

State of Nevada Executive Branch

SEX- AND GENDER-BASED ~~UAL~~ HARASSMENT AND DISCRIMINATION POLICY

Sex- and gender-based~~ual~~ harassment and discrimination based on race, color, national origin, religion, sex, age, disability, pregnancy, sexual orientation, genetic information, gender identity or expression, domestic relations¹ or compensation or wages² in any term, condition or privilege of employment are violations of State and/or federal law.

I. PURPOSE

The purpose of this Policy statement regarding ~~sexual~~ sex- and gender-based harassment and discrimination is to clearly express the position of the State of Nevada that all employees have the right to work in an environment free from all forms of discrimination and conduct which can be considered harassing, coercive or disruptive.

~~Sex- and gender-based Sexual~~ harassment and discrimination are forms of misconduct that undermine the integrity of the employment relationship. No employee, ~~either male or female~~, should be subjected to unsolicited and unwelcomed sexual overtures or conduct, either verbal, written (including digital media, i.e., email, text or digital photos or graphics) or ~~physical~~. ~~No employee should be subjected to physically or verbally harassing behavior—sexual, gendered, or neutral—because of that employee's sex, sexual orientation, gender identity, or expression.~~ No employee should experience discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other ~~terms, conditions, or privileges aspects~~ of employment. Sex- and gender-based~~ual~~ harassment and discrimination are personally offensive, debilitate morale, and, therefore, interfere with work effectiveness. An employee who engages in discriminatory behavior, or behavior that constitutes sex- ~~or gender-based~~ harassment, may be subject to disciplinary action up to and including dismissal.

II. COVERAGE

This Policy is intended to be applicable to all State employees, officers, appointees such as board members, and volunteers in the executive branch of government. All elected officers are encouraged to adopt this Policy within their agencies.

Commented [AM1]: The EEOC recommends that the policy not only include sexual harassment and sex- and gender-based discrimination but also a policy against harassment based on other protected characteristics such as race, age, and disability. I don't know whether that would be beyond the jurisdiction of this Task Force, but I wanted to mention it. See EEOC Task Force, at 43. If it isn't in this policy, there should be another one.

Commented [AM2]: I have changed this because it is more accurate legally. Please see my memo for explanation.

Commented [AM3]: This statement assumes that the only type of harassment is sexual so I added a sentence. Please see my memo.

Commented [AM4]: I changed this language to use the statutory language. It is more accurate.

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¹ AB 229 (2017); AB 227 (2017).

² NRS 613.330.

III. RESPONSIBILITY

- A. Sex- ~~and gender-based~~ harassment and discrimination, whether committed by a supervisor, coworker, or member of the public is specifically prohibited as unlawful and against State policy. Appointing authorities are responsible for taking immediate and corrective action in response to complaints, regardless of whether the specific acts complained of were sanctioned or specifically forbidden. Appointing authorities must be proactive to prevent sex- or gender-based harassment. They are responsible in some cases even if they do not know of the harassment, and even if they do know, and regardless of the manner in which the appointing authority becomes aware of the conduct.
- B. Appointing authorities must ensure that each employee is provided with a copy of this Policy informing them that sex- ~~and gender-based~~ harassment and discrimination are prohibited conduct and will not be tolerated or condoned. All employees will acknowledge receipt and understanding of the Policy through a signed statement.
- C. All new employees, officers, appointees, board members and volunteers in the executive branch shall attend sex- ~~and gender-based~~ harassment and discrimination prevention training within six months of their appointment. Thereafter, employees are required to complete sex- ~~and gender-based~~ harassment prevention refresher training once every two years.
- D. Managers and supervisors are also required to attend additional training related to equal employment opportunity within 12 months of supervisory appointment and every three years thereafter.
- E. Appointing authorities shall advise all employees of their responsibility to report incidents of sex- ~~and gender-based~~ harassment and discrimination.
- F. Appointing authorities shall designate employees within each agency to act as coordinators for the reporting of complaints of sex- and gender-based ~~sexual~~ harassment or discrimination and will

Commented [AM5]: I could not judge whether "appointing authorities" is the proper term because I am not sure what it means under Nevada law. Generally, the State will be liable, not the individuals, but this may not mean legal liability but what the individual employees are responsible to do as employees. I think we should clarify the terms "appointing authorities" and/or "responsible."

Commented [AM6]: If this is referring to legal liability, this in the original was not an accurate statement of the law because there is some vicarious strict liability and some liability based on knowledge or constructive knowledge.

Commented [AM7]: Again, I'm not sure of the meaning of this term.

Commented [AM8]: Same

Commented [AM9]: I think one of the Task Force members mentioned that we should require this sooner. I agree if that is possible. 6 months is a long time.

Commented [AM10]: There is nothing in the policy that regulates the quality of training. The research demonstrates that most of the training is not effective to prevent harassment. I don't know if in this document we would want to describe the types of training that should be done (or the research necessary to figure that out – please see my memo), but I wanted to put us all on alert about this issue.

Commented [AM11]: This is more general than "sexual harassment" or "sex- and gender-based harassment." Is that intentional? Would a more general EEO training be sufficient even if it does not focus on sex or gender-based harassment? Also, who does this training. Who decides what training to use?

Commented [AM12]: This is a very long time. I think this needs to be shorter. The EEOC Task Force explained that whether these programs work depends largely on commitment from the top.

Commented [AM13]: Again, meaning?

Commented [AM14]: same

Commented [AM15]: The EEOC Task Force and all other sources repeatedly state that there must be multiple avenues of reporting. One coordinator in a particular agency, etc. would only be sufficient if there are various persons to whom the victims can make the reports and those persons must report to the coordinators. The methods of reporting, to whom, phone numbers, anonymous hotlines, etc. should be detailed in the policies and the trainings. Moreover, we should consider whether the Executive Branch should create informal mechanisms of reporting as the 9th Circuit and other federal courts have found necessary. Those informal mechanisms, which I discuss in my memo, are not a trigger for an investigation, but rather a way to report and resolve problems before they become too serious.

notify employees and the Sexual Harassment/Discrimination Investigation Unit of the coordinator's name and contact information.

- G. Supervisors shall have a complete understanding of this Policy. Supervisors who willfully disregard incidents of sex- ~~or gender-based~~ harassment or discrimination by subordinates may be subject to discipline. Supervisors are responsible for ensuring their employees have received training as outlined in this Policy.
- H. It is the responsibility of appointing authorities to make sure their agencies are in full compliance with this Policy and associated legal guidelines.

Commented [AM16]: All the research shows that supervisors should be held accountable as this section does, but I think a different approach might be useful. For example, instead of saying supervisors will be subject to discipline, which they should be, it might be better to assure that the annual review has a special section in which supervisors are judged for their compliance in this area. Create an incentive rather than a fear of punishment.

IV. STATE EMPLOYEES' RIGHTS AND RESPONSIBILITIES

- A. Employees are entitled to work in a workplace free of sex- ~~and gender-based~~ harassment and discrimination.
- B. Employees are responsible for ensuring they do not engage in sex- or gender-based ~~sexually~~ harassment or discrimination against any other employee, client, applicant for employment, or other individual(s).
- C. Employees are responsible for cooperating in the investigation of any complaint of alleged sex- ~~or gender-based~~ harassment or discrimination. Employees are additionally responsible for cooperating with the efforts of their agency, division, board or commission to prevent and eliminate sex- ~~and gender-based~~ harassment and discrimination and for maintaining a working environment free from such unlawful conduct. Pursuant to NAC 284.650, failure to participate in any investigation of alleged discrimination, including without limitation, an investigation of sex- ~~and gender-based~~ harassment is cause for disciplinary action.

Commented [AM17]: I just want to note that there should also be a policy forbidding harassment based on other protected characteristics – race, national origin, age, disability, etc.

V. LEGAL DEFINITIONS AND GUIDELINES

- A. NAC 284.771 specifies that sex- ~~and gender-based~~ harassment violates the policy of this State and is a form of unlawful discrimination based on sex under State and federal law. An employee shall not engage in sex- ~~or gender-based~~ harassment against another employee, an applicant for employment, or any other person in the workplace.

Sex- or gender-based harassment is a very serious disciplinary infraction. An appointing authority may impose harsh disciplinary sanctions on persons who commit sex- or gender-based harassment, even on first-time offenders.

B. Behavior that is illegal sex- or gender-based harassment includes:

1. Making submission to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature either explicitly or implicitly a term or condition of a person's employment; or

2. Making submission to or the rejection of such conduct described in (1) by a person a basis of employment decisions affecting that or any other person; or

3. Engaging in unwelcome harassing verbal or physical behavior that occurs because of sex of individual(s) and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating or offensive work environment where:

a. Harassing behavior is of a sexual nature

(E.g. A supervisor rubs his hands on his secretary's thigh repeatedly, and she tells him to stop, but he does not stop; coworkers at a lawyer's office pass rumors about Dan, a male paralegal, that he "is AC/DC," "walks swishy," and "enjoys kinky sex");

b. Harassing behavior is not sexual in nature, but it is related to sex or gender of the victim or others

(E.g. Coworkers yell at female employees who are truck drivers that female employees are "good for nothing," make jokes about how "ugly they are," and say in employee meetings that, "Women can't drive trucks. I don't know why you are here. You are taking a man's place."); or

c. Harassing behavior is sex- and gender-neutral in content but occurs because of an individual's sex or gender

(E.g. A supervisor constantly yells at his female employees, not mentioning anything about their sex or gender, but calling them "stupid" and "worth nothing." He does not yell at his male employees nearly as much or in the same way); or

d. Any combination of types of behaviors described in 3.a through c.

Commented [AM18]: I changed these definitions because the former definitions were legally underinclusive (please see my memo). We may decide to eliminate examples, but they likely make clear a definition that generally the public and the media do not understand.

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~~As used in Section 703 of Title VII of the Civil Rights Act of 1964, “sexual harassment” means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:~~

- ~~1. Submission to such conduct is made either explicitly or implicitly a term or condition of a person’s employment; or~~
- ~~2. Submission to or the rejection of such conduct by a person is used as the basis for employment decisions affecting that person; or~~
- ~~3. Such conduct has the purpose or effect of unreasonably interfering with a person’s work performance or creating an intimidating, hostile or offensive work environment.~~
~~29 C.F.R. § 1604.11.~~

- C. Equal opportunity with regard to the terms, conditions and privileges of employment is mandated under Title VII of the Civil Rights Acts of 1964, the Americans with Disabilities Act of 1990, as amended by the Americans with Disabilities Act of 2008, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, Genetic Information Nondiscrimination Act of 2008, NRS 631.330, NRS 281.370, and numerous sections of Chapter 284 of the NRS which address the State’s Personnel System.
- D. The State of Nevada is an equal opportunity employer and does not discriminate against job applicants or employees based on race, color, religion, sex, national origin, disability, age, pregnancy, sexual orientation, genetic information, gender identity or expression, domestic relations, or compensation or wages.
- E. Federal and state law prohibits ~~retaliation~~ retaliation against employees who bring ~~sex- or gender-based~~ sexual or gender-based harassment or discrimination charges or assist in investigating such charges. Any employee making ~~sex- or gender-based~~ sexual or gender-based harassment or discrimination complaints or assisting in the investigation of such a complaint will not be adversely affected in terms or conditions of employment, nor discriminated against, disciplined or discharged because of the complaint.

Commented [AM19]: I thought it was odd that the ADA was originally listed as the ADA of 2008. 2008 is the year the ADA was amended – it is not the original act. And, the other acts mentioned here have all been amended repeatedly and we don’t include the amended dates for those acts. Let me know what you think, but I would likely eliminate the “as amended” language that I put in here and keep in the original date of the Act.

VI. PROCEDURE

- A. Employee

1. Employees who believe they have been subjected to or witnessed ~~sexual~~ sex- or gender-based harassment or discrimination are encouraged to advise the person believed to have engaged in ~~sexual~~ harassment or discrimination that the conduct is unwelcome, undesirable or offensive. If the employee elects not to confront the alleged harasser or if the conduct persists after an objection, the employee shall report the incident to their supervisor or next level authority, or the employee may elect to report the incident as set forth below. Employees will be asked to complete a complaint form.
2. Employees may report incidents of ~~sexual~~ sex- or gender-based harassment or discrimination (a) to the coordinator within their agency designated to receive such complaints, or (b) by filing a complaint in NEATS on the Home Page, under Personal Tasks, "File a ~~Sex- or Gender-Based~~ Sex- or Gender-Based Harassment or Discrimination Complaint," or (c) by completing an NPD-30 ~~Sex- or Gender-Based~~ Sex- or Gender-Based Harassment or Discrimination Complaint Form located on the Division of Human Resource Management website, or (d) by calling the Division of Human Resource Management's Harassment/Discrimination Hotline at (800) 767-7381. Additionally, eEmployees are always entitled to consult an attorney or labor representative or to report the incident to the Nevada Equal Rights Commission or the Equal Employment Opportunity Commission, but failure to report internally may lead ultimately to dismissal of any legal claim brought by an individual.
3. Employees should give the completed complaint form and any supporting documentation to the coordinator designated within their agency to receive such complaints or to the assigned investigator(s).

Commented [AM20]: This does not mention that employees may make a complaint by notifying the supervisors. I think it should be the supervisors' responsibility to fill out the complaint or to assure that the employee does so. This system seems to allow a gap between oral reporting to the super and filling out a complaint. In essence, it seems to contradict the part above that allows employees to report incidents by going to the supervisor. Perhaps this should say "in the alternative" before "Employees may report..." I would suggest that instead of the last sentence above that states, "Employees will be asked to complete a complaint form" and leaving it up to the employee, it should state something like, "Supervisors will be responsible for assuring that employees complete a complaint form." (But, frankly, I am still confused about how we get from the complaint to the supervisor to this next part about how to fill out the forms. I think it needs clarification.

B. Appointing Authorities

1. After receiving notification of an employee's complaint, the appointing authority shall promptly notify the agency's assigned personnel, Deputy Attorney General or staff counsel assigned to represent the agency pursuant to State Administrative Manual § 1702 (legal counsel) and the Division of Human Resource Management's Sexual Harassment/Discrimination Investigation Unit. The agency coordinator will complete the complaint intake report and obtain a completed copy of the complaint form

Commented [AM21]: This is confusing. Does the employee have to do this in addition to making the reports mentioned in #2?

from the employee filing the complaint. The coordinator will forward a copy of the completed intake report to the agency's legal counsel and the Sexual Harassment/Discrimination Investigation Unit, along with any supporting documentation. The agency coordinator may also submit the complaint via NEATS.

2. The investigator will begin the investigation as soon as witnesses are available.
3. Investigations will be conducted as discreetly and with as little disruption to the workplace as possible. All information gathered in an investigation will be kept confidential, and the confidential nature of the investigative process will be conveyed to the complainant, the accused and each witness.
4. The investigator will prepare a written report of findings, which will be submitted to the appointing authority, the agency's legal counsel, and the agency's chief personnel officer. The ultimate decision for remedial action is the responsibility of the appointing authority; however, the investigative staff may suggest mediation services, if appropriate.
5. After the investigation has been completed, the appointing authority will review the findings and recommendations and determine the appropriate resolution of the case. If warranted, the agency, after consultation with their legal counsel, may take disciplinary action up to and including termination. The agency shall retain a written record of the findings of the investigation and the resolution of the complaint as confidential records.
6. At the conclusion of the Division of Human Resource Management's Sexual Harassment/Discrimination Investigation Unit's investigation, the Division of Human Resource Management will notify the complainant in writing that the investigation was completed and forwarded to their agency for review. The agency, in consultation with their assigned legal counsel, shall notify both the complainant and the accused in writing at the conclusion of their administrative review. A copy of the Notification letter that is sent to the complainant and/or accused must be sent to the Sexual Harassment/Discrimination Investigation Unit for its files. Additionally, the agency shall take whatever corrective

Commented [AM22]: Confidentiality is important, but I am not sure that it is always possible to keep the names of the complainants confidential. We may want to say something like "to the extent possible" here.

Commented [AM23]: What mediation services are available?

action it deems appropriate following consultation with its legal counsel. Corrective action that involves discipline of the accused is confidential pursuant to NAC 284.718 and must not be disclosed except as authorized pursuant to NAC 284.726.

C. Complaint Submitted Through the Hotline

1. When an employee transmits a complaint of sexual harassment or discrimination through the State hotline, the Sexual Harassment/Discrimination Investigation Unit will complete the initial intake report and/or submit the complaint in NEATS.
2. The agency coordinator will be notified of the complaint via NEATS.
3. The investigation will then proceed as described for complaints submitted to appointing authorities (*see* Item VI-B).

Commented [AM24]: It appears that the hotline does not allow for anonymity. I would recommend permitting anonymity so that agencies can get more information, but an anonymous complaint would not ultimately be a formal complaint. Let's discuss informal mechanisms. See my memo.



**STATE OF NEVADA
EXECUTIVE BRANCH
SEXUAL HARASSMENT & DISCRIMINATION
POLICY**

**SEXUAL HARASSMENT AND DISCRIMINATION
POLICY ACKNOWLEDGEMENT**

EMPLOYEE NAME: _____

EMPLOYEE ID #: _____

DEPT/DIV/AGENCY/ORG #: _____

I have read and understand the *Sexual Harassment and Discrimination Policy* dated 4/18/18.

EMPLOYEE SIGNATURE: _____

DATE: _____

SUPERVISOR SIGNATURE: _____

DATE: _____



DISCRIMINATION HAS NO PLACE IN THE WORKPLACE

The State of Nevada prohibits discrimination based on race, color, religion, sex, national origin, pregnancy, age, disability, sexual orientation, genetic information, gender identity or expression, domestic relations and compensation or wages in any terms, conditions or privilege of employment.

If you believe you have been subjected to or witnessed discrimination, contact your agency coordinator:

Name

Phone #

OR

File an on-line complaint at: <https://neats.state.nv.us>.
Sign-in, link can be found on your NEATS "Home Page."

OR

**Call the Hotline
1-800-767-7381**

The State of Nevada is committed to promptly investigating all complaints of discrimination.