

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

SECRETARY'S POLICY AND PROCEDURE MEMORANDUM (PPM) NO. 13

SUBJECT: Policy Prohibiting Sexual Harassment and Discrimination

EFFECTIVE DATE: February 3, 1993

INSTRUCTIONS: This memorandum supersedes all other memoranda and manuals.

1. PHILOSOPHY

The Louisiana Department of Transportation and Development (DOTD) strives to create and maintain a work environment in which people are treated with dignity, decency, and respect. The environment of our agency should be characterized by mutual trust and the absence of intimidation, oppression, and exploitation. Employees should be able to work and learn in a safe, yet stimulating atmosphere. The accomplishment of this goal is essential to the mission of our agency. For this reason, DOTD will not tolerate sexual harassment, other forms of harassment, or other unlawful discrimination of any kind. Through the enforcement of this policy and the education of employees, DOTD will seek to prevent, correct, and discipline behavior that violates this policy.

All employees, regardless of their position, are covered by and expected to comply with this policy, as well as local, state, and federal law, and to take appropriate measures to ensure that prohibited conduct does not occur. Appropriate remedial and/or disciplinary action shall be taken regarding violations of this policy or the violation of local, state, or federal law, including disciplinary action up to and including termination of employment.

2. SEXUAL HARASSMENT

A. Definition

Sexual harassment is a form of discrimination and is unlawful under Title VII of the Civil Rights Act. Sexual harassment is also addressed under Louisiana Revised Statutes (LRS) 42:341 through 345. In accordance with LRS 42:342, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and/or other verbal, physical, or inappropriate conduct of a sexual nature when the conduct explicitly or implicitly affects an individual's employment or the holding of office, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can involve behavior by a person of either gender against a person of the same or opposite gender. Sexual harassment may include the conduct of any appointing authority, manager, administrator, or supervisor towards a subordinate employee or the conduct of one employee towards another employee of lesser, equal, or greater supervising authority. It may also include verbal comments or

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conduct by a vendor, client, or visitor of the Department. An employee may be the victim of sexual harassment because they have been adversely affected by inappropriate behavior directed towards a co-worker. Sexual harassment can occur at the daily job site, at a conference, during travel for work, or even away from work. Sexual harassment is determined by the effect (or result) the harassment has on the victim or their interpretation of the behavior, not the intent of the perpetrator.

Unwelcome sexual comments or conduct constitutes sexual harassment when:

- Submission to such conduct is explicitly or implicitly a term or condition of employment, or
- Submission to or rejection of such conduct is used as a basis for employment decisions (i.e., continued employment, performance evaluations, wages, advancement, assigned duties, shift assignment, or any other condition of employment or career development), or
- Such conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive work environment.

Sexual harassment includes, but is not limited to, the following:

- Unwelcome sexual flirtations, innuendoes, advances, propositions, or demands;
- Unwelcome sexual teasing, jokes, remarks, inquiries, insults, or innuendos;
- Unwelcome looks or gestures of a sexual nature;
- Verbal or written comments of a sexual nature;
- Requests for sexual favors or repeated unwelcome requests for dates;
- Graphic or verbal sexual comments about an individual;
- Unwelcome physical contact (i.e., touching, embracing, massaging, rubbing, brushing up against, leaning over, patting, tickling, pinching, hugging, kissing, cornering, fondling, forced sexual intercourse or assault);
- Sexually degrading words and demeaning or inappropriate terms;
- Sexual or insulting noises; whistling;
- Use of crude or vulgar language; obscene gestures;
- Discussion of sexual activities or exploits;
- Inappropriate comments about a person's physical attributes and/or
- Distribution or display of sexually suggestive objects, statements, graffiti, books, magazines, photographs, calendars, posters, cartoons, pictures, recordings, or videos.

Employees should understand that the verbal, non-verbal, and physical behaviors described above are always inappropriate in the workplace and, therefore, violate DOTD's policy. In determining corrective or disciplinary action, the totality of the

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circumstances will be considered, including the pervasiveness, offensiveness, and unwelcome nature of the conduct.

False accusations of sexual harassment made in bad faith are strictly prohibited. If, after an investigation is complete, it is determined that any employee has **knowingly** made false accusations or provided false statements during the investigation, they shall be subject to disciplinary action, up to and including termination.

B. Confronting the Accused

An employee experiencing unwelcome behavior is encouraged to tell the offender to cease the behavior. Doing so may be sufficient to prevent a recurrence. However, if the behavior continues, the concern should be reported promptly.

DOTD acknowledges that confronting an offender can be disconcerting, especially in situations where the offender is within the employee's supervisory hierarchy. Therefore, DOTD does not require employees to do so before reporting the matter as provided in this policy.

C. Personal Liability

An individual experiencing sexually inappropriate behavior in the workplace has the right to file a claim or initiate civil litigation under state or federal law. When this occurs, as an employer, the State of Louisiana may be cast in judgment, or a settlement of claims may be negotiated to avoid the risk of litigation. In either event, the financial burden falls upon the taxpayers of this state.

To reduce this impact, upon the determination that an employee has engaged in sexually inappropriate workplace behavior, La. R.S. 42:351 mandates that consideration be given to requiring that the employee reimburse all or a portion of any judgment or settlement that may result from a claim or civil litigation. The process and factors to be considered in making this determination are set forth in La. R.S. 42:353, which also authorizes the Attorney General to file suit against an employee to enforce the state's right to reimbursement and indemnification.

D. Annual State Reporting Requirements

The DOTD shall compile an annual report by February 1<sup>st</sup> of each year, containing information from the previous calendar year that consists of:

- The number and percentage of employees in DOTD who have completed the

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sexual harassment training requirements.

- The number of sexual harassment complaints received by the agency.
- The number of complaints that resulted in a finding that sexual harassment occurred.
- The number of complaints in which the finding of sexual harassment resulted in discipline or corrective action.
- The amount of time required to resolve each complaint.

DOTD shall submit the report no later than February 15<sup>th</sup> to the Division of Administration each year.

3. PROHIBITING DISCRIMINATION

A. Harassment

Harassment is prohibited by this policy and by federal and state laws. DOTD will take swift and appropriate action to address allegations of harassment. The definition of harassment includes verbal or physical conduct designed to threaten, intimidate, or coerce, as well as verbal taunting (including racial, ethnic, and gender slurs), which, in the opinion of a reasonable person in the employee's position would impair the employee's ability to perform his or her job. Examples of conduct that may constitute harassment are as follows:

- (1) Verbal: Comments that are unwelcome regarding a person's race, color, sex, national origin, age, religion, disability status, pregnancy, or political affiliation.
- (2) Non-verbal: Distribution, display, or discussion of any written or graphic material that ridicules, denigrates, insults, belittles, or shows hostility or aversion toward an individual or group because of race, color, religion, sex, national origin, political affiliation, disability, age, or pregnancy.

B. Discrimination

- (1) It is a violation of this policy to discriminate in the provision of employment opportunities, benefits, or privileges; to create discriminatory work conditions; or to use discriminatory standards in employment if the discriminatory treatment is based, in whole or in part, on the person's race,

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color, religion, sex, national origin, political affiliation, disability, age, or pregnancy. Even beyond the preceding classes codified in federal and state law, DOTD will offer equal opportunity without regard to any non-merit-based factors. Equal opportunity applies to all employment practices, including recruitment, employment, compensation, benefits, training, promotions, transfers or assignments, recognition, disciplinary actions, layoffs, and other terminations.

- (2) Discrimination of this kind may also be strictly prohibited by a variety of federal, state, and local laws, including Title VII of the Civil Rights Act of 1964, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination in Employment Act of 1967, as amended; and the Americans with Disabilities Act of 1990, as amended. This policy is intended to comply with the directives set forth in the aforementioned anti-discrimination laws.
- (3) When an investigation confirms that an individual has violated this policy or that an individual has violated local, state or federal law, remedial or disciplinary action, up to and including termination of employment, shall be taken.

C. Retaliation

DOTD maintains an affirmative duty to protect its employees from harassment, reprisal, or retaliation. This protection extends to any employee making a good-faith complaint of sexually inappropriate behavior, and/or any other prohibited conduct or discrimination, as well as those individuals providing information or participating in the investigative process. Corrective or disciplinary action shall be imposed for any of the indicated violations in accordance with this policy.

No hardship, loss of benefit, or penalty may be imposed on an employee as punishment for the following:

- (1) Filing or responding to a bona fide complaint of discrimination, sexual harassment, or other prohibited conduct; or
- (2) Appearance as a witness in the investigation of a complaint; or
- (3) Serving as an investigator.

Retaliation or attempted retaliation is a violation of this policy, and anyone who does so shall be subject to severe sanctions, up to and including termination.

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4. HUMAN RESOURCES/TITLE VII DESIGNEE

DOTD recognizes that an employee experiencing sexual harassment or discrimination may be reluctant to file a complaint. As such, the DOTD has a designated central point of contact. This individual has specialized training and expertise in handling employment concerns.

The Headquarters Human Resources/Title VII Specialist is available to discuss the content of this policy, answer questions related to the reporting process, receive complaints, and coordinate and conduct the investigative process. Generalized inquiries and questions regarding this policy will be maintained in strict confidence. In some instances, follow-up inquiries or initiation of the investigative process by this Designee may be required.

5. REPORTING PROCEDURE

Early reporting enhances the credibility of the complainant and facilitates the investigative process. Prompt initiation of the investigation enhances the ability to identify witnesses, preserve evidence, and protects against the fading of memories that can occur over time. For these reasons, employees are encouraged to report such behavior as soon as possible and not prolong reporting in favor of waiting for the occurrence of "one more time" of the offensive behavior.

The initial report needs only to convey the occurrence of words or actions that are discriminatory, harassing, or offensive. This report can be verbal (in person or via telephone) or in writing (letter, memo, email, text) or it can be submitted on the Title VII Complaint Form located on the Human Resources Intranet page, Forms and Job Aids, under Title VII.

The report can be made to the employee's direct supervisor. However, if the complaint involves the supervisor or, regardless of the reason, the employee prefers not to involve that supervisor, the report can be made to any supervisor or Appointing Authority in DOTD or directly to the Human Resource/Title VII Specialist. Supervisory personnel receiving the complaint are required to immediately inform the Appointing Authority and Human Resources/Title VII Specialist of the information provided.

6. CONFIDENTIALITY

DOTD wishes to create a safe environment in which individuals are not afraid to discuss concerns and complaints or to seek general information about sexual harassment, discrimination, and retaliation. The agency recognizes that individuals may be concerned about the confidentiality of information they share, and DOTD will strive, to the extent permitted by law, to preserve confidentiality. Discussions for obtaining general information or advice from responsible administrators or managers may remain confidential. However,

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anonymity cannot be maintained if the individual wishes to have the agency take corrective or disciplinary action in a particular case. No action will be taken when individuals wish only to make an inquiry and do not wish to file a complaint.

DOTD and its administrators may be legally obligated to take action once informed that discrimination, harassment or retaliation has occurred or may be occurring. Once an individual discloses identifying information, and such information is sufficiently complete and specific to state a claim of discrimination, harassment, or retaliation, they will be considered to have filed a complaint with the office.

Internal investigations of the Department and all documentation in connection with such investigations are confidential and will not be released to the public. Only the results of the matter will be released to the complainant and the accused.

7. INVESTIGATION OF COMPLAINT

All reports and complaints of offensive behavior will be directed to the Human Resources/Title VII Specialist, who shall assess the information provided. Management personnel in a need-to-know capacity will be apprised of the complaint. An assessment of the preliminary information provided will be done to determine whether action should be taken to prevent further occurrences of the offensive behavior. For example, it may be appropriate to authorize suspension with pay pending investigation or temporarily reassign personnel.

The investigation will be given priority and begin as soon as practicable. In most instances, it will be conducted by a designated team comprised of the Human Resource/Title VII Specialist, Appointing Authority, and others identified by management. This team approach permits the investigators to evaluate the information gathered during the investigative process from different perspectives, enhances objectivity, and ensures thoroughness.

The investigation generally will begin with an interview of the complainant, who will be required to provide details to facilitate the investigative process, such as the behavior complained of, the date, time, and location of the occurrence, the identity of witnesses, and any writings, records, logs, recordings, pictures, or other documentation supporting the complaint. Individuals possessing relevant information will be interviewed. Once all available information has been evaluated by the investigative team, the accused will be interviewed.

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All individuals called upon to participate in the investigation are required to fully cooperate and provide truthful responses. Employees, including the accused, do not have the option of remaining silent or declining to get involved. Those questioned will be required to prepare a written statement or provide a recorded statement. Employees are hereby informed that polygraph examinations may be employed as an investigative tool.

The investigation will be conducted expeditiously, professionally, and with due regard for the rights of all involved. The facts obtained will be evaluated using the "reasonable person" standard.

To the extent permitted by law, the investigation will be conducted confidentially, with only those in a need-to-know position involved. To preserve the integrity of the investigative process, employees will be instructed that the complaint and all information provided during the interview are to remain confidential. Employees are prohibited from obstructing or interfering with the investigation, which includes questioning or confronting any individual participating in the investigation.

Upon completion of the investigation, the investigative team will apprise the Undersecretary of the outcome and recommendations for resolution. Until a final decision by the Undersecretary is made, the investigative team will remain available to receive new information.

Employees must understand that despite the investigative team's best efforts and thoroughness of the investigative process, not all complaints can be substantiated. This does not indicate, however, that the complaint was contrived or made in bad faith. As such, employees are encouraged to file good-faith complaints.

8. COMPLAINT RESOLUTION

Upon conclusion of the investigation, the complainant and the accused will be apprised of the outcome. Management's decision is final and concludes the internal investigative process. Regardless of the outcome, the complainant has the option of pursuing a claim under state or federal law. Initiation of such a claim is not dependent upon the outcome or the completion of DOTD's internal investigation.

To initiate a claim under federal or state law, employees are referred to the Equal Employment Opportunity Commission and the Louisiana Commission on Human Rights:

EEOC District Office  
Hale Boggs Federal Building

LCHR  
1001 N. 23rd Street, Suite 268



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500 Poydras Street, Suite 809  
New Orleans, Louisiana 70130  
800-669-4000 (Voice)  
504-589-2958 (TDD)  
504-595-2844 (Fax)  
<https://www.eeoc.gov/>

Post Office Box 94094  
Baton Rouge, Louisiana 70804  
225-342-6969 (Voice)  
888-241-0859 (TDD)  
225-342-2063 (Fax)  
<http://gov/page/lchr>

Given the wide range of behaviors prohibited by this policy, the resolution decided upon by executive management will be determined by a number of factors. Most notably, the nature, circumstances, frequency, and severity of the behavior, and whether the behavior recurs after having been previously addressed, will heavily influence the action to be taken. Complainants can be assured that any employee found, after investigation, to have engaged in discrimination or sexual harassment will be subject to corrective action. This may include counseling, reprimand, suspension without pay, reduction in pay, demotion, or dismissal. In conjunction with these corrective actions, other appropriate measures, including additional training, relocation, reassignment, job restructuring, etc., may be utilized to protect against the recurrence of the inappropriate behavior.

9. RESPONSIBILITY

It is the responsibility of all employees, regardless of rank, status, or authority, to ensure compliance with this policy. Employees must realize that reporting the behavior prohibited by this policy is mandatory. Complaints must be truthful and made in good faith. Cooperative participation and candor in the investigative process are mandatory.

10. VIOLATIONS

Given the devastating impact that sexual harassment and discrimination have on working relationships, DOTD will aggressively address violations of this policy. After investigation and satisfaction of due process requirements, corrective action may be imposed for the following:

- Failure by supervisory personnel to timely report a complaint of sexual harassment or discrimination
- Failure to participate or cooperate in the investigative process
- Providing false or withholding information during the investigative process
- Filing a false, malicious, or frivolous complaint
- Harassment, reprisal, or retaliation towards a complainant or anyone involved in the investigative process

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11. POSTING

This policy is available for review by all employees at all times on DOTD's internet site, located at <http://ladotnet/> under the Office of Management and Finance, Human Resources, in the Secretary's Policy and Procedure Memorandum (PPM) section.

12. TIME FRAME AND PROHIBITIVE FACTORS

All complaints must be filed within 300 calendar days from the date of the alleged incident.

SECRETARY'S COMMITMENT

As DOTD Secretary, I am committed to preventing and eliminating all unlawful harassment and discriminatory conduct from our workplace. I further expect all supervisors and managerial personnel to take a leadership role in providing all employees with a workplace free from any form of discrimination or harassment.

A handwritten signature in blue ink, reading "Glenn Ledet, Jr." in a cursive script.

Glenn Ledet, Jr.  
Secretary