

Approved:

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Department of Transportation

EMPLOYMENT DISCRIMINATION COMPLAINTS

PURPOSE:

This procedure establishes the process for filing, investigating and resolving employment discrimination and workplace harassment complaints.

AUTHORITY:

Sections 20.23(3) (a) and 334.048(3), Florida Statutes (F.S.)

SCOPE:

This procedure applies to all Florida Department of Transportation Career Service, Selected Exempt Service (SES), Senior Management Service (SMS) and Other Personal Services (OPS) employees.

REFERENCES:

- The Equal Pay Act (EPA) of 1963
- The Civil Rights Act of 1991; Title VII of The Civil Rights Act of 1964, as amended
- The Age Discrimination in Employment Act (ADEA) of 1967
- The Pregnancy Discrimination Act (PDA) of 1978
- The Americans with Disabilities Act (ADA) of 1990
- The Americans with Disabilities Act Amendments Act (ADAAA) of 2008
- The Florida Civil Rights Act of 1992, Chapter 760, Florida Statutes (F.S.)
- Chapter 60L-33.007 and Chapter 60L-36.004, F.A.C.
- The Equal Employment Opportunity / Affirmative Action Policy Topic No. 001-275-001s
- Cooperation with Official Agency Investigations, Topic No. 001-450-002

DEFINITIONS:

APPLICANT: An individual who applies for a Department vacancy.

CIVIL RIGHTS ANALYST (CRA): A Department employee with the Equal Opportunity Office authorized to conduct investigations for the Department in response to complaints of employment discrimination and workplace harassment.

COMPLAINANT: An individual who files an employment discrimination or workplace harassment complaint with the Equal Opportunity Office (EOO), Florida Commission on Human Relations (FCHR) or the Equal Employment Opportunity Commission (EEOC).

DEPARTMENT: The Florida Department of Transportation.

EMPLOYMENT DISCRIMINATION: An employment practice or action which denies equal treatment or opportunity to an individual or group of individuals, based on race, color, disability, sex (the basis "sex" includes sexual harassment) religion, national origin, age, or marital status.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC): An independent federal agency established to enforce laws against employment discrimination and workplace harassment. The EEOC may bring legal suit, subpoena witnesses, issue guidelines which have the force of law, render decisions, and provide technical assistance to employers and legal assistance to Complainants.

EXTERNALLY FILED COMPLAINTS: Allegations of employment discrimination or workplace harassment filed by a Department employee, former employee or applicant with either the EEOC or FCHR.

FLORIDA COMMISSION ON HUMAN RELATIONS (FCHR): The state committee established by the Florida Legislature to investigate and resolve employment discrimination and workplace harassment complaints filed in accordance with **Chapter 760, F.S.**

INTAKE OFFICER: A District, Central Office or Human Resources Office employee designated to receive and forward complaints of employment discrimination and workplace harassment.

MANAGEMENT DIRECTED INQUIRY: A fact finding review requested by Department management to determine whether a valid complaint of employment discrimination or workplace harassment exists.

SEXUAL HARASSMENT: Unwelcome sexual advances, requests for sexual favors, or written, verbal or physical conduct of a sexual nature constitute sexual harassment when:

(A) Submission to such conduct is made either explicitly or implicitly a term or condition of employment.

(B) Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual;

(C) 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.

1. INTERNALLY FILED COMPLAINTS

1.1 FILING COMPLAINTS

- 1.1.1 Any Department employee or applicant may file an employment discrimination or workplace harassment complaint with an Intake Officer or the Equal Opportunity Office. Internally filed complaints may be submitted in writing using **Form No. 275-010-01, Discrimination/Sexual Harassment Complaint Form**. If requested, the Intake Officer or the Equal Opportunity Office (EOO) staff will assist employees or applicants with completing the complaint form. The CRAs are authorized to investigate internally filed complaints of employment discrimination and workplace harassment.
- 1.1.2 If the Complainant is a non-Department employee (i.e. a contractor or vendor) and their complaint is against a Department employee, the EOO will investigate the complaint in accordance with this procedure.
- 1.1.3 If a Department employee files a complaint against a non-Department employee regarding situations that occurred while conducting official Department business, the EOO should be contacted and will decide, on a case-by-case basis the appropriate course of action.
- 1.1.4 If the Complainant files an internal employment discrimination or workplace harassment complaint in conjunction with filing a similar type complaint with the FCHR or EEOC, the Department will defer to the external agency and respond to the complaint in accordance with **Section 2** of this procedure.
- 1.1.5 Ensure that allegations of sexual harassment meet the requirements of **Rule 60L-36.004, F.A.C.** and that actions are taken to ensure no further inappropriate actions against the Complainant occur. Verbal or anonymous complaints of employment discrimination or workplace harassment may be sufficient to initiate an inquiry by the EOO. Complaints of employment discrimination and workplace harassment may be filed two ways. A Complainant may either file in writing by completing the Discrimination / Sexual Harassment Complaint Form and providing it to an Intake Officer or CRA or by speaking with an Intake Officer who will record the complaint using the Initial Contact Questionnaire. (Appendix A)

1.2 RECEIPT OF COMPLAINTS BY INTAKE OFFICERS

1.2.1 Appointment of Intake Officers

Each District Secretary shall appoint two or more employees who shall act as Intake Officers. These appointments will be reevaluated by the District Secretary every two years. In addition, Regional Human Resources Office staff members will serve as Intake Officers.

1.2.2 Role of an Intake Officer

Intake Officers will be responsible for the following functions:

(A) Receiving and conducting initial intake of employment discrimination and workplace harassment complaints. Complaints to Intake Officers may be made verbally or in writing.

(B) Documenting the following information during initial intake of a complaint using the Initial Contact Questionnaire or the Discrimination / Sexual Harassment Complaint Form (Appendix A):

(1) The name(s), job title(s), address(es), and telephone number(s) of the complainant (s) as well as the unit assigned within the agency (if Complainant is an employee).

(2) The name(s), job title(s), address(es), and telephone number(s) of the person(s) alleged to have performed unlawful employment practice(s) or workplace harassment.

(3) Nature and basis of the alleged complaint.

(4) A clear and concise statement of the facts, including pertinent dates, times, places, and circumstances constituting the unlawful employment practices.

(C) Maintaining a memorandum of record of all activities associated with any initial intake using the FDOT Intake Activity Log (Appendix B).

(D) Notifying the Employee Relations Manager and the EOO of all initial intake meetings with employees.

(E) Informing the Complainant regarding filing options with the EOO, FCHR or EEOC if the complaint has not been amicably resolved.

(F) Providing the EOO with all documentation gathered during the initial intake including the Initial Intake Questionnaire and/or the Discrimination Complaint Form if completed.

(G) Contacting the EOO as necessary for technical assistance.

(H) Providing assistance to the EOO during on-site investigations.

(I) Meeting the Department's training requirement by attending Intake Officer Training (Course No. BT 01-01-0093) as provided by the EOO.

1.2.3 The Central Office Support Services Office and the District Transportation Support Manager will ensure current copies of the Department's ***Equal Employment Opportunity/Affirmative Action Policy, Topic No. 001-275-001***, are posted on bulletin boards and or other prominent places in each work location

1.3 RECEIPT OF COMPLAINTS BY THE EOO

1.3.1 Within five work days after receipt of an internally filed employment discrimination or workplace harassment complaint, the EOO will send a notification letter to the Complainant acknowledging receipt of the complaint, requesting any additional information and identifying the CRA assigned to investigate the complaint.

1.3.2 Within five work days after receipt of an internally filed employment discrimination or workplace harassment complaint, the EOO staff will send an e-mail notification of complaint receipt to the Central Office Employee Relations Manager, the Regional Human Resources Manager, the District Secretary or appropriate Assistant Secretary or Director in Central Office and the Office of General Counsel (OGC) with a copy of the complaint and a request for relevant information. The Human Resources Office will provide requested information to the EOO within two weeks of the receipt of the request.

1.4 DETERMINING THE MERITS OF INTERNAL COMPLAINTS RECEIVED BY THE EOO

The CRA in the EOO will:

(A) Determine if the complaint's basis (race, color, religion, sex, etc.) and issues (demotion, dismissal, disparate treatment, etc.) are covered by state and/or federal law and whether the allegations have merit.

(B) Respond to internal complaints that fail to meet jurisdictional requirements under state and/or federal law, by letter, informing the Complainant of alternative

avenues of recourse and the addresses and phone numbers of the EEOC and FCHR (see below);

Equal Employment Opportunity Commission (EEOC)

Tampa Field Office
501 East Polk Street, Suite 1000
Tampa, Florida 33602
(813) 228-2310
(800) 669-4000

Miami District Office
One Biscayne Tower,
100 SE 2nd Street, Suite 2700
Miami, Florida 33131
(305) 808-1740
(800) 669-4000

Florida Commission on Human Relations (FCHR)

4075 Esplanade Way
Room 100
Tallahassee, FL 32399
(850) 488-7082
(800) 342-8170

(C) Proceed with the investigation of the internal complaint.

1.5 INVESTIGATION OF THE COMPLAINT

The CRA in the EEO will make a case-by-case assessment of each complaint, and as determined appropriate:

(A) Coordinate with the Investigations and Compliance Manager to determine and develop an investigative plan.

(B) Review personnel files of the Complainant and other key employees named in the complaint.

(C) Contact the Complainant to collect any additional information and determine the remedy the Complainant is seeking to resolve the complaint.

(D) Evaluate the requested information and other supporting documentation received from the work unit.

(E) Collect and tabulate personnel data relative to the complaint (i.e. time sheets, applications, disciplinary standards, etc.) in order to provide comparative and documentary evidence relevant to the issues cited in the complaint.

(F) Compile statistical data (i.e. terminations, new hires, merit increases, employment parity matrix, etc.), relevant to the issues cited in the complaint.

(G) Conduct interviews with the Complainant, and witnesses regarding information relevant to the complaint.

(H) If an interview is not possible, obtain affidavits from all relevant witnesses.

(I) Keep the Complainant, the Regional Human Resources Manager, the Employee Relations Manager and the District Secretary or appropriate Assistant Secretary or Director in the Central Office apprised of the status of the investigation.

(J) Perform other investigative duties as deemed appropriate.

1.6 RESOLVING THE INTERNAL COMPLAINT

1.6.1 Evaluation

All investigative data will be evaluated by the EOO staff. All allegations made in the complaint will be identified and denials, corroborations and defenses to each allegation will be analyzed. The objective is to resolve conflicting issues and evaluate the merits of the complaint.

1.6.1.2 A complaint may be amended to correct technical errors, omissions, or to clarify or amplify allegations made therein. An amendment may be filed at any time before a finding is rendered.

1.6.1.3 In the event the complaint does not contain sufficient information to warrant an investigation, the CRA shall request the Complainant provide additional relevant information. Such a request may be made anytime during the course of the investigation.

1.6.2 Investigative Report

An investigative report, written by the CRA will include:

(A) Background information to include complaint basics (allegations and protected bases)

(B) Summary of Investigation (outlining each relevant allegation and responding to each one)

(C) Conclusion (findings)

The Purpose of the Investigative Report is:

1. Provide the specific relevant allegations in the complaint
2. Review facts and document any findings; and

3. Provide the findings to management

1.6.3 Finalized Report

The EOO Manager, will review the draft investigative report for completeness and accuracy. Upon finalization the EOO Manager will submit the final report to the Regional Human Resources Manager, Employee Relations Manager, the District Secretary or appropriate Assistant Secretary or Director in Central Office. A copy of the final report will also be sent to the complainant with a copy retained in the EOO files.

1.6.4 Confidentiality

All complaints and other records in the custody of any agency in the executive branch of state government which relate to a complaint of employment discrimination or workplace harassment shall be exempt from the provisions of **Section 119.07(1) (a), F.S.**, until the investigative report is finalized and signed by the manager of the EOO. The complaint becomes inactive upon withdrawal by the Complainant, or the complaint is made part of the official record at any hearing or court proceeding **Section 119.071(2) (g) (1.a), F.S.**

1.6.5 Withdrawal of Complaint

The Complainant may withdraw his/her complaint at any stage of the investigation. Upon the EOO's receipt of a signed withdrawal statement, the investigation of the complaint will be closed. A letter will be sent from the EOO Manager, to the Complainant and a copy to the Employee Relations Manager, the Regional Human Resources Manager and the District Secretary or appropriate Assistant Secretary or Director in Central Office. The letter will confirm the Complainant's withdrawal of the complaint and include on how to contact EEOC and the FCHR for filing an external complaint.

2. EXTERNALLY FILED COMPLAINTS

2.1 RECEIPT OF COMPLAINT

- 2.1.1** Complainants may request investigations to be conducted by the EEOC or FCHR instead of an internal investigation. All requests for information or correspondence from EEOC or FCHR must be sent to EOO immediately upon receipt.
- 2.1.2** Within five work days after receipt of a complaint from the EEOC or the FCHR, the EOO staff will send an e-mail notification of complaint receipt to the appropriate Central Office Director or Assistant Secretary, Employee Relations Manager and the OGC if the complaint originates within the Central Office.

If the complaint originates in a District, the District Secretary, Regional Human Resources Manager, Employee Relations Manager and the OGC will be notified. Attached will be a copy of the charge and attachments.

- 2.1.3** Responding to externally filed complaints is a collaborative effort between the EOO and the OGC. Staff from the EOO will facilitate collection of relevant documentation, contact the FCHR or the EEOC regarding extension requests and other issues, and assist the OGC concerning the resolution of the complaint. The OGC is responsible for providing a written response to externally filed complaints.

2.2 COORDINATING AND ASSISTING THE OGC WITH INVESTIGATING COMPLAINTS FILED WITH THE EEOC/FCHR

The CRA in the EOO will make a case-by-case assessment of each complaint, and as determined necessary, will:

- (A) Review requests for information and coordinate a response to each by contacting the appropriate office.
- (B) Request personnel files of Charging Party and other key employees named in the complaint.
- (C) Refrain from contacting the Charging Party unless permission is received from the EEOC/FCHR to either collect additional information or determine the remedy the Complainant is seeking.
- (D) Contact the Employee Relations Manager in the Central Office and facilitate the gathering of information requested by the EEOC or FCHR. The Employee Relations Manager will provide the requested information to the EOO and / or the OGC.
- (E) Facilitate collection of affidavits from all relevant witnesses.
- (F) Collect and analyze any additional data considered necessary to clarify issues evolving during the investigation.
- (G) Act as a representative of the Department in all communication with the EEOC/FCHR.
- (H) Coordinate the Department's response to the complaint in conjunction with the OGC, accumulate and review all documents requested by the regulatory agency. Maintain a copy of the response in the official files.
- (I) Perform other investigative duties as deemed appropriate.

4. RETALIATION

Any employee, who files an employment discrimination or workplace harassment complaint, participates in an employment discrimination proceeding, or otherwise contests employment discrimination is protected from retaliation under federal and state law. Any person who fires, demotes, harasses, or otherwise takes an unlawful employment action toward such an employee based on the employees' participation in a discrimination complaint is subject to disciplinary action up to and including dismissal.

5. TRAINING

5.1 The Department will provide, encourage and promote a non-discriminatory workplace by offering training to:

(A) All Department employees, including OPS, temporary and voluntary employees; and

(B) General consultants, sub-consultants and contract employees who are assigned to Department space.

5.2 The ***Equal Employment Opportunity*** Computer Based Training (CBT) is mandatory for Department employees and:

(A) Must be completed with 30 days of hire date.

(B) Is required every three (3) years.

6. FORMS

Form No. 275-010-01, Discrimination/Sexual Harassment Complaint Form, is available in the Department's Forms Library or by contacting the Equal Opportunity Office in Tallahassee, phone (850) 414-4747.

APPENDIX A INITIAL CONTACT QUESTIONNAIRE

1. Complainant's name _____
2. Work unit and job title of Complainant _____

3. Complainant's phone number _____
4. Respondent's (person treating the complainant differently)
name: _____
5. Work unit and job title of Respondent

6. Relationship of Complainant to Respondent?

7. What actions occurred to make you think you were treated differently, discriminated
against or harassed? (May use additional pages if necessary)

8. When did this occur? _____
9. How often has it occurred? _____
10. Why do you think you are being treated this way? _____

11. Did you tell anyone in management about this? Yes _____ No _____
If so, who? When? What actions, if any, were taken? _____

12. Witness name(s) and contact information

13. How would you like to see this matter resolved?

Intake Officer's name _____

Date of initial contact meeting _____

EEO contact _____ HR Office contact _____

Confirmation received from EOO yes / no Confirmation received from HR yes / no

Copies must be provided to Central Office HR and EOO

