

Unlawful Workplace Harassment

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Purpose

The purpose of this policy is to establish that the State of North Carolina prohibits unlawful workplace harassment of State employees, and to require that every agency subject to the Human Resources Act establish policies and programs to ensure that work sites are free from unlawful workplace harassment. This policy also prohibits retaliation against employees.

Policy

The policy of the State of North Carolina is that no State employee may engage in conduct that falls under the definition of unlawful workplace harassment indicated below. All employees are guaranteed the right to work in an environment free from unlawful workplace harassment and retaliation.

Definitions

<p>Unlawful Workplace Harassment is unwelcome or unsolicited speech or conduct based upon race, sex, creed, religion, national origin, age, genetic information, color, or handicapping condition as defined by G.S. 168A-3 that creates a hostile work environment or circumstances involving quid pro quo.</p>

<p>Hostile Work Environment is one that both a reasonable person would find hostile or abusive and one that the particular person who is the object of the harassment perceives to be hostile or abusive. Hostile work environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance.</p>
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<p>Quid Pro Quo harassment consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when (1) submission to such conduct is made</p>
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either explicitly or implicitly a term or condition of an individual's employment, or (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

Retaliation is adverse treatment which occurs because of opposition to unlawful workplace harassment.

Advisory Notes:

1. Sexual Harassment does not include personal compliments welcomed by the recipient, or social interaction or relationships freely entered into by State employees or prOSHRective employees.
2. The U.S. Supreme Court recently held "that nothing in Title VII necessarily bars a claim of discrimination 'because of ... sex' merely because the grievant and the alleged harasser "are of the same sex".
3. Hostile includes offensive, aggressive, antagonistic, belligerent, and/or contentious behavior involving unlawful workplace harassment based on age, sex, race, color, national origin, religion, creed, genetic information or handicapping condition as defined by G.S. 168A-3. A hostile work environment is determined by looking at the following: 1) whether the environment is objectively offensive in the eyes of a reasonable person, 2) whether the environment is subjectively offensive in the eyes of the person who is the object of the alleged harassment, and 3) the nature of the alleged hostility.
4. Conduct towards an outside vendor or contractor that would constitute unlawful workplace harassment toward an employee could constitute unacceptable personal conduct.
5. Examples of quid pro quo unlawful workplace harassment include:
 - A supervisor promises an employee a promotion if the employee acquiesces to sexual advances.
 - A supervisor begins each staff meeting with a prayer session conducted by a Christian minister. A Jewish employee refuses to participate in the prayer session and is terminated because of this refusal.

Coverage

Former employee, full-time or part-time employee with either a permanent, probationary, trainee, time-limited permanent or temporary appointment.

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Advisory Note: While applicants are not covered under the State statute (SB78), they are covered under other State and Federal Civil Rights Acts including Title VII, the Americans with Disabilities Act (ADA), the Age Discrimination in Employment Act (ADEA), and the Genetic Information Nondiscrimination Act of 2008 (GINA).

Grievance Procedure and Appeals

1. Grievant must submit a written complaint to the employing agency within 30 calendar days of the alleged harassing action.
 2. Employing agency shall take appropriate remedial action within 60 calendar days from receipt of written complaint unless the employing agency has waived the 60-day period, and grievant has acknowledged such waiver. The waiver and acknowledgement shall be in writing.
 3. The employing agency shall provide a written response to the grievant when the agency has determined what action, if any, will result from the written complaint of the grievant. Agency grievance procedures shall include this responsibility.
 4. After the agency's 60 calendar day (or less, if waived) response period has expired, the grievant may appeal directly to the Office of Administrative Hearings within 30 calendar days if not satisfied with the agency's response to complaint.
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Advisory Notes

1. A grievant has a right to file a simultaneous complaint under Title VII with the Equal Employment Opportunity Commission (EEOC).
2. An individual with a grievance concerning a denial of employment, promotion, training, or transfer, or concerning a demotion, layoff, transfer or termination due to discrimination based on age, sex, race, color, national origin, religion, creed, political affiliation or handicapping condition as defined by G.S. 168A-3, or a grievance based on retaliation for opposition to alleged discrimination may still appeal directly to the Office of Administrative Hearings. Grievances based on genetic information can only be appealed through an agency/university internal grievance procedure or directly to the Equal Employment Opportunity Commission (EEOC).

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Reporting

Each agency is required to maintain and report unlawful workplace harassment complaints through established grievance reporting mechanisms in the BEACON reporting system or equivalent HR data collection system.

In addition, if an unlawful workplace harassment complaint is settled between the grievant and the employing agency, the agency shall report to the Commission what disciplinary action and/or remedial action, if any, was taken by the agency. Disciplinary action, if appropriate, can be up to and including dismissal.

The Commission may order the Office of State Human Resources to conduct an investigation into the sufficiency of the agency's actions in any unlawful workplace harassment complaint. The Office of State Human Resources will report to the Commission the conclusion(s) of the investigation and, if appropriate, may then report the Office of State Human Resources' findings with regard to the disciplinary action and/or remedial action to the agency head.

Prevention Plan

Each agency head or university chancellor shall develop an unlawful workplace harassment prevention plan or policies and procedures to comply with and implement the law and rules pertaining to unlawful workplace harassment. The workplace harassment prevention plan or policies and procedures shall be submitted as part of the agency's Equal Employment Opportunity (EEO) plan.

The plan shall set forth the steps to prevent and correct unlawful workplace harassment. Each unlawful workplace harassment plan shall, at the minimum, include:

1. A policy statement, signed by the agency head or university chancellor, establishing that unlawful workplace harassment or retaliation against employees is prohibited;
2. A process for disseminating to new and existing employees the unlawful workplace harassment policy of the agency;

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3. A statement that the agency will, in allegations of unlawful workplace harassment, review the totality of the circumstances, to determine whether the alleged conduct constitutes unlawful workplace harassment;
 4. Establishment of internal procedures to handle complaints of unlawful workplace harassment. These procedures shall provide for: (a) written complaint from employee to agency, (b) grievant right to bypass any step in the applicable agency procedure involving review of or decisions by the alleged harasser, (c) agency response with remedial action and notification to grievant within 60 calendar days (or less if waived) of receipt of written complaint or written waiver of 60-day period and acknowledgement thereof, (d) a clause detailing the prohibition against retaliation, and (e) a clause detailing an employee's concurrent right to appeal to the Equal Employment Opportunity Commission (EEOC);
 5. Training and other methods to prevent unlawful workplace harassment;
 6. Method for implementing appropriate disciplinary actions to address unlawful workplace harassment and to assure that disciplinary actions shall be consistently and fairly applied; and
 7. Prohibition of internal interference, coercion, restraint, retaliation, or reprisal against any person complaining of alleged unlawful workplace harassment.
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