**ANTI-DISCRIMINATION AND HARASSMENT PREVENTION**

**IN THE WORKPLACE POLICY (ADHP)**

1. **PURPOSE**

MassDOT/MBTA believes that everyone should be treated with respect and dignity and supports the right of employees to work in an environment that is free from discrimination, harassment (including sexual harassment), and retaliation based on their protected class status. It is also MassDOT/MBTA’s policy that no member of its personnel community, whether supervisory or non-supervisory, may discriminate, harass, or retaliate against another employee for raising allegations of discrimination or harassment. This policy shall apply to employees, job applicants, clients, customers, or others. Furthermore, Title VII of the Civil Rights Act of 1964 and Massachusetts General Law 151B prohibit discrimination on the basis of *race, color, national origin, ancestry, religion, creed, disability (mental or physical), age (40 and over), sex****,*** *sexual orientation, gender, gender identity, pregnancy, genetic status, criminal records (inquiries only), active military status, veteran status, or other protected class*.

This policy describes examples of conduct that are both prohibited and potentially unlawful and affords employees, job applicants, clients, customers, or others who may visit property owned or operated by MassDOT/MBTA the right to file a complaint with the *Office of Diversity & Civil Rights* without fear of retaliation when they believe their protections under this policy have been violated.

1. **POLICY**

MassDOT/MBTA is strongly committed to principles of equal employment opportunity and strictly prohibits discrimination and harassment on the basis of race, color, national origin, ancestry, religion, creed, disability (mental or physical), age (40 and over), sex, pregnancy, sexual orientation, gender, gender identity, genetic information, criminal records (inquiries only), active military status, veteran status, or other protected class or characteristic. MassDOT/MBTA also strictly prohibits retaliation against an employee who reports alleged harassment or discrimination or who cooperates in an investigation. This policy applies to all employment actions, including but not limited to, recruitment, hiring, selection for training, promotion, transfer, demotion, layoff, termination, and rates of pay, or other forms of compensation. This policy protects employees and job applicants from discrimination, harassment, and retaliation by other employees, whether supervisory or non-supervisory, and by independent contractors, clients, customers, vendors, outsourced personnel, contractors or others. MassDOT/MBTA also does not tolerate discrimination by its employees in any of its programs, services, or activities against customers and clients on the basis of their *race, color, national origin, ancestry, religion, creed, disability (mental or physical), age (40 and over), sex****,*** *sexual orientation, gender, gender identity, pregnancy, genetic status, criminal records, active military status, veteran status, or other protected class*. In general, the types of discrimination and harassment prohibited under this policy are unlawful. It is also unlawful to retaliate against an employee who reports an incident of alleged harassment or discrimination or who cooperates in an investigation.

Prohibited conduct, as described below, is a broad term. It includes unlawful discrimination, harassment, and retaliation, and it also includes other conduct that is deemed inappropriate and may not meet a strict legal definition. This policy prohibits ***any*** inappropriate or offensive statement or conduct that is either discriminatory in nature or otherwise based on actual or perceived protected characteristics. Employees who are found to have violated this policy will be subject to disciplinary action up to and including discharge.

1. **PROHIBITED CONDUCT**
2. **Discrimination**

*Discrimination* in employment is any act and/or omission that has the purpose or effect of limiting, excluding, denying or otherwise unreasonably interfering with any individual’s full enjoyment of equal opportunity while in the workplace because of his/her race, color, national origin, ancestry, religion, creed, disability (mental or physical), age (40 and over), sex, pregnancy, sexual orientation, gender, gender identity, genetic information, criminal records (inquiries only), active military status, veteran status, or other protected class or characteristic in accordance with applicable state and federal law.

Examples of prohibited discriminatory conduct includes, but are not limited to, adverse employment actions such as terminating an individual, not selecting the individual for a promotion, or giving the employee a poor evaluation based on his/her actual or perceived protected characteristics.

The anti-discrimination laws also require employers to provide reasonable accommodation to employees who need accommodations because of a disability or to practice or observe their religion. MassDOT is committed to providing such reasonable accommodations. Accordingly, prohibited discriminatory conduct under this policy also includes unreasonably denying a disability or religious accommodation request. In addition, as of April 1, 2018, when the Massachusetts Pregnant Workers Fairness Act goes into effect, the reasonable accommodation requirement will also apply to women who need accommodation because of pregnancy or a pregnancy-related condition.

*Discrimination* in the provision of programs, services, or activities is any act and/or omission that has the purpose or effect of limiting, excluding, denying or otherwise unreasonably interfering with any individual’s full enjoyment of equal opportunity in the right to participate in MassDOT/MBTA programs, services, or activities because of race, color, national origin, religion, creed, disability (mental or physical), age, sex, sexual orientation, gender identity, pregnancy, or other protected class or characteristic in accordance with applicable state and federal law.

 **B. Harassment**

*Harassment* is a form of discrimination. This policy prohibits sexual harassment and other forms of harassment based on protected class status.

***Sexual Harassment***

*Sexual Harassment* in employment can involve relationships among “equals,” such as when repeated advances or demeaning verbal comments by a co-worker towards another co-worker have a harmful effect on a person’s ability to perform his or her work. Sexual harassment may also involve employee behavior directed at non-employees or non-employee behavior directed at employees. Sexual harassment may occur without regard to the gender or sexual orientation of the harasser or person harassed.

Other sexually-oriented conduct, whether intended or not, that is unwelcome and has the effect of creating a workplace environment that is hostile, offensive, intimidating, or humiliating to male or female employees or other persons and/or has the effect of unreasonably restricting or interfering with an individual’s use or enjoyment of, or access to, MassDOT/MBTA services is also prohibited under this policy and may constitute sexual harassment under the law.

**Managers and Supervisors**

Sexual Harassment in employment can also involve relationships of unequal power. Such situations may include elements of coercion, such as if a supervisor were to request sexual favors and this becomes criterion for granting privileges of favorable treatment on the job to a subordinate. However, sexual harassment may also be direct or implied requests by a supervisor or manager for sexual favors in exchange for actual or promised job benefits, such as favorable reviews, salary increases, promotions, increased benefits, or continued employment is prohibited and constitutes sexual harassment under applicable state and federal law.

**EXAMPLES OF CONDUCT THAT MAY CONSTITUTE SEXUAL HARASSMENT**:

While it is impossible to list all conduct that is prohibited under this policy (or unlawful under applicable law), the following is a non-exhaustive list of conduct which, *depending on the totality of the circumstances*, may result in discipline:

* Unwelcome sexual flirtations, propositions, demands or advances, whether involving inappropriate physical touching or not;
* Sexual epithets, jokes, slurs, verbal abuse or sexual innuendo, written or verbal references to sexual conduct, gossip regarding one's sex life, comment about an individual's body or his/her sexual activity, deficiencies or prowess;
* Displaying and/or transmitting sexually-suggestive objects, pictures, cartoons, etc., in any way and by any means, including electronic or otherwise, e.g., faxes, emails, texts, web pages or social media;
* Unwelcome leering, whistling or other offensive sounds, brushing against the body, sexual or obscene gestures, indecent exposure, suggestive or insulting comments of any kind;
* Inquiries into an individual’s sexual experiences; and
* Discussion about sexual activity.

The above examples are prohibited in the workplace, including all MassDOT/MBTA property or premises, and in other work-related settings, such as social events and travel.

This policy also prohibits any sexually harassing conduct that interferes with the right of customers/clients to participate in MassDOT/MBTA programs, services, or activities.

***Other Forms of Harassment***

This policy prohibits ***any*** inappropriate or offensive statement or conduct that is either discriminatory in nature or otherwise based on actual or perceived protected characteristics. This includes verbal or physical conduct that denigrates or shows hostility or aversion toward individuals because of their protected status, or that of their relatives, friends, or associates, and that which (i) has the purpose or effect of creating an intimidating, hostile, or offensive work environment; (ii) has the purpose or effect of unreasonably interfering with an individual’s work performance; (iii) otherwise adversely affects an individuals’ employment opportunities or other benefits or services; or (iv) has the purpose or effect of unreasonably restricting or interfering with an individual’s use or enjoyment of, or access to, MassDOT/MBTA programs, services, or activities.

Prohibited conduct includes and is not limited to epithets, slurs or other derogatory comments, remarks or innuendo, signs or symbols, objects, pictures, cartoons, or demeaning gestures associated with or based on an individual’s membership in a protected group.

**Retaliation**

Retaliation is also prohibited and will not be tolerated by MassDOT/MBTA. In the employment context, retaliation may include, but is not limited to, any adverse employment action (e.g., termination, suspension, demotion, reassignment or transfer) taken against an individual because he/she engaged in protected activity, including, but not limited to opposing prohibited conduct or an employment practice that violated this policy or applicable law, filing a complaint or cooperating or participating in any investigation or other proceedings. Retaliation may sometimes take the form of shunning, intimidating, obstructing, or interfering with an individual’s work and/or the denial of desirable work assignments, placements and/or other employment benefits. Retaliation also refers to any adverse action taken against a customer/client, such as denying service, because he/she engaged in protected activity.

1. **ZERO TOLERANCE**

The aforementioned prohibited forms of conduct under this policy are not limited to conduct that meets a strict legal definition of discrimination, harassment, and retaliation. To the contrary, this policy prohibits **any** inappropriate and offensive statement or conduct that is either sexual in nature or based on actual or perceived *race, color, national origin, ancestry, religion, creed, disability (mental or physical), age (40 and over), sex****,*** *sexual orientation, gender, gender identity, or pregnancy, genetic status, criminal records (inquiries only), active military status, veteran status, or other protected class*.

**In accordance with MassDOT/MBTA’s policy, behavior of this sort will not be tolerated, *even if the behavior is not legally actionable as a violation of law*. Employees who violate this policy will be disciplined and, in appropriate circumstances, discharged.**

1. **EMPLOYEE RESPONSIBILITIES**

MassDOT/MBTA is committed to maintaining a productive workplace free from discrimination, harassment, including sexual harassment, and retaliation. To that end, all employees are strictly prohibited from engaging in unlawful or otherwise inappropriate discriminatory, harassing and/or retaliatory conduct against any employee or other persons, in the workplace.

MassDOT/MBTA is also committed to providing programs, services, and activities on a nondiscriminatory basis. All employees are strictly prohibited from engaging in unlawful or otherwise discriminatory, harassing and/or retaliatory conduct against any customers/clients.

Employees are strongly encouraged to report any violations of this policy and to cooperate and participate in investigations or other related proceedings under this policy. Refusal to participate, intentionally making false or misleading statements, or withholding material information in an investigation may be grounds for discipline and, if deemed necessary, termination. MassDOT/MBTA expects all employees to review and understand this policy; and employees are required to participate in all related training to this policy as required by MassDOT/MBTA.

1. **SUPERVISOR AND MANAGER RESPONSIBILITIES**

It is the responsibility of all department heads, managers, supervisors, forepersons to ensure compliance with this policy. All supervisory staff who become aware of any incident or allegation of prohibited conduct, whether discrimination, harassment, and/or retaliation, even in the absence of a formal complaint, must take immediate and appropriate measures to report such potential violations to ODCR. **No manager or supervisor is permitted to commence a civil rights investigation on their own**. Supervisory and managerial staff are responsible for reviewing, understanding and implementing this policy, as well as completing all related mandatory training.

In addition, all MassDOT/MBTA executives, management and supervisory employees share in the responsibility for implementing and monitoring MassDOT/MBTA’s Equal Employment Opportunity policy within their respective areas. MassDOT/MBTA will consider the performance of managers, supervisors and others on EEO-related activities in the same manner as MassDOT/MBTA considers their performance in other programs.

1. **DISCIPLINE**

 If an investigation of a complaint reveals that a supervisor or employee has engaged in actions or conduct constituting discrimination, harassment, or retaliation, or is otherwise found to have failed to carry out their responsibilities as a MassDOT/MBTA employee as set out in this policy, or other applicable MassDOT/MBTA policies, disciplinary action will be taken, up to and including discharge. The disciplinary action taken will depend upon the circumstances of the situation, including the employee’s prior record and the seriousness of the violation. The Area or Department will take disciplinary action in accordance with the appropriate disciplinary procedure after consultation, as appropriate, with the Office of Labor Relations, Legal, and the Office of Diversity and Civil Rights.

1. **ROLE OF THE OFFICE OF DIVERSITY AND CIVIL RIGHTS**

All MassDOT/MBTA Areas, Departments, Districts, and Unions are responsible for enforcement of MassDOT/MBTA's policies, procedures and obligations affecting equal employment opportunity. The primary functions of ODCR include: complaint investigation and resolution, education and training, compliance monitoring and assessment, and planning. ODCR also offers assistance to any supervisor or employee who has questions or concerns about MassDOT/MBTA's Equal Employment Opportunity Policies and how best to comply with them, and welcomes any inquiries about these matters from supervisors, managers and employees.

1. **COMPLAINTS, APPEALS AND OTHER REMEDIES**

Under this policy, individuals may file a complaint or appeal—verbally or in writing—by contacting ODCR’s Investigations Unit at (855) 227-8066 or electronically at ODCRComplaints@dot.state.ma.us or ODCRComplaints@mbta.com in accordance with ODCR’s established practices and procedures.[[1]](#footnote-1) Any aggrieved individual may also seek other remedies at law available to him/her at the Massachusetts Commission Against Discrimination (MCAD), or the Equal Employment Opportunities Commission (EEOC). Generally, a complaint may be filed with the MCAD or EEOC within **300** days after the alleged unlawful conduct. Individuals should contact the MCAD or EEOC directly for additional information. The contact information for the MCAD and EEOC is as follows:

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| **MCAD**McCormack Building1 Ashburton Place, Suite 601, Boston, MA 02108Tel: (617) 994-6000TTY: (617) 994-6196 | **EEOC**John F. Kennedy Federal Building475 Government CenterBoston, MA 02203Tel: (800) 669-4000TTY: (800) 669-6820 |

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Stephanie Pollack

Secretary & CEO

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Luis Manuel Ramirez

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Julian T. Tynes

Assistant Secretary, Office of Diversity & Civil Rights Officer

1. ODCR is located at 10 Park Plaza, Suite 3800, Boston, MA 02116. [↑](#footnote-ref-1)