

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION
ADMINISTRATIVE PROCEDURES
VOLUME III, CHAPTER 6

SUBJECT: PAYROLL/PERSONNEL
CHAPTER TITLE: DISCRIMINATION COMPLAINTS

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I. INTRODUCTION

Effective: 12/1/95

Included in this procedure are the West Virginia Department of Transportation policies, processes and responsibilities for resolving discrimination complaints, including those pertaining to sexual harassment. Each DOT employee with a discrimination complaint will obtain a prompt and equitable answer to his/her problem, without fear of reprisal, by following this procedure.

This procedure is supplemental to Title VII of the 1964 Civil Rights Act (as amended in 1972) and the Governor's "Protocol for Handling Equal Employment Opportunity Complaints." To ensure an understanding of the employee's/employer's rights and responsibilities, a complete review of this procedure, and these referenced materials, is recommended.

A. DISCRIMINATION COMPLAINT

Effective: 12/1/95

A discrimination complaint is a claim by one or more employees alleging that they have been treated unfairly in their workplace and that remedies are required because of actions against them based upon race, color, religion, sex, age, national origin, physical or mental disability, and/or affirmative action

issues. The complainant may seek advice, consultation or other forms of aid from a Department of Transportation Equal Employment Opportunity Counselor prior to or at any stage of the complaint procedure.

B. SEXUAL HARASSMENT

Effective: 12/1/95

Sexual harassment is a form of sexual discrimination under Title VII of the Civil Rights Act of 1964, therefore, it is dealt with in the same manner as all other forms of discrimination complaints. The Equal Employment Opportunity Commission, in their regulations, defines sexual harassment as follows:

"Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

In other words, if an employee feels that he/she is being forced to endure unwelcome sexual advances or conduct at the risk of being dismissed, demoted or passed over for raises or promotions, a case of sexual harassment may exist.

Or, if an employee feels that sexual advances or conduct is interfering with his/her ability to perform a job, or have reasonable peace and calm at work, a case of sexual harassment may exist.

C. ADDITIONAL METHODS OF FILING DISCRIMINATION COMPLAINTS

Effective: 8/1/97

Discrimination complaints, including sexual harassment, may also be filed with the West Virginia Human Rights Commission, with the U.S. Equal Employment Opportunity Commissioner, as a grievance, or as a Civil Court Action. Following, are the time limits set forth by the additional agencies mentioned above.

1. West Virginia Human Rights Commission: within 365 days of the occurrence.
2. U.S. Equal Employment Opportunity Division: 300 days.

II. DOT DISCRIMINATION COMPLAINT POLICY

Effective: 12/1/95

Employees and supervisors will attempt to resolve problems at the lowest possible administrative level through meetings between the employee and the immediate supervisor.

If that is unsuccessful, the formal Discrimination Complaint process may be started.

A. RESPONSIBILITIES AND DUTIES OF SUPERVISORS

Effective: 12/1/95

Under Title VII of the Civil Rights Act of 1964, supervisors must take all steps necessary to prevent "sexual and other forms of harassment," and must take "immediate and effective corrective action," upon learning of such harassment. A supervisor may be liable in a case of harassment if he/she "knew, or should have known of the conduct," unless immediate and appropriate corrective actions are taken.

B. RIGHTS AND RESPONSIBILITIES OF THE COMPLAINANT

Effective: 12/1/95

1. No reprisal of any kind shall be taken against the complainant or their representative or any interested or participation party.
2. All information shall be held in strictest confidence and shall be disclosed only to appropriate individuals who need to know about it, in order to investigate and resolve the matter.

C. RESPONSIBILITIES OF THE DOT EEO OFFICE

Effective: 12/1/95

The Division of Highways Equal Employment Opportunity (EEO) Division functions as the Department of Transportation(DOT) EEO Office in the Discrimination Complaint process. Its responsibilities are as follows.

1. Ensure EEO policies are communicated to all employees.
2. Coordinate the assignment of trained EEO Counselors to DOT agencies and ensure their availability to all DOT employees.
3. Refer, in a sensitive manner, each employee with discrimination concerns directly to the appropriate EEO Counselor.
4. Coordinate EEO training of administrators and EEO Counselors.
5. Advise EEO Counselors and administrators on specific cases, upon request.
6. Bring Discrimination Complaints that cannot be resolved within a DOT agency to the attention of the State EEO Director.
7. Report every quarter to the Secretary of the DOT and each DOT Executive Officer regarding Discrimination Complaint activity throughout the DOT.

III. DOT DISCRIMINATION COMPLAINT PROCESS

Effective: 12/1/95

A. DEFINITIONS OF SUPERVISORY TITLES

Effective: 12/1/95

The managers referenced in the process are generally defined as follows; but, each agency's Commissioner or Director is responsible for applying this guideline to their own organizational structure.

1. Immediate Supervisor: The employee's supervisor, normally a section manager. (For Highways this includes the County Supervisors.)
2. Organization Manager: The next level manager of the employee's office/division. Normally the chief manager of an office, division or district within the agency.
3. Chief Executive Officer: The chief manager of the agency. The Commissioner, Director, etc.

B. STEPS IN FILING A DISCRIMINATION COMPLAINT

Effective: 12/1/95

1. Employees with discrimination complaints will contact an EEO Counselor within 48 hours of the occurrence to describe the facts surrounding their complaint.
2. Within 48 hours, the EEO Counselor shall refer the complaint, in writing using Form EO1, to the employee's organization manager with copies to:

- a. Complainant
- b. Agency Executive Officer (Commissioner of Highways, Commission of Motor Vehicles, etc.)
- c. Secretary of Transportation

c/o EEO Division, Department of Transportation

(The DOT EEO Office will notify the State EEO Director.)

3. The organization manager must:
 - a. Investigate each complaint fully, working with the EEO Counselor.
 - b. Inform appropriate upper level administrators about the complaint and the findings, and if possible,
 - c. Resolve complaints in a timely manner.
4. If within 15 calendar days of the Complainant's initial contact with the EEO Counselor the matter has been resolved to the satisfaction of the complainant and the organizational manager, the organizational manager shall:
 - a. Issue a report to the Agency Executive Officer, Secretary of Transportation and DOT EEO detailing all steps taken to investigate and resolve the complaint and describing the

results;

- b. And the report shall also include a signed agreement by the Complainant that the complaint has been resolved to his/her satisfaction.
5. If the matter has not been resolved to the Complainant's satisfaction within 15 calendar days of the Complainant's initial contact with the EEO Counselor, the following step should be taken; the organizational manager and EEO Counselor must notify the Agency Executive Officer and Secretary of Transportation detailing the steps taken to investigate and resolve the complaint and the results.
 6. The Secretary of Transportation, or his designee (DOT EEO Division) shall have an additional 15 calendar days to investigate and resolve the complaint. This period may be extended by agreement between the Secretary of Transportation and the State EEO Director for a period of no more than 60 days.
 7. Within 10 workdays after a complaint is resolved, the entire file of the resolved complaint shall be forwarded to the State EEO Director by the DOT EEO Division.