

Unlawful Workplace Harassment Policy

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§ 1. Policy

All employees have the right to work in an environment free from discrimination and harassing conduct. No State employee shall engage in conduct that falls under the definition of unlawful workplace harassment, including sexual harassment discrimination, or retaliation, and no employment decisions shall be made on the basis of race, religion, color, national origin, ethnicity, sex (including pregnancy, gender identity or expression, and sexual orientation),¹ age (40 or older), political affiliation, National Guard or veteran status, genetic information or disability. The State of North Carolina prohibits any such discrimination, retaliation, or harassment, including sexual harassment.

§ 2. Purpose

The purpose of this policy is to establish that the State of North Carolina prohibits in any form unlawful workplace harassment or retaliation based on opposition to unlawful workplace harassment of State employees or applicants and to require that every agency shall develop strategies to ensure that work sites are free from unlawful workplace harassment, including sexual harassment, discrimination, and retaliation.

¹ *Bostock v. Clayton County*, 590 U.S. 644, 660 (2020) (holding, in majority opinion authored by Justice Gorsuch, that discrimination on the basis of sexual orientation or transgender status is discrimination based on sex).

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§ 3. Objective

In establishing the Unlawful Workplace Harassment Policy, the State Human Resources Commission seeks to achieve the following objectives:

- Provide standards for unlawful workplace harassment across agencies and universities.
- Serve as a resource for employers, employees, and HR practitioners.
- Provide clarity on terms and concepts associated with unlawful workplace harassment.

§ 4. Definitions

Unlawful Workplace Harassment is unsolicited and unwelcomed speech or conduct based of race, religion, color, national origin, ethnicity, sex (including pregnancy, gender identity or expression, and sexual orientation), age (40 or older), political affiliation, National Guard or veteran status, genetic information or disability where:

1. There is an explicit change to the terms or conditions of employment that is linked to harassment based on a protected characteristic, or
2. The conduct constructively changes the terms or conditions of employment because it is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. This is referred to as a hostile work environment.

See the section entitled “Unlawful Workplace Harassment” for more details.

Sexual Harassment is a particular type of violation of this unlawful workplace harassment policy. See the section entitled “Sexual Harassment” for more details.

Retaliation is any adverse action taken against an individual for engaging in a protected activity such as filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit related to discriminatory employment practices based on race, religion, color, national origin, sex, pregnancy, gender identity or expression, sexual orientation, age (40 or older) political affiliation, National Guard or veteran status, genetic information or disability, or because of opposition to employment practices in violation of the unlawful workplace harassment policy.

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§ 5. Coverage

This policy covers full-time or part-time employees with either a permanent, probationary, trainee, time-limited or temporary appointment; former employees; and applicants.

§ 6. Unlawful Workplace Harassment

To be unlawful, the conduct must either alter the terms and conditions of employment or create a work environment that would be intimidating, hostile, or offensive to reasonable people, including an allegation that the harassment was unwelcome.² Offensive conduct may include, but is not limited to, offensive jokes, slurs, name calling, physical assaults or threats, and offensive objects or pictures.³

Conduct that is not based on a legally protected characteristic is not unlawful harassment.⁴ Conduct that is not severe or pervasive enough to create an objectively hostile or abusive work environment is not unlawful harassment.⁵ Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of unlawful workplace harassment.⁶

In limited circumstances (such as intentional sexual touching or a display of a noose), a single incident of harassment can result in a hostile work environment.⁷ More frequent but less serious incidents can create a hostile work environment, and most hostile work environment claims involve a series of acts. The focus is on the cumulative effect of these acts, rather than on the individual acts themselves.⁸

Harassment can be based on:

- The perception that an individual has a particular protected characteristic even if the perception is incorrect. (For example, harassment of an employee due to the

² U.S. Equal Employment Opportunity Commission (EEOC), Enforcement Guidance on Harassment in the Workplace (April 29, 2024), Section III.A. The EEOC Enforcement Guidance is available at <https://www.eeoc.gov/laws/guidance/enforcement-guidance-harassment-workplace> .

³ EEOC Enforcement Guidance on Harassment in the Workplace, Section III.B.

⁴ EEOC Enforcement Guidance on Harassment in the Workplace, Section II.

⁵ EEOC Enforcement Guidance on Harassment in the Workplace, Section III.A.

⁶ EEOC Enforcement Guidance on Harassment in the Workplace, Section III.A.

⁷ EEOC Enforcement Guidance on Harassment in the Workplace, Section III.B.3.b.ii.

⁸ EEOC Enforcement Guidance on Harassment in the Workplace, Section III.B.3.c.

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belief they belong to a certain religion even if they do not identify with said religion is unlawful workplace harassment.)

- Association with someone in a different protected class. (For example, it is unlawful workplace harassment based on race if a White employee is harassed because their spouse is Black).
- The complainant's protected characteristic, even if the harasser is a member of the same protected class.
- More than one protected characteristic.⁹

The harasser can be the employee's supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee, such as an independent contractor, vendor, or customer, or anyone affected by the offensive conduct.¹⁰

§ 7. Virtual Work Environment

Conduct within a virtual work environment can contribute to a hostile work environment. It is considered within the work environment if the harassing conduct is conveyed using an employer's email system, videoconferencing technology, intranet, public website, official social media accounts, or other equivalent services or technologies.¹¹

§ 8. Sexual Harassment

This policy prohibits employment discrimination, including unlawful workplace harassment based on sex. Harassment based on sex is a particular type of violation of this unlawful workplace harassment policy. Sex-based harassment includes, but is not limited to:

- Harassing conduct of a sexualized nature such as unwanted sexual attention or expression of sexual attraction.
- Harassing conduct of a non-sexualized nature such as sex-based epithets.

⁹ EEOC Enforcement Guidance on Harassment in the Workplace, Section II.A.10.

¹⁰ EEOC Enforcement Guidance on Harassment in the Workplace, Section IV.B.

¹¹ EEOC Enforcement Guidance on Harassment in the Workplace, Section III.C.2.b.

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- Harassing conduct based on pregnancy, childbirth, or related medical conditions. This can include issues such as lactation or the use of contraception.
- Harassing conduct based on sexual orientation or gender identity, including how that identity is expressed.¹²

§ 9. Complaint Process

An employee, former employee or applicant alleging unlawful workplace harassment or retaliation may file a complaint following the process outlined in the Employee Grievance Policy located in the State Human Resources Manual. A complaint of harassment may be made by someone who witnesses harassing conduct, even if the conduct was not directed towards the person filing the complaint.

Employers are required to conduct a prompt, impartial, and thorough EEO Informal Inquiry and take appropriate action based on the findings of the review. The agency shall take immediate and proportionate corrective action if it determines that harassment has occurred.

Employers should also address, through appropriate and proportionate corrective action, complaints of conduct that, as a single action are not severe enough to rise to the level of a hostile work environment, but if allowed to continue would become pervasive and have the potential to create a hostile work environment.

§ 10. Prevention Strategies

Each agency head shall develop strategies to prevent unlawful workplace harassment. The strategies shall at the minimum include:

- A commitment by the agency to the prohibition of unlawful workplace harassment, sexual harassment and retaliation, including clear, documented, and unequivocal statements that harassment and retaliation are prohibited.
- Training and other methods to prevent harassing actions. "Retaliation" is defined earlier in this policy.

¹² EEOC Enforcement Guidance on Harassment in the Workplace, Section II.A.5.

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- A process for disseminating information prohibiting unlawful workplace harassment and retaliation to all agency employees.
- The inclusion of workplace harassment prevention strategies in the agency's Equal Employment Opportunity (EEO) Plan.
- Allocate sufficient resources for effective harassment prevention strategies.
- Regularly train all employees about the unlawful workplace harassment policy.
- Regularly train supervisors and managers about how to prevent, recognize, and respond to objectionable conduct that, if left unchecked, may rise to the level of unlawful workplace harassment.
- Periodically evaluate the effectiveness of the agency's strategies to prevent and address harassment, including reviewing and discussing preventative measures, complaint data, and corrective action with appropriate personnel.

§ 11. Sources of Authority

This policy is issued under any and all of the following sources of law:

- [N.C.G.S. § 126-4\(5\), \(10\), \(11\)](#)
- [Title VII of the Civil Rights Act](#)

It is compliant with the Administrative Code rules at:

- [25 NCAC 01J .1101](#)

§ 12. History of This Policy

Date	Version
December 1, 1980	First version. Sexual Harassment Policy adopted.
April 1, 1983	Expands the State's definition of sexual harassment so that the definition can be in conformity with the Federal Guidelines
August 1, 1995	New policy on workplace violence.
December 10, 1998	Policy developed to conform to legislation. Also incorporated Sexual Harassment Policy into the Unlawful Workplace Harassment Policy.
August 19, 1999	Removed the phrase "in any form" from the first sentence of the purpose statement. In the Definition section, (a) redefined the term

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	retaliation to read “adverse treatment” as opposed to “adverse action” and (b) added the word “alleged” to the third advisory note. In the Grievance Procedures and Appeals section, (a) added the following sentence to item number 2, “The employing agency shall provide a written response to the grievant when the agency has determined what action, if any, will result from the grievant’s written complaint”, and (b) in item number 3, changed “within 30 days” to read “within 30 calendar days”. In the Reporting section, added the second and third paragraphs. In the Prevention Plan section (a) added the phrase “or policies and procedures to comply with and implement the law and rules pertaining to unlawful workplace harassment” to the first sentence and the phrase “policies and procedures” to the second sentence, (b) modified item number 4 (b) to read “grievant right to bypass any step in the applicable agency procedure involving review of or decisions by the alleged harasser”, and (c) modified item number 6 to read “Method for implementing appropriate disciplinary actions to address unlawful workplace harassment and to assure that disciplinary actions shall be consistently and fairly applied.”
August 17, 2000	Added Advisory Note stating that conduct towards an outside vendor or contractor that would constitute unlawful workplace harassment toward an employee could constitute unacceptable personal conduct. Added provisions under Grievance and Appeals stating that agency shall take action within 60 days unless the agency has waived the 60- day period and grievant has acknowledged waiver.
June 21, 2001	Advisory Note on Page 1-19 deleted. Current employees and former employees use the same complaint procedures.
July 1, 2006	Advisory Note deleted in Item No. 2 since this provision has been approved permanently.
January 1, 2012	Genetic information was added to the policy where appropriate to conform to the Genetic Information Nondiscrimination Act of 2008 (GINA).

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October 1, 2012	Remove reference to the State Personnel Commission in the Grievance Procedures and Appeals Section. Clarification was added to the policy about filing grievances based on genetic information.
October 1, 2014	<ul style="list-style-type: none"> • Policy statement amended to add sexual harassment discrimination and Retaliation • Purpose statement was amended to remove the requirement for agencies to develop policies and was replaced with requirements for agencies to develop strategies to ensure worksites are free from unlawful workplace harassment and retaliation. Strategies must be included in EEO Plan. • Definitions were reworded to match definitions provided by U. S. EEOC. • “Hostile work environment” and “Quid Pro Quo” definitions were removed since terms are no longer being used in the policy. • “Applicants” were included in the “coverage” section of the policy. • Grievance Procedures and Appeals section were renamed “complaint process” and refer applicants and employees to the “Employee Grievance Policy”. • The “reporting” section was removed from the policy. • The section on “prevention plans” was renamed “prevention strategies.”
April 4, 2019	<ul style="list-style-type: none"> • In alignment with Executive Order #24, the EEO policy was amended to add sexual orientation, gender identity and expression, and Veteran/National Guard status to the list of protected groups. Approved at the SHRC meeting on 4/4/2019. • In addition, definitions removed from the policy. The definitions will be expanded and provided as a supplemental document.
July 11, 2024 (effective August 1, 2024)	<ul style="list-style-type: none"> • Added citations to the EEOC Enforcement Guidance on Harassment throughout. • Added in Section 3 as objectives: <ul style="list-style-type: none"> ▪ Provide standards for unlawful workplace harassment across agencies and universities.

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	<ul style="list-style-type: none"> ▪ Serve as a resource for employers, employees, and HR practitioners. ▪ Provide clarity on terms and concepts associated with unlawful workplace harassment. • Revised Section 4, Definitions, by updating the definition of Unlawful Workplace Harassment and moving the text on sexual harassment to a new section of the policy. • Added a new Section 6, Unlawful Workplace Harassment, detailing what conduct is unlawful and what conduct is not unlawful. It also clarifies that harassment may be based on perception, association, committed by a member of the same protected class as the victim and based on more than one protected characteristic. • Added a new section 7, Virtual Work Environment to explain that conduct within a virtual work environment can contribute to a hostile work environment. It is considered within the work environment if the harassing conduct is conveyed using an employer’s email system, videoconferencing technology, intranet, public website, official social media accounts, or other equivalent services or technologies. • Added a new Section 8, Sexual Harassment, detailing what is considered sex-based harassment. • Added language to Section 9, Complaint Process, that states: <ul style="list-style-type: none"> a. A complaint of harassment may be made by someone who witnesses harassing conduct, even if the conduct was not directed towards the person filing the complaint. b. Employers are required to conduct a prompt, impartial, and thorough EEO Informal Inquiry and take appropriate action based on the findings of the review. The agency shall take immediate and
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	<p>proportionate corrective action if it determines that harassment has occurred.</p> <p>c. Employers should also address, through appropriate and proportionate corrective action, complaints of conduct that, as a single action are not severe enough to rise to the level of a hostile work environment, but if allowed to continue would become pervasive and have the potential to create a hostile work environment.</p> <ul style="list-style-type: none">• Updated Section 10, Prevention Strategies, to include additional strategies for agencies to follow to prevent unlawful workplace harassment.
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