

Policy: It is the policy of the Division of Mental Health and Developmental Services to extend equal employment opportunity to all employees and applicants for employment without regard to non-job-related and legally protected factors, including sex, religion, creed, race, color, national origin, age, disability, sexual orientation, political affiliation, or association with others on these bases, unless necessitated by a bona fide occupational qualification. Discrimination or harassment based on any of these factors or associations is specifically prohibited, as is retaliation against any person for exercising rights or opposing unlawful action under this policy or related laws, or for assisting others to do so, including participation in fact-finding investigations pursuant to this policy.

NOTE: This policy attempts to summarize a large body of federal and state statutes, regulations, and case law. It does not establish additional rights or requirements beyond those provided in relevant statute and regulations.

Purpose: To ensure that Division employees are aware of federal and state law regarding nondiscrimination based on legally protected statuses, and to promote development of work environments that welcome diversity and in which employment actions are based on job-related factors.

REFERENCES:

- A. Title VII of the Civil Rights Act of 1964
- B. The Civil Rights Act of 1991
- C. The Age Discrimination in Employment Act of 1967
- D. Pregnancy Discrimination Act of 1979
- E. Americans with Disabilities Act of 1990
- F. Equal Pay Act of 1963
- G. NRS 613.330 Unlawful employment practices: Discrimination or segregation on basis of race, sex, sexual orientation, age or disability; refusal to permit guide, hearing or helping dog or other service animal at place of employment.
- H. NRS 281.370 Actions concerning personnel to be based on merit and fitness; discrimination prohibited.
- I. NAC 284.696 Unlawful discrimination.
- J. NAC 284.771 Sexual Harassment.
- K. Governor's Policy Against Sexual Harassment and Discrimination, 10/14/03

Procedures:

I. Nondiscriminatory Treatment of Employees

It is expected that MHDS Division employees and supervisors treat all other employees respectfully, and that decisions actions affecting terms, conditions, and privileges of employment are made without regard to sex, religion, creed, race, color, national origin, age, disability, sexual orientation, political affiliation, or association with others on these bases.

Supervisors and managers are routinely expected to make decisions about employment terms, conditions and privileges. These include but are not limited to hiring, promotion, training opportunities, performance evaluation ratings, shift scheduling, etc. It is expected that these decisions will be made on the basis of relevant job-related factors. Depending on the decision to be made, job-related factors may include, but are not limited to: employees' or applicants' knowledge, skills, experience, training, and performance in valid selection activities for hiring or promotion; employees' performance in response to supervisory directives, stakeholder feedback, and Work Performance Standards; and laws, regulations, policies and established practice and precedent related to the decision in question.

Both supervisory and nonsupervisory employees also have the potential to affect other employees' terms, conditions, and privileges of employment in broader ways, such as the type of work environment that is created and maintained. Each employee and supervisor contributes to the development of the work environment on a daily basis. It is expected that agencies' work environments will facilitate the agency's and Division's attainment of their mission, goals, and objectives. This policy specifically prohibits any conduct or practice that would unnecessarily create an intimidating, hostile, or offensive work environment for any employee because of that employee's sex, religion, creed, race, color, national origin, age, disability, sexual orientation, political affiliation, or association with others on these bases.

II. Description of Prohibited Conduct

This section elaborates on and provides examples of the types of actions and practices that are prohibited by this policy and the related laws and regulations. It cannot be all-inclusive, and employees who would like assistance in assessing specific situations are encouraged to consult with their personnel representative or agency director. (See also section V, D - H for complaint process.)

This policy prohibits employment discrimination against any individual on the basis of the following protected statuses: race, color, national origin, religion, creed, sex, sexual orientation, or political affiliation. For example, it equally protects whites, African-Americans, and Asians from race and color discrimination; men and women from sex discrimination; Iranians, Cubans, and Americans from national origin discrimination; and Christians, Jews, Muslims, and atheists from religious discrimination. For the age and disability protections, the relevant federal laws have more limiting criteria regarding who is protected - see section II, E and F, below.

This policy protects against discriminatory terms, conditions, or privileges of employment occurring because of, or on the basis of, the protected status. For example, it is a violation of this policy to pass over an employee for a promotional opportunity because he/she is Hispanic, or has a disability.

This policy also protects against discrimination or harassment based on association with a person of a protected class. For example, it prohibits discrimination against or

harassment of a white employee because he/she is married to a Black or Native American person, or has a mixed-race child; and it prohibits discrimination against a person with no disability on the basis of his/her marriage to a person with a disability.

This policy and related law prohibit retaliation against a person for opposing action prohibited by this policy, or assisting others to do so.

A. Sex:

Discrimination based on sex includes pregnancy discrimination, sexual harassment, and gender-based discrimination involving no sexual conduct.

Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations. Appointing authorities cannot refuse to hire a woman because of pregnancy or a related condition as long as she is able to perform the essential functions of the job. Nor can an employer pass over her for a job because of prejudices against pregnant women. If an employee is temporarily unable to perform her job due to pregnancy, the agency must treat her in the same way it would treat any other employee with a temporary disability. Employers must allow pregnant employees to work as long as they are able to perform their job duties. Jobs must be held open for pregnancy-related absences to the same extent they are held open for employees on leave due to sickness or disability.

Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of the conduct is made explicitly or implicitly a term or condition of the person's employment or a basis for employment decisions affecting the person, unreasonably interferes with a person's work performance, or creates an intimidating, hostile, or offensive work environment. The victim and harasser may be the opposite or same sex. In addition to persons to whom sexual activity or requests are directed, victims can include third parties who are negatively affected by the offending conduct.

Gender-based discrimination would occur if a supervisor or a work environment provided better terms, conditions, or privileges of employment to men than women, or vice versa, based on their gender.

B. Race and Color:

Race discrimination includes discrimination or harassment on the basis of physical characteristics associated with a particular race, even where the charging party and the alleged discriminator are members of the same race. For example, failure to hire, promote or give equal training opportunities to an African-American individual because of physical characteristics such as facial features is prohibited.

Color discrimination refers to discrimination or harassment on the basis of shades of skin color. For example, it is unlawful to discriminate against dark- or light-skinned Asian individuals on the basis of their skin color.

C. National Origin:

No one can be denied equal terms, conditions, and privileges of employment because of his/her national origin, which includes birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group. Equal employment opportunity also cannot be denied because of marriage or association with persons of a national origin group; attendance or participation in associations, schools, churches, or mosques generally associated with a national origin group; or a surname associated with a national origin group.

Accent/Language: National origin discrimination includes discrimination on the basis of accent, manner of speaking, or language fluency. It also applies to rules requiring employees to speak only English in the workplace, unless they can be shown to be necessary for conducting business.

Citizenship: The EEO statutes protect all employees who work in the United States for covered employers, regardless of citizenship status or work authorization.

D. Religion:

The Equal Employment Opportunity Commission (EEOC) defines "religion" to include moral or ethical beliefs as to right and wrong that are sincerely held with the strength of traditional religious views. Religious discrimination also includes discrimination against someone because s/he is an atheist. Title VII requires that employers provide reasonable accommodations for an individual's religious practices, such as leave to observe religious holidays, or permission to wear religious symbols or clothing, unless doing so would cause an undue hardship.

E. Age:

The Age Discrimination in Employment Act of 1967 (ADEA) protects individuals who are 40 years of age or older from employment discrimination or harassment based on age.

F. Disability:

The Americans with Disabilities Act (ADA) defines a disability as one of the following: a physical or mental impairment that substantially limits one or more major life activities; a record of such impairment; or being regarded as having such an impairment. A qualified individual with a disability is a person who has an impairment meeting one of these definitions, and who, with or without reasonable accommodation, can perform the essential functions of the job in question. Individuals with disabilities may not be discriminated against on the basis of their

disability. Additionally, persons associated with a person with a disability are also protected against discrimination based on that association.

The Act requires reasonable accommodation, in both the application and the employment process, unless this would impose an undue hardship on the employer. An agency is not required to lower quality or production standards to make accommodations, but is expected to treat requests for accommodation from persons with disabilities in the same way it accommodates requests arising from non-disability-related reasons.

III. Employees' and Supervisors' Rights, Responsibilities and Complaint Process

- A. All employees are entitled to work in an environment free of harassment and discrimination on the basis of non-job-related factors specified in this policy (sex, religion, creed, race, color, national origin, age, disability, sexual orientation, political affiliation, or association with others on these bases). Employees who oppose action prohibited by this policy, or assist others to do so, are entitled to do so without retaliation.
- B. Each employee is responsible to ensure that their treatment of other employees and applicants is respectful and free of harassment, discrimination, and retaliation on the basis of the non-job-related factors addressed by this policy.
- C. Supervisors are responsible to work proactively to prevent unlawful harassment and discrimination, and to take prompt corrective action reasonably calculated to correct any potentially harassing or discriminatory practices. This includes the reporting requirement specified in section IV. G. below.
- D. It is requested that any behavior or practices that appear to be discriminatory or harassing on the basis of the non-job-related factors addressed by this policy be reported as early as possible by those who are aware of them. The intention is that agency and Division management is able to determine whether inappropriate activity is occurring and take prompt corrective action if so before such activity becomes severe and pervasive. Sections E through I below describe responsibilities of various persons and the multiple avenues through which reports may be made.
- E. When an employee feels they are being discriminated against or harassed on any basis protected by this policy, they are encouraged, where feasible, to advise the perceived offending party of their concern. In the case of harassment, an employee is encouraged to indicate that the conduct is unwelcome, and ask the perceived harasser to stop the offending behavior.
- F. If an employee has made such a request to no avail, or feels unable to confront the person perceived to be discriminating or harassing, or believes that it would be ineffective, he/she should report the concern to the agency personnel representative, agency director, or the Personnel Officer of the Division of Mental Health and Developmental Services.

- G. Any supervisor who becomes aware, directly or indirectly, of a complaint of harassment or discrimination, or of a situation that may represent harassment or discrimination as prohibited by this policy, is required to report such to the agency administrator or personnel representative within 24 hours of knowledge.
 - H. Upon learning of a complaint, the personnel representative is to complete the Intake Report of Harassment or Discrimination (NPD-31, Attachment A) and instruct the complainant to complete the Sexual Harassment or Discrimination Complaint form (NPD-30, Attachment B). The Intake form is to be forwarded to the Division Deputy Administrator within 24 hours of learning of the complaint, regardless of whether the complainant has submitted the Complaint form. Note: if the employee first makes known their complaint of discrimination or harassment through a grievance, the portion of the grievance dealing with illegal discrimination or harassment must be converted to an Intake Report as described above.
 - I. Employees' concerns of sexual harassment or discrimination may also be reported through the Department of Personnel's Harassment/Discrimination Hotline at (800).767-7381. The Sexual Harassment/Discrimination Unit will complete the initial intake and will copy the appropriate agency representative and the agency's Deputy Attorney General.
 - J. Additional avenues through which employees may report concerns of harassment or discrimination include the employee grievance process, and the Nevada Equal Rights Commission (NERC) and the EEOC. NERC complaints must be filed within six months of the last occurrence, and EEOC complaints must be filed within 300 days of the last occurrence.
 - K. If a complaint of illegal harassment or discrimination reaches NERC or the EEOC before it is presented to agency or Division management or personnel staff, agency and Division staff must attempt to conduct appropriate fact-finding, which may include a full investigation, upon learning of the complaint from one of these entities.
 - L. All persons responsible for receiving, investigating, and making determinations regarding harassment and discrimination complaints are required to treat all related information as confidentially as possible. Due to the need to investigate and take corrective action, absolute confidentiality may not be possible, but disclosure of information related to the complaint is to be limited to those with a need to know.
- IV. Investigation and Corrective Action
- A. Upon receipt of an Intake form, the Deputy Administrator or designee will forward the form to the State Personnel Sexual Harassment/Discrimination Investigation Unit.
 - B. Working with the assigned Deputy Attorney General, the agency will be asked to develop and issue an NPD-32, Notice of Employee Rights During an Investigation (Attachment C). This not must be received by the person(s) against whom the

complaint was made no less than two working days before their interview with the investigator.

- C. Upon receipt of an investigation report, the agency director, in consultation with the Division Administrator or designee and relevant Deputy Attorney General and personnel staff, is responsible to determine whether unlawful harassment or discrimination occurred, and to recommend corrective action.
- D. When an investigation discloses discrimination, harassment, or other inappropriate activity, corrective action must be promptly taken. Among other corrective actions, it is expected that disciplinary action will be taken when unlawful harassment or discrimination has been established. Such action will be proposed by the affected agency administrator, and reviewed by Division and/or Department staff per established procedure. Disciplinary actions are confidential according to NAC 284.718, and may not be disclosed except as authorized by NAC 284.726.
- E. The complainant and the person alleged to have engaged in harassment or discrimination must receive a written statement from the Division Administrator regarding the findings of the investigation. When corrective action has been taken or is being taken, the complainant is also to be advised of this fact. When there has been a finding of discrimination, harassment, or other inappropriate activity, the complainant should be requested to report any further misconduct to the agency director, personnel representative, or to the Division Administrator or designee, or Division Personnel Officer.



Administrator

Effective Date: 2/8/02
Date Revised: 5/22/07
Approved by MHDS Commission: 2/8/02