

SEXUAL HARASSMENT POLICY FOR COMMONWEALTH OF MASSACHUSETTS EXECUTIVE DEPARTMENT EMPLOYEES

**Issued by the Human Resources Division
Commonwealth of Massachusetts**

Reissued January 2021

I. Introduction

As an employer, it is the goal of the Commonwealth of Massachusetts to promote a workplace that is free of sexual harassment. Sexual harassment of employees occurring in the workplace or in other settings related to their employment is unlawful and will not be tolerated by the Commonwealth. Further, any retaliation against an individual who has complained about sexual harassment or retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is similarly unlawful and will not be tolerated. To achieve our goal of providing a workplace free from sexual harassment, the conduct that is described in this policy will not be tolerated and we have provided a procedure by which inappropriate conduct will be dealt with, if encountered by employees.

Because the Commonwealth of Massachusetts takes allegations of sexual harassment seriously, we will respond promptly to complaints of sexual harassment and 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 sexual 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, regardless of whether that conduct satisfies the definition of sexual harassment.

II. Definition of Sexual Harassment

In Massachusetts, "sexual harassment" means sexual advances, requests for sexual favors, and verbal or physical conduct of a sexual nature when:

- (a) Submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of employment or as a basis for employment decisions; or,
- (b) Such advances, requests or conduct have the purpose or effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, humiliating or sexually offensive work environment.

Under these definitions, direct or implied requests by a supervisor for sexual favors in exchange for actual or promised job benefits such as favorable reviews, salary increases, promotions, increased benefits, or continued employment constitutes sexual harassment.

The legal definition of sexual harassment is broad and in addition to the above examples, other sexually oriented conduct, whether it is intended or not, whether engaged in by a supervisor, a co-worker or co-workers, that is unwelcome and has the effect of creating a work place environment that

is hostile, offensive, intimidating, or humiliating to male, female, or employees who do not identify as gender binary, may also constitute sexual harassment. Sexual harassment may involve individuals of the same or different genders, or those who do not identify as gender binary.

The complainant does not have to be the person at whom the unwelcome sexual conduct is directed. The complainant, regardless of gender, may be a witness to or otherwise personally offended by such conduct. The alleged harasser may be anyone including a supervisor, a manager, a co-worker, or a non-employee, such as a recipient of public services or a vendor.

Examples of Sexual Harassment:

Examples of workplace sexual harassment include, but are not limited to:

- gender based bullying, including bullying based on transgender or non-gender binary status;
- attempts to coerce an unwilling person into a sexual relationship;
- repeatedly subjecting a person to unwelcome sexual or romantic attention;
- punishing a person's refusal to comply with a request for sexual conduct; and
- conditioning a benefit on submitting to sexual advances.

While it is not possible to list all those additional circumstances that may constitute sexual harassment under this policy, the following are some examples of conduct, which if unwelcome, may constitute sexual harassment depending upon the totality of the circumstances including the severity of the conduct and its pervasiveness:

- Unwelcome sexual advances, flirtations or propositions, -- whether they involve physical touching or not;
- Sexual "kidding" epithets, jokes, written or oral references to sexual conduct;
- Gossip regarding one's sex life;
- Comment on an individual's body or on an individual's sexual activity, deficiencies, or prowess;
- Displaying sexually suggestive objects, pictures, posters, cartoons;
- Unwelcome leering or staring at a person;
- Sexual gestures and suggestive or insulting sounds such as whistling, or comments with sexual content or meaning;
- Uninvited sexual contact, such as touching, hugging, and purposely brushing against the body, patting or pinching;
- Indecent exposure;
- Inquiries into one's sexual experiences;
- Discussion of one's sexual activities;
- Sexual emails; and
- Sexting, or sexual messages or images posted on social media, including but not limited to instant messages, Facebook posts, Tweets, Snapchat, Instagram, or blog entries.

III. Retaliation

All employees should take special note that, as stated above, retaliation against an individual who has complained about sexual harassment, and retaliation against individuals for cooperating with an investigation of a sexual harassment complaint is unlawful and will not be tolerated by the Commonwealth of Massachusetts.

IV. Non- Employee Conduct:

During the course of their employment, employees may interact with persons who are not employed by the Executive Department. Employees are encouraged to report all conduct they believe to be sexual harassment, whether or not such conduct is directed at them, including conduct of non-employees. While the ability of Executive Department agencies to impose sanctions on a non-employee may be limited, upon receipt of a complaint of sexual harassment by a non-employee, the Executive Department will follow the same process to the extent practicable. Upon a determination that sexual harassment by a non-employee has occurred, the employing agency will take all action reasonably necessary and practicable to prevent the recurrence of the sexual harassment.

V. Employees working off site

All of the protections and provisions set forth in this policy apply regardless of whether the employee is working at their regular job site or an alternative site within the scope of their employment.

VI. Interns and Contractors

All of the protections and provisions set forth in this policy apply to interns and contractors.

VII. Social Media/Electronic Communication

Employees must engage in social media and electronic communication (including email, texts, and desktop wallpaper) in a manner that is consistent with the Executive Department policies and procedures, including this policy. Social media and improper electronic communication that rise to the level of harassment or other unprofessional or improper conduct as defined in this policy is prohibited at all times. An employee who is subject of harassment as defined in this policy through social media or electronic communication should report such harassment.

VIII. Complaints of Sexual Harassment

If any Commonwealth employee believes that they have been subjected to sexual harassment, the employee has the right to and is encouraged to file a complaint. This may be done in writing or orally.

There are several individuals available to an employee in their agency to make a complaint of sexual harassment. Those include the Sexual Harassment Officer(s), General Counsel and Director of Human Resources. A list of sexual harassment officers is available at <https://www.mass.gov/info-details/sexual-harassment-officer-listing>. The Sexual Harassment Officer is also available to discuss any concerns the employee may have and to provide information to them about the Commonwealth's policy on sexual harassment and the Commonwealth's complaint process. The procedures for reporting sexual harassment can be located on the HRD website <https://www.mass.gov/info-details/sexual-harassment-investigations-and-complaint-procedures-for-executive-branch-agencies> or by contacting the Human Resources Division.

In addition, the Human Resources Division has established an Investigations Center of Expertise (COE) that is responsible for the investigation of claims of sexual harassment by or toward Executive Department employees. An employee may also make a complaint directly to the COE by using the HRD Investigations hotline 1-833-778-7270 or by completing and submitting an online complaint form, available at www.mass.gov/service-details/investigations-center-of-expertise.

Employees who are impacted by sexual harassment either as a victim, witness or otherwise, are encouraged to utilize the Employee Assistance Program (EAP), **Mass4You** at <https://www.liveandworkwell.com/content/en/public.html>

IX. Managers requirement to report

Managers are required to promptly report any knowledge or awareness of an instance of sexual harassment to their Sexual Harassment Officer or the Investigations COE. A manager who witnesses or otherwise has direct knowledge regarding an occurrence of harassment and fails to report such knowledge may be subject to disciplinary action, up to and including termination, particularly if the manager has engaged in a pattern of overlooking harassment or retaliation.

X. Sexual Harassment Investigation

When an Executive Department agency receives a complaint of sexual harassment it will immediately forward the Complaint to the COE so that the allegation may be investigated in a fair and expeditious manner. The investigation will be conducted by the COE in such a way as to maintain confidentiality to the extent practicable under the circumstances.

All parties, including the complainant and the individual alleged to have engaged in wrongdoing, shall be (i) provided with an explanation of the investigatory procedures; (ii) advised of the importance of confidentiality; (iii) reminded of the applicable limits of confidentiality; (iv) reminded of the prohibition on retaliation; and (v) provided with contact information for any relevant external resources.

The investigation will include a private interview with the person filing the complaint and with witnesses. The Investigators will also interview the person alleged to have committed sexual harassment. When the investigation is completed, the findings will be forwarded to the agency who will, to the extent appropriate, inform the person filing the complaint and the person alleged to have committed the conduct of the results of that investigation.

Any evidence of a false complaint of sexual harassment will be considered during the course of the investigation and, if substantiated, may lead to a recommendation for disciplinary action.

If it is determined that inappropriate conduct has occurred, the state agency will act promptly to eliminate the offending conduct, and where it is appropriate will impose disciplinary action.

XI. Investigation Results and Disciplinary Action

If it is determined that an employee has engaged in inappropriate conduct, the state agency will take such action as is appropriate under the circumstances. Such action may range from counseling to termination from employment, and may include such other forms of disciplinary action deemed appropriate under the circumstances.

At the conclusion of the investigation, the individual making the complaint and the individual against whom the allegation was made shall be advised as to the outcome of the investigation. Both will be reminded that retaliation for making the complaint is prohibited.

XII. State and Federal Remedies

In addition to the above, if an employee believes they have been subjected to sexual harassment, they may file a formal complaint with either or both of the government agencies set forth below. Using our complaint process does not prohibit an employee from filing a complaint with these agencies. Each of the agencies has a short time period for filing a claim (EEOC - 300 days; MCAD - 300 days).

The United States Equal Employment Opportunity Commission (EEOC)

www.eeoc.gov

John F. Kennedy Federal Building,
475 Government Center, Boston, MA 02203
Phone: 1-800-669-4000
TTY: 1-800-669-6820

The Massachusetts Commission Against Discrimination (MCAD)

www.mass.gov/mcad

Main Office:

One Ashburton Place, Room. 601, Boston, MA 02108 617- 994-6000 TTY: 617-994-6196

Regional Offices:

New Bedford Office: 800 Purchase Street, Room 501. New Bedford, MA 02740, 508-990-2390

Springfield Office: 424 Dwight Street, Room. 220, Springfield, MA 01103, 413-739-2145

Worcester Office: 484 Main Street, Room 320, Worcester, MA 01608, 508-453-9630

XIII. Document History

Table 1: Document History

Date Issued	Action	Effective Date (Version Change)	Next Review Date
11/6/1996	Original policy issued	11/6/1996	n/a
6/23/1999	Revised policy issued	6/23/1999	n/a
04/21/2005	New policy issued	4/21/2005	n/a
1/23/2017	Updated contact information for MCAD and EEOC	1/23/2017	1/23/2018
1/31/2018	Reissued for annual review	1/31/2018	1/31/2019
1/28/2019	Revised and reissued	1/28/2019	1/28/2020
1/2/2020	Reissued for annual review	1/2/2020	1/2/2021
1/31/2021	Reissued for annual review	1/31/2021	1/31/2022

SEXUAL HARASSMENT INVESTIGATIONS AND COMPLAINT PROCEDURES FOR EXECUTIVE BRANCH AGENCIES

Issued by the Human Resources Division
Commonwealth of Massachusetts
2021

All complaints of sexual harassment (written or oral) will be promptly investigated in a fair and expeditious manner, even in cases where the employee asks that the complaint not be investigated. An investigator from the Human Resources Division Investigations COE will conduct the investigation in such a way as to maintain the privacy of those involved to the extent practicable under the circumstances. The Investigators will inform complainants that they have a legal duty to investigate allegations of sexual harassment, and that, while the matter will be kept as confidential as possible, it may not be possible to withhold the complainant's identity from the alleged harasser. Investigations will include a private interview with the complainant and with any witnesses. In addition, the investigation may include a review of any documents, journals, recordings, voicemails, e-mails or other items that may be relevant to the allegations of harassment.

The Investigator will also interview the person alleged to have committed sexual harassment. In all interviews, parties will be given a copy of the Commonwealth's policy, and will be given an opportunity to discuss the complaint procedure. The Investigator will document all interviews, collect evidence and maintain an investigation file.

Upon the conclusion of the investigation, the agency will notify both the complainant and the person alleged to have committed the harassment, of the results of the investigation.

The Investigator will make a determination as soon as possible following the investigation of a complaint. The Investigator will draft a full report outlining the following:

- The complainant's allegations of harassment, including a record of the date of the report and date of occurrence(s);
- The response of the alleged harasser to the complaint
- The details of the investigation, including all witness statements
- Supporting documentation
- Findings

The finding of the Investigator does not in any way affect the complainant's right to pursue a sexual harassment complaint with any appropriate state or federal authority.

Possible determinations include, but are not limited to: a substantiated complaint, an unsubstantiated complaint, or a knowingly false claim.

Disciplinary and Remedial Actions

When the investigator concludes that sexual harassment has occurred, the agency must take prompt remedial action designed to end the harassment and prevent future harassment.

Remedial actions may consist of the following:

- Promptly halting an ongoing harassment.
- Taking prompt, appropriate disciplinary action against the harasser.
- Taking effective actions to prevent the recurrence of harassment, including conducting sexual harassment prevention training.

The Agency Head will impose discipline where appropriate, and consistent with existing policies and collective bargaining agreements. If either party to the complaint is an Agency Head, the complaint may be reviewed by HRD in order to determine appropriate disciplinary action or case resolution.

Any employee who engages in behavior which constitutes a violation of this policy may be subject to remedial or disciplinary action ranging from mandatory training and counseling, up to, and including, termination from employment.

Roles and Responsibilities

The Human Resources Division:

- Annually review, reissue, update, and ensure implementation of the statewide Sexual Harassment Policy.
- Prompt investigations through the Investigations COE.
- Coordinate training for Sexual Harassment Officers, assess and respond to agency training needs on a regular basis.
 - Contact: hrdtraining@mass.gov for questions about training.
- Provide policy and case consultation to Agency Heads to ensure the appropriate implementation of the Sexual Harassment Prevention statewide policy.
- Determine appropriate disciplinary or remedial action in cases involving Agency Heads.

Agency/Department Heads:

- Designate employees in their agency to function as Sexual Harassment Officers.
- Ensure that all Sexual Harassment Officers receive training either through the Massachusetts Commission Against Discrimination or its designated published list of vendors, or through the Human Resources Division.
- Ensure that the procedures for receiving, investigating, and resolving allegations of sexual harassment are adopted and implemented.
- Ensure that each employee receives the Commonwealth's policy on a yearly basis, the name and telephone number of the agency's Sexual Harassment Officers, and notification to employees of any changes to the above, as soon as possible.
- Ensure new employees receive a copy of policy and that policy is posted in a conspicuous area in the workplace.

Sexual Harassment Officers:

- Publicize their availability to all agency employees and maintain an accessible office.
- Attend training offered by HRD, and/or the Massachusetts Commission Against Discrimination.

- Receive reports of alleged sexual harassment in a confidential and expeditious manner and forward to the HRD Investigations COE. Make recommendations to Agency Heads.
- Maintain accurate and current written records of reports of sexual harassment and their disposition.

Employees:

- Ensure that his or her conduct does not involve any form of sexual harassment, and does not sexually harass any applicant for employment, recipient of public services, or any other person in the workplace.
- Promptly report any/all behavior he/she believes to be sexual harassment. Every employee has the right to file a complaint, either orally or in writing, with the agency/department.
- Cooperate with any investigation of alleged harassment by providing any/all information requested by the department concerning the matter under investigation
- Actively support and participate in the Department's efforts to prevent sexual harassment.

Managers and Supervisors:

- Managers and supervisors have a responsibility to act promptly and affirmatively when they observe behavior that violates this policy and/or when they receive complaints of sexual harassment. Managers and supervisors are encouraged to seek information and guidance from the Sexual Harassment Officers. In addition, managers and supervisors are required to immediately report any sexual harassment complaint received, whether written or oral, to a designated Sexual Harassment Officer.

Procedures for Maintaining Records of Complaints

- The Sexual Harassment Officer will keep a complete record of all complaints, their supporting documentation and their resolution in files separate from official personnel files.
- The Sexual Harassment Officers should be prepared to advise employees on their rights to access any of the above complaint procedures.

A list of Sexual Harassment Officers is available at <https://www.mass.gov/info-details/sexual-harassment-officer-listing>

The Investigations Center of Expertise (COE) is responsible for the investigation of claims of sexual harassment by or toward Executive Department employees. An employee may also make a complaint directly to the COE by using the HRD Investigations hotline 1-833-778-7270 or by completing and submitting an online complaint form, available at www.mass.gov/service-details/investigations-center-of-expertise

For questions about the policy or procedures, please contact:

HRD Legal
100 Cambridge Street 6th
Fl. Boston, MA 02114

(617) 878-9888