

 <p>ARIZONA DEPARTMENT OF CORRECTIONS</p> <p>DEPARTMENT ORDER MANUAL</p>	<p>CHAPTER: 500</p> <p>PERSONNEL/HUMAN RESOURCES</p>	<p>OPR:</p> <p>DIR</p>
	<p>DEPARTMENT ORDER: 527</p> <p><i>SEXUAL HARASSMENT AND EMPLOYMENT DISCRIMINATION</i></p> <p>(Companion Department Order: 501, Employee Professionalism, Ethics and Conduct)</p>	<p>SUPERSEDES:</p> <p>DO 527 (12/9/10)</p>
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PURPOSE

This Department Order ensures that the optimum level of professionalism is maintained by Department employees and that qualified persons are recruited, selected and employed based upon bona fide occupational qualifications. The Department expects the highest ethical standards of honesty, integrity, impartiality and conduct of its employees in their interaction with inmates, offenders, released inmates, other employees and the general public. To merit the public's continued respect and confidence, employees shall observe all laws while at and away from work.

The Department requires a work place absent of sexual harassment, employment discrimination and retaliation against complaining parties, witness and others who provide information concerning such allegations. Qualified persons are recruited, selected and employed, consistent with existing bona fide occupational qualifications, and without regard to race, color, sex (including pregnancy), religion, national origin, age, disability status, veteran status, and genetics, unless exceptions are made because of bona fide occupational qualifications.

Department Order #501, Employee Professionalism, Ethics and Conduct is a related policy to Department Order #527, Sexual Harassment and Employment Discrimination and should be referred to as an existence of this Department Order.

PROCEDURES

527.01 GENERAL RESPONSIBILITIES

- 1.1 All employees shall:
 - 1.1.1 Accept responsibility and delegated authority to efficiently and effectively perform their assigned functions in a courteous, considerate and prompt manner.
 - 1.1.2 Ensure their personal conduct is, at all times, in compliance with the requirements expressed in this Department Order.
 - 1.1.3 Immediately report misconduct to their Warden, Bureau Administrator, any supervisor, Equal Opportunity Liaison or the Equal Opportunity Officer.
 - 1.1.4 Cooperate with the Department's official investigations.
 - 1.1.5 Ensure they maintain a professional demeanor at all times while on duty and while in uniform.
- 1.2 Department employees shall not sexually harass, discriminate or retaliate against another employee.
- 1.3 Approving authorities shall:
 - 1.3.1 Consider knowledge and application of laws, rules, policies and procedures when preparing Performance Appraisal for Correctional Employees (PACE) files.
 - 1.3.2 Ensure their subordinates are held accountable for compliance with this Department Order, and allegations of misconduct by employees at any level are thoroughly investigated and resolved.

- 1.3.3 Investigate or request an investigation into allegations of misconduct, in accordance with Department Order #601, Administrative Investigations and Employee Discipline.
- 1.3.4 Administer appropriate corrective discipline for each sustained finding of employee misconduct, in accordance with Department Order #601, Administrative Investigations and Employee Discipline.
- 1.3.5 Be responsible for taking prompt and appropriate initial and final administrative action and/or corrective disciplinary action regarding criminal charges filed against subordinate staff, and related allegations of misconduct.

527.02 SEXUAL HARASSMENT

- 1.1 Supervisors at each level shall:
 - 1.1.1 Ensure their subordinates are provided with sufficient training, in accordance with Department Order #509, Employee Training and Education, to enable them to understand the elements of sexual harassment as defined by this Department Order.
 - 1.1.2 Clearly communicate to their subordinates that sexual harassment will not be tolerated.
 - 1.1.3 Take immediate and appropriate action to stop sexual harassment if they observe it occurring or are aware or have been made aware it is occurring or has occurred, even in the absence of a written or oral complaint, and notify the Warden or Bureau Administrator and the Equal Opportunity Officer, preferable immediately, but within no more than five working days from the date they became or were made aware of the occurrence. Supervisors who fail to meet this requirement shall be subject to discipline.
 - 1.1.4 Request or initiate an investigation of any allegation of sexual harassment.
 - 1.1.5 Request investigation of incidents involving sexual harassment, and take immediate and appropriate corrective action.
- 1.2 Employees who wish to file a sexual harassment complaint may do so orally or in writing. If in writing, the employee shall complete one of the following: Allegation of Discrimination/Title VII Complaint, Form 527-2; Information Report, Form 105-2 or memorandum. Employees may submit written or oral sexual harassment complaints to their Warden, their Bureau Administrator, any supervisor, any Equal Opportunity Liaison or the Equal Opportunity Officer.
 - 1.2.1 Employees may use the employee grievance procedure, in accordance with Department Order #517, Employee Grievances, to file a grievance regarding sexual harassment.
 - 1.2.2 Employees who file a sexual harassment complaint are not required to confront the alleged harasser.
 - 1.2.3 Complaints of sexual harassment will be kept confidential to the greatest extent possible.

- 1.3 Recipients of sexual harassment complaints whether orally or in writing shall forward the complaint to the Warden or Bureau Administrator, and the Equal Opportunity Officer, preferably immediately, but within no more than five working days from date of receipt.
 - 1.3.1 The Warden or Bureau Administrator in consultation with the Equal Opportunity Officer shall ensure all complaints of sexual harassment are promptly and objectively investigated, and shall ensure the appointed Equal Opportunity Liaison or investigator chosen to conduct the fact finding or investigation is from outside the complaining party's and alleged harasser's assigned work areas or units.
 - 1.3.1.1 The Warden or Bureau Administrator shall notify the complainant in writing advising them of the determination to conduct a fact finding or an investigation as soon as possible, but no later than 20 calendar days after the receipt of a complaint.
 - 1.3.2 Upon completion of the fact finding the Equal Opportunity Liaison shall immediately forward all documentation to the Warden or Bureau Administrator and the Equal Opportunity Officer.
 - 1.3.2.1 The Equal Opportunity Officer shall:
 - 1.3.2.1.1 Evaluate all documentation to determine if the fact finding provided sufficient information for making an accurate assessment of the facts in order to conclude whether a violation occurred.
 - 1.3.2.1.2 Recommend the Warden or Bureau Administrator either address the complaint using appropriate administrative measures or proceed with initiating use of Department Order #601, Administrative Investigations and Employee Discipline.
 - 1.3.2.2 The Warden or Bureau Administrator shall:
 - 1.3.2.2.1 Within ten work days of the completion of the fact finding notify the complainant, in writing, advising them of the results of the fact finding and forward a copy to the Equal Opportunity Officer. If this written notification cannot be provided to the complainant within 90 work days of the date that the complainant filed their complaint, the complainant must be told, in writing, the reason(s) why the investigation was not completed within 90 work days.
 - 1.3.2.2.2 Provide written notification to the Equal Opportunity Officer of the administrative actions taken to address complaint.
- 1.4 Upon determination that Department Order #601, Administrative Investigations and Employee Discipline will be utilized, the Warden, Administrator, or Bureau Administrator shall proceed with the Administrative Inquiry process by issuing the employee an Administrative Inquiry as outlined in Department Order #601.

- 1.4.1 If the Warden, Administrator, or Bureau Administrator, after reviewing the Administrative Inquiry, Form 601-1, and supporting documentation, determine an Administrative Investigation Unit (AIU) investigation is required, all documentation shall be forwarded to AIU.
 - 1.4.1.1 The AIU Investigator shall:
 - 1.4.1.1.1 Provide in writing as soon as possible, but in no event later than 60 calendar days after the filing of the complaint, complete the investigation. If the investigation cannot be completed within 60 calendar days the investigator shall provide an explanation in writing to the complaining party.
 - 1.4.1.1.2 After the investigation, forward the complaint file for review, to the Division Director of the employee against whom the complaint was made.
- 1.5 The Division Director of the employee against whom the complaint was made shall, in accordance with Department Order #601, Administrative Investigations and Employee Discipline, ensure:
 - 1.5.1 The complaint file is returned through the appropriate Division Director to the Warden, Deputy Warden or Bureau Administrator to determine findings and recommend applicable corrective discipline.
 - 1.5.2 The completed complaint file, including findings and recommended corrective action, are forwarded to the Equal Opportunity Officer. The Equal Opportunity Officer shall review all complaint files.
 - 1.5.2.1 If the Equal Opportunity Officer determines the actions under review did not constitute sexual harassment, the complaint file shall be reviewed by the Employee Relations Administrator. If the Employee Relations Administrator and the Equal Opportunity Officer are in agreement on this conclusion, the complaint file shall be returned to the appropriate Division Director for final imposition of corrective or disciplinary action, if appropriate.
 - 1.5.2.2 If the Employee Relations Administrator and the Equal Opportunity Officer determine the actions in review did constitute sexual harassment, the complaint file shall be forwarded to the Director, along with recommended corrective or disciplinary action.
- 1.6 The Director shall review the file and determine the findings and, if appropriate, any corrective discipline to be taken.
 - 1.6.1 After the Director's review, the complaint file is returned through the appropriate Division Director to the Warden, Deputy Warden or Bureau Administrator for information and implementation of any approved corrective or disciplinary action.
 - 1.6.2 A copy of any corrective or disciplinary action is provided to the Employee Relations Administrator, and the Equal Opportunity Officer.

- 1.7 Deputy Director, Division Directors, Wardens, Deputy Wardens and Bureau Administrators shall:
 - 1.7.1 Maintain records of sexual harassment complaints in accordance with Department Order #103, Correspondence/Records Control.
 - 1.7.2 Ensure documentation related to sexual harassment complaints is not placed in a complaining party's Institution/Work Unit Personnel Files or supervisors' PACE files.
 - 1.7.3 Ensure complaining parties, witnesses, and others who provide information concerning such allegations are not subjected to any form of retaliation.
 - 1.7.4 Ensure retaliation and reprisals are not tolerated against employees who:
 - 1.7.4.1 File complaints of sexual harassment with the United States Equal Employment Opportunity Commission (EEOC) or other governmental agency and/or
 - 1.7.4.2 Testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted by the EEOC or other governmental agency.
- 1.8 The Human Resources Operations Administrator shall ensure documentation related to sexual harassment complaints are not placed in a complainant's Central Office Personnel File.
- 1.9 The Equal Opportunity Officer shall provide a quarterly report to the Director outlining all sexual harassment complaints filed with the EEO Office, the Equal Employment Opportunity Commission and the Arizona Civil Rights Division during the quarter and the current status of each complaint.

527.03 EMPLOYMENT DISCRIMINATION

- 1.1 Supervisors at each level shall:
 - 1.1.1 Ensure their subordinates are provided with sufficient training, in accordance with Department Order #509, Employee Training and Education, to enable them to understand the elements of employment discrimination as defined by this Department Order.
 - 1.1.2 Clearly communicate to their subordinates that employment discrimination will not be tolerated.
 - 1.1.3 Take immediate and appropriate action to stop employment discrimination if they observe it occurring or are aware or have been made aware it is occurring or has occurred, even in the absence of a written or oral complaint, notify the Warden or Bureau Administrator, who shall notify the Equal Opportunity Officer and preferably immediately, but within no more than five working days from date they became or were made aware of the occurrence. Supervisors who fail to meet this requirement shall be subject to discipline.
 - 1.1.4 Request or initiate an investigation of an allegation of employment discrimination.

- 1.1.5 Request investigation of incidents involving employment discrimination and take immediate and appropriate corrective action.
- 1.2 Employees who wish to file an employee discrimination complaint may do so orally or in writing. If in writing, the employee shall complete one of the following: Allegation of Discrimination/Title VII Complaint, Form 527-2; Information Report, Form 105-2 or memorandum. Employees may submit written or oral sexual harassment complaints to their Warden, Bureau Administrator, any supervisor, any Equal Opportunity Liaison or the Equal Opportunity Officer.
 - 1.2.1 Employees may use the employee grievance procedure, in accordance with Department Order #517, Employee Grievances, to file a grievance regarding employment discrimination.
 - 1.2.2 Employees who file an employment discrimination complaint are not required to confront the alleged harasser.
 - 1.2.3 Complaints of employment discrimination will be kept confidential to the greatest extent possible.
- 1.3 Recipients of employment discrimination complaints whether orally or in writing shall forward the complaint to the Warden, Bureau Administrator, and the Equal Opportunity Officer, preferable immediately, but within no more than five working days from date of receipt.
 - 1.3.1 The Warden or Bureau Administrator in consultation with the Equal Opportunity Officer shall ensure all complaints of employment discrimination are promptly and objectively investigated, and shall ensure the appointed Equal Opportunity Liaison or Investigator chosen to conduct the fact finding or investigation is from outside the complaining party's and alleged harasser's assigned work areas or units.
 - 1.3.1.1 The Warden or Bureau Administrator shall notify the complainant in writing advising them of the determination to conduct a fact finding or an investigation as soon as possible, but no later than 20 calendar days after the receipt of a complaint.
 - 1.3.2 Upon completion of the fact finding the Equal Opportunity Liaison shall forward all documentation to the Warden or Bureau Administrator and the Equal Opportunity Officer.
 - 1.3.2.1 The Equal Opportunity Officer shall:
 - 1.3.2.1.1 Evaluate all documentation to determine if the fact finding provided sufficient information for making an accurate assessment of the facts in order to conclude whether a violation occurred.
 - 1.3.2.1.2 Recommend the Warden or Bureau Administrator either address the complaint using appropriate administrative measures or proceed with initiating use of Department Order #601, Administrative Investigations and Employee Discipline.

- 1.3.2.2 The Warden or Bureau Administrator shall:
 - 1.3.2.2.1 Within ten work days of the completion of the fact finding notify the complainant, in writing, advising them of the results of the fact finding and forward a copy to the Equal Opportunity Officer. If this written notification cannot be provided to the complainant within 90 work days of the date that the complainant filed their complaint, the complainant must be told, in writing, the reason(s) why the investigation was not completed within 90 work days.
 - 1.3.2.2.2 Provide written notification to the Equal Opportunity Officer of the administrative actions taken to address complaint.
- 1.4 Upon determination that Department Order #601, Administrative Investigations and Employee Discipline will be utilized, the Warden, Administrator, or Bureau Administrator shall proceed with the Administrative Inquiry process by issuing the employee an Administrative Inquiry as outlined in Department Order #601.
 - 1.4.1 If the Warden, Administrator, or Bureau Administrator, after reviewing the Administrative Inquiry, Form 601-1, and supporting documentation, determine an Administrative Investigation Unit (AIU) investigation is required, all documentation shall be forwarded to AIU.
 - 1.4.1.1 The AIU Investigator shall:
 - 1.4.1.1.1 Provide in writing as soon as possible, but in no event later than 60 calendar days after the filing of the complaint complete the investigation. If the investigation cannot be completed within 60 calendar days the investigator shall provide an explanation in writing to the complaining party.
 - 1.4.1.1.2 After the investigation, forward the complaint file for review, to the Division Director of the employee against whom the complaint was made.
- 1.5 The Division Director of the employee against whom the complaint was made shall, in accordance with Department Order #601, Administrative Investigations and Employee Discipline, ensure:
 - 1.5.1 The complaint file is returned through the appropriate Division Director to the Warden, Deputy Warden or Bureau Administrator to determine findings and recommend applicable corrective discipline.
 - 1.5.2 The completed complaint file, including findings and recommended corrective action, are forwarded to the Equal Opportunity Officer. The Equal Opportunity Officer shall review all complaint files.

- 1.5.2.1 If the Equal Opportunity Officer determines the actions under review did not constitute discrimination, the complaint file shall be reviewed by the Employee Relations Administrator. If the Employee Relations Administrator and the Equal Opportunity Officer are in agreement on this conclusion, the complaint file shall be returned to the appropriate Division Director for final imposition of corrective or disciplinary action, if appropriate.
 - 1.5.2.2 If the Employee Relations Administrator and the Equal Opportunity Officer determine the actions in review did constitute discrimination, the complaint file shall be forwarded to the Director, along with recommended corrective or disciplinary action.
- 1.6 The Director shall review the file and determine the findings and, if appropriate, any corrective discipline to be taken.
 - 1.6.1 After the Director's review, the complaint file is returned through the appropriate Division Director to the Warden, Deputy Warden or Bureau Administrator for information and implementation of any approved corrective or disciplinary action.
 - 1.6.2 A copy of any corrective or disciplinary action is provided to the Employee Relations Administrator, and the Equal Opportunity Officer.
- 1.7 Deputy Director, Division Directors, Wardens, Deputy Wardens and Bureau Administrators shall:
 - 1.7.1 Maintain records of discrimination complaints in accordance with Department Order #103, Correspondence/Records Control.
 - 1.7.2 Ensure documentation related to discrimination complaints is not placed in a complaining party's Institution/Work Unit Personnel Files or supervisors' PACE files.
 - 1.7.3 Ensure complaining parties, witnesses, and others who provide information concerning such allegations are not subjected to any form of retaliation.
 - 1.7.4 Ensure retaliation and reprisals are not tolerated against employees who:
 - 1.7.4.1 File complaints of sexual harassment with the United States Equal Employment Opportunity Commission (EEOC) or other governmental agency and/or
 - 1.7.4.2 Testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted by the EEOC or other governmental agency.
- 1.8 The Human Resources Operations Administrator shall ensure documentation related to discrimination complaints are not placed in a complainant's Central Office Personnel File.
- 1.9 The Equal Opportunity Officer shall provide a quarterly report to the Director outlining all discrimination complaints filed with the EEO Office, the Equal Employment Opportunity Commission and the Arizona Civil Rights Division during the quarter and the current status of each complaint.

DEFINITIONS

APPROVING AUTHORITIES - Individuals to whom the Director has delegated authority to recommend corrective disciplinary action and implement that which is approved. Approving authorities include Deputy Director, Division Directors, Regional Operations Directors, Regional Health Administrators, Wardens, Deputy Wardens and Bureau Administrators. These positions are designated in accordance with the pay grade level of the employee to be disciplined, and the severity of the corrective disciplinary action. See Department Order #601, Administrative Investigations and Employee Discipline.

BONA FIDE OCCUPATIONAL QUALIFICATIONS - Defensible requirements for a position that are actual qualifications for performing the job (e.g., medical/physical standards, age, religion, sex or national origin). Bona Fide Occupational Qualifications are clearly announced, in writing, to all applicants for the position.

CORRECTIVE DISCIPLINARY ACTION - Sanctions that an approving authority may take for sustained allegations of misconduct, pursuant to Department Order #601, Administrative Investigations and Employee Discipline, following an Administrative investigation.

EMPLOYEE - Any person compensated for working full-time, part-time or under temporary appointment, or providing services under volunteer, internship or contractual arrangement with the Department.

EMPLOYMENT DISCRIMINATION - Any personnel transaction/employment decision that has an adverse effect, whether intentional or unintentional, on an employee under the law, regarding matters of race, color, sex (including pregnancy), sexual orientation, religion, national origin, age, disability status, veteran status, and genetics, unless exceptions are made because of bona fide occupational qualifications.

EMPLOYMENT DISCRIMINATION COMPLAINT - Complaints related to employment discrimination.

EQUAL OPPORTUNITY LIAISON - Staff members designated by Wardens, Deputy Wardens and Bureau Administrators to be the Equal Opportunity Officer's liaison for local Equal Opportunity issues and complaints.

EQUAL OPPORTUNITY OFFICER - A position that reports to the Employee Relations Administrator, which assists, monitors and evaluates the Department's compliance with equal opportunity laws, guidelines, and policies to ensure employment practices and contracting arrangements give equal opportunity without regard to race, color, sex (including pregnancy), sexual orientation, religion, national origin, age, disability status, veteran status, and genetics, unless exceptions are made because of bona fide occupational qualifications.

FACT FINDING - An informal investigative process used to obtain sufficient information for the purpose of determining the validity of allegations brought forth as possible employment discrimination.

INITIAL ADMINISTRATIVE ACTION - Temporary administrative remedies (e.g., immediate temporary reassignment of an employee from current duties or administrative leave with pay pending review of the investigation report) that an approving authority may take immediately following a Administrative investigation of a staff arrest incident/serious traffic violation involving a subordinate, or incidents involving employee misconduct.

MISCONDUCT - An employee's criminal act or behavior that is not in compliance with Department Orders, rules and regulations while on or off duty.

PERSONNEL TRANSACTION (EMPLOYMENT DECISION) - A decision made or an action taken regarding an employee including, but not limited to, recruitment, hiring, placement, reclassification, training, licensing, transfer, promotion, demotion, rate of pay, lay-off, termination, or reinstatement.

PROFESSIONAL Demeanor - Personal conduct and behavior that exemplifies a courteous, business-like attitude. As examples of professional demeanor, employees shall:

- Maintain a clean, neat and business-like work area.
- Be observant and attentive while on duty.
- Arrange for the introduction of personal property/food in accordance with Department Order #513, Employee Property.

SEXUAL HARASSMENT - Verbal or physical conduct of a sexual nature in the work place imposed upon any employee as a condition of employment or creating a sexually intimidating, hostile or offensive work environment. There are two basic types of sexual harassment:

- **Quid Pro Quo** - An employee's submission to or compliance with a supervisor's demands for sexual favors in order to avoid an economic or tangible job loss; a supervisor's demands for sexual favors that are unwelcome; or a supervisor's retaliatory acts if the employee fails or refuses to submit or comply with demands for sexual favors (e.g., failure to be promoted, failure to receive a merit increase, demotion and dismissal).
- **Environmental** - Creating or condoning a sexually intimidating, hostile or offensive work environment. Environmental sexual harassment does not entail tangible job loss, but is prohibited because it creates a hostile term and condition of employment due to its sexual nature.

Specific acts that constitute sexual harassment include but are not limited to:

- **Unwelcome Sexual Advances** - Patting, pinching, brushing up against, hugging, cornering, kissing, fondling or any physical contact considered unacceptable by another individual.
- **Requests or Demands for Sexual Favors** - Repeated requests to get together may be perceived as requests for sexual favors.
- **Comments or Materials of a Sexual Nature** - Innuendoes and jokes, considered to be abusive or unacceptable by another individual.
- **Intimidation, Hostility, Offensive Attitude** - Resulting from rejection of sexually oriented demands, requests, physical contacts or attention.
- **Interference** - With a co-worker's performance, due to unwanted sexual conduct.
- **Sexually Oriented Conduct** - During work hours.
- **Condoning** - Allowing sexually-oriented innuendoes or any other conduct of a sexual nature within the work environment.

Sexual harassment involves a variety of circumstances, including, but not limited to the following:

- The complainant as well as the harasser may be a woman or a man. The complainant does not have to be of the opposite sex.
- The harasser can be the complainant's supervisor, a supervisor in another area, a co-worker or any agent of the Department.
- The complainant does not have to be the person harassed, but could be anyone affected by the offensive conduct.
- Sexual harassment may occur without economic injury to or discharge of the complainant.
- The harasser's conduct must be unwelcome before an act constitutes sexual harassment.

In determining whether alleged conduct constitutes sexual harassment, a person needs to study the issues as a whole and the totality of circumstances, such as the nature of sexual advances and the context in which the alleged incidents occurred. The determination of legality of a particular action will be made from facts, on a case-by-case basis.

SUPERVISOR – A supervisor is (a) any employee who has the authority to direct the work activities of at least one other employee or (b) any employee who has the authority to hire, fire, promote, transfer, or discipline another employee.

{Original Signature on File}

Charles L. Ryan
Director

FORMS LIST

527-2, Allegation of Discrimination/Title VII Complaint

AUTHORITY

A.R.S. 41-1401, et seq, Arizona Civil Rights Act.

A.R.S. 41-1463, Discrimination; Unlawful practices; Definition.

A.R.S. 41-1602, The Department of Corrections; Purpose.

A.R.S. 41-770, Cause for Discipline or Dismissal from State Service.

A.R.S. 41-773, Unlawful Acts; Violation; Classification

A.A.C. R2-5-501., Standards of Conduct.

A.A.C. R2-5-701., Grievance System.

A.A.C. R2-5-702., Grievance Procedures.

U.S. Civil Rights Act of 1964, Title VII, 703, as amended, 42 U.S.C. 2000e-2.

28 CFR, Part 36; 29 CFR, Parts 1602, 1627 and 1630, The Americans With Disabilities Act.

29 CFR, Chapter 14, Part 1607, Uniform Guidelines on Employment Procedure (1978), et seq.