



DEPARTMENT OF TRANSPORTATION POLICY/PROCEDURE

Policy No. 209

Supersedes: 2.128-A

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SUBJECT: Sexual Harassment	Effective Date: July 1, 2000	Commissioner Approval: Sponsor Approval: Contact Telephone #: 609-530-3009
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I. PURPOSE

To state the sexual harassment policy of the NJDOT and the responsibilities of its employees; and to articulate the procedures for processing complaints of sexual harassment made by NJDOT employees or by vendors against NJDOT employees.

II. DEFINITIONS

The following words or terms as used throughout this document will have the following meanings unless the context indicates otherwise.

- A. Sexual Harassment - means any unwelcome sexual advances, requests for sexual favors, including repeated offensive sexual flirtation, propositions, continual or repeated abuse of a sexual nature, verbal or written sexually related comments about an individual's body, display of sexually suggestive objects or pictures, or any uninvited physical contact or touching, such as patting, pinching, or constant brushing against another's body. Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature also constitute sexual harassment when:
 - submission to such conduct is made, either explicitly or implicitly, a term or condition of employment;
 - such conduct has the purpose or effect of unreasonably and substantially interfering with the work performance of the individual, or creating an intimidating, hostile, or offensive working environment.
- B. Complainant - means any person who alleges and/or files a complaint of sexual harassment.
- C. Respondent - means an individual against whom a complaint has been filed.
- D. Vendor - means an individual, partnership, firm, corporation or any combination thereof, contracting with the Department or subcontracting for performance of prescribed work.
- E. Project Manager - means an employee of the NJDOT who is directly responsible for the technical administration of a contract between a vendor and the NJDOT for a particular project, service or product and who is the primary contact between that vendor and the NJDOT.

III. POLICY STATEMENT

It is the policy of the NJDOT that all NJDOT employees have a right to work in an environment free from sexual harassment. The NJDOT prohibits any and all forms of sexual harassment in the workplace and on the job site. Any State employee or Manager/Supervisor who violates this policy will be subject to disciplinary action up to and including dismissal; and, in the case of vendors, removal of employees from the job site or suspension of the contract in keeping with state and federal laws.

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IV. PROHIBITED CONDUCT

No Manager/Supervisor or other employee shall threaten or insinuate, either explicitly or implicitly, that any employee's submission to, or rejection of, sexual advances will have any effect on that person's employment, job assignment, training, evaluation, promotion, wages or any other term or condition of employment or future job opportunity, nor shall any Manager/Supervisor or employee create an environment which inhibits the ability of an employee to carry out his/her job duties.

Any Department employee who believes he/she has been sexually harassed should immediately report this matter to his/her immediate Supervisor, Manager, Director, Division of Human Resources or Affirmative Action Officer. Any employee who knows of another co-worker who is being sexually harassed should report that matter as noted above. Any vendor whose employee believes he or she has been harassed by a NJDOT employee should report the matter to the NJDOT Project Manager and Affirmative Action Officer.

V. APPLICATION OF POLICY

This policy applies to all NJDOT employees and prohibits such conduct by or toward all employees be they male or female.

VI. RESPONSIBILITIES

The following individuals have responsibilities as follows:

A. Affirmative Action Officer is responsible for:

- advising employees of their right to file complaints and the procedure for same;
- advising all employees of the NJDOT policy statement on sexual harassment; investigating all complaints, formal or informal, of sexual harassment by or against NJDOT employees and making a determination as to whether there is probable cause that sexual harassment has occurred;
- recommending corrective action to assist victims of sexual harassment and to prevent further incidents;
- developing and instituting methods jointly with the Director, Division of Human Resources, to sensitize all concerned to the issues of sexual harassment through training sessions and/or training information packages for all personnel;
- advising vendors that a complaint has been filed against a vendor's employee and assisting in and monitoring the vendor's investigation.

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- B. Director, Division of Human Resources is responsible for:
- identifying sanctions (consistent with NJ Department of Personnel laws, rules, and regulations) that may be imposed against an employee who has sexually harassed another employee;
 - developing and instituting methods jointly with the Affirmative Action Officer to sensitize all concerned to the issues of sexual harassment through training sessions and/or training information packages for all employees. Training and information packages are to be designed to make personnel aware of what is objectionable behavior.
- C. Director, Division of Civil Rights/Affirmative Action is responsible for:
- reviewing all investigative reports prepared by the Affirmative Action Officer for concurrence/approval, and referring all "probable cause" determinations to line management and the Director of Human Resources for appropriate corrective and/or disciplinary action.
- D. All Managers/Supervisors are responsible for:
- ensuring that all personnel under their jurisdiction are made aware of the Department's policy and procedure on sexual harassment;
 - reporting all instances of sexual harassment to the Affirmative Action Officer;
 - taking all necessary steps to eliminate and prevent sexual harassment in the workplace;
 - cooperating with the Affirmative Action Officer in the investigation of complaints.
- E. Employees are responsible for:
- reporting instances of sexual harassment to their immediate Supervisor, Manager, Director, Division of Human Resources or Affirmative Action Officer as appropriate in accordance with Procedure 2.128-B, "Sexual Harassment."

NOTE: It is recognized that the question of whether a particular action or incident is sexual harassment requires a factual determination. A charge of sexual harassment is a serious matter and should not be considered in a frivolous manner. The Affirmative Action Officer will examine the record as a whole and will review the totality of the circumstances, particularly the nature of the conduct and the context in which the incident occurred.

The confidentiality and privacy of all persons involved will be respected during an investigation. Where investigation confirms the allegations, appropriate corrective action will be taken.

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VII. COMPLAINT FILING DEADLINES

- For complaints filed within the Department of Transportation, the complaint must be submitted in writing to the Affirmative Action Officer within 30 calendar days of the alleged incident.
- For complaints filed with the N.J. State Division on Civil Rights, the complaint must be submitted in writing within 180 calendar days (six months) of the alleged incident.
- For complaints filed with the U.S. Equal Employment Opportunity Commission (EEOC), the complaint must be submitted in writing within 360 calendar days (approximately one year) of the alleged incident.
- For complaints filed with the Division of Merit System Practices & Labor Relations, NJ Department of Personnel, the complaint must be submitted in writing within 30 calendar days of the alleged incident.

VIII. PROCEDURE

NOTE: Complaints will be investigated in accordance with Department of Personnel Discrimination Appeal Processing Guidelines.

Complainant -

1. Report verbally or in writing, a complaint of sexual harassment immediately to:

- Immediate supervisor or other level of supervision and/or the NJDOT Affirmative Action Officer and/or the NJDOT Director of Human Resources or the Project Manager (for Vendor Employee Complaints).

NOTE: An employee who is subjected to sexual harassment should first inform the perpetrator that the behavior is offensive and must be stopped. However, the failure of the employee to do so because of the nature of the situation will not preclude the employee from filing a complaint. The employee is also encouraged to notify the immediate supervisor as a first step, but may report it through any of the sources shown above.

Immediate Supervisor/Manager/Director of Human Resources -

2. Contact the Affirmative Action Officer immediately; advise of the details of the complaint. Follow up with a written complaint within two (2) working days.

NOTE: Any manager who becomes aware of an incident of sexual harassment, whether reported directly by the involved employee or not, has an obligation to report the incident to the Affirmative Action Officer for investigation and evaluation. This procedure is necessary to protect employees who because of their emotional makeup, may be unwilling to report the incident.

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Affirmative Action Officer -

3. Contact the complainant and ascertain whether the employee is willing to document the complaint through a signed statement.

NOTE: In the event the complainant is unwilling to sign a complaint, no further pressure shall be exerted upon him/her to sign. However, the investigation into the facts surrounding the complaint shall continue.

If possible (depending on the nature of the allegations), the Affirmative Action Officer should attempt to resolve the problem informally by consulting with all parties before a formal complaint is filed. The complainant still has the right to file a formal complaint.

(Continue to Applicable Section A, B, or C)

- A. In Cases of Sexual Harassment of NJDOT Employees by Supervisors or Co-workers (After Step 3, continue with Steps 4-12)

Affirmative Action Officer -

4. Prepare a confidential memorandum notifying the appropriate Division Director, Assistant Commissioner and respondent(s) that a complaint has been filed and is under investigation.
5. Conduct an investigation of the complaint which includes (but is not limited to) the following information:

- . Statement by the complainant;
- . Statement by the respondent;
- . Questioning of any witnesses;
- . Willingness of the complainant to press charges/testify.

NOTE: The investigation will be concluded in a timely manner so as not to jeopardize other appeal rights to which the complainant may be entitled.

6. Document the process and the results of the investigation in a confidential investigative report. Make a recommendation based on the information developed in the investigation as to whether a probable cause finding is warranted.
7. Forward a draft report to the assigned Deputy Attorney General (when probable cause is determined) for review and comments. Prepare and submit final report to Director, Division of Civil Rights/Affirmative Action.

Director of Civil Rights/Affirmative Action -

8. Review the investigative report and sign to indicate concurrence. If there is nonconcurrence, return the report to the Affirmative Action Officer for further investigation and/or discussion. If concurrence is given, forward to Commissioner/designee for Departmental approval.

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Commissioner/Designee

9. Review and make final approval in the report submitted by the Director of Civil Rights (make any changes as necessary). Return to Civil Rights for changes and/or distribution.

Affirmative Action Officer -

10. Upon Departmental approval, notify the complainant and the respondent by letter of the findings; include a summary of the report. Provide the appropriate Director and/or Assistant Commissioner with a summary of the report including findings and recommendations. If corrective action includes a recommendation for disciplinary action, provide a complete copy of the report to the Director, Division of Human Resources. Disseminate a complete copy of the report with findings and recommendations, to the Department of Personnel, Director, Division of EEO/AA.

Note: The complainant is to be advised regarding other avenues of appeal to which he/she is entitled if he/she is dissatisfied with the determination or the intended corrective action.

Assistant Commissioner/Director/Director of Human Resources -

11. Consult with Civil Rights Director to resolve any concerns. Initiate the corrective action. If disciplinary action is recommended, determine the appropriate penalty and initiate disciplinary action.
 12. Notify the Affirmative Action Officer in writing of the corrective/disciplinary action(s) taken or status of action(s) and anticipated implementation date.
- B.** In Cases of Sexual Harassment of NJDOT Employees by Vendor's Employee (After Step 3, continue with Steps 13-15)

Affirmative Action Officer -

13. Prepare a confidential memorandum notifying the Civil Rights Director, the NJDOT Project Manager, and the employee=s Director and Assistant Commissioner that a complaint has been filed and is under investigation.
14. Notify the vendor in writing of the complaint, stating all relevant data available and whether or not a formal signed complaint has been filed. Request an immediate investigation with a written report to be submitted to NJDOT within five (5) State business days of the notification date.
15. If the vendor fails to conduct an investigation and/or fails to take adequate corrective action, discuss with the appropriate NJDOT Project Manager additional actions which can be taken to enforce compliance under the contract document.

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C. In Cases of Sexual Harassment of a Vendor's Employee by an NJDOT Employee

NJDOT Project Manager or other NJDOT Complaint Recipient -

1. When a complaint is received from a vendor's employee or EEO/AA Officer, notify the Affirmative Action Officer immediately and advise of the details of the complaint. Follow up with a written report within two (2) State business days.

Affirmative Action Officer -

2. Notify the Civil Rights Director and the respondent's Division Director and Assistant Commissioner.
3. Conduct an investigation of the complaint which includes (but is not limited to) the following information:
 - . Statement by the complainant;
 - . Statement by the respondent;
 - . Questioning of any witnesses;
 - . Willingness of the complainant to testify/press charges;
 - . Where possible, work through the vendor's EEO/AA Officer.
4. Document the process and the results of the investigation in a confidential investigative report. Make a recommendation based on the information developed in the report as to whether a probable cause finding is warranted. Forward the report to the Civil Rights Director.

Director, Division of Civil Rights/Affirmative Action -

5. Review the investigative report and sign to indicate concurrence. If there is nonconcurrence, return the report to the Affirmative Action Officer for further investigation and/or discussion. If concurrence is given, forward report to the Commissioner/designee for Departmental approval.

Commissioner/Designee -

6. Review and make final approval in the report submitted by the Director of Civil Rights (make any changes as necessary). Return to Civil Rights for changes and/or distribution.

Affirmative Action Officer -

7. Upon Departmental approval, notify the vendor (company official and EEO/AA Officer) by letter of the findings. Provide the respondent's Director and Assistant Commissioner with a summary of the report. If disciplinary action is recommended, provide a complete copy of the report to the Director, Division of Human Resources. Forward a complete copy of the report to the Director, Division of EEO/AA, Department of Personnel.

Assistant Commissioner/Director/Director, Human Resources -

8. Consult with the Civil Rights Director to resolve any concerns. Initiate the corrective action. If disciplinary action is recommended, determine the appropriate penalty and initiate disciplinary action.
9. Notify the Affirmative Action Officer in writing of the corrective/disciplinary action(s) taken, or status of action(s) and anticipated implementation date.

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IX. AUTHORITY

- A. N.J.S.A. 27:1A-5
- B. N.J.S.A. 10:1, 10:2
- C. Equal Employment Opportunity Commission Guidelines on Sexual Harassment
- D. Titles VI & VII of the Civil Rights Act of 1964 as amended
- E. N.J.A.C. 4A:7-3.3, "Discrimination Appeals-State Service"
- F. NJ State Policy Prohibiting Discrimination, Harassment or Hostile Environment in the Workplace

X. RELATED POLICIES/PROCEDURES

Policy and Procedure No. 207, "Equal Employment Opportunity/Affirmative Action"

Policy and Procedure No. 208, "Investigating Complaints of Sexual Harassment Discrimination on NJDOT Construction Projects"