



West Virginia Department of Transportation Policy: **Prohibited Workplace Harassment** *Issued by the Secretary of Transportation*

Policy No: DOT 3.26

Issue Date: 05/01/1993

Revised: 11/10/2021

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1.0 PURPOSE

The purpose of this policy is to prescribe a work environment where illegal harassment does not occur. Employees have the right to be free from harassment while in a State government workplace, and the State has the legal obligation to ensure that such harassment does not occur, and that effective means of redress are available. Harassment of any type will not be tolerated.

2.0 SCOPE

This policy shall cover all independent contractors, volunteers, and employees of the West Virginia Department of Transportation, including executive, administrative, classified, non-classified, exempt, and temporary employees excluding the Parkways Authority.

3.0 DEFINITIONS

- 3.1 **Agency:** Any authority, bureau, commission, or Division, or similar cabinet subpart of the Department of Transportation
- 3.2 **Cabinet Secretary:** Appointing authority for the Department of Transportation or designee.
- 3.3 **Discriminatory Hostile Work Environment Harassment:** Illegal harassment based on sex (with or without sexual conduct), race, color, religion, national origin, ancestry, age, disability, and protected activity (i.e., opposition to prohibited discrimination or participation in the complaint process), or status explicitly defined as protected under applicable State and federal law.
- 3.4 **Employee:** A person who lawfully occupies a position in a DOT agency and who is paid a wage or salary and who has not severed the employee-employer relationship.
- 3.5 **Employer:** The West Virginia Department of Transportation.
- 3.6 **Equal Employment Opportunity (EEO) Coordinator or Officer:** The agency employee selected by the Cabinet Secretary to advise employees and management concerning proper EEO procedures and to function as a liaison with the State EEO Office.
- 3.7 **Hostile Work Environment Sexual Harassment:** A type of illegal sexual harassment based on gender that is sufficiently severe and pervasive as to alter the conditions of the employee's employment and create a hostile and abusive working environment. A hostile work environment consists of unwelcome conduct, or harassment, based on race, sex, pregnancy, religion, national origin, age, disability, or genetics, the harassment is continued and long lasting, and the

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conduct is severe enough that the environment becomes intimidating, offensive, or abusive.

- 3.8 **Independent Contractor:** Any entity or person responsible for the performance of work under a contract.
- 3.9 **Nondiscriminatory Hostile Workplace Harassment:** A form of harassment commonly referred to as “bullying ” that involves verbal, non-verbal or physical conduct that is not discriminatory in nature but is so atrocious, intolerable, extreme and outrageous in nature that it exceeds the bounds of decency and creates fear, intimidates, ostracizes, psychologically or physically threatens, embarrasses, ridicules, or in some other way unreasonably over burdens or precludes an employee from reasonably performing their work.
- 3.10 **Quid Pro Quo Sexual Harassment:** Meaning “this for that” or “something for something,” a type of illegal sexual harassment in which the satisfaction of a sexual demand is used as the basis of a tangible employment action.
- 3.11 **Retaliation:** Adverse action pertaining to any aspect of employment (hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment) taken against an individual for participating in a complaint and/or investigation process. For the purpose of this policy, retaliation shall also include actions taken against such an individual by the accused or other employees.
- 3.12 **Sexual Harassment:** A type of illegal harassment which involves any unsolicited and unwelcome sexual advances, requests for sexual favors, or other verbal, written, or physical conduct of a sexual nature when:
- A. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
 - B. Submission to or rejection of such conduct is used as the basis for personnel actions affecting an employee, or
 - C. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or offensive working environment.
- 3.13 **State EEO Office:** The State agency, independent of DOT, authorized by the Governor's Executive Order to direct all aspects of the statewide EEO program to prevent unlawful employment discrimination and to promote diversity in West Virginia State government.
- 3.14 **Third-party Harassment:** Third-party harassment occurs when an employee is harassed by a non-employee such as a client or vendor, an employee harasses a non-employee with whom the agency has a business relationship, or an employee believes that a hostile work environment exists due to a sexual relationship involving two other employees.

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- 3.15 **Volunteer:** Any authorized individual directly engaged in the performance of services for the Department or one of its agencies without promise, expectation, or receipt of compensation.
- 3.16 **Workplace:** A worksite where service or work is performed in connection with an independent contractor's, volunteer's, or employee's public employment or service, including sites of social functions and conferences. The workplace includes, but is not limited to, facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, and parking areas provided by the Department, even if not owned, leased, or operated by the Department. *An alternative work location may apply if applicable under Teleworking Guidance.*
- 3.17 **Work-Related or Service-Related Activity:** Includes, but is not limited to, conducting work or service, representing the State, the Department of Transportation, or one of its agencies, receiving awards, speaking as a State, or DOT agency representative, and participating in receptions when invited as a result of State employment or service.

4.0 POLICY

- 4.1 Illegal harassment is prohibited by the West Virginia Human Rights Act and Title VII of the Civil Rights Act of 1964 where such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- 4.2 Although some harassment may not violate existing discrimination laws, any egregious behavior can result in a tort claim for intentional infliction of emotional distress. As such, all forms of harassment are prohibited.
 - A. This policy extends to employees while engaged in any work or service-related activity which includes the performance of Department business.
 - B. Further, this prohibition applies to independent contractors and volunteers while engaged in any work or service related activity in a workplace owned, leased, or operated by the Department or other public?? entity.
 - C. Any employee found to be in violation of this policy will be subject to disciplinary action up to and including dismissal.
- 4.3 Management is potentially liable for acts of harassment in the workplace whether or not the source or target of harassment is another employee or a non-employee.
 - A. Liability for such acts can be imputed on the employer unless the employer demonstrates that immediate and appropriate corrective action was taken upon notice of the improper conduct.
 - B. Employees may be held personally liable for harassment.

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- C. Employees who experience third-party harassment have standing to file claims for discrimination or harassment where employment opportunities or benefits are granted or a hostile environment is created because of an individual's submission to the employer's sexual advances or requests for sexual favors.
- 4.4 Illegal harassment, prohibited by State and federal anti-discrimination laws, includes words, conduct, or action, possibly repeated or persistent, directed at a specific person that annoys, alarms, or causes substantial emotional distress in that person and serves no legitimate purpose.
- 4.5 There are two legally recognized types of sexual harassment claims: (1) Quid Pro Quo Sexual Harassment, and (2) Hostile Work Environment Sexual Harassment. Such harassment involves verbal, physical conduct, or both which may include, but is not limited to:
 - A. Sexually explicit or implicit propositions,
 - B. Improper questions about an employee's private life,
 - C. Sexually discriminatory ridicule, insults, jokes, or drawings,
 - D. Undesired, intentional touching such as embracing, patting, or pinching,
 - E. Remarks directed against one's sex as a class or group,
 - F. Threatened, attempted, or actual sexual assault or rape,
 - G. Repeated sexually explicit or implicit comments or obscene and suggestive remarks that are unwelcome or discomfiting to the employee,
 - H. Offers of tangible employment benefits in exchange for sexual favors, or threats or reprisals for negative responses to sexual advances,
 - I. Sexual harassment by a supervisor of an employee, or
 - J. A combination of any of the above.
- 4.6 Although the scope of The Civil Rights Act of 1964 does not extend to protect employees that are not members of a protected class from unlawful employment discrimination, an employee can still impute liability upon an employer for the infliction of emotional distress if the employer fails to take corrective action when an employee provides notice of nondiscriminatory workplace harassment that has subsequently created a hostile work environment for the employee.
- 4.7 Nondiscriminatory Hostile Workplace Harassment consists of unreasonable or outrageous behavior that deliberately causes extreme physical or emotional distress, or both. Such conduct involves the repeated unwelcome mistreatment of one or more employees often involving a combination of intimidation, humiliation, and sabotage of performance which may include, but is not limited to:
 - A. Unwarranted constant and destructive criticism,

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- B. Singling out and isolating, ignoring, ostracizing, etc.,
- C. Persistently demeaning, patronizing, belittling, and ridiculing,
- D. Bullying, or
- E. Threatening, shouting at, and humiliating behavior/action particularly in front of others.

5.0 COMPLAINT AND INVESTIGATION

- 5.1 It is important to note that Nondiscriminatory Hostile Workplace Harassment claims are not within the jurisdiction of the State EEO Office.
 - A. Employees must address such complaints through their manager or supervisor, the West Virginia Public Employees Grievance Procedure, or litigation.
 - B. Complaints regarding illegal harassment are handled in accordance with established EEO procedures.
 - C. All information shall be held in strictest confidence and shall be disclosed only to appropriate individuals on a need-to-know basis to investigate and resolve the matter.
- 5.2 While an individual alleging illegal harassment has a duty to promptly report the incident or complaint to the agency's EEO Office or Coordinator or the employee's immediate supervisor. The individual also has the right to file such complaints with the West Virginia Human Rights Commission and the United States Equal Employment Opportunity Commission (EEOC).

6.0 RESPONSIBILITIES

- 6.1 Employees have the responsibility to:
 - A. Refrain from all forms of harassment.
 - B. Promptly report allegations or observations of harassment to the appropriate individuals (i.e., supervisor, manager, EEO Coordinator or Counselor, or the Human Resources Division).
 - C. Fully cooperate in and not interfere with any employer-authorized investigation.
 - D. Not retaliate against those who participate in the complaint or investigation process.
 - E. Participate in required training.
 - F. Acknowledge understanding of and compliance with this policy by signing the Prohibited Workplace Harassment Acknowledgment Form at the end of this policy.

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- 6.2 Supervisors, managers, and person in positions of authority at all levels have the responsibility to:
- A. Monitor the work environment to ensure that it is free of harassment.
 - B. Promptly investigate complaints of harassment.
 - C. Enforce this policy and take immediate and appropriate action to address violations.
 - D. Ensure that complainants, falsely accused individuals, and persons interviewed regarding complaints suffer no adverse impact in their employment and no retaliation.
 - E. Ensure that confidentiality is maintained by keeping all information regarding a complaint of harassment in a separate, confidential file with restricted access to appropriate individuals on a need-to-know basis.
 - F. Ensure that all employees receive appropriate training and that supervisory personnel complete the Division of Human Resources training on the Prohibited Workplace Harassment policy.
 - G. Ensure that all required reports are provided to the State EEO Office.
 - H. Post the Prohibited Workplace Harassment Poster at conspicuous locations throughout the agency.
 - I. Communicate this policy to all employees through inclusion in the orientation process of all new employees, and by making it readily available at all work locations.
 - J. Maintain the signed Prohibited Workplace Harassment Acknowledgment Form in each employee's agency personnel file.

7.0 REFERENCES

7.1 Federal

- A. U.S. Const., amend. XIV.
- B. Executive Order 11246 of 1965, as amended.
- C. 8 USC 1324 et seq., (Immigration Reform and Control Act of 1986).
- D. 29 USC 206(d) et seq., (Equal Pay Act of 1963, as amended).
- E. 29 USC 621, et seq., (Age Discrimination in Employment Act of 1967, as amended).
- F. 29 USC 701 et seq., (Rehabilitation Act of 1973).
- G. 29 USC 791 et seq., (Rehabilitation Act of 1992).
- H. 29 USC 2601 et seq., (Family and Medical Leave Act of 1993).
- I. 38 USC 4301 et seq., (Uniform Services Employment and Re-employment Rights Act of 1994).

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- J. 42 USC 1981 et seq., (Civil Rights Act of 1991).
- K. 42 USC 12101 et seq., (Americans with Disabilities Act of 1990).
- L. 42 USCA 12101 et seq., (Americans with Disabilities Act Amendments Act of 2008).
- M. 42 USC 2000e(k) (Pregnancy Discrimination Act of 1978).
- N. 42 USC 2000d-2000d-7, (Civil Rights Remedies Equalization Act of 1986).
- O. 42 USC 2000e et seq., (Title VII of the U.S. Civil Rights Act of 1964, as amended).
- P. 42 USC 2000ff et seq., (Genetic Information Nondiscrimination Act of 2008).
- Q. 29 CFR 1600-1699 (EEOC Uniform Guidelines).

7.2 State

- A. West Virginia Code § 5-11-1 et seq., West Virginia Human Rights Act.
- B. West Virginia Code § 5-15-1 et seq., White Cane Law.
- C. West Virginia Code § 21-3-19, Discrimination for use of tobacco products prohibited.
- D. West Virginia Code § 21-5-17, Employers prohibited from discharging employees for time lost as volunteer firemen or emergency medical service attendant.
- E. West Virginia Code § 21-5-18, Employers prohibited from discharging employees for time lost as emergency medical service personnel.
- F. West Virginia Code § 21-5E-1 et seq., Equal Pay for Equal Work for State Employees.
- G. West Virginia Code § 23-5A-3, Termination of Injured Employee Prohibited; re-employment of injured employees.
- H. West Virginia Code § 52-3-1, Discrimination for Jury Service.
- I. Executive Order No. 3-94 (April 30, 1994).

8.0 CHANGE LOG

November 8, 2021

- Converted to WVDOT policy from DOP.
- Reformatted the purpose and scope.
- Updated language to reflect current procedures.

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POLICY ACKNOWLEDGMENT FORM

I, _____, certify that I have received a copy of the West Virginia Department of Transportation Prohibited Workplace Harassment policy (DOT 3.26).

I understand that illegal harassment based on sex (with or without sexual conduct), race, color, religion, national origin, ancestry, age, disability, and protected activity (i.e., opposition to prohibited discrimination or participation in the complaint process,) or status explicitly defined as protected under applicable State and federal law, as well as nondiscriminatory hostile workplace harassment, is prohibited and will not be tolerated in the workplace. Further, I understand my responsibility to promptly report allegations of illegal harassment, fully cooperate in and not interfere with any authorized investigation, and not retaliate against those who participate in the complaint and/or investigation process.

My signature acknowledges my receipt of the policy and my understanding of its contents and requirements. My signature does not indicate that I agree or disagree with the content of the policy. However, I understand I must abide by the terms of the policy and I am aware that with any violation of this policy, I will be subject to disciplinary action, up to and including dismissal.

Employee's Name (Print)

Employee's Signature

TO BE COMPLETED BY SUPERVISOR

I, _____, certify that I have discussed with and provided the above listed employee a copy of the West Virginia Department of Transportation Prohibited Workplace Harassment policy (DOT 3.26).

Supervisor's Name (Print)

Supervisor's Signature

Date

Distribution: Original – Human Resources
Copy – Employee