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TAG Policy Letter 22-6

22 November 2022

State of New Jersey Policy Prohibiting Discrimination in the Workplace

1. POLICY

a. Protected Categories

The State of New Jersey and the Department of Military and Veterans Affairs (DMAVA) are committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment are based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender, pregnancy, marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability.

To achieve the goal of maintaining a work environment free from discrimination and harassment, the State of New Jersey strictly prohibits the conduct that is described in this policy. This is a zero-tolerance policy. This means that the State and DMAVA reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment.

b. Applicability

Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale, and interferes with work productivity. Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, and authorities. The State of New Jersey and DMAVA will not tolerate harassment or discrimination by anyone in the workplace including supervisors, coworkers, or persons doing business with the State. This policy also applies to both conduct that occurs in the workplace and conduct that occurs at any location which can be reasonably regarded as an extension of the workplace (such as any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed).

*** – This TAG Policy Letter supersedes TPL 18-05, dated 15 May 2018.**

This policy also applies to third party harassment. Third party harassment is unwelcome behavior involving any of the protected categories referred to in 1.a above that is not directed at an individual but exists in the workplace and interferes with an individual's ability to do his or her job. Third party harassment based upon any of the aforementioned protected categories is prohibited by this policy.

This policy applies to all DMAVA employees of any type, including independent contractors, part time and per diem employees.

2. PROHIBITED CONDUCT

It is a violation of this policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories referred to in 1.a above. This policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, transfer, assignment, layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions, and career development.

It is also a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background, or any other protected category set forth in 1.a above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

Examples of behaviors that may constitute a violation of this policy include, but are not limited to, the following:

- Discriminating against an individual with regard to terms and conditions of employment because of being in one or more of the protected categories referred to in 1.a above;
- Treating an individual differently because of the individual's race, color, national origin or other protected category, or because an individual has the physical, cultural or linguistic characteristics of a racial, religious, or other protected category;
- Treating an individual differently because of marriage to, civil union to, domestic partnership with, or association with persons of a racial, religious or other protected category; or due to the individual's membership in or association with an organization identified with the interests of a certain racial, religious or other protected category; or because an individual's name, domestic partner's name, or spouse's name is associated with a certain racial, religious or other protected category;
- Calling an individual by an unwanted nickname that refers to one or more of the above protected categories, or telling jokes pertaining to one or more protected categories;
- Using derogatory references with regard to any of the protected categories in any communication;
- Engaging in threatening, intimidating, or hostile acts toward another individual in the workplace because that individual belongs to, or is associated with, any of the protected categories; or
- Displaying or distributing material (including electronic communications) in the workplace that contains derogatory or demeaning language or images pertaining to any of the protected categories.

3. SEXUAL HARASSMENT

a. It is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment. For the purposes of this policy, sexual harassment is defined by the Equal Employment Opportunity Commission Guidelines as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example:

- Submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- 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.

b. Examples of prohibited behaviors that may constitute sexual harassment and are therefore a violation of this policy include, but are not limited to:

- Generalized gender-based remarks and comments;
- Unwanted physical contact such as intentional touching, grabbing, pinching, brushing against another's body or impeding or blocking movement;
- Verbal, written or electronic sexually suggestive or obscene comments, jokes or propositions including letters, notes, e-mail, text messages, invitations, gestures or inappropriate comments about a person's clothing;
- Visual contact, such as leering or staring at another's body; gesturing; displaying sexually suggestive objects, cartoons, posters, magazines or pictures of scantily-clad individuals; or displaying sexually suggestive material on a bulletin board, on a locker room wall, or on a screen saver;
- Explicit or implicit suggestions of sex by a supervisor or manager in return for a favorable employment action such as hiring, compensation, promotion, or retention;
- Suggesting or implying that failure to accept a request for a date or sex would result in an adverse employment consequence with respect to any employment practice such as performance evaluation or promotional opportunity; or
- Continuing to engage in certain behaviors of a sexual nature after an objection has been raised by the target of such inappropriate behavior.

4. EMPLOYEE RESPONSIBILITIES

Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, or who witnesses others being subjected to such discrimination/harassment is encouraged to promptly report the incident(s) to a supervisor or directly to the DMAVA Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by DMAVA's to receive workplace discrimination complaints.

All employees are expected to cooperate with investigations undertaken pursuant to Section 7 below. Failure to cooperate in an investigation may result in administrative and/or disciplinary action, up to and including, termination of employment.

5. SUPERVISOR RESPONSIBILITIES

Supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. Supervisors shall immediately refer allegations of prohibited discrimination/harassment to DMAVA's Equal Employment Opportunity/Affirmative Action Officer, or any other individual designated by DMAVA to receive complaints of workplace discrimination/harassment.

A supervisor's failure to comply with these requirements may result in administrative and/or disciplinary action, up to and including, termination of employment. For purposes of this section and the State of New Jersey Model Procedures for Processing Internal Complaints Alleging Discrimination in the Workplace ("Model Procedures"), a supervisor is defined broadly to include any manager or other individual who has authority to control the work environment of any other staff member (for example, a project leader).

6. DISSEMINATION

DMAVA shall annually distribute this policy, or a summarized notice of it, to all of its employees, including part-time and seasonal employees. The policy, or the summarized notice of it, shall also be posted in conspicuous locations throughout DMAVA's buildings and (that is, on bulletin boards or on the DMAVA's intranet site). The New Jersey Department of the Treasury shall distribute the policy to State-wide vendors/contractors, whereas DMAVA shall distribute the policy to vendors/contractors with whom DMAVA has a direct relationship.

7. COMPLAINT PROCESS

DMAVA shall follow the "Model Procedures" with regard to reporting, investigating, and where appropriate, remediating claims of discrimination/harassment. Refer to N.J.A.C. 4A:7-3.2. DMAVA is responsible for designating an individual or individuals to receive complaints of discrimination/harassment, investigating such complaints, and recommending appropriate remediation of such complaints. In addition to the Equal Employment Opportunity/Affirmative Action Officer, DMAVA shall designate an alternate person to receive claims of discrimination/harassment.

Any Employee who feels a violation of this policy or the New Jersey Law Against Discrimination has occurred, may contact and make a complaint to the New Jersey Division of Civil Rights at 609-292-4605 or online at www.NJCivilRights.gov.

All investigations of discrimination/harassment claims shall be conducted in a way that respects, to the extent possible, the privacy of all the persons involved. The investigations shall be conducted in a prompt, thorough and impartial manner. The results of the investigation shall be forwarded to the Adjutant General to make a final decision as to whether a violation of the policy has been substantiated.

Where a violation of this policy is found to have occurred, DMAVA shall take prompt and appropriate remedial action to stop the behavior and deter its reoccurrence. DMAVA shall also have the authority to take prompt and appropriate remedial action, such as moving two employees apart, before a final determination has been made regarding whether a violation of this policy has occurred.

The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment.

DMAVA shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate.

8. PROHIBITION AGAINST RETALIATION

Retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation.

Following are examples of prohibited actions taken against an employee because the employee has engaged in activity protected by this subsection:

- Termination of an employee;
- Failing to promote an employee;
- Altering an employee's work assignment for reasons other than legitimate business reasons;
- Imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or
- Ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees).

9. FALSE ACCUSATIONS AND INFORMATION

An employee who knowingly makes a false accusation of prohibited discrimination/harassment or knowingly provides false information in the course of an investigation of a complaint, may be subjected to administrative and/or disciplinary action, up to and including termination of employment. Complaints made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

10. CONFIDENTIALITY

All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigatory process. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter.

All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including, termination of employment.

11. ADMINISTRATIVE AND/OR DISCIPLINARY ACTION

Any employee found to have violated any portion or portions of this policy may be subject to appropriate administrative and/or disciplinary action which may include, but which shall not be limited to, referral for training, referral for counseling, written or verbal reprimand, suspension, reassignment, demotion or termination of employment. Referral to another appropriate authority for review for possible violation of State and Federal statutes may also be appropriate.

12. TRAINING

DMAVA shall provide all new employees with training on this policy and procedures within a reasonable period of time after each new employee's appointment date. Refresher training shall be provided to all employees, including supervisors, within a reasonable period of time. DMAVA shall also provide supervisors with training on a regular basis regarding their obligations and duties under this policy and regarding procedures set forth.

13. REASONABLE ACCOMODATION

DMAVA states as part of this Policy, that a leave of absence or modification to per diem scheduling requirements, may constitute a reasonable accommodation, regardless of an individual's entitlement to leave under the U.S. Department of Labor's Family and Medical Leave Act.



LISA J. HOU, D.O.
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