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AFFIRMATIVE ACTION PLAN

**Office of the Ombudsman for
Mental Health and Mental Retardation
Ste. 420 Metro Square Building
St. Paul, Minnesota 55101-2117**

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COMPLAINT PROCEDURE FOR ALLEGED DISCRIMINATION/HARASSMENT

STATE OFFICE BUILDING
ST. PAUL, MN 55155

II. Statement of Policy

It is the policy of the Office of the Ombudsman for Mental Health and Mental Retardation to prohibit harassment of its employees based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership in a local commission, disability, sexual orientation, or age. This prohibition with respect to harassment includes both overt acts of harassment and those acts that create a negative work environment. Any employee subjected to such harassment should file a complaint internally with the Office of the Ombudsman for Mental Health and Mental Retardation's Affirmative Action Officer designee, Jody Powers-Blok. If the employee chooses, s/he may file a complaint with the Minnesota Department of Human Rights, the Equal Employment Opportunity Commission, or through other legal channels. These agencies have time limits for filing complaints, so individuals should contact the agencies for more information. In extenuating circumstances, the employee should contact the Office of Diversity and Equal Opportunity at the Minnesota Department of Employee Relations for information regarding the filing of a complaint. Any unintentional or deliberate violation of this policy by an employee will be cause for appropriate disciplinary action.

Each employee is responsible for the application of this policy. This includes initiating and supporting programs and practices designed to develop understanding, acceptance, commitment, and compliance within the framework of this policy. All employees must be informed that harassment is unacceptable behavior. The Affirmative Action Officer designee will be expected to keep the Office of the Ombudsman for Mental Health and Mental Retardation and its employees apprised of any changes in the law or its interpretation regarding this form of discrimination. The Affirmative Action Officer designee is also responsible for:

1. Notifying all employees, and orienting each new employee who is hired, of the policy; and
2. Informing all employees of the complaint procedure and ensuring that all complaints will be investigated promptly and carefully.

Definitions

Discriminatory harassment is any behavior based on protected class status which is not welcome, which is personally offensive, which, therefore, may affect morale and interfere with the employee's ability to perform. For example, harassment based on national origin has been defined by the U.S. Equal Employment Opportunity Commission as "Ethnic slurs and other verbal or physical conduct relating to an individual's national origin."

Sexual harassment has also been specifically defined by the Minnesota Human Rights Act, which states in regard to employment, that:

"Sexual Harassment" includes unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other verbal or physical conduct or communication of a sexual nature when: (1) submission to that conduct or

communication is made a term or condition, either explicitly or implicitly, of obtaining employment; (2) submission to or rejection of that conduct or communication by an individual is used as a factor in decisions affecting that individual's employment; or (3) that conduct or communication has the purpose or effect of substantially interfering with an individual's employment, and in the case of employment, the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

It is possible for discriminatory harassment to occur: 1) among peers or coworkers, 2) between managers and subordinates, or 3) between employees and members of the public. Employees who experience discriminatory harassment should bring the matter to the attention of the Office of the Ombudsman for Mental Health and Mental Retardation Affirmative Action Officer (AAO) designee. In fulfilling our obligation to maintain a positive and productive work environment, the AAO designee and all employees are expected to address or report any suspected harassment or retaliation.

Varying degrees of discriminatory harassment violations can occur and require varying levels of progressive discipline. Individuals who instigate harassment are subject to serious disciplinary actions up to and including suspension, demotion, transfer, or termination. Additionally, inappropriate behaviors that do not rise to the level of discriminatory harassment, but are none the less disruptive, should be corrected early and firmly in the interests of maintaining a barrier-free work place. Individuals who participate in inappropriate behaviors at work are also subject to disciplinary actions.

Responsibility of Employees

All employees shall respond promptly to any and all requests by the Affirmative Action Officer designee for information and for access to data and records for the purpose of enabling the AAO designee to carry out his/her responsibilities under the complaint procedure. The failure of any employee to comply with the requests of the AAO designee shall be reported to the employee's supervisor and/or the Ombudsman.

Who May File

Any employee, applicant, or eligible of the Office of the Ombudsman for Mental Health and Mental Retardation who believes that s/he has been discriminated against or harassed by reason of race, religion, creed, color, age, national origin, sex, sexual orientation, membership or activity in a local commission, disability, marital status or status with regard to public assistance may file a complaint.

The Complaint Procedure

The internal complaint procedure provides a method for resolving complaints involving violation of the Office of the Ombudsman for Mental Health and Mental Retardation's nondiscrimination policy within the agency. Employees, applicants, and eligibles are encouraged to use this

internal complaint process. Retaliation against a person who has filed a complaint either internally or through an outside enforcement agency or other legal channels is prohibited. The AAO designee may contact the Office of Diversity and Equal Opportunity if s/he wants information about filing a complaint.

Filing Procedure

1. The employee, applicant, or eligible completes the "Complaint of Discrimination/Harassment Form" provided by the AAO designee. Employees are encouraged to file a complaint within a reasonable period of time after the individual becomes aware that a situation(s) may involve discrimination or harassment. The AAO designee will, if requested, provide assistance in filling out the form.
2. The AAO designee determines if the complaint falls under the purview of Equal Employment Opportunity law, i.e., the complainant is alleging discrimination or harassment on the basis of race, religion, creed, color, age, national origin, sex, sexual orientation, membership or activity in a local commission, disability, marital status, or status with regard to public assistance; or of the complaint is of a general personnel concern. The AAO designee shall also discuss other options for resolution, such as the Workplace Mediation Pilot Project.
 - A. If it is determined that the complaint is not related to discrimination or harassment but rather to general personnel concerns, the AAO designee will inform the complainant within ten (10) working days.
 - B. If the complaint is related to discrimination or harassment, the AAO designee will contact all parties named as respondents and outline the basic allegations of the complaint within ten (10) working days. The respondents will be asked to provide a response to the allegations within ten (10) working days.
3. The AAO designee shall investigate the complaint. At the conclusion of the investigation, the AAO designee shall notify the complainant(s) and respondent(s) that s/he has completed the investigation. The AAO designee shall then review the findings of the investigation.
 - A. If there is sufficient evidence to substantiate the complaint, appropriate action will be taken.
 - B. If insufficient evidence exists to support the complaint, a letter will be sent to the complainant(s) and respondent(s) dismissing the complaint.
4. A written answer will be provided to the parties within sixty days after the complaint is filed. The complainant(s) will be notified should extenuating circumstances prevent the completion of the investigation within sixty (60) days.
5. Dispensation of the complaint will be filed with the Commissioner of the Department of Employee Relations within thirty (30) days of the final determination.

6. All documentation associated with a complaint shall be considered investigative data under the Minnesota Government Data Practices Act. The status of the complaint will be shared with the complainant(s) and respondent(s). After an investigation is completed and all appeals are exhausted, all documentation is subject to the provisions of the Minnesota Government Data Practices Act.
7. All data collected may at some point become evidence in civil or criminal legal proceedings pursuant to state or federal statutes. An investigation may include, but is not limited to, the following types of data:
 - A. Interviews or written interrogatories with all parties involved in the complaint, e.g., complainant(s), respondent(s), and their respective witnesses; officials having pertinent records or files, etc.
 - B. All records pertaining to the case i.e., written recorded, filmed, or in any other form.
8. The AAO designee shall maintain records of all complaints and any pertinent information or data for three (3) years after the case is closed.

OBJECTIVE TO RECRUIT, HIRE AND RETAIN PROTECTED GROUP MEMBERS

Purpose: To assure that positions are equally accessible to qualified persons and to eliminate the underutilization of qualified members of protected groups. To assure that employees will continue to create and maintain a worker-friendly environment to retain the protected groups.

Policy: Recruitment activities are the shared responsibility of the Ombudsman, managers and supervisors. The objective is to ensure that recruitment is conducted to attract sufficient numbers of qualified applicants, enhance the image and esteem of state employment, emphasize the recruitment of protected group members and to achieve a balanced work force.

The Agency believes that it is an unfair employment practice to discriminate against a person with respect to his/her hire, tenure, compensation, terms, upgrading, conditions, facilities, or privileges of employment based on race, religion, creed, color, age, national origin, sex, sexual orientation, membership or activity in a local commission, disability, marital status, or status in regard to public assistance.

The Agency will continue to work to retain qualified protected group employees. The Agency provides mentorship and training opportunities for all employees. This initiative will improve productivity, make the work culture more conducive to diverse employees and guide new employees toward promotional opportunities.

Procedure:

1. Whenever possible our agency will use the programs that assist our agency to meet the Office of Diversity and Equal Opportunity/Affirmative Action (ODEO/AA) requirements of statute, rules, and the statewide Affirmative Action Plan. These are:
 - A. Expanded Certification - The Department of Employee Relations (DOER) certification list will generate a larger list if the Ombudsman Office is underrepresented for one or more protected groups.
 - B. Recruitment - The Agency will work with DOER's Staffing Division Recruitment Team to provide recruitment sources and to discuss other recruitment strategies.
 - C. Training - Develop, implement or provide training opportunities that will promote awareness, acceptance and appreciation for diversity and affirmative action.

REASONABLE ACCOMMODATIONS POLICY

The Agency is committed to encouraging the employment of people with disabilities. The Agency will make reasonable accommodations to the physical or mental limitations of a qualified disabled applicant, current employee or employee seeking promotion unless the accommodation would impose an undue hardship on the agency.

Accommodations will be provided to qualified individuals, whether an employee, employee seeking promotion or job applicant, when such accommodations are directly related to performing a job or competing for a job. Accommodations will not be provided for non-job related personal needs, such as transportation to and from work.

For purposes of determining eligibility for Reasonable Accommodation, a person with a disability is a person who has a physical or mental impairment that substantially or materially limits one or more major life activities.

Examples of Reasonable Accommodations

Examples of reasonable accommodations may include but are not limited to the following:

1. Modification of equipment or assistive devices. Purchase of, or modification to existing equipment such as special telephone equipment, talking calculators, one-handed typewriters, and/or specifically designed desk and files.
2. Job site modifications. Modifications may include adjustments to equipment height, addition of electrical outlets, relocation of job site to an accessible area, special parking facilities or other types of similar modifications.

3. III Job restructuring. This may include flexible work hours and/or restructuring job duties while retaining the essential job duties.
4. Support services. Services such as interpreters for individuals with hearing impairments, readers for individuals who are blind or special attendants.
5. Reassignment to a vacant position of equal status when possible and appropriate.

Requests for Reasonable Accommodations for Employees/Employees Seeking Promotion

The steps to request reasonable accommodations are:

1. Supervisor and the individual with a disability discuss the need for the accommodation and discuss alternatives such as job restructuring, job site modification and accessible devices.
2. II Supervisor must inform the AAO of the request and submit a Request for Accommodation form. The request will include justification for the request including a statement of the limitations, the suggested accommodation, approximate cost, and any other pertinent information. The AAO will assist the supervisor by providing the necessary resources and information. If necessary the AAO will obtain documentation of the individual's functional limitations to determine eligibility under the ADA.
3. Upon approval, the supervisor will forward the request form and supporting information to the agency's AAO within seven (7) working days upon receiving the request.
4. The AAO will review the request and assist the supervisor in making the accommodation. If the accommodation will cost a significant amount (in excess of \$100.00), the affirmative action officer will forward it along with his or her recommendation to the Ombudsman within three (3) working days.
5. The decision is provided in writing to the supervisor, manager, and employee within five (5) working days after the determination is made by the Ombudsman.
6. The AAO will maintain all documents pertaining to the accommodation and keep medical information in a separate, locked file.

Request for Reasonable Accommodations for Job Applicants

1. All initial communication between a job applicant and a supervisor or personnel office regarding a position in the agency shall indicate the willingness of the agency to make a reasonable accommodation upon request, prior to the job interview.
2. The supervisor shall contact the AAO immediately to indicate that an accommodation is needed. In order to ensure that the accommodation is provided at the interview, requests shall be handled in a timely manner.

3. The AAO shall contact the applicant to discuss the needed accommodation and discuss possible alternatives.

IV. The agreed upon accommodation shall be provided if the cost does not cause undue hardship on the agency.

V. If the accommodation is approved the AAO shall take the necessary steps to see that the accommodation is provided.

Funding for Reasonable Accommodation

Funding will be provided for reasonable accommodations. The Ombudsman must approve the expenditure of funds for the accommodation exceeding \$100.00. When determining whether or not to make the accommodation without imposing hardship on the agency, the following factors must be considered:

- The size of the agency's budget;
- The nature and cost of the accommodation;
- The ability to finance the accommodation in relationship to the site(s) where there may be a need; and
- Documented good faith effort to explore a less restrictive or less expensive alternative.

Definition - Undue Hardship. An undue hardship is an action that is unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the Office of the Ombudsman for Mental Health and Mental Retardation.

Procedure for determining Undue Hardship

- 1 The employee will meet with the ADA Coordinator designee to discuss the requested accommodation.
- 2 The ADA Coordinator designee will review undue hardships by considering:
 - a) The nature and cost of the accommodation in relation to the size, the financial resources, and the nature and structure of the operation: and
 - b) The impact of the accommodation on the nature or operation of the Office of the Ombudsman for Mental Health and Mental Retardation.
- 3 The ADA Coordinator designee will provide a decision to the employee.

Appeals

Employees or applicants who are dissatisfied with the decision(s) pertaining to his/her accommodation request may file an appeal with the agency head, within a reasonable period of time, for a final decision.

Supported Work

The Office of the Ombudsman for Mental Health and Mental Retardation will review vacant positions and assess the current workload and needs of the office, to determine if job tasks might be performed by a supported employment worker(s). If appropriate, a list of supported worker candidates will be requested from DOER. The Office of the Ombudsman for Mental Health and Mental Retardation will work with the State ADA/Disability Coordinator to recruit and hire individuals for supported employment if such a position is created.

Dissemination of Policy

A copy of this policy will be located electronically in our database for all employees to view.