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I. Policy

It is the policy of the Department of Health (DOH or the department) that sexual harassment is illegal and will not be tolerated. Employees of the department are entitled to work in an environment which is free from any form of sexual harassment.

II. Authority

A. 29 CFR, Equal Employment Opportunity Commission, pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq. prohibits employment discrimination on the basis of race, color, sex, national origin, and religion, and it establishes procedures for complaints of employment discrimination filed against recipients of federal financial assistance. 29 CFR also establishes minimal retention schedules and records requirements. Sexual harassment is a form of sex discrimination under Title VII of the Civil Rights Act of 1964.

B. [Section 110.105\(2\)](#), Florida Statutes (F.S.), prohibits discrimination in state employment on the basis of age, sex, race, religion, national origin, political affiliation, marital status, and/or handicap.

C. [Chapter 760](#), Title I, F.S., the Florida Civil Rights Act of 1992, prohibits discrimination in employment on the basis of race, color, national origin, sex, religion, age, marital status, or disability.

D. [Rule 60L-36.004](#), Florida Administrative Code (F.A.C.), establishes the state sexual harassment policy and procedures for handling complaints and for disciplining offenders.

E. Governor's Executive Order 81-69 prohibits sexual harassment in state executive branch agencies.

F. [Section 119.071\(2\)\(g\)1.a. and 2.](#), F.S., establishes the confidentiality of complaints for discrimination related to race, color, religion, sex, national origin, age, handicap, and/or marital status.

III. Supportive Data

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A. [DOHP 220-3-00](#), Methods of Administration, Equal Opportunity in Service Delivery (to be replaced with DOHP 60-34-09).

B. [DOHP 220-2-00](#), Equal Employment Opportunity (to be replaced with DOHP 60-33-09).

IV. Signature Block with Effective Date

Signature on File

Ana M. Viamonte Ros, M.D., M.P.H.
State Surgeon General

2/18/09

Date:

V. Definitions

- A. Administrative Entity. Entity (including contractors or service providers) in which the alleged discriminatory official is employed.
- B. Alleged Discriminatory Official (ADO). Employee or supervisor who is alleged by the complainant to have engaged in the sexual harassment.
- C. Complainant. Employee, former employee, applicant for employment, client, or potential client filing complaint of sexual harassment.
- D. Conciliation. Resolution of a sexual harassment complaint through appropriate remedies, such as reassignments, transfers, procedural changes, training, orientation, and other prudent measures to ensure a work environment free from sexual harassment.
- E. Delegated Authority. Official who has been assigned the authority to take disciplinary action.
- F. Employee. DOH employee in a Career Service, Other Personal Services (OPS), Selected Exempt Service (SES), or Senior Management Service (SMS) position, or a volunteer or contract staff.
- G. External Complaint. Written complaint of discrimination filed with federal or state agencies with enforcement authority in the investigation, resolution, or disposition of civil rights (discrimination) complaints.
- H. Internal Complaint. Complaint of discrimination filed with the department's Office of the Inspector General. A complaint of sexual harassment need not be in writing when reported directly to the Office of the Inspector General or the Bureau of Human Resource Management, Equal Opportunity Section.
- I. Retaliation. Prohibited action taken against complainants or persons involved in the filing or investigation of a complaint of discrimination, as a direct result of their participation in the complaint or their opposition to alleged unlawful employment practices prohibited by state and federal laws or DOH policy.
- J. Sexual Harassment. Any form of unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
1. Submission to such conduct is made, either explicitly or implicitly, a term

or condition of an individual's employment; or

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

VI. Protocol

A. Expected Outcome

This policy serves to meet the provisions of [Rule 60L-36.004](#), F.A.C., which require that:

1. The department shall not tolerate sexual harassment within the workforce.
2. The department make known to its employees that sexual harassment will not be tolerated, and make available a copy of [Rule 60L-36.004](#), F.A.C., this policy, and the department's Equal Employment Opportunity policy (DOHP [220-2-00](#), to be replaced with DOHP 60-33-09). Each employee shall acknowledge understanding of this rule and the agency policy in writing. The documented evidence of acknowledgement shall be retained in the employee's official personnel file.
3. The department shall develop and implement procedures to investigate and resolve complaints of sexual harassment, and designate a person or persons to receive complaints of sexual harassment.
4. The department shall initiate prompt review of all complaints and take steps to protect the privacy of those involved during the review and any related investigation.
5. The department shall fully comply with investigatory procedures and rights contained in collective bargaining agreements between the state and the certified bargaining representatives for state employees.
6. The filing of an internal complaint pursuant to department procedures shall not preclude the complainant from filing with an external agency.
7. Any employee who engages in sexual harassment shall be subject to disciplinary action.
8. Any supervisory or managerial employee who has knowledge of sexual harassment and fails to immediately report the matter to the department's designated official shall be subject to disciplinary action. For the Department of

Health, the designated official is the Equal Opportunity Manager in the Equal Opportunity Section, Bureau of Human Resource Management.

9. Any employee who knowingly files a false complaint of sexual harassment shall be subject to disciplinary action.

10. The department shall not tolerate retaliation against any person who has in good faith filed a complaint, opposed a complaint, or participated in any manner in an investigation or proceeding involving allegations of sexual harassment.

B. Personnel

This policy applies to all Department of Health employees.

C. Competencies

1. Knowledge of Rule [60L-36.004](#), F.A.C.
2. Knowledge of Florida Statutes, as listed in Section II. Authority.

D. Areas of Responsibility

1. The Equal Opportunity Manager in the Division of Administration, Bureau of Human Resource Management, Equal Opportunity Section, shall be responsible for coordinating the department's efforts to comply with and carry out the provisions of this policy. The Equal Opportunity Manager shall be responsible for ensuring that external complaints of sexual harassment are investigated promptly in accordance with [Rule 60L-36.004](#), F.A.C., and DOH policy.

2. The Inspector General shall be responsible for ensuring that internal complaints of sexual harassment are reviewed and/or investigated promptly in accordance with [Rule 60L-36.004](#), F.A.C., and DOH policy.

3. The delegated authority is responsible for assuring that the workplace is free of sexual harassment, and for notifying employees that they will be subject to disciplinary action for violation of this policy.

4. The servicing human resource office is responsible for ensuring that the employee's acknowledgement of this policy is documented in his or her personnel file within 30 days of employment.

5. Each DOH employee's immediate supervisor shall ensure that the employee is given a reasonable opportunity to review this policy through appropriate posting and distribution. Each employee shall also be given the opportunity to discuss this policy with a supervisor, trainer, or other official, and to ask questions regarding sexual harassment in general.

6. Each new employee's immediate supervisor shall ensure that the employee has access to the Employee Handbook which requires that every employee shall be afforded the opportunity to work in an environment free from unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

VII. Procedures

A. Filing Complaints

1. Any employee, former employee, or applicant for employment who feels discriminated against in the form of sexual harassment as defined by this policy may file a complaint with the department within 365 days of the alleged discriminatory action. Any client or potential client may file a complaint of sexual harassment within 180 days of the alleged discriminatory action by an employee, volunteer, or contractor working for the department. A complaint may be filed with the supervisor, delegated authority, servicing human resource office, Office of the Inspector General, or Equal Opportunity Section in the Bureau of Human Resource Management. The Office of the Inspector General will review and/or investigate internally filed complaints of sexual harassment.

2. Internal complaints received by any employee shall immediately be forwarded to the Inspector General which will forward a copy of the complaint to the Equal Opportunity Manager in the Equal Opportunity Section, Bureau of Human Resource Management.

3. Any supervisor or manager who learns of possible sexual harassment must contact the Equal Opportunity Manager within 24 hours. If the individual does not wish to be named or to file a written statement or complaint, the Equal Opportunity Manager, with the appropriate delegated authority, will determine the disposition of the matter.

4. Any employee who receives information regarding possible sexual harassment of a client or applicant for services shall immediately notify his or her supervisor. The supervisor will take action as required by this policy.

5. Information pertaining to sexual harassment and filing of complaints may be obtained from the servicing human resource office, servicing legal office, Equal Opportunity Section in the Bureau of Human Resource Management, or Office of the Inspector General.

6. Internal complaints shall be in writing, signed by the complainant, and contain at least the following information:

a. Name, business address, and telephone number of the person filing the complaint;

- b. Name of the person who allegedly committed the act of sexual harassment and the alleged victim;
- c. Clear and concise statement of the facts, including pertinent dates, locations, witnesses, and other evidence in support of the allegation.

If the complaint does not contain all of this information, the Office of the Inspector General shall, in writing, request the complainant to furnish it.

7. In accordance with Section [119.071\(2\)\(g\)2.](#), F.S., if the alleged victim chooses not to file a formal complaint and requests that records of the complaint remain confidential, all records relating to an allegation of employment discrimination are confidential and exempt from Section [119.07\(1\)](#), F.S., and Section 24(a), Article I of the State Constitution.

B. Processing Complaints

1. Internal Complaints

- a. When a delegated authority receives a written complaint, whether in narrative format or on the Discrimination Complaint Form, such complaints are to be forwarded immediately to the Equal Opportunity Manager and the Inspector General. The complaint will be confidential under [Section 119.071\(2\)\(g\)1.a.](#), F.S. The Equal Opportunity Manager will provide guidance relative to any immediate action that is necessary and will maintain a record of receipt of the complaint.
- b. The Inspector General will be responsible and shall initiate prompt review and/or investigation of internally filed sexual harassment complaints, and shall take steps to protect the privacy of those involved during the review and any related investigation. The Inspector General will notify the Equal Opportunity Section by furnishing the latter a copy of the written complaint containing the case file number and name of the inspector specialist assigned to the complaint. If a complaint is made verbally, the Equal Opportunity Manager should be provided the name of the victim and alleged discriminatory official, contact, and other relevant information, in writing.
- c. Prior to or during the course of the review and/or investigation, the delegated authority, in consultation with the servicing human resource and/or servicing legal counsel, may deem it necessary to reassign the alleged discriminatory official, the complainant, or both, to a different work location pending the outcome of the investigation. Further, to ensure a work environment free from sexual harassment, the appropriate delegated authority may implement other reasonable measures at any stage of the complaint process. The Equal Opportunity Section will be consulted prior to such action. The Equal Opportunity Manager will

coordinate with the Inspector General regarding recommended action.

d. The filing of an internal complaint does not preclude the complainant from also filing a separate complaint with an external agency such as the Florida Commission on Human Relations or the United States Equal Employment Opportunity Commission. The Bureau of Human Resource Management will respond to the external agency on behalf of DOH. An internally filed complaint will not be closed upon receipt of an external complaint, until the internal investigation is completed.

2. External Complaints

a. The Equal Opportunity Section will be responsible for the investigation of complaints filed with an external agency. The Equal Opportunity Section shall initiate prompt review of externally filed sexual harassment complaints and shall take steps to protect the privacy of those involved during the review and any related investigation. The Equal Opportunity Section will notify the Inspector General and provide a copy of the complaint.

b. Prior to or during the course of the review and/or investigation, the delegated authority, in consultation with the servicing human resource office and/or servicing legal counsel, may deem it necessary to reassign the alleged discriminatory official, the complainant, or both, to a different work location pending the outcome of the investigation. Further, to ensure a work environment free from sexual harassment, the appropriate delegated authority may implement other reasonably prudent measures at any stage of the formal complaint process. The Equal Opportunity Section in the Bureau of Human Resource Management will be consulted prior to such action.

c. The Equal Opportunity Section will follow investigative procedures outlined in DOHP [220-2-00](#) (to be replaced with DOHP 60-33-09).

C. Disciplinary Actions

Disciplinary action, up to and including dismissal, shall be taken after consultation with the servicing human resource office and the servicing legal counsel.

1. Any employee who is found to have discriminated against another employee by sexual harassment will be subject to appropriate disciplinary action.

2. Any supervisor or managerial employee who has knowledge of sexual harassment shall immediately report the matter to the Equal Opportunity Section in the Bureau of Human Resource Management or the Inspector General. If the supervisory or managerial employee fails to do so, he or she will be subject to disciplinary action.

3. Any employee who is determined to have knowingly filed a false complaint of sexual harassment against another employee shall be subject to disciplinary action.

4. All disciplinary actions will be administered by the delegated authority in accordance with all applicable Florida Statutes, Personnel Rules, and the DOH Discipline Policy and Standards for Disciplinary Action (DOHP [60-8-02](#)).

D. Retaliation Prohibited

It shall be prohibited for any official or employee of the department to discriminate or to take any retaliatory action against an individual who in good faith has opposed alleged sexual harassment, or has made a charge, testified, assisted, or participated in any manner in a complaint or in an investigation under the provisions of this policy.

There are three essential elements of a retaliation claim which must exist:

1. a protected activity – opposition to discrimination or participation in the statutory complaint process;
2. an adverse action; and
3. a causal connection between the protected activity and the adverse action.

VIII. Distribution List

Deputies
Office Directors
Division Directors
Bureau Chiefs
County Health Department Directors/Administrators
Children's Medical Services Medical Directors
Children's Medical Services Nursing Directors and Program Managers
Human Resource Managers/Liaisons
Web Manager

IX. History Notes. This policy replaces DOHP 220-4-00, dated June 28, 2000.