



**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION**
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Jimmy Wriston, P.E.
Secretary of Transportation
Commissioner of Highways

May 16, 2022

MEMORANDUM

TO: ALL DOT Employees

FROM: Jimmy D. Wriston, P.E. *Jimmy D. Wriston, P.E.*
Secretary of Transportation/
Commissioner of Highways

THRU: Rita Pauley *Rita Pauley*
Assistant Commissioner

Alanna J. Keller, P.E. *Alanna J. Keller, P.E.*
Chief Transportation Engineer

SUBJECT: DOT 3.37 Equal Employment Opportunity (EEO) Policy

The Equal Employment Opportunity (EEO) Policy has been revised. Please carefully review this information; all DOT employees are affected by the new policy.

A copy of the policy can be found at -
<https://sites.google.com/wv.gov/dot/policies>

If you have any questions, please contact Civil Rights Compliance Division at 304-558-3931 and you will be directed accordingly.



West Virginia Department of Transportation Policy: **Equal Employment Opportunity (EEO): Prohibited Discrimination, Harassment, and Related Misconduct**

Issued by the Secretary of Transportation

Policy No: DOT 3.37

Issue Date: 12/01/1995

Revised: 05/16/2022

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1.0 PURPOSE

The West Virginia Department of Transportation (WVDOT) strives to maintain a diverse workforce. WVDOT is committed to providing a safe, inclusive, and respectful working environment for all applicants, employees, vendors, contractors, and customers without regard to race, color, religion, age, sex, national origin, actual or perceived disability status, genetics, sexual orientation, gender identity or expression, pregnancy or pregnancy-related conditions, or any other characteristic protected by federal, state, or local laws. WVDOT has a "Zero Tolerance" policy for discrimination and harassment.

This policy applies to all terms and conditions of employment, including recruiting, hiring, placement, promotion, termination, layoff, recall, transfer, leaves of absence, compensation, and training.

It is a violation of this policy to retaliate against WVDOT employees, applicants, vendors, contractors, special service employees, or an employee of another department or agency who has supported this policy, filed a complaint, testified, or assisted in any proceeding under this policy.

2.0 SCOPE

The WVDOT is fully committed to ensuring a work environment free from all forms of discrimination and harassment in accordance with the policy of the United States and West Virginia State Governments per Executive Order 11246, as amended, Title VII of the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, the Rehabilitation Act of 1973, Title I of the Americans With Disabilities Act, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, the West Virginia Human Rights Act, the Genetic Information Non-Discrimination Act 2008, the Pregnancy Discrimination Act of 1978, and State of West Virginia Executive Order No. 6-90. These acts and orders collectively prohibit discrimination in employment based on race, color, religion, sex, national origin, age, disability, genetic information, political affiliation, or military, or veteran status.

The WVDOT will ensure that all personnel actions relating to employment, compensation, transfers, promotion, training, educational opportunities, and terminations will be made in a nondiscriminatory manner. Discrimination or harassment of any type will not be tolerated.

Suggestions or concerns regarding the Department's Equal Employment Opportunity Policies should be directed to your local EEO Coordinator or the EEO Unit of the Civil Rights Compliance Division ("EEO Unit"). All levels of management are charged with the responsibility of achieving compliance with this policy. Appropriate corrective action will be taken for noncompliance.

An employee who files a discrimination complaint will receive a prompt and timely response. Reprisal against employees, vendors, and contractors, complaining of discrimination or harassment is illegal and will not be tolerated.

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3.0 DEFINITIONS

- 3.1 **Agency:** Any authority, bureau, commission, Division or similar cabinet subpart of the WVDOT.
- 3.2 **Agency Head:** The chief executive officer of an agency.
- 3.3 **Complainant(s):** Person or persons alleging discriminatory conduct at any point within the employment process, application through separation.
- 3.4 **EEO Complaint:** A claim by one or more employees alleging that they have been treated unfairly in their workplace because of actions against them based on a protected class.
- 3.5 **EEO Coordinator:** 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 Unit.
- 3.6 **EEO Officer:** The designated WVDOT EEO Officer that coordinates the EEO activities of the agency.
- 3.7 **EEO Specialist:** The EEO Specialist works with the WVDOT EEO Officer to gather EEO information, investigate EEO incidents, and draft policy and reports.
- 3.8 **EEOC:** The Equal Employment Opportunity Commission is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy, transgender status, and sexual orientation), national origin, age (40 or older), disability, and genetic information.
- 3.9 **Employee:** A person who lawfully occupies a position in a WVDOT agency and who is paid a wage or salary and who has not severed the employee-employer relationship.
- 3.10 **Formal Complaint:** Signed, written document from a complainant alleging specific prohibited conduct by a respondent and initiating the applicable resolution procedures.
- 3.11 **Harassment:** Unwelcome conduct based on race, color, religion, sex (including sexual orientation, gender identity, or pregnancy), national origin, older age (beginning at age 40), disability, and genetic information.
- 3.12 **Hostile Work Environment:** Environment determined by a reasonable person to either be so severe, pervasive, and objectively offensive that it effectively denies a person equal access or when the conduct subjects an individual to inferior terms, conditions, or privileges of employment. The conduct must be "more than a petty slight or trivial inconvenience" from the perspective of a reasonable person in the same protected class.

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- 3.13 **HR Representative:** Agency or District Human Resources (HR) Manager. This position acts as a liaison between the employee and the EEO Unit when scheduling and holding interviews.
- 3.14 **Investigation:** Organized inquiry into a formal complaint.
- 3.15 **Investigator:** EEO Specialist(s), EEO Officer, or other individuals with specialized EEO training appointed to assist in conducting EEO investigations.
- 3.16 **Prohibited Conduct:** Conduct that violates this policy.
- 3.17 **Prohibited Discrimination:** Discrimination against someone covered by this policy because of that person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), military, veteran status, disability, or genetic information. It is also illegal to retaliate against someone because they complained about discrimination.
- 3.18 **Protected Classes:** A group of people with a common characteristic who are legally protected from employment discrimination based on that characteristic, i.e., race, color, religion, sex (gender or sexual), national origin, age (40 or older), disability, The Genetic Information Nondiscrimination Act (GINA) violation, political affiliation, military, veteran status, or retaliation.
- 3.19 **Respondent(s):** Person against whom a report or formal complaint of prohibited conduct under this policy is made.
- 3.20 **Retaliation:** An adverse action taken against an individual for participating in a complaint or an investigation process. Retaliation also includes steps taken against such an individual by the accused or other employees, including, but not limited to intimidation, threats, coercion, discrimination, or adverse employment actions.
- 3.21 **Sexual Harassment:** Sexual harassment is sexual advances, requests for sexual favors, or other unwanted conduct of a sexual nature, which may include acts of aggression, intimidation, or hostility, whether verbal, nonverbal, graphic, physical, or otherwise.
- Sex or gender-based harassment is harassment based on gender, sex, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal, nonverbal, graphic, physical, or otherwise, even if the actions do not involve conduct of a sexual nature.
- 3.22 **Workplace:** A worksite where service or work is performed in connection with an independent contractor's, vendor'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, trailers, vehicles, and parking areas provided by the State, even if not owned, leased, or operated by the State.

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- 3.23 **WV Human Rights Commission:** The Commission administers and ensures adherence to the Human Rights Act through education, investigation, mediation, and adjudication. The Human Rights Act prohibits discrimination in employment and places of public accommodations based on race, color, religion, sex (gender or sexual), national origin, age (40 or older), disability, The Genetic Information Nondiscrimination Act (GINA) violation, political affiliation, military, or veteran status.
- 3.24 **WVDOT Civil Rights Compliance Division ("CRC"):** The office within WVDOT that includes the EEO Unit. The EEO Unit is responsible for receiving complaints, conducting mediations, investigations, and tracking the processing of complaints. The CRC Division administers and monitors the WVDOT's Equal Opportunity, Affirmative Action, Contract Compliance, Labor Compliance, and On-the-job Training Programs. CRC Division's programs are to support and enhance WVDOT's commitment to diversity and non-discrimination in all its programs, services, and activities.

4.0 RESPONSIBILITIES

4.1 EEO Officer:

- A. Ensures that the WVDOT EEO program and plan are fully implemented and complied with in all programs and business activities;
- B. Ensures that employment, recruitment, hiring, retention, training, transfers, promotions, and business activities comply with EEO guidelines and laws;
- C. Ensures that active recruitment efforts for qualified applicants include all segments of the relevant workforce;
- D. Guides employees and management regarding EEO issues;
- E. Responsible for receiving EEO complaints, overseeing a complaint's processing, writing policy, and developing and administering EEO training to all employees;
- F. Responsible for federal reports and compliance with federal EEO regulations; and
- G. Ensures the Secretary's EEO Policy Statement is implemented and maintained up to date.

4.2 WVDOT Agency Heads, Chief Officers, District Managers, Division Directors:

- A. Provide a work environment free from discrimination and harassment by ensuring that program objectives, standards, and practices comply with EEO guidelines;
- B. Ensure that managers and supervisors review this policy with their employees annually; and

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- C. Recommends EEO contact(s) for their Agency District or Division.

4.3 Managers and Supervisors:

- A. Provide a work environment free from discrimination and harassment by ensuring that standards and practices comply with EEO guidelines;
- B. Review this policy with employees on an annual basis;
- C. Forward complaints or EEO potential issues to the Civil Rights Division – EEO Office or agency or District HR manager in a confidential and timely manner;
- D. Ensure that employees are aware of their responsibility to cooperate fully in the investigation processes of a complaint and disciplinary proceedings for violations of this policy;
- E. Take immediate and appropriate corrective action when a violation of this EEO policy occurs; and
- F. Provide a work environment free from retaliation for those who have supported this policy, filed a complaint, testified, or assisted in any proceeding under this policy.

4.4 Agency and District HR Administrators, Managers, and Representatives:

- A. Monitor the implementation of District programs and ensure that business activities comply with EEO guidelines and directives;
- B. Monitor and ensure that the work environment is free from discrimination and harassment;
- C. Serve as the local staff resource for managers, supervisors, employees, and investigators regarding EEO issues; and
- D. Serve as a point of contact for employees to initiate the complaint process.

4.5 Employees, Applicants, and Business Partners:

- A. Ensure that fellow employees, business partners, and the general public are treated with dignity and respect in a work environment free from discrimination and harassment;
- B. Immediately report alleged violations of this policy to a supervisor, manager, HR representative, or the EEO Unit; and
- C. Cooperate fully in the investigation processes of a complaint and disciplinary proceedings for violations of this policy.

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5.0 TYPES OF DISCRIMINATION

5.1 Age Discrimination

Treating an applicant or employee less favorably because of their age. The Age Discrimination in Employment Act (ADEA) forbids age discrimination against people who are age 40 or older.

5.2 Disability Discrimination

When an employer or other entity covered by the Americans with Disabilities Act (ADA), as amended or the Rehabilitation Act, as amended, treats a qualified individual with a disability who is an employee or applicant unfavorably because they have a disability.

5.3 Genetic Information Discrimination

Under Title II of GINA, it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts employers and other entities covered by Title II from requesting, requiring, or purchasing genetic information, and strictly limits the disclosure of genetic information.

5.4 Harassment

A form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the ADEA, and ADA.

Harassment becomes unlawful when 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

5.5 National Origin Discrimination

Treating applicants or employees unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).

5.6 Pregnancy Discrimination

Treating an applicant or employee unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

5.7 Race and Color Discrimination

Race discrimination involves treating an applicant or employee unfavorably because they are of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features).

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Color discrimination involves treating someone unfavorably because of skin color. Discrimination can occur when both parties are of the same race or color.

5.8 Religious Discrimination

Treating an applicant or employee unfavorably because of their religious beliefs. The law protects people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, and others who have sincerely held religious, ethical, or moral beliefs.

5.9 Retaliation

EEO laws prohibit punishing job applicants or employees for asserting their rights to be free from employment discrimination, including harassment. These EEO rights are called a "protected activity." Participating in a complaint process is protected from retaliation under all circumstances.

5.10 Sex Discrimination

Treating an applicant or employee unfavorably because of that person's sex or sexual identification.

5.11 Sexual Harassment

It is unlawful to harass an applicant or employee because of that person's sex or sexual identification. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Both parties can be any gender, and of the same or opposite sex. The harasser can be the direct supervisor, a supervisor in another area, a co-worker, or someone not a WVDOT employee, such as a third party.

Conduct constitutes harassment when it is "quid pro quo" harassment or creates a hostile environment.

Examples of conduct that can violate this policy include, but are not limited to:

- Explicit sexual behavior by a supervisor, manager, co-worker, visitor, or other entity the employee interacts with during employment;
- Implicit request for sex;
- Direct or indirect pressure for dates or sexual activity;
- Pinching, patting, hugging, or any other unwelcome touching;
- Leering or gawking;
- Posting or circulation of sexually graphic materials including, but not limited to, cartoons, pictures, posters, or calendars;
- Sexually derogatory comments, including slurs, jokes, and other inappropriate remarks.
- Reprisals or threats after a negative response to sexual advances; and
- Unwelcome sexual advances

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6.0 COMPLAINT PROCESS

- 6.1 Employees must file a complaint with EEO Unit within 180 days of the action giving rise to the complaint. The complaint must clearly outline the allegations to be addressed by submitting a completed WVDOT EEO Complaint Form, including the basis of the alleged policy violation.
- 6.2 Multiple complaints by an employee may be consolidated into a single complaint. Separate complaints filed by two (2) or more employees regarding the same issue may be consolidated into a group complaint. Employees having a common complaint may submit one group complaint, identifying one complainant as the selected spokesperson for the group—employees who choose to file a group complaint may be prohibited from filing separate complaints on the same issue.
- 6.3 An EEO Complaint can also be filed by any employee that witnesses discrimination even if they are not directly involved. Any manager who becomes aware of alleged discriminatory conduct in the workplace must notify an EEO coordinator immediately.
- 6.4 Once a complaint is submitted to the EEO Unit, it may not be amended. If the complainant submits additional documentation after a complaint has been submitted, the reviewing or investigation official may remand the complaint for reconsideration and resubmission.
- 6.5 The WVDOT EEO Complaint Form must include “all facts” and circumstances involved in the alleged violation, including the following information:
 - A. Description of the incident(s).
 - B. Name(s) of the individual(s) involved.
 - C. Name(s) of witness(es).
 - D. The date(s) the discrimination or harassment occurred (if known).
 - E. Resolution sought.
- 6.6 The EEO Unit may submit a report to the HR Division if administrative actions may be necessary.

7.0 PRIVACY

- 7.1 The agency recognizes that participants should be protected from unreasonable disclosure of their involvement in the EEO process. To maintain the integrity of the process:
 - A. The parties should not reveal any information they learn during the EEO process, other than to consult with advisors and attorneys and incidental to seeking support and advice from family, clergy, health professionals, and others playing a similar role.

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- B. The parties are encouraged to request that any advisors, attorneys, and support persons they consult keep information related to matters under this policy private.
- C. The WVDOT prohibits parties from distributing documents obtained during their participation in matters under this policy, including, but not limited to, the complaint, interview transcripts, and the investigative record and report.
- D. The WVDOT EEO Officer may issue an order restricting the parties from disclosing specific information.
- E. The WVDOT shall take reasonable measures to protect the privacy of proceedings and records. Information collected during the EEO process shall remain confidential and limited to agency personnel who need to know and legal mandates governing disclosure.

8.0 SUPERVISOR DUTY TO RESPOND TO DISCRIMINATION, HARASSMENT, AND RELATED MISCONDUCT IN THE WORKPLACE

All WVDOT supervisors and managers understand that discrimination and harassment are considered forms of employee misconduct. WVDOT will enforce sanctions against individuals engaging in discrimination or harassment and against supervisory and managerial personnel who knowingly allow such behavior to continue. Supervisory and managerial personnel must take all reasonable actions to report any misconduct to the EEO Unit and respond immediately to any reports or observations of prohibitive behavior that may impact an employee's working environment.

9.0 RECORDKEEPING

The EEO Unit will retain all records of complaints and investigative reports for five (5) years from the date of making the record or the personnel action involved, whichever occurs later. However, in the case of involuntary termination of an employee associated with a discrimination investigation, the EEO Unit will retain the records associated with an employee who was involuntarily terminated for five (5) years from the date of termination.

10.0 FEDERAL AUTHORITY

- 10.1 [The Civil Rights Act of 1991; Title VII of the Civil Rights Act of 1964 \(Title VII\)](#)
- 10.2 [The Pregnancy Discrimination Act \(PDA\) of 1978](#)
- 10.3 [The Equal Pay Act of 1963 \(EPA\)](#)
- 10.4 [The Age Discrimination in Employment Act of 1967 \(ADEA\)](#)
- 10.5 [The Americans with Disabilities Act of 1990 \(ADA\)](#)
- 10.6 [The Americans with Disabilities Act Amendments Act \(ADAAA\) of 2008](#)

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10.7 [Sections 501 and 505 of the Rehabilitation Act of 1973](#)

10.8 [The Genetic Information Nondiscrimination Act of 2008 \(GINA\)](#)

11.0 RELEVANT STATE AUTHORITY

11.1 West Virginia Code §5-11-1 et seq. West Virginia Human Rights Act

11.2 West Virginia Code §5-15-1 et seq. White Cane Law

11.3 West Virginia Code §21-3-19 Discrimination for the use of tobacco products prohibited

11.4 West Virginia Code §21-5-17 Employers prohibited from discharging employees for time lost as volunteer firemen or emergency medical service attendant

11.5 West Virginia Code §21-5-18 Employers prohibited from discharging employees for time lost as emergency medical service personnel

11.6 West Virginia Code §21-5E-1 et seq. Equal Pay Equal Work for State Employees

11.7 West Virginia Code §23-5A-3 Termination of Injured Employee Prohibited; re-employment of injured employees

11.8 West Virginia Code §52-3-1 Discrimination for Jury Service. Executive Order No. 3-94 (April 30, 1994)

12.0 ADDITIONAL RESOURCES

12.1 WV State Grievance Process

Grievances must be filed within 15 working days of the event to be grieved. www.pegb.wv.gov.

12.2 WV State EEO Office

Complaints must be filed within 180 days of the occurrence of discrimination or harassment under most circumstances. www.eeo.wv.gov.

12.3 WV Human Rights Commission

The complaint must be filed within 365 days of the last date upon which the alleged discrimination occurred. www.hrc.wv.gov.

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12.4 Federal EEOC

The complaint must be filed within 180 days of the last date upon which discrimination is alleged. www.eeoc.gov.

13.0 RELEVANT MATERIALS/DOCUMENTS

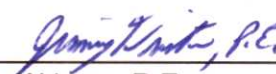
13.1 WVDOT EEO Complaint Form

13.2 WVDOT EEO Policy Statement (12/01/2021)

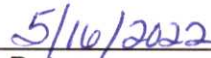
14.0 CHANGE LOG

Effective Date of Policy: 05/16/2022

Approved by:



Jimmy D. Wriston, P.E.
Secretary of
Transportation
Commissioner of
Highways



Date

*The Secretary of the West Virginia Department of Transportation or the Commissioner of Highways may, pursuant to the authority vested with the Secretary and Commissioner in W. Va. Code §5F-2-2, §17-2A-1 *et seq.*, and §17-2-1 *et seq.*, waive the requirements of this policy if the circumstances, in the Secretary or Commissioner's sole discretion, warrant such action.