

 DEPARTMENTAL POLICY State of Tennessee Department of Transportation	Policy Number: 105-02
	Effective Date: March 19, 2012
Approved By: 	Supersedes: March 16, 2008
SUBJECT: Workplace Discrimination and Harassment/Complaint Procedures	

RESPONSIBLE OFFICE: Civil Rights Office

AUTHORITY: T.C.A. § 4-3-2303 and T.C.A. § 8-30-324; Tennessee Department of Human Resources Rule 1120-10-.05(21). Tennessee Department of Human Resources Policy No. 11-010 concerning “Investigations of Allegations of Illegal Discrimination and Harassment” dated January 12, 2011. If any portion of this policy conflicts with applicable state or federal laws or regulations, that portion shall be considered void. The remainder of this policy shall not be affected thereby and shall remain in full force and effect.

RELATED POLICY: TDOT Policy No. 105-01, Equal Employment Opportunity.

PURPOSE: The purpose of this policy is to establish the Department’s complaint, intake, and investigative procedures for alleged violations of TDOT’s Equal Employment Opportunity (EEO) Policy.

APPLICATION: All employees of the Tennessee Department of Transportation, applicants for employment, and persons conducting business with the Department.

DEFINITIONS: See definitions set forth in TDOT Policy No. 105-01.

POLICY: It is the policy of the Tennessee Department of Transportation to prohibit discrimination on the basis of race, color, sex, pregnancy, age (40 and over), religion, creed, national origin, disability, veteran’s status, or any other category protected by state and/or federal civil rights laws. This policy applies to hiring, job training, promotion, discharge and other aspects of employment e.g., classification/compensation, benefits, educational, social and recreational programs.¹

¹ **Note:** While the Department is committed to the principles embodied in this policy, the policy itself is not intended to state contractual terms and does not constitute a contract 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 document and its contents constitute ONLY the policy of the State of Tennessee and the Tennessee Department of Transportation. A finding of a violation of this policy does not mean that the conduct violates state and/or federal civil rights laws.

Policy Number: 105-02
Effective Date: 3/19/12

Retaliation against employees or applicants for employment who question a policy, file a complaint of discrimination, participate in an investigation, or oppose an unlawful employment practice is prohibited.

PROCEDURE: The Tennessee Department of Transportation hereby adopts the complaint procedure issued by the Tennessee Department of Human Resources including form PR-0411 “Intake/Referral Form” and “Investigation Memorandum Format,” copies attached, which from time to time may be revised by the Tennessee Department of Human Resources.

HOW TO REPORT DISCRIMINATION OR HARASSMENT INCIDENTS

If an employee, applicant for employment, or third party believes he/she has been subjected to conduct that violates this policy, he/she must report those incidents as soon as possible after the event occurs.

Employees and applicants for employment may file a complaint with:

Affirmative Action Director

Tennessee Department of Transportation

Civil Rights Division

Suite 1800, James K. Polk Building

Nashville, Tennessee 37243

Telephone: (615) 741-5996 or 741-3681

Toll Free: (888) 370-3647

Employees and/or applicants for employment may report a complaint with the TDOT’s Affirmative Action Director, Human Resources Director, Regional or Division Director, or their own supervisor(s).

Supervisory employees who receive a complaint alleging discrimination and/or harassment or learn by any means of conduct that may violate this policy must immediately report any such event to TDOT’s Affirmative Action Director. The employee to whom the complaint is reported shall complete the attached Intake/Referral Form, and then forward it directly to TDOT’s Affirmative Action Director. For technical assistance, the supervisor may contact the TDOT Civil Rights Office or the TDOT Human Resources Division’s Employee Relations staff.

Under no circumstances is the individual alleging discrimination and/or harassment required to file a complaint with the alleged harasser. If an employee or applicant believes he/she cannot file a complaint within his/her work unit, Division, or Region, that person should contact the TDOT Civil Rights Office, Affirmative Action Director. If an employee or applicant believes he/she cannot file a complaint within TDOT, that person should contact the Tennessee Department of Human Resources, EEO Division.

Individuals who wish to file a complaint are encouraged to submit it in writing using the attached Intake/Referral Form and to include a description of the incident(s) as well as the date(s), time(s), place(s), and any witnesses. For technical assistance in completing this form, an individual may contact the TDOT Civil Rights Office or the TDOT Human Resources Division’s Employee Relations staff.

Policy Number: 105-02
Effective Date: 3/19/12

If a complaint involves an assistant commissioner, deputy commissioner, or the Commissioner of TDOT, an employee or applicant for employment may file the complaint directly with the Tennessee Department of Human Resources, EEO Division.

HOW TO REPORT RETALIATION INCIDENTS

If an employee, applicant for employment, or third party believes he/she has been subjected to retaliation for engaging in protected conduct under this policy, he/she must report any incident as soon as possible.

Any employee, applicant for employment, or third party who makes a complaint of discrimination or provides information related to such complaints will be protected against retaliation. If retaliation occurs, the employee, applicant for employment, or third party should report the retaliation in the same manner as he/she would report any other complaints involving alleged harassment and/or discrimination.

HOW COMPLAINTS ARE INVESTIGATED AND RESOLVED

The Affirmative Action staff in the TDOT Civil Rights Office will conduct a thorough and neutral investigation of all reported complaints of workplace discrimination, harassment and/or retaliation as soon as practicable.

Generally, an investigation will include an interview with the complainant to determine if the conduct in issue violates this policy. In some cases, the initial intake interview with the complainant may result in summary closure.

If the Department determines that the conduct falls within the terms of this policy, the Civil Rights Office shall interview the alleged offender and any other witnesses who have direct knowledge of the circumstances of the allegations.

It is an employee’s official job duty to cooperate fully with any investigation conducted under this Policy. *Failure to do so may result in discipline up to and including termination.* Tennessee Department of Human Resources Rule 1120-10-.05(21), Examples of Disciplinary Offenses, states, “Refusal to accept a reasonable and proper assignment from an authorized supervisor (insubordination).” In addition, T.C.A. § 8-30-324 states, “If any employee in the state service shall willfully refuse to fail to appear before any ... body authorized to conduct any ... inquiry, the person shall forfeit such position and shall not be eligible for appointment to any position in the state service.”

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

If a complaint involves an assistant commissioner, deputy commissioner, or the Commissioner of TDOT, and if the complaint is filed with the TDOT Civil Rights Office, the TDOT Civil Rights Office shall immediately refer the matter (including the completed Intake/Referral Form) to Tennessee Department of Human Resources, EEO Division for further investigation and appropriate action.

Summary Complaint Closure: If after the initial intake interview with the complainant and review of the completed Intake/Referral Form, it is determined that the alleged conduct at issue is outside the scope of this policy, (i.e., not an alleged violation of TDOT's EEO policy), the TDOT Civil Rights Office shall complete the required steps of the intake procedures and create the required documentation under this policy. Such documentation shall also include any referrals or recommendations made. In all summary closures, the complainant shall receive a written notice.

A Summary Complaint Closure will consist of three (3) documents: the completed Intake/Referral form, a brief memorandum documenting the events leading to the summary complaint closure, and a written notice of summary closure to the complainant. At no time will a complainant be asked or persuaded not to pursue a legitimate workplace discrimination and harassment or retaliation complaint. However, attempts to file complaints under facts and circumstances that fall outside the scope of TDOT's Workplace Discrimination and Harassment/Complaint Procedures shall be summarily closed and properly documented.

HOW CONFIDENTIALITY IS TREATED

To the extent permitted by law, TDOT will try to maintain the confidentiality of each party involved in a workplace discrimination and/or 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, TDOT cannot guarantee confidentiality. Any documents that are made or received in the course of the investigation are public records under the State's Public Records Act, unless otherwise exempted by state law.

DIRECTIVE TO SUPERVISORY EMPLOYEES

Supervisory employees who receive a complaint alleging discrimination and/or harassment or learn by any means of conduct that may violate this policy must immediately report any such event to TDOT's Civil Rights Office, Affirmative Action Director or to the Office of the Commissioner.

CORRECTIVE ACTION FOR VIOLATION OF THIS POLICY

Any employee who, as defined by this policy, commits workplace discrimination, harassment, and/or retaliation, or who encourages such conduct by others will be subject to corrective action. Such corrective action includes, but is not limited to, mandatory participation in appropriate training, such as the Respectful Workplace course, disciplinary action up to and including termination, and/or changes in job duties or location.

Supervisory employees who allow conduct that could violate this policy to continue, or fail to take appropriate action upon learning of such conduct will be subject to corrective action. Such corrective action includes, but is not limited to, mandatory participation in appropriate training, disciplinary action, up to and including termination, and/or changes in job duties or location.

OTHER PROVISIONS

Policy Number: 105-02
Effective Date: 3/19/12

When a complaint is filed, the investigator will inform the complainant, accused, and witnesses of the following statement of limitation on confidentiality and/or the limitations on confidentiality included in the Intake/Referral Form attached to this Policy.

To the extent permitted by law, the State will try to maintain the confidentiality of each party involved in a workplace discrimination or 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.

The investigator will inform the complainant, accused, and witnesses of the strict prohibition of retaliation.

The investigator will create an investigative memorandum using the attached standardized Investigation Memorandum Format for every complaint filed under this Policy.

The investigator will communicate information concerning the allegations only to those to whom the investigator is authorized to report such matters.

In cases where a full investigation is convened under this policy and complaint procedures, the Civil Rights Office shall issue a determination letter to the accuser and a determination letter to the accused concerning the outcome of the investigation. Copies of these letters shall be forwarded to the TDOT's Human Resources Director, the TDOT Legal Division, and the TDOT Region/Division Director in whose Region and/or Division the complaint arose.

The investigative report(s) of any investigation shall be reported to the Commissioner of TDOT and/or the Chief of Staff, the TDOT Deputy Commissioner for Administration, and the TDOT Legal Division.

All documents generated by the investigation and any subsequent disciplinary action shall be preserved and disposed of in accordance with the appropriate State rule and/or applicable Records Disposition Authorization.

Any disciplinary action taken requires that records of such action be maintained in the disciplined employee's human resources file subject to the Tennessee Department of Human Resources rules and/or policies concerning the retention of disciplinary records.

The supervisor is responsible for maintaining the proper performance level, conduct and discipline of employees under his/or her supervision. When corrective action is necessary resulting from a violation of this policy, the supervisor must take the appropriate corrective action.

The complainant may withdraw his/her complaint or terminate the procedure at any time. However, simply because the complainant may not wish for a matter to be investigated does not

Policy Number: 105-02
Effective Date: 3/19/12

release TDOT from any applicable duties to properly investigate conduct that may violate the Department's EEO policies.

These procedures are not meant to be a substitute for an employee's right to file a complaint with an external agency based on discrimination. An employee who does not wish to utilize the Department's complaint procedure may file with the Tennessee Human Rights Commission or the United States Equal Employment Opportunity Commission based on the rules of those agencies.

Policy Number: 105-02
Effective Date: 3/19/12

INTAKE/REFERRAL FORM

STATEMENT CONCERNING CONFIDENTIALITY

Pursuant to Tennessee Code Annotated § 10-7-502(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: _____

HOME: _____

IS YOUR HOME TELEPHONE NUMBER UNLISTED? YES _____ NO _____

MOBILE: _____

NAME OF AGENCY AND DIVISION INVOLVED:

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

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

Policy Number: 105-02
Effective Date: 3/19/12

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.)

Policy Number: 105-02
Effective Date: 3/19/12

SIGNATURE OF COMPLAINANT:

DATE: _____

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:

Policy Number: 105-02
Effective Date: 3/19/12

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

ACTION: _____

DATE ON WHICH THE FORM WAS FORWARDED:

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