

## The Commonwealth of Massachusetts, Department of Mental Health

### Policy for the Prevention and Elimination of Sexual Harassment in the Workplace

#### Policy # 97-5

**Date of Issue:** October 8, 1997

**Effective Date:** October 8, 1997

#### Approval by Commissioner

**Signed by:** Marylou Sudders

**Date:** October 8, 1997

#### Policy

It is the policy of the Commonwealth that all employees experience a work environment free from all forms of discrimination, including sexual harassment. Sexual harassment undermines the integrity of the workplace and the personal dignity of the individual. It is not the Commonwealth's intent to regulate social interaction or relationships freely entered into by its employees, but rather to eliminate conduct that creates an abusive or hostile work environment.

All complaints of sexual harassment will be investigated and promptly resolved. Any employee found to be engaging in sexual harassment is in violation of the law and Commonwealth policy, and may therefore be subject to disciplinary action.

#### Authority

Sexual harassment is illegal under Title VII of the Civil Rights Act of 1964, and Chapter 151B, Section 4, Paragraphs 1 and 16B of the Massachusetts General Laws. Chapter 151B, Section 3A, MGL, as inserted by Chapter 278 of the Acts of 1996, requires the Commonwealth to develop a written policy against sexual harassment and to provide copies of it to all employees on an annual basis.

#### Definition of Sexual Harassment

Massachusetts General Laws define sexual harassment as a form of sex discrimination. Sexual harassment includes unwelcome sexual advances, requests for sexual favors or other behavior of a sexual nature when:

- Submission to or rejection of such advances, requests or behavior is made, either explicitly or implicitly, a term or condition of employment or a basis for an employment decision; or
- Such behavior has the purpose or effect of unreasonably interfering with work performance; or
- Such behavior has the purpose or effect of creating an intimidating, hostile, humiliating or sexually offensive work environment.

Sexual harassment is not limited to prohibited behavior by a male employee toward a female or by a supervisory employee toward a non-supervisory employee. The Commonwealth's view of sexual harassment reflects, but is not limited to, the following considerations:

- A man as well as a woman may be the victim of sexual harassment, and a woman as well as a man may be the harasser.
- Sexual harassment does not refer to occasional compliments of a socially acceptable nature, or welcomed social relationships. It refers to deliberate or repeated behavior, consisting of verbal comments, gestures or physical contact of a sexual nature that is not welcome, that is personally offensive, that lowers morale and that, therefore, interferes with work productivity. This unwelcome sexual behavior is defined from the perspective of the victim, not the harasser. Some examples of such behavior may include, but are not limited to, the following:
  - Direct sexual advances or sexual assault
  - Sexual inquiries, jokes and epithets
  - Derogatory comments about a person's sex or sexual orientation
  - Other forms of verbal abuse of a sexual nature, such as whistling or catcalling
  - Offensive or unnecessary touching, such as patting, pinching or constant brushing against a person
  - Physical interference with a person's movements

- The display of sexually suggestive posters, photographs or objects on the job
- The requirement that a person wear sexually revealing clothing
- The harasser does not have to be the victim's supervisor. The harasser may be a supervisor who does not supervise the victim, a non-supervisory employee (co-worker), or, in some circumstances, even a non-employee, such as a recipient of public services or a vendor.
- The victim does not have to be the opposite sex from the harasser.
- The victim does not have to be the person at whom the unwelcome sexual conduct is directed. The victim may be someone who is a witness to and personally offended by such conduct when it is directed toward another person.
- Sexual harassment does not depend on the victim's having suffered a concrete economic injury as a result of the harasser's conduct; it can include the creation of a hostile environment within which the victim must work.
- Sexual harassment can occur not only in the workplace itself, but during work assignments away from the workplace and at employer-sponsored off-site social events, if the behavior creates a hostile work environment for the victim or otherwise meets the definition of sexual harassment as described on page 1.

### **Liability of the Commonwealth**

The Commonwealth, as an employer, is likely to be held responsible for sexual harassment under existing statutes and case law, in three sets of circumstances:

- Acts of sexual harassment by the Commonwealth's agents and its supervisory employees;
- Acts of sexual harassment by co-workers or recipients of public services, directed toward employees of the Commonwealth, for cases in which the Commonwealth, its agents or its supervisory employees knew or should have known of the conduct; or
- Acts of sexual harassment by non-employees providing services on behalf of the Commonwealth, for cases in which the Commonwealth's agents or its supervisory employees knew or should have known of the conduct. The Commonwealth's responsibility for sexual harassment in these cases depends on the extent of its supervision over the non-employee(s) and any other legal responsibility it may have with respect to the non-employee's conduct.

The Commonwealth may not be held responsible if it can show that it took prompt and appropriate corrective action.

### **Roles and Responsibilities**

The Human Resources Division (HRD) is responsible for the following:

- Issue, update and implement the statewide Sexual Harassment Policy.
- Coordinate initial training for Sexual Harassment Officers and continue to assess and respond to agency training needs (e.g. sensitivity training) on a regular basis.
- Develop informational materials for all employees, managers and supervisors.
- Determine disciplinary action for cases involving Agency Heads.
- Maintain records of cases involving insufficient evidence.
- Review and advise agencies on how to handle incidents for which a formal complaint has not been filed.

Agency Heads are responsible for the following:

- Select one or more employees in their agency to function as Sexual Harassment Officers, preferably the agency's Civil Rights Officer(s).
- Ensure that the procedures for receiving, investigating and resolving allegations of sexual harassment, as explained in this policy, are adopted and implemented.
- Ensure that each employee receives:
  - an explanation of the Commonwealth's policy and complaint procedure, as soon as possible after hire and annually after that;
  - the name and number of the agency's Sexual Harassment Officer;
  - notification of any changes to the above, as soon as administratively possible.
- Strongly encourage employees to report behavior which they believe to be sexual harassment.
- Determine the nature of disciplinary action to be taken against harassers.

Sexual Harassment Officers are responsible for the following:

- Publicize their availability to all agency employees and maintain an accessible office.
- Attend training offered by HRD, and in turn provide or arrange for the provision of training of all agency supervisors and employees, in the identification and prevention of sexual harassment; assess additional agency training needs in this area on an on-going basis, such as the need for sensitivity training, and work with HRD in meeting those needs.
- Distribute to each employee:
  - an explanation of the Commonwealth's policy and complaint procedure, as soon as possible after hire and annually thereafter;
  - the name and number of the agency's Sexual Harassment Officer(s);
  - notification of any changes to the above, as soon as administratively possible.
- Receive and investigate reports of alleged sexual harassment in a confidential and expeditious manner and present findings to Agency Heads for resolution.
- Maintain confidential, accurate and current records of reports of sexual harassment and their disposition.

Employees are responsible for the following:

- Ensure that they do not sexually harass any other employee, applicant for employment, recipient of public services, or any other individual in the workplace.
- Cooperate in an investigation of alleged sexual harassment by providing any information they possess concerning the matter being investigated.
- Actively participate in the Commonwealth's efforts to prevent and eliminate sexual harassment and to maintain a working environment free from such discrimination.

Protection of All Parties

- Pursuant to Chapter 151B, Section 3B, paragraph 4, any employee who files a sexual harassment claim or cooperates in an investigation shall not be subjected to retaliation or reprisal. An employee believing he/she may have been retaliated against may amend his/her complaint or file a separate complaint, which will be investigated pursuant to this policy.
- All complaints of sexual harassment will be addressed.
- The alleged harasser will be notified when a formal complaint is filed.
- The sexual harassment investigation will be conducted in a manner to protect the confidentiality of the complainant, the alleged harasser and all witnesses. All parties involved in the proceedings will be advised to maintain strict confidentiality, from the initial meeting to the final agency decision, to safeguard the privacy and reputation of all involved.
- False accusations of sexual harassment (i.e. the alleging of incidents or behavior that are proven, through investigation, not to have occurred at all) may result in severe disciplinary action up to and including termination. A finding that either sexual harassment did not occur or that there was insufficient evidence does not necessarily in itself establish that an accusation was false.
- Employees covered by a collective bargaining agreement who are charged with sexual harassment and who are subject to disciplinary action are entitled to representation by their respective union.

### **Procedures for Reporting and Investigating Sexual Harassment Complaints**

The following sexual harassment complaint procedure has been developed specifically to ensure an orderly, fair and confidential investigation process which protects the civil rights of all parties involved. See Appendix 1 for a flowchart which summarizes the complaint procedure.

- An employee who feels that he/she has been sexually harassed should report the complaint to the agency's Sexual Harassment Officer. If the employee does not feel comfortable reporting the complaint to the officer, a complaint may initially be filed with any agency manager, who will request the employee to prepare a complaint form and then provide the complaint to the agency Sexual Harassment Officer for further investigation and resolution. If the employee does not feel comfortable discussing the complaint with any agency managers, the complaint may be filed instead with:
  - Massachusetts Commission Against Discrimination
  - State Office of Affirmative Action
  - U. S. Equal Employment Opportunity Commission
  - Applicable Collective Bargaining Agreement Grievance Procedure

The Sexual Harassment Officer should also be prepared to advise employees on their rights to access any

of the above complaint procedures. Such advice will include informing employees of any applicable statutes of limitation for filing complaints with any of the above outside agencies. Sexual Harassment Officers should also be aware that some collective bargaining contracts restrict their employees to a certain complaint or grievance procedure, or may not allow a grievance to be filed if a complaint has already been filed under this policy. See Appendix 2 for contacts, phone numbers and time limitations for filing complaints.

As explained in the section entitled "Protection of Parties", all individuals involved with a complaint, either directly or indirectly, are advised to maintain strict confidentiality at all times concerning all aspects of the complaint.

- The Sexual Harassment Officer will meet privately with the employee in order to provide a copy of the Commonwealth policy, to discuss the complaint procedure and to document the complaint. The employee will also complete a complaint form, if he/she has not already done so (see Appendix 3), and return it to the officer. Both accounts should include: a description of the incident(s), the name of the alleged harasser, times, locations, specific words/actions, and any witnesses to the occurrence(s). Both accounts will be considered part of the investigation. Agencies may develop their own complaint form, as long as it contains at minimum the information in HRD's form. The officer will interview the employee (complainant) to ascertain the following:
  - What happened? What was said or done by whom which gave rise to the complaint?
  - When and where did the alleged offense take place? How long a period of time elapsed between the alleged offense and the complaint? Was it during working hours, on break, at lunch, on or off the work premises?
  - Has the alleged offense occurred before? When and where? Has the complainant complained before about similar alleged occurrences?
  - Are there any witnesses? If so, who are they?
  - What did the complainant do or say before and after the alleged offense?
  - Did the complainant's supervisor know, or should the supervisor have known, of the alleged offense or of previous occurrences?
  - How did the alleged offense affect the complainant physically or psychologically?
  - The officer will meet privately with the alleged harasser and inform him/her of the details of the complaint. The officer will interview the alleged harasser to ascertain the following:
    - What is the alleged harasser's response to the charge?
    - If the alleged harasser admits the conduct and the complainant agrees with the accuracy of his/her statements, the sexual harassment officer shall suspend the interview and report the findings to the agency head.
    - If the response is a denial, what is the alleged harasser's explanation of the charge, if any? The officer should explore possible improper motives of the complainant, such as a desire to pre-empt impending disciplinary action by filing a harassment complaint.
    - Are there any witnesses that can substantiate the alleged harasser's response?
    - Did the complainant welcome or accept the conduct on the occasion which precipitated the complaint or on previous occasions? The alleged harasser should also submit a written account to the officer.
  - The officer will contact and interview witnesses as required during the course of the investigation. The officer may also determine the need for additional witnesses and will contact and interview them as well. Witnesses should be interviewed privately and individually, and neither the alleged harasser nor the complainant should be present. The officer will document the statements of all witnesses, and will inform both the complainant and the alleged harasser of the names of all witnesses interviewed.

### **Procedures for Resolving Complaints**

- The Sexual Harassment Officer will make a determination as soon as possible following the investigation of a complaint. Possible findings include:
  - Sexual harassment occurred The preponderance of evidence shows that the behavior in question met the definition of sexual harassment as defined in the Commonwealth's policy (see pp. 1-2).
  - Sexual harassment did not occur The preponderance of evidence shows that the behavior in question did not meet the criteria for sexual harassment or did not meet the threshold for sexual harassment.

- Insufficient evidence Due to a lack of definitive evidence, the truth of what actually occurred cannot be established.
- The accusation was false The complainant acted in bad faith by either knowing that the allegation was false or recklessly filing the complaint.
- The Sexual Harassment Officer will draft a full report outlining the following:
  - The alleged incident(s) of harassment
  - The response of the alleged harasser to the complaint
  - The details of the investigation, including who was interviewed, what each interviewee said and how each reacted
  - Supporting documentation
  - Finding on whether or not sexual harassment or a false accusation occurred.
- If sexual harassment, or a false accusation, is found to have occurred, the Officer will meet with the Agency Head, who will determine appropriate action for either the harasser or the employee who has made a false accusation. The Agency Head will impose discipline where appropriate and consistent with existing agency policies and procedures on disciplinary actions. If either party to the complaint is an Agency Head, the complaint will be reviewed by HRD in order to determine disciplinary action.
- The nature of disciplinary actions should be proportionate to the severity of the conduct. Disciplinary actions may consist of:
  - Sensitivity training (e.g. role-playing, to raise person's awareness of the effects of his/her behavior on others)
  - An oral warning or reprimand
  - A written warning or reprimand to be placed in a personnel file
  - Suspension, demotion, transfer or termination
  - A combination of the above.
  - The Sexual Harassment Officer will prepare a summary of the investigation and outcome and give it to both the complainant and the alleged harasser. This finding does not in any way affect the complainant's right to pursue a sexual harassment complaint with any appropriate state or federal authority. The officer should again inform complainants of any specific time frames involved in pursuing complaints with outside agencies.

### **Procedures for Maintaining Records of Complaints**

The Sexual Harassment Officer will keep a complete record of all formal written complaints, their supporting documentation and their resolution in confidential files separate from official personnel files.

If the determination is that either sexual harassment or a false accusation occurred, the Officer's summary report will be placed in the personnel file of the harasser or the employee who has made the false accusation. If it was determined that sexual harassment did not occur, the summary will be maintained only in the officer's confidential files. In the event that there was a determination of "insufficient evidence", the records will be maintained by the Human Resources Division, separate from either party's personnel file.

### **Procedures for Handling Information Outside of the Formal Complaint Process**

In the case of an incident which an employee discusses with a Sexual Harassment Officer but decides not to file a formal complaint, the Sexual Harassment Officer will complete a Contact Record (Appendix 4) and send it to the Human Resources Division, who will advise the agency's Sexual Harassment Officer within five business days if further action should be taken. A copy of the form should be maintained by the agency's Sexual Harassment Officer in his/her confidential files, filed by the name of the employee, with the name of the alleged harasser redacted (stricken) from the form. The Human Resources Division will maintain the only official file of all such forms showing the names of the alleged harassers.

The following are cases in which agency Sexual Harassment Officers would be advised by HRD to conduct investigations and render findings regardless of the absence of a formal complaint:

- Incidents raised by several employees concerning the same alleged harasser.
- Incidents involving possible criminal actions, such as physical assault or rape.
- Several incidents reported by the same employee over a period of time, that may or may not involve the same alleged harasser.

### **AGENCIES HANDLING SEXUAL HARASSMENT COMPLAINTS**

MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

Charles E. Walker, Jr., Chairman Springfield Office:

One Ashburton Place, Room 601 424 Dwight Street, Room 220

Boston, Massachusetts 02108-1599 Springfield, Massachusetts 01103

Telephone 617-727-3990 Telephone 413-739-2145

Time Limitations: Must file complaint within 6 months of the alleged discrimination; MCAD recommends that complaints be filed in person at their Boston or Springfield Offices.

#### HUMAN RESOURCES DIVISION, OFFICE OF AFFIRMATIVE ACTION

Mark D. Bolling, Director

One Ashburton Place, Room 213

Boston, Massachusetts 02108-1516

Telephone 617-727-7441

Time Limitations: Must file complaint within 180 days of the alleged discrimination.

#### U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

One Congress Street, 10th Floor

Boston, Massachusetts 02114

617-565-3200 or 800-669-4000

Time Limitations: Must file written complaint within 300 days of date of violation.

### COLLECTIVE BARGAINING AGREEMENT GRIEVANCE PROCESS

Collective bargaining agreements have specific time frames within which a grievance must be filed (generally 21 calendar days for Step I grievance, 10 calendar days for other steps); some agreements may also limit whether or not the grievance or complaint process may be used. Consult the applicable agreement for the employee's (complainant's) job title to determine what the grievance process and time frame is for sexual harassment complaints. The 7/1/94 Alliance Agreement specifically provides for a grievance concerning sexual harassment to be filed at Step II of the grievance procedure, within 21 days of the occurrence (Article 6).

### HUMAN RESOURCES DIVISION SEXUAL HARASSMENT REPORT FORM

Name of Employee\_\_\_\_\_

Date\_\_\_\_\_

Title \_\_\_\_\_

Agency\_\_\_\_\_

Name of Immediate Supervisor\_\_\_\_\_

Statement of Complaint:\_\_\_\_\_

Date(s) of Incident(s)\_\_\_\_\_

Name of Person(s) Accused of Harassment \_\_\_\_\_

Description of Incident(s) (Please be detailed)\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Name(s) of Witness(es)\_\_\_\_\_

Remedy requested\_\_\_\_\_

Complaint Received \_\_\_\_\_

Date\_\_\_\_\_

Name of Sexual Harassment Officer\_\_\_\_\_

### HUMAN RESOURCES DIVISION SEXUAL HARASSMENT CONTACT REPORT

Sexual Harassment Officers: Please use this form to record your notes on incidents discussed with you by employees who decide not to file formal complaints. This report should be sent to:

Human Resources Division, Legal Unit

One Ashburton Place, Second Floor



Boston, MA, 02108.

HRD will review each report and will contact you directly within one week if further action is recommended to be taken. Please follow the filing instructions in the HRD policy to maintain a copy of this report.

Name of Employee\_\_\_\_\_

Date of Report\_\_\_\_\_

Title \_\_\_\_\_

Agency\_\_\_\_\_

Name of Sexual Harassment Officer\_\_\_\_\_

Phone: \_\_\_\_\_

Date(s) of Incident(s)\_\_\_\_\_

Name of Person(s) Accused of Harassment\*\_\_\_\_\_

(if provided by employee)

Description of Incident(s):\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Reason Given by Employee for Not Wanting to File Formal Complaint:\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Action Taken (if any) by Sexual Harassment Officer:\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date\_\_\_\_\_

Signature of Sexual Harassment Officer\_\_\_\_\_

\* This information should be redacted (stricken) from the copy of this report maintained at the agency.