



**STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES
DEVELOPMENT
POLICIES AND PROCEDURES**

POLICY NO. 601.001	NO. of PAGES 7 2 Attachments
EFF. DATE October 15, 2013	REV.NO./Date N/A

TITLE: DISCRIMINATION/HARASSMENT-FREE WORKPLACE POLICY	APPROVED:  Barbara A. Krieg, Director
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I. POLICY

The State and its appointing authorities are committed to promoting and maintaining a productive work environment free of any form of discrimination, harassment and retaliation. The State and its appointing authorities do not tolerate workplace discrimination, harassment or retaliation. The State and its appointing authorities are required to and will take appropriate action when discrimination, harassment or retaliation is based on a person's protected class.

The State and its appointing authorities will act to curb protected class discrimination or harassment without regard to its severity or pervasiveness and does not require that discrimination or harassment rise to the level of unlawfulness before taking action. Every State employee is responsible for assuring that work in the executive branch is conducted in an atmosphere that respects the dignity of every State employee, and people with whom the State conducts business. State employees are expected to avoid behavior that could reasonably be perceived as discrimination or harassment prohibited under this policy. In addition, State employees are expected to avoid retaliation against an individual who makes a complaint, and/or participates in or provides information for an investigation relating to discrimination and/or harassment. A violation of this policy may result in disciplinary action, up to and including termination, in accordance with applicable State laws, rules, policies, and collective bargaining agreements.

The State and its appointing authorities will also make reasonable accommodations, if needed, to the extent required by law, for employees who are disabled, pregnant (including pregnancy-related disabilities), breastfeeding, victims of sexual or domestic abuse, or for bona fide religious purposes. Any employee who believes he/she needs accommodation for any of these reasons should contact his/her manager, Departmental Personnel Officer (or his/her designee), Departmental EEO or Civil Rights Compliance Officer, or the Executive Branch Equal Employment Opportunity Office (587-1162 or eeo@hawaii.gov).

II. PURPOSE

The purpose of this policy is to assure compliance with all federal and State laws and to prevent discrimination, harassment, and retaliation in the workplace.

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This policy is intended to protect all applicants, employees, and individuals providing services to the State on a non-paid basis (e.g. volunteers or interns) from discriminatory or harassing conduct by employees or non-employees and to prevent employees from engaging in discriminatory or harassing conduct directed to any individual (whether employees or non-employees).

III. DEFINITIONS

"Gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.

"Genetic information" includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members (i.e. an individual's family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

"Protected class" means race, color, sex, including gender identity or expression, sexual orientation, condition of pregnancy, act of breastfeeding or expressing milk, religion, national origin, ancestry, age, disability, genetic information, marital or civil union status, arrest and court record (except as permitted by applicable laws), income assignment for child support, national guard absence, uniformed service, veteran status, citizenship (except as permitted by applicable laws), credit history or credit report (unless directly related to a bona fide occupational qualification), domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to the victim's employer of such status or the employer has actual knowledge of such status, or any other classification protected under applicable state or federal laws.

"Protected class discrimination or harassment" means any unwelcome behavior based on a person's protected class which is sufficiently severe or pervasive and has the purpose or effect of either unreasonably interfering with the person's work performance or creating an intimidating, hostile, or offensive work environment.

"Retaliation" means an adverse action taken or threat of adverse action in response to or in an attempt to prevent an individual from opposing a

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discriminatory practice or from participating in an employment discrimination investigation or proceeding.

IV. SCOPE

This policy applies to all employees and applicants in the executive branch under the jurisdiction of the Department of Human Resources Development, whether civil service or exempt employees, full-time or part-time employees, permanent or temporary employees.

V. PROHIBITED CONDUCT

- A. It is a violation of this policy to engage in protected class discrimination or harassment.
1. Protected class characteristics may not be used as a basis for taking employment action or making an employment decision that results in a significant change in benefits, or terms and conditions of employment.
 2. Harassing or offensive conduct directed at individuals based on protected class characteristics is prohibited under this policy, and includes, but is not limited to:
 - a. Unwanted physical contact, sexually suggestive or offensive touching, patting, hugging, or brushing against a person's clothing or body, pinching, or hitting;
 - b. Sexual advances, requests for sexual favors, repeated and unwanted attempts at a romantic relationship, sexually explicit questions, comments about physical attributes;
 - c. Lewd descriptions, sexual jokes, pressure for sexual activity, such as repeated requests for dates, and threats for refusing a sexual advance;
 - d. Displays of demeaning, insulting, objects, pictures, or photographs relating to any protected class;
 - e. Demeaning, insulting, intimidating, written, recorded, or electronically transmitted messages (such as email, text messages, voicemail, and Internet materials) relating to any protected class;
 - f. Derogatory comments, slurs, jokes, profanity, anecdotes, and/or offensive questions based on or directed at any protected class; and/or

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- g. Any employment action or decision that adversely impacts a protected class of employees or applicants.
- B. Retaliation against an individual who makes a complaint, participates in an investigation, or provides information related to any complaint, is prohibited. Retaliation includes, but is not limited to, any adverse action taken or threat of adverse action in response to any of the following actions or any attempt to prevent an individual from taking any of the following actions:
1. Making a complaint of harassment or discrimination;
 2. Making a request for reasonable accommodation;
 3. Participating in a complaint investigation or proceeding; or
 4. Otherwise opposing acts of discrimination.

VI. PROCEDURES

A. REPORTING PROCEDURES

1. The State and its appointing authorities encourage employees to report discrimination, harassment, and/or retaliation, regardless of the identity of the alleged offender or whether the offender is an employee of the executive branch, before it becomes severe or pervasive so that steps may be taken to stop the offending behavior before it rises to the level of unlawful behavior.
2. Conduct that violates the Discrimination/Harassment-Free Workplace Policy should be reported to the employee's manager, the Departmental Personnel Officer (or his/her designee), the Departmental EEO or Civil Rights Compliance Officer, or the Executive Branch Equal Employment Opportunity Office (587-1162 or eeo@hawaii.gov).
3. Anyone who observes or experiences discrimination, harassment or retaliation prohibited under this policy is encouraged, if at all possible, to make it clear to the offender that he or she finds such behavior offensive. **Employees are not required, however, to make a complaint to the offender.**
4. A complaint or report may be made either orally or in writing, using the Discrimination Complaint Form (see Attachment A). A complaint or report, whether oral or written, should include:

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name of the alleged offender(s), including position and department, if known, a summary of the offensive acts, the dates, times and places of the incidents, the names of witnesses to the events, and copies of documents, if any, that support the complaint or report.

B. CONFIDENTIALITY

The State and its appointing authorities will take appropriate steps to protect the confidentiality of discrimination, harassment and retaliation complaints, investigations, and reports, whether substantiated or unsubstantiated. However, complete confidentiality cannot be guaranteed and information regarding complaints, investigations and reports shall be shared with appropriate individuals and agencies on a "need to know" basis, with due consideration for the safety and security of individuals involved in the investigation.

C. RESPONSIBILITIES

1. Department Responsibilities

- a. In alignment with this Discrimination/Harassment-Free Workplace Policy, department or agency heads are responsible for developing and enforcing their own discrimination/harassment free workplace investigation and enforcement processes within their own departments or agencies.
- b. Should a conflict exist, this Discrimination/Harassment-Free Workplace Policy shall take precedence over all policies and/or procedures that are developed by the departments or agencies.
- c. Departments are responsible for distributing this Discrimination/Harassment-Free Workplace Policy to all of its employees using the Discrimination/Harassment-Free Workplace Policy Acknowledgment Form (see Attachment B).
- d. Departments shall forward a copy of any and all complaints of discrimination, harassment or retaliation, whether made internally or to the Equal Employment Opportunity Commission or Hawaii Civil Rights Commission, to designated persons within their department or agency and, in addition, to the Executive Branch Equal Employment Opportunity Office.

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- e. Departments are responsible for making sure all complaints are investigated promptly. Departments may take appropriate interim action while an investigation is pending, including placing an accused person on leave or temporarily in another position.
 - f. If the Department finds that an employee violated the Discrimination/Harassment-Free Workplace Policy, the Department will take appropriate corrective action, up to and including termination of the employee, in accordance with applicable State laws, rules, policies, and collective bargaining agreements. If the person found to have violated the policy is not employed by the State or its appointing authorities, other appropriate action shall be taken, including notice to the actual employer.
2. **Managers' and Supervisors' Responsibilities**
- a. Managers and supervisors are responsible for maintaining a workplace free of harassment, discrimination and retaliation. Managers and supervisors who witness or receive reports of offending action shall take immediate and appropriate action to ensure any wrongful behavior ceases, and shall forward all such reports to the designated persons within their department.
 - b. Managers and supervisors, as assigned within their departments, shall investigate complaints of alleged violations of this Policy in a fair and impartial manner.
3. **Employee Responsibilities**
- a. Employees are expected to conduct themselves appropriately while at work and during work-related functions and refrain from any acts of discrimination, harassment or retaliation.
 - b. Employees who experience or observe any unlawful harassment, discrimination or retaliation, have a duty and responsibility to report the incident(s) in order to correct and prevent unlawful harassment, discrimination or retaliation.

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D. REFERRING COMPLAINTS TO EXTERNAL AGENCIES

1. In addition to the procedures described above, employees may make complaints about discrimination, harassment, or retaliation in the workplace to other appropriate agencies, including but not limited to, the federal Equal Employment Opportunity Commission (www.eeoc.gov) and the Hawai'i Civil Rights Commission (<http://labor.hawaii.gov/hcrc>).
2. Employees wishing to file complaints with other agencies should contact that agency to obtain information on their specific procedures and should not wait for resolution of a complaint made to the employer. Agencies may have time limitations for filing complaints. For example, complaints of unlawful discriminatory practices must be filed with the Hawai'i Civil Rights Commission no later than one hundred eighty (180) days, or with the Equal Employment Opportunity Commission no later than three hundred (300) days from the date: (1) the alleged unlawful discriminatory act occurred; or (2) the last occurrence in a pattern of ongoing discriminatory conduct.

VII. AUTHORITIES AND REFERENCES

Title VII of the Civil Rights Act of 1964 as amended

The Pregnancy Discrimination Act

The Age Discrimination in Employment Act of 1967

The Equal Pay Act of 1963

Titles I and II of the Americans with Disabilities Act of 1990 as amended

Sections 102 and 103 of the Civil Rights Act of 1991

Sections 503 and 504 of the Rehabilitation Act of 1973

The Genetic Information Nondiscrimination Act of 2008

The Immigration Reform and Control Act of 1986

Chapter 378, Hawaii Revised Statutes

VIII. ATTACHMENTS

Attachment A: Discrimination Complaint Form, HRD Form 613

Attachment B: Discrimination/Harassment-Free Workplace Policy Acknowledgment Form

DISCRIMINATION COMPLAINT FORM

COMPLAINANT INFORMATION

Last Name	First Name	Middle Name
Address and Phone	Job Title, Branch, Division	

ALLEGED OFFENDERS

Name	Job Title/Organization
Name	Job Title/Organization
Name	Job Title/Organization

BASIS OF COMPLAINT
Check box or boxes for applicable protected class.

<input type="checkbox"/> Race	<input type="checkbox"/> Color	<input type="checkbox"/> Sex/Gender	<input type="checkbox"/> Gender Identity or Expression	<input type="checkbox"/> Sexual Orientation	<input type="checkbox"/> Pregnancy
<input type="checkbox"/> Breastfeeding	<input type="checkbox"/> Religion	<input type="checkbox"/> National Origin	<input type="checkbox"/> Ancestry	<input type="checkbox"/> Age	<input type="checkbox"/> Disability
<input type="checkbox"/> Genetic Information	<input type="checkbox"/> Marital Status	<input type="checkbox"/> Arrest and Court Records	<input type="checkbox"/> Income Assignment for Child Support	<input type="checkbox"/> National Guard Absence	<input type="checkbox"/> Uniformed Service/Veteran's Status
<input type="checkbox"/> Citizenship	<input type="checkbox"/> Credit History or Credit Report	<input type="checkbox"/> Domestic or Sexual Violence Victim Status	<input type="checkbox"/> Retaliation	<input type="checkbox"/> Other (Specify)	

COMPLAINT SUMMARY
(Provide details of who, what, when, and where. Attach additional pages if needed.)

REQUESTED REMEDY
(Provide corrective action or remedies you are seeking.)

WITNESS INFORMATION
(Provide names and contact information for witnesses, if any. Attach additional pages if needed.)

Witness Name	Job Title/Organization/Phone
Witness Name	Job Title/Organization/Phone
Witness Name	Job Title/Organization/Phone

The information provided above is truthful and accurate to the best of my knowledge.

Complainant's Signature: _____

Date: _____

Complaint Received by: _____
Name, Title, Signature

Date: _____

ATTACHMENT 2

**AUTHORIZATION FOR RELEASE OF HEALTH INFORMATION
(Sample -- Family and Medical Leave)**

I, _____, hereby authorize the use or disclosure of
Name of Employee
my health information as described in this authorization.

(1) Specific person or organization authorized to provide the information:

(2) Specific person or organization authorized to receive and use the information:

(3) Specific and meaningful description of the requested information:

*<For example, medical examination report and conclusions related to a fitness-for-work
examination.>*

(4) Purpose of the request:

<State the purpose of the request or use: "At the request of the individual".>

(5) Right to revoke authorization: I understand that I have the right to revoke this authorization at any time by notifying *<Department Name>* in writing at *<Include the address where revocation must be delivered>*. I understand that the revocation is only effective after it is received and logged by *<Department Name>*. I understand that any use or disclosure made prior to the revocation under this authorization will not be affected by a revocation.

(6) I understand that after this information is disclosed, federal law might not protect it and the recipient might redisclose this information.

(7) I understand that my Family and Medical Leave may be conditioned on my agreement to this authorization and any additional authorization *<Department Name>* requests.

(8) I understand that I am entitled to receive a copy of this authorization.

(9) I understand that this authorization will expire when my employment with *<Department Name>* terminates.

Employee's Signature _____ Date _____
or Personal Representative

Personal Representative Section

If a personal representative executes this form, that representative certifies that he/she has authority to sign this form on the basis of _____