



Virginia Department of Corrections

Human Resources

Operating Procedure 145.3

Equal Employment Opportunity, Anti-Harassment, and Workplace Civility

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REVIEW

The Content Owner will review this operating procedure annually and re-write it no later than three years after the effective date.

COMPLIANCE

This operating procedure applies to all units operated by the Virginia Department of Corrections (DOC). Practices and procedures must comply with applicable State and Federal laws and regulations, American Correctional Association (ACA) standards, Prison Rape Elimination Act (PREA) standards, and DOC directives and operating procedures.

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DEFINITIONS

Bona Fide Occupational Qualification (BFOQ) - Statutory exception to Title VII of the *Civil Rights Act of 1964*, that allows discrimination on the basis of gender in certain circumstances; BFOQ exceptions are granted by the DOC Human Resources Director or designee when gender has been found to be a business necessity for a specific security post

Bullying - Disrespectful, intimidating, aggressive, and unwanted behavior toward a person that is intended to force the person to do what one wants, or to denigrate or marginalize the targeted person

Cyber-Bullying - Bullying that occurs using technology such as the internet, cell phones, or other electronic devices to intentionally harm others through hostile, threatening, disrespectful, demeaning, or intimidating electronic communications via the internet, cell phones, or other devices (e.g., emails, Instant Messages (IMs), text messages, blogs, pictures, videos, postings on social media, etc.)

Disability - An actual physical or mental impairment that substantially limits one or more major life activities; 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 class related to race (including traits historically associated with race to include hair texture, hair type, and protective hairstyles such as braids, locks, and twists), sex (including sexual harassment, pregnancy, lactation or expression of breastmilk, and marital status), color, national origin, religion, sexual orientation, gender identity, age, political affiliation, veteran status, or against otherwise qualified persons with disabilities

Ex-inmate or probationer/parolee - An individual previously under the control and supervision of the Virginia Department of Corrections, or a corrections agency in another state.

Gender - A person's self-identity as male or female, which may be different from the person's assigned sex at birth

Organizational Unit - A DOC 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, and individual headquarters unit e.g., Human Resources, Offender Management, Internal Audit

Organizational Unit Head - The person occupying the highest position in a DOC organizational unit, such as a correctional facility, Regional Office, Probation and Parole Office, Virginia Correctional Enterprises, Academy for Staff Development, Corrections Construction Unit, Agribusiness Unit, and individual Headquarters unit e.g., Human Resources, Offender Management, Internal Audit.

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 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, requests 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)

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 - Any location, either permanent or temporary, where an employee performs any work-related duty; this includes, but is not limited to, buildings and surrounding perimeters, including the parking lots, field locations, alternate work locations, and travel to/from work assignments



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, opportunities, or compensation. Workplace harassment on the basis of race (including traits historically associated with race including hair texture, hair type, and protective hairstyles such as braids, locks, and twists), sex (including sexual harassment, pregnancy, lactation or expression of breastmilk, 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.



PURPOSE

This operating procedure provides for equal employment opportunity within the Department of Corrections (DOC); educates employees in the recognition of discriminatory practices, harassment, cyber-bullying, and bullying; and provides an effective means of preventing and eliminating such discrimination, harassment, cyber-bullying, bullying, and retaliation from the workplace. DOC fosters a culture that demonstrates the principles of civility, diversity, inclusion, and equity to ensure a safe and civil workplace based on an awareness of all employees' responsibility to conduct themselves in a manner that cultivates mutual respect, inclusion, and a healthy work environment.

PROCEDURE

- I. Equal Employment Opportunity (EEO)
 - A. The DOC is committed to the adherence and enforcement of Executive Order 1 (2018), Equal Opportunity, which states, in part 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." Support of equal employment opportunity initiatives shall be considered in the evaluation of each manager's job performance. All employees are responsible for conducting themselves in a manner consistent with the Governor's Executive Order.
 - B. State appointing authorities and other management principals are directed to give preference, as determined by the Director of the Department of Human Resource Management (DHRM), 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; see DHRM Policy 2.10, Hiring.
 - C. The DOC does not discriminate against qualified ex-inmates or probationers/parolees in hiring for non-sensitive positions. (5-ACI-1C-08; 4-ACRS-7E-06, 4-APPFS-3E-07) The Director, or designee, has the final authority to determine whether to hire ex-inmates or probationers/parolees.
 - D. State appointing authorities and other management principals are directed to take affirmative measures, as determined by the DHRM Director to emphasize the recruitment of qualified minorities, women, disabled persons, veterans, and older persons to serve at all levels of state government. (5-ACI-1C-06; 4-APPFS-3E-04; 2-CO-1C-09; 1-CTA-1C-03)
 - E. 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.
 - F. The DOC specifically prohibits employment discrimination, harassment to include sexual harassment, bullying behaviors, threatening or violent behaviors, retaliation for participating in a protected activity, or other displays of inappropriate behavior toward any employee, applicant for employment, vendor, contractor, or volunteer. (5-ACI-1C-09; 4-ACRS-7E-04; 4-APPFS-3E-05; 4-APPFS-3E-06; 2-CI-6C-4, 2-CI-6D-2)
 1. Behaviors that undermine team cohesion, employee morale, individual self-worth, productivity, and/or safety are not acceptable.
 2. If any of these prohibited behaviors occur, the employee(s) or third parties should report the matter to a person of authority through the established complaint protocol in the *Complaint Procedure* section of this operating procedure.
 - G. DOC procedures, guidelines, and practices must reflect sound human resource management that provides equal opportunity for all positions and aspects of employment, including but not limited to hiring, promotion, transfer, demotion, role change, in-band adjustment, layoff, performance management, employee development, and employee recognition; and corrective actions, including disciplinary actions, compensation, pay practices, benefits, and other terms, conditions, and privileges of employment without regard to race (including traits historically associated with race including hair texture, hair type, and



protective hairstyles such as braids, locks, and twists), sex (including sexual harassment, pregnancy, lactation or expression of breastmilk, and marital status), color, national origin, religion, sexual orientation, gender identity or expression, age, political affiliation, veteran status, qualified persons with disabilities, or any other characteristic protected by law unless there are bona fide occupational qualifications. Employment areas covered include, but are not limited to: hiring, promotion, demotion, classification, compensation, transfer, layoff, employee development, recognition, assignment, awarding of overtime, performance management, corrective and disciplinary actions, benefits, and other terms, conditions, and privileges of employment. (5-ACI-1C-06; 4-ACRS-7E-05; 4-APPFS-3E-04, 4-APPFS-3E-06; 2-CI-6C-4, 2-CI-6D-3; 2-CO-1C-09; 1-CTA-1C-03)

H. Complaints of discrimination, including but not limited to those based on race, sex, color, national origin, religion, sexual orientation, gender identity or expression, age, political affiliation, veteran status, or against otherwise qualified persons with disabilities or violation of the Governor’s Executive Order 1 (2018), *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. (5-ACI-1C-09; 4-ACRS-7E-04; 4-APPFS-3E-05; 4-APPFS-3E-06)

I. A state employee found in violation of this operating procedure will be subject to appropriate disciplinary action under Operating Procedure 135.1, *Standards of Conduct*.

II. Bona Fide Occupational Qualification (BFOQ)

A. In accordance with Operating Procedure 401.2, *Security Staffing*, based upon duties, certain post assignments may be restricted to persons of one gender with the approval of the Director of Human Resources or designee.

B. Gender may be a BFOQ when there is a need to accommodate the personal privacy of inmates or probationers/parolees.

C. Where there is a conflict between the privacy rights of inmates or probationers/parolees and the employment opportunities of employees, an attempt will be made to reasonably rearrange job responsibilities in order to minimize the conflict between privacy interests and Title VII of the *Civil Rights Act of 1964*.

D. Prior to establishing a BFOQ post assignment, the facility should explore reasonable, non-discriminatory alternatives.

E. Where operating procedures require that certain tasks be performed by an employee of a specific gender, there is no need to establish a BFOQ post to perform those tasks.

F. If reasonable alternatives are not available to allow an employee of either gender to be assigned to a specific post, that post may be designated as a BFOQ post.

G. The Director of Human Resources or designee will review and approve all BFOQ restrictions in accordance with Operating Procedure 401.2, *Security Staffing*.

H. All posts being considered as BFOQ due to the individual needs of the facility must be submitted to the Director of Human Resources or designee for review and approval at least 30 days prior to being established as a BFOQ post assignment, or as soon as possible thereafter.

I. Facility Unit Heads are responsible for submitting an annual list of approved BFOQ posts, including justifications for the BFOQ designation, to the Director of Human Resources or designee for review. This list will be reviewed, revised as needed, and re-approved in accordance with standards as established in Operating Procedure, 401.2, *Security Staffing*.

J. BFOQ designations are not allowed for general population housing unit floor posts or Front Entry posts.



III. Requests for Accommodations

A. Disability

1. DOC provides reasonable accommodations to qualified persons with disabilities as defined herein.
2. Any request for a reasonable accommodation from an employee or applicant with a disability must be reviewed in accordance with Operating Procedure 150.3, *Reasonable Accommodations*.
3. Reasonable accommodations are also made to ensure that all unrestricted public areas of the facility are accessible and usable by employees and visitors with disabilities. (5-ACI-2F-03; 4-ACRS-7E-02)

B. Pregnancy

1. DOC provides a reasonable accommodation on the basis of pregnancy, lactation or expression of breastmilk, childbirth, or related medical conditions.
2. Women affected by pregnancy or related conditions must be treated in the same manner as other applicants or employees with similar abilities or limitations.
3. Requests for any accommodations must be submitted to the Organizational Unit Head or Human Resource Officer (HRO) for consideration in accordance with Operating Procedure 150.3, *Reasonable Accommodations*.

C. Religion

1. DOC provides a reasonable accommodation for bona fide religious beliefs, practices, or observances upon request by an employee.
2. All requests for religious accommodations, including but not limited to specific grooming or attire requests, must be submitted orally or in writing to the Organizational Unit Head or HRO. The Organizational Unit Head or HRO must document all verbal requests for accommodation in writing.
3. The facility Organizational Unit Head, HRO or their designee(s) must submit the request to the DOC EEO Unit and the Director of Human Resources or designee prior to making a final decision regarding an accommodation.

- D. The DOC is not legally required to make a requested accommodation if the requested accommodation places an undue hardship on the DOC, interrupts the mission of a work unit, unreasonably increases expenditures to accommodate the request, causes scheduling and shift conflicts, or jeopardizes the safety and security of inmates or probationers/parolees, employees, or the general public.

IV. Expectations and Prohibited Conduct

- A. 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 workplace harassment of any kind, cyber-bullying, bullying, retaliation, or other inappropriate behavior; see Attachment 1, *Guidance on Prohibited Conduct*.

- B. Managers, supervisors, and other persons of authority have a duty to promptly take action to eliminate harassment, bullying, discrimination, threatening or violent behaviors, retaliation, and other displays of inappropriate behavior from the work environment once a situation comes to their attention by doing the following:

1. When necessary, in order to protect the safety of employees and maintain a hostile free environment, separate the complainant and the alleged perpetrator (e.g., send the alleged perpetrator home or move the individual to another building, department, shift or break); and
2. Report the complaint or observed conduct in violation of this procedure to the Organizational Unit Head, Human Resource Officer, the DOC EEO Unit, or the Director of Human Resources for monitoring, investigation, advice, or assistance. If the investigation determines the complaint has merit, immediate, appropriate corrective action must be taken.



- C. Managers and supervisors who allow observed or reported complaints of harassment, cyber-bullying, bullying, or other inappropriate behavior to continue; who engage in retaliatory conduct; or who fail to take appropriate action upon becoming aware of a complaint or prohibited behavior will be subject to disciplinary action under Operating Procedure 135.1, *Standards of Conduct*, up to and including termination.
 - D. Any employee who engages in conduct determined to be harassment, discrimination, retaliation, cyber-bullying, bullying, and/or other inappropriate behavior, or who encourages or ignores such conduct by others will be subject to disciplinary action under Operating Procedure 135.1, *Standards of Conduct*, which may include termination from employment.
 - E. Violations occurring outside the workplace may be grounds for disciplinary action, up to and including termination. In these situations, the agency must demonstrate that the conduct has a connection to the workplace, the productivity of the targeted individual(s), or the Department's operations, services, or reputation.
 - F. 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.
 - 1. Failure to do so may result in disciplinary action under Operating Procedure 135.1, *Standards of Conduct*, including demotion or discharge.
 - 2. Employees will acknowledge their rights and responsibilities pertaining to administrative proceedings and investigations by signing Attachment 2, *Notice of EEO Unit Investigation*.
 - G. If any employee is found to be untruthful in any aspect of an investigation, it could affect their credibility as a Commonwealth of Virginia witness and ability to perform the essential duties as required for employment.
 - H. Personal counsel, attorneys, or others acting on behalf of a subject of an investigation, an employee, or a witness are not permitted to be present in EEO interviews during administrative, non-criminal investigations.
 - I. Under no circumstances will anyone directly or indirectly interfere with an investigation or induce or coerce others not to cooperate with investigators. Any attempt to directly or indirectly interfere with an investigation is prohibited and subject to disciplinary action up to and including termination.
 - J. Under no circumstances will anyone, directly or indirectly, attempt to identify or retaliate against any person suspected of making the allegation(s) or participating in the investigation, including but not limited to threatening to affect any reprisal; or taking or directing another person to take, recommend, process, or approve any personnel action or any other retaliatory actions, or attempts to do the same.
 - K. Investigations focusing on administrative non-criminal matters that could lead to a Corrections Officer being issued a *Written Notice 135_F1*, with transfer, suspension without pay, demotion, or termination will be conducted in accordance with COV §9.1-508 et seq., *Correctional Officer Procedural Guarantee Act*, and Operating Procedure 135.1, *Standards of Conduct*.
 - L. To ensure the integrity of the investigation, preserve relevant evidence, and protect the privacy of the complainant, accused, and other parties to the investigation, strict confidentiality is required throughout the entire EEO investigation. Information discussed or obtained through the investigative process must not be discussed with other persons within the DOC except on a strict need-to-know basis only.
- V. Complaint Procedures (5-ACI-1C-09; 4-ACRS-7E-04; 4-APPFS-3E-05; 4-APPFS-3E-06)
- A. Employees and third parties should report incidents of prohibited conduct as defined in this procedure to a person of authority, their Human Resource Officer, or the DOC EEO Unit as soon as possible after the incident occurs, but no later than 180 days after the incident.



B. Under no circumstances will the individual alleging prohibited conduct be required to file a complaint directly with the individual(s) alleged to have engaged in the prohibited conduct nor will the individual alleged to have engaged in the prohibited conduct be allowed to investigate the complaint made against them.

C. Assurance against Retaliation

1. Employees and third parties who, in good faith, make complaints of inappropriate workplace conduct or provide information related to such complaints will be protected against retaliation.
2. If retaliation occurs, the complainant(s) or third party should immediately report the retaliation, as soon as possible after the incident occurs, to the individual's immediate supervisor or the Organizational Unit Head.

D. Employees and applicants for employment may file a complaint using any of the options noted below:

1. Internal Department Complaint - The employee or applicant may report incidents of prohibited conduct to their supervisor(s), Organizational Unit Head, Human Resource Officer, DOC EEO Unit, or any person of authority. Employees, contract workers, volunteers, etc., may submit a *Charge of Discrimination Complaint 145_F8* to the DOC EEO Unit.
2. State Complaint - Any state employee or applicant for state employment may file an allegation of violation of the Governor's Executive Order with the Office of Workforce Engagement's Diversity, Equity, and Inclusion Unit in the Department of Human Resource Management.
3. Grievance Procedure
 - a. The employee may also use the State Employee *Grievance Procedure*, which is administered by DHRM as outlined in the *DHRM Grievance Procedure Manual*.
 - b. An employee may not simultaneously use the grievance procedure and a formal state complaint with DHRM to address the same work-related action.
4. Federal Complaint Process - Employees (and applicants for Commonwealth employment) may file a complaint with the U.S. Equal Employment Opportunity Commission (EEOC).
5. Those wishing to file a complaint may also contact the Advice Line (1-888-23ADVICE) (1-888-232-3842), administered by DHRM, to discuss concerns and be advised of options and procedures.
6. Additional resources may be found at the DHRM Office of Employment Dispute Resolution (EDR) and within Operating Procedure 145.4, *Employee Grievances*.

VI. Agency and Management Responsibilities

A. Managers and supervisors are required to:

1. Ensure compliance and consistent application of this procedure.
2. Support equal employment opportunity, and diversity and inclusion activities.
3. Express strong disapproval and zero tolerance of all forms of prohibited conduct.
4. Intervene when they observe any acts or behaviors that may be considered prohibited conduct.
5. Report any prohibited conduct of which they are aware, whether or not a complaint has been made, to their Organizational Unit Head, Human Resource Officer or the DOC EEO Unit as soon as possible after the incident occurs.
6. Take immediate action to prevent retaliation towards the reporting party or any participant in an investigation.
7. Take immediate action to eliminate any harassment, discrimination, cyber-bullying, bullying, threats or violent behavior, and other inappropriate behavior.
8. The Director of Human Resources or designee will ensure that necessary data and reports regarding



equal opportunity are maintained and supplied as required for the DOC.

- B. The Chief of Corrections Operations, Deputy Directors, and Regional Operations Chiefs will ensure that necessary data and reports are maintained and submitted in accordance with instructions of the Director of Human Resources.
- C. Annually, the Director of Corrections will develop and publish an equal employment opportunity compliance policy statement that informs employees of the Governor's Executive Order and the Department's commitment to equal employment opportunity.

REFERENCES

COV §9.1-508 et seq., *Correctional Officer Procedural Guarantee Act*

[Department of Human Resource Management Policy 2.05, Equal Employment Opportunity](#)

Department of Human Resource Management: Policy 2.10, *Hiring*

[Department of Human Resource Management Policy 2.35, Civility in the Workplace](#)

Department of Human Resource Management, *Discrimination Complaint Procedure*

Executive Order 1 (2018), *Equal Opportunity*

Operating Procedure 135.1, *Standards of Conduct*

Operating Procedure 145.4, *Employee Grievances*

Operating Procedure 150.3, *Reasonable Accommodations*

Operating Procedure 401.2, *Security Staffing*

Title VII of the Civil Rights Act of 1964

ATTACHMENTS

Attachment 1, *Guidance on Prohibited Conduct*

Attachment 2, *Notice of EEO Unit Investigation*

FORM CITATIONS

Written Notice 135_F1

Charge of Discrimination Complaint Form 145_F8

