



State of Delaware
Department of
Human Resources

Report on the State of Delaware's
Executive Branch Sexual Harassment and Assault Prevention
Policies, Practices and Procedures

March 2018

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EXECUTIVE SUMMARY

At the request of Governor John Carney, the Department of Human Resources (DHR) analyzed the State of Delaware's policies, practices, and procedures related to sexual harassment and sexual assault. The Governor also requested that DHR provide recommendations for updating and improving current practices to ensure that all state offices are safe and healthy environments for our employees.

This report provides a summary of that analysis and offers recommendations for improvements.

The policies, practices and procedures reviewed apply to the Office of the Governor and the State of Delaware's 16 Executive Branch agencies:

- Department of Agriculture
- Department of Corrections
- Department of Education
- Department of Finance
- Department of Health and Social Services
- Delaware State Housing Authority
- Department of Human Resources
- Department of Labor
- Office of Management and Budget
- Delaware National Guard
- Department of Natural Resources and Environmental Control
- Department of Safety and Homeland Security
- Department of Services for Children, Youth and Their Families
- Department of State
- Department of Technology and Information
- Department of Transportation

When defining sexual harassment, the State of Delaware (State) models the Equal Employment Opportunity Commission's (EEOC) definition of [sexual harassment](#):

“Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interfering with an individual's work performance, or creates an intimidating, hostile, or offensive working environment.”

Under the EEOC definition of sexual harassment, the victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex. The harasser can be the victim's supervisor, a manager in another area, a co-worker or someone who is not an employee, such as a client, contractor or customer.

Recommendations

Review of the State of Delaware’s Executive Branch policies, practices, and procedures identified the need to revise the state’s current anti-discrimination and sexual harassment policies; streamline the monitoring and reporting process; and mandate consistent sexual harassment awareness and prevention training across state government.

Specific recommendations include:

- a. **Policy Revisions:** Consolidate the [*Policy on Anti-Discrimination, Workplace Harassment and Retaliation and the Policy Sexual Harassment Prevention*](#) to create one concise policy. This inclusive policy will outline a clear complaint process, necessary training, reporting, sexual harassment complaint tracking separately, and investigation requirements.
- b. **Centralized Reporting/Tracking:** Develop or identify and secure a centralized tracking system to streamline reporting and tracking of complaints and investigations of harassment from filing to resolution. This one-stop-shop system will have the ability to create, manage, track, and report on allegations of harassment.
- c. **Performance Plans:** Employee performance plans to include accountability for each employee to support a respectful workplace, free of discrimination and sexual harassment and sexual assault. The plans will set clear and specific performance expectations for each employee.
- d. **Training:** Provide mandatory training to all new and existing employees on anti-discrimination, retaliation, bullying, sexual harassment, and sexual assault, with periodic updates.
- e. **Agency Accountability:** Execute Service Level Agreements with Executive Branch agencies to establish clear expectations, for training, monitoring and tracking performance to support a respectful workplace.
- f. **Communications Toolkit:** Implement a communication plan to educate employees on the State’s sexual harassment policies, practices, procedures, and training. The plan should include marketing materials, talking points, and fact sheets, surveys, and evaluations.
- g. **Employee Relations Helpdesk:** Enhance DHR’s helpdesk and continue to provide information and receive employee questions and complaints.
- h. **Status Report:** To ensure accountability, DHR will publicly report to the Governor on the status of these recommendations.

The report includes completion dates for each recommendation identified.

AUTHORITY PROHIBITING SEXUAL HARASSMENT and SEXUAL ASSAULT

The State of Delaware’s sexual harassment and sexual assault policies, practices, and procedures within the Executive Branch agencies are governed by Federal Law, State Law, Merit Rules, Collective Bargaining Agreements, and Executive Orders. Each expresses intolerance for sexual harassment and sexual assault, includes protocol for addressing complaints, and provides guidance to employees and management for reporting and processing claims.

Federal Law¹

[Title VII of the Civil Rights Act](#), the primary federal anti-discrimination law, prohibits employers from discriminating against employees on the basis of sex, race, color, national origin, and religion. Executive Branch employees alleging harassment may file formal charges with the [EEOC](#) or the [Delaware Department of Labor](#) (DOL), per Fair Employment Practices Agency² (FEPA). Complaints must be filed within 300 days under state and federal law. DHR’s Division of Labor Relations and Employment Practices is responsible for representing Executive Branch agencies. DHR extends this availability for representation to non-Executive Branch agencies.

State Law¹

The State of Delaware has enacted many statutes prohibiting discrimination. Failing to adhere to these laws can result in complaints of harassment, including sexual harassment and sexual assault. Specifically, 29 Del.C §5953 Discrimination Prohibited reads: “No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or be in any way favored or discriminated against with respect to employment in the classified service because of political or religious opinions or affiliations, sexual orientation, gender identity, sex or race.”

Merit Rules

State Merit Rules establish and maintain standards for non-discrimination and provide Merit employees the ability to file formal grievances based upon sexual harassment and sexual assault claims.

Specifically, [Merit Rule 2.1](#) states, “Discrimination in any human resource action covered by these rules or Merit system law because of race, color, national origin, sex, age, disability, sexual orientation, or other non-merit factors is prohibited.” The Merit System [grievance procedure](#) has three steps plus an appeal to the [Merit Employee Relations Board](#) (MERB). If not satisfied with the outcome at Steps 1 and 2 at the agency level, the employee may appeal to DHR for a Step 3

¹ See the Appendix for a list of federal and state statutes relating to, among others, sexual harassment and sexual assault which are generally filed under Title VII.

² Fair Employment Practices Agency or FEPA is a work-share arrangement. When state or local laws are substantially similar to the antidiscrimination statutes enforced by EEOC, EEOC is authorized by law to use the services of these FEPAs. The acronym FEPA refers to a state or local agency that accepts and resolves charges of discrimination by virtue of a state or local law prohibiting the unlawful employment practice alleged.

hearing. If the employee is still not satisfied with the outcome, the grievance may be appealed to the MERB. The following outlines the Merit Rules grievance procedures:

18.6 Step 1: Grievant shall file, within 14 calendar days of the date of the grievance matter or the date they could reasonably be expected to have knowledge of the grievance matter, a written grievance which details the complaint and relief sought with their immediate supervisor. The following shall occur within 14 calendar days of receipt of the grievance: the parties shall meet and discuss the grievance and the Step 1 supervisor shall issue a written reply.

18.7 Step 2: Any appeal shall be filed in writing to the top agency personnel official or representative within 7 calendar days of receipt of the reply. The following shall occur within 30 calendar days of the receipt of the appeal: the designated management official and the employee shall meet and discuss the grievance, and the designated management official shall issue a written response.

18.8 Step 3: Any appeal shall be filed in writing to the Director within 14 calendar days of receipt of the Step 2 reply. This appeal shall include copies of the written grievance and responses from the previous steps. The parties and the Director (or designee) may agree to meet and attempt an informal resolution of the grievance, and/or the Director (or designee) shall hear the grievance and issue a written decision with 45 calendar days of the appeal's receipt. The Step 3 decision is final and binding upon agency management.

18.9 If the grievance has not been settled, the grievant may present, within 20 calendar days of receipt of the Step 3 decision or of the date of the informal meeting, whichever is later, a written appeal to the Merit Employee Relations Board (MERB) for final disposition according to 29 Del.C. §5931 and MERB procedures.

Merit Rule grievances may be filed concurrently with a charge of discrimination with a DOL/EEOC filing.

Collective Bargaining Agreements

A Collective Bargaining Agreement (CBA) is a legal contract between an employer and organized labor unit. CBAs may provide union-represented employees a process for filing complaints based upon sexual harassment and sexual assault. The State of Delaware has over 50 CBAs, 45 of these contain non-discrimination clauses which prohibit sexual harassment and sexual assault.

The grievance process in CBAs is similar to that found in the Merit Rules. There are several steps to this process starting with the filing of a grievance in the employee's agency. Although specific to each CBA, most begin with a grievance to the Supervisor at Step 1, followed by appeal to the Division Director or designee at Step 2, followed by appeal to the head of the agency or designee at Step 3. If the grievance is not resolved, the grievance can be appealed to DHR. The DHR Labor Relations staff will attempt to mediate a resolution to the grievance. If an employee is unsatisfied with the outcome, the Union may file for Arbitration. Grievances may also be filed concurrently with a DOL/EEOC filing.

Executive Orders³

Executive Orders (EOs) have been created to direct agency leadership to foster a work atmosphere free of sexual harassment and sexual assault. These EOs direct that policy be created to prevent sexual harassment and sexual assault. Two EOs are particularly pertinent to this report:

[EO6](#), approved by Governor Carney, on March 1, 2017 and made effective April 1, 2017 directs an update of the statewide anti-discrimination policies. As noted, “EO6 is intended to modify, and not rescind Paragraphs 13 through 15 of EO8, approved by Governor Markell and dated August 11, 2009.”

[EO8](#), approved by Governor Markell, on August 11, 2009, includes, a complaint process for claims of discrimination.

Governor Carney’s EO6 declared the State of Delaware’s commitment to promoting equal employment opportunities and workplaces free of unlawful discrimination and directed the creation of a uniform policy by no later than April 1, 2017. The policy titled [Policy on Anti-Discrimination, Workplace Harassment and Retaliation](#) became effective in April 2017 and was revised in June 2017. The policy provides complaint procedures for employees alleging workplace harassment, retaliation sexual harassment and sexual assault and incorporates, by reference, the State of Delaware’s [Policy on Sexual Harassment Prevention](#).

Portions of Governor Markell’s EO8 are still in effect and require Executive Branch agencies to submit annual Affirmative Action (AA) reports to the Governor by September 15. Among other requirements, the AA report provides a summary of discrimination complaints; however, the type of discrimination is not identified. In EO8, complaints are categorized as:

- Informal Complaint, which is defined as an internal complaint that is not filed under an agency’s written complaint procedure or the Merit Rule;
- Formal Complaint, which is defined as a Merit Rule grievance under MR 2.1 or under a formal agency complaint procedure;
- External Complaint, which is defined as a complaint filed with the Equal Employment Opportunity Commission or the Delaware Department of Labor.

Statewide Policies, Practices, and Procedures³

The current principal documents prohibiting harassment, including sexual harassment and sexual assault, are the *Policy on Anti-Discrimination, Workplace Harassment and Retaliation* and the *Policy on Sexual Harassment Prevention*. The former resulted directly from the Governor’s issuance of EO6 and was implemented on April 1, 2017. The latter policy, focusing on prevention of sexual harassment specifically, was last revised in October 2005.

The complaint procedures for both policies are as follows:

³ See Appendix for EOs and policies. Effective July 1, 2017, responsibilities of the Office of Management and Budget related to human resources transferred to the Department of Human Resources.

Policy on Anti-Discrimination, Workplace Harassment and Retaliation Procedures:

An employee who believes s/he has been discriminated against, harassed or subjected to retaliation on any basis set forth in this policy should utilize the following procedure:

- Promptly report the incident and details related to the complaint to the department's Human Resources Manager, their Division Director, their supervisor, or any individual designated by the department to receive such reports.
Under no circumstances is the individual alleging workplace discrimination, harassment or retaliation required to file a complaint with the alleged harasser.
- Any supervisor or manager receiving a complaint must notify their Human Resources Manager or other individual that has been designated by the department to receive such complaints within one (1) business day of receipt of the complaint. Supervisory personnel who allow workplace discrimination, harassment or retaliation to continue or fail to take appropriate action upon learning of such conduct will be subject to corrective action. Such corrective action includes, but is not limited to, mandatory referral to EAP, training, disciplinary action, up to and including termination.
- The department Human Resources Manager must also be notified, in addition to any other individual designated by the department to receive such complaints. If your agency does not have a Human Resources Manager, if the complaint crosses agencies, or if the complaint involves a Cabinet Secretary or Deputy Secretary, the Office of Management and Budget shall be notified, and a determination will be made as to the appropriate individual(s) to investigate the complaint.
- The Human Resources Manager or designee shall conduct a neutral and thorough investigation of reported workplace discrimination complaints. All employees are expected to cooperate with administrative investigations. Failure to cooperate in an administrative investigation may result in disciplinary action, up to and including termination of employment. Any employee found to have knowingly and willfully filed false charges of discrimination, harassment or retaliation will be subject to appropriate disciplinary action.
- Objectives of the investigation include whether the complaint can be substantiated on the basis of facts, recommending appropriate action and suggestions for preventing future occurrences.
- The relevant parties will be informed if the complaint has been substantiated or unsubstantiated. If the complaint is substantiated, the department will take appropriate action recommended by Agency Human Resources or designee and/or the Office of Management and Budget.

Corrective action may include, but is not limited to, mandatory participation in counseling, training, disciplinary action, up to and including termination. Disciplinary action(s) shall be processed in accordance with Merit System Rules and/or collective bargaining agreements, where applicable.

Policy on Sexual Harassment Prevention Procedures:

If you are the object of unwelcome sexual conduct, tell the person that you find the behavior unwelcome and ask him or her to stop. If you cannot talk to the person, report the person to your supervisor or another appropriate person (e.g., the other individual's supervisor, Division Director, Human Resources, etc.) giving details relating to the complaint. This supervisor or manager will tell the person that you find the behavior unwelcome and ask him or her to stop. If the behavior continues, the supervisor and employee should report the person through the procedure outlined below.

Any employee who believes s/he has been the victim of sexual harassment has a right to file a complaint. The reporting procedure is as follows:

1. Immediately report the incident to your supervisor or another appropriate person (e.g., the other individual's supervisor, Division Director, etc.) giving details relating to the complaint.
2. Any supervisor or manager receiving a complaint must immediately notify his/her Division Director, Human Resources Manager or whoever has been designated to receive such complaints by your Cabinet Secretary/Agency Head.
3. If your agency has a Human Resources Manager, that individual must also be notified in addition to any individual designated in #2. The Human Resources Manager shall take immediate and appropriate steps to investigate the complaint. If your agency does not have a Human Resources Manager or if the complaint crosses agency lines, then the Office of Management and Budget shall be notified, and a determination will be made as to the appropriate individual(s) to investigate the complaint.
4. Following investigation of the complaint, the validity of the charge will be determined.
5. If charges are determined to be valid, the parties will be informed that the applicable Division Director, Cabinet Secretary or Agency Head will take action against the harasser to prevent recurrence in the future (the precise action should not be divulged to the complainant.) If charges are determined to be valid, the offender shall face immediate and appropriate disciplinary action, recommended by Human Resources and/or the Office of Management and Budget and imposed by the appropriate Division Director, Cabinet Secretary or Agency Head. Disciplinary action(s) shall be processed in accordance with Merit System Rules/Union Contract where applicable.
6. If charges are determined to be invalid or highly questionable based on related facts, the individual investigating the charge will document accordingly and relay to the applicable Division Director, Cabinet Secretary or Agency Head. If charges are determined to be invalid, the parties and the applicable Division Director, Cabinet Secretary or Agency Head will be informed of the decision based on the investigation and related facts and notified that no further action will be taken.

7. If the charges are found to be inconclusive, then the Cabinet Secretary or Agency Head will consult with the Director of the Office of Management and Budget or designee per the appropriate course of action.
8. The individual(s) named in #3, along with the applicable Division Director, Cabinet Secretary or Agency Head (or their designee), will hold a private meeting with each party involved to advise of the results of the investigation. A follow-up interview will be held with the complainant approximately two (2) to four (4) weeks after the decision to ensure no reoccurrence and/or retaliation.
9. The individual(s) named in #3 will inform the Cabinet Secretary/Agency Head and the applicable Division Director of the results of all harassment complaints.
10. Note: Any employee found to have knowingly and willfully filed false charges of sexual harassment will be subject to appropriate disciplinary action.

TRAINING

Training is available to Executive Branch employees and is offered in a variety of formats:

Online: The Delaware Learning Center offers two online courses related harassment prevention:

Sexual Harassment Prevention: What is sexual harassment? How do you recognize it and prevent it from occurring? Where is the line drawn between acceptable social behavior and sexual harassment? This program is designed to answer these questions and more. Besides providing an awareness of the legal definition and different types of sexual harassment, the program will cover legal background, federal guidelines, as well as the State of Delaware's policy on sexual harassment.

Policy on Anti-Discrimination, Workplace Harassment and Retaliation: This policy provides uniform procedures for the Executive Branch of the State of Delaware outlining procedures related to anti-discrimination, harassment retaliation in the workplace including the method of reporting and resolving complaints. This policy requires an acknowledgement that you have read, understand, and agree to abide by the policy and procedures set forth.

Employee Assistance Program: The State's Employee Assistance Program, delivered by Human Management Services (HMS), offers instructor-led and online training to state agencies related to respectful workplace, bullying, and harassment prevention.

Classroom Setting: Traditional training may be available in a classroom setting is available. Some state agencies offer respect and harassment prevention training through internal or external resources.

Sexual harassment prevention training has been available since 2006. Since that time, approximately 9,000 employees have completed sexual harassment prevention training. In 2017,

harassment training became mandatory for all employees in compliance with the policy that resulted from Governor Carney's EO6.

All Executive Branch employees are required to read and acknowledge the *Policy on Anti-Discrimination, Workplace Harassment and Retaliation*, which includes, by reference, the *Policy On Sexual Harassment Prevention* within 90 days from date of hire. Of the approximate 14,000 Executive Branch employees (including casual/seasonal employees), over 12,500 completed the acknowledgement of the *Policy on Anti-Discrimination, Workplace Harassment and Retaliation* process between June 12, 2017 and January 7, 2018.

Policy on Anti-Discrimination, Workplace Harassment and Retaliation
Acknowledgement Completion

Department	# Employees
Agriculture, Department of	118
Correction, Department of	2095
Education, Department of	91
Finance, Department of	219
Governor's Office	19
Health & Social Services, Department of	3583
Housing Authority, Delaware State	7
Human Resources, Department of	86
Labor, Department of	453
Management and Budget, Office	240
National Guard, Delaware	1
Natural Resources & Environmental Control, Department of	805
Safety and Homeland Security	1231
Services for Children, Youth & Their Families, Department of	1095
State, Department of	510
Technology & Information, Department of	319
Transportation, Department of	1670
Grand Total	12,542.00

ANALYSIS, GAPS AND OPPORTUNITIES

The State of Delaware employs a large and diverse workforce of over 14,000 in 16 Executive Branch agencies with each agency managing its own human resources functions. DHR's analysis of the State of Delaware's policies, practices, procedures, and training related to sexual harassment and sexual assault include a review of the Ivy Group's report titled [*Independent Study of Diversity and Inclusion Related Policies, Procedures and Organizational Structure*](#) (Ivy Report); research regarding efficiencies, uniformity, and equitable practices resulting from centralizing human resource functions; and an external review of several states to identify best practices. It is important to note that the information obtained during this research phase changes daily as states continue to analyze their own policies.

DHR's analysis identifies existing gaps as well as opportunities to improve the State of Delaware's practices including: ensuring uniform policies, practices, and procedures; dedicating staff to receive reports of complaints; tracking investigations; enhancing leadership involvement; improving communications; and providing mandatory training for all employees.

Uniform Policies, Practices, and Procedures

Executive Branch agencies employ and manage their own workforce. DHR develops policies centrally and distributes policy to agencies for implementation. Historically, agencies have augmented DHR policy with procedures specific to their agency, resulting in inconsistently applied and enforced policies, practices, and procedures. The result of this decentralized approach, documented in the Ivy Report, leads to additional inconsistencies related to communications, investigations, and training.

The centralization of human resources functions across the Executive Branch will greatly assist in administering statewide policies in a consistent and uniform manner.

Although the *Policy on Anti-Discrimination, Workplace Harassment and Retaliation* was developed to provide a uniform policy and complaint process, the *Policy on Sexual Harassment Prevention* was not rescinded, therefore two policies currently exist, with similar, but slightly different procedures. These policies must be consolidated to create one concise policy.

Dedicated Staff for Receiving and Reporting Complaints

Trained staff must be available to provide resources and information to all parties involved in a complaint. DHR aims to reinforce a culture that encourages the reporting of complaints by increasing confidence in the process, fairness, and balance in the outcomes. The infrastructure for achieving these goals requires further analysis.

Investigating and Monitoring Complaints

Feedback from the Ivy Report reflects the need for consistent investigations across the Executive Branch. Training must be provided on the manner in which complaints are investigated. These instructions must be transparent not only to supervisors but also to the complainant. Elements key

to investigations are: responsiveness, confidentiality, evidence, interviews, closure, communication to the complainant.

Leadership Involvement and Performance Evaluation

Senior leaders are tasked with tremendous responsibilities. Despite these extensive demands, fostering a workplace culture that prevents harassment and supports employees must be a priority.

Current employee performance plans and evaluations do not contain a *respect for workplace* requirement. Performance plans and evaluations must be revised to include expectations for accountability requiring every employee to take ownership of fostering an inclusive and safe workplace.

The climate and culture of a workplace is set by the tone of leadership. Leadership in all Executive Branch departments must consistently and regularly emphasize their support and commitment to an inclusive and respectful workplace, report on the status of harassment prevention, routinely publicize resources and processes available to employees, communicate expectations, and hold employees at all levels accountable.

Communication Plan

Creating long-term change to prevent harassment in the workplace requires engaging employees at all levels. A statewide communications plan will help to ensure that all employees receive consistent communications. This must be designed to ensure agencies have the necessary tools to routinely, effectively, and consistently reinforce policies and procedures, expectations on behavior, reporting methods, and the importance of a respectful work environment. In addition, administering a routine survey will help gauge the employee climate and identify areas for improvement. The survey will act as a barometer on the effectiveness of leadership efforts and on harassment policies and procedures.

Training – Employees and Management

Employees must receive consistent, robust, and routine training on prevention of harassment. Present challenges include a decentralized structure. Centralization and onboarding of new hires will eliminate this challenge; however, there must be a design for monitoring and ensuring that all Executive Branch employees receive initial training and refresher training in a timely fashion.

The quality of the current training varies from passive training, involving reading a document, to more active training using more-effective live instructor-led sessions. Training must be linked to a broader communication strategy to reinforce and engage employees as to a respectful workplace.

One of the most pervasive concerns facing employees that experience harassment is a fear of retaliation. To prevent retaliation, the State must better train employees in recognizing and preventing it.

RECOMMENDATIONS

The Department of Human Resources was created July 1, 2017 to address issues important to State employees including the delivery of human resource services, encouraging workplace diversity, ensuring uniform, fair and consistent policies and enforcement of policies. DHR has the responsibility, in coordination with the Administration and the Executive Branch agencies, to create and sustain a work environment that is free from discrimination, retaliation, bullying, sexual harassment, and sexual assault.

1. The **Department of Human Resources** Action Plan includes the following:

- a. **Policy Revisions:** Consolidate the *Policy on Anti-Discrimination, Workplace Harassment and Retaliation* and the *Policy Sexual Harassment Prevention* to create one concise policy. This inclusive policy will outline a clear complaint process, necessary training, reporting, sexual harassment complaint tracking separately, and investigation requirements.

A draft of the revised policy to be submitted for Governor Carney's review by March 15, 2018.

- b. **Centralized Reporting/Tracking:** Develop or identify and secure a centralized tracking system to streamline reporting and tracking of complaints and investigations of harassment from filing to resolution. This one-stop-shop system will have the ability to create, manage, track, and report on allegations of harassment.

An overview of centralized tracking system options to be completed by April 1, 2018.

- c. **Performance Plans:** Employee performance plans to include accountability for each employee to support a respectful workplace, free of discrimination and sexual harassment and sexual assault. The plans will set clear and specific performance expectations for each employee.

Performance plans to be updated within six months following the implementation of human resources centralization.

- d. **Training:** Provide mandatory training to all new and existing employees on anti-discrimination, retaliation, bullying, sexual harassment, and sexual assault, with periodic updates.

Current training processes will be updated to reflect mandatory training requirements by December 31, 2018.

- e. **Agency Accountability:** Execute Service Level Agreements with Executive Branch agencies to establish clear expectations, for training, monitoring and tracking performance to support a respectful workplace.

Service Level Agreements to be in place by July 1, 2018.

- f. **Communications Toolkit:** Implement a communication plan to educate employees on the State's sexual harassment policies, practices, procedures, and training. The plan should include marketing materials, talking points, and fact sheets, surveys, and evaluations.

Communication Plan to implemented and updated to coincide with each phase of the Action Plan.

- g. **Employee Relations Helpdesk:** Enhance DHR's helpdesk and continue to provide information and receive employee questions and complaints.

The functions and responsibilities of this centralized helpdesk will consistently be reviewed and updated as necessary.

- h. **Status Report:** To ensure accountability, DHR will publicly report to the Governor on the status of these recommendations.

Submit a public report to the Governor on the status of DHR's Action Plan no later than December 31, 2018.

2. The Administration:

- a. Require that all employees in the Executive Branch are trained on all mandatory policies and procedures.
- b. Review DHR's proposed revisions to EO6 and the recommendation to rescind EO8 in its entirety.
- c. Implement performance measures for Cabinet Member performance plans to foster a workplace free of discrimination, retaliation, bullying, sexual harassment, and sexual assault.
- d. Request legislation requiring lobbyists, vendors and contractors doing business with the State to submit or certify that they have received anti-discrimination, retaliation, bullying, sexual harassment, and sexual assault prevention policies and training.

3. The Legislature:

- a. Draft legislation to require Merit Rule grievances initially be heard (at Step 1 and/or Step 2) in the Merit employee's non-Executive Branch home agency. Currently, a non-Executive Branch agency may allow the grievance timeframe to lapse without actually hearing the grievance.
- b. Draft legislation requiring lobbyists, vendors and contractors doing business with the State to submit or certify that they have anti-discrimination, retaliation, bullying, sexual harassment, and sexual assault prevention policies and training.

CONCLUSION

The State of Delaware has dedicated, talented and hard-working employees. The State has a responsibility to provide all employees with a work environment free from discrimination, retaliation, bullying, sexual harassment, and sexual assault. Achieving this goal requires clearly drafted policies, ongoing training, and performance expectations for all employees.

As research reflects, other states are also reviewing their human resources infrastructure to meet these objectives. DHR has already begun to centralize the State's human resources functions to provide uniform policies, practices, and procedures in order to achieve the finest workplace environment.

DHR looks forward to working with Governor Carney, his Cabinet, and the General Assembly to ensure that all State employees have a safe and respectful work environment.

APPENDIX

Equal Employment Opportunity (EEO)/Affirmative Action (AA) Compliance List	
Effective Date: 2-2018	Supersedes: 10-1-2016 9-24-2014
Application: All State Agencies, All State Employees	
Authority: Federal and State Laws	

This list was compiled to help state agencies comply with equal employment opportunity and affirmative action responsibilities in compliance with Executive Order No. 8. The Executive Order continues the State's commitment to EEO standards and best practices of human resource management in the areas of diversifying the workforce, prohibiting discrimination in hiring and employment practices, and maintain an inclusive work atmosphere of mutual respect and understanding.

Protected Classes (*numbered by corresponding statute*):

- race ^{1,5, 11,23,24}
- color ^{1, 5, 11,23}
- religion ^{1, 5, 11,23}
- national origin ^{1, 5, 11,23}
- age ^{2, 11,23}
- sex ^{1, 11,18,23, 24}
- mental or physical disability ^{7,11,17,19,21,22,23}
- marital status ^{4,11,18,20,23}
- sexual orientation ^{11,20,23, 24}
- genetic information ^{6,11,23}
- gender identity or expression ^{11,16,23, 24}
- veteran or military status ^{3, 4, 11,17,23}
- victims of domestic violence, sexual assault, and/or stalking ^{11,14,23}
- reproductive health decisions ^{11,12,23}
- family responsibilities ^{11,13,23}

	FEDERAL	
1	Title VII of the Civil Rights Act of 1964 as amended by the Equal Employment Opportunity Act of 1972 and 1991. 42 U.S.C. 1971, 1983, 2000e-2h.	Prohibits discrimination in employment because of race, color, religion, gender, or national origin. It covers all terms and conditions of employment, and may subject an employer to liability for discriminatory acts that occur in the workplace. Strengthens and improves Federal civil rights laws to provide for damages in cases of intentional employment discrimination and unlawful harassment in the workplace and to clarify provisions regarding disparate impact actions.
2	Age Discrimination in Employment Act of 1967, as amended. 29 U.S.C. 621, <u>et seq.</u>	Prohibits discrimination based on age against individuals who are age 40 and above.
3	Vietnam Era Veterans Readjustment Assistance Act of 1974. 38 U.S.C. 219, <u>et seq.</u>	Requires federal government contractors and subcontractors over \$10,000 to take affirmative action to employ and advance in employment Veterans with disabilities and Veterans of the Vietnam Era.
4	Family Medical Leave Act of 1993 as amended 29 U.S.C. 2601, <u>et seq.</u>	Entitles an eligible employee to take up to a total of 12 workweeks off during a 12-month period for the birth/adoption of a child or to care for a spouse or immediate family member with a serious health condition or when the employee is unable to work because of a serious health condition or for Military Family Leave to address certain qualifying exigencies. And entitles an eligible employee to take up to a total of 26 workweeks off for Military Family Leave to care for a covered service member during a single 12-month period. Employers covered by the law are required to maintain any pre-existing group health coverage and once the leave period is concluded, to reinstate the employee to the same or an equivalent job with equivalent employment benefits, pay, and other terms and conditions of employment.
5	Federal Executive Order discrimination in 11246 of 1965, as amended by Executive Order 11375 of 1967.11478 or 2014	Prohibits federal contractors and sub-contractors from discriminating in areas of employment, selection, promotion, compensation, granting of benefits, training, Or employment opportunities because of race, color, religion, national origin, or gender.

6	Genetic Information Nondiscrimination Act (GINA) - PUBLIC LAW 110–233 MAY 21, 2008	<i>Title II of the Genetic Information Nondiscrimination Act of 2008, which prohibits genetic information discrimination in employment, took effect on November 21, 2009.</i> Under Title II of the Genetic Information Nondiscrimination Act (GINA), it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts acquisition of genetic information by employers and other entities covered by Title II, and strictly limits the disclosure of genetic information. The EEOC enforces Title II of GINA (dealing with 55genetic discrimination in employment). The Departments of Labor, Health and Human Services, and the Treasury have responsibility for issuing regulations for Title I of GINA, which addresses the use of genetic information in health insurance.
7	Americans With Disabilities Act of 1990 (ADA) and Amendments Act (ADAAA), 42 U.S.C. 12191, <u>et seq.</u>	Makes it unlawful to discriminate in employment against a qualified individual with a disability. The ADA also outlaws discrimination against individuals with disabilities in state and local government services, public accommodations, transportation, and telecommunications.
STATE		
8	Title 29 Delaware Code Section 9006D and 9009D (HB 4) 149 th General Assembly	Creation of the Delaware Department of Human Resources and the establishment of the Division of Diversity and Inclusion and the Office of Women’s Advancement and Advocacy.
9	Title 19 Delaware Code Section 709B (HS 1 to HB1) 149 th General Assembly	Prohibits employers from inquiring into an applicant’s compensation history. An applicant may voluntarily disclose the information. An employer is permitted to seek and confirm such information after an offer, including compensation, has been negotiated, made, and accepted.
10	Title 19 Delaware Code Section 713 (SB 214) 148 th General Assembly	Increases the amount of time provided to a person seeking to file a charge of employment discrimination from 120 days to 300 days, making Delaware’s statute of limitation consistent with the statute of limitations under federal discrimination law.
11	Executive Order Number 6 of 2017 and Anti-Discrimination, Workplace Harassment and Retaliation Policy	Establishment of a uniform statewide Anti-Discrimination, Workplace Harassment and Retaliation Policy. The policy outlines practice with regard to anti-discrimination, harassment, and retaliation in the workplace and the method of reporting and resolving complaints.
12	Title 19 Delaware Code Section 710 (HB 316) 148 th General Assembly(effective December 30, 2016)	Adds reproductive health decisions to protected class through Title 19, Chapter 7 of the Delaware Code.

13	Title 19 Delaware Code Section 710 (HB 317) 148 th General Assembly (effective December 30, 2016)	Adds family responsibilities to prohibited practices of discrimination.
14	Title 19 Delaware Code Section 710 (5) (HB 4) 148 th General Assembly	This law makes it unlawful employment practice for any employer to discriminate based on surviving sexual assault, domestic violence, and/or stalking. Employers must provide reasonable accommodations, which may include repurposing accrued leave originally designated for a different purpose.
15	Title 19 Delaware Code Section 711 – “Ban the Box” (House Bill 167) 147 th General Assembly	This law makes it an unlawful employment practice for any public employer to inquire into or consider the criminal record, criminal history or credit history or score of an applicant for employment during initial application, including the first interview. Certain agency exceptions are stated in the Act. An applicant may be excluded from employment based on criteria stated in the Act as the employer may inquire into or consider an applicant’s criminal record, criminal history, credit history or credit score after completion of the first interview. The exclusion must be consistent with business necessity and the factors provided by statute must be taken into consideration.
16	Title 19 Delaware Code Section 711 – Gender Identity Protection Act (Senate Bill 97) 147 th General Assembly	This Act adds the term "gender identity" to the already-existing list of prohibited practices of discrimination and hate crimes. As such, this Act would forbid discrimination against a person on the basis of gender identity in housing, employment, public works contracting, public accommodations, and insurance, and it would provide for increased punishment of a person who intentionally selects the victim of a crime because of the victim’s gender identity.
17	Title 19 Delaware Code Sections 740-745 – Employment First Act (HB 319) 146 th General Assembly	All persons with disabilities, including veterans with service-connected disabilities, have a right to the opportunity for competitive employment. To promote the realization of this right, this bill creates the Employment First Act. The Act requires that state agencies that provide services and support to persons with disabilities shall consider, as their first option, competitive employment in an integrated setting for persons with disabilities. The Act does not require an employer to give preference to hiring persons with disabilities.
18	Title 19 Delaware Code Sections 710 & 711 – Same Gender Civil Marriage (House Bill 75) 146 th General Assembly	This Act repeals the prohibition on same-gender marriage that was enacted in 1996. The effect of this Act is to allow two individuals, whether of the same or different genders, to marry if otherwise eligible.

19	House Concurrent Resolution 29 – Employment for Individuals who are Visually Impaired or Blind – 146 th General Assembly	This concurrent resolution recognizes the Division for the Visually Impaired and promotes equal employment opportunity in hiring by the State of Delaware for persons who are blind or visually impaired.
20	Title 13 Delaware Code Section 201 & 202 – Civil Union and Equality Act of 2011 – (Senate Bill 30) 146 th General Assembly	The Civil Union and Equality Act of 2011 creates a legal relationship of civil unions between same sex couples in the State of Delaware. The Act further recognizes legal unions between two persons of the same sex entered into jurisdictions outside of Delaware provided that such unions and the parties thereto meet Delaware eligibility requirements to enter into a civil union in the State of Delaware. Persons who enter into a lawful civil union in Delaware on or after January 1, 2012 or whose legal union is recognized under Delaware law on or after January 1, 2012, will have the same rights, benefits, protections, and responsibilities as married persons under Delaware law.
21	Title 19 Delaware Code Section 724 – Unlawful Employment Practices Act	Prohibits discrimination practices by employers, employment agencies, labor unions in hiring, training, promotion, and all other areas of employment practices against qualified individuals with disabilities.
22	Title 29 Delaware Code Section 5904 (A) – Agency Aid Program	Created the Agency Aide Program and the Selective Placement Program, which provide employment opportunities for persons with physical or mental disabilities. These programs enable Human Resource Management to employ qualified citizens with disabilities for work in various State agencies, without competitive examination or without listing, on an eligibility list. It further allows those individuals eventually to become employees of that agency.
23	Executive Order Number 8 of 2009	Continues the Governor's Council on Equal Employment Opportunity, directs state agencies to pursue equal employment and promotional opportunity for all state employees and applicants, and includes a strong recruitment and retention component. The Council is responsible for holding agencies accountable for implementing equal opportunity programs and assessing their compliance with the order.
24	Title 29 Section 5953 – Discrimination Prohibited	Prohibits discrimination with respect to employment in the classified service because of political or religious opinions or affiliations, sexual orientation, gender identity, sex or race.

STATE OF DELAWARE



EXECUTIVE DEPARTMENT DOVER

EXECUTIVE ORDER NUMBER SIX

TO: Heads Of All State Departments and Agencies

RE: Establishing a Uniform Statewide Anti-Discrimination Policy

WHEREAS, the State of Delaware is committed to promoting equal employment opportunities and workplaces free of unlawful discrimination; and

WHEREAS, following past directives, each Department and Agency within the Executive Branch (collectively “Executive Branch Agencies”) implemented its own internal policy and procedures for addressing complaints of discrimination; and

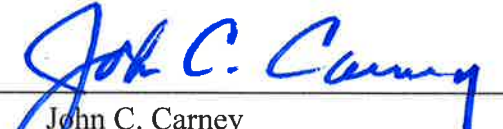
WHEREAS, a uniform policy and procedures will permit standardized training of State personnel and will otherwise allow more effective and efficient promotion of equal employment opportunities.

NOW, THEREFORE, I, JOHN C. CARNEY, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER the following:

1. The Human Resources Management Division of the State of Delaware Office of Management and Budget (“HRM”) shall update its Statewide anti-discrimination policies, in accordance with State and Federal laws, into a single, uniform policy, which will become the controlling standard for all Executive Branch Agencies.
2. This uniform policy shall include, but not be limited to:
 - a. Statewide anti-discrimination guidelines to be followed by each Executive Branch Agency.
 - b. Complaint procedures to be followed by each Executive Branch Agency.
3. Prior to implementation the uniform policy shall be sent to and reviewed by each Executive Branch Agency’s human resources manager for input and feedback.
4. HRM shall implement the uniform policy no later than April 1, 2017.
5. The uniform policy shall be distributed by each Agency/Department official to its employees, contractors, and casual/seasonal employees. Each Agency/Department official shall take all necessary steps to implement the uniform policy.
6. This Executive Order is intended to modify, and not rescind, Paragraphs 13 through 15 of Executive Order Number Eight, approved by Governor Markell and dated August 11, 2009. To the extent there are any inconsistencies between the terms of this

Executive Order and Governor Markell's Executive Order Number Eight, this Executive Order shall supersede.

APPROVED this 1st date of March 2017.



John C. Carney
Governor

ATTEST:



Secretary of State



POLICY ON ANTI-DISCRIMINATION, WORKPLACE HARASSMENT AND RETALIATION

Policy Number: P17-001

Effective Date: 04/01/2017

Supersedes: State Agency Discrimination Complaint Policy and Procedure

Application: All Executive Branch State Employees

Merit Rule: 2.1

Authority: Executive Order #6

Revised: 6/2017

PURPOSE AND SCOPE

To establish a policy with uniform procedures for the Executive Branch of the State of Delaware outlining its position and practice with regard to anti-discrimination, harassment and retaliation in the workplace and to outline the method of reporting and resolving complaints.

DEFINITIONS

Protected Class: This policy prohibits unequal and unlawful treatment of an individual on the basis of a person's race, color, national origin, gender, age (40 and over), sex, pregnancy, marital status, sexual orientation, gender identity or expression, religion, creed, disability, or veteran's status, and victims of domestic violence, sexual assault and/or stalking, family responsibility, or any other category protected by state and/or federal civil rights laws.

Prohibited Activities: Any unwelcome verbal, written, physical conduct, or electronic communication that either degrades or shows hostility or aversion towards a person because of that person's [protected class](#).

Harassment: Unwelcome conduct that is based on an individual's [protected class](#). Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating or hostile.

Retaliation: Any act of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against an individual or individuals that has an adverse employment action for exercising rights under this policy.

Third-Party Individuals: These individuals include contractors, volunteers and other third-party, non-state employees. Any discrimination, harassment, or retaliation claims made by a third-party, must be addressed through the third-party's employer and/or DDOL or EEOC.

POLICY

The State of Delaware is firmly committed to the principle of providing a working environment free of discrimination and harassment based on a person's [protected class](#) or any other category protected by applicable state and/or federal law.

State employees are strictly prohibited from engaging in any form of discrimination, harassment or retaliation. Examples of prohibited behaviors may include, but are not limited to:

- Discriminating against an individual with regard to terms and conditions of employment because of being in one or more of the protected classes listed above;
- Engaging in threatening, intimidating, or hostile acts toward another individual in the workplace because the individual belongs to, or is associated with, any of the protected classes listed above;
- Displaying or distributing material (including electronic communications) in the work place that contains derogatory or demeaning language or images pertaining to any of the protected classes listed above;
- Unwelcome touching or near-touching, which can encompass leaning over, cornering, hugging, pinching, sexual innuendos, teasing and other sexual talk such as jokes, personal inquiries, persistent unwanted attention and sexist remarks; (See also [Sexual Harassment Prevention Policy](#))
- Slurs, jokes or remarks that are derogatory, demeaning, threatening or suggestive to a class of persons or a particular person or that promote stereotypes of a protected class of persons listed above;

The State will not tolerate such conduct by State employees or any third-party individual on its worksite. Any employee, who after a complete and impartial investigation, is found to have engaged in such conduct will be subject to appropriate disciplinary action, up to and including termination.

No employee shall be subjected to retaliation for reporting, testifying, assisting or participating in any manner in an investigation, proceeding or hearing resulting from a complaint of discriminatory or harassing behavior. No employee shall intimidate, threaten, coerce or discriminate against any individual for the purpose of interfering with that person's right to file a complaint of harassment or discrimination.

State agencies shall provide all new employees with training on this policy and procedure within a reasonable period of time after the employee's first date of employment with the State, not to exceed the first 90 days of employment. Refresher training shall be provided to all employees, including supervisors, within a reasonable period of time, but not to exceed every three (3) years. All state agencies shall also provide supervisors with training on a regular basis regarding their obligations and duties under this policy and procedure. The Office of Management and Budget may assign mandatory training in furtherance of this policy.

While the State of Delaware is committed to the principles embodied in this policy, it is not intended to state contractual terms and does not constitute a contract between the State and its employees.

Furthermore, this statement constitutes only the policy of the State of Delaware. A finding violation of this policy does not mean that the conduct violates state and/or federal laws.

PROCEDURE

An employee who believes s/he has been discriminated against, harassed or subjected to retaliation on any basis set forth in this policy should utilize the following procedures:

- Promptly report the incident and details related to the complaint to the department's Human Resources Manager, their Division Director, their supervisor, or any individual designated by the department to receive such reports.

Under no circumstances is the individual alleging workplace discrimination, harassment or retaliation required to file a complaint with the alleged harasser.

- Any supervisor or manager receiving a complaint must notify their Human Resources Manager or other individual that has been designated by the department to receive such complaints within one (1) business day of receipt of the complaint.

Supervisory personnel who allow workplace discrimination, harassment or retaliation to continue or fail to take appropriate action upon learning of such conduct will be subject to corrective action. Such corrective action includes, but is not limited to, mandatory referral to EAP, training, disciplinary action, up to and including termination.

- The department Human Resources Manager must also be notified, in addition to any other individual designated by the department to receive such complaints. If your agency does not have a Human Resources Manager, if the complaint crosses agencies, or if the complaint involves a Cabinet Secretary or Deputy Secretary, the Office of Management and Budget shall be notified, and a determination will be made as to the appropriate individual(s) to investigate the complaint.
- The Human Resources Manager or designee shall conduct a neutral and thorough investigation of reported workplace discrimination complaints. All employees are expected to cooperate with administrative investigations. Failure to cooperate in an administrative investigation may result in disciplinary action, up to and including termination of employment.

Any employee found to have knowingly and willfully filed false charges of discrimination, harassment or retaliation will be subject to appropriate disciplinary action.

- Objectives of the investigation include whether the complaint can be substantiated on the basis of facts, recommending appropriate action and suggestions for preventing future occurrences.
- The relevant parties will be informed if the complaint has been substantiated or unsubstantiated. If the complaint is substantiated, the department will take appropriate action recommended by Agency Human Resources or designee and/or the Office of Management and Budget.

Corrective action may include, but is not limited to, mandatory participation in counseling, training, disciplinary action, up to and including termination. Disciplinary action(s) shall be processed in accordance with Merit System Rules and/or collective bargaining agreements, where applicable.

Making a complaint pursuant to this policy will not extend the timeframes, prescribed by statute, by which any person must file a formal complaint through the Merit Rules, the Department of Labor's (DDOL) Office of Anti-Discrimination, the Equal Employment Opportunity Commission (EEOC), a Collective Bargaining Agreement, if applicable, or any court or regulatory body.

The statute of limitations for filing a charge with DDOL or EEOC under State and Federal law is (300) days from the date of the discriminatory action. Making a complaint pursuant to this policy will not extend the time by which any person must file a formal complaint with the Delaware Department of Labor, the Federal Equal Employment Opportunity Commission. No provision of this policy is intended to create any individual right or legal cause of action that does not already exist under state or federal law.

Questions regarding this policy may be directed to Human Resource Management, Employee Relations (302)739-4195.

Executive Order Eight - Our continuing commitment to equal opportunity hiring standards and best practices of human resources management in the executive branch

TO: Heads Of All State Departments And Agencies

RE: Our Continuing Commitment To Equal Opportunity Hiring Standards And Best Practices Of Human Resources Management In The Executive Branch

WHEREAS, Delaware law, executive order and/or Merit Rules prohibit discrimination in state employment based on gender, race, color, religion, national origin, age, marital status, disability, sexual orientation, veteran status; or genetic information; and

WHEREAS, the State of Delaware is committed to providing equal employment opportunities to all Delawareans; and

WHEREAS, all Delawareans are indebted to the servicemen and servicewomen of our armed forces, and the State of Delaware is committed to honoring that service by ensuring equal employment opportunities to all members of the Armed Forces, Reserves, National Guard and veterans; and

WHEREAS, the State of Delaware remains committed to maintaining a high quality workforce that draws upon the talents of our diverse citizenry to operate our government effectively and efficiently for the benefit of the State's citizens; and

WHEREAS, the State of Delaware has succeeded over the years in diversifying its workforce; and

WHEREAS, the State of Delaware must continue vigorously to promote equal employment opportunity and workplaces free of unlawful or improper discrimination; and

WHEREAS, the State of Delaware can achieve equal opportunity and a diverse workforce only by continuing and improving an equal employment opportunity program that enforces fair recruitment, hiring and promotional practices throughout state government.

NOW, THEREFORE, I, JACK A. MARKELL, by virtue of the authority vested in me as Governor of the State of Delaware, do hereby DECLARE and ORDER that:

1. The State of Delaware's commitment to equal employment opportunity is hereby affirmed and heads of each Department and Agency within the Executive Branch (collectively "Executive Branch Agencies") are directed to pursue diligently the recruitment and promotion of qualified applicants from diverse backgrounds and to be vigilant in complying with the laws prohibiting discrimination in employment.

2. The work atmosphere in Executive Branch Agencies shall be one that fosters mutual respect and understanding among persons of different gender, race, color, religion, national origin, age, marital status, disability, sexual orientation, gender identity or expression, or military or veteran status.

3. Paragraphs 1 and 2 of this Executive Order are directives from the Governor to Executive Branch Agencies. They will be vigorously enforced by the Governor. However, they are not intended to and shall not create independent causes of action for or on behalf of persons who allege a lack of compliance with those paragraphs.

4. The Governor's Council on Equal Employment Opportunity (hereinafter "Council") is continued. The function of the Council shall be to assist in the monitoring and evaluation of the Executive Branch Agencies' implementation of and compliance with this Executive Order, and to provide advice and recommendations to the Director of the Office of Management & Budget and the Governor.

a. The Council shall consist of eight members. One half of the Council's members shall be members of the Delaware Human Relations Commission, who shall be nominated by the Chairperson of the Human Relations Commission and appointed by the Governor. The remainder of the Council's members shall be appointed by the Governor. All members of the Council shall serve at the pleasure of the Governor. The Chairperson of the Council shall be appointed by the Governor from among the Council's members, and shall serve as Chairperson at the pleasure of the Governor.

b. The Council shall receive staff support from Human Resource Management and the Office of Human Relations. The Division of Vocational Rehabilitation shall advise the Council on matters regarding persons with disabilities.

c. The Council shall furnish each year a written annual report to the Governor and the Director of the Office of Management & Budget on the progress being made in improving the diversity of the State's workforce. Further, the Council should include in its report recommendations to advance cohesion and understanding among current employees,

address the effects of implicit bias, and to foster an environment of inclusion. In its report, the Council shall recommend any additional action which, in the Council's judgment, should be undertaken. Such report shall be available to the public.

5. On behalf of the Office of Management & Budget, Human Resource Management shall maintain the central managerial role over all diversity and equal employment matters in the Executive Branch and shall accept overall responsibility for the implementation and management of the policies and procedures set forth in this Order. The Director of Human Resource Management shall:

- a. establish the duties and responsibilities of the Equal Employment Opportunity/Affirmative Action Administrator and of Agency equal employment officers ("EEO officers");
- b. prepare and submit an annual Executive Department Affirmative Action plan, to include short and long term strategies;
- c. hold Agencies accountable for their implementation of this Order;
- d. act as the State of Delaware's liaison with the EEOC for federal reporting requirements; and
- e. communicate and coordinate diversity and equal opportunity initiatives across Agencies.

AFFIRMATIVE ACTION PLANS

6. The head of each Executive Branch Agency shall maintain an Affirmative Action Plan, which shall be filed annually with Human Resource Management and the Council on or before September 15.

7. Each Affirmative Action Plan referred to in paragraph 6 shall be in a form prescribed by Human Resource Management to ensure compliance with federal laws, state laws, and this Order. Each plan shall include, but shall not be limited to, the following provisions:

- a. A specific statement of goals and objectives designed to assure equal employment opportunities in hiring and promotion and to eliminate any unlawful discrimination in Agency employment;
- b. A specific statement of action steps designed to address any documented under-representation of minorities or women in the Agency as compared to Delaware's labor pool. Such action steps shall include:

(i.) Specific proposals for recruiting minorities and women for employment in the Agency to the extent that they are underrepresented in the Agency when compared to the relevant statewide labor market.

(ii.) Specific proposals for assuring that hiring practices are conducted consistently with the objectives of this Order.

(iii.) Specific proposals for assuring that all promotional opportunities are offered in a manner consistent with this Order.

(iv.) Specific proposals for staff participation in training programs on interview techniques and acceptable hiring practices.

(v.) Specific proposals for employee participation in career enhancement programs and seminars.

(vi.) Specific statements regarding the applicability of the following outreach, training, and accountability measures to the Agency's recruitment and retention efforts:

A. Job fairs

B. College and university outreach

C. Professional group outreach

D. Advertising

E. Employee recognition programs

F. Formal and informal mentoring

G. Internal leadership programs

H. Participation in statewide programs

I. Professional development for existing staff, including tuition reimbursement programs, attendance at conferences and seminars, and internal training opportunities.

J. Inclusion of recruitment and retention of women and minorities in Agency's strategic and staff plans.

K. Statements of Agency policy

L. Creation or continuation of Agency diversity committees.

M. Specific efforts of top leadership within the Agency

N. Internal communications efforts within the Agency

c. A designation of the EEO officer within the Agency to carry out diversity and equal employment opportunity functions for the Executive Branch Agency.

8. Each Executive Branch Agency shall make available a summary or full copy of its Affirmative Action Plan to any employee upon request.

RECRUITMENT AND PROMOTION OF A DIVERSE WORKFORCE

9. To support the recruitment of a diverse workforce, the Director of Human Resource Management or designee shall:

a. Assist Executive Branch Agencies in updating their Affirmative Action Plans in accordance with federal guidelines;

b. Develop, coordinate, and implement professional recruiting efforts throughout State government designed to increase the number of qualified women and minority candidates for State employment for positions and opportunities where women and minorities are under-represented. Human Resource Management shall develop a statewide directory of organizations that can serve as resources for the identification of qualified women and minority candidates in particular fields, so that these organizations can be notified regarding specific vacant positions;

c. Review and revise employment hiring procedures and Merit Rules to ensure a selection process that is fair, non-discriminatory and equitable;

d. Require Agencies filling merit positions at paygrade 15 and above to use an interview team of at least three members. Such a team should be diverse in its composition;

e. Work with the State Manager of Training and Development to facilitate Statewide training and technical assistance programs to ensure compliance with State and Federal equal opportunity laws and this Order, and to inculcate effective recruitment and career development procedures; and

f. Work with the EEO officers and personnel officers of the various Executive Branch Agencies to review job classifications within those Agencies, and the qualifications of the employees of such Agencies, with a view toward eliminating any artificial barriers to hiring and promotion, and targeting appropriate employee career development, mentoring and workforce development plans.

REPORTING REQUIREMENTS

10. Each Executive Branch Agency shall:

a. Be held accountable for compliance with this Order by including the measures and statements required in this Order in each manager's performance plan and each relevant Agency strategic plan;

b. Retain a record of all applicants who voluntarily divulge protected class information. The information required shall be prescribed by Human Resource Management and, to the extent practicable, shall be in a format consistent with the terminology and categories used in federal EEO standard forms;

c. Ask each terminating employee to participate in an exit interview to determine the reasons for that employee's termination and retain records of such interviews; and

d. Report to Human Resource Management information requested by Human Resource Management concerning the Agency's Affirmative Action Plan.

11. Human Resource Management shall:

a. Maintain a comprehensive, statewide, on-line, user-friendly system that allows continuous monitoring of the diversity of the State's workforce across all paygrades;

b. Work with the Council to ensure the publication of clear information regarding the composition of the State's workforce;

- c. Submit a quarterly report to the Council; and
- d. Assist the Council in preparing its annual report.

PUBLIC ACCOUNTABILITY

12. The Council, with the assistance of Human Resource Management and the Human Relations Commission staff, shall:

- a. Establish a schedule for conducting an intensive review of each Executive Branch Agency in need of review based on criteria established by the Council, to assess compliance with the terms of this Executive Order, the Agency's Affirmative Action Plan, and equal opportunity laws. The review criteria shall be used to determine which Agencies will appear before the Council in priority order. The review shall involve an in-depth consideration of Agency promotion, hiring and recruiting practices. Each reviewed Agency shall receive a detailed report identifying those practices and policies of the Agency that are constructive and those practices and policies which need improvement or elimination, with specific recommendations for the Agency to consider. The Council shall incorporate a summary of the results of these reviews in its annual report, as required by paragraph 4 of this Order. From these annual reviews, Human Resource Management shall submit to each Executive Branch Agency a guidance memorandum identifying successful practices used by the reviewed Agencies to increase the diversity of their workforce and examples of policies and practices that hindered the State's attempt to create a more diverse workforce.
- b. Publish, as a part of its annual report, an overall report on the composition of the State's workforce and the State's effectiveness in complying with equal employment laws and this Order.

COMPLAINTS

13. Each Agency shall include in its Affirmative Action Plan a description of a mechanism or complaint procedure to permit and encourage employees to discuss any problems resulting from alleged bias, discrimination, lack of equal employment opportunity or any similar matters with appropriate division or Agency supervisory personnel. The procedure shall provide for the lodging of employee complaints and for a response to be made within a specified reasonable period of time. Employees shall be advised of their right to file a formal complaint with the Office of Anti-

Discrimination of the Department of Labor. Employees shall receive such assistance with the complaint as may be requested from their Agency EEO officer.

14. Human Resource Management shall:

- a. Post a public notice, in conspicuous locations or bulletin boards, of all cabinet Departments, major offices, divisions or Agencies which shall affirm the State's commitment to equal opportunity and advise all State employees and applicants for State employment that any complaints of discrimination should be promptly reported to the State Equal Employment Opportunity/Affirmative Action Program Administrator and the Office of Anti-Discrimination of the Department of Labor; and
- b. Provide on the application form for state employment a statement of the state's commitment to equal employment opportunity and instructions as to how complaints of discrimination may be reported.

15. The complaint process for employment discrimination cases shall fall into two categories: informal and formal.

- a. An informal complaint is filed with Human Resource Management by written or oral communication with the State Equal Employment Opportunity/Affirmative Action Program Administrator requesting the State Equal Employment Opportunity/Affirmative Action Program Administrator to attempt to facilitate resolution of the complaint. Human Resource Management will determine whether or not the complaint appears to fall within the jurisdiction of the Office of Anti-Discrimination of the Department of Labor and may require a formal charge of discrimination within the time limits prescribed by statute.
- b. The State Equal Employment Opportunity/Affirmative Action Program Administrator will inquire into such cases by working through the designated Agency EEO officer and appropriate management staff, as deemed appropriate by the Cabinet Secretary. Based on the determination, the State Equal Employment Opportunity/Affirmative Action Program Administrator will respond in writing to the complainant. For allegations of violations to Title VII of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act of 1967 as amended, Vietnam Era Veterans Readjustment Assistance Act of 1979, the Americans with Disabilities Act of 1990, or Title 19 of the Delaware Code relating to discrimination in employment, the complainant will be advised and/or referred to the Office of Anti-Discrimination of the Department of Labor for investigation into filing a formal complaint

even if a resolution is reached through Human Resource Management. Nothing in this Order shall be construed to bar mediation of a complaint by the State Human Relations Commission; however, such mediation shall not affect or in any way toll relevant time limitations.

REPEAL OF PREVIOUS EXECUTIVE ORDERS

16. Executive Order No. 81, dated February 1, 2006, and Executive Order No. 86, dated May 2, 2006, are hereby rescinded.

APPLICABILITY OF EXECUTIVE ORDER

17. This Order shall apply to all Cabinet Departments and Executive Agencies of the State. The members of the General Assembly and the Judiciary are also encouraged to adopt this Order.

18. No provision of this Order is intended to or shall create any individual right or legal cause of action that does not already exist under state or federal law.

APPROVED this 11th day of August, 2009