



**STATE OF NEVADA**  
**DEPARTMENT OF ADMINISTRATION**  
*Division of Human Resource Management*  
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**GOVERNOR'S TASK FORCE RE: SEXUAL  
DISCRIMINATION AND HARASSMENT**

**March 1, 2019**

**Sexual Harassment and Discrimination Investigation Unit  
(SHDIU)**

**Tab 1:** State of Nevada Executive Branch  
Sexual Harassment and Discrimination Policy

**Tab 2:** Sexual Harassment and Discrimination Investigation Unit (SHDIU)  
PowerPoint Presentation

**Tab 1:**  
State of Nevada Executive Branch  
Sexual Harassment and Discrimination Policy

# State of Nevada Executive Branch

## SEXUAL HARASSMENT AND DISCRIMINATION POLICY

Sexual harassment and discrimination based on race, color, national origin, religion, sex, age, disability, pregnancy, sexual orientation, genetic information, gender identity or expression, domestic relations<sup>1</sup> or compensation or wages<sup>2</sup> 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 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.

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 experience discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Sexual 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 sexual 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.

<sup>1</sup> AB 229 (2017); AB 227 (2017).

<sup>2</sup> NRS 613.330.

### III. RESPONSIBILITY

- A. Sexual 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 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 sexual 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 sexual harassment prevention training within six months of their appointment. Thereafter, employees are required to complete sexual 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 sexual harassment and discrimination.
- F. Appointing authorities shall designate employees within each agency to act as coordinators for the reporting of complaints of sexual harassment or discrimination and will 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 sexual 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.

#### **IV. STATE EMPLOYEES' RIGHTS AND RESPONSIBILITIES**

- A. Employees are entitled to work in a workplace free of sexual harassment and discrimination.
- B. Employees are responsible for ensuring they do not sexually harass or discriminate 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 sexual harassment or discrimination. Employees are additionally responsible for cooperating with the efforts of their agency, division, board or commission to prevent and eliminate sexual 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 sexual harassment is cause for disciplinary action.

#### **V. LEGAL DEFINITIONS AND GUIDELINES**

- A. NAC 284.771 specifies that sexual 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 sexual harassment against another employee, an applicant for employment, or any other person in the workplace.

Sexual harassment is a very serious disciplinary infraction. An appointing authority may impose harsh disciplinary sanctions on persons who commit sexual harassment, even on first-time offenders.

- B. 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 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 law prohibits retaliation against employees who bring sexual harassment or discrimination charges or assist in investigating such charges. Any employee making sexual 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.

## VI. PROCEDURE

### A. Employee

1. Employees who believe they have been subjected to or witnessed sexual 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 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 Sexual Harassment or Discrimination Complaint," or (c) by completing an NPD-30 Sexual 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. Employees 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.

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).

#### 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 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 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 VIB).



**Tab 2:**  
**Sexual Harassment and Discrimination Investigation Unit**  
**(SHDIU)**  
**PowerPoint Presentation**



## Sexual Harassment and Discrimination Investigation Unit (SHDIU)



Department of Administration

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## Creation of the SHDIU



- The Sexual Harassment/Discrimination Unit (SHDIU) was established July 1, 2003, to establish an impartial, consistent and independent investigative process to evaluate allegations contained in a complaint of harassment or discrimination.
- The Governor issued the Governor's Policy Against Sexual Harassment & Discrimination (recently revised and renamed April 2018) with a mandate that all State employees sign the "Sexual Harassment & Discrimination Policy Acknowledgement" form.

• Both the Policy and Acknowledgement form can be accessed at <http://doers.in.gov/Departments/DepartmentofAdministration/sexual-harassment-discrimination/>

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## MISSION



- The unit's mission is to conduct prompt, independent investigations of complaints of sexual harassment and discrimination, as defined by State and Federal law, in order to protect the interests of the State; protect employees from unlawful discrimination and harassment; and reduce costs associated with settlements and court decisions against the State.

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### Benefits of SHDIU

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- Each complaint is evaluated and investigated by trained personnel using consistent investigative procedures.
- Independent investigations reduce the perception there is bias on the part of the investigator. It may reduce concerns that departments could "sweep issues under the rug."
- Independent investigators can complete investigations more timely and more in depth as compared to agency staff that often have many other duties.
- Investigators provide management with additional important information which can be used to improve work culture.

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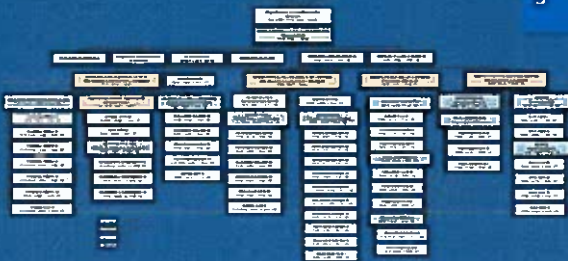
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### Organizational Chart

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### Unit Description

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- The unit is managed by the Equal Employment Opportunity Office and is part of the Division of Human Resource Management.
- SHDIU has one Supervisory Compliance Investigator and three Compliance Investigator II's.
- Investigators are located in Carson City and Las Vegas.

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- Investigators are trained both internally by other staff and externally by various providers.
- Training consists of investigative techniques, a federally certified EEOC Investigator Certification Program, and ongoing State courses.

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### Training sources



- 32 hour online EEO Investigator Certification Course  
<https://www.eeoproduction.com/wsp/ica/32>
- Administrative Investigations offered through the State of Nevada Department of Public Safety
- Creating Effective Interviews and Interrogations  
<https://nevadatraining.com/>
- New hires participate in a 10 day training program where they are partnered with the supervisor. They work on cases together while applying concepts from the procedure manual. Investigators observe while the supervisor plans and develops the investigation. As they work through the training, the new investigator begins to work with the supervisor as a partner and then on their own.

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### Training-continued



- Investigators coming into the unit receive training manuals specific to EEO and Title VII investigations and must work with the Supervisory Investigator on all cases until they become proficient with our techniques and the application of Title VII.

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### Method and Law

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- The Unit conducts its investigations in accordance to State and Federal Law
- Title VII of the Civil Rights Act of 1964 (amended 1991)
- Age Discrimination in Employment Act of 1967 (ADEA)
- Americans with Disabilities Act of 1990 (ADA)
- The Rehabilitation Act of 1973
- Equal Employment Opportunity Act of 1972
- Equal Pay Act of 1963 (EPA)
- The Pregnancy Discrimination Act of 1978
- Family and Medical Leave Act of 1993 (FMLA)




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### Method and Law-continued

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- NAC 284.0995 "Sexual harassment" defined "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other speech or physical conduct of a sexual nature when:
  1. Submission to such speech or conduct is made either explicitly or implicitly a term or condition of a person's employment;
  2. Submission to or the rejection of such speech or conduct by a person is used as the basis for employment decisions affecting that person; or
  3. Such speech or conduct has the purpose or effect of unreasonably interfering with a person's work performance or creating an intimidating, hostile or offensive working environment.
- NAC 284.690 and NRS 613.330 -Unlawful discrimination

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### NAC 284.771. Sexual Harassment

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1. Sexual harassment violates the policy of this State and is a form of unlawful discrimination based on sex under state and federal law. An employer shall not engage in sexual harassment against any other employee, an applicant for employment, or any other person in the workplace.
2. Sexual harassment is a very serious disciplinary infraction. An appealing authority may impose harsh disciplinary sanctions on, or dismiss, persons who commit sexual harassment, including, without limitation, first time offenders.

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### Parameters of Sexual Harassment and Discrimination

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- 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 (such as the victim being fired or demoted).
- The unit often finds conduct that may not rise to the level of a Title VII violation such as a one-time inappropriate comment. While those cases may not rise to the level of a violation, the conduct is still notated in the final report to be addressed by the agency.

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### Parameters of Sexual Harassment and Discrimination-continued

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- Typical outcomes of investigations include:
  1. The investigation revealed activity consistent with violations under Title VII;
  2. The investigation did not reveal activity consistent with Title VII; or
  3. The investigation revealed activity that, if continued, could rise to a Title VII violation.
- Our report also documents other misconduct if discovered.
- Additionally, any determination made as a result of such an investigation must be completed and the employee notified of any disciplinary action within 90 days after the employee is provided notice of the allegations.
- An extension may be filed when the timeframes become a concern.

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### Parameters of Sexual Harassment and Discrimination-continued

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- Investigators are continually trained on what level of activity is required to meet Title VII violations.
- In recent training, the unit was provided caselaw including *Sari Mateo vs. Brooks* from the Ninth Circuit Court, which set a shockingly high standard to meet hostile work environment.

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### Prima Facie - Sexual Harassment

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- Was he/she subjected to unwelcome sexual harassment?
- Was the harassment sufficiently pervasive? Did it affect a term, condition, or privilege of employment?
- Did Management know, or should they have known, of the conduct, but failed to take immediate and appropriate corrective action?

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### COMPLAINT FILING OPTIONS

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The complainant has several methods to file a sexual harassment or discrimination complaint with the SHDIU:

1. Call the confidential Department of Administration's DHRA, Sexual Harassment and Discrimination Hotline: 1-800-767-7381. This goes directly to the supervisor of the SHDIU;
2. Complete a complaint in the NEATS system;
3. File a complaint using the SHDIU (SPD-30 Form); or
4. File a complaint directly with the Agency Coordinator (usually the agency Personnel Officer or EEO Officer).




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### Notice Requirements- NRS 284

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- An employee who is the subject of an internal administrative investigation that could lead to disciplinary action must be provided notice in writing of the allegations against the employee within 30 days after the date on which the appointing authority becomes aware, or reasonably should have become aware, of the allegations. The notice must be provided before the employee is questioned regarding the allegations.
- SHDIU typically uses a courtesy notice to document when the appointing authority became aware it should have become aware of the investigation.

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**Procedure for Discrimination Cases** 19

After filing a complaint with the SHDIU, the Investigator will reach out to the complainant to schedule an interview (recorded), collect a statement, a witness list, and any evidence regarding the allegation

The Investigators establish a Prima Facie Case.

- 1. Complainant is a member of a protected class.
- 2. Complainant was subjected to an adverse employment action, and
- 3. A similarly situated employee was treated more favorably than the complainant under similar circumstances.

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**Investigative Process** 20

After filing a complaint, the complainant will receive a letter from the SHDIU. The letter will contain information regarding the process and the timeline for the investigation.

The complainant will be contacted by the investigator to schedule an interview. The interview will be recorded and will be conducted in a confidential setting.

The complainant will be asked to provide a written statement and a list of witnesses. The complainant will also be asked to provide any evidence regarding the allegation.

The investigator will conduct an investigation and will interview the complainant, the respondent, and any witnesses. The investigator will also review any evidence provided by the complainant.

The investigator will prepare a report and will provide a copy of the report to the complainant and the respondent. The report will contain the findings of the investigation and the investigator's recommendations.

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**NAC 284.646 (Dismissals) and NAC 284.650 (Disciplinary action)** 21

**284.646, 2(c)**  
Participation in a social conduct on the premises of the employer, including, but not limited to, drinking alcohol or using tobacco products, is prohibited by the State.

**284.650, 21**  
Any act of violence or harassment, including, but not limited to, sexual harassment, is prohibited by the State.

**284.650, 22**  
Failure to participate in any investigation regarding discrimination, including, but not limited to, providing false information or withholding information, is prohibited by the State.

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**Trends 2015-2018** 22



- 2015: 199 Complaints filed
- 2016: 179 Complaints filed
- 2017: 111 Complaints filed
- 2018: 116 Complaints filed

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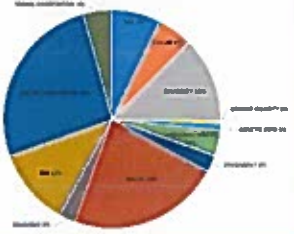
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**Complaints by Type** 23

- In 2018 sexual harassment was the most common complaint by 33% of female employees, followed by racial discrimination and then disability or gender discrimination.
- Disabled discrimination complaints were often associated with ADA compliance issues and FMLA leave.

**2018 EEO INVESTIGATION CASES BY COMPLAINT TYPE**



Complaint Type	Percentage
Sexual Harassment	33%
Racial Discrimination	15%
Disability	12%
Gender Discrimination	10%
Age Discrimination	8%
Retaliation	7%
Other	15%

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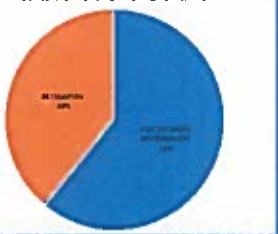
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**Employees Reported Retaliation and Hostile Work Environment at a Significant Rate** 24

- Of the complaints received 61% included allegations of hostile work environment and 39% reported retaliation after filing.
- Retaliation continues to be a significant concern for those interviewed, whether complainants or witnesses.

**2018 EEO INVESTIGATION CASES HOSTILE WORK ENVIRONMENT & RETALIATION**



Category	Percentage
Hostile Work Environment	61%
Retaliation	39%

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### New Methods to Identify Trends

- SADIU has begun gathering data that will help in allocate resources, identify problem areas within the State, forecast trends, or at least recognize trends to adjust staffing, and to identify areas for targeted education to reduce complaints.
- The unit plans to collect information on repeat offenders, previous complaints against the accused, relationship information, adverse employee actions, whether a case is Title VII or not, and if there is other misconduct that rising to the level of Title VII.



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