

**OFFICE OF THE EXECUTIVE DIRECTOR**  
**MISSISSIPPI DEPARTMENT OF HUMAN SERVICES**

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**POLICIES**

MDHS-ADMINISTRATIVE POLICY	
Revision Date November 1, 2011	AP - 41

**SUBJECT: SEXUAL HARASSMENT PREVENTION POLICY**

The Mississippi Department of Human Services (MDHS) has adopted a "zero tolerance" policy against any form of sex discrimination. Sexual harassment is a form of sex discrimination which interferes with work productivity and wrongfully deprives employees of the opportunity to work in an environment independent from unsolicited and unwelcome sexual overtones. MDHS is committed to maintaining a workplace where every employee is treated with honor, dignity, respect, and professionalism.

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**PURPOSE:**

To reaffirm the Mississippi Department of Human Services position prohibiting sexual harassment and to inform all employees (to include training school personnel, contractors, interns and other person involved with MDHS in an occupational capacity) that sexual harassment is against the law and will not be tolerated from any employee, regardless of their position.

**ACTION:**

1. Division Directors shall ensure that a copy of this cover and policy are distributed to each current employee and new employee in their unit.
2. This policy will be conspicuously placed on official bulletin boards in locations easily accessible to all staff.

**APPLICATION:**

1. This policy is applicable to all divisions of the Mississippi Department of Human Services, contractors, vendors and other persons involved with MDHS in an occupational capacity.
2. Specific adherence to this policy shall be made an express term of every contracted services agreement entered into by MDHS.

**DUPLICATION:**

This policy may be duplicated.

**CONTACT:**

Director, Division of Human Resources.

**EXCEPTIONS:**

None

**EFFECT ON OTHER  
DIRECTIVES:**

Supersedes policy dated November 1, 2001

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Distribution: All DHS Employees  
AP-41 MDHS SAAG Section Head

November 1, 2011

  
Executive Director

**Revised Date: November 1, 2011****ACKNOWLEDGMENT**

Upon receipt of the Sexual Harassment Prevention Policy, all employees, to include management officials, will sign a statement acknowledging receipt of this policy. The signed statement will be filed along with other official documents in the individual's personnel file.

**SEXUAL HARASSMENT PREVENTION TRAINING**

All new employees are required to receive sexual harassment training before completing their probationary year. Additionally, any person designated by the Division of Human Resources to handle sexual harassment complaints must receive formal training on how to properly handle sexual harassment complaints.

**CONFIDENTIALITY**

All complaints and investigations will be kept confidential to the extent possible. Information will be disclosed only to the extent necessary to conduct a prompt and adequate investigation and only those individuals with a "need to know" will be informed. Further, any person who, without authorization, reveals such information will be subject to disciplinary action.

**IMPROPER COMPLAINTS**

As it is important to protect individuals from acts of sexual harassment, it is equally important to protect employees from frivolous and malicious complaints. Any individual who knowingly and willfully files a false complaint will face disciplinary action.

**ANTI- RETALIATION ASSURANCE**

Title VII of the Civil Right Act specifically protects an employee from retaliation when an individual has filed a sexual harassment charge or testified, assisted, or participated in any manner in the investigation, proceeding, or hearing of a sexual harassment charge under Title VII. Anyone who is determined to have engaged in unlawful retaliation under this policy will be disciplined, up to and including termination.

**DEFINITIONS**

Harassment on the basis of sex is a violation of Section 703 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e-2. The Equal Employment Opportunity Commission (EEOC), Guidelines on Discrimination Because of Sex, defines sexual harassment as follows:

"Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

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- (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's work, or;
- (c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance, or;
- (d) conduct creates an intimidating, hostile, or offensive working environment."

"Hostile environment" is defined as:

Physical and/or verbal conduct that unreasonably interferes with an individual's work performance.

"Unwelcome" is defined as:

Conduct that the "employee did not solicit or incite", and that "the employee regarded...as undesirable or offensive."

"Quid pro quo" is defined as:

"Something for something." Sexual harassment presented as a "bargain." Verbal and physical conduct of a sexual nature by one in a superior position who grants an employment benefit or imposes an employment penalty based on submission to or refusal of a request for sexual favors from an employee. The harasser must possess the power to control the employee's employment benefit(s). This relationship may be direct as in the case of a supervisor and subordinate or it may be indirect when the harasser has the power to direct others who have authority over the victim.

## GUIDANCE

1. Sexual harassment is "unwelcome...verbal or physical conduct of a sexual nature..." Because sexual attraction may often play a role in the day-to-day social exchange between employees, the distinction between invited, uninvited-but-welcome, offensive-but-tolerated, and "rejected" sexual advances may well be difficult to discern. However, this distinction is essential because sexual conduct becomes unlawful only when:
  - (a) the conduct is unwelcome; and/or
  - (b) the charging party has clearly communicated to the offender that the conduct is unwelcome.

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2. Sexual harassment can occur between members of the same sex or opposite sex, between a manager and an employee, and by customers or other visitors to the agency.

#### WHO MAY FILE A CLAIM

1. If after clear communication to an offender that sexually harassing behavior is unwelcome, the harassing behavior does not stop, any permanent state service, probationary or other non-state service employee in, or applicant for, a position within MDHS may file a complaint of sexual harassment.
2. Individuals who are not the direct recipient of sexually harassing behavior may also have a claim of sexual harassment if the conduct of the harasser directly affects their performance and/or working conditions.

#### SEXUAL HARASSMENT STANDARDS

Sexually harassing conduct can include but is not limited to the examples below however in keeping with MDHS' "zero tolerance" policy against sexual harassment all conduct of a sexual nature is prohibited:

- uninvited letters, telephone calls, or materials of a sexual nature;
- uninvited and deliberate touching, patting, rubbing, brushing up against the body, leaning over, cornering, or pinching;
- uninvited sexually suggestive looks or gestures, whistles, catcalls, eye contact with a person's sexual body parts;
- the display of sexually explicit materials such as sexual graffiti, pictures, posters, or other graphic materials of a sexual nature;
- sexual comments or jokes communicated via e-mail, facsimile machines, or telephone voice-mail systems;
- the use of derogatory names (including names referring to body parts), derogatory or stereotypical comments.

#### RESPONSIBILITIES

- a. All employees will be informed that sexual harassment is prohibited conduct which will not be tolerated and appropriate corrective action will be taken against persons who engage in sexual harassment up to and including termination.

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b. All supervisors will discuss this Sexual Harassment Prevention Policy with all current employees and each new employee under their supervision and encourage employees to report conduct which they believe to be sexual harassment to a management official to ensure that there is not sexually harassing conduct in their area(s) of responsibility.

c. All supervisors are required to investigate complaints of sexual harassment and deal appropriately with the offending personnel. Failure to investigate gives tacit support to the harassment because the absence of sanctions encourages abusive behavior.

### MANAGEMENT RESPONSIBILITY

In an effort to eliminate incidents of sexual harassment, management officials will be held accountable for the actions of their employees. Therefore, managers are expected to set the tone for their employees by providing examples of non-offensive behavior. Management and supervisory staff will work toward an environment which is fair and free of discrimination and retaliation by neither practicing sex discrimination nor tolerating discriminatory behavior or practices.

### CLAIMANT PROCEDURE

1. An employee who wishes to complain of sexual harassment by another employee must initially communicate the facts of the complaint to one of the following:
  - (a) the employee's supervisor or division head, excluding the person accused;
  - (b) the employee's immediate supervisor's supervisor if the source of harassment is the employee's immediate supervisor;
  - (c) the Division of Human Resources designated official;
  - (d) the Deputy Executive Director; or
  - (e) the Executive Director.
2. The complaint may be communicated orally or in writing but offended employees are encouraged to present their complaint in writing to the Human Resources designated official.
3. An individual is not required by policy to make a complaint with his or her immediate supervisor first.
4. Under no circumstances should an employee report an incident to the member of management who he or she is alleging committed sexual harassment.

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DUTIES OF THE DIVISION OF HUMAN RESOURCES OFFICIAL RECEIVING THE COMPLAINT

1. Act immediately. Take every complaint seriously. Do not assume that the problem will work itself out or go away on its own.
2. Investigate and act on every complaint. This includes even those claims where victims minimize the incident(s).
3. The Division of Human Resources staff will meet with the MDHS Attorney General staff to discuss the claim and to plan an investigation as soon after the initial report as is practical but no more than 1 business day.
4. A representative from the Division of Human Resources and a representative from the Attorney General's MDHS staff will initiate a formal investigation into the claim within 3 business days from the date of the initial complaint.
5. Keep accurate records of the investigation. The person responsible for handling sexual harassment complaints shall document all phases of the investigation from receipt of the complaint through any remedial action(s) taken.
6. REGARDLESS OF OUTCOME, ALL GRIEVANCES/COMPLAINTS ALLEGING SEXUAL HARASSMENT WILL BE FORWARDED TO THE EXECUTIVE DIRECTOR.
7. In addition to the agency Human Resources Office, a designee of the Mississippi State Personnel Board will be available to advise and counsel employees on the sexual harassment grievance procedure. In such cases:
  - a. The agency Personnel Office or the designee of the State Personnel Board may be advised to assist in the filing and resolution of a grievance, or
  - b. In cases of agency head and/or widespread harassment, the employee may be advised to file an appeal directly with the Employee Appeals Board without exhausting agency level remedies.

## ACKNOWLEDGMENT

I, \_\_\_\_\_, acknowledge that I have read the Mississippi Department of Human Services Sexual Harassment Prevention Policy (AP-41 Revised November 1, 2011) and agree to abide by all requirements of the policy. I acknowledge that failure to abide by this policy could result in disciplinary action up to and including termination.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Typed or Printed

\_\_\_\_\_  
Social Security Number