




Approved by: Juan Williams, Commissioner	Policy Number: 17-001 (Rev. 01/10/20)
Signature: 	Supersedes: NA
Application: Executive Branch Agencies, All Employees	Effective Date: March 15, 2017
Authority: T.C.A. § 4-3-1703, T.C.A. § 8-30-104, T.C.A. § 50-1-501 et seq.	Rule: NA

Abusive Conduct in the Workplace¹

The State of Tennessee is firmly committed to providing an environment in which all employees, applicants for employment, and members of the public are treated with professionalism and respect. It is the policy of the State of Tennessee to provide a work environment free from abusive conduct. The State of Tennessee will not tolerate any behavior in the workplace that is abusive or disrupts the work environment.

Employees are expected to exhibit proper behavior and conduct themselves in a manner that demonstrates professionalism and respect for others in the workplace. No employee shall engage in threatening, violent, intimidating, or other abusive conduct or behaviors.

This policy does not address behaviors that involve one of the protected classes listed under state and/or federal law. Allegations of abusive conduct involving protected classes are addressed in the Workplace Discrimination and Harassment Policy (DOHR Policy #12-008).²

¹ While the State of Tennessee is committed to the principles embodied in this policy, this policy itself is not intended to state contractual terms between the State and its employees, applicants for employment, or parties who do business with the State. This policy supersedes all policies that conflict with the terms of this policy.

Furthermore, this statement constitutes ONLY the policy of the State of Tennessee. A finding violation of this policy does not mean that conduct violates state and/or federal laws.

² The protected classes defined by DOHR Policy (12-008) include race, color, national origin, age (40 and over), sex, pregnancy, religion, creed, disability, veteran’s status, or any other category protected by state and/or federal civil rights laws.

Definitions

A. *Abusive Conduct*

Abusive conduct means acts or omissions that would cause a reasonable person, based on the severity, nature, and frequency of the conduct, to believe that an employee was subject to an abusive work environment, such as:

1. Repeated verbal abuse in the workplace, including derogatory remarks, insults, and epithets;
2. Verbal, nonverbal, or physical conduct of a threatening, intimidating, or humiliating nature in the workplace; or
3. The sabotage or undermining of an employee's work performance in the workplace.

This policy applies to the use of the State of Tennessee email system, social media, computers, internet access, or any other State electronic communication systems or devices to engage in abusive conduct.

A single act generally will not constitute abusive conduct, unless such conduct is determined to be severe or pervasive. To aid employees in identifying abusive conduct, the following specific examples are provided. These examples are not exhaustive; they illustrate, however, the types of conduct that may violate this policy:

1. Intimidating an employee by excessive yelling, repeated emotional outbursts, berating others, using an unreasonably harsh tone of voice;
2. Undermining another's work by withholding pertinent work-related information or purposefully giving incorrect information, or by not giving enough information to do what is required, as compared to others;
3. Arbitrary or punitive punishment without cause;
4. Unreasonable micro-managing;
5. Persistent or constant criticism in front of others for the purpose of humiliating another employee;
6. Isolating an employee from co-workers, or launching a campaign not based on facts to provoke an employee to leave or be removed;
7. Making humiliating or degrading remarks about a person through or on social media; or
8. Any malicious behavior a reasonable person would find unprofessional, disturbing, and/or harmful to his or her psychological health.

Please note that this policy does not prohibit reasonable oversight of employees, performance reviews, coaching, requests, or other regular supervisory responsibilities. In addition, abusive conduct must be distinguished from behavior(s), which, even though harsh, unpleasant, or disconcerting, may be appropriate and necessary in the carrying out of certain instructional, operational, advisory, or supervisory responsibilities or activities authorized by quasi-military or correctional entities, or for law enforcement purposes.

B. Retaliation, Materially Adverse Action, and Protected Activity

Retaliation is strictly prohibited under this policy. Retaliation occurs when any materially adverse action is taken against an individual because he or she has engaged in protected activity under this policy.

A materially adverse action is any action that might well deter a reasonable person from engaging in protected activity under this policy.

Protected activity includes: filing or threatening to file complaints or reports of abusive conduct, participating in any investigation concerning abusive conduct, or being associated or perceived to be associated with a person who initiates a complaint or participates in the investigation of a complaint.

C. Interference

Investigation interference is strictly prohibited under this policy. Interference is any action that would impact or compromise the integrity of an abusive conduct investigation. Prohibited actions include, but are not limited to, actual or attempted threats, coercion, intimidation, and manipulation of witnesses or potential witnesses in an investigation.

How to Report Incidents of Abusive Conduct

If an individual believes he or she has been subjected to abusive conduct that violates this policy, or observes conduct that violates this policy, he or she is encouraged to report those incidents as soon as possible after the event occurs.

Employees may file a complaint with their department's human resources director, the department head, their supervisor(s), or any individual designated by the department to receive such reports. Under no circumstances is the individual alleging abusive conduct required to file a complaint with the alleged offender. The individual may also contact the Department of Human Resources, Office of General Counsel, EEO Division, at Workplace.Harassment@tn.gov.

Individuals who wish to file a complaint are encouraged, but are not required, to submit the complaint in writing and to include a description of the incident(s) as well as the date(s), time(s), place(s) and any witnesses. Individuals may also use the attached Intake/Referral Form to file complaints.

If a complaint involves an executive director, assistant commissioner, deputy commissioner, or the commissioner, an individual shall file the complaint directly with the Department of Human Resources, Office of General Counsel, EEO Division.

How to Report Retaliation and Interference Incidents

Any employee, applicant for employment, or third party who makes complaints of abusive conduct or provides information related to such complaints will be protected against retaliation and interference. If an employee believes that he or she has been subjected to retaliation or interference for engaging in

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protected activity under this policy, or observes retaliation or interference, he or she is encouraged to report the conduct in the same manner as he or she would report an abusive conduct complaint.

Reports can be made using the attached Intake/Referral Form.

How Complaints are Investigated and Resolved

It is the State's policy to promptly investigate allegations of abusive conduct in the workplace as defined by this policy. The affected department shall conduct a review of all reported complaints of abusive conduct or retaliation/interference as soon as practicable. If possible, this review shall include an interview with the complainant to determine if the conduct in issue violates this policy. If the department determines that the conduct falls within the terms of this policy, the department shall conduct a thorough and neutral investigation, which includes an interview with the alleged offender (if possible) and any other witnesses who have direct knowledge of the circumstances of the allegations. If the department determines that the conduct best falls within the terms of another policy, the department will review the complaint following the procedures established in that policy.

The department retains the sole discretion to determine whether a violation of this policy has occurred and to determine what level, if any, of disciplinary action is warranted.

If a complaint involves an executive level employee (such as an executive director, assistant commissioner, deputy commissioner, or commissioner), the Department of Human Resources, Office of General Counsel, EEO Division will investigate the complaint on behalf of the department and report the results to the appropriate agency or authority. The EEO Division may also investigate abusive conduct complaints involving non-executive level employees, pursuant to an agreement between the department and the Department of Human Resources.

How Confidentiality is Treated

To the extent permitted by law, the State will try to maintain the confidentiality of each party involved in an investigation, complaint, or allegation of a violation of abusive conduct, 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 confidentiality of investigations. Therefore, the State does not guarantee confidentiality.

Directive to Supervisory Personnel

Supervisory personnel are responsible for ensuring appropriate behaviors are exhibited at all times. Supervisory personnel who receive a complaint alleging abusive conduct or learn by any means of conduct that may violate this policy must immediately report any such event to the department's human resources director, EEO officer or to the person designated by the agency to receive the information.

Corrective Action for Violation of this Policy

Any employee who engages in conduct that violates this policy, or who encourages such conduct by others may be subject to corrective action. Such corrective action may include, but is not limited to, mandatory participation in counseling, training, disciplinary action up to and including termination, and/or changes in job duties or location.

Supervisory personnel who allow abusive conduct to continue or fail to take appropriate action upon learning of such conduct may also be subject to corrective action. Such corrective action may include, but is not limited to, mandatory participation in counseling, training, or disciplinary action up to and including termination, or changes in job duties or location.

Tennessee Employee Mediation Program

Complaints under this policy may also be eligible for mediation under the Tennessee Employee Mediation Program. This program is a form of alternative dispute resolution that is offered to state employees by the Department of Human Resources. Mediation is an informal process where a neutral third party assists employees who are involved in a workplace conflict by helping them to achieve a voluntary resolution. A mediator helps the parties agree on a mutually acceptable resolution. Mediation is a voluntary process. Employees wishing to obtain information on mediating a matter under this policy should contact the Department of Human Resources at DOHR.Mediation@tn.gov.

All employees shall review and acknowledge this policy on an annual basis. Questions regarding this policy may be directed to the Office of the General Counsel.

Attachment 1 – Employee Acknowledgement Form

Abusive Conduct in the Workplace Policy

Employee Acknowledgement

I, _____, hereby certify that I have received a copy of the Abusive Conduct in the Workplace Policy. I understand that violation of this policy may subject me to discipline, up to and including termination.

Employee Signature*

Date

Human Resources Office Signature

Date

* By acknowledging this policy via the Edison system, I agree that my acknowledgement is the equivalent to my handwritten signature.

Attachment 2 - 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:

EMAIL/TELEPHONE NUMBERS OF COMPLAINANT OR PERSON REPORTING EVENT:

EMAIL: _____

WORK: _____

PREFERRED: _____

NAME OF AGENCY AND DIVISION INVOLVED:

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

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

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EXPLAIN WHY YOU BELIEVE THESE EVENTS OCCURRED:

WERE OTHER EMPLOYEES TREATED DIFFERENTLY THAN YOU? IF YES, DESCRIBE HOW:

IF YOU ANSWERED YES TO THE PREVIOUS QUESTION, PLEASE PROVIDE THE NAMES OF THE EMPLOYEES WHO WERE TREATED DIFFERENTLY:

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?

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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?

WOULD YOU BE OPEN TO PARTICIPATING IN MEDIATION WITH THE ACCUSED ABOUT THE INCIDENT(S)?

SIGNATURE OF COMPLAINANT: _____

DATE: _____

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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:
