

# Employee Conduct / Records Requests

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## 100.01 Harassment, Discrimination, and Bullying

Effective: March 1, 2022

### I. Purpose

The Auditor of State (AOS) is committed to providing a working environment that fosters mutual respect, integrity, and professional conduct and is free from discriminatory insult, intimidation, stalking, bullying, and other forms of harassment, including sexual harassment. AOS will implement this policy to comply fully with applicable Federal and State laws, rules, regulations, and guidelines as well as current Executive Orders in the area of non-discrimination and harassment in employment. Harassment may be overt or subtle, but whatever form it takes — verbal, nonverbal, or physical — harassment is insulting and demeaning to the recipient and cannot be tolerated in the workplace.

### II. Policy

The AOS is an Equal Opportunity Employer. It is the policy of the AOS to prohibit discrimination and harassment of applicants and employees, due to race, color, religion, sex (including sexual harassment), sexual orientation, gender identity or expression, genetic information, national origin, ancestry, disability, age (40 years or older), veteran status, or military status. Discrimination, harassment, and/or retaliation will not be tolerated.

It is the policy of AOS to maintain a working environment free from discrimination and to prohibit harassment of its employees and applicants, including sexual harassment.

### III. Applicability

This policy applies to all employees and applicants of the Auditor of State. This policy applies to all activities that take place on the work premises (including interpersonal and electronic communications), or which are directly connected to the workplace and during any employment-related duties or activities, including conferences, training sessions, travel, and social functions.

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**Authority:** Ohio Administrative Code (OAC) [123:1-49](#); Ohio Revised Code (ORC) [§4112](#); [Title VII of the Civil Rights Act of 1964](#), as amended; [Age Discrimination in Employment Act of 1967](#); the [Americans with Disabilities Act of 1990](#); the [Genetic Information Nondiscrimination Act of 2008 \(GINA\)](#); the [Uniformed Services Employment and Reemployment Rights Act \(USERRA\)](#); [Ohio Executive Order 2011-05k](#); [Policy Against Discrimination Based on Sexual Orientation or Gender Identity](#)

#### IV. Definitions

**Discrimination:** Adverse treatment of one person or group based on their race, color, religion, sex (including sexual harassment), sexual orientation, gender identity or expression, genetic information, national origin, ancestry, disability, age (40 years or older), veteran status or military status.

- **Disparate Treatment:** Disparate treatment occurs when an employer intentionally treats an employee differently because of their protected class.
- **Disparate Impact:** Disparate impact occurs when an employment policy, although neutral on its face, adversely affects a person in a protected class.

**Harassment:** Harassment is unwelcome conduct based on race, color, religion, sex (including sexual harassment), sexual orientation, gender identity or expression, national origin, ancestry, disability, age (40 years or older), veteran status, or military status. 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, hostile, or abusive. Harassment can be verbal and/or physical and can include name-calling, slurs, jokes, gestures, leering, stalking, grabbing, and/or assault. This is not an exhaustive list of all harassing behaviors.

**Quid Pro Quo, or "This for That":** Quid pro quo harassment generally results in a tangible employment decision based on the employee's acceptance or rejection of unwelcome sexual advances or requests for sexual favors, but it can also result from unwelcome conduct of a religious nature. This kind of harassment is generally committed by someone who can effectively make or recommend formal employment decisions (such as termination, demotion, or denial of promotion) that will affect the victim. Some examples:

- Supervisor fires or denies promotion to a subordinate for refusing to be sexually cooperative.
- Supervisor requires a subordinate to participate in religious activities as a condition of employment.
- Supervisor offers preferential treatment/promotion if subordinate sexually cooperates or joins supervisor's religion.

**Bullying:** Bullying is often characterized by insulting, hurtful, hostile, vindictive, cruel, or malicious behaviors that undermine, disrupt, or negatively affect another's ability to do their job and results in a harmful work environment for the employee. Bullying may or may not be the result of deliberate intention. It is important to recognize that it is the effect of the behavior on others, not the intent, that determines whether bullying has occurred. Depending on the severity and impact of the behavior, a single significant incident may constitute bullying if it is found to be sufficiently offensive,

threatening, or intimidating. To determine whether bullying has occurred, each situation must be examined reasonably and objectively, based on its specific facts.

**Hostile Work Environment:** A hostile environment can result from the unwelcome conduct of supervisors, co-workers, clients, or anyone else with whom the victim interacts on the job, and the unwelcome conduct renders the workplace atmosphere intimidating, hostile, or offensive.

Examples of behaviors that may contribute to an unlawful hostile environment:

- discussing sexual activities
- telling off-color jokes concerning race, sex, disability, or other protected bases
- unnecessary touching
- commenting on physical attributes
- displaying sexually suggestive or racially insensitive pictures
- using demeaning or inappropriate terms or epithets
- using indecent gestures
- using crude language
- sabotaging the victim's work
- engaging in hostile physical conduct

**Retaliation:** Retaliation occurs when an employer, employment agency, or labor organization takes an adverse action against an individual because they engaged in a protected activity.

**Stalking:** Repeated unwanted or obsessive attention by an individual or group toward another person or contact between two or more employees that directly or indirectly communicates a threat or intimidation. Stalking behaviors include, but are not limited to, following or spying on another employee; waiting at places to make unwanted contact with the victim or to monitor the employee's behavior; trespassing into another employee's office; making harassing phone calls; sending harassing letters or e-mails; and leaving unwanted written messages or objects unrelated to work material.

## V. Procedures

### A. Reporting/Handling of Discrimination, Harassment, or Bullying Complaint

1. Any employee or applicant who believes they have been discriminated against or subjected to bullying or harassment, including sexual harassment and/or stalking, should advise the offending individual that the action is not welcome and must stop. All employees have a duty to report suspected harassment whether or not they are the victim.

2. The aggrieved individual must then report such incident(s) to either their supervisor, another supervisor/manager, EEO Officer, Director of Human Resources, and/or the Chief of Staff.
3. Regardless of whether a written report is received from the alleged victim, managers and/or supervisors must report such complaints to the EEO Officer within 24 hours of receiving such notification.
4. Any complaint or report received cannot be kept strictly confidential; however, information concerning allegations shall be managed discreetly and communicated to others only as is necessary to investigate and take appropriate disciplinary action.
5. There will be no retaliation against an employee for filing a complaint; reporting discrimination, harassment, stalking, or other inappropriate behavior; or for participating as a witness in an EEO investigation. Retaliatory actions will be subject to investigation and possible discipline.

#### **B. Internal Processing of Complaints**

1. Complaints must be filed within 30 days of the most recent incident of alleged discrimination, harassment, or stalking.
2. All allegations of discrimination, harassment, or stalking will be taken seriously.
3. All complaints will be reviewed by the EEO officer to ensure jurisdiction.
4. All allegations and/or complaints of discrimination, harassment, and stalking will be investigated promptly and thoroughly.
5. When appropriate, all efforts will be made to seek an internal resolution of claims. (e.g., mediation, alternative dispute resolution)
6. Upon acceptance of a complaint, the employee will receive notice in writing that the complaint was accepted. The employee will also be notified of their right to file with an external agency.
7. Complaints may be submitted in various forms, including, but not limited to, orally or in written format or statements.
8. Unless timelines are extended, a determination will be made within 90 days if any corrective action is deemed warranted by possible violations of this policy.
9. At any stage in the presentation of a complaint, the employee has the right to be accompanied and advised by a representative of their choosing. The employee and employee representative will be given a reasonable amount of time off from work to present the complaint.

### C. Filing an External Complaint

1. Complaints may also be filed with either or both of the following enforcement agencies by the appropriate deadline for each:
  - Ohio Civil Rights Office: six-month deadline
  - U.S. Equal Employment Opportunity Commission: 300-day deadline
2. Complaints filed with the Ohio Civil Rights office must be filed within six months of the most recent incident of alleged discrimination or harassment.
3. Complaints filed with U.S. Equal Employment Opportunity must be filed within 300 days of the most recent incident of alleged discrimination or harassment.

### D. Enforcement

1. Harassment, discrimination, bullying, retaliation, and related behavior in the workplace are inappropriate and will not be tolerated.
2. Such conduct is subject to discipline, up to and including termination.
3. Employees at all levels are expected to cooperate in an investigation. The failure of any employee to cooperate fully during an investigation may result in appropriate disciplinary action up to and including termination.
4. During an investigatory interview, a bargaining unit employee will be entitled to the presence of a union steward upon request and if they have reasonable grounds to believe that the interview may be used to support disciplinary action against them.
5. During an investigatory interview, if a bargaining unit employee does not have reasonable grounds to believe that the interview may be used to support disciplinary action against them, the presence of a representative shall be at the investigator's discretion.
6. Supervisory employees are advised that they may be subject to personal liability for acts of discrimination and harassment and may be responsible for their own legal defense.
7. This policy supports the objectives and practices of the State of Ohio and is in conjunction with applicable Federal and State laws and regulations.
8. This policy is available to all employees on the AOS's intranet and will be included in employee orientation materials.

Any employee or applicant for employment with the AOS who believes they have been a victim of discrimination, discriminatory harassment, retaliation, or stalking, or who has questions concerning this policy, should contact:

**EEO Officer, Human Resources Department**

65 East State Street

Columbus, Ohio 43215

Telephone: 614-995-1078 | Fax: 866-708-0024