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| NH DEPARTMENT OF CORRECTIONS POLICY AND PROCEDURE DIRECTIVE | CHAPTER <u>Personnel</u> STATEMENT NUMBER <u>2.39</u> |
| SUBJECT: SEXUAL HARASSMENT PROPOSER: <u>Colon Forbes, Director</u> <i>Name/Title</i> <u>Commissioner's Office 271-</u> <u>5604</u> <i>Office</i> <i>Phone #</i> | EFFECTIVE DATE <u>05/01/2012</u> REVIEW DATE <u>05/01/2013</u> SUPERSEDES PPD# <u>2.39</u> DATED <u>02/01/08</u> |
| ISSUING OFFICER: <u>William Wrenn, Commissioner</u> | DIRECTOR'S INITIALS: _____ DATE: _____ APPENDIX ATTACHED: YES _____ NO _____ |
| REFERENCE NO: See reference section on last page of PPD. | |

I. PURPOSE:

To provide guidelines to maintain a work environment free of sexual harassment.

II. APPLICABILITY:

To all Department of Corrections staff.

III. POLICY:

- A. It is the policy of the New Hampshire Department of Corrections that all employees are entitled to work in an environment free of sexual harassment. Sexual harassment has been shown to have a devastating impact on victims and co-workers and the Department is committed to preventing and eliminating such misconduct in the work place and to ensure compliance with the NH Policy on Sexual Harassment (see Attachment I: NH Policy on Sexual Harassment).
- B. Acts that constitute sexual harassment include, but are not limited to, unwelcome sexual advances, suggestions or requests for sexual favors, and other verbal or physical conduct of a sexual nature when:
1. Submission to such conduct is either explicitly or implicitly a term or condition of an individual's employment;
 2. Submission to or rejection of such conduct is used as a basis for an employment decision affecting the individual;
 3. 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.
 - a. Sexual harassment by any Department of Corrections employee, manager or supervisor, will not be tolerated. Appropriate disciplinary action will be taken against anyone who violates this policy.
 - b. All employees, managers, and supervisors, are responsible for preventing and eliminating sexual harassment in their areas and departments.

IV. PROCEDURES:

- A. **Employee Responsibility:** Any employee who believes that they are being sexually harassed at any job site should promptly take the following steps:
1. Attempt to politely but firmly confront whoever is doing the harassing. State how you feel about their actions and request that the person cease harassing you immediately.
 2. If the harassment continues, or if you believe some employment consequences may result from your confrontation, or if you feel incapable of confronting the harasser directly, go to the harasser's Supervisor or Director. If circumstances prohibit this response, report the behavior to your supervisor or directly to the Human Resource Administrator. This may be done either verbally or in writing, stating specific details of the sexually harassing behavior.
 3. If the harasser is not from your work area or is not a departmental employee, the employee harassed should report the behavior immediately to their supervisor.
- B. Complaints of sexual harassment or of retaliation for making such complaints shall be made either in writing (see attachment 2) or verbally to the Director of the Division of Personnel or the agency Human Resource Administrator, who shall then refer the complaint to the Director of State Personnel.
1. The employee has the right to file a complaint with the NH Human Rights Commission and/or the Equal Employment Opportunity Commission within 180 days from the date of the alleged harassment.
- C. **Supervisor's Responsibility:** Every supervisor is responsible for ensuring that no sexual harassment occurs within their area of authority.
1. Any complaint of sexual harassment should receive immediate attention by the complainant's supervisor and be reported to the appropriate Warden/Director.
 2. The Warden/Director must promptly report the complaint to the Human Resource Administrator.
 3. Per the NH Policy on Sexual Harassment, all supervisory employees are required to participate in annual sexual harassment training and shall meet with the employees under their authority once each year to advise them of the state's commitment to eliminate sexual harassment in the work place. (Refer to State's Policy on Sexual Harassment).
- D. **Investigations:**
1. All complaints shall be investigated with reasonable thoroughness and as expeditiously as possible by the investigator(s). Subject to the limits or requirements of the law, investigations shall be conducted with particular care to preserve the confidentiality of all involved.
 2. An investigation of the complaint will result and will include statements from the affected parties, witnesses named by the complainant and others identified as having relevant information pertinent to the complaint.
- E. **Confidentiality**
1. All parties including the complainant and the alleged harasser contacted in the course of an investigation shall be advised of the necessity of confidentiality and that any breach of confidentiality shall be treated as misconduct subject to disciplinary action.
 2. Under no circumstances will information concerning a complaint of sexual harassment be released by employees to third parties or to anyone who does not have a need to know within the Department. More specifically, information will not be released to the affected employee's family or the news media.
 3. The purpose of this provision is to protect the confidentiality of the employee who files a complaint, to encourage the reporting of any incidents of sexual harassment.
 4. Any employee found to have released confidential information relating to a sexual harassment investigation to the news media or other third party, without authorization from the Commissioner, will be subject to disciplinary action.

F. Investigations Final Report

1. Copies of the investigator's final report shall be submitted to the Director of Personnel, who shall share it with the agency Human Resource Administrator and Agency Head. The complainant and the alleged harasser shall be advised of the findings reached on the complaint. If a violation of this policy is found to have occurred, the complainant will be advised that appropriate corrective action will be taken. This is in accordance with RSA 91-A, which provides that specific personnel actions must remain confidential.

V. RETALIATION PROHIBITED:

Retaliation of any kind against anyone who is involved in the investigation or in the making of an allegation of sexual harassment is prohibited and may result in disciplinary action against the retaliator.

VI. EMPLOYEE EDUCATION AND TRAINING:

All Department of Corrections employees will be provided a copy of this policy on their first day of employment and shall be informed that they are responsible in knowing the contents of the State's Sexual Harassment Policy and during their first year of employment shall attend a training session regarding this policy/.

The Department's Bureau of Training in conjunction with each Department's training coordinator will provide annual Sexual Harassment training for all staff.

REFERENCES:

Standards for the Administration of Correctional Agencies

Second Edition Standards

2-CO-1C-11

Standards for Adult Correctional Institutions

Fourth Edition Standards

4-4056

Standards for Adult Community Residential Services

Fourth Edition Standards

4-ACRS-7E-04

Standards for Adult Probation and Parole Field Services

Third Edition Standards

3-3053

Other

NH Policy on Sexual Harassment

RSA 91-A

FORBES/pf

Attachments

THE STATE OF NEW HAMPSHIRE
POLICY ON SEXUAL HARASSMENT

I. POLICY STATEMENT

All employees of the State of New Hampshire are entitled to work in an environment free of sexually inappropriate behavior. The State of New Hampshire is committed to preventing and eliminating such misconduct in the workplace before it rises to the level of sexual harassment. To accomplish these goals, the state's policy against sexual harassment shall be clearly and regularly communicated to all state employees, both supervisory and non-supervisory, through periodic educational programs and training. In addition, this policy shall be implemented through the complaint investigation procedures set forth below. This policy shall also serve as a guideline for the investigation of any other type of discrimination prohibited by law.

All complaints of sexual harassment or retaliation shall be promptly and thoroughly investigated. Particular care shall be taken in the course of investigations to protect the confidentiality of all involved to the extent possible. Should it be determined that a state employee has violated this policy, immediate and appropriate corrective and/or disciplinary action shall be taken. This may include discharge and/or other forms of discipline. The type and extent of corrective action regarding non-employees will depend on the amount of control the agency has over the non-employee.

II. POLICY PURPOSE – STATEMENT OF PROHIBITED CONDUCT

Harassment and discrimination in employment based on sex are illegal under federal and state law and shall not be tolerated in state employment. Maintenance of a discriminatory work environment is also prohibited. Every state employee has a duty to observe the law and shall be subject to appropriate disciplinary action such as discharge for failing to do so.

SEXUAL HARASSMENT: an unwelcome sexual advance, a request for a sexual favor, or other verbal or physical conduct of a sexual nature constitutes sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for the 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 working environment. Any supervisor who threatens or suggests, either explicitly or implicitly, that an employee's refusal to submit to sexual advances or other conduct of a sexual nature will adversely affect the employee's job and/or working conditions has committed sexual harassment. Any supervisor who threatens or suggests, either explicitly or implicitly, that an employee's refusal to submit to sexual advances or other conduct of a sexual nature will adversely affect the employee's job and/or working conditions has committed sexual harassment. In order to rise to the level of legally actionable sexual harassment, conduct creating a hostile work environment must be severe or pervasive. However, it is the intent of the State to prevent conduct from escalating to the point that a hostile work environment exists. To that end, the following conduct is considered inappropriate and is prohibited from the workplace regardless of whether it rises to the level of being severe or pervasive: verbal abuse of a sexual nature, unwelcome, offensive sexual flirtation; unwelcome, graphic verbal comments about an individual's body; sexually degrading words to describe an individual; unwelcome brushing, touching, patting or pinching an individual's body; sexually explicit gestures; the display in the workplace of sexually suggestive, sexually demeaning or pornographic objects, pictures, posters or cartoons; unwelcome inquiry or comment about sexual conduct or sexual orientation or preferences; or verbal abuse consistently targeted at only one sex, even if the content of the abuse is not sexual. Sexual harassment is unlawful and hurts other employees. Whether the conduct is severe or pervasive shall be considered in determining the level of appropriate corrective action..

III. PROCEDURES FOR MAKING, INVESTIGATING AND RESOLVING SEXUAL HARASSMENT AND RETALIATION COMPLAINTS

A. COMPLAINTS

Complaints of sexual harassment or of retaliation for making such complaints shall be made, either in writing or verbally, to the Director of the Division of Personnel or the agency Human Resource Administrator, who shall then refer the complaint to the Director. Complaints may also be made

submitted to the employee's supervisor, who shall be responsible for transmitting any complaint received to the agency Human Resource Administrator. If the employee's supervisor is involved in the alleged harassment, the employee may submit the complaint to the next supervisor in their direct chain of command, who shall be responsible for transmitting any complaint received to the agency Human Resource Administrator. The Director of Personnel shall then assign as appropriate, one or two investigators. If only one investigator is assigned, the investigator shall be from outside the complainant's agency. No employee shall be required to file a complaint with a supervisor who hostile to that employee and/or who engages in conduct or has been alleged to have engaged in conduct which could be considered sexual harassment.

Any supervisor who has knowledge of sexual harassment or retaliation against a person who has reported sexual harassment, shall be required to report it to the Director of Personnel or the agency Human Resource Administrator. Failure to report may result in appropriate corrective action, which may include discipline. During the pendency of the investigation, the agency, in consultation with the Director of Personnel, shall promptly take such action as is reasonably calculated to prevent further harassment from occurring.

B. INVESTIGATIONS – CONFIDENTIALITY

All complaints shall be investigated with reasonable thoroughness and as expeditiously as possible by the investigator(s). Subject to the limits or requirements of the law, investigations shall be conducted with particular care to preserve the confidentiality of all persons involved. Only those who need to know in order to accomplish the purposes of the investigation shall be provided with the identity of the complainant and the allegations. All parties including the complainant and the alleged harasser contacted in the course of an investigation shall be advised of the necessity of confidentiality and that any breach of confidentiality shall be treated as misconduct subject to disciplinary action. Copies of the investigators' final report shall be submitted to the Director of Personnel, who shall share it with the agency Human Resource Administrator and Agency Head.

The complainant and the alleged harasser shall be advised of the findings reached on the complaint. If a violation of this policy is found to have occurred, the complainant will be advised that appropriate corrective action will be taken. This is in accordance with RSA 91-A, which provides that specific personnel actions must remain confidential. All individuals are required to be truthful, forthcoming and cooperative in connection with the complaint investigation. An investigation shall begin promptly. The investigators shall provide the Director of Personnel with progress reports every thirty days. Upon completion, a written report shall be prepared and submitted to the Director of Personnel who will share it with the agency Human Resource Administrator and the Agency Head. The agency officials and the Director of Personnel shall review the report. The agency shall make a determination as to whether or not disciplinary or corrective action is warranted.

C. RETALIATION PROHIBITED

Retaliation of any kind against anyone who is involved in the investigation of or in making an allegation of sexual harassment is prohibited and may result in disciplinary action against the retaliator, up to and including termination from employment..

IV. STATE EMPLOYEE EDUCATION AND TRAINING

The State's policy against sexual harassment shall be communicated in writing to all employees. Educational posters communicating the State's opposition to sexual harassment shall be conspicuously and continuously displayed in the workplace. Such notices shall advise employees of the right to initiate a sexual harassment complaint through the procedures outlined in this policy as well as the right to initiate complaints with the New Hampshire Commission on Human Rights and/or the Equal Employment Opportunity Commission.

Each state department or agency shall conduct periodic training to inform employees of the state's policy prohibiting sexual harassment and retaliation and the complaint and investigation procedure set forth herein. Such training shall include the following components:

- A. For all employees: as part of general orientation, each recently-hired employee shall be provided a copy of this policy and during their first year of employment shall attend a training session regarding this policy.
- B. For all supervisory employees: All supervisory personnel shall annually participate in a training session on sexual harassment and other forms of discrimination which includes information about the types of conduct which will not be tolerated in the workplace.

Revised August 2006

NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS
SEXUAL HARASSMENT COMPLAINT FORM

_____ Date

Complainant _____ Job Title _____

Work Location _____

Contact # _____

Alleged Harasser _____

Name

_____ Job Title

_____ Work Location

When did the harassment occur? _____

Date _____

Where did it occur? _____

Describe the acts or circumstances of the harassment _____

Have you reported this to anyone else? _____
Yes No

If yes, who? _____
Witness, Friend, Supervisor, etc.

Where can this person be reached? _____
