


Executive Directive



Title: Discrimination, Harassment, Retaliation, and Unfair Employment Practices	Secretary's Directive Number: OEO.050.0031 Revised
Related MD Statute/Regulations: Title VII, Civil Rights Act of 1964, 42 U.S.C. §200e, <i>et seq.</i> ; EEOC Guidelines on Discrimination Because of Sex, 29 C.F.R., §1604.11; Laws Administered by the State of Maryland Commission on Civil Rights, Title 20, Human Relations; Executive Order 01.01.2007.16, (Code of Fair Employment Practices); Correctional Services Article, §2-103, Annotated Code of Maryland; State Personnel and Pensions Article, §5-207, <i>et seq.</i> , Annotated Code of Maryland; State Personnel and Pensions Article, §2-302 and 305, <i>et seq.</i> , Annotated Code of Maryland; Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. §621, <i>et seq.</i> ; Americans with Disabilities Amendments Act of 2008; Rehabilitation Act of 1973, 29 U.S.C. §791, <i>et seq.</i> , (2004 Sum Supp.); Department of Public Safety and Correctional Services Standards of Conduct; Code of Maryland Regulations, Title 17	Supersedes: OEO.050.0031 Dated: April 15, 2016
Related ACA Standards: 4-4053—4-4056; 4-ALDF-7E-01; 2-CO-1C-09, 2-CO-1C-11	Responsible Authority:  Executive Director, Office of Equal Opportunity Effective Date: <p style="text-align: center;">August 10, 2016</p> Number of Pages: 8



Stephen T. Moyer
Secretary



William G. Stewart
Deputy Secretary
for Administration

.01 Purpose.

- A. This directive continues existing policy for the Department of Public Safety and Correctional Services (Department) concerning incidents of discrimination, harassment, retaliation, and unfair employment practices.
- B. This directive assigns responsibilities for reporting and processing complaints of discrimination, harassment, retaliation, and unfair employment practices.
- C. This directive does not preclude employees or applicants from filing sexual harassment complaints pursuant to Department Sexual Harassment Policy.
- D. This directive designates the Department's Fair Practices Officer and Equal Employment Opportunity Officer.

.02 Scope.

This directive applies to all units of the Department.

.03 Policy.

- A. The Department is committed to providing employees with a work environment free of discrimination based on an individual's age, ancestry, color, creed, gender identity and expression, genetic information,

Executive Directive Number: OEO.050.0031

marital status, mental or physical disability, national origin, race, religious affiliation, belief or opinion, sex, sexual orientation, or any other non-merit factor.

- B. The Department affords equal opportunity in employment and personnel practices to all employees and applicants for employment without regard to age, ancestry, color, creed, gender identity and expression, genetic information, marital status, mental or physical disability, national origin, religious affiliation, belief or opinion, race, sex, sexual orientation, or any other non-merit factor.
- C. The Department does not tolerate any form of discrimination, harassment, retaliation, or unfair employment practice based on an individual's age, ancestry, color, creed, gender identity and expression, genetic information, marital status, mental or physical disability, national origin, religious affiliation, belief or opinion, race, sex, sexual orientation, or any other non-merit factor.
- D. The Department shall thoroughly and promptly resolve all verbal and written complaints of discrimination, harassment, retaliation, or unfair employment practices, applying appropriate administrative or disciplinary action, or both, up to and including termination against an employee found to have engaged in discrimination, harassment, retaliation, or unfair employment practices.

.04 Definitions.

- A. In this directive, the following terms have the meanings indicated.
- B. Terms Defined.
 - (1) "Complaint" means a verbal or written statement presented to the Department's Office of Equal Opportunity (OEO), alleging discrimination, harassment, retaliation, or unfair employment practice.
 - (2) "Discrimination" means the differential treatment of a person based on factors determined by law to be unrelated to the person's merit, skill, ability or potential to perform assigned job functions, such as age, ancestry, color, creed, gender identity and expression, genetic information, marital status, mental or physical disability, national origin, religious affiliation, belief or opinion, race, sex, sexual orientation, or any other non-merit factor.
 - (3) Employee.
 - (a) "Employee" means an individual assigned to or employed by the Department in a full-time, part-time, temporary, or contractual position regardless of job title or classification.
 - (b) "Employee" includes an intern and volunteer.
 - (4) "Equal Employment Opportunity Designee" means a Department employee designated by the employee's unit head, subject to the approval of the Executive Director, who may receive allegations of discrimination, harassment, retaliation or unfair employment practices under this directive and may conduct investigations authorized by the Executive Director.
 - (5) "Equal Employment Opportunity Officer" has the meaning stated in State Personnel and Pensions Article, §5-207, Annotated Code of Maryland.
 - (6) "Executive Director" means the Executive Director of the Department's OEO.

Executive Directive Number: OEO.050.0031

- (7) “Fair Practices Officer” has the meaning stated in State Personnel and Pensions Article, §5-207, Annotated Code of Maryland.
- (8) “Harassment” means verbal or physical conduct, based on an individual’s age, ancestry, color, creed, gender identity and expression, genetic information, marital status, mental or physical disability, national origin, religious affiliation, belief or opinion, race, sex, sexual orientation, or any other non-merit factor, any of which that has the purpose or effect of:
 - (a) Creating an intimidating, hostile, or offensive work environment;
 - (b) Unreasonably interfering with an individual’s work performance; or
 - (c) Otherwise adversely affecting an individual’s employment opportunities.
- (9) Retaliation.
 - (a) “Retaliation” means a covert or overt action, or threat of action, taken against an individual in response to the individual’s complaint of an alleged discrimination, harassment, unfair employment practice, or cooperation in reporting or investigating a complaint, regardless of the merits or the disposition of the complaint.
 - (b) “Retaliation” may include:
 - (i) Unnecessary discipline;
 - (ii) Intimidation;
 - (iii) Unnecessary changes in work or program assignments;
 - (iv) Unjustified transfers or placements; or
 - (v) Unjustified denials of privileges or services.
 - (c) “Retaliation” does not include reasonable administrative, disciplinary, or other action intended to stop and prevent, protect an individual involved in, or resolving a complaint of discrimination, harassment, retaliation, or unfair employment practices.
- (10) “Unfair employment practice” means:
 - (a) An employment or personnel action taken because of, or based on, an impermissible non-merit factor, including an applicant’s or employee’s age, ancestry, color, creed, gender identity and expression, genetic information, marital status, mental or physical disability, national origin, religious affiliation, belief or opinion, race, sex, or sexual orientation;
 - (b) Harassment based on age, ancestry, color, creed, gender identity and expression, genetic information, marital status, mental or physical disability, national origin, religious affiliation, belief or opinion, race, sex, or sexual orientation;

Executive Directive Number: OEO.050.0031

- (c) Retaliation against an individual because the individual opposed, filed a complaint, or testified, assisted or participated in an investigation, proceeding, or hearing concerning alleged discrimination, harassment, or unfair employment practice;
 - (d) Employment or personnel actions based on stereotypes or assumptions about the abilities, traits, or performance of individuals of a certain sex, race, age, religion, sexual orientation, or ethnic group, or an individual with a disability; and
 - (e) Denying an employment opportunity to an individual because of a marriage to, or association with, an individual of a particular race, religion, sex, national origin, or an individual with a disability.
- (11) “Unit” means an organization, an institution, or a division, established by statute or created by the Secretary of Public Safety and Correctional Services (Secretary).
- (12) “Unit head” means the highest authority of a unit.

.05 Responsibility/Procedure.

A. Discrimination, harassment, retaliation, and unfair employment practices:

- (1) Are prohibited by law;
- (2) May victimize a specific individual or group of individuals;
- (3) May be reported by a victim or an individual with knowledge of the discrimination, harassment, retaliation, or unfair employment practice; and
- (4) Are decided on a case-by-case basis considering the totality of the circumstances involved in the incident.

B. A Department employee may not:

- (1) Perform, participate in, support, or otherwise condone discrimination, harassment, retaliation, or unfair employment practice;
- (2) Dissuade, advise, or discourage or attempt to dissuade, advise, or discourage an employee or other individual from reporting discrimination, harassment, retaliation, or unfair employment practice; or
- (3) Intimidate, coerce, threaten, influence, or retaliate or attempt to intimidate, coerce, threaten, influence, or retaliate against an individual because the individual:
 - (a) Reported or filed a complaint of alleged discrimination, harassment, retaliation, or unfair employment practice;
 - (b) Took action to stop or prevent discrimination, harassment, retaliation, or unfair employment practice;
 - (c) Was involved in discrimination, harassment, retaliation, or unfair employment practice;

Executive Directive Number: OEO.050.0031

- (d) Investigated discrimination, harassment, retaliation, or unfair employment practice;
 - (e) Took remedial action or applied penalties in response to a substantiated complaint of discrimination, harassment, retaliation, or unfair employment practice;
 - (f) Opposed any form of discrimination, harassment, retaliation, or unfair employment practice; or
 - (g) Testified, assisted, or participated in an investigation, proceeding, or hearing concerning any alleged discrimination, harassment, retaliation, or unfair employment practice.
- C. The Executive Director of the Office of Equal Opportunity is the Department's Fair Practices Officer who shall ensure compliance with requirements established under State Personnel and Pensions Article, §5-207, Annotated Code of Maryland.
- D. The Deputy Executive Director of the Office of Equal Opportunity (OEO) is the Department's Equal Employment Opportunity Officer who shall perform duties:
- (1) Established under State Personnel and Pensions Article, §5-207, Annotated Code of Maryland; and
 - (2) Assigned by the Department's Fair Practices Officer.
- E. The Department shall:
- (1) Thoroughly investigate and properly resolve all verbal and written complaints of discrimination, harassment, retaliation, and unfair employment practice; and
 - (2) Take appropriate administrative or disciplinary action, or both, up to and including termination of employment against an employee found to have engaged in discrimination, harassment, retaliation, or unfair employment practice.
- F. The Maryland Police and Correctional Training Commissions (MPCTC), in cooperation with the OEO, is responsible for developing and providing training and education intended to communicate OEO administrative and operational procedures related to discrimination, harassment, retaliation, or unfair employment practice in the following areas:
- (1) Filing complaints;
 - (2) Employee requirements for reporting and documenting complaints;
 - (3) Processing complaints;
 - (4) Investigating complaints; and
 - (5) Resolving complaints.
- G. Within a unit, the unit head is responsible for:
- (1) Ensuring that each supervisor, manager, and shift commander who reports to the unit head is familiar with Department policy prohibiting discrimination, harassment, retaliation, and unfair employment practice, specifically that:

Executive Directive Number: OEO.050.0031

- (a) The Department does not tolerate any form of discrimination, harassment, retaliation, and unfair employment practice; and
 - (b) A substantiated complaint of discrimination, harassment, retaliation, or unfair employment practice shall result in administrative or disciplinary action, or both, up to and including termination of employment;
- (2) Ensuring that employees attend required discrimination, harassment, retaliation, and unfair employment practice training;
 - (3) Posting a copy of this directive and all policies concerning discrimination, harassment, retaliation, or unfair employment practice at a location, or locations, readily accessible to employees and applicants for employment;
 - (4) Ensuring that a complaint of alleged discrimination, harassment, retaliation, or unfair employment practice is processed according to procedures established by, and on forms created by, the OEO and;
 - (5) If the OEO assigns the responsibility for investigating an allegation of discrimination, harassment, retaliation, or unfair employment practice to the unit, ensuring that a thorough investigation is conducted according to requirements established by the OEO.

H. An employee working for a unit head as a supervisor, manager, or shift commander is responsible for:

- (1) Ensuring that each employee reporting to the supervisor, manager, or shift commander is familiar with Department policy prohibiting discrimination, harassment, retaliation, and unfair employment practice;
- (2) Taking reasonable actions to eliminate circumstances that may result in incidents of discrimination, harassment, retaliation, and unfair employment practice;
- (3) Ensuring that a complaint is reported according to procedures established by, and on forms created by, the OEO; and
- (4) If assigned to conduct or required to participate in an investigation of an allegation of discrimination, harassment, retaliation, and unfair employment practice, conducting the investigation or participating according to requirements established by the OEO.

I. Each employee:

- (1) Is responsible for reporting all incidents of alleged discrimination, harassment, retaliation, and unfair employment practice; and
- (2) Shall report incidents of alleged discrimination, harassment, retaliation, and unfair employment practices according to procedures established by, and on forms created by, the OEO if the employee:
 - (a) Receives a complaint of discrimination, harassment, retaliation, or unfair employment practices or

Executive Directive Number: OEO.050.0031

- (b) Otherwise has personal knowledge of or a reasonable belief that discrimination, harassment, retaliation, or unfair employment practice is occurring or has occurred.
- J. An employee or applicant for employment who has personal knowledge of or a reasonable belief that discrimination, harassment, retaliation, or unfair employment practice is occurring, or has occurred, is responsible for filing a verbal or written complaint of alleged discrimination, harassment, retaliation, or unfair employment practice:
- (1) According to procedures established by, and on forms created by the OEO; and
 - (2) With any or all of the following:
 - (a) The Executive Director;
 - (b) An Equal Employment Opportunity Designee;
 - (c) A unit head;
 - (d) A manager or shift commander;
 - (e) For a correctional officer, a supervisory employee at the level of shift commander or higher;
 - (f) For employees other than correctional officers, a supervisory employee;
 - (g) The Equal Employment Opportunity Coordinator of the Department of Budget and Management;
 - (h) The Maryland Commission on Civil Rights; and
 - (i) The United States Equal Employment Opportunity Commission.
- K. Processing and Resolving a Complaint. — The Department shall process and resolve complaints of alleged discrimination, harassment, retaliation, or unfair employment practice according to procedures, and on forms, established by the OEO.
- L. Sanctions.
- (1) Discrimination, harassment, retaliation, and unfair employment practice are violations of Department policy and the Department's Standards of Conduct.
 - (2) An employee determined to have committed an act of discrimination, harassment, retaliation, or unfair employment practice is subject to any of the penalties under the Department's Standards of Conduct, up to and including termination of employment with the Department.
 - (3) An employee, a supervisor, a manager, a shift commander, or a unit head who does not perform responsibilities established under this directive is subject to disciplinary action, up to and including termination of employment with the Department.

Executive Directive Number: OEO.050.0031

- (4) A substantiated complaint of discrimination, harassment, retaliation, or unfair employment practice may be subject to criminal prosecution.
- (5) An appointing authority shall provide OEO with a record of all sanctions imposed as a result of an OEO investigation for placement in the investigative file.

.06 Attachment(s)/Links.

There are no attachments or links to this directive.

.07 History.

- A. This Executive Directive replaces Secretary's Directive OEO.050.0031, dated April 15, 2016 updating designation for the Fair Practices Officer and EEO Officer.
- B. This directive supersedes provisions of any other prior existing Department or unit communication with which it may be in conflict.

.08 Operations Distribution.

A, B, L