POLICY

Approved by: Rebecca R. Hunter, Commissioner

Signature: Rebecca R. Hunter

Policy Number: 12-009

Supersedes: 11-010, 05-025

Application: Executive Branch Agencies and Employees

Effective Date: October 3, 2012

Rule: Chapter 1120-07

Subject:

Investigations of Allegations of Illegal Discrimination and Harassment

It is the State's policy to promptly investigate allegations of illegal discrimination and harassment as defined by the State's Policy on Workplace Discrimination and Harassment. It is also the State's policy to ensure that these investigations are conducted in an impartial and appropriate manner.

Accordingly, all executive branch departments, agencies, boards and commissions and any other divisions of the executive branch of state government shall develop an internal policy that sets out the process that the agency will follow in investigating allegations of illegal discrimination and harassment. Each agency shall maintain a copy of its internal policy with the Department of Human Resources. Agencies shall submit any revisions to such internal policies to the Department upon implementation.

In addition to the requirements set out in the State's Policy “Workplace Discrimination and Harassment,” each agency’s internal policy shall include, at minimum, the following provisions:

1. The title of the person(s) or division that will be charged with investigating such complaints.
2. The title of the person to whom the investigator will report the results of the investigation.
3. A requirement that the investigator inform the complainant, accused and witnesses of the following limitations on confidentiality:
   To the extent permitted by law, the State will try to maintain the confidentiality of each party involved in a workplace harassment investigation, complaint or charge; provided it does not interfere with the department's ability to investigate the allegations, or to take corrective action. However, state law may prevent the state from maintaining total confidentiality of investigations. Therefore, the State does not guarantee confidentiality.
4. A requirement that the investigator inform the complainant, accused, and witnesses of the State's policy concerning retaliation.

5. A requirement that the investigator communicate information concerning the allegations only to those to whom the investigator is authorized to report such matters.

6. A requirement that the agency's supervisors or other authorized agents use a standardized intake/referral form (Attachment 1) for every allegation of illegal discrimination and harassment.

7. A requirement that the investigator create an investigative memorandum using a standardized format (Attachment 2) for every complaint of illegal discrimination and harassment.

8. A requirement that the agency issue a letter to the accuser and accused concerning the outcome of the investigation.

9. In cases that result in discipline, a requirement that records of the disciplinary actions be maintained in the disciplined employee's human resources file. The maintenance of such disciplinary records, however, is subject to the Department of Human Resource's rules concerning the retention of disciplinary records.

10. A requirement that documents generated by the investigation and any subsequent disciplinary action shall be preserved for five (5) years as required under RDA 5 2963.

Questions regarding this policy may be directed to the Office of the General Counsel.
Attachment 1

Intake/Referral Form

Statement Concerning Confidentiality

Pursuant to Tennessee Code Annotated § 10-7-503(a)(2)(A), “all state . . . records . . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law.” Accordingly, the State cannot and does not guarantee the confidentiality of this document or any notes, files, reports, or other documents, whether created by the State or received from the complainant, accused, or witnesses.

NAME OF COMPLAINANT OR PERSON REPORTING EVENT: ____________________________
TELEPHONE NUMBERS OF COMPLAINANT OR PERSON REPORTING EVENT:

WORK: ________________
PREFERRED: ________________

NAME OF AGENCY AND DIVISION INVOLVED: ____________________________

NAME OF PERSON(S) WHO ALLEGEDLY DISCRIMINATED AGAINST YOU OR HARASSED YOU?
________________________________________________________________________________

RELATIONSHIP OF ALLEGED ACCUSER TO YOU (I.E. DIRECT SUPERVISOR, CO-WORKER):
________________________________________________________________________________

DATE OF EARLIEST OCCURRENCE OF EVENTS? ____________________________
DATE OF LATEST OCCURRENCE OF EVENTS? ____________________________

HOW WERE YOU DISCRIMINATED AGAINST (E.G. DISCIPLINARY ACTION, PROMOTION, DEMOTION, HOSTILE ENVIRONMENT)?
________________________________________________________________________________
DOHR Policy: Investigations of Allegations of Illegal Discrimination and Harassment

EXPLAIN AS CLEARLY AS POSSIBLE WHAT HAPPENED, INCLUDING WHO DID WHAT, WHERE IT HAPPENED, WHO WAS INVOLVED, ETC. PLEASE ATTACH ADDITIONAL PAGES IF NECESSARY.

__________________________________________________________________________________________________________________________________________________________________________________________________________________________

EXPLAIN WHY YOU BELIEVE THESE EVENTS OCCURRED:

__________________________________________________________________________________________________________________________________________________________________________________________________________________________

DESCRIBE HOW OTHERS WERE TREATED DIFFERENTLY THAN YOU:

__________________________________________________________________________________________________________________________________________________________________________________________________________________________

WERE THERE OTHER EMPLOYEES WHO WERE TREATED BETTER IN SIMILAR CIRCUMSTANCES?

PLEASE CHECK ONE: YES _____ NO _____

IF YOU ANSWERED YES TO THE PREVIOUS QUESTION, PLEASE PROVIDE THE NAMES OF THE EMPLOYEES WHO WERE TREATED BETTER AND DESCRIBE HOW THEY WERE TREATED BETTER:

__________________________________________________________________________________________________________________________________________________________________________________________________________________________

__________________________________________________________________________________________________________________________________________________________________________________________________________________________

__________________________________________________________________________________________________________________________________________________________________________________________________________________________

__________________________________________________________________________________________________________________________________________________________________________________________________________________________

__________________________________________________________________________________________________________________________________________________________________________________________________________________________
DOHR Policy:
Investigations of Allegations of Illegal Discrimination and Harassment

Policy Number: 12-009

PLEASE LIST BELOW ANY PERSONS (WITNESSES, FELLOW EMPLOYEES, SUPERVISORS, OTHERS) WHO MAY HAVE ADDITIONAL INFORMATION TO SUPPORT OR CLARIFY THIS COMPLAINT. EXPLAIN WHAT INFORMATION EACH CAN PROVIDE.

________________________________________

________________________________________

WHAT EXPLANATION DO YOU THINK THE AGENCY OR ACCUSED WILL GIVE AS TO WHY YOU WERE TREATED IN THIS MANNER?

________________________________________

________________________________________

PLEASE IDENTIFY ANY OTHER INFORMATION (INCLUDING DOCUMENTARY EVIDENCE SUCH AS DIARIES, JOURNALS, RECORDINGS, EMAILS, VOICEMAILS, CORRESPONDENCE, ETC.) THAT YOU THINK IS RELEVANT TO THIS MATTER.

________________________________________

________________________________________

WHAT DO YOU WANT TO HAPPEN AS A RESULT OF THIS COMPLAINT?

________________________________________

________________________________________

IF YOU HAVE TOLD ANYONE ELSE ABOUT THIS MATTER, PLEASE LIST THE NAME(S) AND RELATIONSHIP(S) (CO-WORKER, FAMILY MEMBER, ETC.)

________________________________________

________________________________________

SIGNATURE OF COMPLAINANT: ____________________________

DATE: ________________

Tennessee Department of Human Resources
Providing strategic human resources leadership and partnering with customers for innovative solutions
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IF COMPLETED BY SUPERVISOR OR AGENT OF STATE AS A RESULT OF INTERVIEWING A COMPLAINANT, PLEASE PROVIDE THE FOLLOWING INFORMATION:

PRINTED NAME: ________________________________

SIGNATURE: ________________________________

TITLE: ________________________________

AGENCY AND/OR DIVISION: ________________________________

WORK TELEPHONE NUMBER: ________________________________

DATE COMPLAINT RECEIVED: ________________________________

DATE FORM COMPLETED: ________________________________

REASON FOR DELAY, IF ANY, BETWEEN THE DATE THE COMPLAINT WAS RECEIVED AND THE DATE THE FORM WAS COMPLETED:

________________________________________________________________________________________

________________________________________________________________________________________

________________________________________________________________________________________

NAME AND TITLE OF PERSON TO WHOM THE FORM WAS FORWARDED FOR ACTION: .

________________________________________________________________________________________

________________________________________________________________________________________

DATE ON WHICH THE FORM WAS FORWARDED:

________________________________________________________________________________________
Attachment 2

Investigation Memorandum Format

1. Complainant's name, job title, agency, location

2. Initiation of investigation:
   a. Persons involved in conducting investigation
   b. Date complaint received by agency
   c. Person in agency who initially received complaint
   d. Date investigation began and, if applicable, reason for any delay

3. Description of complaint
   a. General nature of events giving rise to complaint, including dates of alleged events
   b. Person(s) accused of inappropriate behavior and organizational relationship to complainant

4. Statements and evidence gathered in the investigation
   a. Complainant
      i. Specific allegation(s). If more than one allegation, list each separately
      ii. Additional witnesses named by complainant
      iii. Resolution desired by complainant
   b. Person accused of inappropriate behavior. If more than one, list each separately
      i. Specific response(s) to allegation(s). If more than one, list each separately
      ii. Additional witnesses named by accused
   c. Witnesses interviewed
      i. Name and job title. If more than one, list each separately
      ii. Evidence about specific allegations (noting firsthand knowledge v. secondhand knowledge)
      iii. Additional witnesses, if any

5. Summary of evidence
   a. Corroboration of specific allegations
   b. Non-corroboration of specific allegations
   c. Other pertinent information

6. Conclusions concerning violation of policy. INCLUDE ONLY AT THE DIRECTION OF THE AGENCY.

7. Appendices
   a. List of potential witnesses not interviewed and reason
   b. List of attachments (documentary evidence)