



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

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| CD-033200 Unlawful Discrimination / Sexual Harassment | Issued: 7/2/01 Effective: 7/2/01 | Reviewed: 11/30/20 Revised: 12/8/16 |
| Alisha Tafoya Lucero, Cabinet Secretary | | <i>Original Signed and Kept on File</i> |

AUTHORITY:

- A. Title VII of the Civil Rights Act of 1964.
- B. Equal Pay Act of 1963.
- C. Age Discrimination in Employment Act of 1967 (ADEA).
- D. Rehabilitation Act of 1973, Sections 501 and 505.
- E. Titles I and V of the Americans with Disabilities Act of 1990 (ADA), and Americans with Disabilities Act Amendments Act of 2008 (ADAAA).
- F. Civil Rights Act of 1991.
- G. NM Human Rights Act, NMSA 1978, Sections 28-1-1 through 28-1-15, as amended.
- H. NMSA 1978 28-20-2, as amended.
- I. Policy *CD-010100*.

REFERENCE:

- A. ACA Standards 2-CO-1C-11, *Standards for the Administration of Correctional Agencies*, 2nd Edition.
- B. ACA Expected Practice 5-1C-4056, *Performance Based Expected Practices for Adult Correctional Institutions*, 5th Edition.
- C. ACA Standards 4-APPFS-3E-05 and 4-APPFS-3E-06, *Performance Based Standards for Adult Probation and Parole Field Services*, 4th Edition.
- D. ACA Standards 1-CTA-1C-14, *Standards for Correctional Training Academies*, 1st Edition.
- E. ACA Standard 2-CI-6D-2, *Standards for Correctional Industries*, 2nd Edition.
- F. Policy *CD-030800*, Americans with Disabilities Act (ADA)/Americans with Disabilities Act Amendments Act of 2008 (ADAAA).
- G. Policy *CD-031800*, Office of Professional Standards (OPS).
- H. Policy *CD-032200*, Code of Ethics.
- I. Policy *CD-037800*, Disciplinary Actions for Classified Employees.

PURPOSE:

To establish guidelines for the maintenance of a work environment within the New Mexico Corrections Department that is free from unlawful forms of discrimination, including sexual harassment, and to provide procedures for the reporting of illegal discriminatory conduct so that prompt remedial action can occur in response to such reports.

APPLICABILITY:

All full-time and part-time employees, volunteers to the New Mexico Corrections Department (NMCD), public or private employees of other agencies/companies doing work for the NMCD, and consultants and contractors hired directly by the New Mexico Corrections Department.

FORMS:

- A. **Report of Employment Discrimination** form (CD-033201.1) (2 pages)
- B. **Policy Acknowledgment** form (CD-033201.2)

ATTACHMENTS:

NONE

DEFINITIONS:

- A. Adverse Employment Action: When an employee undergoes a significant change in employment status, including but not limited to firing, failing to promote, reassignment with significantly different responsibility or a decision causing a significant change in benefits. An adverse employment action may also include any action which dissuades a reasonable employee from making or supporting a complaint of discrimination.
- B. Civil Rights Specialist: An NMCD Department employee charged with the enforcement of civil rights and equal opportunity policies within the Department.
- C. Complainant: For purposes of this policy, a person or employee who has reported or complained of having been the alleged victim of unlawful discrimination, sexual harassment or discourteous conduct of a sexual nature.
- D. Department or NMCD: The New Mexico Corrections Department.
- E. Discriminatory Harassment: A course of conduct which results in an intimidating, hostile, or offensive environment, based upon an individual's race, ethnicity, gender, sexual orientation, gender identity, color, national origin, age, religion, physical or mental disability, veteran status or spousal affiliation.
The following examples of harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:
Verbal harassment includes comments that are offensive or unwelcome regarding a person's race, ethnicity, gender, pregnancy, sexual orientation, gender identity, color, national origin, age, religion, appearance, physical or mental disability, veteran status or spousal affiliation, including epithets, slurs and negative stereotyping.
Nonverbal harassment includes distribution, display or discussion of any written or graphic material that ridicules, denigrates, insults, belittles or shows hostility aversion or disrespect toward an individual or group because of race, ethnicity, gender, pregnancy, sexual orientation, gender identity, color, national origin, age, religion, physical or mental disability, veteran status or spousal affiliation.
See definitions of Hostile Work Environment and Unlawful Discrimination.
- F. Equal Employment Opportunity Commission (E.E.O.C.): The Federal investigative agency of the United States Department of Justice, which regulates and enforces equal employment opportunity laws, guidelines, standards and rules.

- G. Hostile Work Environment: A form of harassment so sufficiently severe or pervasive that it unreasonably interferes with an employee's work performance or creates an intimidating, abusive or offensive work environment from the perspective of the complainant and a reasonable person. Examples of actions that may result in hostile work environment harassment include but are not limited to:
- Use of racially derogatory words, phrases or epithets;
 - Demonstrations of a racial or ethnic nature such as gestures or pictures;
 - Comments about an individual's skin color or other racial/ethnic characteristics;
 - Stereotypes regarding an individual's sexual orientation or gender identity;
 - Negative comments regarding an employee's birthplace or ancestry;
 - Negative stereotypes regarding an employee's religious beliefs;
 - Negative stereotypes regarding an employee's age; or
 - Derogatory or intimidating references to an employee's mental or physical impairment.
- Hostile work environment is also a type of sexual harassment. It can take the form of verbal, visual or physical conduct of a sexual nature that is unwelcome by the complainant, affects the complainant's conditions of employment, and which creates an environment that the complainant finds, and a reasonable person would find, intimidating, hostile, abusive or offensive. The conduct can consist of foul language, sexual or sexist remarks or comments, obscene gestures, physical contact, the display of pornographic material, joking, inquiries into a person's sexual habits, bragging about one's own sexual prowess, repeatedly asking for dates and other activities of a sexual nature. See sexual harassment definition below.
- H. New Mexico Human Rights Commission: The State Agency charged with the receipt and investigation of allegations and enforcement of the New Mexico Human Rights Act, and other State laws prohibiting discrimination in employment because of race, color, sex, sexual orientation, gender identity, religion, national origin, age, disability or retaliation.
- I. Office of Equal Opportunity (OEO): Office within the NMCD that assures that Departmental policies concerning equal opportunity are enforced.
- J. Quid Pro Quo: A legal term used to describe a form a sexual harassment. See Sexual Harassment definition below.
- K. Reasonable Person Standard (as it applies to Harassment): In deciding whether comments or conduct constitute unlawful discrimination or sexual harassment, the behaviors will be reviewed from the perspective of a "reasonable person" standard.
- L. Respondent: Employee or other person or employee alleged by the complainant to have engaged in discriminatory conduct and who is or will be required to respond to the allegations.
- M. Retaliation: Adverse employment action against an employee because that employee made a bona fide complaint alleging unlawful discrimination, sexual harassment or hostile work environment, or because that person testified, assisted, or participated in the investigation or hearing concerning such conduct.

- N. Sexual Harassment: Unwelcome sexual advances, request for sexual favors, hostile work environment, or other verbal or physical conduct of a sexual nature where:

-submission to the conduct is made a condition of employment or submission to or rejection of the conduct is used as the basis for employment decisions, (called by the legal term “*quid pro quo*”) or;

-where the conduct unreasonably interferes with work or creates an intimidating, hostile or offensive working environment. (Called by the legal term “hostile work environment”).

Sexual harassment is not just repeated propositions or requests for dates. It may take many forms, including verbal statements or behavior, not necessarily sexual in nature, but which are unwelcome and directed at the individual because of his or her gender. Sexual harassment is further defined and described in the guidelines, standards and rules adopted by the United States Equal Employment Opportunity Commission.

- O. Staff: NMCD employees, volunteers, contract persons, on-site vendors, and persons from other agencies whose assignment is to perform duties on behalf of the Department or in connection with Department duties.
- P. Supervisor: For purposes of reporting under this policy, a supervisor means a Lieutenant or above or the person in charge of the organizational unit. For purposes of reporting, a Sergeant is NOT a supervisor.
- Q. Unlawful Discrimination: When an individual is treated differently on the basis of his or her membership in a “protected class.” Protected classes include race, ethnicity, gender, pregnancy, sexual orientation, gender identity, color, national origin, age, religion, physical or mental disability, veteran status, spousal affiliation or any other characteristics or categories protected by state or federal law.
In the employment context, unlawful discrimination may occur when adverse actions are taken against an individual based on his or her membership in a protected class. Harassment based on one’s membership in a protected class, including sexual harassment, also is a form of unlawful discrimination. See definitions of harassment and sexual harassment.
Personality differences or conflicts, general mistreatment not based on the above protected characteristics, or a response to poor performance are usually employee relations issues, not discrimination matters.
Discrimination is further defined and described in the guidelines, standards and rules adopted by the New Mexico Human Rights Commission and the Equal Employment Opportunity Commission.
- R. Workplace: Includes, but is not limited to, Department owned or leased facilities, property or any other location where any Department staff are required to be in order to perform their duties.

POLICY:

- A. The Department shall maintain a work environment free from all forms of unlawful discrimination, including sexual harassment. Unlawful discrimination based on race, color, religion, sex, sexual orientation, gender identity, national origin, age or disability is strictly prohibited. Sexual harassment, a form of illegal discrimination, either explicit or implicit, is also strictly prohibited. All NMCD staff will treat other staff, inmates, probationers, parolees of the NMCD, and the public in a professional manner with dignity and respect in accordance with (*CD-032200*) (Code of Ethics). Any staff found to have violated the provisions of this policy shall be subject to disciplinary action up to and including dismissal or termination of a contract in accordance with (*CD-037800*) (Disciplinary Action for Classified Employees). [**2-CO-1C-11**] [**4-APPFS-3E-05**] [**4-APPFS-3E-06**] [**1-CTA-1C-14**] [**5-1C-4056**] [**2-CI-6D-2**]
- B. In order to foster the ability of a nursing mother who is an employee, volunteer, private or public employee of other agencies/companies doing work for the Department, or contractor hired directly by the Department, to use a breast pump in the workplace, the Department shall provide the following upon request:
1. A space for using a breast pump that is:
 - a. Clean and private;
 - b. Near the employee or person's workspace; and
 - c. Not a bathroom.
 2. Flexible break times.
 3. The Department shall not be liable for:
 - a. storage or refrigeration of breast milk;
 - b. payment for a nursing mother's break time in addition to established employee or other designated breaks; or
 - c. payment of overtime while a nursing mother is using a breast pump.
- C. The Department shall adopt administrative policies and procedures for implementing this policy and resolving complaints of unlawful discrimination. Retaliation against any individual for bringing a complaint alleging unlawful discrimination or participating in an investigation or hearing concerning unlawful discrimination is also strictly prohibited.



NEW MEXICO CORRECTIONS DEPARTMENT

Secretary
Alisha Tafoya Lucero

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| CD-033200 Complaints and Investigations Concerning Unlawful Discrimination and Sexual Harassment | Issued: 7/2/01 Effective: 7/2/01 | Reviewed: 11/30/20 Revised: 12/8/16 |
| Alisha Tafoya Lucero, Cabinet Secretary | | <i>Original Signed and Kept on File</i> |

AUTHORITY:

Policy *CD-033200*

PROCEDURES: [2-CI-6D-2]

A. Prohibition of Unlawful Discrimination and Sexual Harassment:

1. Unlawful Discrimination:

The Department strictly prohibits unlawful discrimination/harassment of, or by, its employees on the basis of race, sex, sexual orientation, gender identity, color, age, religion, national origin, physical or mental disability, or any other basis prohibited by applicable federal, state or local law. The Department will take appropriate action whenever allegations of unlawful discrimination are made. Staff found to have engaged in unlawful discrimination will be subject to appropriate disciplinary action, up to and including dismissal or termination of a contract. Unlawful discrimination/harassment may include conduct which unreasonably interferes with your work performance, or which creates an intimidating, hostile, or offensive working environment. Unlawful discrimination may also take many other forms, including derogatory remarks pertaining to sex (gender), sexual orientation, gender identity, age, race, religion, color, national origin, ancestry or disability. [2-CO-1C-11] [4-APPFS-3E-05] [4-APPFS- 3E-06] [1-CTA-1C-14] [4-4056]

2. Sexual Harassment:

- a. The Department strictly prohibits sexual harassment. The Department will take appropriate action whenever allegations of sexual harassment are made. Staff found to have engaged in sexual harassment will be subject to appropriate disciplinary action, up to and including dismissal, or termination of a contract. [2-CO-1C-11] [4-APPFS-3E-05] [1-CTA-1C-14] [5-1C-4056]
- b. Each employee should be aware that sexual harassment and/or creating a hostile work environment might be offensive or unwelcome even if an employee or other individual does not openly object to it. All employees and other individuals are encouraged to immediately inform an individual committing such conduct that his or her behavior is unwelcome and that such behavior should cease immediately. Once that warning has occurred, any continuation of the unwelcome conduct will

be considered sexual harassment. However, the warning need not occur for conduct to be considered sexual harassment and, in some instances, one egregious act can constitute sexual harassment.

B. Staff Notification and Training:

1. The most effective means of eliminating unlawful discrimination and sexual harassment from the workplace is through staff notification, training and the prompt reporting of such matters by any individual who has been subjected to, or observed such conduct, so that remedial action can occur.
2. All new staff will receive a copy of this policy upon hiring and every year thereafter. Acknowledgments of this policy will be signed by all staff and placed in personnel files.
3. The Department may mandate and conduct ongoing training for staff concerning workplace discrimination issues as deemed appropriate. Training regarding the provisions of this policy will be incorporated into the Academy training curriculum.
4. All staff shall have access to the NMCD complaint process as outlined below.

C. Staff Responsibility:

1. All staff has a responsibility to read and become familiar with the provisions of this policy so that each employee can do his or her part in ensuring that the Department's work environment is free of unlawful discrimination, including sexual harassment and retaliation.
2. All employees have an obligation to report incidents of unlawful discrimination and sexual harassment in accordance with this policy.
3. The Department prohibits employees from providing false information in any report, investigation, or hearing regarding unlawful discrimination, sexual harassment, or retaliation. This prohibition includes, but is not limited to, filing a complaint under this policy that the employee knows or has reason to believe is false or unjustified. Any person found to have provided false information or knowingly files a false complaint may be subject to disciplinary action, up to and including dismissal or termination of a contract.

D. Reporting Procedure:

1. Reporting to appropriate authority:

- a. Any staff or other person having business with the Department who believes that he or she has been subjected to, or has witnessed unlawful discrimination or sexual harassment shall initiate a report within 180 calendar days (including

weekends and holidays) from the date of the alleged discrimination with one or more of the following:

- 1) The staff supervisor, (*Lieutenant or above*);
- 2) Warden;
- 3) Bureau Chief;
- 4) Division Director;
- 5) Directly to the OEO.

If staff wants to report unlawful discrimination and/or sexual harassment directly to the Civil Rights Specialist in the OEO, they are encouraged to do so. During normal business hours, (8-5, Monday through Friday). The phone number for the OEO may be obtained through the following sources:

- a) The unit/facility/Department Human Resources office;
 - b) The Warden's/Bureau Chief's/Division Director's/Secretary's office;
and,
 - c) The Department's main web page: <http://www.corrections.state.nm.us>.
- b. Staff may file a complaint directly with the United States Equal Employment Opportunity Commission (EEOC) or the NM Human Rights Commission. However, staff is encouraged to use the procedures in this policy first to resolve unlawful discrimination/sexual harassment issues.

2. How to initiate a report of unlawful discrimination:

- a. Initial reports may be made orally. However, a Department Supervisor, Warden, Bureau Chief, Division Director or the Department's OEO shall request that the complainant provide a written statement and/or a recorded statement, or may require the employee use the **Report of Employment Discrimination** form (*CD-033201.1*) to submit a complaint. The complainant shall provide the written statement of complaint within five (5) working days (excluding weekends and holidays) of making the oral complaint.
- b. The complainant should include in the written statement, form, or in a supplemental memorandum if necessary, the nature of the complaint, the parties involved, and times and dates of alleged incident and should include all supplementary documentation generated regarding the incident, such as witness reports, etc. If using the **Report of Employment Discrimination** form (*CD-033201.1*), the complainant should also specify at the bottom of the form which type of unlawful discrimination has been alleged by checking the appropriate box. If the **Report of Employment Discrimination** form is not being used, the complainant should specify what form of unlawful discrimination he/she is alleging in the written statement.

- c. The Supervisor, Warden, Bureau Chief, Division Director or the OEO may also use the **Report of Employment Discrimination** form (*CD-033201.1*) as an 'intake form' in order to supplement the information the complainant provides.

E. Handling Reports of Unlawful Discrimination:

1. Supervisor(s) Responsibilities:

- a. If a staff Supervisor, Warden, Bureau Chief, or Division Director is notified of an allegation relating to unlawful discrimination, he or she shall immediately notify the OEO via telephone, and supply the OEO with the following information:
 - 1) **Report of Employment Discrimination** form (*CD-033201.1*) must be completed either by the complainant or by the appropriate authority as an intake form.
 - 2) Any written statement submitted by the Complainant, or the appropriate authority's memorandum documenting the substance of the complainant's oral statement.
 - 3) Date and time when the appropriate authority, Warden or Division Director was notified of the alleged conduct and the date(s) the alleged incident(s) occurred;
 - 4) Any supplemental information that may be deemed helpful; and
 - 5) A request to consult with the OEO regarding investigation protocol, or any interim action to be taken.
- b. Based upon the advice or information received from OEO, the appropriate authority, Warden, Bureau Chief, Division Director shall notify the respondent that there has been an allegation or complaint that he or she has engaged in misconduct and shall be advised as to the general nature of the allegation or complaint.

2. Responsibilities of the Department OEO:

When the OEO receives an allegation of unlawful discrimination or sexual harassment, the Civil Rights Specialist shall take the following actions:

- a. If the allegation was received directly from the complainant or from someone other than an appropriate authority, notify the appropriate supervisor that a complaint has been received.
- b. Review the circumstances involved and determine whether the information presented justifies further investigation. Once a determination has been made as to

whether the Office of Professional Standards (OPS) will conduct an investigation, the OEO shall immediately notify the appropriate supervisors. If it is determined an investigation should be conducted, the OEO shall also advise the appropriate supervisors of any action that should or should not be taken during the course of the investigation, for example, change posts or schedules, separate the employees, etc.

- c. If the OEO determines that unlawful discrimination or sexual harassment has not occurred, or due to the facts or nature of the complaint an investigation is not warranted, the OEO shall notify the complainant and recommend possible alternatives the complainant may pursue. Alternatives may include filing a grievance in accordance with Departmental policy or engaging in mediation. The OEO shall note this determination and/or resolution on the complaint form. The OEO shall also notify the respondent of the OEO's determination.

3. Investigation:

- a. Employees are advised that the Department will take appropriate action following all complaints of unlawful discrimination and sexual harassment. Such action may include an investigation conducted in accordance with *CD-031800* (OPS).
- b. If it is determined that a complaint of unlawful discrimination or sexual harassment warrants an investigation, the OEO will refer the matter to the (OPS). All investigations shall be conducted in accordance with policy *CD-031800* and in a timely and thorough manner. All investigations shall be conducted discreetly and in a good-faith effort to be fair to all parties involved. Staff should realize that it is not always possible to keep these matters entirely confidential. However, the dissemination of any information related to any complaint will be restricted to those having a legitimate need for the information to resolve such a complaint.
- c. Per *CD-032200.3* (Code of Ethics), staff has a duty to cooperate with investigations initiated under this or any other Department policy. Any refusal to comply, cooperate or be truthful in investigations under this policy will be grounds for disciplinary action, up to and including dismissal or termination of a contract.
- d. The OEO shall also make an initial determination, in cooperation with Department supervisory authorities, as to whether any interim remedial action shall be taken. Determinations regarding interim remedial actions shall be on a case-by-case basis. Interim remedial actions may include, but are not limited to, whether the complainant and the respondent should be separated within their work location until the investigation has been completed. Regardless of whether the complainant and respondent are separated, both individuals shall be instructed to limit communications with each other to necessary job-related communications until after the fact-finding inquiry has been completed.

4. Follow-up:

- a. After conclusion of the investigation, the findings shall be reported in writing by the assigned investigator to the following:
 - 1) The appropriate supervisor;
 - 2) The OPS;
 - 3) The OEO;
 - 4) The appropriate Warden, Bureau Chief, Division Director;
 - 5) The Department's General Counsel.
- b. No later than twenty (20) working days after the investigation has been completed and the findings reported in writing, the OPS shall ensure that both the complainant and respondent are notified that the investigation is concluded, the results of the investigation, and generally what, if any, action is being taken.

F. Prohibition on Retaliation:

1. The Department strictly prohibits retaliation against any individual who has filed a complaint alleging unlawful discrimination or against any individual who cooperates in an investigation or hearing regarding any such allegation.
2. Some examples of actions which might be considered by the Department to be retaliation include, but are not limited to, any of the following if done because an employee has made a claim of unlawful discrimination or participated in an investigation or hearing concerning an unlawful discrimination complaint: disciplining the employee without cause or more harshly than is justified, changing an employee's work assignment, refusing to cooperate or discuss work-related matters with an employee, or providing ratings on an employee's performance evaluation which are below the employee's actual job performance.
3. Any individual who believes that he or she has been subjected to retaliation as described in this policy shall report the alleged retaliation in accordance with the reporting procedures of this policy.

NEW MEXICO CORRECTIONS DEPARTMENT
Report of Employment Discrimination

COMPLAINANT NAME: _____

FACILITY/DIVISION: _____ JOB TITLE: _____

NAME OF IMMEDIATE SUPERVISOR: _____

NAME OF PERSON AGAINST WHOM COMPLAINT IS BEING FILED: _____

FACTS CONSTITUTING COMPLAINT: _____

RELIEF REQUESTED: _____

PLEASE INDICATE TYPE OF DISCRIMINATION:

AGE: _____ SEX: _____ RACE: _____ DISABILITY: _____ NATIONAL ORIGIN: _____

RELIGION: _____ COLOR: _____ RETALIATION: _____ SEXUAL HARASSMENT: _____

SEXUAL ORIENTATION: _____

Signature of Complainant/Supervisor/OEO

Date

REPORTED TO: _____ POSITION/TITLE: _____ DATE: _____
(Print Name)

CALLED/FAXED TO OEO: _____
(Date)

NEW MEXICO CORRECTIONS DEPARTMENT
Policy Acknowledgement

(CD-033200-01, Unlawful Discrimination/Sexual Harassment)

I, _____, acknowledge that I have received a copy of policy (CD-033200) and procedure (CD-033201) and I further acknowledge that it is my responsibility to become familiar with this policy/procedure and recognize that violations may result in disciplinary action. If I have questions or if I do not understand any provision of this policy/procedure, I will ask my supervisor or the Office of Equal Opportunity (OEO) for assistance.

Employee's Signature

Date

cc: employee's personnel file