

# POLICY



# MEMORANDUM

<b>SUBJECT:</b> Statewide Sexual Harassment Prevention Policy	<b>EFFECTIVE:</b> March 1, 2019
<b>ISSUED BY:</b> DEPARTMENT OF ADMINISTRATIVE SERVICES OFFICE OF THE STATE INSPECTOR GENERAL	

## I. Introduction

While there are multiple types of workplace harassment, as Executive Order 01.14.19.02 recognizes, incidents of sexual harassment present unique challenges which warrant special emphasis and the implementation of a particularized approach to the prevention, detection and elimination of sexual harassment from the State workplace.

## II. Purpose

The State of Georgia promotes respect and dignity and does not tolerate sexual harassment in the workplace. The State is committed to providing a workplace and environment free from sexual harassment for its employees and for all persons who interact with state government. All State of Georgia employees are expected and required to interact with all persons including other employees, contractors, and customers in a professional manner that contributes to a respectful work environment free from sexual harassment.

This Policy is intended to set standards for Executive Branch agencies and employees in furtherance of this commitment and to protect individuals from sexual harassment and retaliation.

## III. Authority

Executive Order 01.14.19.02 directs the Georgia Department of Administrative Services Human Resources Administration Division (HRA), in consultation with the Executive Counsel to the Governor, to promulgate a uniform sexual harassment prevention policy that shall apply to all Executive Branch agencies.

In addition, pursuant to O.C.G.A § 45-20-4, the Georgia Department of Administrative Services is responsible for ensuring compliance with all applicable federal and state statutes and regulations concerning personnel administration and related matters. This includes, but is not limited to, the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution, U.S. Const. amend. XIV., the Equal Protection Clause of the Georgia Constitution, Ga. Const. Art. 1, Sec. I, Para. II., Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, et seq., and the Fair

Employment Practices Act of 1978, O.C.G.A §§ 45-19-20, et seq., which prohibit employment discrimination and harassment on the basis of sex.

#### **IV. Applicability**

The provisions of this Policy apply to all Executive Branch agencies. This Policy does not apply to the Board of Regents of the University System of Georgia, the Legislative Branch, or the Judicial Branch.

#### **V. Definitions**

For purposes of this Policy, the following definitions apply:

- (a) "Agency" or "Agencies" means any Executive Branch agency, authority, board, bureau, commission, council, department, office, unit, entity, or instrumentality of any kind, and others as may be designated by the Governor, or to the extent that such designation does not conflict with state law.
- (b) "Employee" is a person who is hired to provide services to the State on a regular basis in exchange for compensation and who does not provide these services as part of an independent business. "Covered Employee" is a person who is hired to provide services to an Agency on a regular basis in exchange for compensation and who does not provide these services as part of an independent business.
- (c) "Investigator" is a person designated by his or her Agency head to conduct investigations related to sexual harassment complaints or reports.
- (d) "Retaliation" is an act or omission intended to, or having the reasonably foreseeable effect of, punishing or otherwise negatively impacting an individual for submitting (or assisting with submitting) a complaint of or reporting sexual harassment, for participating in a sexual harassment investigation or proceeding, or for otherwise opposing sexual harassment.
- (e) "Sexual harassment" is physical, verbal, or non-verbal/visual conduct that is either (i) directed toward an individual or (ii) reasonably offensive to an individual because of his or her sex. Therefore, for purpose of this Policy, "Sexual harassment" includes physical, verbal, or non-verbal/visual conduct constituting:
  - 1. Unwanted sexual attention, sexual advances, requests for sexual favors, sexually explicit comments, and other conduct of an expressed or obviously implied sexual nature, by an individual who knows, or reasonably should know, that such conduct is unwanted and offensive; and

2. Conduct that is hostile, threatening, derogatory, demeaning, or abusive or intended to insult, embarrass, belittle, or humiliate an individual *because of his or her sex* – regardless of whether the underlying reason for the conduct is apparent.

This Policy purposefully prohibits all sexual harassment and is not limited to conduct that would rise to the level of unlawful conduct under state or federal anti-harassment laws.

- (f) “Supervisor” or “Manager” is a Covered Employee who has the authority to oversee, hire, fire, demote, or to effectively recommend hiring, firing, or demotion, or to make or effectively recommend other material changes to the working conditions of at least one employee.

## **VI. Prohibited Conduct**

- (a) All Covered Employees are strictly prohibited from engaging in sexual harassment as defined herein. This prohibition applies to conduct occurring in or otherwise affecting the workplace. As such, it includes conduct occurring both on and off the work premises and during or outside of work hours. While sexual harassment encompasses a wide range of conduct, some examples of conduct specifically prohibited by this Policy include, but are not limited to:

1. Denying (directly or indirectly) an employment benefit or employment-related opportunity to an employee for refusing to comply with a sexually-oriented request;
2. Threatening (directly or indirectly) to deny an employment benefit or an employment-related opportunity to an employee for refusing to comply with a sexually-oriented request;
3. Providing or promising (directly or indirectly) to provide an employment benefit or employment-related opportunity to an employee in exchange for complying with a sexually-oriented request;
4. Engaging in sexually-explicit or suggestive physical contact, including touching another employee in a way that is unwelcome or restricting an employee’s movement;
5. Displaying or transmitting pornographic or sexually-oriented materials (such as photographs, posters, cartoons, drawings, or other images) or storing or accessing such materials on State-owned equipment for personal use or consumption;
6. Engaging in indecent exposure;
7. Making obscene gestures (i.e., hand or bodily gestures);
8. Making romantic advances and persisting despite rejection of the advances;
9. Using sexually-oriented language or making sexually-related propositions, jokes, or remarks, including graphic verbal commentary about an individual’s body or clothing; and,

10. Sending sexually suggestive or obscene messages by mail, in person, by telephone, or by electronic communication.
- (b) Agencies and Covered Employees are further prohibited from engaging in retaliation against an employee for submitting (or assisting with submitting) a complaint of or reporting sexual harassment, for participating in a sexual harassment investigation or proceeding, or for otherwise opposing sexual harassment.
  - (c) A Covered Employee found to have engaged in sexual harassment and/or retaliation in violation of this Policy will be subject to corrective and/or disciplinary action, up to and including termination of employment.
  - (d) A third party found to have engaged in sexual harassment and/or retaliation may be subject to appropriate corrective action. Such action may include, but is not limited to, termination of contract, removal from Agency premises, restricted access to Agency premises and/or personnel, or notification to the third party's employer.
  - (e) Agencies shall immediately refer any reported criminal conduct to the appropriate law enforcement agency. Such referral shall not prohibit an Agency from pursuing its own investigation of the complaint or report. If criminal activity is suspected the Agency shall confer with the Office of the State Inspector General (OIG) regarding how to proceed with the Agency investigation.

## **VII. Training**

- (a) Agencies shall require all Covered Employees, including part-time, temporary, seasonal employees, and independent contractors who are regularly on Agency premises and/or regularly interact with Agency personnel to complete employee sexual harassment prevention training on an annual basis. An independent contractor may waive state-mandated training upon acknowledgement of this Policy and documentation that he/she has completed sexual harassment prevention training offered by his/her employer within the last year.
- (b) Agencies shall provide sexual harassment prevention training to all new or transferred Covered Employees within thirty (30) calendar days of hire.
- (c) Agencies shall require sexual harassment prevention training for supervisors and managers on an annual basis. New supervisors and managers must complete this training within thirty (30) calendar days of employment or promotion to a supervisory or managerial position.
- (d) Agencies shall utilize the standardized training provided by HRA to fulfill the obligations under this Policy for employee and manager training.

- (e) Agencies shall track and maintain records pursuant to the statewide record retention schedule documenting attendance of employee and manager training. Such records are subject to audit by the OIG.
- (f) Agencies shall require designated investigators (see Section IX. Investigations) to complete statewide investigator training provided by the OIG to ensure consistency in sexual harassment investigations across the State. Agencies shall require designated investigators to complete the statewide training within thirty (30) calendar days of the effective date of this Policy. Designated investigators appointed subsequent to the effective date of this Policy shall complete such training as soon as practicable.

### **VIII. Complaint Procedure**

- (a) Covered Employees who believe they have been subjected to sexual harassment or retaliation in violation of this Policy are strongly encouraged to promptly submit a complaint regarding the incident(s) to one of the following officials:
  - 1. The Covered Employee's supervisor or manager;
  - 2. The Covered Employee's division director;
  - 3. The Agency's Human Resources Director; or,
  - 4. Other Agency designee.
- (b) Covered Employees who have witnessed or otherwise have reason to believe that another employee is being or has been subjected to sexual harassment or retaliation shall promptly report the same to one of the Agency officials listed above.
- (c) To the extent that any of the above officials are the alleged harasser or retaliator, or if a Covered Employee has a reasonable fear of retaliation by one of the above officials, a Covered Employee may submit a complaint or report of sexual harassment or retaliation directly to the OIG.
- (d) While written complaints and reports of sexual harassment or retaliation are preferred, Agencies shall accept all complaints and reports, whether written, verbal, or anonymous, and will ensure that each complaint or report is promptly and appropriately investigated and resolved.
- (e) Agencies shall review all complaints and reports of sexual harassment and retaliation they receive and shall notify the OIG of the same within two (2) business days of receipt.

### **IX. Investigations**

- (a) Each Agency shall designate at least two of its employees, not of the same gender, to conduct investigations under this Policy. Agencies must ensure that employees directly supervised by designated investigators have the ability to submit complaints or reports of sexual harassment to an individual other than their direct supervisor or manager.
- (b) Agencies shall report to the OIG the names and contact information for the designated investigators and a HR contact via the OIG's online portal within seven (7) business days of the effective date of this Policy. Should a vacancy in an investigator or HR contact role occur, a replacement shall be designated and reported to the OIG within seven (7) business days of the vacancy via the OIG online portal.
- (c) Agencies shall cooperate with any determination by the OIG that a complaint or report cannot be handled internally at the Agency from which it originated. Agencies shall cooperate fully with the impartial investigator assigned by the OIG to handle the complaint or report.
- (d) The assigned investigator shall complete the investigation and issue a report of findings as promptly as possible but at least within forty-five (45) calendar days of assignment. An Agency Head may consider an extension of time due to extenuating circumstances.

**X. Resolution**

- (a) Agencies shall make a final determination, and if necessary, implement appropriate corrective or disciplinary action and remedial measures depending upon the nature of the policy violation, as soon as possible but in no event more than twenty-one (21) calendar days of receipt of the investigative report.
- (b) Agencies shall consult with and provide updates to the OIG as requested and promptly produce any information related to a sexual harassment or retaliation complaint or report or the investigation upon the OIG's request.
- (c) Agencies shall, to the extent consistent with thorough investigation and with procedures outlined in this Policy, maintain confidentiality of information reported to the Agency. Complaints and reports of sexual harassment or retaliation, investigative reports, final determinations, and other related documents will be subject to disclosure under the Open Records Act upon completion of the investigation.

**XI. Acknowledgement and Recordkeeping**

- (a) Agencies shall make this Policy available to all Covered Employees and retain documentation of each Covered Employee's acknowledgment of receipt of the Policy in his or her personnel file.

- (b) All complaints and reports, investigative documents, policy acknowledgements, and records of training attendance shall be retained pursuant to the statewide record retention schedule and as otherwise required by law pursuant to specific requests for preservation.

**Effective Date**

This Policy becomes effective March 1, 2019 and may be revised as necessary.

**Revision History**

Version	Date
1.0	March 1, 2019

**STATEWIDE SEXUAL HARASSMENT PREVENTION POLICY  
APPENDIX – INVESTIGATION PROCEDURES**

These procedures are promulgated in accordance with Executive Order 01.14.19.02, which directs the Governor’s Executive Counsel and the Office of the State Inspector General (OIG), in consultation with the Georgia Department of Administrative Services Human Resources Administration, to develop procedures regarding investigation and resolution of complaints and reports of sexual harassment.

To ensure impartial, consistent and transparent investigations, agencies should follow these guidelines to the extent practicable.

**Selection of Investigator(s)**

Upon receipt of a complaint or report of sexual harassment, an Agency must notify the OIG of the complaint or report and assign at least one of the Agency’s designated investigators to investigate the matter.

When selecting the investigator, an Agency shall consider any actual or perceived conflict, the investigator’s workload, and any other factor that could affect the investigator’s actual or perceived ability to conduct a prompt, thorough, and impartial investigation. Two investigators may be designated to investigate a complaint where deemed appropriate.

If the OIG determines that no designated investigator within an Agency should investigate a given complaint or report of sexual harassment submitted by an employee of that Agency, the OIG will appoint a designated investigator from another agency.

**Interim Protective Measures**

Upon receipt of a complaint or report of sexual harassment (or retaliation), an Agency must consider whether interim protective measures are warranted. Interim protective measures are non-disciplinary administrative actions or steps taken to ensure: (a) that the alleged conduct underlying the complaint or report does not continue and/or (b) that the employee submitting the complaint or report is protected from actual or perceived retaliation. Interim protective measures are taken prior to or during the investigation and, therefore, are not premised on any determination that the allegations of the complaint or report are true. If interim protective measures are not taken prior to commencement of the investigation, investigators should consult with Agency management/human resources if at any point during their investigation they determine that such measures are warranted.

Interim protective measures should be no broader than reasonably necessary to accomplish their purpose. Whenever possible, any such measures taken by an Agency should be designed to avoid undue hardship and minimize the burden on both the alleged victim (or employee submitting the report) and the respondent. Interim protective measures may include but are not limited to:

- Issuance of a “no contact” directive.
- Changes in employment arrangements, schedules or supervision.



- Temporary insertion of another employee into the workplace to serve as a passive monitor.
- Non-disciplinary suspension with pay; provided, however, that the alleged victim or employee reporting sexual harassment (or retaliation) should not be placed on non-disciplinary suspension with pay without his/her consent.
- Other reasonable measures designed to ensure that the alleged conduct underlying the complaint or report does not continue and/or to prevent actual or perceived retaliation.

### **Initiation of Investigation**

Upon review of the complaint or report of sexual harassment (or retaliation), the investigator shall:

- Determine the scope of the investigation (identify issues to be investigated).
- Provide copies of the Statewide Sexual Harassment Prevention Policy (“the Policy”) to the employee submitting the complaint or report and to the alleged victim (in the case of a report).
- Notify the respondent of the complaint or report and provide a copy of the Policy to him/her.
- Inform all parties of the Policy’s non-retaliation provision.

### **Secure Potential Evidence**

The investigator should take reasonable steps to secure and/or obtain any evidence potentially relevant to the complaint or report, including such items as emails, text messages or other correspondence, electronic files, voice mail and other audio recordings, surveillance video, previous complaints, etc.

### **Prepare for and Conduct Interviews**

The investigator should identify witnesses to be interviewed, in addition to the complainant and respondent. Witnesses may include:

- Those identified by either party.
- Employees or former employees, including supervisors/managers or subordinates of the complainant and respondent.
- Vendors or non-employees.

If a complainant requests to be interviewed by an investigator of a particular gender, that request shall be accommodated whenever possible.

When conducting interviews, the designated investigator should:

- Explain the purpose of the interview to each witness and that he/she is not an advocate or representative for either the complainant or the respondent.
- Explain zero tolerance for retaliation against witnesses and encourage witnesses to report any alleged retaliation he/she experiences as a result of participating in investigation.
- If witness is a current employee, explain that he/she is required to cooperate with the investigation.

- Explain the importance of preserving the integrity of the investigation by not discussing interview with others.

If one or more of the acts underlying the sexual harassment (or retaliation) complaint or report is the subject of a criminal investigation, or the act or acts alleged in the complaint or report could potentially expose the respondent to criminal liability, the Agency shall confer with the Office of the State Inspector General (OIG) regarding how to proceed with the Agency investigation.

### **Investigative Report**

The designated investigator shall complete the investigation and issue a written report of factual findings and conclusions as promptly as possible, but at least within forty-five (45) calendar days of assignment. If unable to complete an investigation and/or the report within forty-five (45) days, the investigator shall notify Agency leadership, as well as the complainant and respondent, and provide a progress update(s) as appropriate.

Each investigation should conclude with one or an appropriate combination of the following determinations:

- **Without Merit.** The investigation revealed that the act(s) complained of either did not occur or was not committed by the respondent.
- **Exonerated.** The investigation revealed that the act(s) complained of did occur, but that it does not constitute a violation(s) of the Statewide Sexual Harassment Prevention Policy.
- **Not Sustained.** The investigation failed to reveal evidence sufficient to support a conclusion whether the act(s) complained of occurred or did not occur or whether the act(s) was committed by the respondent.
- **Sustained.** The investigation revealed sufficient evidence to support the conclusion that the act(s) complained of occurred, that it was committed by the respondent, and that it constitutes a violation(s) of the Statewide Sexual Harassment Prevention Policy.

The investigative report shall be shared with the complainant and the respondent. The parties should be given at least three (3) business days to submit a written response to the investigative report. The investigator will review and consider any response(s) received and determine whether any additional information provided therein warrants continuing the investigation or making any modifications to the investigative report; otherwise, the investigator shall finalize the investigative report and submit it to Agency leadership without further action. If an external investigator is designated by the OIG, the investigator shall coordinate with the OIG regarding delivery of the investigative report.

Upon closing an investigation, the Agency shall report to the OIG the closing date and the conclusion of the investigation.

### **Resolution of Complaint or Report**

Agencies shall consult with and provide updates to the OIG as requested and promptly produce any information or documentation related to a sexual harassment (or retaliation) complaint or report or the

investigation into same, including the investigative report, any evidence collected or identified by the investigator, and any written responses to the report submitted by the parties, upon the OIG's request.

Revision History

Version	Date
1.0	March 1, 2019