

<b>UTAH DEPARTMENT OF HUMAN SERVICES POLICY AND PROCEDURES</b>		
<b>Reference: 02-10</b>	<b>Effective Date: September 4, 2001</b>	<b>Page 1 of 5</b>
<b>SUBJECT: UNLAWFUL HARASSMENT POLICY</b>		
<b>RATIONALE:</b> The Department of Human Services is committed to providing its employees, clients and customers with a safe and productive work environment, free from unlawful harassment based on race, color, religion, sex, national origin, age, disability, or protected activities. The purpose of this policy is to foster a working environment free from unlawful harassment and to comply with state and federal anti-discrimination laws.		

**POLICY**

The Department of Human Services (DHS) shall comply with all federal and state statutes, rules, policies and procedures that prohibit unlawful harassment in the work place. Any violation of those statutes or rules is also a violation of this policy on unlawful harassment.

DHS shall prevent, investigate, and correct such unlawful harassment in the workplace by:

- (1) establishing these policies and procedures;
- (2) training DHS employees and supervisors about how to prevent and respond appropriately to unlawful harassment;
- (3) establishing and maintaining complaint procedures which are confidential and free from management bias, collusion, intimidation, or reprisal;
- (4) investigating every complaint promptly, impartially and thoroughly, and using trained supervisors or investigators to conduct investigations; and
- (5) taking immediate and appropriate action, including corrective action, disciplinary action or referral for criminal prosecution, against those who violate this policy.

**DEFINITIONS**

**Unlawful Harassment:** Any unlawful behavior or conduct that: (a) is based on race, color, religion, sex, national origin, age, disability, or protected activities under the anti-discrimination statutes; (b) is unwelcome and severe, pervasive, demeaning, derisive or coercive; (c) results in the creation of a hostile, abusive or intimidating work environment or tangible employment action; and (d) involves a DHS employee as the victim, or the alleged harasser.

**Protected Activity:** Opposition to discrimination or unlawful harassment, or participation in proceedings covered by the federal or state anti-discrimination statutes.

**Tangible Employment Action:** Any action by DHS management that results in a significant change in employment status such as a hiring, firing, failure to promote, demotion, and undesirable assignments; or, a decision that causes a significant change in benefits, compensation decisions or work assignment. Tangible employment action does not include insignificant changes in employment status such as a change of job title without a change in salary, benefits, or duties.

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## **PROCEDURES**

### **I. Unlawful Harassment Prevention Training**

#### **A. New Employees, Transferred Employees, Volunteers, and Interns**

1. **New Employees:** New employees shall attend harassment prevention training within 90 days of hire. Supervisors shall ensure that new employees under their supervision receive the required training and take a refresher course at least every three years thereafter. This initial training shall be delivered by a trainer who has been certified by the DHS Office of Human Resources (OHR) and shall be at least 90 minutes in length. The refresher course may be a training session by an approved trainer or the DHRM approved video/workbook module, test and registration.
2. **Employees from Other State Departments:** State employees transferring to DHS from another department shall also attend the harassment prevention training within 90 days of transfer unless they can provide documentation of having attended such training within the last three years.
3. **Volunteers and Interns:** At a minimum, the Department shall provide all volunteers and interns with the Department's brochure on "Unlawful Harassment Prevention Guidelines." All volunteers and interns shall sign the page of the brochure which indicates that they have been informed of, are aware of, and will comply with these policies and with the state and federal laws that prohibit unlawful harassment. Volunteers and interns may also attend training or take a refresher course.

**B. Refresher Training Courses:** Following the initial new employee training, current employees shall attend an unlawful harassment prevention refresher every three years thereafter.

**C. Documentation of Training Completion:** Documentation of training completion shall be maintained in the permanent personnel file of each employee, volunteer, or intern.

#### **D. Training for Managers and Supervisors:**

1. **New Supervisors:** All management staff who supervise employees shall attend "Supervisor Unlawful Harassment Prevention Training" within 90 days of their appointment. The training shall be provided by an instructor certified by OHR and be at least three hours in length.
2. **Refresher Training Courses:** All other administrators, managers and supervisors shall attend "Supervisory Unlawful Harassment Prevention Training" at least once every three years thereafter.
3. **Documentation of Training Attendance:** Documentation of training completion shall be maintained in the administrators', managers' or supervisors' permanent personnel files.

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- E. Development of the Training Program: The DHS Office of Human Resources (OHR) shall develop and conduct a training program that teaches DHS administrators, managers, supervisors, and employees how to recognize, prevent, and correct unlawful harassment in the workplace.

**II. Unlawful Harassment Prevention and Complaint Procedures**

- A. Management’s Responsibility: If a DHS supervisor knows or suspects that a DHS employee may be or is being subjected to unlawful harassment, on or off duty, and that the unlawful harassment may result in a tangible job action or the creation of a hostile work environment, the supervisor shall notify OHR immediately regarding the complainant’s allegations before conducting any further investigation or interviews. If the supervisor has a conflict of interest, the supervisor shall not interview the complainant or others about the allegation of harassment. (A conflict of interest may arise whenever the supervisor is the alleged harasser or whenever the supervisor has another special status with regard to the complainant or alleged harasser.) The supervisor shall not interview the alleged harasser unless OHR has reviewed the allegation and authorized such an interview.
- B. Office of Human Resources’ (OHR) Responsibility: OHR shall provide consultation, investigation, technical assistance, or training as needed.
- C. Complainant’s Responsibility: Any employee, volunteer or intern who feels he/she has been subjected to unlawful harassment is encouraged to:
  - 1. Continue to report to work;
  - 2. Document the occurrence;
  - 3. Identify witnesses, and
  - 4. File an oral or written complaint with his/her supervisor, another person in agency management, OHR, the Department of Human Resource Management, the Utah Anti-discrimination and Labor Division, or the Equal Employment Opportunity Commission.

It is also recommended (but not required) that the complainant express disapproval to the harasser and demand that the harasser stop the unlawful harassment.

- 5. If the complainant’s supervisor is the alleged harasser, the complainant may notify another person in management, the alleged harasser’s supervisor, and/or any of the people or agencies specified in number four above.
- D. Retaliation Prohibited: **DHS** employees shall not retaliate against an individual because she or he has:
  - 1. Reported or opposed an unlawful employment practice or unlawful harassment;  
or

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2. Made a charge, testified, assisted or participated in an investigation, proceeding or hearing under this policy; or
3. Otherwise engaged in a protected activity.

Any DHS employee who retaliates against a complainant, witness, or others involved in an investigation shall be subject to disciplinary action.

### **III. Unlawful Harassment Investigation Procedures**

- A. Confidentiality: DHS investigators shall preserve the confidentiality of investigations, to the extent permitted by state and federal laws. During the investigation process, the investigators shall take appropriate measures to protect the confidentiality of information gathered.
- B. Investigating and Resolving Harassment Complaints:
  1. Decision About Type of Investigation: Upon receiving an allegation of harassment, management shall consult with OHR to determine whether the complainant's supervisor or another designated individual should conduct a preliminary review, or whether OHR should proceed immediately with a formal investigation of the complaint. If a formal investigation is necessary, OHR shall investigate or assign an approved team of investigators to perform the investigation. OHR shall ensure that the investigators have no conflict of interest. For instance, if the alleged harasser is the complainant's supervisor, a formal investigation will be conducted by an OHR assigned team.
  2. Preliminary Review by Complainant's Supervisor: Before conducting any preliminary review, the supervisor shall consult with OHR. Unless otherwise directed by OHR or this policy, the complainant's supervisor shall conduct the preliminary review, which shall be limited to interviewing the complainant and the alleged harasser only. Witnesses and others shall not be interviewed during a preliminary review. If witnesses are identified by the complainant, the supervisor's preliminary review will end with the interview of the complainant only. When, witnesses are identified by the complainant, a formal investigation is required.
    - a. Based on the supervisor's interview of the complainant and the alleged harasser, the supervisor shall document the facts in writing. The supervisor should be careful to maintain the confidentiality of the investigation.
    - b. Upon completion of the preliminary review, the supervisor shall;
      - (i) Consult with OHR to determine, based on the documented facts, whether the harassment allegation should be substantiated; and
      - (ii) Forward all notes and written materials about the preliminary review or the investigation to OHR, making sure that nothing is filed in the personnel files of the individuals involved.

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c. Lastly, the supervisor shall report the findings of the investigation back to the complainant and the alleged harasser. However, the name of the complainant shall not be divulged to the alleged harasser.

3. Formal investigations shall be conducted under the direction of OHR.

C. Unsubstantiated Allegations and False Complaints: If an investigation finds that the allegation of unlawful harassment is unsubstantiated, the information shall be documented, the investigation terminated, and appropriate parties (i.e., management, the complainant, and the alleged harasser) shall be notified. If the investigation indicates that a DHS employee's complaint was malicious, frivolous, knowingly false or made in bad faith, the employee who filed the complaint may be subject to corrective or disciplinary action.

D. Records:

1. OHR shall maintain and store a separate record of all unlawful harassment complaints and investigations in accordance with State of Utah Human Resource Management Rules. Supervisors shall not keep any additional separate files regarding complaints or investigations of unlawful harassment. Unlawful harassment complaints and investigation documents shall NOT be placed in any employee personnel files.

2. Records relating to reporting and investigation of unlawful harassment are classified as "protected" under the Utah Government Records Access and Management Act (GRAMA), Utah Code Annotated §63-2-101, *et seq.*, and access to such records shall be given only as required by state and federal laws, including GRAMA.

IV. **Interaction with Other DHS Policies:** Depending on the circumstances, unlawful harassment may also violate other DHS policies, such as the Code of Ethics or the policy on Appropriate Use of Information Technology Resources. Management will also consider appropriate corrective or disciplinary action if these policies are violated

*Robin Arnold-Williams*

DATE: 09-04-01

Robin Arnold-Williams, Executive Director  
Department of Human Services