

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF DEVELOPMENTAL SERVICES**

PROHIBITION OF DISCRIMINATION AND HARASSMENT IN THE WORKPLACE POLICY

It is the law of the Commonwealth and the policy of the Department of Developmental Services [DDS], to promote and maintain a work environment that is free from discrimination and harassment. As an employer, we take responsibility for implementing policy ensuring protection to our employees against discrimination and harassment in the workplace.

DDS will not tolerate or condone discrimination or harassment by or toward its employees. Further, any retaliation against an individual who has complained about discrimination, harassment or retaliation against individuals for cooperating with an investigation of a discrimination or harassment complaint is similarly unlawful and will not be tolerated. Employees are strongly encouraged to timely report behavior that they believe to be discrimination or harassment to the Diversity Officer below:

Genie Nortelus, Deputy Director of Investigations
617-624-7506 or TTY: 617-624-7590 or FAX: 617-624-7577
Genie.Nortelus@MassMail.State.MA.US

Or

Lorraine Woodson, Director of Diversity
617-624-7530 or TTY: 617-624-7590
Lorraine.Woodson@state.ma.us

Because DDS takes allegations of discrimination and harassment seriously, we will respond promptly to complaints where it is determined that such inappropriate conduct has occurred. We will act promptly to eliminate the conduct and impose such corrective action as is necessary, including disciplinary action where appropriate.

Please note that while this policy sets forth our goals of promoting a workplace that is free of discrimination and harassment, the policy is not designed or intended to limit our authority to discipline or take remedial action for workplace conduct which we deem unacceptable, up to and including termination, regardless of whether that conduct satisfies the definition of discrimination and harassment.

Legal authority for this policy arises from Executive Order 526, from Massachusetts General Laws, Chapter 151 B, Section 4, Paragraphs 1 and 16B, and Title VII of the Federal Civil Rights Act of 1964, American with Disabilities Act as well as from collective bargaining agreements applying within the Executive Branch.

DISCRIMINATION AND HARASSMENT

Discrimination is illegal treatment of a person or group, (whether intentional or unintentional) based on certain enumerated protected characteristics.

Federal and state law prohibits discrimination on the basis of race, gender, pregnancy, national origin, religion disability and age (if the person is at least 40 years old). The Commonwealth of Massachusetts adds marital status, military status and sexual orientation, gender identity and gender expression to the list.

The same law that prohibits discrimination based on protected characteristics (such as race, color, age, sex, religion, national origin, disability, sexual orientation etc.) also prohibits harassment based on those characteristics.

Harassment occurs when an employee or group of employees must endure a work environment that is hostile, offensive, or intimidating to them because they have a protective characteristic.

Harassment includes any comment, action, or type of behavior that is threatening, insulting, intimidating, or discriminatory and upsets the workplace environment.

Harassing conduct includes but is not limited to:

- Epithets;
- Mockery, gestures;
- Offensive jokes, pictures, videos, e-mail and cartoons, and
- Implied and explicit threats of violence

All employees should take special note that, retaliation for participating in or who has complained about discrimination or harassment, or for cooperating in an investigation is unlawful and will not be tolerated by this organization.

EMPLOYEES ARE RESPONSIBLE FOR THE FOLLOWING:

- a) Ensuring that they do not discriminate or harass any other employee, applicant for employment, recipient of public services, or any other individual in the workplace;
- b) Cooperating in an investigation of alleged discrimination or harassment by providing any information they possess concerning the matter being investigated;
- c) Actively participating in the Commonwealth's efforts to prevent and eliminate discrimination and harassment and to maintain a working environment free from such discrimination;
- d) Refraining from retaliating against any individual who has complained about discrimination and harassment or who has cooperated with an investigation of discrimination or harassment; and,
- e) Reporting such allegations to the Diversity Officer

Pursuant to M.G.L., c 151B, any employee who files a discrimination or harassment claim or cooperates in an investigation is assured that (s)he may do so confidentially without fear of retaliation or reprisal.

DISCIPLINARY ACTION

If it is determined that inappropriate conduct has been committed by one of our employees, we will take action as appropriate under the circumstances. Such action may range from mandated training to termination from employment, and may include other forms disciplinary action as we deem appropriate under the circumstances.

RESPONSIBILITIES OF THE AGENCY

As the employer, the Agency is responsible for:

- a) Ensuring that all employees know that they have the right to complain about discrimination or harassment to the Diversity Officer
- b) Conducting a thorough investigation of each complaint in the most expeditious and confidential manner possible;
- c) Taking immediate and appropriate corrective actions, including disciplinary actions with respect to employees who engage in discrimination and/or harassment;
- d) Posting and making available to employees information regarding discrimination and harassment policy and procedures and conducting training on this matter for new employees.

The Agency may not be held responsible if it can show that prompt and appropriate corrective action was taken in response to a complaint.

RESPONSIBILITIES OF THE DIVERSITY OFFICER INCLUDE:

- a) Investigating reports of alleged discrimination and harassment in a confidential and expeditious manner including conducting intake interviews within three working days from the date the complainant contacts the Diversity Officer;
- b) Within three weeks of intake Interviews, meeting with the Agency Head and/or designee, to discuss either the proposed resolution of the matter or the status of the complaint in the event that more than 21 days is needed for closure of the matter;
- c) Preparing reports of investigation for review by the Commissioner, General Counsel, Director of Human Resources and/or Director of HR with findings as to whether there was a violation of Agency Policy and recommendations;
- d) Ensuring that complainants are informed about their other avenues of recourse;
- e) Providing training and technical assistance to all Area Directors and Program Directors;
- f) Maintaining confidential, accurate and current records of reports of discrimination and harassment investigations and their disposition; and,
- g) Distributing to all employees the following
 - i. an explanation of the Commonwealth's policy and complaint procedure, as soon as possible after hire and annually thereafter;
 - ii. the name and contact information for the agency's Diversity Officer and,
 - iii. notice about any changes to the above, as soon as administratively possible.

PROCEDURES FOR MAINTAINING RECORDS OF COMPLAINTS

The Diversity 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 a violation of the Agency Policy occurred, the Diversity Officer's summary report will be maintained only in the Diversity Officer's confidential files.

If it is determined that a false accusation likely occurred, a separate investigation into the conduct of the person who made the false accusation will be triggered.

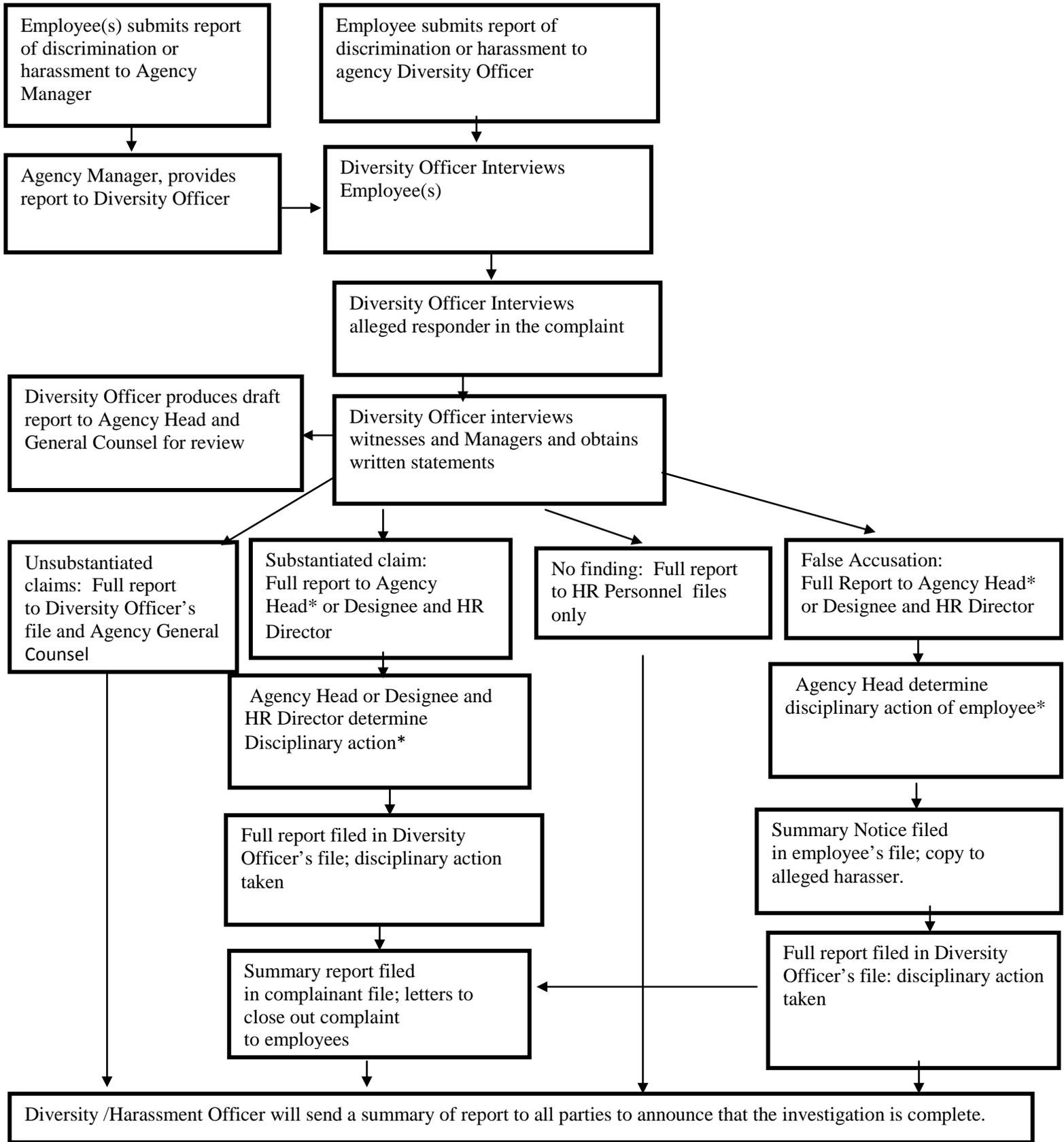
If it is determined that a violation of the Agency Policy did not occur, the summary report will be maintained only in the Diversity Officer's confidential files. If the determination is that there is "insufficient evidence, records will be maintained by the Human Resources, separate from either party's personnel file.

PROTECTION OF ALL PARTIES

Pursuant to Chapter 151B, Section 3B, paragraph 4, any employee who files a discrimination or harassment claim or cooperates in an investigation shall not be subjected to retaliation or reprisal. An employee who thinks that he/she may have been retaliated against may amend his/her complaint or file a separate complaint, which shall be investigated pursuant to this policy.

- a) All complaints of discrimination or harassment shall be addressed.
- b) The alleged harasser shall be notified when a formal complaint is filed.
- c) The investigation shall be conducted in a manner to protect the confidentiality of the complainant, the respondent and all witnesses. All parties involved in the proceedings shall be directed to maintain strict confidentiality, from the initial meeting to the final Agency decision.

PROCESS FOR RESOLVING DISCRIMINATION and HARASSMENT COMPLAINTS



* If agency head is harasser or false accuser, HRD determines disciplinary action.

PROCEDURES FOR REPORTING AND INVESTIGATING DISCRIMINATION AND HARASSMENT

The following procedures are consistent with those issued by the State Office of Diversity and Equal opportunity. The following discrimination and 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:

1. An employee who feels that he/she has been discriminated against should report the complaint to the agency's Diversity 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 Diversity Officer for further investigation and resolution. If the employee does not feel comfortable discussing the complaint with any agency managers, the employee has the right to file their complaint with one or more of the following:
 - a. State Office of Diversity and Equal Opportunity;
 - b. Mass Office on Disability;
 - c. Massachusetts Commission Against Discrimination;
 - d. U. S. Equal Employment Opportunity Commission; and,
 - e. Applicable Collective Bargaining Agreement Grievance Procedure
2. The Diversity 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. The Diversity Officer 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.
3. The employee reporting discrimination or harassment will have a private meeting with the Diversity Officer, within three working days, at which time the Officer will document the complaint. The individual complaining should also prepare his/her own written account of the occurrence, which should include: a description of the incident(s), the name of the alleged harasser, times, locations, specific action, and any witness to the incident(s).
4. Explain to all individuals involved with a complaint, either directly or indirectly, they are to maintain strict confidentiality at all times concerning all aspects of the complaint.
5. If the alleged offender confirms the charges, the officer shall follow disciplinary recommendation procedures. If the alleged harasser denies the charges in part or in whole, or otherwise contradicts the allegations or if the officer thinks it is otherwise necessary, the officer shall continue the investigation. If the officer determines that additional witnesses need to be contacted (s)he may do so. Both parties have the right to request that witnesses be contacted. The parties may not prevent the officer from contacting witnesses, if the officer deems such contact necessary. All witnesses shall be interviewed individually and privately and apprised of confidentially of the proceedings. Neither the alleged offender nor the alleged target shall be present during the interviewing of witnesses. Statements of all witnesses shall be documented.
6. The Diversity Officer retains the option at his/her discretion to have the parties meet in his/her presence to discuss the matter, if both parties are amenable to such a meeting and the officer determines that it will aid in the expeditious resolution of the complaint. Neither party may compel such a face-to-face meeting nor shall any party be required to attend such a meeting.

7. The Diversity Officer will meet privately with the employee in order to provide a copy of the Agency 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, and return it to the officer. Both accounts should include: a description of the incident(s), the name of the alleged offender, times, locations, specific words/actions, and any witnesses to the occurrence(s). Both accounts will be considered part of the investigation. 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 offender 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 offender's response to the charge?
 - If the alleged offender admits the conduct and the complainant agrees with the accuracy of his/her statements, the Diversity Officer shall suspend the interview and report the findings to the agency head.
 - If the response is a denial, what is the alleged offender's explanation of the charge, if any?
 - The officer should explore possible improper motives of the complainant, such as a desire to preempt impending disciplinary action by filing a discrimination or harassment complaint.
 - Are there any witnesses that can substantiate the alleged offender's response?
 - Did the complainant welcome or accept the conduct on the occasion which precipitated the complaint or on previous occasions?
 - The alleged offender should also submit a written account to the officer.
 - The Diversity 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 offender nor the complainant should be present. The officer will document the statements of all witnesses.

8. Upon completion of the investigation, the Diversity Officer shall draft a report to the Agency Head and General Counsel outlining his/her findings and recommendations for a resolution. The Diversity Officer recommends an appropriate course of action and whether any disciplinary action is merited. The Agency head will then decide what action to take. Appropriate disciplinary action to confirmed charges includes: oral warning or reprimand, sensitivity training, suspension, demotion, termination, or some combination of the above. The investigation report and all documentation shall be kept in the Diversity Officer's confidential files.
9. In instances where the Diversity Officer does not conclude that the Discrimination or Harassment Prevention Policy was violated, the Agency Head may still exercise his/her right to take disciplinary action if he/she determines that the conduct at issue was unacceptable.
10. The Diversity Officer will prepare and submit to the parties a written summary of the investigation and disciplinary action decided by the Agency Head. The summary shall be kept in the Diversity Officer's confidential file, unless it is determined that, as a disciplinary matter, it should be made a part of the harasser's personnel file.
11. When the investigation is completed, the agency will, to the extent appropriate, meet to inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.
12. If it is determined that inappropriate conduct has occurred, the state agency will act promptly to eliminate the offending conduct, and where appropriate will impose disciplinary action.