



WYOMING DEPARTMENT OF CORRECTIONS

Policy and Procedure #1.205

Workplace Harassment, Discrimination, and Equal Employment Opportunity

Page 1 of 11

<p>Authority: Wyoming Statute(s): 25-1-104; 25-1-105</p> <p>ACA Standard(s): 4-4053; 4-4056 2-CO-1C-09-R; 2-CO-1C-11; 4-APPFS-3E-05; 4-APPFS-3E-06; 1-CTA-1C-03; 1-CTA-1C-14</p>	<p>Effective Date: November 30, 2016</p> <p>Revision/Review 01/01/16</p> <p>History: 11/01/14 06/15/14 10/31/13 10/31/12 09/26/11 06/01/04</p> <hr/> <p>Summary of Revision/Review: Updates existing policy pursuant to annual review.</p>
<p>Cross Reference of Policy: P&P #1.009, <i>Release of Information</i>; P&P #1.014, <i>Investigations</i>; P&P #1.219, <i>ADA Compliance for Staff</i>; P&P #1.218, <i>Employee Performance Management</i>; P&P #1.226, <i>Recruitment, Selection and OnBoarding of WDOC Employees</i>; P&P #3.402, <i>Protection from Sexual Misconduct against Offenders</i>; P&P #3.403, <i>Inmate Rights</i></p>	<p>Supersedes Existing Policy :</p>
<p>Approved:</p> <p style="text-align: center;">R.O. Lampert</p> <hr style="width: 60%; margin: auto;"/> <p style="text-align: center;">Robert O. Lampert, Director</p>	
<p style="text-align: right;">11-15-16</p> <hr style="width: 60%; margin: auto;"/> <p style="text-align: right;">Date</p>	

REFERENCE

1. ATTACHMENTS
 - A. WDOC Form #102, *Staff Report*

2. OTHER
 - A. *State of Wyoming Personnel Rules*, Department of Administration and Information, Human Resources Division
 - B. State of Wyoming Executive Order Number 2000-4: *Anti-Discrimination Policy*



WYOMING DEPARTMENT OF CORRECTIONS	Policy and Procedure #1.205	Page 2 of 11
		Workplace Harassment, Discrimination, and Equal Employment Opportunity

I. PURPOSE

A. **Ensuring a Workplace Environment Free from Discrimination and/or Harassment.** The purpose of this policy is to provide the Wyoming Department of Corrections (WDOC) with guidelines for ensuring a workplace free from unlawful discrimination and/or harassment based on a protected class as defined by this policy. (4-APPFS-3E-06)

1. It is important to note that this policy applies to WDOC staff, contractors, vendors, volunteers, and visitors. Discrimination and harassment against offenders is prohibited, but such conduct is addressed in WDOC Policy and Procedure #3.403, *Inmate Rights*, and WDOC Policy and Procedure #3.402, *Protection from Sexual Misconduct against Offenders*.
2. All allegations of discrimination and/or harassment shall be taken seriously and resolved as quickly as possible. This policy provides guidelines for reporting, investigation, resolution of complaints, and training on this policy and procedure. (4-APPFS-3E-06; 4-APPFS-3E-05)

II. POLICY

A. **Zero Tolerance for Harassment and Discrimination.** The WDOC, in compliance with state and federal law, adopts a zero tolerance policy regarding harassment (sexual or otherwise) and discrimination. Prompt and remedial action shall be taken by the WDOC for violation of this policy. (4-APPFS-3E-06; 4-APPFS-3E-05)

1. Sexual harassment, either explicit or implicit, is strictly prohibited. (ACA 4-4056; 2-CO-1C-11; 4-APPFS-3E-05; 1-CTA-1C-14)
2. Discrimination and/or harassment based upon a protected class is prohibited. Any retaliation for reporting such conduct shall not be tolerated.

B. **Equal Employment Opportunity.** Equal employment opportunities shall exist for all positions. (ACA 4-4053; 2-CO-1C-09-R; 1-CTA-1C-03)

1. The WDOC is firmly committed to a policy of Equal Employment Opportunity (EEO). The department shall administer its human resources policies and conduct its employment practices in a manner which treats each staff member and applicant for employment on the basis of merit, experience, or other work-related criteria without regard to a protected



WYOMING DEPARTMENT OF CORRECTIONS	Policy and Procedure #1.205	Page 3 of 11
		Workplace Harassment, Discrimination, and Equal Employment Opportunity

class. These principles shall also apply to WDOC contracts with contractors and vendors, which shall be influenced by the contractor's/vendor's demonstrated commitment to diversity and/or equal opportunity.

- C. **Americans with Disabilities Act.** The WDOC is committed to comply with the Americans with Disabilities Act (ADA), as outlined in WDOC Policy and Procedure #1.219, *ADA Compliance for Staff*, which protects qualified applicants and staff with disabilities from unlawful discrimination.
- D. **Training, Acknowledgement and Understanding of Policy.** As outlined in WDOC Policy and Procedure #1.226, *Recruitment, Selection and OnBoarding of WDOC Employees*, all new hires shall review Policy and Procedure #1.205, *Workplace Harassment, Discrimination, and Equal Employment Opportunity* within the first forty (40) hours of start date and shall acknowledge understanding and receipt of this policy. All WDOC employees shall receive annual refresher training on this policy and the expectations outlined in the policy. (4-APPFS-3E-06; 4-APPFS-3E-05)

III. DEFINITIONS

- A. **Chief Executive Officer (CEO):** A CEO is identified, but not limited to, the following positions: Director, Deputy Director, division administrators, deputy administrators, wardens, district supervisors, adult community corrections coordinator, adult community corrections directors.
- B. **Discrimination:** (*For this Policy only.*) Disparate treatment in a term or condition of employment of any individual based not wholly on legitimate factors, but based on a protected class.
- C. **Hostile Work Environment:** (*For this Policy only.*) A work environment that is so imbued with harassment and/or discrimination based on an employee's protected class that it interferes with the ability to do one's job.
 - i. The term "*hostile work environment*" does not cover simple rudeness, petty slights, annoyances, isolated incidents (unless extremely serious), unprofessional conduct and/or bullying behavior. While this policy does not cover bullying behavior, bullying will not be tolerated in the WDOC as outlined in Policy and Procedure #1.218, *Employee Performance Management*.
- D. **Offender:** A person who has entered a plea of guilty or has been convicted of



a misdemeanor or a felony and is committed to the custody or supervision of the Wyoming Department of Corrections.

- E. Protected Class:** The following is considered a protected class in the WDOC: race, color, religion, sex (including pregnancy), national origin, ancestry, age, disability, or sexual orientation.
- i.** Sexual orientation includes the coverage of lesbian, gay, bisexual and transgender individuals.
 - ii.** Title II of the *Genetic Information Nondiscrimination Act of 2008* prohibits genetic information discrimination in employment. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts employers from requesting, requiring or purchasing genetic information, and strictly limits the disclosure of genetic information.
- F. Retaliation:** (*For this policy only.*) The action of discriminating against an applicant or employee because the applicant or employee made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing against the actions prohibited within this policy.
- G. Unlawful Harassment:** (*For this Policy only.*) Unwelcome conduct that is based on a protected class and the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. The following are forms of unlawful harassment:
- i. Sexual Harassment:** Any unwelcome sexual advances, requests for sexual favors, unequal treatment, and other unwelcome verbal and physical conduct based on an employee's sex. There are two forms of sexual harassment, quid pro quo harassment and hostile work environment harassment.
 - a. Quid pro quo harassment** is when the harasser demands sexual conduct as a condition for receiving a tangible benefit.
 - b. Hostile work environment harassment** is when the work environment becomes so offensive as to adversely affect an employee's job performance.
 - ii. Third Party Harassment:** Discriminatory or harassing behavior that is witnessed by a third party, including a staff member, contractor, visitor or



WYOMING DEPARTMENT OF CORRECTIONS	Policy and Procedure #1.205	Page 5 of 11
		Workplace Harassment, Discrimination, and Equal Employment Opportunity

volunteer who is neither the actor nor recipient of such conduct, when that behavior rises to the level of workplace harassment. Third party harassment may also include workplace harassment by a third party who is not a staff member of the DOC.

- iii. **Workplace Harassment:** Sexual harassment or any degrading/inflammatory comments, jokes, slurs, printed material or innuendos based, in whole or part, on race, color, religion, age, sex, marital status, disability, national origin, or any other protected class.

IV. PROCEDURE

- A. **Adherence to State of Wyoming Policy and Rules.** All WDOC staff shall abide by the State of Wyoming *Anti-Discrimination Policy* set forth in Executive Order Number 2000-4. All WDOC staff shall abide by the *State of Wyoming Personnel Rules*, specifically those provisions pertaining to Equal Employment Opportunity, Discrimination and Sexual Harassment, and all other rules and policies of the Executive Department of the State of Wyoming.
- B. **Individual Staff Member's Responsibility.** All staff, contractors, volunteers, visitors, and recipients of the agency's services shall be treated fairly and equally.
1. All staff shall act responsibly to establish and maintain a work environment free from harassment and/or discrimination.
 2. All staff must refrain from exhibiting or promoting harassment and/or discrimination in the work place. All staff shall be expected to interact with co-workers, contractors, volunteers, offenders and the public in a professional, respectful manner as outlined in WDOC Policy and Procedure #1.215, *Code of Ethics*. All staff are expected and required to report any conduct that would exhibit or promote harassment and/or discrimination.
 3. Supervisors and managers shall serve as role models for subordinates, educate staff, respond to actions that may be discriminatory and/or harassing in nature, report allegations to the CEO and request investigations through the Servicing Human Resources office as deemed necessary.
- C. **Prohibited Conduct.** The WDOC will not tolerate any offensive conduct. Any staff member found to have engaged in offensive conduct shall be subject



WYOMING DEPARTMENT OF CORRECTIONS	Policy and Procedure #1.205	Page 6 of 11
		Workplace Harassment, Discrimination, and Equal Employment Opportunity

to discipline, up to and including dismissal from employment. Offensive conduct includes but is not limited to the following:

- 1. Discrimination.** Discrimination in any activity of the WDOC, including, but not limited to:
 - i.** Hiring;
 - ii.** Work assignments;
 - iii.** Promotion or promotion opportunities;
 - iv.** Personnel or disciplinary action;
 - v.** Classification;
 - vi.** Transfers;
 - vii.** Grant or denial of privileges;
 - viii.** Compensation; and
 - ix.** Performance Evaluations.

- 2. Harassment.** Includes but is not limited to the following:
 - i.** Comments which are not flattering regarding a person's protected class;
 - ii.** Epithets or name calling, ridicule, mockery, slurs and negative stereotyping;
 - iii.** Distribution, display or discussion of any written or graphic material that ridicules, denigrates, insults, belittles, or shows hostility or aversion toward protected class.
 - iv.** Offensive jokes, slang expressions, inappropriate gestures, insults or put-downs;
 - v.** Physical assaults or threats, and intimidation.



WYOMING DEPARTMENT OF CORRECTIONS	Policy and Procedure #1.205	Page 7 of 11
		Workplace Harassment, Discrimination, and Equal Employment Opportunity

- 3. Sexual Harassment.** The conduct must be unwelcome as determined by the recipient. Sexual harassment includes but is not limited to the following:

 - i.** Threatening or taking adverse employment action if sexual favors are not granted.
 - ii.** Demands for sexual favors in exchange for favorable or preferential treatment.
 - iii.** Unwelcome and repeated flirtations, propositions, pressure for date or sexual advances.
 - iv.** Unwelcome physical touching(s).
 - v.** Whistling leering, improper gestures or offensive remarks.
 - vi.** Unwelcome comments about appearance.
 - vii.** Sexual jokes or the use of sexually explicit derogatory or otherwise offensive language.
 - viii.** The display of sexually explicit pictures, greeting cards, articles, books, magazines, photos, or cartoons.
 - ix.** Any unwelcome sexual advances, unwelcome verbal or physical conduct of a sexual nature or requests for sexual favors.

- 4. Retaliation.** Retaliation against an individual who:

 - a.** Presents a claim of discrimination or harassment;
 - b.** Assists in investigating charges, including witnesses to alleged discrimination or harassment;
 - c.** Reports harassing behavior directed at person(s) other than the staff member; or
 - d.** Opposes what the individual believes to be harassment or a discriminatory action.

- 5. Failure to respond.** A supervisor who knowingly permits or fails to appropriately respond to the harassment of, or discrimination against, any



staff member, recipient of the WDOC's services, or any applicant for employment, whether that conduct is personally witnessed or reported verbally or in writing.

- D. Third Party Harassment.** Individuals who are not the direct target of harassment may have grounds to claim third party harassment when the individual(s) are subjected to prohibited conduct as outlined in this policy. Individuals shall report such prohibited conduct; the agency will intercede, investigate and take corrective action, when such complaints are received from a third party.
- E. Reporting Violations.** Any staff member, recipient of agency services, or applicant for employment who believes he/she is being subjected to harassment or discrimination as defined by this policy is encouraged to directly inform the offending person(s) that such conduct is offensive and must stop. If the offending person(s) persist in such behavior or if the recipient of such conduct does not wish to communicate directly with the offending person(s), then the recipient(s) is encouraged to report the alleged harassment or discrimination. (4-APPFS-3E-05; 4-APPFS-3E-06)
1. Although staff can file complaints at any time, they are encouraged to file their complaints as quickly as possible following the act so that a prompt investigation and remedial action, if necessary, can be taken. Complaints of discrimination or harassment may be made verbally or in writing. Whenever possible, employees are encouraged to use the WDOC Form #102, Staff Report to report allegations of harassment or discrimination. Reports must include the following:
 - i. Name of the complainant;
 - ii. Name(s) of person(s) alleged to have engaged in prohibited conduct;
 - iii. A specific and detailed description of the conduct which the staff member believes violates this policy; and
 - iv. A description of the relief the staff member desires.
 2. Perceived violation(s) of this policy may be reported to the recipient(s) immediate supervisor, other management personnel or administrator, investigations major or human resources staff. If a person reports a perceived violation of this policy to a supervisor, the supervisor does not



WYOMING DEPARTMENT OF CORRECTIONS	Policy and Procedure #1.205	Page 9 of 11
		Workplace Harassment, Discrimination, and Equal Employment Opportunity

have the discretion to keep the matter confidential and not report it, even if requested to do so by the reporting party.

3. Use of the chain of command is encouraged when the staff member is comfortable reporting to their immediate supervisor. However, staff may report to any of the persons listed above and need not observe any particular chain of command.
 4. The person receiving a complaint alleging harassment or discrimination or who is aware of such conduct shall be required to immediately report the complaint in writing to the responsible Chief Executive Officer (CEO). If the allegation concerns the CEO, the person receiving the complaint shall refer the complaint to the next higher administrator in the chain of command rather than directly to the CEO.
 5. The CEO shall report the receipt of a complaint alleging harassment or discrimination to the Servicing Human Resources Office. The Servicing Human Resources Office shall report all claims of harassment or discrimination to the Central Office Human Resources, who shall be responsible for managing and tracking of such complaints.
 6. Nothing in this policy precludes a person from filing a formal complaint with the Wyoming Department of Workforce Services Division of Labor Standards or the Federal Equal Employment Opportunity Commission (EEOC).
- F. Initial Review of Complaints.** All complaints shall be taken seriously and shall be reviewed with Human Resources as timely as possible. CEOs and Human Resources shall review the complaint and any available information regarding the matter to determine if the situation is a violation of this policy. Complaints which clearly violate this policy will be referred for investigation.
1. Depending on the amount and type of information received by the complainant(s), the CEO and/or Human Resources may assign a supervisor or Human Resources representative to conduct an initial inquiry with the complainant. The intent of an initial inquiry is to ensure WDOC has a full and complete statement of the complainants' concerns and/or details of the situation. The initial inquiry may also include gathering documentation (*e.g.* staff reports) and talking to witnesses. An initial inquiry report will be submitted to the CEO and Human Resources for further review and appropriate action.



WYOMING DEPARTMENT OF CORRECTIONS	Policy and Procedure #1.205	Page 10 of 11
		Workplace Harassment, Discrimination, and Equal Employment Opportunity

2. Complaints involving workplace conflict not attributed to violations of this policy will be managed appropriately and in accordance with WDOC policies and procedures. Employees will be notified in writing how their complaint will be resolved.
- G. Investigation.** Investigations shall be conducted in accordance with WDOC Policy and Procedure #1.014, *Investigations*.
1. The CEO shall assign a trained investigator based on the needs of the investigation.
 - a. The investigator who is assigned to conduct the investigation may request additional assistance when necessary.
 - b. An investigator should not be assigned to investigate a complaint that was filed against someone in the investigator's direct line of authority.
 2. Staff under investigation (*i.e.* Subject Staff) will be informed of the general nature of the investigation as soon as practical, so as not to jeopardize or compromise the investigation. In some instances, notification of the investigation may occur at the beginning of the investigative interview. Staff may be placed on Administrative Review Leave, if WDOC believes it is prudent to do so to maintain the integrity of the investigation.
 3. **Report.** The investigator shall submit a final report to the CEO and Human Resources.
 - i. Information obtained as a result of an investigation shall only be distributed internally to persons with an official need to know, and externally in accordance with WDOC Policy and Procedure #1.009, *Release of Information*.
 - ii. At the conclusion of the investigation, staff involved will be notified in writing of such.
 - iii. Requests for copies of investigation reports shall be referred to the WDOC Human Resources Manager for response and in compliance with the Wyoming Public Records Act.
 6. **Corrective Action.** When an investigation substantiates a complaint is in violation of this policy, the CEO shall take corrective action as deemed



appropriate to resolve the complaint, which may include disciplinary action up to and including dismissal. If the complaint involves persons outside the agency, appropriate measures shall be taken to remedy the problem.

V. TRAINING POINTS

- A.** What level of tolerance does WDOC have for any type of harassment and discrimination in the workplace?
- B.** What factors must disparate treatment be based on, in whole or part, for there to be an actionable claim of discrimination?
- C.** What are the conditions that constitute a hostile work environment?
- D.** What are the two forms of sexual harassment?
- E.** Can individuals who are not the direct target of harassment ever file an actionable claim for harassment?
- F.** Can a claim of workplace harassment at WDOC be based on behaviors related to one's sexual orientation?
- G.** Which staff members are responsible for the establishment and maintenance of a work environment free from discrimination or harassment?
- H.** What information needs to be included in a verbal or written complaint of discrimination, sexual harassment or workplace harassment?
- I.** Who must the person receiving a complaint alleging harassment or discrimination, or who is aware of such conduct, immediately report the complaint in writing to?
- J.** What corrective actions may be taken against an offending staff member who engages in harassing or discriminatory conduct?
- K.** Is retaliation against staff that brings harassment charges, who assist in investigating charges, or who report harassing behavior directed at another person other than themselves, prohibited under this policy?