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Prohibited Discrimination, Harassment and Retaliation

The Oklahoma Department of Corrections (ODOC) is committed to making employment decisions consistent with federal and state laws and guidelines established for equal

employment opportunity. Employment decisions in all job classifications are to be made based on valid requirements for employment opportunities. They will be made without regard to political or religious opinion or affiliation, race, creed, gender, age, color, national origin, veterans' status, genetic information, or disability, so long as the disability does not render the person unable to perform the essential functions of the position for which he or she is employed.

It is the policy of ODOC not to discriminate in any of its employment practices. Any form of unlawful discrimination is a very serious matter and will not be tolerated.

The principles of equal employment opportunity apply to all employment practices and personnel actions throughout the agency including: recruiting, hiring, promotions, demotions, separations, transfers, reductions in force (RIF), recall, compensation, benefits, and all other terms and conditions of employment. All personnel actions, as well as all decisions relating to employment practices, are to be made in accordance with the spirit of equal employment opportunity for all. Employment decisions are to be based on valid requirements for employment opportunities in accordance with [OP-110235](#) entitled "Hiring and Promotional Procedures."

The Employee Rights and Relations Unit (ERRU) is available to any employee having questions or needing assistance in regard to equal employment opportunity.

I. Behaviors Prohibited by Law

A. Discrimination

No employee will be in any way favored or discriminated against because of political or religious opinions or affiliations, race, creed, gender, color, age, national origin, or physical handicap so long as the physical handicap does not render the employee unable to perform the essential function of the position for which the person is employed. (74 O.S. § 840-2.9 and 954, Merit Rules 260:25-3-2 and 260:25-3-3)

B. Harassment

Harassment may involve actions or statements related to a person's protected class, including offensive remarks or physical aggression, among other behaviors. The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, an inmate/offender, a vendor, or a customer.

Harassment is not limited to sexual behaviors. It is unlawful to harass a person because of his or her protected class. Harassment can include, for example, comments, graphic materials, or writings that are not flattering or are unwelcome regarding a person's nationality, origin, race, color, religion, gender, sexual orientation, age, body disability or appearance, or political affiliation. These may take the form of epithets, slurs, or negative stereotyping, in any manner. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious,

harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision. Additionally, while the law may not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, agency procedure does require employees treat one another with dignity and respect at all times.

Behaviors violating [OP-110215](#) entitled “Rules Concerning the Individual Conduct of Employees,” or [OP-110214](#) entitled “Workplace Violence,” including bullying, may constitute illegal harassment if the behavior is based upon or directed toward the recipient’s membership in a class protected by state and/or federal law.

C. Retaliation

It is illegal to fire, demote, harass, or otherwise “retaliate” against people (applicants or employees) because they filed a charge of discrimination, complained to their employer or other enforcement entity about discrimination on the job, or participated in an employment discrimination proceeding (such as an investigation or lawsuit). Retaliation is defined as acting in revenge or getting even.

Federal and state laws, along with this procedure, prohibit any form of retaliation against a person who complains about discrimination. Individuals who give information about a complaint, including all supervisors mandated to report directly to ERRU, and individuals who participate in an investigation are also protected from workplace reprisals.

II. Definition and Categories of Protected Classes

A. Protected Class

“Protected class” refers to characteristics or factors which cannot be targeted for discrimination and harassment under state or federal laws. Characteristics or factors include political or religious opinion or affiliation, race, creed, gender, age, color, national origin, veterans' status, disability, or genetic information.

B. Age

Age discrimination involves treating a person (an applicant or employee) less favorably because of his/her age. The Age Discrimination in Employment Act (ADEA) only forbids age discrimination against people who are age 40 or older. It does not protect workers under the age of 40; it is unlawful to harass a person because of his or her age.

C. Disability

Disability discrimination occurs when an employer treats an employee or applicant with a disability unfavorably because he or she has a disability or is perceived to have a disability. Not everyone with a medical condition is protected by the law. In order to be protected, a person must be qualified for the job and have a disability as defined by the Americans with Disabilities Act (ADA) and the Americans with Disabilities Act, as Amended (ADAAA).

Disability discrimination also occurs when a covered employer or other entity treats an applicant or employee less favorably because he or she has a history of a disability or because he or she is believed to have a physical or mental impairment that is not short-term and minor.

In accordance with [OP-110218](#) entitled "Employee Medical Exams/Inquiries and Records", a reasonable accommodation will be provided to an employee or job applicant with a disability, unless doing so would cause undue hardship (4-4054, 4-ACRS-7E-03). A reasonable accommodation is any change in the work environment to help a person with a disability apply for a job or perform the duties of a job.

Undue hardship means that the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the needs of the business. If more than one accommodation works, the employer may choose which one to provide.

1. A person can show that he or she has a disability in one of three ways:
 - a. A person may be disabled if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning).
 - b. A person may be disabled if he or she has a history of a disability (such as cancer that is in remission).
 - c. A person may be disabled if he is believed to have a physical or mental impairment that is not short-term and minor.

D. Genetic Information

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits genetic information discrimination in employment, took effect on November 21, 2009.

Under GINA, it is illegal to discriminate against employees or applicants because of genetic information. GINA prohibits the use of genetic information in making employment decisions, restricts employers from

requesting, requiring or purchasing genetic information, and strictly limits the disclosure of genetic information.

E. National Origin

Title VII of the Civil Rights Act governs national origin discrimination. National origin discrimination involves treating applicants or employees unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).

National origin discrimination may involve treating people unfavorably because they are married to (or associated with) a person of a certain national origin or because of their connection with an ethnic organization or group.

F. Pregnancy

Pregnancy discrimination involves treating a woman (an applicant or employee) unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. The Pregnancy Discrimination Act (PDA) forbids discrimination based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, reductions in force, training, and any other term or condition of employment.

G. Race/Color

Title VII of the Civil Rights Act governs race and color discrimination. Race discrimination involves treating an applicant or employee unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion.

H. Religion

Religious discrimination, also governed by Title VII of the Civil Rights Act, involves treating an applicant or employee unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also others who have sincerely held religious, ethical or moral beliefs.

The law requires an employer or other covered entity to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause more than a minimal burden on the operations of the employer's business. This means an employer may be required to make

reasonable adjustments to the work environment that will allow an employee to practice his or her religion.

An employer does not have to accommodate an employee's religious beliefs or practices if doing so would cause undue hardship to the employer. An accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of potentially hazardous or burdensome work.

An employee cannot be forced to participate (or not participate) in a religious activity as a condition of employment.

I. Gender

Gender discrimination involves treating an applicant or employee unfavorably because of that person's sex or gender in violation of Title VII of the Civil Rights Act.

It is unlawful to harass a person because of that person's gender. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general. Gender discrimination also includes favoring employment decisions based on a person's gender (e.g., setting salary based gender instead of qualifications). (Lilly Ledbetter Act)

J. Sexual Harassment (2-CO-1C-11, 4-4056, 4-APPFS-3E-05)

1. Sexual harassment is prohibited by the Civil Rights Act of 1964, the regulatory guidelines of the Equal Employment Opportunity Commission, applicable federal and state laws, the state Merit Rules for Employment, and agency policy. In some circumstances, it may also violate other laws (e.g., criminal assault). It is also a violation of [OP-030601](#) entitled "Oklahoma Prison Rape Elimination Act" for any supervisor or employee of ODOC, male or female, to engage in the acts or behavior defined by law as sexual harassment.

Sexual harassment is a form of unlawful discrimination based on an unwelcome request for sexual favors or the gender of another person as the basis for employment decisions. It is often behavior that is personally offensive, degrading, designed to lower morale and to intimidate.

No employee will permit or engage in any conduct which constitutes, or is contributory to, sexual harassment. Sexual

harassment is defined as any unwelcome sexual advances, requests for sexual favors, and verbal, graphic or physical conduct of a sexual nature when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
 - b. Submission to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting such individual; or
 - c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. (Merit Rule 260:25-3-3)
2. Sexual harassment does not refer to behavior or occasional compliment of a socially acceptable nature. It refers to behavior that is unwelcome, that is personally offensive, and that lowers morale, therefore interfering with work effectiveness.

Examples of conduct that may constitute sexual harassment are:

- a. Verbal statements and/or comments: Sexual innuendos, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks or threats, requests for any type of sexual favor (this includes repeated, unwelcome requests for dates), verbal abuse or "kidding" that is oriented toward a prohibitive form of harassment, including that which is sexually oriented and considered unwelcome.
- b. Nonverbal: The distribution, display, or discussion of any written or graphic material, 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; content in letters and notes, facsimiles, email, photos, text messages, internet postings, etc. that is sexual in nature.
- c. Physical: Unwelcome, unwanted physical contact including, but not limited to, touching (unless job-related and performed in accordance with procedure and training), tickling, pinching, patting, brushing up against, hugging, cornering, kissing, fondling, forced sexual intercourse or assault.

K. Equal Pay/Compensation

The Equal Pay Act of 1963 (EPA) requires that men and women in the same workplace be given equal pay for equal work. The jobs need not be identical, but they must be substantially equal. Job content (not job titles) determines whether jobs are substantially equal. All forms of pay are covered by this law, including salary and overtime pay. If there is an inequality in wages between men and women, employers may not reduce the wages of either sex to equalize their pay.

III. State-Specific Prohibited Behavior

The Oklahoma Personnel Act adopts most of the federal law mandates, but also creates additional protection for political opinions or affiliations and creed.

Specifically, the state law states, "No person in the state service, whether subject to the provisions of the Merit System or in unclassified service, shall be appointed to or demoted or dismissed from any position in the state service, or in any way favored or discriminated against with respect to employment in the state service because of political or religious opinions or affiliations, race, creed, gender, color or national origin or by reason of any physical handicap so long as the physical handicap does not render the employee unable to do the work for which he is employed." (74 O.S. §840-2.9.) Oklahoma statutes further address discrimination. (25 O.S. §1301, et seq.)

IV. Responding

A. Receiving a Complaint

Any supervisor who receives or becomes aware of a complaint of discrimination, harassment, and/or retaliation may seek objective information to further an investigation into the allegations, but seeking additional information is not required. Information may include the following:

1. What happened?
2. When did it happen?
3. Where did it happen?
4. Has it ever happened before?
5. Has it happened to anyone else?
6. Who was present when it happened?
7. Have you talked with anyone about the incident(s)?
8. Was the behavior welcome or unwelcome?

9. Was it conveyed to the alleged harasser that the behavior was unwelcome?
10. Is there any other information that would substantiate the allegation(s)?

B. Reporting the Complaint

1. Facility/district/unit heads will immediately report all allegations of discrimination, harassment or retaliation (as defined in Section I. of this procedure) to the Employee Rights and Relations Unit.
2. Any supervisor receiving a complaint or who becomes aware of conduct which is in violation of this section will immediately report the complaint or conduct to the Employee Rights and Relations Unit.
3. Employees will report any conduct which is perceived to be harassment immediately. Reports or complaints of harassment under this procedure may be made directly to the Employee Rights and Relations Unit without submission through the chain of command.
4. The agency grievance manager will report any matter containing allegations of discrimination, sexual harassment, or retaliation to the Employee Rights and Relations Unit for investigation. Discrimination investigations within or outside the grievance process will be conducted by a certified investigator as directed by the director or designee.
5. Complaints of discrimination, harassment, or retaliation for engaging in protected activity will be reported immediately to any one of these individuals:
 - a. The immediate supervisor.
 - b. Any level of management above the immediate supervisor, especially when the issue involves the immediate supervisor.
 - c. The director of Employee Rights and Relations.
 - d. The agency's grievance manager, as prescribed by policy.

- C. The ERRU will maintain a log of all contacts that do not result in initiation of an investigation. The log will contain the date, facility/district/unit, name of staff making contact and responding to the contact, nature of contact, and resolution of the request. The log will be maintained for a period of time in accordance with [OP-020202](#) entitled "Management of Office Records."

D. Cease and Desist Orders

Pending the completion of any investigation or disciplinary response, the facility/district/unit head may issue a cease and desist order to any employee alleged to have committed any act of harassment, discrimination and/or retaliation as defined in Section I. of this procedure. The cease and desist order will be placed in the employee's supervisory file pending substantiation of the allegations. In the event the allegations are substantiated and formal disciplinary action is issued, the order will be placed in the employee's personnel file.

If the allegations are not substantiated or warrant informal discipline, the order may be removed from the employee's supervisory file at the discretion of the facility/district/unit head.

E. Separation

Facility/district/unit heads may separate the parties to a discrimination, harassment and/or retaliation complaint. Generally, the accused party will be removed or relocated from the worksite. The General Counsel's Office will be consulted regarding any decisions that result in changes to the complainant's working environment.

F. Prevention of Retaliation or the Appearance of Retaliation

1. Current Employees

The supervisor will consult with the General Counsel's Office regarding employment decisions involving the complainant and any witnesses, including disciplinary actions and transfers.

2. Former Employees

All references will be provided in accordance with [OP-110105](#) entitled "Employee Personnel Records." Any information released will be in the form of official records only.

V. Investigating

A. Investigations into allegations of discrimination, harassment and retaliation will be conducted by a state certified discrimination complaint investigator. No determination will be made regarding whether discrimination, harassment, or retaliation has or has not occurred except by a certified discrimination complaint investigator.

B. Investigations will be initiated within two business days by establishing contact with the complainant. The investigation will be completed within a reasonable time frame.

C. Use of Recording Devices

Digital recordings will be made of all interviews. Interviewees are not allowed to use personal audio or video recorders during the interview.

D. A report of the investigation process and findings will be prepared utilizing a standardized format and may be submitted to legal for review prior to final submission to the agency director.

E. Employees are responsible for cooperating in an investigation and honoring the confidentiality of any investigation. Failure to cooperate with an investigation will be reported to the employee's chain of command to be handled in accordance with [OP-110415](#) entitled "Progressive Disciplinary Procedures." In accordance with [OP-110105](#) entitled "Employee Personnel Records" the appointing authority may determine that an employee is not eligible for rehire if the employee resigns during an investigation.

F. The agency and its supervisors/managers/directors will not discriminate or retaliate against anyone for filing a complaint or grievance, testifying or otherwise assisting or participating in an investigation, proceeding or hearing concerning an unlawful employment practice.

G. After completion of an investigation any person, except an inmate/offender, who participated, gave a statement, or was interviewed, may request to inspect the information that the individual has provided. Such request will be made in writing through the chain of command stating the purpose(s) of the request for inspection. The agency director may approve or deny the request after due consideration of the stated purpose(s).

H. Final Review

Final review is completed by the agency director or designee. The report and recording(s) action will be returned to ERRU for final closure and storage. Upon the closure of an investigation, the report and supporting material will be sealed and maintained in accordance with [OP-020202](#) entitled "Management of Office Records."

VI. Steps to Correct Behaviors

The agency will not tolerate any conduct which contributes to a work environment that is demeaning or disparaging of any employee or group of employees due to membership in any protected class listed in Section II. item A. of this procedure. The agency and its supervisors/managers will take immediate action to stop inappropriate behaviors and prevent further violations.

A. Potential Parties to Action Steps

Discrimination, harassment or unlawful retaliation by any employee of another will not be condoned or tolerated in ODOC. Any supervisory employee, employee with authority for personnel matters, or other agent or officer of ODOC who knows of or should have known that any employee of the agency is being subjected to discrimination, harassment, or retaliation must immediately act by reporting the facts to the employee rights and relations manager/civil rights administrator or the director.

1. Any employee who causes, engages in, encourages, condones, or otherwise permits discrimination, harassment, or unlawful retaliation.
2. Any supervisor or other responsible employee who fails to take action or respond appropriately to allegations of discrimination, harassment, or unlawful retaliation.
3. All employees of the affected worksite.

B. Responsive Actions

The facility/district/unit head will take immediate action necessary to reasonably ensure that such misconduct does not re-occur. Responses may include, but are not limited to:

1. Any disciplinary action, up to and including termination, which is appropriate for the severity of the misconduct, in accordance with [OP-110415](#) entitled "Progressive Disciplinary Procedures";
2. Instructive memoranda to all employees in the affected worksite, including follow-up and monitoring compliance;
3. Any other action to deter inappropriate workplace behavior;
4. Training; and/or
5. Transfer.

The Employee Rights and Relations Unit may conduct a follow-up investigation within three months following the termination of an investigation to determine whether additional harassment or retaliation has occurred. Records will be maintained to document that the follow-up investigation was conducted, along with a statement of the results.

VII. Prevention

It is the responsibility of all employees in this agency, supervisory and non-supervisory, to adhere to agency procedure and use all reasonable efforts to

further its goals and spirit. Supervisors will address workplace conflicts and inappropriate behaviors immediately and in a manner consistent with performance management and progressive discipline principles.

A. Mediation

Any supervisor or party to workplace conflict may request mediation in accordance with [OP-110205](#) entitled "Employee Grievance Resolution Procedures." Mediation services are available to resolve disputes outside of and during each step of the grievance process. The mediation request form is located in [OP-110205](#), [Attachment A](#) entitled "Oklahoma Department of Corrections Grievance Form."

B. Training

All ODOC employees and supervisors will receive training regarding equal employment opportunity issues during orientation and annually thereafter. Courses will include Sexual Harassment and Cultural Diversity/Awareness.

C. Awareness

All employees will ensure awareness through enforcement of federal and state laws and agency procedure; modeling respectful behaviors in accordance with [OP-110215](#) entitled "Rules Concerning the Individual Conduct of Employees", encouraging attendance at additional training opportunities and enforcing the agency's anti-discrimination policy at all times.

VIII. Disciplinary Action

Any employee who violated this procedure by engaging in conduct that constitutes discrimination, harassment, bullying, or retaliation will be subject to disciplinary action up to and including termination in accordance with [OP-110415](#) entitled "Progressive Disciplinary Procedures." Disciplinary measures may also be imposed upon:

- A. Anyone in a supervisory or management capacity who had knowledge of discriminatory conduct and failed to report the knowledge or take corrective action;
- B. Anyone who interferes with the resolution of a complaint by threats, intimidation, retaliation or reprisal; or
- C. Anyone who files a frivolous complaint or one that is initiated in bad faith.

IX. References

Policy Statement No. P-110100 entitled "Uniform Personnel Standards"

OP-020202 entitled "Management of Office Records"

OP-030601 entitled "Oklahoma Prison Rape Elimination Act"

OP-110105 entitled "Employee Personnel Records"

OP-110205 entitled "Employee Grievance Resolution Procedures"

OP-110214 entitled "Workplace Violence"

OP-110215 entitled "Rules Concerning the Individual Conduct of Employees"

OP-110218 entitled "Employee Medical Exams/Inquiries and Records"

OP-110235 entitled "Hiring and Promotional Procedures"

OP-110415 entitled "Progressive Disciplinary Procedures"

Age Discrimination in Employment Act of 1967 (ADEA), Public Law 90-202

Americans with Disabilities Act of 1990 (ADA), Public Law 101-336

Americans with Disabilities Act, as Amended (ADAAA), Public Law 110-325

Equal Pay Act of 1963 (EPA), Public Law 88-38

Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), Public Law 110-233

Title VII of the Civil Rights Act of 1964, Public Law 88-352

Pregnancy Discrimination Act (PDA), Public Law 95-555

74 O.S. § 840-2.9 and 954

25 O.S. §1301, et seq.

Merit Rule 260:25-3-2 and 260:25-3-3

X. Action

The agency director is responsible for compliance with this procedure.

The director of Employee Rights and Relations is responsible for the annual review and revisions.

Any exception to this procedure will require prior written approval from the agency director.

This procedure is effective as indicated.

Replaced: Operations Memorandum No. OP-110410 entitled "Prohibited Discrimination, Harassment and Retaliation" dated October 21, 2016

Distribution: Policy and Operations Manual
Agency Website

<u>Referenced Attachments</u>	<u>Title</u>	<u>Location</u>
Attachment A	"ODOC Grievance Resolution Form"	OP-110205