

ADMINISTRATIVE POLICY NO. 18.66

TITLE: DISCRIMINATION AND HARASSMENT PREVENTION
DEPARTMENT OF SOCIAL AND HEALTH SERVICES

APPLIES TO: ALL DSHS EMPLOYEES

LAW: RCW 49.60, Executive Order 89-01

INFORMATION CONTACT: Human Resources Division

EFFECTIVE DATE: July 1, 2005

SUNSET REVIEW DATE: June 30, 2009

APPROVED BY:



Director, Human Resource Division

PROCEDURE BACKGROUND & LIMITATIONS:

DSHS is committed to providing a work environment that is free from employment discrimination or harassment based on: race, creed, color, religion, national origin, sex, disabled veterans status, Vietnam Era veterans status, disability, age (40 and over), sexual orientation, marital status, use of a trained guide dog or service animal by a person with a disability, and/or any other protected class OR retaliation for complaints related to these categories.

1. What is the purpose of this policy?

This policy identifies and prohibits behaviors that are inconsistent with a safe, harassment-free work environment.

2. What is the position of DSHS concerning discrimination and harassment?

DSHS strives to create and maintain a work environment in which people are treated with dignity, decency and respect. The work environment should be characterized by mutual trust and the absence of intimidation, oppression and exploitation. Employees should be able to work and learn in a safe environment.

The accomplishment of this goal is essential to the mission of DSHS. For that reason, DSHS will not tolerate unlawful discrimination or harassment of any kind. Through enforcement of this policy and by education of employees, DSHS will seek to prevent, correct and discipline behavior that violates this policy.

3. What is an employee's responsibility with regards to this policy?

All DSHS employees, volunteers, work-study students and interns, regardless of their position, are expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur.

4. What is discrimination?

Discrimination is unfavorable or unfair treatment of a person or class of persons in comparison to others who are not members of the protected class because of race, creed, sex, color, religion, national origin, age (over 40), disabled veterans status, disability, Vietnam Era veterans status, sexual orientation, marital status, use of a trained guide dog or service animal by a person with a disability, and/or any other protected class OR retaliation for complaints related to these categories.

5. What is harassment?

Harassment is verbal, nonverbal or physical conduct that threatens, intimidates, coerces or taunts another person (including sexual, racial or ethnic slurs) and interferes with the employee's ability to perform his or her job.

6. What is sexual harassment?

According to the Equal Employment Opportunity Commission (EEOC), sexual harassment is "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature...when...(1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct is used as the basis for employment decisions affecting such individual or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment." There are basically two types of sexual harassment:

- A. "Quid pro quo" harassment involves harassment that is linked to some employment decision. For example: A supervisor promising an employee a raise if she goes on a date with him; a manager telling an employee she will fire him if he does not have sex with her.
- B. "Hostile work environment" involves harassment that creates an offensive and unpleasant working environment. A hostile work environment can be created by anyone in the work environment, whether it is a supervisor, other employees, or a client. Hostile environment harassment can involve verbal conduct of a sexual nature, unwelcome sexual materials, or unwelcome physical contact. Cartoons or posters of a sexual nature, vulgar or lewd comments or jokes, or unwanted touching or fondling all fall into this category.

7. What conduct is prohibited under this policy?

A. Discrimination

It is a violation of this policy to discriminate in the provision of employment opportunities, benefits or privileges, to create discriminatory work conditions, or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, based on membership in a protected class or retaliation for assisting in the investigation of a complaint.

Discrimination of this kind may also be strictly prohibited by federal, state and local laws, including Title VII of the Civil Rights Act of 1964; the Age Discrimination Act of 1975; the Americans with Disabilities Act of 1990; and the Washington Law Against Discrimination. This policy is intended to comply with the prohibitions stated in these anti-discrimination laws.

B. Harassment

Harassment, including sexual harassment, is prohibited by federal and state laws. This policy prohibits harassment of any kind, and DSHS will take appropriate swift action to address any violation of this policy. Prohibited harassment includes verbal or physical conduct that threatens, intimidates, coerces or taunts another person (including sexual, racial and ethnic slurs) and that unreasonably interferes with the employee's ability to perform his or her job.

Examples of harassment include, but are not limited to:

1. Verbal: Inappropriate, unwarranted and/or unwelcome comments regarding a person's race, creed, color, religion, national origin, sex, disabled veterans status, Vietnam Era veterans status, disability, age (40 or over), sexual orientation, marital status, or use of a trained guide dog or service animal by a person with a disability; epithets, slurs or negative stereotyping.
2. Nonverbal: Distribution or display of any written or graphic material that, ridicules, denigrates, insults, belittles, or shows hostility or aversion toward an individual or group because of membership in a protected class.
3. Physical: Any 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.

"Hostile work environment" includes harassment on the basis of gender (sexual harassment) and harassment as a lack of appreciation and respect for diversity in the workplace based on race, creed, color, religion, national origin, sex, disabled veterans status, Vietnam Era veterans status, disability, age (over 40), sexual orientation, marital status, use of a trained guide dog or service animal by a person with a disability or any other protected class.

Examples of behavior or actions that could be perceived by others to create a hostile work environment include, but are not limited to:

- Racial or ethnic epithets;
- Discriminatory verbal intimidation, ridicule and insults;
- Denying salary increases, promotions and assignments to more desirable work that is motivated based on a protected class status;
- Yelling, verbal intimidation, ridicule or insults by a supervisor directed at a person in a protected class but not at others; or
- Jokes directed at individuals in a protected class that are unwelcome or offensive.

C. Sexual Harassment

Sexual harassment in any form is prohibited under this policy. Sexual harassment is a form of discrimination and is unlawful under both state and federal law.

1. Sexual harassment includes unsolicited and unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when such conduct:

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

Examples of conduct that may constitute sexual harassment include, but are not limited to:

- Verbal: Sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks, threats. Requests for any type of sexual favor (this includes repeated, unwelcome requests for dates). Verbal abuse or "kidding" which is oriented towards a prohibitive form of harassment, including that which is sex oriented.
- Nonverbal: The distribution or display of any written or graphic material that is sexual in nature, including calendars, 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 sexual content in letters and notes, facsimiles and e-mail, that is sexual in nature.
- 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.

2. Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is unwelcome, that is personally offensive, which lowers morale and therefore interferes with work effectiveness.
3. Normal, courteous, mutually respectful, pleasant, non-coercive interactions between employees that are acceptable to and welcomed by both parties are not considered harassment.

D. Retaliation

No hardship, no loss of benefits, and no penalty may be imposed on an employee as punishment for:

1. Filing or responding to a bona fide complaint of discrimination or harassment;
2. Appearing as a witness in the investigation of a complaint; or
3. Serving as an investigator.

Retaliation or attempted retaliation is prohibited and anyone who does so will be subject to severe sanctions, up to and including, dismissal.

8. What is DSHS' position concerning consensual sexual relationships?

- A. DSHS prohibits romantic or sexual relationships between a manager or other supervisory employee and his or her staff (an employee who reports directly or indirectly to that person) because such relationships tend to create compromising conflicts of interest or the appearance of such conflicts. In addition, such a relationship may give rise to the perception by others that there is favoritism or bias in employment decisions affecting the staff member. Moreover, given the uneven balance of power within such relationships, consent by the staff member is suspect and may be viewed by others or, at a later date, by the staff member himself/herself as having been given as the result of coercion or intimidation. The atmosphere created by such appearances of bias, favoritism, intimidation, coercion or exploitation undermines the spirit of trust and mutual respect that is essential to a healthy work environment. If such a relationship exists, the parties need to be aware that one or both may be moved to a different chain of command, or other actions may be taken, as appropriate.
- B. If any DSHS employee enters into or continues a consensual relationship that is romantic or sexual in nature with a member of his or her staff (an employee who reports directly or indirectly to him or her), the employee/employees must notify the appointing authority. Although the employee/employees may feel that what they do during non-working hours is their business and not the business of DSHS, because of potential issues regarding “quid pro quo” harassment, DSHS has made this a mandatory requirement. This requirement does not apply to employees who do not work in the same chain of command, or to employee/employees who do not supervise or have management responsibilities over the other.
- C. Once the relationship is made known to the appointing authority, the appointing authority will review the situation with the assigned HR manager. The review will include an assessment of reporting relationships, affect on co-workers and other relevant factors. It will also determine whether one or both employees need to be moved to another position within the administration. If there are jobs in other program areas available for both, the employee/employees may decide who will be the one to apply for a new position. If the employee/employees cannot amicably come to a decision, or the employee is not chosen for the position to which he or she applied, the employee/employees will contact the appointing authority who will, in concert with the assigned HR Manager, decide which employee should be moved. The final decision will be based on which move will be least disruptive to the administration as a whole.
- D. As in all cases, the burden of proving sexual harassment rests with the accuser. When the subordinate employee makes allegations of harassment during or subsequent to such a relationship and the supervisor claims that the relationship was consented to by the employee, the burden will be on the supervisor to prove that the relationship was consensual and voluntary.

9. What are the roles and responsibilities of supervisors, managers and staff of the Human Resources Division (HRD) in administering this policy?

Managers and supervisors shall model appropriate behavior and are responsible for:

- A. Providing each employee with a copy of the Nondiscrimination and Harassment brochure upon hire;
- B. Ensuring new employees receive training on this policy within the first six months of their employment;
- C. Reviewing this policy with staff annually and documenting the review in the employee's personnel file;

- D. Consulting with the HR Manager to determine appropriate action calculated to stop harassment and discriminatory behavior that is observed and/or of which they become aware; and
- E. Taking appropriate corrective or disciplinary action when harassment and/or discriminatory behavior occurs.

The Human Resources Division (HRD) will provide managers and employees with:

- A. Technical assistance and consultation; and
- B. Training regarding the prevention of harassment, discrimination and inappropriate behavior of a sexual nature in the workplace.

10. What action may be taken for violations of this policy?

DSHS staff who violate this policy may be subject to disciplinary action in accordance with Title 357 WAC and/or the provisions of an applicable collective bargaining agreement.