



**CIVIL SERVICE COMMISSION**  
**Division of Equal Employment Opportunity/Affirmative Action**

**CONFIDENTIAL**

**MEMORANDUM**

**To:** Honorable Philip Murphy, Governor  
Office of the Governor

**From:** Deirdre L. Webster Cobb, Esq.  
Chair/Chief Executive Officer  
Civil Service Commission

Mamta Patel, Esq., Director  
Division of EEO/AA  
Civil Service Commission

**Date:** January 28, 2019

**Subject:** Recommended Changes to Administrative Code, Chapter 7  
New Jersey State Policy and Procedures Prohibiting  
Discrimination in the Workplace

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In addition to the recommended changes to the *New Jersey State Policy and Procedures Prohibiting Discrimination in the Workplace* ("State Policy"), N.J.A.C. 4A, Chapter 7, previously outlined in my Memo dated December 13, 2018, the Civil Service Commission is recommending one additional change as incorporated below to address concerns as requested by the Office of the Governor. The changes are reflected in bold on this memo and are highlighted on the attachment to reflect how the changes would appear in the actual rules.

**Explicitly Adding Gubernatorial Transition Offices**

N.J.A.C. 4A:7-3.1 Policy prohibiting discrimination in the workplace

1. Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale, and interferes with work productivity. **Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, authorities and**

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**Gubernatorial Transition Offices (hereafter referred to in this section as "State agencies" or "State agency").**

2. Examples of prohibited behaviors that may constitute sexual harassment and are therefore a violation of this policy include, but are not limited to:

i. Generalized gender-based remarks and comments;

ii. Unwanted physical contact such as intentional touching, grabbing, pinching, brushing against another's body, or impeding or blocking movement.

iii. **Sexual physical contact that involves any form of coercion, force or lack of consent, such as sexual assault.**

iv. Verbal, written, or electronic sexually suggestive or obscene comments, jokes, or propositions including letters, notes, e-mail, text messages, invitations, gestures, or inappropriate comments about a person's clothing;

### **Reporting**

N.J.A.C. 4A:7-3.1(d) which addresses the reporting of suspected violations, language was added to clarify that in instances where there is "prohibited physical contact" an employee can file a report with law enforcement. In addition, the proposed amendment states that it can also be reported to the supervisor or EEO Officer. I think in these types of instances the employee should contact law enforcement as soon as possible and report any workplace discrimination or harassment promptly.

(d) Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, or who witnesses others being subjected to such discrimination/harassment, is encouraged to promptly report the incident(s) to a supervisor or directly to the State agency's Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by the State agency to receive workplace discrimination complaints. **Victims of prohibited sexual physical contact can file a criminal complaint with law enforcement where the incident occurred. Victims can also make a criminal complaint and a report to his/her supervisor and/or EEO Officer; one does not have to choose one or the other.**

### **Discrimination Complaint Processing Form**

Although the Discrimination Complaint Processing Form (DPF-481) has always been available and could be filled out on line, it could not be saved and emailed to the EEO Officer. The reason

for this was to preserve confidentiality, we did not want parties to e-mail the form to those that did not need to know about the complaint. However, now an employee will have the ability to fill out the form, save it and e-mail it to his/her Appointing Authorities' EEO Officer.

N.J.A.C. 4A:7-3.2 Model procedures for internal complaints alleging discrimination in the workplace

(b) Complaints of prohibited discrimination/harassment can be reported to either (name of Officer), the EEO/AA Officer, or to any supervisory employee of the State Agency. Complaints may also be reported to (Authorized Designee). To facilitate the reporting of a complaint, Discrimination Complaint Processing Forms (DPF-481) can be found on the Appointing Authorities' Intranet or the Civil Service Commission's website.

### **Examples of interim measures**

The Procedures will now include examples of interim measures after a complaint is reported but prior to initiating an investigation. The examples include but are not limited to, reporting to law enforcement, to make clear that this is an option for serious allegations such as prohibited sexual physical contact.

N.J.A.C. 4A:7-3.2 Model procedures for internal complaints alleging discrimination in the workplace

(h) During the initial intake of a complaint, the EEO/AA Officer or authorized designee will obtain information regarding the complaint, and determine if interim corrective measures are necessary to prevent continued violations of the State's Policy Prohibiting Discrimination in the Workplace[.] **which may include but are not limited to:**

- 1. Separation of parties;**
- 2. Removal of parties from the workplace;**
- 3. Involvement of law enforcement when appropriate for instances involving bodily harm or serious bodily harm.**

### **Factors to consider when determining State Policy Jurisdiction**

Although covered during various EEO Officer/Investigator trainings, the rules will now include a number of factors the EEO Officer should consider when determining whether a case should be opened for investigation. The factors include whether the parties are current State employees, regardless of when the incident occurred.

(i) At the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place. **In determining whether or not an investigation is warranted, the EEO/AA Officer when reviewing complaints shall consider but is not limited to considering the following factors:**

1. The facts presented;
2. Whether the complainant articulated a sufficient nexus between the alleged conduct to a protected category as set forth in N.J.A.C. 4A:7-3.1(a) above;
3. The time the incident occurred;
4. The time the incident was reported;
5. Whether the complainant and/or respondent is a current State employee (regardless of when the incident occurred).



**CIVIL SERVICE COMMISSION**  
**Division of Equal Employment Opportunity/Affirmative Action**

**CONFIDENTIAL**

**MEMORANDUM**

**To: Honorable Philip Murphy, Governor**  
**Office of the Governor**

**From: Mamta Patel, Esq., Director**  
**Division of EEO/AA**  
**Civil Service Commission**

**Date: December 3, 2018**

**Subject: Recommended Changes to Administrative Code, Chapter 7**  
**New Jersey State Policy and Procedures Prohibiting**  
**Discrimination in the Workplace**

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Stated below are the recommended changes to the *New Jersey State Policy and Procedures Prohibiting Discrimination in the Workplace* ("State Policy"), N.J.A.C. 4A, Chapter 7 to address concerns as requested by the Office of the Governor. Please note that these changes will require a formal rule change which will be initiated by the Civil Service Commission. However, the Division of EEO/AA will begin to immediately train the EEO Officers to the State Appointing Authorities of the changes so there is no delay in their implementation. The changes are reflected in bold on this memo and are highlighted on the attachment to reflect how the changes would appear in the actual rules.

There were not many changes since when the State Policy and Procedures are correctly interpreted and applied when complaints are reported, following the State Policy and Procedures will result in an effective resolution.

**Additional example of what constitutes sexual harassment**

More encompassing language was added to cover "sexual assault" (sec. iii). To just add "sexual assault" could be read as too limiting and therefore a broader definition of an inappropriate,

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coerced touching that would constitute sexual harassment as well as a possible crime was included.

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4. The time the incident was reported;
5. Whether the complainant and/or respondent is a current State employee (regardless of when the incident occurred).

Please feel free to contact me with any questions or concerns.