

 <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>EMPLOYMENT DISCRIMINATION AND HARASSMENT</i></p> <p>(Companion Department Order: 501, Employee Professionalism, Ethics and Conduct)</p>	<p>SUPERSEDES:</p> <p>DO 527 (07/17/12)</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 employment discrimination, harassment and retaliation against complaining parties, witnesses 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, sexual orientation and gender identity), religion, national origin, age, disability status, military obligation, veteran status, or genetic information, unless exceptions are made because of bona fide occupational qualifications.

The Department’s Human Resources Programs Manager shall serve as the Department’s Complaint Coordinator, receiving, reviewing and/or assigning complaints to appropriate individuals so they may be addressed. Employee grievances filed by a covered employee under the Arizona Department of Administration (ADOA) Personnel Rule R2-5B-403 that include an allegation of discrimination or harassment shall be reviewed or investigated under the provisions of this policy and not the grievance system.

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

APPLICABILITY

This Department Order does not create a contract for employment between any employee and the Department. Nothing in this Department Order changes the fact that all uncovered employees of the Department are at-will employees and serve at the pleasure of the appointing authority.

This Department Order is not applicable to private prisons. Private prisons shall adhere to their established vendor corporate policies regarding employee discrimination and harassment, and reporting of related misconduct.

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 Report misconduct or unethical behavior to which they are subjected to their Warden, Bureau Administrator, any supervisor, any Equal Opportunity Liaison or the Equal Opportunity Officer preferably immediately, but within no more than 180 calendar days from the date of the action giving rise to the complaint. Employees who fail to meet this requirement may be subjected to corrective action.
- 1.1.4 Immediately report misconduct or unethical behavior they are told about or which they otherwise become aware to their Warden, Bureau Administrator, any supervisor, any Equal Opportunity Liaison or the Department's Complaint Coordinator. Employees who fail to meet this requirement may be subjected to corrective action.
- 1.1.5 Cooperate with the Department's investigative processes.
- 1.1.6 Ensure they maintain a professional demeanor at all times while in uniform on and off duty.
- 1.2 Department employees shall not discriminate, harass, sexually harass 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 an employee performance evaluation.
 - 1.3.2 Ensure their subordinates are held accountable for compliance with this Department Order, and that allegations of misconduct and unethical behavior 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 EMPLOYMENT DISCRIMINATION AND 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 employment discrimination, harassment and sexual harassment as defined by this Department Order.
 - 1.1.2 Clearly communicate to their subordinates that employment discrimination and all types of harassment will not be tolerated.

- 1.1.3 Take immediate and appropriate action to stop employment discrimination and 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. Immediately notify the Warden or Bureau Administrator and the Department’s Complaint Coordinator of the occurrence.
- 1.2 Employees who wish to file employment discrimination, harassment or sexual harassment complaints 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 employment discrimination or harassment complaints to their Warden, Bureau Administrator, any supervisor, any Equal Opportunity Liaison or the Department’s Complaint Coordinator. Employees may request a review of the Department’s handling of this matter by the ADOA Director within five business days of receipt of the Department’s response to them.
 - 1.2.1 Complaints shall clearly outline the allegations to be addressed, including whether the basis of the complaint is based on:
 - 1.2.1.1 Unlawful discrimination based on a legally protected characteristic.
 - 1.2.1.2 An allegation of sexual harassment or another form of harassment.
 - 1.2.1.3 Retaliation for filing a complaint.
 - 1.2.1.4 Retaliation or intimidation for exercising any right under state or federal law.
 - 1.2.2 Complainants shall ensure their complaints provide the following:
 - 1.2.2.1 Description of the incident(s).
 - 1.2.2.2 Name(s) of individual(s) involved.
 - 1.2.2.3 Name(s) of witness(es).
 - 1.2.2.4 The date(s) the discrimination or harassment occurred (if known).
 - 1.2.2.5 The resolution being sought.
 - 1.2.2.6 The state or federal law alleged to have been violated.
 - 1.2.3 Complainants are not allowed the use of state time or state property to prepare a complaint, prepare for a meeting with agency management or to meet with a representative.
 - 1.2.4 Employees who file an employment discrimination, harassment or sexual harassment complaint are not required to confront the alleged harasser.
 - 1.2.5 Complaints of employment discrimination, harassment or sexual harassment will be kept confidential to the greatest extent possible.

- 1.2.6 Once submitted to the Department’s Complaint Coordinator, a complaint may not be amended.
- 1.3 Recipients of employment discrimination or harassment complaints, whether received orally or in writing, shall forward the complaint to the Warden, Bureau Administrator and the Department’s Complaint Coordinator, preferably immediately, but within no more than five working days from date of receipt.
 - 1.3.1 The Department’s Complaint Coordinator or designee shall:
 - 1.3.1.1 Immediately notify the Director of all oral or written complaints of employment discrimination or harassment.
 - 1.3.1.2 Acknowledge receipt of the complaint in writing to the complainant no later than five business days after receipt of the written complaint.
 - 1.3.2 The Warden or Bureau Administrator, in consultation with the respective Equal Opportunity Officer, shall ensure that a review of all complaints of employment discrimination, harassment or sexual harassment is begun within ten business days of receipt of the written complaint, and is completed within 60 business days of receipt. If a fact-finding is deemed necessary, the Warden or Bureau Administrator 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.
 - 1.3.2.1 The Warden or Bureau Administrator shall notify the complainant in writing advising him/her of the decision 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.
 - 1.3.3 Upon completion of the fact-finding the Equal Opportunity Liaison shall forward the finalized report and any additional supporting documentation to the Warden or Bureau Administrator and the Equal Opportunity Officer.
 - 1.3.3.1 The Equal Opportunity Officer shall:
 - 1.3.3.1.1 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.
 - 1.3.3.1.2 Recommend that the Warden or Bureau Administrator either address the complaint deemed appropriate using appropriate measures or proceed with initiating use of Department Order #601, Administrative Investigations and Employee Discipline.
 - 1.3.3.1.3 Notify the Director or designee of the case and forward a written recommendation to him/her within ten business days of completion of the review or investigation.

1.3.3.2 The Warden or Bureau Administrator shall:

1.3.3.2.1 Within ten workdays of receiving the finalized report, provide the complainant, in writing, a closure letter advising him/her the results of the comprehensive review that was conducted, and forward a copy to the Equal Opportunity Officer. If this written notification cannot be provided to the complainant within 60 business days of the date that the complainant filed the complaint, the complainant must be told, in writing, the reason(s) why the investigation was not completed within 60 business days.

1.3.3.2.1.1 The Equal Opportunity Officer may provide the complainant with the closure letter in accordance with 1.3.2.2.1 of this section.

1.3.3.2.2 As applicable and appropriate, provide written notification and supporting documentation to the Equal Opportunity Officer of the corrective action(s) 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, Form 601-1, as outlined in Department Order #601.

1.4.1 If the Warden, Administrator or Bureau Administrator, after reviewing the Administrative Inquiry form, 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 Complete the investigation and produce a written investigative report as soon as possible, but in any event no later than 60 business days after the filing of the complaint. If the investigation cannot be completed within 60 business 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 or Assistant Director of the employee against whom the complaint was made.

1.5 The Division Director or Assistant 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 or Assistant 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 employment discrimination, harassment or sexual harassment, the complaint file shall be reviewed by the Chief Human Resources Officer or designee. If the Chief Human Resources Officer or designee and the Equal Opportunity Officer are in agreement on this conclusion, the complaint file shall be returned to the appropriate Division Director or Assistant Director for final imposition of corrective or disciplinary action, if appropriate.
 - 1.5.2.2 If the Chief Human Resources Officer or designee and the Equal Opportunity Officer determine the actions in review did constitute discrimination or 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 or Assistant 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 Chief Human Resources Officer and the Equal Opportunity Officer.
- 1.7 Deputy Director, Division Directors, Assistant Director, Wardens, Deputy Wardens and Bureau Administrators shall:
 - 1.7.1 Maintain records of employment discrimination, harassment, and sexual harassment complaints in accordance with Department Order #103, Correspondence/Records Control.
 - 1.7.2 Ensure documentation related to employment discrimination, harassment or sexual harassment complaints is not placed in a complaining party's Institution/Work Unit personnel files or supervisors' Performance Evaluation files.
 - 1.7.3 Ensure complaining parties, witnesses, subjects, 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 employment discrimination, harassment or 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 employment discrimination, harassment and/or 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 employment discrimination and harassment complaints filed with the Equal Employment Opportunity Office, the EEOC 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 the Deputy Director, Division Directors, Assistant Director, Regional Operations Directors, 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 selective 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.

BUSINESS DAY – For the purpose of this Department Order, are the hours between 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding observed state holidays.

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 based on his/her race, color, sex (including pregnancy, sexual orientation and gender identity), religion, national origin, age, disability status, military obligation, veteran status, and genetic information, unless exceptions are made because of bona fide occupational qualifications.

EMPLOYMENT DISCRIMINATION OR HARASSMENT COMPLAINT - Complaints related to employment discrimination or harassment and sexual harassment, including sexual harassment.

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 Chief Human Resources Officer or designee, 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 and gender identity), religion, national origin, age, disability status, military obligation, veteran status, and genetic information, 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 violations of policy.

GENDER IDENTITY – A person’s self-identified gender, versus their anatomical gender at birth.

HARASSMENT - Harassment is a form of employment discrimination that also violates policy. Harassment is unwelcome conduct that is based on race, color, sex (including pregnancy, sexual orientation and gender identity), religion, national origin, age, disability status, military obligation, veteran status, and genetic information. Harassment violates the ADOA Personal Rules and Department policies when:

- Enduring the offensive conduct becomes a condition of continued employment, or;
- The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-discrimination laws also prohibit harassment against individuals in retaliation for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws.

Petty slights, annoyances, and isolated incidents (unless extremely serious) may not rise to the level of harassment as defined. To violate this policy, the conduct must create a work environment that would be intimidating, hostile, or offensive to reasonable people.

Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.

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 an 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 violate the standards of this policy and may 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 may present itself in a number of ways, 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.

SEXUAL ORIENTATION – A person’s sexual and emotional attraction to another person based on the gender of that person.

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

CROSS-REFERENCE INDEX

Department Order #103, Correspondence/Records Control
Department Order #105, Information Reporting
Department Order #125, Sexual Offense Reporting
Department Order #501, Employee Professionalism, Ethics and Conduct
Department Order #509, Employee Training and Education
Department Order #513, Employee Property
Department Order #523, Domestic and Workplace Violence
Department Order #601, Administrative Investigations and Employee Discipline

AUTHORITY

A.R.S. 41-753, Unlawful acts; Violation; Classification
A.R.S. 41-773, Causes for Dismissal or Discipline for Employee in Covered Service
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, State Department of Corrections; Purpose
A.A.C. R2-5A-104, Prohibition Against Discrimination, Harassment and Retaliation
A.A.C. R2-5A-501, Standards of Conduct
A.A.C. R2-5A-901, Complaint System
A.A.C. R2-5A-902, Complaint 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.
29 CFR, Part 1635, Family and Medical Leave Act (1993), et seq.