UNDERSTANDING UNLAWFUL WORKPLACE HARASSMENT

A REFERENCE for SUPERVISORS

NC OFFICE OF STATE HUMAN RESOURCES | 2018
NORTH CAROLINA
UNLAWFUL
WORKPLACE
HARASSMENT
POLICY
OVERVIEW

All employees have the right to work in an environment free from discrimination and harassing conduct. No State employee shall engage in conduct that falls under the definition of unlawful workplace harassment, including sexual harassment, or retaliation, and no employment decisions shall be made on the basis of race, sex, religion, national origin, age, color, disability, genetic information or political affiliation.

The purpose of this policy is to establish that the State of North Carolina prohibits any form of unlawful workplace harassment or retaliation based on opposition to unlawful workplace harassment of State employees or applicants and to require that every agency develop strategies to ensure that work sites are free from unlawful workplace harassment, including sexual harassment, and retaliation.
DEFINITIONS of HARASSMENT

“Unlawful Workplace Harassment” is unsolicited and unwelcomed speech or conduct based upon race, sex, religion, national origin, age, color, disability, genetic information or political affiliation where: 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

“Sexual Harassment” on the basis of sex is a particular type of violation of the unlawful workplace harassment policy, and in addition to the previous definition of unlawful workplace harassment, the unlawful workplace harassment policy prohibits the following: “Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment 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 by an individual 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 working environment.”

Examples of hostile work environment include:
- Unwelcome or unsolicited touching, contact or sexual advances
- Offensive jokes, stories or epithets
- Abusive behavior including physical threats
- Offensive drawings, pictures or objects
There are two basic types of unlawful workplace harassment: harassment that results in a “tangible employment action” (also referred to as “Quid Pro Quo”) and “hostile environment” harassment.

1) Tangible Employment Action (Quid Pro Quo)
An employer is always liable for harassment by a supervisor on a prohibited basis that culminates in a tangible employment action.

What is a Tangible Employment Action?
A tangible employment action is a significant change in employment status. Tangible employment actions are the means by which the supervisor brings the official power of the agency or university to impact subordinate employees.

TIP
REMEMBER: Harassment and Tangible Employment Action = Automatic Liability
Examples of tangible employment actions include:

- failure to hire
- promotion and/or failure to promote
- demotion or discharge
- undesirable reassignment
- a decision causing a significant change in benefits
- compensation decisions
- changes in work assignment

2) Hostile Work Environment
Hostile work environment harassment is a situation in which the employer (a supervisor, manager or co-worker) does or says things that unreasonably interfere with an individual's work performance or creates an intimidating, hostile or offensive work environment based on race, color, sex, religion, national origin, age, disability, genetic information or political affiliation. Hostile environment harassment does not need to include a demand for an exchange of favors for a job benefit.

Negative Impacts of Harassment:
- Harassment is always wrong, even if it is not unlawful
- Harassment causes harm to the targeted person and to co-workers
- Harassment can result in a direct financial cost to the employer
WHY WOULD an EMPLOYEE be CONCERNED ABOUT REPORTING HARASSMENT?

*Employees may hesitate to file a complaint of harassment because of concerns about:*

- Humiliation
- Damage to Reputation
- Damage to Career
- Blame
- Disbelief

**OR**

- Fear of Retaliation:

  *Retaliation is the most frequently alleged basis of discrimination. The LAW prohibits retaliation.*

  Retaliation is any adverse action taken against an individual for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit related to discriminatory employment practices based on race, religion, color, national origin, sex, age, disability, genetic information or political affiliation or because of opposition to employment practices in violation of the unlawful workplace harassment policy.

*What can Supervisors do to avoid retaliation?*

- Avoid publicly discussing their allegation
- Be mindful not to isolate the charging employee
- Avoid reactive decisions concerning the employee
- Do not interfere with the investigative process

**TIP**

Retaliation laws are NOT a shield for poor performance or employee misconduct.
Prevention is the best tool to eliminate harassment in the workplace. It is important for supervisors to establish, publicize, and enforce anti-harassment policies and complaint procedures. How you handle the complaint has a major effect upon how the organization's policies on harassment are viewed and accepted by the employees. Even more importantly, how you handle the complaint has a major effect on the person who has alleged the harassment. Here are some helpful steps to take when handling a complaint:

- Consult with the appropriate Human Resource representative and/or EEO officer in your agency or department
- Adhere to all Federal and State laws, and Agency Policies
- Enforce, widely post, and disseminate a “No Tolerance” Policy - the policy is applicable to contractors, members of the public, vendors, etc.
- Create multiple paths in the complaint process
- Investigate complaints promptly and objectively
- Take appropriate remedial action to prevent a reoccurrence
- Ensure that retaliation does not occur
QUESTIONS/ASSISTANCE

If you have any questions on unlawful workplace harassment, please contact your agency EEO Officer and/or someone in your agency HR Office who can address your questions and concerns regarding the Unlawful Workplace Harassment Policy and procedures. The OSHR website has a link (www.oshr______________) provides the names of contacts in your agency.

While you are not required to contact your agency HR Office/EEO Office prior to filing a complaint or grievance and/or contacting the EEOC, many employees prefer to do this prior to filing a formal grievance. Please also note that while policy requires that a complaint within 15 days of the alleged harassing action you may contact your agency HR Office/EEO Office at any time even if this 15 days has expired.