

 <b>Corrections and Community Supervision</b>  <b>DIRECTIVE</b>	TITLE		NO. 2602
	<b>Employee Discrimination Complaints</b>		DATE 08/13/2019
SUPERSEDES DIR# 2602 Dtd. 05/05/16	DISTRIBUTION A	PAGES PAGE 1 OF 5	DATE LAST REVISED
REFERENCES (Include but are not limited to) See Section II; ACA Expected Practices 4-APPFS-3E-06, 2-1050-1, 2-CI-6C-4, 2-CI-6D-2; Directives #2010, #2601, #2607, #4960; Employees' Manual	APPROVING AUTHORITY 		

## I. POLICY

- A. The Department of Corrections and Community Supervision (DOCCS), in the furtherance of diversity and inclusion, and its Affirmative Action and Equal Employment Opportunity Program, shall not discriminate against any person as it relates to terms and conditions of employment because of race, color, national origin, creed/religion, age, disability, military status, arrest/criminal conviction record, marital/familial status, predisposing genetic characteristics, pregnancy and related conditions, domestic violence victim status, gender/sex, sexual harassment, sexual orientation, gender identity, gender expression and/or retaliation, where not job related, in all of its programs and services to achieve full and fair participation.
- In order to ensure the successful implementation of this policy, it is the expectation of the Department that all staff will cooperate fully with the investigatory processes pursuant to Executive Order No. 187, "Ensuring Diversity and Inclusion and Combating Harassment and Discrimination in the Workplace"; and "Equal Employment Opportunity in New York State – Rights and Responsibilities – A Handbook for New York State Employees." Effective December 1, 2018, all complaints of protected class employment discrimination will be investigated by the Governor's Office of Employee Relations (GOER) Anti-Discrimination Investigations Division (ADID). It is also the expectation of the Department that no staff member will interfere, hinder, obstruct, or tamper with an investigation.
- B. DOCCS' policy applies to all employees, applicants for employment, volunteers, interns (whether paid or unpaid), contractors, and persons conducting business, regardless of immigration status, with DOCCS. For purposes of this directive, the term "employees" refers to this collective group.
- C. Sexual Harassment is a form of discrimination and an unlawful employment practice. DOCCS has a zero-tolerance policy with respect to sexual harassment in the workplace and provides no latitude for the instigation of sexual harassment. Every employee is entitled to work in an environment free from sexual harassment and its negative economic, psychological, and physical effects. Allowing sexual harassment to go unchecked in the workplace creates significant costs to the State in both human and financial resources, including: the replacement of personnel who leave their jobs, increased use of health benefits due to emotional and physical stress, absenteeism, and decline in work productivity.

**II. BASIS:** This policy is based upon requirements of the New York State Human Rights Law; the mandates of Title VI and VII of the Federal Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act; Article 15-A of the Executive Law; Departmental Directive #2601, "Equal Employment Opportunity and Diversity & Inclusion Program"; "Equal Employment Opportunity in New York State - Rights and Responsibilities - A Handbook for Employees of New York State Agencies"; and Executive Order #187. This policy furthers the Department's commitment to creating a work environment free of bias, discrimination, and harassment, particularly sexual harassment and related employee misconduct.

### **III. REDRESS**

- A. Any employee, applicant for employment, volunteer, intern (whether paid or unpaid), contractor, or person conducting business with DOCCS, regardless of immigration status; who believes that, based on his or her real or perceived membership in one of the above-listed protected classes (see Section I), they are being harassed or discriminated against may file a complaint with any supervisor or by completing a complaint form located on the GOER website at: <http://goer.ny.gov/new-york-state-discrimination-complaint-form>. A link to this complaint form is also located at [www.doccs.ny.gov](http://www.doccs.ny.gov). This form may be submitted electronically to GOER or printed out and mailed directly to GOER at the address listed on the form. Additionally, DOCCS has representatives on-site in Central Office, employed by GOER ADID, who can assist in filing a complaint. GOER Investigators may be contacted by phone at 518-485-5806 or by email at: [antidiscrimination@goer.ny.gov](mailto:antidiscrimination@goer.ny.gov).

Any employee who believes that they are being retaliated against for having participated in a legally-protected action related to a complaint of discrimination may file a complaint with any supervisor, Superintendent, Regional Director, Bureau Chief, Division Head, or a representative of GOER ADID (for more information, see Section IV-D). The supervisor will be required to immediately transmit the complaint to the Superintendent, Regional Director, Bureau Chief, or Division Head, who will forward the complaint to GOER ADID. Any employee who is aware of any act of protected-class based harassment/discrimination or retaliation against another employee related to a complaint of harassment/discrimination shall notify a supervisor so that appropriate action may be taken. The supervisor will be required to immediately notify the Superintendent, Regional Director, Bureau Chief, or Division Head regarding the complaint, who will forward the complaint to GOER ADID. The complaint must involve matters of protected-class discrimination, including all forms of sexual harassment, retaliation, or bias against minority/women-owned businesses in accordance with the New York State Human Rights Law, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, Title VI and VII of the Civil Rights Act of 1964, and Article 15-A of the Executive Law.

- B. The GOER complaint process does not address employee grievances otherwise covered by contracts with employee organizations.
- C. The alleged conduct must have a nexus (link) between the alleged action and a protected class category as it relates to harassment, discrimination, and/or retaliation.
- D. "Title VII is not designed to serve as a code of civility to govern workplace professionalism."

- E. All complaints of discrimination, harassment, or retaliation received by GOER will be reviewed and assessed to determine the appropriate jurisdiction.

#### IV. PROCEDURE

- A. Internal Complaints: Any employee who believes that they are being harassed, sexually harassed, experiencing discrimination or retaliation, or has witnessed a violation of this policy should immediately report that violation to his or her supervisor. Complaints are not required to be in writing; however, it is strongly recommended that employees complete a complaint form located on the GOER website.
- B. Supervisors Who Receive Reports of Complaints
1. Supervisors and managers are expected to ensure that employees, as well as themselves, adhere to this policy. Any supervisor who receives a report or complaint of alleged violations, whether verbal or written, shall immediately report the same to GOER ADID and not attempt to resolve the matter on their own. The supervisor shall provide GOER ADID with the complaint or, in the absence of a complaint form, provide a memorandum including: a description of the complaint incident(s) using exact quotations, where possible; the date, time, location, and manner in which the complaint was received; and the names and titles of any witnesses who were present.
  2. All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior, or for any reason suspect that sexual harassment is occurring, **are required** to report such suspected sexual harassment to the GOER Liaison for DOCCS.
  3. In addition to being subject to discipline if they are engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected violations of this policy, including sexual harassment or otherwise knowingly allowing sexual harassment to continue.
  4. Supervisors and managers will also be subject to discipline for engaging in any retaliation.
  5. If the complaint involves allegations of physical contact between employees, immediate and appropriate steps should be taken to address the matter and the Office of Special Investigations should be promptly contacted.
  6. Pending an investigation by GOER ADID, the Superintendent, Regional Director, Bureau Chief, or Division Head should assess the allegations being reported and take immediate and reasonable action to eliminate the possibility of further alleged incidents of harassment, discrimination, or retaliation. "Cease and Desist" orders or "Conduct in the Workplace" memos may be issued to any party directly or indirectly involved in the alleged complaint. The assessment should include a review of various Agency directives and policies on harassment, discrimination, and retaliation, as well as the Employees' Manual, specifically Section 2, "Conduct and Activities of Employees." This directive and the following directives shall be included as part of this review:
    - Directive #2601, "Equal Employment Opportunity and Diversity & Inclusion Program"

- Directive #2607, "Reasonable Accommodations for Employees and Applicants with Disabilities"
- Directive #4960, "Workplace Violence Prevention Program"

Any violation of the Employees' Manual will be handled as such, and corrective action will be taken by supervisory staff.

### C. External Complaints

1. A copy of any complaint of harassment, discrimination, or retaliation received by a facility Superintendent, Regional Director, Bureau Chief, or Central Office Division Head via another agency, such as the NYS Division of Human Rights or the U.S. Equal Employment Opportunity Commission, shall be promptly forwarded to the Office of Counsel and GOER. The Superintendent, Regional Director, Bureau Chief, or Division Head shall include any supporting documentation relative to the complaint.
2. A GOER Affirmative Action Administrator will investigate the allegations in the complaint and submit a Draft Investigation Report to the Workforce Development Unit (WDU), as outlined within GOER policy.
3. The external agency will make a determination regarding the case and notify necessary parties.

### D. Retaliation

1. Allegations of retaliation that fall within the purview of the GOER complaint process must be based on participation in a legally-covered action related to a discrimination complaint. A protected action includes, but is not limited to, previously complaining of discrimination or participation in a GOER investigation as a witness. A retaliation complaint should include the type, date, and location of protected action, as well as (1) a description of the behavior that is the subject of the retaliation complaint, and (2) how it is related to the complainant's previous participation in a protected action.
2. GOER will notify the complainant, during an investigation concerning allegations of harassment, discrimination, or retaliation, that he or she may file a subsequent complaint for any additional allegations of harassment, discrimination, or retaliation. Concurrently, the party accused of any subsequent allegation of harassment, discrimination, or retaliation shall be notified that any such action must immediately cease and desist. If underlying allegations of discrimination are investigated and deemed to be unsubstantiated, retaliation against any individual for filing a complaint is a separate and distinct violation of law and Departmental policies. Any conduct that could be construed as retaliation will be fully investigated.

## V. **CONFIDENTIALITY**

During the complaint process, DOCCS and GOER require the full cooperation of all parties involved. This process is confidential and the utmost discretion must be exercised regarding the use of information obtained. All parties involved in a complaint shall refrain from disclosing information about the case to anyone who does not have a legitimate need or right to know.

Disclosure of records or information is governed by the Department's Employees' Manual, specifically Section 4, "Department Records and Statements," and Directive #2010, "FOIL/Access to Departmental Records." The privacy of all parties involved in a complaint investigation shall be strictly respected insofar as it does not interfere with the Department's legal obligation to investigate allegations of misconduct, to take corrective action, or as otherwise provided by law and Departmental policy. Failure by a participant to comply with the mandates of this Section may result in administrative action.

Copies of records related to a GOER complaint shall not be placed in either the complainant's or the respondent's Personnel History File unless there are specific instructions recommending formal counseling or discipline.

## **VI. DISCIPLINE**

- A. Discrimination, harassment, and/or retaliation are considered forms of employee misconduct. Individuals found guilty of such conduct may be subject to appropriate disciplinary action up to and including termination.
- B. Any supervisor or managerial staff who knowingly allows discrimination/harassment and/or sexual harassment to continue may also be subject to appropriate disciplinary action up to and including termination.