant to the complaint process described below. All applicants/employees involved in the investigation of a complaint are expected to cooperate fully with the DDS's efforts to resolve the complaint.

V. THE COMPLAINT PROCESS

DDS strongly encourages individuals to report alleged violations of this Policy as soon as possible after an alleged incident(s) occurs. Any delays in reporting alleged violations may make the complaint more difficult to investigate, potentially adversely affecting the outcome of the investigation. Delays in reporting violations also may have negative consequences with respect to filing a complaint, and/or an appeal, with the State Personnel Board (SPB), the State Department of Fair Employment and Housing (DFEH), or the U.S. Equal Employment Opportunity Commission (EEOC). Failure to utilize the DDS's internal procedures to report violations of this Policy may negatively impact subsequent claims. Any DDS employee or applicant for employment who believes this Policy has been violated is encouraged to report any such alleged violations to any of the following:

- the employee's immediate supervisor;
- any DDS supervisor or manager;
- one of the designated EEO Counselors; and/or,
- the worksite EEO/Human Rights Office.

No individual is required to contact his/her immediate supervisor first to report conduct believed to be in violation of this Policy. Any of the above listed options may be utilized by an individual seeking to report a violation of this Policy. In an effort to resolve the workplace issue(s) without filing a formal complaint, an individual may, but is not required to, inform the person engaged in the conduct believed to be in violation of this Policy that their conduct is unwelcome. Often individuals are unaware that their conduct is offensive and may be receptive to this approach and stop the offensive conduct.

While discretion is used in addressing complaints, complete confidentiality cannot be guaranteed due to the need to take immediate and appropriate action when allegations of discrimination are brought to management's attention, whether or not a formal complaint is filed.

Informal Complaint Process

All DDS employees/applicants for employment may file an informal (verbal) complaint of discrimination with any of the above-designated individuals. Employees/applicants may discuss the matter (although not required) with a trained EEO Counselor. The Counselor will attempt to seek resolution of the matter on an informal basis. All alleged violations of this Policy will be assessed and appropriate action taken whether or not the complainant wishes to pursue the complaint. Upon completion of the counselor's efforts to resolve the informal complaint, the counselor will document his or her efforts in a written Report of Inquiry which includes the results of the inquiry and attempts to resolve the matter. The completed report is provided to the EEO Office which will work with management to assure appropriate follow-up action is taken. Employees/applicants may bypass the informal process and file a formal written complaint.

Mediation Program

In addition to working with an EEO Counselor, employees/applicants may consider using the State Personnel Board (SPB) State Employee Mediation Program, which is a voluntary program designed to facilitate resolution of workplace disputes using trained mediators outside DDS. For information regarding this program, you may contact the DDS Office of Human Rights and Advocacy Services (OHRAS) at (916) 654-1888.

Formal Complaint Process

Employees/applicants may file a formal complaint within 365 days of the alleged discriminatory event. The DDS Formal Complaint of Discrimination (DS 312) form should be used to document complaints. The DS 312 is available on DDS's intranet OASIS homepage or can be obtained by contacting the worksite EEO/Human Rights Office or OHRAS.

If an individual files a Formal Complaint of Discrimination with his/her immediate supervisor, any DDS supervisor or manager, the worksite EEO Coordinator or Counselor, or DDS's Equal Employment Opportunity Office, the following process will be followed:

- The local worksite EEO Office will review the complaint and determine whether a formal investigation is warranted.
- If the EEO Office determines an investigation should be conducted, a trained investigator will be assigned to complete a thorough and complete investigation. A Report of Findings will be prepared.

- The Chief Deputy Director/Executive Director or their designee will review the Report of Findings and determine whether a violation of this Policy has occurred and make recommendations as to appropriate corrective and/or disciplinary action that should be taken, if any, based on the findings. Both parties will be provided with a Letter of Determination upon completion of the investigation.

Appeal Process

If the individual who filed the complaint is not satisfied with DDS's decision, the individual may file an appeal directly with the SPB Appeals Division within 30 days after receipt of the Executive Director/Chief Deputy Director letter of determination.

Developmental Center/Community Facility (DC/CF) employees/applicants may also choose to appeal the Executive Director's (or designee's) determination to the Director of DDS within 30 days of receipt of the letter of determination. DC/CF appeals to the Director will be assigned to the OHRAS for review. The Director (or designee) will notify the complainant of the final DDS decision and appeal rights. If dissatisfied, the DC/CF employee/applicant may then appeal the Director's decision to SPB Appeals Division within 30 days of receipt of the final DDS decision from the Director.

Other Avenues for Complaints

DDS employees and applicants for employment may also file a complaint with the following entities:

Department of Fair Employment and Housing (DFEH)
<http://www.dfeh.ca.gov/>
2014 T Street, Suite 210
Sacramento, CA 95814
1-800-884-1684
916-227-0551

U.S. Equal Employment Opportunity Commission (EEOC)
<http://www.eeoc.gov/>
901 Market Street, Suite 500
San Francisco, CA 94103
415-744-6500

Some employees have provisions in their respective collective bargaining unit contracts for filing discrimination complaints within the grievance process. Individuals represented by an employee union may wish to review their contract to see if this option is available.

VI. RIGHT OF ACCESS TO PERSONAL INFORMATION

Investigations of complaints alleging a violation of this policy are protected from disclosure for the duration of the investigation, or any other related investigation. Once the investigation is completed, all individuals identified in the record have the right of access to any information which pertains to them, whether they are the complainant, the respondent, or a witness.

Requests for personal information contained in investigative files should be made on form DS 43 (Request to Inspect Public Records). At Headquarters, requests should be submitted to OHRAS; at the DCs and CFs, requests should be submitted to the EEO Coordinators.

A fee of \$.10 per page may be charged for copying personal information contained in investigative files.

Access to requested information from investigative files will be provided as soon as possible; however, it may take up to 30 days to allow sufficient time to delete personal information about others. Access to investigative files which are stored at another location may require up to 60 days.

Responses to requests for personal information from investigative files may be made by providing a copy of the text of the material with such deletions as are necessary to protect the identity of the source, or consist of a comprehensive summary of the substance of the material. The type of response is at the discretion of the Department.

Questions regarding this Policy should be directed to:

**OFFICE OF HUMAN RIGHTS AND ADVOCACY SERVICES
1600 NINTH STREET, ROOM 240, MS 2-15
SACRAMENTO, CALIFORNIA 95814
(916) 654-1888**