



# Operating Procedure

<b>Effective Date</b> January 1, 2016	<b>Number</b> <del>101.2</del> 145.3
<b>Amended</b>	<b>Operating Level</b> Department
<b>Supersedes</b> Operating Procedure 101.2 (11/1/12)	
<b>Authority</b> COV §2.2-2900 et seq; §53.1 10; §53.1-25.1	
<b>ACA/PREA Standards</b> 4-4048, 4-4053, 4-4054, 4-4055, 4-4056, 4-4169; 4-ACRS-7E-02, 4-ACRS-7E-03, 4-ACRS-7E-04, 4-ACRS-7E-05, 4-ACRS-7E-06; 4-APPFS-3E-04, 4-APPFS-3E-05, 4-APPFS-3E-06, 4-APPFS-3E-07; 2-CO-1C-01, 2-CO-1C-03, 2-CO-1C-09; 1-CTA-1C-03	
<b>Office of Primary Responsibility</b> Human Resources Director	

**Subject**  
**EQUAL EMPLOYMENT OPPORTUNITY**

**Incarcerated Offender Access**  
Yes  No

**FOIA Exempt** Yes  No   
**Attachments** Yes  No

## I. PURPOSE

This operating procedure provides for equal employment opportunity within the Department of Corrections in regard to all employment practices, to educate employees in the recognition and prevention of discriminatory practices and workplace harassment, and to provide an effective means of preventing and eliminating such discrimination harassment, and retaliation from the workplace.

## II. COMPLIANCE

This operating procedure applies to all units operated by the Department of Corrections (DOC). Practices and procedures shall comply with applicable State and Federal laws and regulations, Board of Corrections policies and regulations, ACA standards, PREA standards, and DOC directives and operating procedures.

## III. DEFINITIONS

**Activities of Daily Living (ADL)** - Any individual activity including basic self-care, performing manual tasks, walking, talking, hearing, seeing, breathing, learning, and working, etc. and including major bodily functions (non-exhaustive list).

**Disability** - An actual impairment that substantially limits one or more of the major activities of daily living (ADL) of an individual; or a record of such impairment; or being regarded as having such an impairment

**Discrimination** - Any policy or action taken that results in an unfair disadvantage to either an individual or group of individuals who are considered part of a protected group related to race, sex (including sexual harassment, pregnancy, and marital status), color, national origin, religion, sexual orientation, gender identity, age, political affiliation, veteran status, or against otherwise qualified persons with disabilities.

**Organizational Unit** - A DOC operating unit, such as a correctional facility, regional office, probation and parole office, Virginia Correctional Enterprises (VCE), Academy for Staff Development, Corrections Construction Unit, Agribusiness Unit, or other separate operational unit

**Organizational Unit Head** - The person occupying the highest position in a DOC organizational unit

**Retaliation** - Any adverse, overt or covert action taken by an employer against an employee, or former employee, who has participated in a protected activity, i.e., exercised their rights under anti-discrimination laws, reported or participated in an investigation into violation of the sexual abuse/harassment policies, filed a grievance, or assisted someone in exercising their rights, where there is established a causal connection between the protected activity and the adverse action. Types of retaliation include, but are not limited to employment actions such as termination, refusal to hire, denial of promotion, threats, harassment, intimidation, unjustified negative evaluations, unjustified negative references, increased surveillance, etc.

**Sexual Harassment** - Unsolicited, unwelcome behavior of a sexual nature including, but not limited to, sexual advances, request for sexual favors, or verbal, written or physical conduct of a sexual nature by a manager, supervisor, co-worker(s) or non-employee (third party). Sexual harassment is unlawful. Examples of sexual harassment are:

- *Hostile Environment* - A form of sexual harassment when a target is subjected to unwelcome and severe and /or pervasive sexual comments, innuendoes, touching, or other conduct of a sexual nature that creates an intimidating or offensive work environment.
- *Quid pro quo* - A form of sexual harassment when a manager/supervisor or a person of authority gives or withholds a work-related benefit in exchange for sexual favors. Typically, the harasser requires sexual favors from the target, either rewarding or punishing the target depending on their denial or participation in the manager/supervisor's request.

**Third Parties** - Individuals who are not state employees, but who have business interactions with state employees (i.e. volunteers, contractors, vendors, and customers, including applicants for state employment or services).

**Witness** - A person who has or may have evidence/information pertinent to a complaint.

**Workplace Harassment** - Any unwelcome verbal, written or physical conduct that denigrates or shows hostility or aversion towards a person that:

- Has the purpose or effect of creating an intimidating, hostile or offensive work environment
- Has the purpose or effect of unreasonably interfering with an employee's work performance
- Affects an employee's employment or opportunities or compensation. Workplace harassment on the basis of race, sex (including sexual harassment, pregnancy, and marital status), color, national origin, religion, sexual orientation, gender identity, age, political affiliation, veteran status, or against otherwise qualified persons with disabilities is illegal. Workplace harassment not involving protected areas is in violation of DOC operating procedures.

#### IV. PROCEDURE

##### A. Equal Employment Opportunity (4-4048; 2-CO-1C-01)

1. Executive Order One (2014) states that "By virtue of the authority vested in me as Governor, I hereby declare that it is the firm and unwavering policy of the Commonwealth of Virginia to assure equal opportunity in all facets of state government."
2. State appointing authorities and other management principals are hereby directed to give preference, as determined by the Director of the [Department of Human Resource Management \(DHRM\)](#) (see DHRM Policy 2.10, *Hiring*) to emphasize the recruitment of veterans, and veterans with service connected disability ratings fixed by the U.S. Department of Veterans Affairs to serve at all levels of state government.
3. State appointing authorities and other management principals are hereby directed to take affirmative measures, as determined by the Director of the [Department of Human Resource Management \(DHRM\)](#) to emphasize the recruitment of qualified minorities, women, disabled persons, veterans, and older persons to serve at all levels of state government. (4-4053; 1-CTA-1C-03)
4. This operating procedure does not permit or require the lowering of bona fide job requirements, performance standards, or qualifications in order to give preference to any state employee or applicant for state employment.
5. DOC procedures and practices shall reflect sound human resource management providing equal opportunity for all.
6. All procedures, guidelines, and practices shall be written and implemented to ensure that there will be no discrimination based on race, sex (including sexual harassment, pregnancy, and marital status) color, national origin, religion, sexual orientation, gender identity, age, political affiliation, veteran status, or against otherwise qualified persons with disabilities unless there are bona fide occupational qualifications. Employment areas covered include, but are not limited to: recruitment, selection, promotion, classification, compensation, training, assignment, awarding of overtime, discipline, and benefits. (4-4053; 4-ACRS-7E-05; 4-APPFS-3E-04, 4-APPFS-3E-06; 2-CO-1C-09; 1-CTA-1C-03)
7. This operating procedure specifically prohibits employment discrimination on the basis of race, sex (including sexual harassment, pregnancy, and marital status), color, national origin, religion, sexual

orientation, gender identity, age, political affiliation, veteran status, or against otherwise qualified persons with disabilities.

8. The DOC does not discriminate against qualified ex-offenders in hiring for non-sensitive positions. (4-4055, 4-ACRS-7E-06, 4-APPFS-3E-07) The Director, or designee, has the final authority to determine whether to hire an ex-offender.
9. Complaints of discrimination based on race, sex (including sexual harassment, pregnancy, and marital status), color, national origin, religion, sexual orientation, gender identity, age, political affiliation, veteran status, or against otherwise qualified persons with disabilities or violation of the Governor's Executive Order One (2014) governing Equal Opportunity, may be filed by classified employees (including probationary), wage employees, third parties, and applicants. Complaints should be reported as soon as possible after the incident occurs and filed in accordance with the *Complaint Procedure* section of this operating procedure.
10. No state appointing authority, other management principals, or supervisors shall take retaliatory actions against persons making complaints of discrimination and/or harassment or against individuals participating in a complaint investigation.
11. A state employee found in violation of this procedure shall be subject to appropriate disciplinary action under Operating Procedure 135.1, *Standards of Conduct*.

#### B. Bona Fide Occupational Qualification (BFOQ)

1. Based upon duties, certain post assignments may, with the approval of the Human Resources Director or designee, be restricted to persons of one sex.
2. Sex may be a bona fide occupational qualification when there is a need to accommodate the personal privacy of offenders.
3. Where there is a conflict between the privacy rights of offenders and the employment opportunities of employees, an attempt shall be made to reasonably rearrange job responsibilities in order to minimize the conflict between privacy interests and non-discriminatory alternative of Title VII.

#### C. Prohibited Conduct

1. The Department of Corrections strictly forbids discrimination or harassment of any employee, applicant for employment, vendor, contractor, or volunteer on the basis of an individual's race, sex (including sexual harassment, pregnancy, and marital status), color, national origin, religion, sexual orientation, gender identity, age, political affiliation, veteran status, or against otherwise qualified persons with disabilities. (4-4056, 4-ACRS-7E-04, 4-APPFS-3E-05, 4-APPFS-3E-06)
2. The DOC will not tolerate any form of retaliation directed against an employee, third party, or witness who complains about either discrimination or harassment or who participates in any investigation concerning discrimination or harassment.
3. If discrimination, harassment, or retaliation occurs, the employee(s) or third parties should report the matter through the established complaint protocol in the *Complaint Procedure* section of this operating procedure. Under no circumstances will the individual alleging discrimination or harassment be required to file his or her complaint with the alleged harasser. (4-APPFS-3E-05, 4-APPFS-3E-06)

#### D. General Provisions for Workplace Harassment

1. It is the responsibility of all employees, applicants, vendors, contractors and volunteers to maintain a non-hostile, bias-free working environment and to ensure that employment practices are free from harassment of any kind. (2-CO-1C-03)
2. Employees and third parties should report incidents of workplace harassment (including sexual harassment) as soon as possible upon becoming aware of the situation. A written complaint should be filed in accordance with the procedures set forth in the *Complaint Procedure* section of this operating procedure.

3. Any employee who engages in conduct determined to be harassment, or who encourages such conduct by others, will be subject to corrective action under Operating Procedure 135.1, *Standards of Conduct*, which may include discharge from employment.
4. Managers and supervisors have a duty to promptly take action to eliminate workplace harassment from the work environment once a situation comes to their attention.(e.g. separate the complainant and the alleged perpetrator by sending the alleged perpetrator home or moving him or her to another building or department) Complaints should be reported by the manager or supervisor to the Human Resource Office, the DOC Office of Equal Employment Opportunity (EEO), or the Human Resources Director for monitoring, advice, or assistance. If the investigation determines the complaint has merit, immediate, appropriate corrective action is to be taken.
5. Managers and supervisors who allow workplace harassment to continue, or who fail to take appropriate action may be subject to disciplinary action under Operating Procedure 135.1, *Standards of Conduct*, including demotion or discharge.
6. Employees are expected to cooperate fully during the course of an administrative investigation and respond with truthful and complete answers to all proper questions of official interest and provide the agency representative with any and all information or evidence that may pertain to the specific matter under investigation.

#### E. Requests for Accommodations

1. All requests for accommodations are to be reviewed in accordance with Operating Procedure ~~101.5~~ 155.3, *Reasonable Accommodations*. (4-4054, 4-ACRS-7E-03) Reasonable accommodation is made to ensure that all unrestricted areas of the facility that are accessible to the public are accessible and usable by staff and visitors with disabilities. (4-4169, 4-ACRS-7E-02)
2. *Disability* – It is the policy of the DOC to provide a reasonable accommodation for a disability as defined above. Any employee or applicant requesting an accommodation for a disability should be reviewed in accordance with Operating Procedure ~~101.5~~ 155.3, *Reasonable Accommodations*.
3. *Religion* - It is the policy of the DOC to provide a reasonable accommodation for bona fide religious beliefs, practice, or observances upon request by an employee. All requests for religious accommodations must be in writing and given to the employee's immediate supervisor. The Unit Head, or designee, should discuss the request with the DOC Human Resource Equal Employment Opportunity office or the Human Resources Director or designee.
4. *Pregnancy* - It is the policy of the DOC to provide a reasonable accommodation on the basis of pregnancy, childbirth, or related medical conditions. Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations. Requests for any accommodations are to be considered in accordance with Operating Procedure ~~101.5~~ 155.3, *Reasonable Accommodations*.
5. For all requests for accommodation, if the requested accommodation places an undue hardship on the DOC, interrupts the mission of a work unit, increases expenditures to accommodate the request, causes scheduling and shift conflicts, or jeopardizes the safety and security of offenders, staff, or the general public, the Agency is not legally required to make the requested accommodation.

#### F. Complaint Procedure

1. The DOC encourages resolution of employee concerns and complaints. Immediate supervisors and upper management levels should create a work environment wherein employees are free to voice concerns and complaints. Mediation through the Office of Employment Dispute Resolution or assistance from the Regional Employee Ombudsman services representative are also available for employees who wish to take advantage of these conflict-resolution resources.
2. Regardless at what level discrimination or harassment is discovered, all complaints are to be reported to the DOC Office of Equal Employment Opportunity in Human Resources. (4-APPFS-3E-06)
3. *Department Level* - Within the DOC, employees may file complaints of harassment or discrimination

through either the employee grievance procedure (see Operating Procedure ~~140.1~~ 145.4, *Employee Grievances*) or the EEO procedure as follows.

- a. At Unit, Regional, or Departmental levels, EEO complaints may be initiated with the employee's supervisor, Unit Head, Human Resource Officer, Human Resources Director or designee, or directly to the Office of Equal Employment Opportunity within the DOC.
  - b. Complaints should be in writing - a [Charge of Discrimination Complaint Form](#) 101\_F6 is available for employees to reduce their complaint(s) to writing. Complaints will also be accepted in other written formats when signed and dated by the complainant.
  - c. Complaints must be filed within 180 days of the alleged act of discrimination. For purposes of this section, a complaint is filed when a written complaint is received at any of the levels listed in the *EEO Procedure* Section above.
4. *State Level* - The [Office of Equal Employment Services \(OEES\)](#) at the Department of Human Resource Management investigates complaints of employment discrimination on the basis of race, sex (including sexual harassment, pregnancy, and marital status), color, national origin, religion, sexual orientation, gender identity, age, political affiliation, veteran status, or against otherwise qualified persons with disabilities. Filing a complaint with the DOC EEO Office does not limit employees or applicants from filing with the OEES Office. However, an employee may not pursue both an OEES complaint and a grievance on the same matter (see Office of Employment Dispute Resolution [Grievance Procedure Manual](#), Section 1.6).
  5. *Federal Level* - The [Equal Employment Opportunity Commission \(EEOC\)](#) investigates complaints of employment discrimination filed by employees to that agency. Employees may directly contact the respective EEOC office for instructions on filing. Filing a grievance or filing a complaint with the DOC EEO Office or State OEES Office does not limit employees or applicants from filing with the Federal Equal Employment Opportunity Commission.
- G. The DOC EEO Office serves as liaison with the State Office of Equal Employment Services as well as Federal Equal Employment Opportunity Commission for the purpose of resolving discrimination complaints by preparing and analyzing interrogatory data for appropriate review in conjunction with EEO officials.
- H. Data and Reports
1. The DOC Human Resources Director shall ensure that necessary data and reports regarding equal opportunity are maintained and supplied as required for the Department of Corrections.
  2. Chief of Corrections Operations, Deputy Directors and Regional Operations Chiefs shall ensure that within the divisions and regions necessary data and reports are maintained and submitted in accordance with instructions of the DOC Human Resources Director.

## V. REFERENCES

DHRM Policy 2.10, *Hiring*

Executive Order One (2014) *Equal Opportunity*

Office of Employment Dispute Resolution [Grievance Procedure Manual](#)

Operating Procedure ~~101.5~~ 155.3, *Reasonable Accommodations*

Operating Procedure 135.1, *Standards of Conduct*

Operating Procedure ~~140.1~~ 145.4, *Employee Grievances*

## VI. FORM CITATIONS

[Charge of Discrimination Complaint Form](#) 101\_F6

VII. REVIEW DATE

The office of primary responsibility shall review this operating procedure annually and re-write it no later than three years from the effective date.

*Signature Copy on File*

*11/12/15*

N. H. Scott, Deputy Director for Administration

Date