

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

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# Non-Tolerance of Sexual Harassment

Policy and Procedure No.: 1026-105

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1.0 **Title:** Non-Tolerance of Sexual Harassment

2.0 **Conditions:**

This policy and procedure applies to all employees of the Executive Branch of the Commonwealth Government and other activities that obtain personnel servicing from the Office of Personnel Management.

3.0 **Statement of Purpose:**

This policy and procedure will establish the Commonwealth Government's policy of non-tolerance of sexual harassment of any form, by its employees, toward its employees, or by non-governmental agents against the Government's clients or employees. It will also provide guidance for the education and training of employees to recognize, avoid and prevent sexual harassment in the workplace. This policy and procedure will provide steps for reporting, investigating and taking administrative action in situations involving sexual harassment.

4.0 **Definitions:**

4.1 Sexual harassment is an unwelcome sexual advance, request for sexual favors or other verbal or physical conduct of a sexual nature. Sexual harassment occurs when:

- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or
- submission or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individual, or
- such conduct has the purposed or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

4.2 Sexual harassment can be divided into two basic types of misconduct:

4.2.1 When an employee suffers or is threatened with a "quid pro quo (this for that)" situation. This form of sexual harassment occurs when a supervisor or

someone else with authority over the victim makes a "put out or get out" demand, such as "submit to my sexual requests or you will be fired, demoted, passed over for promotion, or in some other way made miserable on the job." This type of sexual harassment can be committed only by someone in the organization structure who has the power to control the victim's job destiny.

4.2.2 When behavior in the workplace creates a hostile environment. This form of sexual harassment occurs when a supervisor, co-worker, or someone else with whom the victim comes into contact on the job creates an abusive work environment or interferes with the employee's work performance through words or deeds *because of the victim's gender*. The following kinds of behavior have been recognized by the courts as contributing to a sexually hostile environment:

- discussing sexual activities;
- telling off-color jokes;
- unnecessary touching
- commenting on physical attributes;
- displaying sexually suggestive pictures;
- using demeaning or inappropriate terms, such as "babe," "honey," etc.;
- using indecent gestures;
- sabotaging the victim's work;
- engaging in hostile physical conduct;
- granting job favors to those who participate in consensual sexual activity; or
- using crude and offensive language.
- wearing provocative, sensual attire, i.e. tight, skimpy, short-length, etc.

The above listed behaviors can create a liability for the Government and any such conduct must be addressed and corrected at its earliest stage before it becomes severe or pervasive.

A workplace environment is considered sexually hostile when conduct occurs that meets the following two conditions:

- (1) it must be subjectively perceived as abusive by the person(s) affected, and
- (2) it must be objectively severe or pervasive enough to create a work environment that a reasonable person would find hostile or abusive.



4.2.3 A determination of whether or not a situation would be construed as sexual harassment should also take into consideration the following factors:

- The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex;
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker or a non-employee;
- The victim does not have to be the person harassed, but could be anyone affected by the offensive conduct;
- Unlawful sexual harassment may occur without economic injury to the victim;
- The harasser's conduct must be unwelcome.

4.3 Sexual discrimination is distinguished from sexual harassment in that it reflects biases in employment actions based upon gender, but does not involve the abusive behavior described in Section 4.2 above.

## 5.0 Policy:

- 5.1 It is the policy of the Commonwealth Government that all employees shall enjoy a work environment free from sexual harassment and all forms of discrimination. Sexual harassment is illegal, under Title VII of the Civil Rights Act of 1964, as amended and as implemented by 29 CFR 1604.11 and is prohibited under Part V.F1 (revised numbering per November 15, 1997-amendments) of the *Personnel Service System Rules and Regulations* and Part II.10 of the *Excepted Service Personnel Regulations*.
- 5.2 Sexual harassment is specifically prohibited and will not be tolerated in any form, regardless of whether the offensive conduct is committed by supervisors, managers, non-supervisors (co-workers) or non-employees (consultants, contractors, general public).
- 5.3 All employees are encouraged to report any violation of this policy. If Management is not aware of specific incidents of sexual harassment in the workplace it cannot properly address them. If you observe or are subjected to sexually discriminatory or harassing behavior in the workplace, report it immediately to the departmental EEO counselor or coordinator so it can be resolved at the earliest possible time. Employees will not be retaliated against for making truthful statements about perceived harassment.
- 5.4 No employee will be denied or will receive employment opportunities and/or benefits because of a sexual relationship between a co-worker or supervisor. No employee or non-employee shall imply to an employee, an applicant for employment, or a client of

a government activity, that conduct of a sexual nature will have an effect on that person's employment, assignment, advancement, other condition of employment, or any other relationship with the Government. Any incidents of this type, upon verification by investigation, will be subject to disciplinary and corrective action.

- 5.5 Supervisors, by law, are responsible for the occurrence of acts of sexual harassment in the work place when they know or should have known of the prohibited conduct. As an official of the Commonwealth government, a supervisor's improper action or failure to act creates a liability on the part of the Government. All incidents of sexual harassment will be immediately reported to the Equal Employment Opportunity Coordinator, Division Director or Department Head for guidance. Supervisors and managers who knowingly allow harassing behavior to occur, or participate in such behavior, will be subject to disciplinary action.
- 5.6 The Director of Personnel, as the Deputy Commonwealth Equal Employment Officer, will be immediately informed by all Department and Activity Heads of any incident of sexual harassment reported within their organization, or of any charges received from the Equal Employment Opportunity Commission (EEOC).
- 5.7 The Director of Personnel will ensure that all sexual harassment complaints receive swift and thorough investigations. Appropriate action will be taken in situations where the complaint is validated to correct the situation and appropriately discipline the harasser. Complaints determined to be deliberate false accusations will also be treated as potential disciplinary situations. Situations where the victim requests that no investigation be conducted or action taken must also be investigated and acted upon to avoid future liability and to effect consistent enforcement of the Commonwealth's policy of non-tolerance for sexual harassment.
- 5.8 Complaints of sexual harassment should be filed immediately upon occurrence to facilitate a timely response to minimize the time that an employee would be subjected to such treatment. However, per EEOC statutes complaints may be filed anytime within one-hundred and eighty days of an incident's occurrence.
- 5.9 Incidents of harassment due to an employee's sexual orientation, while not covered by law as an Equal Employment Opportunity violation, is a violation of the Commonwealth's policy of ensuring that every employee is provided with a work environment that is safe, non-threatening and non-discriminatory. Incidents of this nature comprise misconduct and will be subject to disciplinary action.
- 5.10 The hiring of an employee with a known history of sexual harassment or misconduct could result in Government liability for negligent hiring. No applicant for employment with such a history will be employed without a complete background investigation and the specific approval of the Director of Personnel.



- 5.11 Each Appointing Authority is required to distribute this policy to every employee under his or her authority and to ensure that this policy is posted in an accessible location at all times.
- 5.12 All supervisors will be provided training on identifying and preventing sexual harassment in the workplace. They will also receive training on how to conduct a limited administrative investigation and the reporting procedures for allegations of harassment.

6.0 **Procedures:**

- 6.1 Any government official who is aware of an incident or situation involving sexual harassment must report it immediately to his or her Equal Employment Opportunity Coordinator, Division Director, Department Head or Appointing Authority. The Commonwealth government has legal liability for any action where a government official subjects an employee to sexual harassment, or is aware that an employee subjects another employee to sexual harassment and fails to take corrective action.
- 6.2 Any employee who is personally subjected to sexual harassment, or is aware that other employees are being subjected to sexual harassment, should report the incident or situation **immediately** to his or her departmental Equal Employment Opportunity Coordinator, Division Director or Department Head/Appointing Authority. If the employee does not feel comfortable bringing it to the attention of any of these parties, or the Division Director or Department Head are somehow involved in the harassment, he or she should **immediately** contact the Commonwealth Equal Employment Coordinator at the Office of Personnel Management, or the Director of Personnel directly. The initial contact does not have to be in writing.
- 6.3 If the sexual harassment incident involves a physical assault, such as rape, attempted rape, assault or other actions involving physical contact, either the employee or the official who becomes aware of the incident should report it **immediately** to the Department of Public Safety for **immediate** processing and investigation. Any physical evidence should not be disturbed until the arrival of the Department of Public Safety.
- 6.4 All incidents of alleged sexual harassment must be immediately reported to the Commonwealth Equal Employment Opportunity Coordinator at the Office of Personnel Management or to directly to the Director of Personnel as soon as the Department Head/Appointing Authority, or other senior official in case of the Department Head's/Appointing Authority's unavailability, becomes aware of it. The complaining employee should be interviewed by the departmental Equal Employment Coordinator, Legal Counsel, Division Director, or the Department Head/Appointing Authority to determine the basic facts of the allegation. The

Director of Personnel or the Commonwealth Equal Employment Opportunity Coordinator will then be consulted to determine if the investigation will be conducted at the departmental level or if an outside investigator will be appointed.

- 6.5 Due to the potential legal liabilities resulting from sexual harassment situations, the Director of Personnel will assume responsibility for the investigation and assign the investigating official (selected EEO official, manager or legal counsel) or unit (Office of the Attorney General or Department of Public Safety).
- 6.6 All allegations of sexual harassment from employees or perceptions of sexual harassment from third parties or management staff will be reported to the Director of Personnel and will be investigated. Those situations where the victim requests that no investigation be conducted or action taken must also be investigated and acted upon to avoid future liability and to effect consistent enforcement of the Commonwealth's policy of non-tolerance for sexual harassment.
- 6.7 The department(s) involved in the complaint and the official or unit appointed to conduct the investigation will cooperate fully with the Office of Personnel Management in the process of investigating, reporting and resolving the complaint.
- 6.8 The department(s) involved in the complaint and the Office of Personnel Management will ensure that no retaliation is taken against the complainant or any witnesses by the alleged harasser or by any other employees.
- 6.9 In the process of investigating the complaint, the following guidance will be followed at all times:
  - 6.9.1 All complaints will be taken seriously.
  - 6.9.2 Guilt should not be presumed on either party. The rights of both parties must be protected.
  - 6.9.3 Both parties should be afforded the opportunity to state their side.
  - 6.9.4 Confidentiality must be maintained at all times.
- 6.10 An administrative investigation will be completed as expeditiously as possible. The final report will be delivered to the Director of Personnel in the following format:

Summary of Incident  
Findings of Fact  
Discussion



Conclusions  
Recommendations

- 6.11 The Director of Personnel will review the investigative report to ensure that the facts support the conclusions and that the recommendations are reasonable and consistent with the Commonwealth's disciplinary policy. The Office of the Attorney General will be consulted to ensure that the resolution is legally appropriate.
- 6.12 The Director of Personnel will forward the final report to the Department Head or Appointing Authority with the Office of Personnel Management's recommendations for the resolution of the complaint.
- 6.13 Depending upon the severity of the incident of sexual harassment, the resolution of the situation could involve the following administrative actions:

Conference/Counseling  
Oral or Written Warning  
Letter of Reprimand  
Suspension  
Demotion  
Termination

Any administrative actions are separate from and not contingent upon any civil or criminal court actions.

- 6.14 The Department Head or Appointing Authority will resolve the complaint/grievance based upon the investigation and the recommendation of the Office of Personnel Management. If the Department Head or Appointing Authority disagrees with the recommended resolution, he or she must immediately meet with the Director of Personnel to resolve their differences. If both parties cannot reach agreement, the case will immediately be brought before the Governor for a final decision.
- 6.15 Either the complainant or the respondent, if Civil Service, may appeal the final resolution to the Civil Service Commission, not later than fifteen (15) days after receiving notice of the final resolution. If the complainant or the respondent are Excepted Service employees and are not gubernatorial or Mayoral appointees, they may appeal the final resolution to the Director of Personnel, not later than fifteen (15) days after receiving notice of the final resolution. Complainants or the respondents who are gubernatorial or Mayoral appointees may formally request in writing for the Appointing Authority to review the decision in their case, but final resolutions approved by the Governor or Mayors on cases involving their respective appointees are not subject to appeal.



- 6.16 The Civil Service Commission or the Director of Personnel, as appropriate, will conduct a hearing on the appeal and make a final decision on the matter.
- 6.17 Incidents or situations of sexual discrimination that do not involve acts of harassment will be processed through the normal grievance procedure utilized for other Equal Employment Opportunity complaints.

**7.0 Records and Reports:**

- 7.1 The Office of Personnel Management will maintain records of all allegations of sexual harassment to include copies of investigative reports.
- 7.2 Records of on-going investigations will be kept in a confidential file separate from Official Personnel Folder. Upon resolution of the complaint, appropriate records of the resolution or disciplinary action will be placed in the appropriate Official Personnel Folder.
- 7.3 The Office of Personnel Management will report to the Governor annually in its Annual Personnel Report on the number of sexual harassment cases and their resolution.

**8.0 Responsibilities:**

- 8.1 **All Employees** will be familiar with the Commonwealth's Equal Employment Opportunity and Non-Tolerance of Sexual Harassment Policies and will comply with these policies to create a safe, non-threatening and non-discriminatory workplace.
- 8.2 **All Supervisors, Managers and Directors** will develop and maintain a work environment that is safe, non-threatening and non-discriminatory. They will ensure that all employees know that sexual harassment will not be tolerated and will ensure that any incident of sexual harassment is reported as directed by this policy.
- 8.3 **All Equal Employment Program Counselors** must be knowledgeable concerning Equal Employment Opportunity laws, regulations and policies, both federal and Commonwealth and will strive to remain up-to-date on current EEO trends and activities. They will make themselves readily available to listen to EEO-related complaints in their department or activity and provide counseling and assistance to affected employees. They will coordinate with the department/activity EEO Coordinator.
- 8.4 **All Department/Activity Equal Employment Coordinators** must be knowledgeable concerning Equal Employment Opportunity laws, regulations and policies, both federal and Commonwealth and will strive to remain up-to-date on current EEO

trends and activities. The Coordinators will provide EEO expertise and assistance to the department/activity EEO Counselors and management staff. They will coordinate with the Commonwealth EEO Coordinator.

- 8.5 **All Department or Activity Heads**, as activity Equal Employment Officers, will issue an Equal Employment Opportunity policy statement and establish a departmental Equal Employment Opportunity Program that includes a policy of non-tolerance of sexual harassment. They will hold their supervisors, managers and directors accountable for developing and maintaining a work environment that is safe, non-threatening and non-discriminatory. They will enforce the Commonwealth's policy of non-tolerance of sexual harassment and take reasonable and consistent action in resolution of any sexual harassment situation.
- 8.6 **The Director of Personnel**, as the Deputy Equal Employment Officer for the Commonwealth, will ensure the development and maintenance of a viable Commonwealth-wide Equal Employment Opportunity Program that includes training at all levels in prevention and resolution of sexual harassment situations. The Director of Personnel will initiate administrative investigations for all allegations of sexual harassment and will ensure their appropriate resolution in accordance with this policy and procedure.
- 8.7 **The Governor**, as the Equal Employment Officer for the Commonwealth, will establish and promote a policy of non-tolerance of sexual harassment in any form. The Governor will hold all Department and Activity Heads accountable for their active support of the Commonwealth's Equal Employment Opportunity and non-tolerance of sexual harassment policies, and for their fulfillment of the responsibilities assigned in this policy and procedure.

9.0 **Equal Employment Opportunity Commission:**

If an employee's sexual harassment complaint is not acted upon to his or her satisfaction, the employee has the option of filing a complaint with the Equal Employment Opportunity Commission (EEOC). Complainants also have the option of filing their complaint directly with the EEOC. It should be noted that there is a statutory limitation of 180 days from the harassing/discriminatory incident during which the complaint may be filed. The EEOC in Hawaii is located at:

300 Ala Moana Blvd.  
Room 7123A  
Box 50082  
Honolulu, Hawaii, 96850  
(808) 541-3120



The EEOC in San Francisco, California, is located at:

**901 Market Street  
Suite 500  
San Francisco, California, 94103  
(415) 356-5100**

Although the Commonwealth government would like to resolve all complaints through its administrative processes, employees will not be subjected to any retaliatory actions for filing a complaint with the Equal Employment Opportunity Commission.

**10. Effectivity:**

This policy and procedure is effective upon issuance.