

**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

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HR011.00 **Anti-Discrimination/Anti-Harassment Policy and Procedures**

EFFECTIVE: June 23, 2009

APPLIES TO: All South Carolina Department of Health and Human Services (the Department) Workforce Members

POLICY

It is the policy of the South Carolina Department of Health and Human Services (the Department) to maintain a work environment free of harassment and discrimination based on race, color, sex, religion, national origin, age, disability, veteran status or one's protected activity in the workplace. Any offensive physical, written or spoken conduct, including conduct of a sexual nature, is prohibited at the Department. It is a violation of this policy for any workforce member to engage in the acts or behavior categorized in this policy. All workforce members, regardless of their position, are covered by and shall comply with this policy and must take appropriate measures to ensure that prohibited conduct does not occur. The Department will not tolerate retaliation against anyone who complains of harassment or discrimination or who participates in an investigation. Appropriate action, up to and including termination, will be taken against any employee who violates this policy.

PURPOSE

The Department strives to create and maintain a work environment free from discrimination and harassment. The Department has zero tolerance for unlawful

**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

discrimination or harassment of any kind. Through enforcement of this policy and by education of workforce members, the Department will seek to prevent, correct and discipline behavior that violates this policy.

Workforce members who believe they have been the subject of or a witness to a violation of the Department's Anti-Discrimination/Anti-Harassment Policy should report any violations as soon as possible. Reports of such policy violations may be made verbally or in writing in accordance with the complaint procedures outlined within this policy. Any questions regarding this policy and procedures should be directed to the Department's Office of Human Resources. This policy cancels and supersedes the Department's Sexual Harassment Human Resources Policies and Procedures (14.00) issued October 1999.

11.01 Prohibited Conduct Under This Policy

A. The Department prohibits conduct which can contribute to an offensive or hostile work environment, including, but not limited to, discrimination, harassment and sexual harassment.

1. Discrimination

- a. This policy prohibits discrimination of any kind, including, but not limited to, discrimination based on race, color, sex, national origin, age, religion, disability, veteran status or involvement in protected activities. The Department will take appropriate action to address any violations of this policy.
- b. This policy applies to all aspects of the employment relationship between the Department and its workforce members, including, but not limited to: Recruitment, Employment, Promotion, Transfer, Reassignment, Training, Working Conditions, Wages and Salary Administration, Employee Benefits and Application of Department Policies.

**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

- c. Federal and state laws prohibiting discrimination include, but are not limited to: Title VII of the Civil Rights Act 1964, the Age Discrimination in Employment Act of 1975, the Americans with Disabilities Act of 1990 and the South Carolina Human Affairs Law. This policy is intended to be consistent with federal and state discrimination laws.
- d. Discrimination in violation of this policy is subject to appropriate action, up to and including termination.

2. Harassment

- a. This policy prohibits harassment of any kind, including, but not limited to, harassment based on race, color, sex, national origin, age, religion, disability, veteran status or involvement in protected activities. The Department will take appropriate action to address any violations of this policy.
- b. Harassment includes conduct by an employee that creates an intimidating, hostile or offensive work environment or interferes with an employee's work performance. The conduct may be between, but is not limited to: employee to employee, employee to supervisor, supervisor to employee, employee to non-employee or non-employee to employee. An employee is prohibited from harassing anyone by use of the employee's position or state-owned equipment.
- c. Examples of harassment include, but are not limited to:
 - i. Verbal - Epithets, slurs, negative stereotyping or comments which are not flattering or are intended to cause hurt or disrupt the work environment. This does not include legitimate feedback or constructive criticism from supervisors or management that is done professionally, respectfully and confidentially and is related to work performance or behavior.
 - ii. Non-verbal - Distribution, display or discussion of any written,

**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

graphic or sexually explicit material that ridicules, denigrates, insults, belittles or shows hostility or aversion toward an individual or group.

- iii. Physical - Threatening or intimidating actions, blocking a person's path with intent to intimidate or threaten, pushing, shoving or purposely bumping into a person, inappropriate touching, caressing or fondling.

3. Sexual Harassment

- a. Sexual harassment in any form is prohibited under this policy. Sexual harassment is a form of discrimination and is unlawful under Title VII of the Civil Rights Act of 1964. According to the Equal Employment Opportunity Commission (EEOC), sexual harassment includes unsolicited and unwelcome sexual advances, requests for sexual favors and/or other verbal or physical conduct of a sexual nature, when such conduct:

- i. Is made explicitly or implicitly a term or condition of employment, or
- ii. Is used as a basis for an employment decision, or
- iii. Unreasonably interferes with an employee's work performance or creates an intimidating, hostile or otherwise offensive environment.

- b. Sexual harassment does not generally include behavior or compliments of a socially acceptable nature. However, if such behavior or compliments are unwelcome, personally offensive, lower morale or interfere with work effectiveness or productivity, the behavior may constitute sexual harassment. Examples of conduct that may constitute sexual harassment include, but are not limited to:

- i. Verbal - Sexual innuendoes, suggestive comments, jokes and/or questions of a sexual nature, sexual propositions, lewd remarks or

**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

- threats. Requests for any type of sexual favor, including repeated and unwelcomed requests for dates.
- ii. Non-verbal - The distribution, display or discussion of any written or graphic material, including calendars, pictures, posters and cartoons that are sexually suggestive or show hostility toward an individual or group because of sex, suggestive or insulting sounds, leering, staring, whistling, obscene gestures or content in letters, notes, facsimiles or e-mail that is sexually oriented in nature.
 - iii. Physical - Unwelcome, unwanted physical contact, including, but not limited to, touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing, fondling, forced sexual intercourse or assault. Normal, courteous, mutually respectful, pleasant, non-coercive interactions between employees that are acceptable to and welcomed by both parties are not considered to be harassment.
- c. Sexual harassment typically falls into two categories:
- i. “Quid pro quo” harassment - Submission to or rejection of harassment by an individual is used as the basis for employment decisions affecting an individual. In this type of harassment, employee benefits such as salary increases, promotions, better working hours, etc., are directly linked to compliance with sexual advances or requests. Only someone in a direct or indirect supervisory or management capacity (with the authority to approve such benefits) can engage in quid pro quo harassment.
 - ii. “Hostile work environment” - Harassment that creates an offensive or unpleasant working environment. Hostile work environment can be created by anyone in the work environment, whether it is supervisors, other employees or customers. Hostile

**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

work environment harassment includes, but is not limited to, unwelcome verbiage of a sexual nature, unwelcome sexual materials and/or unwelcome physical contact as a regular part of the work environment. Cartoons or pictures of a sexual nature, vulgar or lewd comments, jokes and/or questions of a sexual nature or unwanted touching or fondling all fall into this category.

11.02 Workplace Relationships

- A. If a romantic relationship exists between peers, the parties must be aware that one or both may be moved to a different work unit or other actions may be taken. Although having a consensual romantic relationship with another employee is not harassment, harassment may occur as a result of the relationship if either person in the relationship engages in conduct in the workplace that is inappropriate or unwelcome.
- B. Supervisors may not have a romantic or sexual relationship with a subordinate, nor may they threaten or imply that an employee's response to sexual advances or any other harassing behaviors will, in any way, influence that employee's continued employment or career development.
- C. Employees may not provide agency-sponsored services to family members or to individuals with whom they have a romantic or sexual relationship.

11.03 Complaint Procedures

- A. If an employee believes he or she is being treated in an unlawful discriminatory manner or is being harassed, the employee should report the conduct to his or her supervisor, the Department's Office of Human Resources, or another member of management. The employee is encouraged to take the initiative to stop the unwelcome and possibly unlawful conduct. This could include making it clear to the harasser that the conduct is unwelcome or telling the harasser to stop.
- B. A complaint may be made verbally or in writing. If made in writing, the

**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

- employee should use the Formal Complaint Form available on the Department's Intranet and submit it to the Department's Office of Human Resources. If the complaint is made verbally, the employee will be required to complete the Formal Complaint Form to assist the Department in its investigation of the alleged violation. The Formal Complaint Form will be held confidential as allowed by law.
- C. If an employee's supervisor is the alleged perpetrator, an employee should bypass the supervisor and bring the conduct to the attention of the Department's Office of Human Resources, management within the employee's chain of command or another member of management
 - D. All allegations of violations of this policy will be thoroughly investigated. Based on the results of the investigation, the Department will take appropriate action, up to and including termination.
 - E. All supervisors and other management-level employees having knowledge of complaints or allegations of harassment or discrimination are required to contact the Department's Office of Human Resources immediately. Any workforce member who witnesses a violation of this policy should report the violation in the same manner as outlined above. Failure to report a violation of this policy will result in appropriate action, up to and including termination.
 - F. The Department will maintain confidentiality in its investigation to the extent possible. The Department cannot guarantee complete confidentiality of the harassment or discrimination allegation and the identity of the complainant because the Department may need to disclose the allegation and the identity of the complainant to other investigating agencies and to the accused during the course of an investigation.
 - G. Whether it is the complainant, the alleged perpetrator or a witness, cooperation is essential to an investigation. Employees are expected to cooperate with all aspects of an investigation. Refusal to cooperate during an investigation will result in appropriate action, up to and including termination.

**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

- H. In order to effectively investigate and resolve complaints associated with violations of this policy, the Department requests and advises that those with knowledge of such violations report them within one-hundred and twenty (120) calendar days of the occurrence of the alleged conduct.

11.04 Retaliation

- A. No hardship, loss of benefit and/or other penalty may be imposed on an employee as punishment for filing or responding to a bona fide complaint of harassment or discrimination, appearing as a witness in the investigation of a complaint or serving as an investigator.
- B. Retaliation or attempted retaliation is a violation of this policy and anyone who does so is subject to appropriate action, up to and including termination.

11.05 False Reports

- A. Filing groundless and malicious complaints is an abuse of this policy and is strictly prohibited. Such actions are subject to appropriate action, up to and including termination.

11.06 Explanatory Definitions

- A. Complainant - Refers to the person making an allegation or complaint of discrimination or harassment.
- B. Alleged Perpetrator - Refers to the person against whom the allegation or complaint of discrimination or harassment is made.
- C. Allegation - A statement by a complainant that he or she believes an act of discrimination or harassment has occurred.
- D. Complaint - A formal notification of the belief that harassment or discrimination has occurred. A complaint is handled through the formal process for resolving claims of discrimination or harassment.
- E. Age - For the purposes of this policy, age discrimination or harassment applies to

**SOUTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

- an employee who is forty (40) years old or older.
- F. Participation in Protected Activity - Protected activity may include filing a harassment or discrimination complaint or charge, objecting to discriminatory or harassment action or being witness in any discrimination or harassment investigation.
- G. Workforce Members - For the purposes of this policy, workforce is defined as Department employees, volunteers, trainees and other persons whose conduct, in the performance of work for the Department, is under the guidance of the Department whether or not they are paid.