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ADMINISTRATIVE REGULATION

OPR: EEO/PERSONNEL

206

EQUAL EMPLOYMENT OPPORTUNITY / CIVIL RIGHTS COMPLIANCE

I. GENERAL

This Alabama Department of Corrections (ADOC) Administrative Regulation (AR) establishes the responsibilities, policies, and procedures for fair and equitable treatment of all individuals and prohibits and requires the reporting of harassment, sexual harassment, and discrimination.

Title VII of the Civil Rights Act of 1964, as amended, "*prohibits discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment on the basis of race, color, religion, sex, or national origin.*" It is the ADOC's policy that its work environment be free of unlawful discrimination and harassment. The ADOC will not tolerate physical or verbal harassing behavior. The ADOC will take all reasonable steps to discourage unlawful discrimination and harassing behavior and will impose appropriate corrective action in response to any such identifiable action.

II. POLICY

The ADOC provides an equal-employment opportunity to all individuals without discrimination or harassment based on race, color, national origin, religion, sex, pregnancy, age, disability, genetic information, sexual orientation, gender identity, or any other characteristic protected by law. No employment-related practice, including any term or condition of employment, shall be based, wholly or partially, on discrimination or harassment, or on any employee's opposition to and/or participation in an investigation of such conduct.

It is the policy of the ADOC to:

- A. Strictly prohibit any form of harassment, whether based on sex, race, color, religion, national origin, age, sexual orientation, ancestry, gender identity, genetic information, disability or any other characteristic protected by law.
- B. Strictly prohibit any form of discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of sex, race, color, religion, national origin, age, sexual orientation, ancestry, gender identity, genetic information, disability or any other characteristic protected by law.
- C. Strictly prohibit harassment and sexual harassment by any employee.
- D. Swiftly investigate and seek resolution of any complaint made under this regulation.
- E. Strictly prohibit any form of reprisal or retaliation against complainants under this regulation/

Any employee who feels the ADOC discriminated against him/her based on any of the aforementioned items should file a complaint as soon as possible after the alleged discrimination or harassment occurs according to the procedures outlined in this AR.

Note: The complaint procedures in this Chapter refer only to EEO-related matters. Employees who believe they were aggrieved in a non-EEO-related matter affecting their employment or work environment should seek resolution through their supervisory chain of command.

III. DEFINITIONS AND ACRONYMS

- A. **Discrimination**: Adverse treatment or consideration based on class or category, such as sex, race, color, religion, national origin, age, sexual orientation, ancestry, or disability, rather than on individual merit.
- B. **Employee**: For this AR only, an employee is a person employed by the ADOC in a full-time, part-time, or temporary position in the state's classified or unclassified service.
- C. **Equal Employment Opportunity (EEO) Officer**: The ADOC employee assigned to review, investigate, and resolve complaints of harassment, sexual harassment, and discrimination.
- D. **Harassment**: Physical or verbal conduct that demonstrates hostility or aversion to an individual *because of* his/her race, color, religion, sex, national origin, age, disability, sexual orientation, gender identity, or any other characteristic protected by law or that of his/her relatives, friends, or associates, and that has the purpose or effect of the following:

Harassing conduct in the workplace includes but is not limited to:

1. Creating an intimidating, hostile, or offensive work environment;
 2. Unreasonably interfering with an individual's work performance; or
 3. Otherwise adversely affecting an individual's employment opportunities.
 4. Slurs or negative stereotyping;
 5. Threatening, intimidating, or hostile acts; or
 6. Denigrating jokes and displaying and/or circulating (including via electronic media) written or graphic material that denigrates or shows hostility or aversion toward an individual or group.
- E. **Individual**: Employees, contractors, volunteers, vendors, customers, visitors, and other persons involved with the ADOC.
- F. **Physical Harassment**: Pushing, shoving, touching, or other intentional acts committed in whole, or in part, because of the individual's sex, race, color, religion, national origin, age, sexual orientation, ancestry, or disability.
- G. **Reprisal/Retaliation**: Any punishment, adverse consideration, or undeserved treatment as a result of filing a complaint.
- H. **Sexual Abuse**: Sexual acts or contact committed by force, persuasion, inducement, or enticement.
- I. **Sexual Contact**: The touching of another individual or of the individual's intimate parts and/or clothing covering the individual's intimate parts for the purpose of sexual arousal or gratification.
- J. **Sexual Harassment**: Any unwelcome conduct of a sexual nature, including sexual advances, requests for favors, remarks, sounds, gestures, physical contact, and display or circulation of material that is subjectively or objectively offensive. Sexual harassment includes *unwelcome* sexually oriented conduct that is sufficiently pervasive or severe to unreasonably interfere with an employee's job performance or that creates an intimidating, hostile, or offensive work environment. For the purposes of this AR, "sexual harassment" includes sexual abuse and sexual contact. While sexual harassment encompasses a wide range of conduct, specifically prohibited conduct includes but is not limited to:

1. Directly or indirectly promising to give special treatment or benefits to an employee for complying with a request that is sexual in nature;
2. Directly or indirectly threatening to retaliate against an employee if he/she refuses to comply with a request that is sexual in nature;
3. Directly or indirectly denying an employment-related opportunity to an employee if he/she refuses to comply with a request that is sexual in nature;
4. Engaging in sexually suggestive physical contact or touching another employee in an unwelcome way;
5. Displaying, storing, or transmitting pornographic or sexually based materials using ADOC equipment or facilities;
6. Commenting about an individual's body, clothing, sexual prowess, or sexual deficiencies;
7. Making insulting or obscene comments or gestures that are sexual in nature;
8. Engaging in indecent exposure;
9. Making sexual or romantic advances toward an employee and persisting despite his/her rejecting the advances;
10. Demeaning references to one's gender;
11. Repeated staring, comments, or propositions of a sexual nature;
12. Jokes about sex or gender-specific traits or conversation filled with sexually suggestive innuendos or double meanings;

In addition to the above-described examples of sexually harassing behavior, harassing conduct of a non-sexual nature, which includes hazing, intimidation, or offensive remarks about members of a particular sex, is also impermissible.

Sexual harassment can be physical and/or psychological in nature. The combination of a series of incidents can constitute sexual harassment, even if one of the incidents on its own would not be considered harassing behavior.

Sexual harassment can involve harassment by a member of either sex. Although sexual harassment typically involves a person in a position of authority greater than that of the complainant (i.e., the complainant's direct supervisor), the harasser could also be a supervisor in another area, a co-worker, a subordinate, or a non-ADOC employee. Consensual sexual or romantic relationships between

employees, consumers, vendors, and/or contractors are deemed unwise and strongly discouraged.

- K. **Verbal Harassment**: Making statements which contain derogatory descriptions or stereotypes based on race, sex, color, national origin, age, sexual orientation, ancestry, or disability.

IV. **RESPONSIBILITIES**

- A. It is the responsibility of all ADOC employees to comply with this AR.
- B. It is the responsibility of all individuals to comply with this AR, and failure to adhere to this regulation may result in being removed and/or barred from an ADOC facility.
- C. Wardens/Regional Directors/Division Directors/Designee are responsible for ensuring the implementation and adherence to this policy. Wardens/Regional Directors/Division Directors/Designee are also responsible for designating, in consultation with Personnel's Legal Counsel, a supervisory level employee to serve as an EEO Officer and for ensuring that the EEO Officer attends EEO Officer training provided by Men's and Women's Services.
- D. ADOC employees and other affected individuals are responsible for reporting incidents of harassment, sexual harassment, and discrimination as prescribed in the procedures below.
- E. The EEO Officer receiving a complaint of harassment, sexual harassment, and/or discrimination is responsible for reviewing, investigating, and seeking resolutions to the complaint.

V. **PROCEDURES**

- A. ADOC strongly urges employees to report all incidents they perceive as discriminatory, harassing, or retaliatory, regardless of the alleged harasser's identity or classification/position.
- B. ADOC will not terminate, demote, harass, or otherwise retaliate against anyone for filing a complaint about job-related discrimination or harassment, or for participating in any investigation or other proceeding relating to an allegation of discrimination or retaliation.
- C. Verbal Reporting of Harassment, Sexual Harassment, and Discrimination:
 - 1. Employees who experience or witness any form of harassment, sexual harassment, or discrimination must notify their immediate supervisor, provided that the immediate supervisor is not the alleged perpetrator.

2. If the alleged perpetrator is the immediate supervisor, or if the immediate supervisor is not available, then the employee must report the harassment, sexual harassment, or discrimination to the next highest ranking official, or if necessary, to the Commissioner/Designee.
3. Any supervisor who receives a verbal report of harassment, sexual harassment, or discrimination shall promptly document and forward it to the Facility/Divisional EEO Officer/Warden/Regional Director/Division Director/Designee.
4. If the verbal report is against the Facility/Divisional EEO Officer/Warden/or Division Director, the receiving supervisor shall forward the documentation to the Departmental EEO Officer.
5. If the verbal report is against the Departmental EEO Officer, the receiving supervisor shall forward the documentation to Personnel's Legal Counsel.
6. All verbal reports of harassment, sexual harassment, or discrimination shall be investigated by the EEO Officer who receives the written documentation from the supervisor.

D. Complaints:

1. Individuals who believe they experienced conduct that amounts to illegal discrimination, harassment, or retaliation or who have concerns about workplace conduct they observed should follow the following procedure:
 - a. Promptly report the incident to his/her immediate supervisor using the EEO/Civil Rights Compliance Complaint Form;
 - b. In the event the alleged harasser is the employee's supervisor, the employee should report the conduct to his/her next level supervisor;
 - c. If the employee is uncomfortable reporting the complaint to any member of his/her supervisory chain of command, the employee should report the conduct to the EEO Officer; or
 - d. In the event the EEO Officer is the alleged harasser, or if the employee is uncomfortable reporting the matter to the EEO Officer, the employee should report the conduct to the General Counsel.

In no event shall the employee file or appeal his/her complaint of harassment or discrimination to the alleged harasser.

2. Individuals should feel no obligation to file their complaint(s) with their immediate supervisor before notifying one of the above-designated ADOC representatives.

Note: The complaint procedures in this AR refer only to EEO-related matters. Employees who believe they were aggrieved in a non-EEO-related matter affecting their employment or work environment should seek resolution through their supervisory chain of command.

E. Remaining Anonymous:

An individual may file an anonymous complaint with the ADOC. While the Agency will seek to honor an individual's request for anonymity, the circumstances of the complaint and the resulting investigation may make it difficult to hide a complainant's identity.

1. Complaints should be made in writing.
2. All complaints will be handled in a timely and confidential manner to:
 - a. Protect the confidentiality of the employee who files the complaint;
 - b. Encourage the reporting of any incident of sexual harassment;
 - c. Protect the reputation of any employee wrongfully charged with sexual harassment.
3. Information concerning a complaint will not be released during the investigation, except as necessary for conducting the investigation.
4. Parties involved in the investigation are not permitted to discuss the subject of the investigation outside of the investigation at any time.

F. Any individual who believes he/she has been harassed or sexually harassed, has witnessed harassment or sexual harassment, or believes that adverse decisions concerning his/her employment, or another's employment were based on unlawful discrimination, should file a complaint. The filing and investigation of complaints consists of up to three (3) steps:

1. Step One - Complaint:

The complaint shall be submitted to the Facility/Divisional EEO Officer/Designee on ADOC Form 206-A, *EEO/Civil Rights Compliance Complaint Form*.

- a. The complaint shall be submitted within five (5) working days of the occurrence of the incident causing the complaint. In addition to the complaint form, the employee may present written statements or affidavits from witnesses.
- b. The Facility/Divisional EEO Officer/Designee shall respond, in writing, to the complaint within five (5) working days.

2. Step Two - Appeal:

An employee who is not satisfied with the Facility/Divisional EEO Officer/Designee's response to his/her complaint may, within five (5) working days of receiving the response to the complaint, file an appeal to the Warden/Regional Director/Division Director/Designee, as applicable.

- a. The appeal shall be filed on ADOC Form 206-A, *EEO/Civil Rights Compliance Complaint Form*. A copy of the original complaint and response should be attached.
- b. The Warden/Regional Director/Division Director/Designee shall, after investigating the complaint, respond to the employee's appeal, in writing, within seven (7) working days.

3. Step Three - Final Appeal:

An employee who is not satisfied with Warden/Regional Director/Division Director/Designee response to his/her appeal may, within five (5) working days of receiving the response to the appeal, submit a final appeal to the Departmental EEO Officer.

- a. The final appeal shall be filed on ADOC Form 206-A, *EEO/Civil Rights Compliance Complaint Form*. A copy of the original complaint and appeal, and the responses to each, shall be attached.
- b. The Departmental EEO Officer shall, after review of the complaint and appeal and their responses, determine if further investigation is appropriate, including whether to meet with the employee to discuss the complaint.
- c. After concluding any further investigation, the Departmental EEO Officer shall submit his/her findings and a recommendation for solution, in writing, to the Commissioner/designee within seven (7) working days.
- d. The Commissioner/Designee shall, within ten (10) working days, respond in writing to the Departmental EEO Officer either approving the recommended solution or directing another solution.

- e. The Departmental EEO Officer shall, within five (5) business days of receipt of the Commissioner's response, notify the Warden/Regional Director/Division Director/Facility/Divisional EEO Officer/Designee, and the complainant, in writing, of the resolution.
 - f. The Warden/Regional Director/Division Director/Designee will direct the implementation of the resolution.
 - g. An employee who is dissatisfied with the complaint resolution provided by the Commissioner/Designee may appeal the Department's decision directly to the State Personnel Department Director.
4. In the event the complaint is against the Facility/Divisional EEO Officer/Designee, the complaint shall be submitted to the Warden/Regional Director/Division Director/Designee. The appeal, if any, shall be handled by the Departmental EEO Officer/Designee, and the final appeal, if any, shall be handled by Personnel's Legal Counsel. The timelines for the filing of the complaint, appeal, and final appeal shall remain the same.
 5. Any employee who desires to file a complaint of harassment, sexual harassment, or discrimination against an immediate or a higher-level supervisor can file the complaint directly with the Departmental EEO Officer/Designee. When using this exceptional complaint procedure, the employee must justify bypassing his/her Facility/Divisional EEO Officer/Warden/Regional Director/Division Director/Designee. The appeal, if any, shall be handled by Personnel's Legal Counsel, and the final appeal, if any, shall be handled by the Commissioner/Designee. The timelines for the filing of the complaint, appeal, and final appeal shall remain the same.
 6. Under no circumstances shall an individual's complaint of harassment, sexual harassment, or discrimination be filed with or appealed to the alleged perpetrator.
 7. If an individual feels that the Commissioner of the ADOC has subjected him or her to unlawful discrimination, harassment, or sexual harassment, he or she should report these allegations to Personnel's Legal Counsel or the Alabama State Personnel Department.
- G. All Wardens/Regional Directors/Division Directors/ Associate/Deputy Commissioners/Designee shall endeavor to interact with the complainant employee in such a manner as to try to prevent any fear of restraint, interference, reprisal, retaliation, or coercion as a result of the employee complaining of harassment, sexual harassment, or discrimination.