

Policy No. 4 / Non-Discrimination and Anti-Harassment

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Approving authority



Mike Kreidler, Insurance Commissioner

Reference Title VI and VII of the Civil Rights Act, as amended
Age Discrimination Act of 1975, as amended
the Americans with Disabilities Act of 1990, as amended
RCW 49.60
WAC 357
WAC 162
Collective Bargaining Agreement

I. Purpose

- A. To establish a policy and procedure to address complaints alleging harassment on any basis, and harassment or discrimination on the basis of protected class status, in any aspect of the Office of the Insurance Commissioners' (OIC's) service delivery or employment.
- B. This policy applies to all employees and volunteers of the OIC and other persons having business with the agency, including contractors. For positions covered by the Collective Bargaining Agreement (CBA), if the provisions of this policy conflict with the CBA, the CBA will prevail.

II. Definitions

- **Discrimination:** Unfavorable or unfair treatment of a person or class of persons in comparison to others who are not members of the protected class because of race, creed, sex, pregnancy or breastfeeding, color, religion, national origin, age (over 40), veteran or military status, sexual orientation/gender identity, marital status, use of a trained guide dog or service animal by a person with a disability or any other protected class or retaliation for complaints related to these categories.

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- Harassment: Verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her protected class status that:
 - ✓ Has the purpose or effect of creating an intimidating, hostile or offensive work environment;
 - ✓ Has the purpose or effect of unreasonably interfering with an individual's work performance; or
 - ✓ Otherwise adversely affects an individual's employment opportunities.

Examples of harassment that denigrate or show hostility or aversion toward an individual due to protected class status may include, but are not limited to, jokes, slurs, derogatory comments, negative stereotyping, graffiti, offensive material on a bulletin board or in e-mail, and unwelcome comments about the individual's protected class status.

- Intimidation: For the purposes of this policy, intimidation is a form of harassment that while not prohibited by anti-discrimination laws, involves verbal or physical conduct that demonstrates:
 - ✓ Hostility or aversion toward an individual;
 - ✓ Threats;
 - ✓ Offensive behavior;
 - ✓ Efforts to humiliate or insult another employee;
 - ✓ Interference with the work performance of another employee; or other improper behavior that has an adverse impact on an employee's mental or physical well-being; or
 - ✓ Other improper behavior that has an adverse impact on an employee's mental or physical well-being.
- Sexual Harassment and Inappropriate Conduct of a Sexual Nature: Sexual harassment (an unlawful employment practice) and inappropriate workplace conduct of a sexual nature in any form is prohibited under this policy. Sexual harassment is defined as the following:
 - ✓ Unwelcome verbal or physical conduct of a sexual nature when submission to such conduct, either explicitly or implicitly, is made a term or condition of an individual's employment;
 - ✓ Unwelcome verbal or physical conduct of a sexual nature when submission or rejection of such conduct by an individual is used as the basis for employment decisions affecting an individual;
 - ✓ Unwelcome verbal or physical conduct of a sexual nature when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or statutory rights, or creating an intimidating, hostile or offensive environment; or
 - ✓ Unwelcome verbal or physical nonsexual conduct that denigrates or shows hostility toward a person because of his or her gender or sexual orientation when the conduct has the purpose or effect of substantially interfering with a person's work performance or statutory rights, or creating an intimidating, hostile, or offensive environment.

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III. Policy

- A. The OIC is committed to providing a work environment that is free from all forms of discrimination, intimidation, and conduct that can be considered harassing, coercive or disruptive, including sexual harassment. Through enforcement of this policy and by education of employees, the OIC will seek to prevent, correct, and discipline behavior that violates this policy.
- B. All employees are expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur. To ensure employees are educated on this policy, every new employee will read and acknowledge this policy during the first 30 days of employment and thereafter on an annual basis during agency key policy acknowledgement. Employees are also required to attend diversity training per requirements contained within OIC Policy No. 14, Human Resource Development.
- C. Prohibited Conduct
 - 1. It is a violation of this policy to discriminate in providing employment opportunities, benefits, or privileges; to create discriminatory work conditions; or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, the person's protected class status.
 - 2. Intimidation constitutes prohibited conduct even if the activity does not constitute a violation of the anti-discrimination or harassment laws. Appropriate corrective or disciplinary actions taken by a supervisor do not constitute intimidation.
 - 3. Sexual Harassment in any form is prohibited under this policy.
 - a. Sexual harassment can be in the form of verbal behavior such as unwanted sexual comments, questions, suggestions, demeaning terms, flirtations, jokes or requests for sexual favors; any non-verbal behavior which may include gestures, leering, pictures or cartoons; and physical behavior such as assault, molestation, touching, patting, pinching, or repeated brushing against a person's body.
 - b. Sexual harassment can occur in a variety of circumstances. Sexual harassment may involve individuals of the same or different gender. The harasser can be a supervisor, subordinate, a co-worker, or a non-employee. The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
 - c. Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature.
 - d. Through this policy, the OIC does not intend to regulate social interaction or relationships which are consensual, voluntary and freely entered into by employees or individuals performing business with the OIC where such relationships do not impact the performance of professional duties. (Employees are referred to OIC Policy 12, Employment of Relatives and Household Members for additional information.)

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- D. Harassment on the basis of any other protected characteristic is also prohibited under this policy. Harassing conduct includes, but is not limited to, epithets, slurs or negative stereotyping; threatening, intimidating, or hostile acts; denigrating jokes, and display or circulation in the workplace of written or graphic material that denigrates or shows hostility toward an individual or group.
- E. No hardship, loss, benefit, and no penalty may be imposed on an employee as punishment for:
 - 1. Filing or responding to a bona fide complaint of discrimination or harassment;
 - 2. Appearing as a witness in the investigation of a complaint; or
 - 3. Serving as an investigator.

IV. Reporting

- A. Employees are expected to report all perceived incidents of discrimination, intimidation, or harassment in the workplace to their chain of supervision or the Human Resources Director (or designee). Employees are not required to file their complaints with their chain of supervision first before bringing it to the attention of the Human Resources Office.
- B. Employees who have experienced conduct they believe is contrary to this policy have an obligation to take advantage of this reporting procedure. An employee's failure to fulfill this reporting obligation could affect his or her right to pursue the legal action under Section E below.
- C. Supervisors or managers who become aware of allegations of discrimination, intimidation, or any form of harassment will immediately notify the Human Resources Director (or designee) so the incident can be investigated in a timely and confidential manner.
- D. To provide and maintain a workplace free from harassment, discrimination, and retaliation the agency may pursue an inquiry into such allegations, with or without authorization of the complainant and/or injured party.
- E. Employees who believe they have been subjected to illegal forms of discrimination or harassment based on protected class status may file a complaint with the Washington State Human Rights Commission under 49.60 RCW or with the Federal Equal Employment Opportunity Commission under Title VII of the Civil Rights Act of 1964.
- F. The availability of this reporting procedure does not preclude employees who believe they are being subjected to harassing conduct from promptly advising the harasser that his or her behavior is unwelcome and requesting that it be discontinued.

V. Investigation

- A. All reported allegations of discrimination, intimidation, or harassment will be investigated. The investigation will include gathering relevant information and conducting individual interviews

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with the parties involved, and where necessary, any witnesses who may have observed the alleged conduct or may have other relevant knowledge.

- B. Confidentiality, including all parties and witnesses, will be maintained throughout the investigatory process to the extent consistent with adequate investigation. Once an investigation is completed, confidentiality can no longer be guaranteed. Completed investigative reports may be subject to public dissemination in accordance with state law or federal law, or court order.
- C. Employees involved in or observing the investigation of such matters are expected to maintain confidentiality and refrain from gossip or speculation concerning the parties to a complaint, an investigation, or agency action on such matters.
- D. All OIC staff will cooperate fully with the investigatory process. This includes providing complete and truthful information, maintaining confidentiality with regard to all persons involved in an investigation and refraining from gossip or speculation concerning the parties to a complaint or agency action on such matters.
- E. The OIC Core Competencies, found on the OIC Intranet, are reflective of the expected behaviors that all employees are expected to show in the workplace, to include situations such as those covered in this policy.

VI. Retaliation

- A. Retaliation against employees, volunteers or other persons having business with the agency who report, in good faith, harassment or discrimination or who participate in an investigation will not be tolerated.
- B. An employee who feels they have been subjected to adverse retaliatory action or who has knowledge of retaliatory behavior toward another person is required to report the offender to their supervisor, manager, or to the Human Resource Director (or designee.)

VII. Violation of Law or Policy

Any employee found to have violated this policy or state and federal law is subject to corrective or disciplinary action, up to and including dismissal.