Michigan Civil Service Commission

Regulation 1.03

Subject: Investigating Reports of Discriminatory Harassment		
SPDOC No.:	**Effective Date:**	**Replaces:**
~~19-05~~22-04	~~May 1, 2019~~July 25, 2022	Reg. 1.03 (SPDOC 1~~9~~6-0~~5~~6, ~~January~~ May 1, 201~~7~~9)

1. Purpose

This regulation outlines a procedure for appointing authorities to investigate reports of discriminatory harassment. Improper discrimination may take a number of forms, including **discriminatory harassment**. The state has an obligation to investigate reports of discriminatory harassment and to take prompt and appropriate remedial action, if necessary. State classified employees are protected from improper discrimination based on religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan consideration disability, or genetic information.

2. CSC Rule References

1-8 Prohibited Discrimination

1-8.1 Prohibited Discrimination

Neither civil service staff nor an appointing authority shall do any of the following:

(a) *Fail or refuse to hire, recruit, or promote; demote; discharge; or otherwise discriminate against a person with respect to job application procedures, employment, job training, compensation, or a term, condition, or privilege of employment, because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or, consistent with state and federal law, ~~a~~ disability or genetic information ~~that is unrelated to the person's ability to perform the duties of a particular job or position~~.*

(b) *Limit, segregate, or classify an employee or applicant for employment in a way that deprives or tends to deprive the employee or applicant of an employment opportunity or otherwise adversely affects the status of an employee or applicant because of religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, or, consistent with state and federal law, ~~a~~ disability or genetic information ~~that is unrelated to the person's ability to perform the duties of a particular job or position~~.*

1-8.2 Accommodation of Disabilities

Civil service staff and appointing authorities shall accommodate a person with a disability, consistent with state and federal law ~~as provided in the civil service rules and regulations~~.

1-8.3 Discriminatory Harassment

(a) Discriminatory harassment prohibited. *Discriminatory harassment is prohibited in the classified service. A classified employee who engages in discriminatory harassment may be disciplined by the appointing authority, up to and including dismissal.*

(b) Requirement to report. *A classified employee who is subjected to discriminatory harassment or who observes discriminatory harassment in the workplace shall report the discriminatory harassment to the appointing authority through reporting procedures established by the appointing authority.*

(c) Regulations and action. *The state personnel director shall issue regulations governing reporting and investigating discriminatory harassment. The regulations must require each appointing authority to make good faith efforts to eliminate and prevent discriminatory harassment in the workplace. The regulations must require the following minimum actions by each appointing authority:*

(1) *Each appointing authority shall assign one or more investigators to investigate reports of discriminatory harassment by employees.*

(2) *Each appointing authority shall investigate all reports of discriminatory harassment.*

(3) *If a report of discriminatory harassment is substantiated or there is reasonable cause to believe that an allegation of discriminatory harassment is true, the appointing authority shall take appropriate corrective and remedial action.*

1-8.4 Bona Fide Occupational Qualification

An appointing authority may establish a bona fide occupational qualification based on religion, national origin, sex, sexual orientation, age, marital status, height, or weight, only if it is consistent with applicable law and is approved in advance by the state personnel director.

1-8.5 Elimination of Present Effects of Past Discrimination

An appointing authority may adopt and carry out a plan to eliminate the present effects of past discriminatory practices with respect to religion, race, color, national origin, sex, or disability if the plan is approved in advance by the state personnel director and is otherwise consistent with applicable law.

1-8.6 Seniority and Merit System

Notwithstanding any other provision of these rules, civil service staff or an appointing authority may apply different standards for compensation or different terms, conditions, or privileges of employment under a bona fide seniority or merit system approved by the civil service commission or the state personnel director.

1-8.7 Agency Work Rules

This rule does not limit the authority of an appointing authority to issue an agency work rule that regulates verbal or physical conduct or communication that does not rise to the level of prohibited discrimination or discriminatory harassment as defined in these rules.

2-10 Whistleblower Protection

2-10.1 Reprisal Prohibited

An appointing authority shall not engage in reprisal against an employee for disclosing a violation or suspected violation of any of the following:

(a) *A state or federal law.*

(b) *A lawful regulation or rule promulgated by a political subdivision of the state of Michigan.*

(c) *A civil service rule or regulation.*

2-10.2 Application

An employee who reports, or who is known by the appointing authority to have indicated an intent to report, violations or suspected violations is protected by this rule, unless the employee knew the report was false. This protection extends to an employee who participates in, or who was known by the appointing authority to have indicated an intent to participate in, a court proceeding or an investigation, hearing, or inquiry conducted by a public body.

2-10.3 Forms of Reprisal

Reprisal includes actions such as discharge, threats of discipline, or arbitrary and capricious changes in the conditions of employment.

3. Definitions

A. CSC Rule Definitions.

1. ***Appointing authority*** *means each of the following:*

   (a) *A single executive heading a principal department.*

   (b) *A chief executive officer of a principal department or autonomous entity headed by a board or commission.*

   (c) *A person designated by any of the preceding as responsible for administering the personnel functions of the department, autonomous entity, or other agency.*

2. ***Disability*** *means a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment, as defined in state or federal law.*

   ~~***(a) Disability*** *means any of the following:*~~

~~*(1) A determinable physical or mental characteristic of a person, which may result from disease, injury, congenital condition of birth, or functional disorder, if the characteristic:*~~

~~*(A) substantially limits one or more of the major life activities of the person, and*~~

~~*(B) is unrelated to (1) the person's ability to perform the duties of a particular job or position or (2) the person's qualifications for employment or promotion.*~~

~~*(2) A history of a determinable physical or mental characteristic described in subsection (a)(1).*~~

~~*(3) Being regarded as having a determinable physical or mental characteristic described in subsection (a)(1).*~~

~~*(b) Disability does not include either of the following:*~~

~~*(1) A determinable physical or mental characteristic caused by the current illegal use of a controlled substance by the person.*~~

~~*(2) A determinable physical or mental characteristic caused by the use of alcohol by the person if that physical or mental characteristic prevents the person from performing the duties of the person's job.*~~

3. ***Discriminatory harassment*** *means unwelcome advances, requests for favors, and other verbal or physical conduct or communication based on religion, race, color, national origin, age, sex, sexual orientation, height, weight, marital status, partisan considerations, disability, or genetic information under any of the following conditions:*

   (a) *Submission to the conduct or communication is made a term or condition, either explicitly or implicitly, to obtain employment.*

   (b) *Submission to or rejection of the conduct or communication by a person is used as a factor in decisions affecting the person's employment.*

   (c) *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. ***Genetic information*** *means an individual's genetic information, as defined in state or federal law ~~about a gene, gene product, or inherited characteristic of an individual derived from the individual's family history or a genetic history~~.~~**5. *Genetic test*** *means the analysis of human DNA, RNA, chromosomes, and those proteins and metabolites used to detect heritable or somatic disease-related genotypes or karyotypes for clinical purposes. A genetic test must be generally accepted in the scientific and medical communities as being specifically determinative for the presence, absence, or mutation of a gene or chromosome in order to qualify under this definition. Genetic test does not include a routine physical examination or a routine analysis*~~

~~*including, but not limited to, a chemical analysis of body fluids unless conducted specifically to determine the presence, absence, or mutation of a gene or chromosome.*~~

~~6~~5. ***Sexual orientation*** *means actual or imputed heterosexuality, homosexuality, or bisexuality.*

~~***7. Unrelated to the person's ability*** *means, with or without accommodation, a person's disability does not prevent the person from performing the duties of a particular job or position.*~~

4. Standards

A. Reporting Process.

1. **Obligation to Report Discriminatory Harassment.**

   a. **All employees.** A classified employee is obligated to report to management in writing in either of the following circumstances:

      (1) If the employee is subjected to unwanted discriminatory harassment in the workplace by a supervisor, manager, coworker, or other person.

      (2) If the employee witnesses a supervisor, manager, coworker, or other person in the workplace engaging in discriminatory harassment of another person.

   b. **Supervisors and managers.** A supervisor or manager who witnesses a subordinate employee engaged in discriminatory harassment of another person is obligated to report the behavior and to take prompt and appropriate remedial action.

2. **To Whom to Report Discriminatory Harassment.**

   a. If an employee is harassed or witnesses discriminatory harassment of someone else, the employee shall report the discriminatory harassment in writing to a supervisor or an investigator designated by the appointing authority.

   b. If an employee is harassed or witnesses discriminatory harassment by the employee's own supervisor, the employee is not required to report unwelcome conduct to that supervisor. The employee shall report the unwelcome conduct in writing directly to a higher level supervisor or an investigator.

   c. If an employee is harassed or witnesses discriminatory harassment by an investigator, the employee is not required to report unwelcome conduct to that investigator. The employee shall report the unwelcome conduct in writing directly to a supervisor, another investigator, or the appointing authority.

3. **When to Report Discriminatory Harassment.** The employee is encouraged to report any discriminatory harassment immediately. However, in any event, the employee must report any discriminatory harassment within **180 calendar days** after the alleged harassment.

4. **Confidentiality.** To protect the interests of all involved, the appointing authority shall maintain confidentiality to the extent practicable and appropriate under the circumstances.

5. **Use of Grievance Procedure.** Although an employee who is subjected to unwanted discriminatory harassment is obligated to report the harassment as provided in this regulation, the employee may also file a grievance regarding the harassment as authorized in the rules and regulations governing grievances or an applicable collective bargaining agreement.

6. **Reporting Other Types of Discrimination.** If an employee becomes aware of improper discrimination other than discriminatory harassment, the employee may use the procedures provided in this regulation to report the discrimination.

B. Investigative Procedures.

1. Each appointing authority shall make a good faith effort to eliminate and prevent discriminatory harassment in the workplace.

2. Each appointing authority shall investigate **all** reports of discriminatory harassment, regardless of the source of the report. If a report of discriminatory harassment is substantiated or there is reasonable cause to believe the allegations are true, the appointing authority shall take prompt and appropriate remedial action.

3. If, at the time of the alleged harassment, the alleged harasser was an employee of an agency other than the one receiving the report, the report must be referred to the agency employing the alleged harasser for investigation.

4. Each appointing authority shall appoint one or more investigators with the authority to investigate any report of discriminatory harassment. The appointing authority shall assure the availability of sufficient investigators, considering the location and hours of the agency's operation. If more than two investigators are appointed, the appointing authority shall designate a coordinator of investigators.

5. Each appointing authority shall notify all employees under its authority of the prohibitions against discriminatory harassment. The notice must identify the persons to whom employees may file a report of discriminatory harassment. The notice must also describe the process for filing such a report.

6. Each appointing authority shall implement an education and training program for all new and continuing employees on the definitions of discriminatory harassment and the need to make good faith efforts to eliminate and prevent discriminatory harassment in the workplace.

7. Each appointing authority shall provide additional training for each investigator, coordinator of investigators, manager, and supervisor on techniques and procedures

for investigating reports of discriminatory harassment and recognizing and remedying discriminatory harassment.

8. Each appointing authority shall keep adequate records of reports and investigations regarding discriminatory harassment. The records must include the following, if available:

   a. Any statements of the person making the report, the alleged harasser, or any witnesses.

   b. Other documents supporting conclusions reached by investigators.

   c. Relevant disciplinary reports and performance evaluations.

   d. The final investigatory report.

C. Guidelines for Investigating Reports.

1. **Receiving the Report and Beginning the Investigation.**

   a. **Notice to Person Making Report.** Before taking a statement, the investigator shall advise the person making the report of the following:

      (1) The employer has a duty to investigate all allegations of discriminatory harassment, even if the person making the report does not want the investigation to go forward.

      (2) The identity of the person making the report and charges may be disclosed as part of the investigation, even if the person does not want the identity or charges disclosed.

      (3) The person making the report will be protected from retaliation for filing a report in good faith.

   b. **Signed Statement.** The investigator shall require the person making the report to sign a statement describing the specific acts of discriminatory harassment that occurred. The investigator shall document any refusal to provide a signed statement. If a person reports the harassment of another person, the investigator shall also ask the person allegedly harassed to sign a statement.

2. **The Investigation.**

   a. **Report.** After receiving a report, the investigator shall detail in writing the unwelcome conduct that is alleged to constitute discriminatory harassment. The report must include each of the following, if available:

      (1) The signed statement provided by the reporting employee and any person allegedly harassed (or notation of any refusal to submit such a statement).

      (2) The types of conduct alleged.

(3) The frequency of occurrence.

(4) The names of witnesses.

(5) The dates on which the alleged harassment occurred.

b. **Details.** The investigator shall ascertain the specific context in which the alleged conduct occurred, including, but not limited to, the following:

(1) The nature and general description of the workplace and the specific location and circumstances in which the alleged harassment occurred.

(2) Any physical evidence of the alleged harassment.

(3) What action was taken by the person allegedly harassed.

(4) Whether the person allegedly harassed told the alleged harasser by word or behavior that the alleged harasser's conduct was unwelcome.

c. **Action to Stop Harassment.** If the harassment is alleged to be continuing or the person allegedly harassed needs protection, the appointing authority shall consider taking immediate action to ensure that the alleged harassment does not continue. Possible actions include, but are not limited to, (1) change of location of the work station of the alleged harasser or the person allegedly harassed, (2) "no contact" orders to both parties, (3) temporary reassignment of the alleged harasser or the person allegedly harassed, or (4) suspension of the alleged harasser during the pendency of the investigation.

d. **Statement of Alleged Harasser.** The investigator shall interview the alleged harasser and require the alleged harasser to sign a statement regarding the allegation. The investigator shall document any refusal to submit a signed statement. The investigator shall advise the alleged harasser that (1) the interview is for investigating a claim of discriminatory harassment, (2) the alleged harasser is required to keep confidential any information regarding the investigation, (3) no person may retaliate against the person reporting the alleged harassment or any witness, and (4) any retaliation is a separate basis for investigation and, if substantiated, potential discipline.

e. **Statements of Other Witnesses.** The investigator may obtain signed statements from witnesses who can refute, corroborate, or support any of the allegations of the person making the report or the alleged harasser. If a signed statement is requested, the investigator shall document any refusal to provide a statement. The investigator shall warn witnesses that (1) the witness is required to keep confidential any information regarding the investigation, (2) no person may retaliate against the person making the report or other witnesses, and (3) any retaliation is a separate basis for investigation and, if substantiated, potential discipline.

f. **Confidentiality.** To the extent practicable, the investigator shall distribute and collect any signed statements or other documents in a manner that will protect confidentiality of the information.

g. **Preservation of Records.** The investigator shall preserve all records of all investigative steps for 3 years after the final decision.

3. **Final Investigative Report.** After completing the investigation, the investigator shall transmit a final investigative report to the appointing authority or other designated authority.

D. Further Action.

1. **Action by Appointing Authority.** The appointing authority shall review the final investigative report submitted by an investigator. If the appointing authority substantiates the report of discriminatory harassment or determines that there is reasonable cause to believe that the allegations reported are true, the appointing authority shall take prompt and appropriate remedial action.

2. **Notice.** After the investigation, the appointing authority shall advise the person making the report and the alleged harasser whether the investigation substantiated the report, did not substantiate the report, or was inconclusive.

3. **Discipline.** The appointing authority or other approved manager may discipline a classified employee for engaging in discriminatory harassment, as provided in the Civil Service rules and regulations and agency work rules governing discipline.

4. **Supplemental Investigation.** If, during the course of an investigation, credible information indicates that a manager or supervisor with responsibility for taking remedial action in a harassment situation failed to take prompt and appropriate remedial action, the appointing authority shall separately investigate the behavior of that manager or supervisor.

CONTACT

Questions on this regulation may be directed to the Office of the General Counsel, Civil Service Commission, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at 517-284-0093; or to MCSC-OGC@mi.gov.