

DHMH

Office of Equal Opportunity Programs (OEOP)

Sexual Harassment Supervisory Reference Manual

This manual defines sexual harassment, details the roles and responsibilities of employees, particularly managers/supervisors, and details the complaint process. This document is a living document and is subject to updates and revisions.

INTRODUCTION

Zero Tolerance

The Office of Equal Opportunity (OEOP) administers and ensures all DHMH employees are compliant with Federal and State laws, regulations, policies, and guidance that prohibit discrimination in the workplace based on race, color, national origin, religion, gender, age, disability, genetic information, ancestry, creed, sexual orientation, gender identity and expression, marital status, or retaliation.

The OEOP is primarily responsible for encouraging resolution and processing of EEO complaints, in accordance with applicable federal and state EEO laws and regulations.

DHMH is committed to providing a work environment that ensures that every employee is treated with dignity and respect and afforded equitable treatment.

The law guarantees employees the right to employment in a workplace free from harassment and discrimination.

DHMH will not tolerate any form of harassment and is committed to taking all necessary steps to ensure that employees are not subject to harassment.

Sexual Harassment

Definition

Sexual harassment may be one or a series of incidents involving unsolicited and unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature. Sexual harassment is one-sided, repetitive, and may involve power or intimidation.

Sexual harassment is also a form of discrimination, based on gender/sex, that violates Title VII of the Civil Rights Act of 1964.

Sexual harassment in the workplace includes, but is not limited to:

- unwelcome sexual advances (verbal, written or physical);
- requests or demands for sexual favors;
- verbal abuse or “kidding” that is sex oriented;
- unwanted touching, patting or leering;
- sexual assault;
- inquiries or comments about a person's sex life;
- telephone calls/emails/faxes/social networking/texts with sexual overtones;
- gender-based insults or jokes causing embarrassment or humiliation;
- repeated unwanted social or sexual invitations;
- inappropriate or unwelcome focus/comments on a person's physical attributes or appearance; and
- any other type of unwanted sexually oriented conduct.

When:

- the conduct has the purpose or the effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment; and/or
- submission to such conduct is either an explicit or implicit term or condition of employment; and/or
- submission to or rejection of the conduct is used as a basis for making employment decisions.

Knowledge of Sexual Harassment

What do you do?

Once management has been made aware of sexual harassment, either by the complainant, another individual, and/or his/her own observations; management has been placed “**on notice**”. Management is required to take action and an investigation must ensue.

An investigation of complaints, allegations, and/or observations of sexual harassment must be conducted, in spite of the fact the alleged victim may decline to participate in the investigation. Managers must be sure to advise their staff that once they have been placed on notice, the allegation(s) must be investigated.

Upon notification of an allegation(s), management must ***immediately*** notify the Office of Equal Opportunity Programs, in order to commence a prompt and objective investigation.

First Step to a Resolution:

Complainant's Role

1. When an incident of harassment occurs, **communicate your discontent and protest immediately to the harasser and request the harasser to stop.**
2. If the harassment continues or if you are uncomfortable with addressing the harasser directly, bring your concern to the attention of your direct supervisor, or the next individual in the chain of command, if your supervisor is the alleged harasser.
3. The OEOP will provide advice, guidance, and support, as requested, and will undertake an investigation to resolve the matter, in order to identify and deter such behavior in the workplace.

Filing a Complaint:

1. Any employee of DHMH with a harassment concern and/or who is not comfortable with the above steps to resolution or has exhausted such options may bring a complaint to management and/or the OEOP. All such complaints will be promptly investigated;

2. The Complainant must complete a Discrimination/Hostile Work Environment Complaint Form. A complaint must be filed with OEOP within 30 days after the complainant first knew or reasonably should have known of the alleged violation, that is the basis for the complaint;
3. Upon receipt of the complaint, a member of the OEOP will:
 - a. Review and analyze the complainant's written complaint;
 - b. Conduct a complainant interview;
 - c. Conduct a respondent(s) interview;
 - d. Conduct, if appropriate, a witness(es) interview;
 - e. Review and analyze additional documentation;
 - f. Conduct follow-up interviews, if necessary.
4. An individual may file a complaint with the DHMH Office of Equal Opportunity Programs (OEOP), Maryland Commission on Civil Rights (MCCR) and the Equal Employment Opportunity Commission (EEOC), *simultaneously*;
5. A complainant may elect or member of the Office of Equal Opportunity Programs may request, in writing, to extend the time needed for completion of the investigation and decision, at any time during the investigation.
6. Upon completion of the investigation, the investigating OEOP representative will prepare an investigative report, which will detail the complainant's allegations, the respondent's responses to the allegations, witness statements, copies of relevant documentation, and recommendations;
7. The investigative report will be distributed to the Office of the Statewide Equal Employment Opportunity Coordinator (OSEEOC), the Secretary of DHMH, and the appropriate Deputy Secretary;
8. OEOP will forward a Letter of Determination to the complainant (along with an explanation of his/her appeal rights) and the respondent;
9. If it is determined that a complaint of sexual harassment is substantiated, appropriate corrective action will be taken by management;
10. Corrective action may include, but not is not limited to:
 - a. A formal apology;
 - b. A verbal and/or written counseling;

- c. A written reprimand placed in the employee's file;
- d. A change of work assignment;
- e. Suspension or termination of an employee.

In addition to the discipline that may be imposed on an employee, individuals who engage in sexual harassment may expose themselves to damages in the event of a successful lawsuit or Equal Employment Opportunity Commission (EEOC) or Department of Justice Office of Civil Rights (OCR) case.

NOTE: An Appointing Authority may take corrective action, in regard to sexual harassment, without waiting for an employee to file a complaint of sexual harassment. In addition, per the DHMH Policy on Sexual Harassment, management must seek guidance from the Director of OEOP, before determining the appropriate disciplinary action to take to address sexual harassment.

NOTICE ON TIME FRAMES: SHOULD THE MATTER APPEAR TO POSSIBLY WARRANT A SUSPENSION OF THE OFFENDER, THERE CAN BE NO DELAY IN CONTACTING OEOP, AS SUSPENSIONS MUST OCCUR WITHIN FIVE (5) DAYS OF WHEN MANAGEMENT FIRST KNEW OR SHOULD HAVE KNOWN OF AN INCIDENT. IF SUSPENSION IS NOT BELIEVED TO BE THE DESIRED COURSE OF ACTION, THE OEOP HAS 30 DAYS TO INVESTIGATE A COMPLAINT OF SEXUAL HARASSMENT ACCORDING TO THE ANNOTATED CODE OF MARYLAND STATE PERSONNEL AND PENSIONS §5-212.

Responsibilities

A Shared Responsibility

All DHMH employees are encouraged to maintain a work environment free from sexual harassment.

All DHMH employees have a personal responsibility to ensure that their behavior does not violate sexual harassment laws and DHMH policy. Violation of DHMH's policy related to sexual harassment will result in discipline, up to and including termination.

Managers Role

While all employees share responsibility for understanding and preventing harassment in the workplace, it is important to recognize that, under law, managers carry more responsibility than any other employee.

Once management has been placed on notice, OEOP must be immediately notified of an allegation or observation of inappropriate sexual behavior in the workplace. Management must work in conjunction with OEOP during the course of an investigation.

Responsibilities of Management:

- If an employee contacts you with questions or concerns about sexual harassment, listen, take notes, and **keep a detailed record of the contact.**
- Ask what exactly occurred, the date and time of the occurrence(s), were there witnesses, contact information, immediate remedy, expected resolution.
- **Maintain notes and/or documentation separate from an employee's personnel file.**
- Contact OEOP **immediately.**
- Accept that a complaint is the employee's right.
- Take **ALL** complaints seriously.
- Be sensitive, listen and avoid being impatient.
- Remain impartial.
- Work with OEOP in the investigation of complaints.
- Discourage and prevent employment-related sexual harassment by consistent review and implementation of DHMH's sexual harassment policy, through email communications, during PEP evaluations, in-service training, or any another method appropriate for communicating DHMH's no tolerance policy on sexual harassment;

- Ensure all employees of DHMH are aware that sexual harassment exists and of their responsibilities with respect to preventing sexual harassment in the workplace;
- Take appropriate corrective measures to respond to any substantiated allegations of sexual harassment.

Those who have authority to prevent or discourage harassment may be held personally liable for failing to do so. This accountability extends to anyone in a management or a supervisory position, including but not limited to, Directors of Administrations, Health Officers, Program Managers, Facility Directors, Regional Directors, Superintendents/CEO's and assistants to such positions. The employer may share liability with managers and others in substantiated complaints.

Managers are also responsible for ensuring that the rights of both the complainant and the respondent involved in a harassment incident are protected. Fair and equitable procedures must be ensured for all parties.

A complaint of harassment should not preclude a manager/supervisor from carrying out their managerial/supervisory functions, if s/he is not the respondent in a complaint.

If the supervisor/manager is a respondent in a complaint, the complainant should immediately and temporarily report to another manager/supervisor during the investigation.

Performance reviews, work evaluations and disciplinary measures taken by management for any valid reason, do not constitute harassment in the workplace.

Confidentiality

The DHMH understands that it is difficult to come forward with a complaint of sexual harassment and recognizes the complainant's interest in keeping the matter confidential.

To protect the interests of the complainant, the alleged harasser, witnesses and any others who may report incidents of sexual harassment, confidentiality will be maintained throughout any investigatory process, to the extent practicable and appropriate under the circumstances.

All records of complaints, including contents of meetings, interviews, results of investigations and other relevant material will be kept confidential, except where disclosure is required for disciplinary or other corrective processes.

Retaliation

The law forbids retaliation in any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Equal Employment Opportunity laws make it illegal to fire, demote, harass, or otherwise “retaliate” against people (applicants or employees) because they file a complaint of sexual harassment or because they participated in a related proceeding (i.e., an investigation or lawsuit). For example, it is illegal for an employer to refuse to promote an employee because s/he filed a complaint with OEOP or an external commission, even if it is later determined the allegations could not be substantiated.

The DHMH is committed to ensuring that any employee who files a complaint of sexual harassment is not subject to any form of retaliation. Any retaliatory actions will be met with discipline.

Complaint Filing Timeframes

FILING DEADLINES FOR COMPLAINTS OF DISCRIMINATION

Complainants must adhere to the statutory time periods for the timely filing of charges of discrimination:

1. **State Fair Practices/EEO Offices (i.e., DHMH Office of Equal Opportunity Programs (OEOP))**—within **30 days** after first knowledge or reasonably knowing (SPPA§5-211(b)).
2. **Maryland Commission on Civil Rights (MCCR)**—**Six (6) months** (State Government Article Title 20, Annotated Code of Maryland) <http://mccr.maryland.gov/>
3. **United States Equal Employment Opportunity Commission (EEOC)**—**180 calendar days** from the day the discrimination took place; **300 calendar days** if a state or local agency enforces a law that prohibits employment discrimination on the same basis. See the EEOC’s website, <http://www.eeoc.gov/employees/timeliness.cfm>, discrimination filing guidelines.

State Fair Practices Offices Timeline

An applicant or employee may file a written complaint with the appropriate head of the principal unit, or designee, within **thirty (30) days** after the complainant knew, or reasonably should have known, of the alleged violation of the State's Fair Employment Practices Policy (SPP 2-302).

After receiving the complaint, the agency Fair Practices and/or Equal Employment Opportunity Officer shall investigate and recommend a proposed decision to the head of the principal unit, or the designee, within **thirty (30) days**. The head of the principal unit, or designee, shall issue a written decision to the complainant and may grant any appropriate relief.

The complainant may appeal, in writing, to the Department of Budget and Management, Office of the Statewide Equal Employment Opportunity Coordinator, Room 607, 301 West Preston Street, Baltimore, Maryland 21201, **ten (10) days** from the date of notification of the head of the principal unit's or designee's decision.

After receiving the appeal, the Statewide Equal Employment Opportunity Coordinator shall review the complaint and the agency decision and conduct any necessary investigation and/or mediation conference. The Office of the Statewide Equal Employment Opportunity Coordinator shall issue the final decision which may be to grant the relief requested by the complainant or dismiss the complaint, within **thirty (30) days**.

Important Provisions-

- Procedure covers employees and applicants for positions in the Skilled, Professional and Management Services, or comparable positions in independent personnel systems.
- Employees in the State Personnel Management System may elect to pursue an allegation of employment discrimination under either the above complaint procedure **OR** the grievance procedure according to the Code of Maryland Regulations, 17.04.08.03 (B)(2). A complainant cannot file a complaint with OEOP and file a grievance simultaneously.
- Days refer to calendar days.
- Failure of any agency to respond to a complaint within the established time lines is considered a denial from which an appeal may be made.
- A complainant may be represented during the complaint process by any person the complainant chooses.

Source: State Personnel & Pensions Article, Title 5, Subtitle 2

Contact Information

Maryland Department of Health and Mental Hygiene
Office of Equal Opportunity Programs
201 West Preston Street
Baltimore, Maryland 21201
(O) 410-767-6600
(F) 410-333-5337
keneithia.taylor@maryland.gov

Any employee or applicant for employment, who believes that s/he has been discriminated against, has a right to file a complaint with the State or Federal agencies listed below. *A person does not give up this right when s/he files a complaint with the DHMH Office of Equal Opportunity Programs.* The following State and Federal agencies enforce laws related to **discrimination**:

Maryland Commission on Civil Rights (MCCR)

6 St. Paul Street, 9th Floor
Baltimore, Maryland 21201
Phone: 410-767-8600

United States Equal Employment Opportunity Commission (EEOC)

10 South Howard Street, 3rd Floor
Baltimore, Maryland 21201
Phone: 410-962-3932

Office of the Statewide Equal Employment Opportunity Coordinator (OSEEOC)

301 West Preston Street, Suite 607
Baltimore, Maryland 21201
Phone: 410-767-3800



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

Office of Equal Opportunity Programs (OEOP)

Discrimination/Hostile Work Environment Complaint Form

Please CLEARLY PRINT or TYPE the following information (add additional pages as needed):

Last Name: First: MI:

Home Address:

City: State: Zip Code:

Home Phone: Cell Number: Work Number:

Title: Department/Location:

Supervisor's Name: Supervisor's Contact #:

Name and work locations of individual(s) you believe discriminated against you:

What is the basis of the alleged discrimination? (Check only those that apply to your complaint)

- | | | | |
|--------------------------------------|---|--|--|
| <input type="checkbox"/> Age | <input type="checkbox"/> Sex (gender) | <input type="checkbox"/> Mental or Physical Disability | <input type="checkbox"/> Color |
| <input type="checkbox"/> Retaliation | <input type="checkbox"/> Genetic Information | <input type="checkbox"/> Sexual Orientation | <input type="checkbox"/> Ancestry |
| <input type="checkbox"/> Religion | <input type="checkbox"/> Marital Status | <input type="checkbox"/> Creed | <input type="checkbox"/> National Origin |
| <input type="checkbox"/> Race | <input type="checkbox"/> Gender Identity and Expression | | |

What issues are associated with your complaint? (Circle only those that apply to your complaint)

- | | | |
|---|--|---|
| <input type="checkbox"/> Recruitment | <input type="checkbox"/> Failure to Hire | <input type="checkbox"/> Performance Evaluation |
| <input type="checkbox"/> Demotion | <input type="checkbox"/> Discharge | <input type="checkbox"/> Sexual Harassment |
| <input type="checkbox"/> Transfer | <input type="checkbox"/> Promotion | <input type="checkbox"/> Working Conditions |
| <input type="checkbox"/> Hostile Work Environment | <input type="checkbox"/> Other _____ | |

When did the alleged discrimination occur?

Date:

Where did the alleged discrimination occur?

Location:

Were there any witnesses to the alleged discrimination? Yes _____ No _____

If yes, please provide witnesses names and contact number.

Describe the incident(s). (Please attach additional pages as needed.)

What corrective action do you believe would address your complaint?

**Have you filed a previous complaint of alleged discrimination? Yes _____ No _____
If so, briefly describe the incident and when it occurred.**

FOR COMPLAINTS BASED ON A HOSTILE WORK ENVIRONMENT

Please respond to each question applicable to your situation. Add additional pages as needed.

1. Does the hostile behavior you are alleging happen on a frequent basis? If so, explain.

2. Is the hostile behavior severe? If so, explain.

3. Is the hostile behavior physically threatening or humiliating? If so, explain. Provide dates, other employees present, if known.

4. Does the hostile conduct unreasonably interfere with your ability to perform your job duties, or affect a term, condition or privilege of employment? If so, explain.

5. Do you believe there is a relationship between the hostile behavior and your membership in a protected class? A protected class member is one protected by race, gender, age, disability (mental or physical), etc.

6. Did your supervisor know or should have known about the hostile behavior? If so, explain. If your supervisor is creating a hostile work place, explain.

Who did you file this complaint with? (Please check all that apply)

Maryland Commission on Civil Rights

Equal Employment Opportunity Commission

Office of the Statewide Equal Employment Opportunity Coordinator

DHMH OEOP

MEDIATION

Mediation is a process which attempts to have parties in conflict resolve their differences with the assistance of an external mediator from the State of Maryland’s Shared Neutral Program. Mediation is a *voluntary*, expeditious and proactive process that encourages dialogue and mutual agreement between parties in conflict. In order for mediation to be successful, both parties must agree to mediate. If either party declines mediation, the complaint will move forward to the investigative phase. Any information discussed during the mediation is confidential. If an agreement is reached, it is put in writing and signed by both parties and the complaint is closed. If an agreement is not reached, then the complaining party may elect to move forward with their complaint.

I would like to have my complaint addressed through the mediation process. YES NO

Complainant’s Signature: _____

AFFIRMATION

I affirm that I have read the above charge(s) and that it is true to the best of my knowledge, information and belief.

Signature

Date

Please forward to:
Keneithia J. Taylor, Director/Fair Practices Officer
Office of Equal Opportunity Programs
201 West Preston Street, Room 514
Baltimore, Maryland 21201
410-767-6595 (p)
410-333-5337 (f)
keneithia.taylor@maryland.gov

**Please notify the Office of Equal Opportunity Programs of any changes of address and/or telephone number.*

NOTICE OF YOUR RIGHT TO FILE A COMPLAINT WITH AN EXTERNAL CIVIL RIGHTS ENFORCEMENT AGENCY

Any employee or applicant for employment, who believes that he or she has been discriminated against, has a right to file a complaint with the State or Federal agencies listed below. *A person does not give up this right when he or she files a complaint with the DHMH Office of Equal Opportunity Programs.* The following State and Federal agencies enforce laws related to **discrimination**:

Maryland Commission on Civil Rights (MCCR)
6 St. Paul Street, 9th Floor
Baltimore, Maryland 21201
Phone: 410-767-8600

United States Equal Employment Opportunity Commission (EEOC)
10 South Howard Street, 3rd Floor
Baltimore, Maryland 21201
Phone: 410-962-3932

STATUTORY TIME PERIODS FOR THE TIMELY FILING OF CHARGES OF DISCRIMINATION (MEASURE FROM THE OCCURRENCE OF DISCRIMINATORY ACTION):

1. **State Fair Practices/EEO Offices-** within 30 days after first knowledge or reasonably knowing (SPPA§5-211 (b))
2. **Maryland Commission on Civil Rights (MCCR)-** Six (6) months (State Government Article Title 20, Annotated Code of Maryland)
3. **United States Equal Employment Opportunity Commission (EEOC)-** 180 calendar days from the day the discrimination took place; 300 calendar days if a state or local agency enforces a law that prohibits employment discrimination on the same basis. See the EEOC's website for age discrimination filing guidelines (search *Timeliness* in the EEOC's search engine)

Confidentiality- Information obtained as part of an investigation conducted under this SPPA§5-214 is confidential within the meaning of Title 10, Subtitle 6 of the State Government Article.

AFFIRMATION

I affirm that I have read the above notice concerning my rights to file a complaint with a local, state, and federal civil rights enforcement agency at any time before or after I file an internal complaint with the DHMH Office of Equal Opportunity Programs and am aware of my filing deadlines for those agencies.

Complainant's Signature

Date

Equal Opportunity Director or designee

Date

FOR USE BY THE DHMH OFFICE OF EQUAL OPPORTUNITY PROGRAMS

CASE NO. _____

BASIS(ES): _____

DATE FILED: _____

RESOLUTION: _____