

Summary of Revisions

Changed HR-D-14 to HR-14. Revisions in *red, bold, and italicized* text.

Purpose

The State of Ohio is a diverse, inclusive, and equal opportunity employer. The purpose of this policy is to emphasize that discrimination, harassment, and/or retaliation will not be tolerated in the workplace and to establish procedures for state employees, applicants, clients, and customers to report claims of discrimination, harassment, and retaliation. This policy is not intended to be a complete statement of federal and/or state law, or an employee's rights regarding discrimination, harassment, and retaliation. As always, an employee should seek the counsel of an attorney for questions regarding the law and the rights thereby accorded. Bargaining unit employees may also consult with their union.

Policy

I. **STATEMENT OF POLICY**<26.1.03; 31.2.03; TA 4.6.2; TA 5.1.2>*

It is the policy of the State of Ohio and DPS to maintain a working environment free from discrimination, harassment, and retaliation of applicants and employees. DPS shall prohibit discrimination, harassment, and retaliation of applicants, employees, customers, and clients. DPS shall not retaliate against anyone who participates in a protected activity.

This policy follows, but is not limited by, *State of Ohio Administrative Policy, HR-14 Anti-Discrimination and Anti-Harassment (previously HR-D-14)* and statutory authority prohibiting discrimination. Employee conduct may be subject to discipline even if it does not rise to the level of illegal discrimination under state or federal law.

II. **DEFINITIONS**

- A. Discrimination – improper treatment or employment practices against applicants, employees, customers, or clients on the basis of the person's membership in a protected class.
- B. Employment Practices – including but not limited to, hiring, promotion, discipline, demotion, transfer, recruitment, layoff, termination, rate of compensation, and in-service training programs.
- C. Genetic Information – information about an individual's genetic tests, the genetic tests of an individual's family members, the manifestation of a disease or disorder in an individual's family members (e.g., an individual's family medical history), and the individual's participation in genetic services or genetic research.
- D. Harassment – conduct that has the purpose or effect of unreasonably interfering with a person's work performance or creating an intimidating, hostile, or offensive working environment, and which is on the basis of a person's membership in a protected class, includes sexual harassment.
- E. Protected Activities – participation in a discrimination or harassment complaint process (e.g., witness, complainant) or reasonable opposition of discrimination.
- F. Protected Class – groups protected from employment discrimination and harassment by law and/or Executive Order. These groups include men and women on the basis of race, color, religion, sex/gender, gender identity or expression, national origin (ancestry), military/veteran status, disability, age (40 years or older), caregiver status (parent during pregnancy and immediately after the birth of a child, parent of a young child, or foster parent), genetic information, or sexual orientation.

- G. Retaliation – improper treatment against an applicant or employee on the basis of their participation in protected activities.
- H. Sexual Harassment - a form of harassment, defined as any unwelcome or unwanted sexual advances, requests for sexual favors, and/or other verbal, non-verbal, or physical conduct of a sexual nature when any one of the following criteria is met:
 - 1. Submission to such conduct is made either explicitly or implicitly a term or condition of a person's employment;
 - 2. Submission to or rejection of such conduct by a person is used as the basis for employment decisions and/or retaliation affecting such person; or
 - 3. Such conduct has the purpose or effect of interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

III. **CONTACTS**

- A. DPS EEO Officer (located in Human Resources)
 - 1. Phone: 614-387-3169
- B. Equal Opportunity Division of the Ohio Department of Administrative Services (EOD)
 - 1. Phone: 614-466-8380
 - 2. Web site: <http://www.das.ohio.gov/Divisions/Equal-Opportunity>
- C. Ohio Civil Rights Commission (OCRC)
 - 1. Phone: 614-466-2785
 - 2. Web site: <http://crc.ohio.gov/FilingaCharge/ChargeFilingProcedure.aspx>
- D. U.S. Equal Employment Opportunity Commission (EEOC)
 - 1. Phone: 1-800-669-4000
 - 2. Web site: <https://www.eeoc.gov/employees/howtofile.cfm>

IV. **RESPONSIBILITIES**

- A. Employees
 - 1. Discourage discrimination, harassment, and retaliation;
 - 2. Report discrimination, harassment, or retaliation to an appropriate department official (i.e. supervisor, DPS EEO Officer, or the Administrative Investigations Unit (AIU)); and
 - 3. Cooperate with any resulting investigation.
 - 4. Any employee who believes that they have been subject to harassment is encouraged, though not required, to inform the potential harasser that their conduct is unwelcome, directly or indirectly, and as soon as practical and safe.

- B. Supervisors

When a supervisor witnesses, is notified, or otherwise becomes aware of a complaint, or conduct that may constitute discrimination, harassment, or retaliation under this policy, that supervisor must report the conduct to a higher-level supervisor, AIU, or to the DPS EEO Officer. Reporting is mandatory, not discretionary, and full disclosure of all information about the incident is required. While the report cannot be kept strictly confidential, the information reported will be kept confidential when feasible.

C. DPS EEO Officer

1. Provide guidance on how to file a complaint to persons who believe that they have been discriminated against, a victim of harassment, or retaliated against; and
2. Conduct or assist with a prompt, thorough, and objective investigation, including interviews of witnesses and formal written reports or findings. While the information obtained cannot be kept strictly confidential, the information reported will be kept confidential when feasible.

V. **ENFORCEMENT**

In addition to disciplinary and other enforcement activities by DPS, enforcement authority is also vested in EOD, OCRC, and EEOC.

VI. **REPORTING DISCRIMINATION, HARASSMENT, OR RETALIATION** <26.1.03> 1-3*

- A. Customers and clients should refer to DPS-501.39 Addressing Civil Rights Complaints Against DPS or DPS Grant Recipients. This policy is available for customers and clients on the DPS public Web site, [http://: publicsafety.ohio.gov](http://publicsafety.ohio.gov).
- B. Labor Agreements – Employees may want to contact the appropriate union representative for information concerning member rights within their labor agreement.
- C. Departmental Complaints
 1. Any employee or applicant who believes that he or she has been discriminated against, a victim of harassment, or retaliated against, or a supervisor who witnesses, is notified, or otherwise becomes aware of such actions should report the incident(s) to any or all of the following:
 - a. A supervisor;
 - b. DPS EEO Officer; or,
 - c. AIU
 2. An employee is not required to report discrimination, harassment, or retaliation to any supervisor or other person who the employee accuses of engaging in the discrimination, harassment, or retaliation against the complaining employee. In particular, there is no obligation to report harassment to the alleged harasser.
 3. If a person does not wish to speak with a supervisor, the person may speak with the DPS EEO Officer for counseling. A person pursuing a resolution also may, but is in no way required to, speak with the individual he or she believes has engaged in discrimination, harassment, or retaliation.
 4. Employees pursuing a departmental resolution of a complaint of discrimination, harassment, or retaliation should be aware that the supervisor or other person to whom they make the complaint may not be able to guarantee confidentiality, and may be required to report the complaint.
- D. Complaints to an Administrative Agency
 1. In addition to, or instead of, making a departmental complaint, a complaint may be filed with any or all of the following entities within the specified time limits from the date of the alleged discriminatory incident:
 - a. EOD - 30 days;
 - b. OCRC - 180 days;

- c. EEOC - 300 days.
2. The aggrieved person who files a complaint with OCRC or EEOC will be advised by the respective entity of his or her rights.
3. The DPS EEO Officer is available to help an employee obtain the appropriate materials to file a complaint with an administrative agency.

VII. **GENETIC INFORMATION RULES AND REGULATIONS**

A. Confidentiality of Genetic Information

It is prohibited for an employer to disclose genetic information about applicants or employees. Employers must keep genetic information confidential and in a separate medical file (Genetic information may be kept in the same file as other medical information in compliance with the Americans with Disabilities Act). There are limited exceptions to this non-disclosure rule.

B. Employers Not to Acquire Genetic Information

It will usually be prohibited for an employer to seek or obtain genetic information. There are six narrow exceptions to this prohibition:

1. Inadvertent acquisitions of genetic information do not violate the GINA, such as in situations where a manager or supervisor overhears someone talking about a family member's illness.
2. Genetic information (such as family medical history) may be obtained as part of qualifying health or genetic services, including wellness programs, offered by the employer on a voluntary basis, if certain specific requirements are met.
3. Genetic information may be acquired as part of the certification process for Family and Medical Leave Act (FMLA) leave (or leave under similar state or local laws), where an employee is asking for leave to care for a family member with a serious health condition.
4. Acquisition through commercially and publicly available documents like newspapers is permitted, as long as the employer is not searching those sources with the intent of finding genetic information.
5. Acquisition through a genetic monitoring program that monitors the biological effects of toxic substances in the workplace is permitted where the monitoring is required by law or, under carefully defined conditions, where the program is voluntary.
6. Acquisition of genetic information of employees by employers who engage in DNA testing for law enforcement purposes such as a forensic lab or for purposes of human remains identification is permitted, but the genetic information may only be used for analysis of DNA markers for quality control to detect sample contamination.

VIII. **Discipline**

- A. Any person found to have engaged in discrimination, harassment, and/or retaliation may be subject to discipline, up to and including termination.
- B. Any person who engages in sexual harassment may be subject to discipline, up to and including termination, regardless of whether the person who was sexually harassed acquiesced or participated in the harassing behavior.
- C. Any manager, supervisor, or employee who violates this policy either by engaging in prohibited conduct or by allowing the conduct to go unaddressed may be subject to discipline, up to and including termination.

- D. In addition to disciplinary actions, supervisory employees are advised that they may be subject to personal liability for acts of discrimination, harassment, and/or retaliation and may be responsible for providing their own legal defense.

IX. STATUTORY AUTHORITY

- A. Federal and Ohio laws prohibit employers from engaging in discriminatory practices based upon race, color, religion, sex/gender, national origin, disability, age, or military status.
- B. Executive Order 2019-05D prohibits, among other things, discrimination by executive agencies under the authority of the Governor on the basis of sexual orientation, gender identity or expression, and caregiver status.