

Approved:

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Topic No.: 275-010-001-I



Department of Transportation

## **EMPLOYMENT DISCRIMINATION COMPLAINTS**

### **AUTHORITY:**

Sections 20.23(3) (a) and 334.048(3), Florida Statutes

### **STATEMENT OF POLICY:**

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

### **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, F.S.
- Section 110.112 F.S., Individuals with Disabilities Act
- Chapter 60L-40.001 and .002, F.A.C.
- The Equal Employment Opportunity / Affirmative Action Policy Topic No. 001--275-001
- Cooperation with Official Agency Investigations, Topic No. 001-450-002

## **DEFINITIONS:**

**APPLICANT:** An individual who applies for a Department vacancy.

**COMPLAINANT:** An individual who files an employment discrimination, workplace harassment or retaliation complaint based on the protected classes (race, color, disability, sex, pregnancy, religion, national origin, age or marital status) or having engaged in protected activity as defined under The Florida Civil Rights Act of 1992, Chapter 760, F.S. (FCRA) or Title VII of The Civil Rights Act of 1964 (Title VII), with the Equal Opportunity Office (EEO), Florida Commission on Human Relations (FCHR) or the Equal Employment Opportunity Commission (EEOC).

**DEPARTMENT:** The Florida Department of Transportation.

**EEO INVESTIGATOR):** A Department employee with the Equal Opportunity Office (EEO) authorized to conduct investigations for the Department in response to complaints of employment discrimination, workplace harassment or retaliation based on the protected classes.

**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), pregnancy, religion, national origin, age, or marital status.

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC):** An independent federal agency established to enforce laws against employment discrimination, workplace harassment or retaliation based on the protected classes.

**EQUAL OPPORTUNITY OFFICE (EEO) STAFF:** EEO staff assigned to conduct or assist in investigations includes the Equal Opportunity Office, Manager; Civil Rights Program Manager and EEO Investigators.

**EXTERNALLY FILED COMPLAINTS:** Allegations of employment discrimination, workplace harassment or retaliation based on the protected classes or protected activity as defined under the FCRA or Title VII, filed by a Department employee, former employee or applicant with either the EEOC or FCHR.

**FLORIDA COMMISSION ON HUMAN RELATIONS (FCHR):** The state agency established by the Florida Legislature to investigate and resolve employment discrimination, workplace harassment or retaliation complaints based on the protected classes or protected activity as defined under the FCRA or Title VII, and 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, workplace harassment or retaliation based on the protected classes to the EEO.

**INTERNALLY FILED COMPLAINTS:** Allegations of employment discrimination, workplace harassment or retaliation based on the protected classes or protected activity as defined under the FCRA or Title VII, filed with the EOO or an Intake Officer by a Department employee or applicant.

**MANAGEMENT DIRECTED INQUIRY:** A fact finding review requested in writing by the Secretary, an Assistant Secretary, a District Secretary or Executive Director to determine whether employment discrimination or hostile work environment exists.

**PRIMA FACIE:** Complaint contains the three (3) elements of proof to initiate an investigation:

- A) Complainant is a member of a protected class or engaged in protected activity as defined under the FCRA or Title VII,
- B) Complainant was harmed by an employment action, and
- C) Similarly situated persons of a different group were not or would not have been harmed under similar situations

**RESPONDENT:** Individual(s) accused by Complainant of engaging in employment discrimination, workplace harassment or retaliation.

**RETALIATION:** The act of discriminating against a person because the individual engaged in protected activity as defined under the FCRA or Title VII, such as filed an employment discrimination or workplace harassment complaint or testified, assisted, or participated in any manner in a proceeding initiated pursuant to this procedure.

**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, workplace harassment or retaliation complaint with an Intake Officer or the EOO. Internally filed complaints may be submitted in either of the following two (2) ways:

(A) Completing the on-line paperless form at <https://eoic.fdot.gov/PublicComplaint/PublicComplaintForm>. The complaint information will automatically be submitted to the EOO. The link can also be found on the EOO's Internet webpage

(B) Completing and submitting Form No. 275-010-1, Discrimination /Sexual Harassment Complaint Form to an Intake Officer or the EOO Staff.

If requested, the Intake Officer or the EOO Staff will assist employees or applicants with completing the complaint form.

1.1.2 If the Complainant is a non-Department employee (i.e. a contractor, consultant 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 an employment discrimination, workplace harassment or retaliation complaint based on the protected classes against a non-Department employee based on their status as a contracted Department employee, 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, workplace harassment or retaliation complaint in conjunction with an externally filed 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 If a Complainant files an internal employment discrimination, workplace harassment or retaliation complaint and resigns from the Department before an investigation is initiated, the complaint will be administratively closed by the EOO, unless otherwise directed by Management in accordance with Section 1.1.8. If a Complainant resigns before completion of the investigation, EOO will seek guidance from the General Counsel's Office. The Complainant will be notified of a decision by e-mail or letter and provided contact information for both the FCHR and the EEOC.

- 1.1.6** The Department will ensure that allegations of sexual harassment meet the requirements of **Rule 60L- 40.001, F.A.C.** and that actions are taken to ensure no further inappropriate actions against the Complainant occur.
- 1.1.7** Verbal or anonymous complaints of employment discrimination or workplace harassment may be sufficient to initiate an inquiry by the EEO. A Complainant may file in writing by completing the on-line Discrimination / Sexual Harassment Complaint Form or by contacting an Intake Officer or EEO Investigator.
- 1.1.8** If a Management Directed Inquiry is requested, the EEO will investigate the inquiry in accordance with this procedure.

## **1.2 RECEIPT OF COMPLAINTS BY INTAKE OFFICERS**

### **1.2.1 Appointment of Intake Officers**

Each District Secretary shall appoint two (2) or more employees who shall act as Intake Officers. These appointments will be reevaluated by the District Secretary every two (2) years. In addition, District 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, workplace harassment and retaliation complaints based on the protected classes. 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:
  - (1) The name(s), job title(s), address(es), and telephone number(s) of the complainant(s) as well as their assigned unit within the Department (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 committed unlawful employment practice(s), workplace harassment or retaliation
  - (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 District Human Resources Manager, Employee Relations Manager and the EOO Staff 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/ Sexual Harassment 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 (5) business days after receipt of an internally filed employment discrimination, workplace harassment or retaliation complaint, the EOO will send a notification letter by e-mail to the Complainant acknowledging receipt of the complaint, requesting any additional information and identifying the Investigator assigned to investigate the complaint.

**1.3.2** Within five (5) business days after receipt of an internally filed employment discrimination, workplace harassment or retaliation complaint, the EOO staff will send an e-mail notification of the receipt of a complaint to the District Secretary, appropriate Assistant Secretary or Director in Central Office, Director of Human Resources, Employee Relations Manager, Office of General Counsel (OGC), the District Human Resources Manager and the cost center manager 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 (2) weeks of the receipt of request.

## 1.4 DETERMINING THE MERITS OF INTERNAL COMPLAINTS RECEIVED BY THE EOO

The EEO Investigator in the EOO will:

(A) Determine if the Complainant'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 Complainant's alleged facts would constitute unlawful discrimination, harassment, or retaliation

(B) Respond to internal complaints that fail to meet jurisdictional requirements under state and/or federal law, by letter or e-mail, 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

(800) 669-4000

Miami District Office  
Miami Tower,  
100 SE 2<sup>nd</sup> Street, Suite 1500  
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 EEO Investigator will make a case-by-case assessment of each complaint, and as determined appropriate:

- (A) Coordinate with the Civil Rights Programs Manager to determine and develop an investigative plan.
- (B) Contact the Complainant to collect any additional information and determine the remedy the Complainant is seeking to resolve the complaint.
- (C) Evaluate the requested information and other supporting documentation received from the work unit.

- (D) Review personnel files of the Complainant and other key employees named in the complaint.
- (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, witnesses and Respondent, regarding information relevant to the complaint.
- (H) If an interview is not possible, obtain affidavits from all relevant witnesses.
- (I) Keep the Complainant, the District Secretary or appropriate Assistant Secretary or Director in Central Office, Director of Human Resources, Employee Relations Manager, Office of General Counsel (OGC), the District Human Resources Manager and the cost center manager 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 reviewed and evaluated by the EOO Staff. All allegations made in the complaint will be identified, as well as, any denials, corroborations, and defenses to each allegation. All evidence once compiled, will be analyzed and addressed. The objective is to resolve conflicting issues and evaluate the alleged facts that would constitute unlawful discrimination, harassment, or retaliation.

**1.6.1.2** A complaint may be amended to correct technical errors, omissions, or to clarify 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 EEO Investigator 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

The Purpose of the Investigative Report is to present the specific, relevant allegations in the complaint, review facts including detailing the evidence which supports or disputes the factual allegations, document any findings, and provide the findings to management.

An investigative report, written by the EEO Investigator will include:

- A) Background information including the basic elements of the complaint (allegations and protected bases),
- B) Summary of Investigation (outlining each relevant allegation and responding to each one, including setting out the testimony and other evidence related to the allegation), and
- C) Conclusion (findings).

## 1.6.3 Finalized Report

The EEO Manager, will review the draft investigative report for completeness and accuracy, and then forward to the OGC for final review. Upon finalization, the EEO Manager will submit the final report to the District Secretary, appropriate Assistant Secretary or Director in Central Office, Director of Human Resources, Employee Relations Manager, Office of General Counsel (OGC), the District Human Resources Manager and the cost center manager. A copy of the final report will also be sent to the Complainant with a copy retained in the EEO 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, workplace harassment or retaliation 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 EEO. The complaint becomes inactive upon withdrawal by the Complainant (unless the EEO is directed to continue with the investigation by Management in accordance with Section 1.1.8), 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 by Complainant

The Complainant may withdraw his/her complaint at any stage of the investigation. Upon the EEO's receipt of a signed withdrawal statement, the

investigation of the complaint will be closed (unless the EOO is directed to continue with the investigation by Management in accordance with Section 1.1.8). A letter or e-mail acknowledging receipt of the withdrawal will be sent from the EOO Manager, to the Complainant and a copy to the District Secretary, appropriate Assistant Secretary or Director in Central Office, Director of Human Resources, Employee Relations Manager, OGC, the District Human Resources Manager and the cost center manager. The letter will confirm the Complainant's withdrawal of the complaint and include 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 (5) business 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 District Secretary, appropriate Assistant Secretary or Director in Central Office, Director of Human Resources, Employee Relations Manager, OGC the District Human Resources Manager and the cost center manager. 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. EOO Staff 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.

## **3. RETALIATION**

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

## 4. TRAINING

**4.1** 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.

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

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

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

**4.3** Intake Officer training is mandatory every three (3) years. Newly appointed Intake Officers must complete the training within 60 days of appointment.

## 5. FORMS

Form No. 275-010-01, Discrimination/Sexual Harassment Complaint Form, is available in the Department's Forms Library. The on-line link to the paperless form is:

<https://eoic.fdot.gov/PublicComplaint/PublicComplaintForm>.

## APPENDIX A INITIAL CONTACT QUESTIONNAIRE

1. Complainant's name \_\_\_\_\_
2. Work Unit and 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 EEO yes / no*

*Confirmation received from HR yes / no*

**Copies must be provided to Central Office HR and EEO**

