

MICHIGAN DEPARTMENT OF CORRECTIONS POLICY DIRECTIVE		EFFECTIVE DATE 09/13/2021	NUMBER 02.03.109
SUBJECT DISCRIMINATORY HARASSMENT		SUPERSEDES 02.03.109 (06/01/2019)	
		AUTHORITY MCL 37.1202, et seq.; 37.2101, et seq.; 791.203; 29 USC 623, et seq.; 42 USC 2000, et seq.; 42 USC 12101, et seq.; Civil Service Commission Rule 1-8; ED 2019-09	
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POLICY STATEMENT:

The Department is committed to maintaining a work environment free from discriminatory harassment.

RELATED POLICY:

01.01.140 Internal Affairs
02.03.100 Employee Discipline

POLICY:

DEFINITION

- A. Complainant - Any person who reports an alleged incident of discriminatory harassment to a Michigan Department of Corrections (MDOC) employee.

- B. Discriminatory Harassment - Unwelcome advances, requests for favors, or other verbal or physical conduct or communication based on religion, race, color, national origin, age, sex, height, weight, marital status, partisan considerations, disability, or genetic information under any of the following conditions:
 - 1. Submission to such conduct or communication is made a term or condition, either explicitly or implicitly, to obtain employment.
 - 2. Submission to or rejection of such conduct or communication by a person is used as a factor in decisions affecting the person's employment.
 - 3. The conduct or communication has the purpose or effect of substantially interfering with a person's employment or creating an intimidating, hostile or offensive employment environment.
 - 4. The conduct or communication concerns the status of another individual with whom the person has a real or perceived past or present relationship or association and has the purpose or effect of substantially interfering with a person's employment, or creating a hostile, or offensive employment environment.

- C. Employee - For purposes of this policy, employee includes Michigan Department of Corrections (MDOC) staff, contractors, interns, and volunteers.

- D. Genetic Information - Information about a gene, gene product or inherited characteristic of an individual derived from the individual's family history or a genetic test.

- E. Management Representative - Staff designated pursuant to PD 02.03.100 "Employee Discipline" to initiate disciplinary investigations, chair disciplinary conferences and/or recommend/impose discipline.

- F. Sex - Gender (male and female), sexual orientation (actual or imputed heterosexuality, gay, or bisexuality), gender identity or expression (the perception by an individual or another person of the gender identity, appearance, behavior expression of the individual whether or not that gender identity, appearance, behavior, or expression is different from the gender identity, appearance, behavior, or expression traditionally associated with the sex assigned to the individual at birth).

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GENERAL INFORMATION

- G. For purposes of this policy, "Administrator" means each Warden, the appropriate Field Operations Administration (FOA) Assistant Deputy Director (ADD), and for Central Office, the appropriate Executive Policy Team (EPT) member or Administrative Management team member.
- H. All employees are prohibited from engaging in discriminatory harassment. In addition, supervisors and managers must make a good faith effort to eliminate and prevent discriminatory harassment from occurring in their respective areas. Whenever a supervisor or manager becomes aware of allegations of, or witnesses, such behavior by any employee, they shall refer the person allegedly harassed to the appropriate harassment counselor and report the alleged harassment to the Administrator and appropriate harassment counselor to ensure the allegations are referred for investigation in accordance with this policy.
- I. This policy directive addresses only discriminatory harassment, including sexual harassment, involving employees. Other forms of harassment involving employees not addressed by this policy directive are a violation of work rules and may result in discipline pursuant to PD 02.03.100 "Employee Discipline."
- J. This policy directive also does not address discriminatory harassment of employees by offenders. Such conduct may result in discipline pursuant to PD 03.03.105 "Prisoner Discipline," PD 06.06.100 "Parole Violation Process," or PD 06.06.120 "Probation Violation Process." Harassment of offenders by employees also is not addressed by this policy directive. Such conduct is prohibited pursuant to PD 03.03.130 "Humane Treatment and Living Conditions for Prisoners" and PD 03.03.140 "Prison Rape Elimination Act (PREA) and Prohibited Sexual Conduct Involving Prisoners," and may result in discipline pursuant to PD 02.03.100 "Employee Discipline."
- K. The Administrator of the Equal Employment Opportunity (EEO) Office is responsible for coordinating the Department's efforts to eliminate discriminatory harassment in the workplace. This includes identifying the training needs of Department staff in this area, in conjunction with the Training Division, Budget and Operations Administration (BOA).
- L. Whenever a complaint of discriminatory harassment is made against an administrator, the appropriate supervisor of that administrator shall assume the responsibilities of the administrator set forth in this policy directive for reporting and investigating the complaint.
- M. Whenever a complaint of discriminatory harassment is made against an employee of the EEO Office, the Human Resources Director in Central Office, or a designee not employed in the EEO Office, shall assume the responsibilities of the EEO Administrator set forth in this policy directive for reporting, as well as determining if the complaint may constitute discriminatory harassment.
- N. Where in conflict with PD 02.03.100 "Employee Discipline" and/or PD 01.01.140 "Internal Affairs," this policy shall control for complaints of discriminatory harassment.

HARASSMENT COUNSELORS/INVESTIGATORS

- O. In consultation with the EEO Administrator or designee, each administrator shall designate at least two harassment counselors for their respective areas. In consultation with the Internal Affairs Section, Office of Executive Affairs (OEA), each administrator shall designate at least two investigators for their respective areas who have completed the training to conduct discriminatory harassment investigations. In correctional facilities, there shall be at least one harassment counselor per shift. The same employee shall not be designated as both an investigator and counselor.
- P. The EEO Administrator or designee shall serve as the harassment counselor for Central Office. Harassment investigators for Central Office shall be designated by the Internal Affairs Manager.
- Q. Each administrator shall ensure written notice is posted to advise employees in their respective areas of the name, work telephone number and work location of their harassment counselors. The EEO Administrator shall ensure a similar notice is posted at all Central Office work sites.

REPORTING DISCRIMINATORY HARASSMENT

- R. An employee who believes they are the subject of, or witness to, discriminatory harassment is required to report it in writing to the appropriate supervisor, harassment counselor, the EEO Office, or Internal Affairs as soon as possible but no later than 180 calendar days after the alleged harassment occurred. Supervisors shall forward reports they receive to the harassment counselor, Administrator, the EEO Office, or Internal Affairs, as appropriate for entry into the Department's Administrative Investigation Management (AIM) database.
- S. If harassment is alleged to be continuing or the person allegedly harassed needs protection, the appropriate administrator or their supervisor shall take immediate action to prevent further harassment.
- T. The appropriate harassment counselor shall meet with each person who files a complaint pursuant to Paragraph R and advise him/her of the following:
1. That all allegations of discriminatory harassment will be referred for investigation, even if the complainant does not want an investigation to be conducted.
 2. That the identity of the complainant along with the allegations made may be disclosed as part of an investigation, even if the complainant does not want their identity or the allegations disclosed.
 3. That appropriate action will be taken to protect the complainant from retaliation for filing the complaint.
- U. The harassment counselor shall assist the complainant in completing the Complaint Form for Discriminatory Harassment Reporting and Prevention (CAJ-339) and ensures all relevant information is reported. The complaint form must include a description of all of the specific acts of discriminatory harassment that allegedly occurred, the names of all witnesses and the dates on which the alleged harassment occurred. If this information is included in writing other than on a CAJ-339, it may be attached and noted on the form. The counselor shall note on the Discriminatory Harassment Reporting and Prevention Contact Form (CAJ-326) if the complainant declines to complete the complaint form.
- V. The complainant should sign the complaint form to verify its accuracy. The counselor shall note on the contact form if the complainant or employee allegedly harassed declined to sign the form.

INVESTIGATIONS

- W. The counselor shall sign and forward the complaint form(s) and the contact form to the appropriate administrator or, in Central Office, to Internal Affairs, for entry into AIM. The administrator shall forward the complaint and contact forms, along with their preliminary findings as to whether the allegations may constitute discriminatory harassment, to the EEO Administrator or designee. The EEO Administrator or designee shall review the complaint and make a preliminary determination if the conduct as alleged may constitute discriminatory harassment and refer the case to Internal Affairs for processing and investigation in accordance with PD 01.01.140 "Internal Affairs."
- X. The Internal Affairs Manager shall ensure that the complainant, and the employee allegedly harassed if not the complainant, are notified in writing as to whether the allegation(s) met the purview for discriminatory harassment. If the allegation(s) do not meet the purview, the complainant also shall be notified that the complaint may instead be investigated as a work rule violation pursuant to PD 02.03.100 "Employee Discipline" and PD 01.01.140 "Internal Affairs." The determination whether the matter will be investigated as a work rule violation is at the discretion of the Internal Affairs Manager.
- Y. Whenever an investigation of discriminatory harassment is to be conducted pursuant to this policy, the Internal Affairs Manager or the appropriate administrator shall assign a trained harassment investigator to conduct the investigation. The investigator may be from another facility or office with prior approval of the Internal Affairs Manager. The investigation shall be conducted and a report of the investigation prepared in accordance with PD 01.01.140 "Internal Affairs" and Civil Service Commission rules and regulations. The investigation shall be completed within 45 calendar days after the investigation type is

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assigned by Internal Affairs unless the Internal Affairs Manager or designee grants an extension.

- Z. The Internal Affairs Manager shall send a final disposition notice to the subject of the complainant when the final finding is insufficient or no evidence to support the allegations and shall ensure the EEO Office receives a copy. For cases proceeding to a disciplinary conference, the subject shall be notified of the disposition in accordance with PD 02.03.100 "Employee Discipline."

DISCIPLINARY CONFERENCES/IMPOSITION OF DISCIPLINARY SANCTIONS

- AA. Whenever disciplinary charges are issued, the disciplinary conference shall be conducted and any disciplinary sanctions imposed consistent with the requirements set forth in PD 02.03.100 "Employee Discipline."

DOCUMENTATION

- BB. The Internal Affairs Manager shall ensure the complainant, and the employee allegedly harassed if not the complainant, is notified in writing by first class mail to their home address of the final disposition of the complaint. Notice shall be made after the disciplinary conference is held and shall include whether any disciplinary action has been taken. However, details of the discipline, including the specific charges and sanctions, shall not be provided. The Internal Affairs Manager shall ensure that a copy of the notice is sent to the EEO Office. Copies of the notices shall be retained in accordance with the Department's Retention and Disposal Schedule.
- CC. Management Representatives shall ensure that a copy of all complaint forms resulting in an investigation and all supporting documentation are forwarded to Internal Affairs when the investigation is closed.
- DD. To the extent practical, complaint forms and investigatory records shall be collected and distributed in a manner that will protect the confidentiality of the information. All requests for documents regarding a complaint or any investigatory records shall be handled as set forth in PD 01.06.110 "Freedom of Information Act - Access to Department Public Records."

RETALIATION PROHIBITION

- EE. Retaliatory action against anyone raising or filing a complaint of any type of discriminatory harassment is strictly prohibited and may result in discipline pursuant to PD 02.03.100 "Employee Discipline." An employee who believes they were the subject of such retaliation may file a complaint under this policy.

DIVERSITY, EQUITY AND INCLUSION OFFICER

- FF. The Department shall establish a position as the MDOC's Diversity, Equity and Inclusion Officer. The Diversity, Equity and Inclusion Officer shall be responsible for following all guidelines set forth in Executive Directive 2019-09.

OPERATING PROCEDURES

- GG. If necessary, to implement requirements set forth in this policy directive, the Human Resources Director in Central Office shall ensure that procedures are developed or updated.

AUDIT ELEMENTS

- HH. Primary Audit Elements List has been developed and is available on the Department's Document Access System (DAS) to assist with self-audit of this policy pursuant to PD 01.05.100 "Self-Audits and Performance Audits."

APPROVED: HEW 07/19/2021