

## PROHIBITED WORKPLACE HARASSMENT

### I. PURPOSE

The purpose of this policy is to prescribe a work environment where illegal harassment based on sex (with or without sexual conduct), race, color, religion, national origin, ancestry, age, disability, genetic information, and protected activity (i.e., opposition to prohibited discrimination or participation in the complaint process) or status explicitly defined as protected under applicable State and federal law as well as nondiscriminatory hostile workplace harassment does not occur. Employees have the right to be free from harassment while in a State government workplace, and the State has the legal obligation to ensure that such harassment does not occur and that effective means of redress are available. This policy shall cover all independent contractors, volunteers, and employees of the State of West Virginia, as well as any employees of county or municipal agencies affiliated with the West Virginia Division of Personnel (DOP).

### II. DEFINITIONS

- A. **Appointing Authority:** The executive or head of a department or agency who is authorized by statute to appoint employees in the classified or classified-exempt service. By written notification to the Director of Personnel, the appointing authority may delegate specific powers authorized by this rule to persons who satisfy the definition of employee as established in this rule.
- B. **Agency:** Any authority, board, bureau, commission, division, or other entity of state government, however designated, transferred to, or incorporated in one of the departments created in W. Va. Code § 5F-1-2, as well as any affiliated county or municipal agencies. Provided that individual districts, offices, regions, sections, and units within the same agency, however designated, shall not be considered a separate agency.
- C. **Discriminatory Hostile Work Environment Harassment:** Illegal harassment based on sex (with or without sexual conduct and including pregnancy, childbirth, or related medical conditions), race, color, religion, national origin, ancestry, age (40 or older), disability, genetic information (including family medical history), and protected activity (i.e., opposition to prohibited discrimination or participation in the complaint process), or status explicitly defined as protected under applicable State and federal law.
- D. **Employee:** Any person who lawfully occupies a permanent or temporary position with the State; or any affiliated political subdivision, and who is paid a wage or salary, including, but not limited to, executive, administrative, classified, classified-exempt, exempt, temporary employees, and employees of county or municipal agencies affiliated with the DOP. For the purpose of this policy, “employee” shall also include authorized students, and interns performing services for an agency under direct supervision, irrespective of receipt of wages.

- E. Employer: The State or any affiliated political subdivision, including, but not limited to, executive, administrative, classified, classified-exempt, exempt, and any county or municipal agencies affiliated with the DOP.
- F. Equal Employment Opportunity Commission (EEOC): The federal agency responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex, national origin, age, disability, or genetic information.
- G. Equal Employment Opportunity (EEO) Coordinator: The Department employee designated by an appointing authority to coordinate the agency's EEO procedures and advise agency EEO counselors concerning proper EEO procedures.
- H. Equal Employment Opportunity (EEO) Counselor: Agency employee selected by an appointing authority to advise employees and management concerning proper EEO procedures.
- I. Hostile Work Environment Sexual Harassment: A type of illegal sexual harassment based on sex that is sufficiently severe or pervasive as to alter the conditions of the employee's employment and create a hostile and abusive working environment.
- J. Human Rights Commission (HRC): The State agency responsible for enforcing the Human Rights Act, which prohibits discrimination in employment, housing, and public accommodations.
- K. Independent Contractor: Any entity or person responsible for the performance of work under a contract.
- L. Nondiscriminatory Hostile Workplace Harassment: A form of harassment commonly referred to as "bullying" that involves verbal, non-verbal, or physical conduct that is not discriminatory in nature but is so atrocious, intolerable, extreme, and outrageous in nature that it exceeds the bounds of decency and creates fear, intimidates, ostracizes, psychologically or physically threatens, embarrasses, ridicules, or in some other way unreasonably overburdens or precludes an individual from reasonably performing his or her work.
- M. Quid Pro Quo Sexual Harassment: Meaning "this for that" or "something for something," a type of illegal sexual harassment in which the satisfaction of a sexual demand is used as the basis of a tangible employment action.
- N. Retaliation: Adverse action pertaining to any aspect of employment (hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment) taken against an individual for participating in a complaint and/or investigation process. For the purpose of this policy, retaliation shall also include actions taken against such an individual by the accused or other employees.
- O. Sexual Harassment: A type of illegal harassment which involves any unsolicited and unwelcome sexual advances, requests for sexual favors, or other verbal, written, or physical conduct of a sexual nature when:
  - 1. Submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment;

2. Submission to or rejection of such conduct is used as the basis for personnel actions affecting an employee; or,
  3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or offensive working environment.
- P. Third-party Harassment: Hostile Environment or Quid Pro Quo Harassment in which:
1. An employee is harassed by a non-employee, such as a client or vendor;
  2. An employee harasses a non-employee with whom the agency has a business relationship; or,
  3. An employee believes that a hostile environment exists due to a sexual relationship involving two other employees.
- Q. Volunteer: An authorized individual directly engaged in the performance of services for the State without promise, expectation, or receipt of compensation.
- R. Workplace: A worksite where service or work is performed in connection with an independent contractor's, volunteer's, or employee's public employment or service, including sites of social functions and conferences. The workplace includes, but is not limited to, facilities, property, buildings, offices, structures, automobiles, trucks, trailers, other vehicles, means of conveyance (either private or public, while engaged in the performance of duties), and parking areas provided by the State, even if not owned, leased, or operated by the State.
- S. Work-/service-related Activity: Includes, but is not limited to, conducting work/service, representing the State or the agency, receiving awards, speaking as a representative, and participating in receptions when invited as a result of State employment/service.

### III. POLICY

- A. Illegal harassment is prohibited by the West Virginia Human Rights Act and Title VII of the Civil Rights Act of 1964, where such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- B. Although some harassment may not violate existing discrimination laws, such behavior can result in a tort claim for intentional infliction of emotional distress. As such, all forms of harassment, including nondiscriminatory hostile workplace harassment, are prohibited.
1. This policy extends to employees, independent contractors, and volunteers, while engaged in any work-/service-related activity, which includes the performance of agency business as well as non-work-related conduct that can contribute to hostile workplace harassment affecting the terms and conditions of employment, including electronic communications using private phones, computers, or social media accounts if it impacts the workplace.
  2. Any employee found to be in violation of this policy shall be subject to disciplinary action up to and including dismissal.
- C. Management is potentially liable for acts of harassment in the workplace, whether or not the source or target of harassment is another employee or a non-employee.

1. Liability for such acts can be imputed on the employer, unless the employer demonstrates that immediate and appropriate corrective action was taken upon notice of the improper conduct.
  2. Employees may also be held personally liable for harassment.
  3. Employees who experience third-party harassment shall also have standing to file claims for discrimination or harassment where employment opportunities or benefits are granted, or a hostile environment is created because of an individual's submission to the employer's sexual advances or requests for sexual favors.
- D. Illegal harassment prohibited by State and federal anti-discrimination laws includes words, conduct, or action, usually repeated or persistent, directed at a specific person that annoys, alarms, or causes substantial emotional distress that a reasonable person in the individual's position would find the situation to create an abusive atmosphere.
- E. There are two legally recognized types of sexual harassment claims: (1) Quid Pro Quo Sexual Harassment, and (2) Hostile Work Environment Sexual Harassment. Such harassment involves verbal and/or physical conduct, which may include, but is not limited to:
1. Sexually explicit or implicit propositions;
  2. Improper questions about an employee's private life;
  3. Sexually discriminatory ridicule, insults, jokes, or drawings;
  4. Undesired, intentional touching such as embracing, patting, or pinching;
  5. Remarks directed against one's sex as a class or group;
  6. Threatened, attempted, or actual sexual assault or rape;
  7. Repeated sexually explicit or implicit comments or obscene and suggestive remarks that are unwelcome or discomfiting to the employee;
  8. Offers of tangible employment benefits in exchange for sexual favors, or threats of reprisals for negative responses to sexual advances; and/or,
  9. Sexual harassment by a supervisor of an employee of the same sex.
- F. Although the scope of The Civil Rights Act of 1964 does not extend to protect employees who are not members of a protected class from unlawful employment discrimination, an employee can still impute liability upon an employer for the infliction of emotional distress if the employer fails to take corrective action when an employee provides notice of nondiscriminatory hostile workplace harassment that has subsequently created a hostile work environment for the employee.
- G. Nondiscriminatory Hostile Workplace Harassment consists of unreasonable or outrageous behavior that deliberately causes extreme physical and/or emotional distress. Such conduct involves the repeated unwelcome mistreatment of one or more employees, often involving a combination of intimidation, humiliation, and sabotage of performance, which may include, but is not limited to:
1. Unwarranted, constant, and destructive criticism;
  2. Singling out and isolating, ignoring, ostracizing, etc.;
  3. Persistently demeaning, patronizing, belittling, and ridiculing; and/or,
  4. Threatening, shouting at, and humiliating, particularly in front of others.

#### **IV. COMPLAINT AND INVESTIGATION**

Each appointing authority shall establish internal policies and procedures for responding to, investigating, and redress of allegations of workplace harassment or discrimination. Policies established in accordance with the provisions contained herein by any department, division, or governmental sub-unit under the jurisdiction of the DOP do not require the approval of the Director; however, a copy of the policy must be filed with the DOP.

##### **A. Illegal Discriminatory Hostile Work Environment or Quid Pro Quo Harassment**

1. An individual alleging illegal harassment has a duty to promptly report the incident or complaint to the agency's EEO Coordinator/Counselor or his or her immediate supervisor.
2. All complaints regarding illegal harassment shall be handled in accordance with agency-established EEO policies and procedures.
3. Individuals alleging illegal harassment may also file a formal complaint with the HRC and/or the EEOC.
4. Illegal harassment claims are not within the jurisdiction of the Public Employees Grievance Board (PEGB).
5. All information shall be held in the strictest confidence and shall be disclosed only to appropriate individuals on a need-to-know basis to investigate and resolve the matter.

##### **B. Nondiscriminatory Hostile Workplace Harassment**

1. Employees must address claims of nondiscriminatory hostile workplace harassment through their employer (manager/supervisor/human resources representative), or private litigation. Employees who have recourse to the State grievance procedure may also file a grievance with the PEGB.
2. Nondiscriminatory hostile workplace harassment claims are not within the jurisdiction of the HRC and/or the EEOC.
3. All information shall be held in the strictest confidence and shall be disclosed only to appropriate individuals on a need-to-know basis to investigate and resolve the matter.

#### **V. RESPONSIBILITIES**

##### **A. Employees have the responsibility to:**

1. Refrain from all forms of harassment.
2. Promptly report allegations or observations of harassment to the appropriate individuals (i.e., supervisor, manager, agency EEO Coordinator/Counselor, or human resources).
3. Fully cooperate in and not interfere with any employer-authorized investigation.
4. Not retaliate against those who participate in the complaint and/or investigation process.
5. Participate in required training.
6. Acknowledge understanding of and compliance with this policy by signing the Prohibited Workplace Harassment Acknowledgment Form (Appendix A).

##### **B. Appointing authorities have the responsibility to:**

1. Monitor the work environment to ensure that it is free of harassment.
2. Promptly investigate allegations of discrimination and harassment.
3. Enforce this policy and take immediate and appropriate action to address violations.

4. Ensure that complainants, falsely accused individuals, and/or persons interviewed regarding complaints suffer no adverse impact in their employment or retaliation.
5. Ensure confidentiality is maintained by keeping all information regarding a complaint of harassment in a separate, confidential file, with access restricted to appropriate individuals on a need-to-know basis.
6. Ensure that all employees receive appropriate training and that supervisory personnel complete DOP training on workplace harassment.
7. Post the Prohibited Workplace Harassment Poster (Appendix B) at conspicuous locations throughout the agency.
8. Communicate this policy and applicable agency policies to all employees through inclusion in the orientation process of all new employees, and by making it readily available at all work locations.
9. Maintain the signed Prohibited Workplace Harassment Acknowledgment Form (Appendix A) in each employee's agency personnel file.
10. Establish written policies and procedures for the response, investigation, and redress of allegations of workplace harassment or discrimination.
11. Designate an agency EEO Coordinator and Counselors, and report any changes to the DOP.
12. Maintain accurate records of complaints of harassment and respond to the DOP requests for reporting.

## VI. REFERENCES

### A. Federal

1. U.S. Const., amend. XIV.
2. 8 USC 1324 *et seq.*, (Immigration Reform and Control Act of 1986, as amended).
3. 29 USC 206(d) *et seq.*, (Equal Pay Act of 1963, as amended).
4. 29 USC 621 *et seq.*, (Age Discrimination in Employment Act of 1967, as amended).
5. 29 USC 701 *et seq.*, (Rehabilitation Act of 1973, as amended).
6. 29 USC 791 *et seq.*, (Rehabilitation Act of 1992).
7. 29 USC 2601 *et seq.*, (Family and Medical Leave Act of 1993, as amended).
8. 38 USC 4301 *et seq.*, (Uniform Services Employment and Re-employment Rights Act of 1994).
9. 38 USC 4334 *et seq.*, (The Veterans Benefits Improvement Act of 2004).
10. 42 USC 1981 *et seq.*, (Civil Rights Act of 1991).
11. 42 USC 12101 *et seq.*, (Americans with Disabilities Act of 1990).
12. 42 USCA 12101 *et seq.*, (Americans with Disabilities Act Amendments Act of 2008).
13. 42 USC 2000e(k) (Pregnancy Discrimination Act of 1978, as amended).
14. 42 U.S.C. 2000gg-3(a) *et seq.* (The Pregnant Workers Fairness Act of 2024).
15. 42 USC 2000d-2000d-7, (Civil Rights Remedies Equalization Act of 1986, as amended).
16. 42 USC 2000e *et seq.*, (Title VII of the U.S. Civil Rights Act of 1964, as amended).
17. 42 USC 2000ff *et seq.*, (Genetic Information Nondiscrimination Act of 2008, as amended).
18. 29 CFR 1600-1699 (EEOC Uniform Guidelines).
19. 29 USC 201 *et seq.*, (The Fair Labor Standards Act of 1938, as amended).

B. State

1. West Virginia Code § 16B-17-1 *et seq.*, West Virginia Human Rights Act.
2. West Virginia Code § 16B-19-1 *et seq.*, Pregnant Workers Fairness Act.
3. West Virginia Code § 5-15-1 *et seq.*, White Cane Law.
4. West Virginia Code § 21-3-19, Discrimination for use of tobacco products prohibited.
5. West Virginia Code § 21-5-17, Employers prohibited from discharging employees for time lost as volunteer firemen or emergency medical service attendants.
6. West Virginia Code § 21-5-18, Employers prohibited from discharging employees for time lost as emergency medical service personnel.
7. West Virginia Code § 21-5E-1 *et seq.*, Equal Pay for Equal Work for State Employees.
8. West Virginia Code § 23-5A-3, Termination of Injured Employee Prohibited; re-employment of injured employees.
9. West Virginia Code § 52-3-1, Discrimination for Jury Service.

**VI. EFFECTIVE DATE:**

May 1, 1993 (this effective date pertains to the original DOP-P6 Policy, Sexual Harassment Prohibited).

**VII. REVISIONS:**

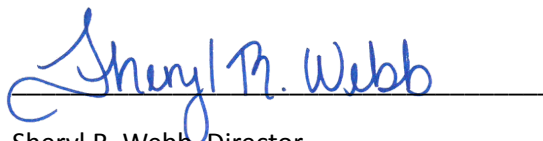
A. Previous Revisions

1. Pertaining to the original DOP-P6 Policy, Sexual Harassment Prohibited: July 15, 1994, October 20, 1994, January 1, 2004, and December 1, 2011.
2. Pertaining to the Interpretive Bulletin: January 1, 2005, and December 1, 2006.

B. Latest Revision: January 1, 2026

**VIII. POLICY NUMBER:** DOP-P6.

Approved and Issued By:



Sheryl R. Webb, Director

Date Signed: December 4, 2025

**PROHIBITED WORKPLACE HARASSMENT  
POLICY ACKNOWLEDGMENT FORM**

I, \_\_\_\_\_, certify that I have received a copy of the West Virginia Division of Personnel *Prohibited Workplace Harassment* policy (DOP-P6).

I understand that illegal harassment based on sex (with or without sexual conduct), race, color, religion, national origin, ancestry, age, disability, genetic information, and protected activity (i.e., opposition to prohibited discrimination or participation in the complaint process,) or status explicitly defined as protected under applicable State and federal law, as well as nondiscriminatory hostile workplace harassment, is prohibited and will not be tolerated in the workplace. Further, I understand my responsibility to promptly report allegations of illegal harassment, fully cooperate in and not interfere with any authorized investigation, and not retaliate against those who participate in the complaint and/or investigation process.

My signature acknowledges my receipt of the policy and my understanding of its contents and requirements. My signature does not indicate that I agree or disagree with the content of the policy. However, I understand I must abide by the terms of the policy, and I am aware that with any violation of this policy, I shall be subject to disciplinary action, up to and including dismissal.

\_\_\_\_\_

Employee's Name (Print)

\_\_\_\_\_

Employee's Signature

**TO BE COMPLETED BY SUPERVISOR**

I, \_\_\_\_\_, certify that I have discussed with and provided the above-listed employee a copy of the West Virginia Division of Personnel *Prohibited Workplace Harassment* policy (DOP-P6).

\_\_\_\_\_

Supervisor's Name (Print)

\_\_\_\_\_

Supervisor's Signature

\_\_\_\_\_

Date

Distribution: Agency Human Resources  
Copy – Employee

FORM DOP-P6-AF

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If you feel you are a victim of illegal harassment, you have a duty to promptly report the incident to your agency's Equal Employment Opportunity (EEO) Coordinator/Counselor or your supervisor. In addition, you have the right to file a complaint with the:

- West Virginia Human Rights Commission: 304-558-2616
- United States Equal Employment Opportunity Commission: 800-669-4000; 800-669-6820 (TTY)

If you feel you are a victim of nondiscriminatory hostile workplace harassment, you should immediately notify your manager or human resources office. Employees who have recourse to the State grievance procedure may also file a grievance with the West Virginia Public Employees Grievance Board.

If you believe you have witnessed harassment of another, please report the incident(s) to your agency EEO Coordinator/Counselor, supervisor, or human resources office.

If you have questions about the West Virginia Division of Personnel's statewide *Prohibited Workplace Harassment* policy (DOP-P6), you may contact the Employee Relations Section at 304-414-1853.

### WRITTEN POLICY AVAILABLE FROM

West Virginia Division of Personnel  
State Capitol Complex, Building 3, Suite 500  
Charleston, W.V. 25305  
304-558-3950  
[www.personnel.wv.gov](http://www.personnel.wv.gov)