

LOUISIANA DEPARTMENT OF TRANSPORTATION AND DEVELOPMENT

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

SUBJECT: Sexual Harassment and Other Prohibited Conduct Policy; Complaint and Documented Inquiry/Investigation Procedure

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 that reason, DOTD will not tolerate sexual harassment, other harassment, or other unlawful discrimination of any kind. Through enforcement of this policy and by 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 are expected to comply with this policy and 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 conduct of one employee towards another employee of,

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

SUBJECT: Sexual Harassment and Other Prohibited Conduct Policy; Complaint and Documentation/Investigation Procedure

Page 2

lessor, equal, or greater supervising authority. It may also include verbal comments or conduct by a vendor, client, or visitor of the Department. An employee may be the victim of sexual harassment because he/she has been adversely affected by inappropriate behavior directed towards a co-worker. Sexual harassment can occur at the daily job duty site, 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 constitute 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 innuendo;
- Unwelcome looks or gestures of a sexual nature;
- Verbal or written comments of a sexual nature;
- Requests for sexual favors; 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 behavior described above is always inappropriate in the workplace and, therefore, violates DOTD's policy. In determining corrective or disciplinary action, the totality of the

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

SUBJECT: Sexual Harassment and Other Prohibited Conduct Policy; Complaint and Documentation/Investigation Procedure

Page 3

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 a documented inquiry/investigation is complete, it is determined that any employee has **knowingly** made false accusations or provided false statements during the documented inquiry/investigation, he/she shall be subject to disciplinary action, up to and including termination.

B. Confronting the Accused

An employee experiencing unwelcomed 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 chain of command. Therefore, DOTD does not require employees to do so before reporting the matter as provided in this policy.

3. OTHER PROHIBITED CONDUCT

A. Other Harassment

Harassment is prohibited by this policy and by federal and state laws. The 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; and 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 which are unwelcome regarding a person's race, color, national origin, age, religion, disability status, 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.

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

SUBJECT: Sexual Harassment and Other Prohibited Conduct Policy; Complaint and Documentation/Investigation Procedure

Page 4

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, 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 a documented inquiry/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 LADOTD Policy and Procedure Memorandum (PPM) No. 13, Sexual Harassment and Other Prohibited Conduct Policy; Complaint and Documented Inquiry/Investigation Procedure.

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

- (1) Filing or responding to a bonafide complaint of discrimination, sexual harassment or other prohibited conduct

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

SUBJECT: Sexual Harassment and Other Prohibited Conduct Policy; Complaint and Documentation/Investigation Procedure

Page 5

- (2) Appearance as a witness in the documented inquiry/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.

4. THE COMPLAINT PROCESS

Early reporting of sexual and/or inappropriate behavior enhances the credibility of the complainant and facilitates the investigative process. Prompt initiation of the documented inquiry/investigation enhances the ability to identify witnesses, preserve evidence, and protects against faltering memories occasioned by the passage of time. 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.

Any person electing to utilize this complaint resolution procedure will be treated courteously; the problem will be handled swiftly and as confidentially as feasible in light of the need to take appropriate corrective action; and, the registering of a complaint will in no way be used against the employee, nor will it have an adverse impact on the individual's employment status. While reporting such incidents is a difficult personal experience, allowing harassment activities to continue will most certainly lead to less desirable outcomes. For that reason, employees are strongly urged to utilize this procedure.

A. Responsibilities

- (1) Employees, who believe they have been harassed or discriminated against, are responsible for informing their supervisor or someone in their supervisory chain of any discriminatory activity including, sexual harassment and retaliation, recounting specific actions or occurrences whenever possible. They may inform the Compliance Programs Director or Employment Attorney of any discriminatory activity including, sexual harassment and retaliation, recounting specific actions or occurrences whenever possible.
- (2) Supervisory personnel are responsible for the following: Any Supervisory employee who receives information or a complaint of sexual harassment, discrimination, other harassment, or retaliation must immediately notify the Appointing Authority. Appointing authorities, managers and supervisors have the responsibility, as agents of the agency, to act promptly to eliminate any forms of sexual harassment, and/or other forms of harassment, discrimination and retaliation which exists in their areas of responsibilities.

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

SUBJECT: Sexual Harassment and Other Prohibited Conduct Policy; Complaint and Documentation/Investigation Procedure

Page 6

If a supervisory employee knows that sexual harassment, and/or other forms of harassment, discrimination and/or retaliation is occurring, or receives information that discrimination, harassment and/or retaliation might be occurring, he or she must take immediate action to address the problem.

In the event that an employee alleges discrimination occurred during the course of the selection process to fill a vacancy, the Compliance Programs Office will notify the appropriate person in the HQ Human Resources Section of the complaint. No appointment will be made effective while a discrimination complaint is pending in connection with the filling of a vacancy.

If the alleged sexual harassment, other forms of harassment, discrimination and/or retaliation is not within the area of a supervisor's oversight, the supervisor must notify the appropriate Appointing Authority, who must then take prompt steps to address the allegation. The Appointing Authority must consult with the Compliance Programs Director and/or the Employment Attorney for next steps to take.

- (3) Compliance Programs Section. The Compliance Programs Director has the primary responsibility of administering this policy. In particular, the Compliance Programs Director or his/her designee, with advice and guidance from the Employment Attorney, will respond to inquiries and complaints from management and employees regarding discrimination, sexual harassment, other forms of harassment, or retaliation; will maintain records of these inquiries and complaints as well as their resolution, and will keep the DOTD Deputy Secretary advised thereof. The Compliance Programs Director is also responsible for providing information and education to employees and management on recognizing, understanding, and combating unlawful discrimination and harassment.

B. 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 the purpose of obtaining general information or advice from responsible administrators or managers may remain confidential. However, 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.

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

SUBJECT: Sexual Harassment and Other Prohibited Conduct Policy; Complaint and Documentation/Investigation Procedure

Page 7

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, he or she will be considered to have filed a complaint with the office.

Internal documented inquiry/investigations of the Department and all documentation in connection with such documented inquiry/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.

C. Complaint Procedures

(1) Sexual Harassment

- (a) DOTD does not require a rigid reporting protocol; however, details are needed to thoroughly investigate a complaint. The initial report can be verbal (in person or via telephone) or in writing (letter, memo, email). All initial verbal complaints must be put in writing. The report can be made to the employee's direct supervisor. However, if the complaint involves the supervisor or, regardless of reason, the employee prefers not to involve that supervisor, the report can be made to any supervisor or manager in DOTD, or directly to the Compliance Section.

The Compliance Section or supervisory personnel receiving a report of sexually inappropriate behavior are required to immediately inform the appropriate Appointing Authority of the information provided.

Anonymous complaints are discouraged; however, if an anonymous complaint is submitted, it should contain as much detail as possible including the names of the accused and all witnesses, the locations, dates, times, and description of all behaviors experienced, and any previous reports of similar behavior to management. Without this level of detail, the ability to conduct a thorough documented inquiry/investigation may be impeded.

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

SUBJECT: Sexual Harassment and Other Prohibited Conduct Policy; Complaint and Documentation/Investigation Procedure

Page 8

(2) Other Prohibited Conduct

- (a) A person who feels that they have been discriminated or retaliated against may initiate the complaint process verbally or by filing a written and signed complaint to the Compliance Programs Section (Headquarters Building, Room 305-L; telephone 225 379-1382 or 1362.) The complainant (the employee making the complaint) may use the complaint form, which is attached to this policy. If a supervisor or manager becomes aware that harassment or discrimination is occurring, either from personal observation or as a result of an employee coming forward, the supervisor or manager should immediately report it to the Title VII Program Manager of the Compliance Programs Section.
- (b) In the event that an employee feels that he/she has been discriminated against during the course of the selection process to fill a vacancy, the employee must initiate the complaint process (as described in C. (1) above) within seven (7) working days after the notification of the selection which prompted the complaint.
- (c) Upon receiving the complaint, or being advised by a supervisor or manager that a violation of this policy or local, state or federal law, may be occurring, the Compliance Programs Director or designee will review the complaint with the Employment Attorney and either the Deputy Secretary or the respective Office Head (Chief Engineer, Undersecretary, Assistant Secretary of Operations, Commissioner of Multimodal Commerce, or Assistant Secretary of Planning) for the Office in which the alleged harassment or discrimination is occurring.
- (d) A documented inquiry/investigation will be initiated to determine whether there is a reasonable basis for believing that the alleged violation occurred. During the documented inquiry/investigation, the Appointing Authority, in consultation with appropriate Compliance Programs staff, DOTD's Employment Attorney, DOTD's Compliance Investigator and/or other management employees, will interview the complainant, the respondent, and any witnesses to document the conduct that occurred.
- (e) After the documented inquiry/investigation is concluded, the Employment Attorney will review the documentation/evidence gathered to determine the legal sufficiency. The appropriate Appointing Authority will discuss the legal sufficiency of the

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

SUBJECT: Sexual Harassment and Other Prohibited Conduct Policy; Complaint and Documentation/Investigation Procedure

Page 9

documentation gathered/evidence with the appropriate Compliance Programs staff, the Employment Attorney and/or other management staff as may be appropriate, and decide what action, if any, will be taken. If it is determined that a violation has occurred, appropriate remedial or disciplinary action shall be taken. If it is determined that there has been no policy violation, but some potentially problematic conduct is revealed, preventative action may be taken. As may be appropriate, the complainant may be advised of the remedial and/or preventative action which shall be taken.

(3) Documented Inquiry/Investigation

- (a) Upon notification of alleged sexually inappropriate behavior and/or sexual harassment, other forms of harassment, and/or discrimination, the Appointing Authority shall consult with the appropriate Compliance Programs staff, the Employment Attorney, and the respective Office Head prior to beginning a documented inquiry/investigation to establish the facts of the events.

After consulting with the appropriate Compliance Programs staff and the Employment Attorney, an Appointing Authority may place an employee on suspension with pay pending investigation.

Interviews and fact-finding shall be completed as soon as possible upon the initial notification of misconduct. If additional time is needed beyond ten business days, Appointing Authorities must notify their Office Head. This notification must include the status of the documented inquiry/investigation and how much additional time may be needed to complete the documented inquiry /investigation.

The respective Appointing Authority shall conduct the documented inquiry/investigation, with guidance from the appropriate Compliance Programs staff and the Employment Attorney. Requests for an investigation to be conducted by the DOTD Investigator shall be made through the respective Office Head.

- (b) The documented inquiry/investigation will begin with a documented interview of the complainant who will be required to provide a signed and dated statement with details to facilitate the investigative

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

SUBJECT: Sexual Harassment and Other Prohibited Conduct Policy; Complaint and Documentation/Investigation Procedure

Page 10

process, such as the behavior complained of; the date, time, and location of the occurrences; the identity of witnesses; and any writings, records, logs, recordings, pictures, or other documentation supporting the complaint.

All individuals with relevant knowledge will be interviewed, and required to provide a signed and dated statement.

Once the available information has been evaluated, the accused will be interviewed, and required to provide a signed and dated statement.

The Appointing Authority may ask questions in order to ensure pertinent facts are obtained from the complainant, the accused, and each witness. The Appointing Authority should be careful not to guide or recommend specific responses from those giving a statement.

- (c) Upon conclusion of the documented inquiry/investigation, and obtaining required statements and documentation, the Appointing Authority shall consult with the appropriate Compliance Programs staff and the Employment Attorney. The Employment Attorney will review the information gathered in the documented inquiry/investigation and make a determination as to the legal sufficiency.
- (d) If the Employment Attorney determines legal sufficiency exists to substantiate a violation of the policy, the matter shall be reviewed by the DOTD Deputy Secretary for disciplinary action.² Any employee determined to have committed such acts shall be subject to disciplinary action, up to and including termination. Non-employees engaged in such acts on the premises of DOTD shall be reported to the proper authorities.
- (e) The outcome of DOTD's documented inquiry/investigation does not prevent the complainant from pursuing a claim under state or federal law.

² All evidence of sexual harassment which occur in Section 01 shall be reviewed by the Undersecretary for Disciplinary Action.

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

SUBJECT: Sexual Harassment and Other Prohibited Conduct Policy; Complaint and Documentation/Investigation Procedure

Page 11

D. Alternative Legal Remedies

Employees retain the right to file a complaint of discrimination with the Equal Employment Opportunity Commission, the Louisiana State Civil Service Commission, the Louisiana Commission on Human Rights or pursue any other legal remedy. This procedure does not extend any time limitations for filing with outside parties.

Pursuant to La. R.S. 42:353, "any employee found to have committed the act of sexual harassment shall be responsible for the payment of all or a portion of any judgment or settlement reached by the parties involved. The Department may file suit against the sexual harasser to assert and enforce the Department's right to reimbursement from the sexual harasser of any amount received by the claimant as a result of any judgement or settlement reached against the Department in connection with the sexual harassment claim."

5. STATE REPORTING REQUIREMENTS

The Compliance Section shall compile an annual report by February 1st 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 sexual harassment training requirements.
- The number of sexual harassment complaints received by the agency.
- The number of complaints which 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 15th to the Division of Administration each year.

6. POSTING

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

7. TIME FRAME AND PROHIBITIVE FACTORS

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

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

SUBJECT: Sexual Harassment and Other Prohibited Conduct Policy; Complaint and Documentation/Investigation Procedure

Page 12

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.



Eric Kalivoda
Secretary

Attachment

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

SUBJECT: Sexual Harassment and Other Prohibited Conduct Policy; Complaint and Documentation/Investigation Procedure

Page 13

HARASSMENT REPORT

Name of Employee Making the Allegation: _____

District/Section: _____ Gang: _____ Work Location: _____

Name of Immediate Supervisor: _____

Name of Person(s) Against Whom the Allegation is being made:

Give a clear and concise statement of the facts constituting each alleged charge and the dates, times and places when such act(s) allegedly occurred: (Use extra paper, if necessary)

Name(s) of Witness(es):

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

SUBJECT: Sexual Harassment and Other Prohibited Conduct Policy; Complaint and Documentation/Investigation Procedure

Page 14

(Signature of Person Filing Report)

(Date Report Filed)