

Department of Finance and Administration

Office of Personnel Management

Policy Title: Sexual Harassment

Policy Number: 2.1

Authority: 29 CFR Ch XIV, subsection 1604.11, Section 703 of Title VII of the Civil Rights Act of 1964, as amended, and the Arkansas Civil Rights Act at Ark. Code Ann. § 16-123-101

Purpose

The Department of Finance and Administration (DFA) does not tolerate sexual harassment in any form. The purpose of this policy is to define workplace sexual harassment, prohibit it in all forms, and provide procedures for lodging and investigating sexual harassment claims.

Persons Covered/Applicability

All DFA workers are subject to this provision, including temporary employees.

Sexual Harassment Defined

"Sexual harassment" is unwelcome conduct of a sexual nature that is sufficiently persistent or offensive to unreasonably interfere with an employee's job performance or create an intimidating, hostile or offensive working environment. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when, for example:

- a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
- b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or
- c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

For more guidance, please see the Federal Guidelines (29 CFR Ch XIV, subsection 1604.11), Section 703 of Title VII of the Civil Rights Act of 1964, as amended, and the Arkansas Civil Rights Act at Ark. Code Ann. § 16-123-101.¹

Under Title VII of the Civil Rights Act of 1964, there are two types of sexual harassment: a) quid pro quo and 2) hostile work environment. Sexual harassment can

¹ The Code of Federal Regulations is accessible here: <https://www.gpo.gov/fdsys/pkg/CFR-2009-title29-vol4/pdf/CFR-2009-title29-vol4-sec1604-11.pdf>; Title VII § 703 is accessible here: <https://www.eeoc.gov/laws/statutes/titlevii.cfm>; See also EEOC guidelines: <https://www.eeoc.gov/policy/docs/currentissues.html>

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be physical or psychological in nature. An aggregation of a series of incidents can constitute sexual harassment even if one of the incidents considered on its own would not be harassing. DFA employees are prohibited from harassing other employees whether or not the incidents of harassment occur on DFA premises and whether or not the incidents occur during working hours.

Examples of prohibited conduct

Though sexual harassment encompasses a wide range of conduct, some examples of specifically prohibited conduct include the following:

- Physical assaults of a sexual nature, such as rape, sexual battery, molestation or attempts to commit these assaults, and intentional physical conduct that is sexual in nature, such as touching, pinching, patting, grabbing, intentionally brushing against another employee's body, poking or touching another employee's body.
- Unwelcome sexual advances, propositions or other sexual comments, such as sexually oriented gestures, noises, remarks, jokes or comments about a person's sexuality or sexual experience.
- Preferential treatment or promises of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward.
- Subjecting, or threats of subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of the employee's job more difficult because of that employee's sex.
- Sexual or discriminatory displays or publications anywhere in DFA's workplace by a DFA employee.
- Retaliation for sexual harassment complaints.

Responding to Conduct in Violation of Policy

Employees

If a DFA employee believes that he or she has been subject to sexual harassment or any unwelcome sexual attention, he or she may, but is not required, address the situation directly and immediately to the harasser. If the inappropriate conduct does not cease, or if the employee is unable to or uncomfortable with addressing the alleged harasser directly, he or she should report the incident to his or her supervisor, or someone in his or her immediate

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chain of command and to the DFA Human Resources (DFA HR) Office. It is important to report all concerns of sexual harassment or inappropriate sexual conduct to the DFA HR Office and an administrator or supervisor/manager as soon as possible so that the DFA HR Office can conduct an immediate and impartial investigation and take appropriate action to remediate or prevent the prohibited conduct from continuing.

Administrators and supervisors

Administrators and supervisors must deal expeditiously and fairly with allegations of sexual harassment whether or not there has been a written or formal complaint. They must:

- Take all complaints or concerns of alleged or possible harassment or discrimination seriously no matter how minor or who is involved.
- Ensure that harassment or inappropriate sexually oriented conduct is immediately reported to the DFA HR Office so that a prompt investigation can occur.
- Take any appropriate action to prevent retaliation or prohibited conduct from recurring during and after any investigations or complaints.

Supervisors or managers who knowingly allow or tolerate sexual harassment or retaliation, including the failure to immediately report such misconduct to the DFA HR Office, are in violation of this policy and subject to discipline. As defined above, sexual harassment is unwelcome behavior of a sexual nature that affects an individual's employment, unreasonably interferes with work performance, or creates an intimidating, hostile, or offensive work environment. Any employee who believes that he or she is being discriminated against is encouraged to follow the complaint procedures outlined below.

Discrimination Complaint Procedure

No employee, to effect resolution of a complaint, shall be required to solely or independently confront the person allegedly conducting or causing the action believed to be discriminatory. Further, retaliation against an employee for reporting

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discrimination is strictly prohibited. Employees believing themselves to be victims of discrimination are encouraged to come forward to effect resolution of the complaint.

Notwithstanding the foregoing, any DFA employee who believes he or she has been the target of discrimination and/or harassment is encouraged to inform the offending person orally or in writing that such conduct is unwelcome and offensive and must stop. If the employee does not wish to communicate directly with the offending person, or if such communication has been ineffective, the employee has multiple avenues for reporting allegations of discrimination and/or harassment and/or pursuing resolution. Complaints may be made verbally to the DFA HR Office. In addition, employees may submit a complaint to the DFA HR Office using the DFA Harassment/Discrimination Complaint Form. The complaint should be made in good faith, expressed in reasonable terms and must contain the following: cause for the complaint, how the unwelcome conduct unreasonably interferes with the complainant's work performance or creates a discriminatory, intimidating, hostile, or abusive work environment, the corrective action desired and sufficient information upon which to base decisions. Upon submission to the DFA HR Office, an internal investigation will be conducted. DFA will protect the confidentiality of complaints to the extent reasonably possible. The DFA HR Office will take immediate and appropriate corrective action when it determines that a violation has occurred.

If the complainant believes an inadequate review was conducted by the DFA HR Office, he or she may request further review or investigation by the DFA Director or his designee. The DFA Director or his designee will determine if the sexual harassment charge was substantiated.

Discipline

Employees who violate this policy are subject to appropriate discipline. If an investigation results in a finding that this policy has been violated, the mandatory minimum discipline is a written warning. The discipline for very serious or repeat violations is termination of employment. Employees who violate this policy may also be subject to civil damages or criminal penalties.

Confidentiality

All inquiries, complaints and investigations are treated confidentially. Information is

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revealed strictly on a need-to-know basis. Information contained in a formal complaint is kept as confidential as possible. However, the identity of the complainant may be revealed to the respondent and witnesses as necessary to thoroughly investigate any claim of sexual harassment. The DFA HR Office will take steps to ensure that the complainant is protected from any retaliation and will limit the disclosure of information to those who need to know. All information pertaining to a sexual harassment complaint or investigation is maintained by the DFA HR Office in secure files. The DFA HR Office is available to respond to questions relating to the procedures for handling information related to sexual harassment complaints and investigations to complainants and respondents.

Other Available Procedures

The procedures available under this policy do not preempt or supersede any legal procedures or remedies otherwise available to a victim of sexual harassment under local, state or federal law. PLEASE REFER TO DFA-OPM 17

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