

Discrimination and Harassment Complaint Procedure

Policy Statement

The State of Oregon is committed to a discrimination and harassment free work environment per DAS Policy 50.010.01. The following procedures apply to all employees, interns and volunteers of the Oregon Health Authority (OHA) and the Department of Human Services (DHS) and extend to contractor/vendor and employee interactions, and job candidates. Failure to comply with policy and procedure may result in disciplinary action up to and including dismissal from state service.

Intake

Complaints must be brought to the attention of the Office of Equity and Inclusion (OEI) for OHA, the Office of Equity and Multicultural Services (OEMS) for DHS, any DHS or OHA supervisor or manager, or the Office of Human Resources. If it is determined that a complaint alleges discrimination or harassment on the basis of race, color, religion, sex, marital status, national origin, disability, age, sexual orientation, gender identity, or any other factor applicable by state or federal law, the Office of Equity and Inclusion (OEI) is in charge of processing the complaint for OHA and the Office of Equity and Multicultural Services (OEMS) is in charge of processing the complaint for DHS.

If the individual reporting the complaint (complainant) has not completed the *Equal Employment Opportunity Discrimination/Harassment Complaint Form*, the complainant must be advised of this form or avenues available to file a complaint. The submission of this form to any of the parties named above constitutes a formal complaint of discrimination and harassment to DHS or OHA and must be processed per the guidelines set forth in this procedure. **Managers and supervisors are held to a higher standard and must report all allegations of discrimination, harassment and retaliation.**

An investigation may proceed without submission of the *Equal Employment Opportunity Discrimination/Harassment Complaint Form* in some circumstances

Complaints not initially received by OEI or OEMS must be referred to one of these offices. The Directors of DHS and OHA delegate the investigation of complaints on the basis of race, color, religion, sex, marital status, national origin, disability, age, sexual orientation, gender identity, or any other factor applicable by state or federal law to:

Oregon Health Authority
Office of Equity and Inclusion
421 SW Oak Street, suite 750
Portland, OR. 97204
(971) 673-1284
OHA.InternalCivilRights@dhsaha.state.or.us

Or

Department of Human Services
Office of Equity and Multicultural Services
500 Summer Street NE, E-15
Salem, OR 97301-1066
(503) 945-7842

Investigation

The jurisdiction of investigation per these procedures includes discrimination or harassment on the basis of race, color, religion, sex, marital status, national origin, disability, age, sexual orientation, gender identity, or any other factors related to protected class applicable by state or federal law. **A complaint that does not claim such bases should be referred to the appropriate supervisor or manager, or to the Office of Human Resources.**

Investigations will be conducted by the Office of Equity and Inclusion for OHA or the Office of Equity and Multicultural Services for DHS. Investigators in these offices are charged to conduct lawful, timely and neutral fact finding related to complaints brought forth under this procedure. Investigators will have full and ready access to all files and documentation to include but not be limited to personnel files, data bases and supervisor/manager files relevant to the complaint. If for any reason the investigator determines that the complaint does not meet the jurisdiction of investigation, the investigator will refer the issue to the appropriate DHS or OHA manager or supervisor, or to the Office of Human Resources.

Upon receipt of the complaint it will be reviewed and an investigation plan will be developed. The complainant and respondent will be notified regarding the intent to investigate. An investigation typically entails interviews with the complainant, respondent and witnesses, and document collection and review. Signed, written statements may also be collected. Clarification will be sought with appropriate parties on any unresolved matters.

The investigation will culminate in a report with supporting evidence or with a letter of finding.

Informal Resolution or Mediation

In an attempt to informally resolve the concern, the complainant may request a meeting with the individual alleged to have committed the discriminatory act (the respondent).

Communication and Reporting

The complainant will be notified first of the intent to investigate the complaint. The respondent will then be notified and provided a summary of the allegations. The supervisor or manager will be involved to the extent necessary. The Director's Office will also be notified that an investigation is underway. Confidentiality will be maintained to the extent that the investigation allows. Information shared will be for the purpose of conducting thorough fact finding. A respondent has the right to know the scope of the complaint in order to have the opportunity to respond to the allegations.

The investigation report will include the allegations, the facts determined in the investigation and findings (whether or not the allegations were substantiated by a preponderance of evidence). A letter of finding may be used in less extensive investigations, for example in cases where only a review of documentation is warranted. The investigator may also generate for the Director or designee recommendations for resolving the issue to accompany the investigation report or letter of finding.

Reconsideration Process

The complainant or respondent may request that a finding be reconsidered if there is a discovery of new information unknown during the time of the investigation. A *Reconsideration Form* must be filed with the OHA Director's Office or the DHS Director's Office within 20 working days of the date that the investigative report or letter of finding was issued. The Director's Office will then determine whether to reopen the investigation or not based upon the information provided in the Reconsideration Form.

For OHA Reconsiderations are to be submitted to:

Director's Office
Oregon Health Authority
500 Summer St. NE
Salem, OR. 97301-1097

For DHS Reconsiderations are to be submitted to

Director's Office
Oregon Department of Human Services
500 Summer St. NE
Salem, OR. 97301-1097

Implementation of Recommendations or Corrective Action

The Director or designee is responsible for final action. The Director or designee may assign responsibility to an appropriate administrator, manager or supervisor.

Nothing in this procedure prevents any person from filing a formal grievance in accordance with a collective bargaining agreement, with the Bureau of Labor and Industries, with the Equal Employment Opportunity Commission, or from seeking private legal counsel.

Timelines

Complaints should be filed as soon as possible and preferably within 30 days of the most recent incident; however, complainants do have up to 180 days to file a complaint. In extraordinary circumstances the 180 day limit may be waived, upon the approval of the OHA Diversity, Inclusion and Civil Rights Executive Manager

Notification to complainant regarding jurisdiction of investigation will be within five working days.

Notification to respondent will be within seven working days.

The investigation should be completed in 60 working days, but can be waived in extraordinary circumstances, upon approval of the OHA Diversity, Inclusion and Civil Rights Executive Manager and with notification to the complainant and respondent.

A reconsideration request to the Director's Office must be submitted within 20 working days of the date that the investigative report or letter of finding was issued.

No Retaliation

Retaliation against any individual who files a complaint, reports inappropriate behavior or participates in an investigation via this procedure is prohibited. Investigation of such complaints would follow the process put forth in this procedure. Any employee found to have engaged in retaliatory action or behavior will be subject to discipline, up to and including dismissal from state service

Definition of Terms

Complainant:

Individual or individuals filing a complaint and/or the individual or individuals allegedly subjected to workplace harassment or discrimination.

Disabilities:

People with disabilities are persons with a physical, mental, or sensory impairment which substantially limits one or more major life activities. An individual is disabled if he or she meets at least one of the following tests: (i) he or she is substantially impaired with respect to a major life activity; or (ii) he or she has a record of such impairment, or (iii) he or she is regarded as having such impairment.

Discrimination:

The process of making a distinction in favor of, or against, a person or persons on the basis of protected class rather than on individual merit. If protected class is taken into account when making a decision regarding an employee, except when it is a bona fide occupational qualification or is otherwise authorized by law, or if a person is harassed based upon protected class, that person has been subjected to discrimination. Employment decisions related to hiring, firing, transferring, promoting, demoting, benefits, compensation, or other terms or conditions of employment that are made because of an employee's protected class are discriminatory.

Gender Identity:

A person's actual or perceived gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's sex at birth.

Harassment:

Unwelcome, unwanted or offensive conduct based on or because of a person's protected class. Harassing behavior has the purpose or effect of unreasonably interfering with an individual's work performance or creating a hostile work environment.

Protected Class:

In addition to those classes listed above, protected class includes pregnancy and pregnancy related conditions; use of federal Family Medical Leave (FMLA) and Oregon Family Leave (OFLA); injured worker status; use of Military Leave; an individual who associates with members of a protected class; an individual who opposes unlawful employment practices, files a complaint, or testifies about violations or possible violations; family relationship; whistleblower; expunged juvenile record; use of Crime Victim leave or Domestic Violence leave.

Respondent:

Individual or individuals accused of a violation of policy.

Sexual Harassment:

A form of sex discrimination involving inappropriate introduction into the workplace of sexual activities or comments that demean or otherwise diminish one's self worth on the basis of gender. Sexual harassment includes unwelcome, unwanted, or offensive

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 the individual's employment, or is used as a basis for any employment decision (granting leave requests, promotion, favorable performance appraisal, etc.); or
2. Such conduct is unwelcome, unwanted or offensive and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Examples of sexual harassment include but are not limited to: unwelcome, unwanted, or offensive touching or physical contact of a sexual nature, such as, closeness, impeding or blocking movement, assaulting or pinching; gestures; innuendoes; teasing, jokes, and other sexual talk; intimate inquiries; persistent unwanted courting; sexist put-downs or insults; epithets; slurs; or derogatory comments.

Sexual harassment often involves relationships of unequal power.

Sexual Orientation:

An individual's actual or perceived heterosexuality, homosexuality, bisexuality or other sexual identity.