

(i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

(ii) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(iii) 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.

(2) "Intimidating, hostile, or offensive working environment" means a workplace in which:

(a) unwelcome sexually-oriented jokes, innuendoes, obscenities, pictures or any action with a sexual connotation makes an employee feel uncomfortable in the workplace; or

(b) any aggressive, harassing behavior in the workplace or that affects the workplace, whether or not sexual in connotation, is directed toward an employee based on the employee's sex.

(3) "Equal employment opportunity (EEO) officer" means a person appointed by the agency head who has the authority to develop the agency's EEO program and work with managers to implement the program.

(4) "Management" means, for purposes of receiving, investigating, and resolving reports of sexual harassment, the immediate supervisor, or the first level supervisor who is not involved in the alleged harassment and other managers in the direct line of authority above these supervisors. (Eff. 6/10/88.)

2.21.1304 AGENCY POLICY STATEMENT (1) Each agency of the executive branch shall adopt a policy statement prohibiting sexual harassment in the agency. The department of administration shall review and approve the policy statement prior to its adoption, in compliance with ARM 2.21.1203.

(2) The policy statement shall contain at a minimum the following:

(a) a statement prohibiting sexual harassment in the agency;

(b) a definition of sexual harassment, which is contained in ARM 2.21.1203(1); and

(c) a statement encouraging early reporting of complaints by employees and informing employees about the reporting procedure. (Eff. 6/10/88.)

2.21.1305 REPORTING PROCEDURE (1) Each agency of the executive branch shall adopt a procedure to receive, investigate and resolve complaints of sexual harassment. The department of administration shall review and approve the procedure prior to its adoption, in compliance with ARM 2.21.1203.

(2) The procedure is a management problem-solving device to be used to intervene when an employee alleges that sexual harassment has taken place. Because sexual harassment is sex discrimination, management is obligated to investigate when reports are received. The agency equal employment opportunity officer shall be informed of the report when it is received. The EEO officer may be consulted by management and the employees at any time. The reporting procedure shall contain at a minimum the following steps:

(a) Employee's responsibility:

(i) An employee who believes he or she has been the victim of sexual harassment is encouraged to report the incident(s) or action(s) as soon as possible after the alleged harassment occurs. Early reporting is encouraged, because management's ability to investigate and act on reports diminishes with time. Employees may bring reports to the attention of any or all of the following:

(A) the harasser and request that the action stop immediately;

(B) the immediate supervisor or to the first level supervisor who is not involved in the alleged harassment; or

(C) the EEO officer.

(ii) The employee shall cooperate with the EEO officer or other designated management representative in investigating and verifying the report.

(b) Management's responsibility:

(i) When management receives a report of sexual harassment, management shall promptly inform the agency equal employment opportunity officer of the report. The EEO officer shall initiate an investigation or recommend another appropriate management representative to initiate the investigation. The investigation shall include verification of the report, a course of action, and documentation of implementation of the action. Management shall assist the EEO officer, as requested.

(ii) A report of sexual harassment, its investigation, the outcome of the investigation, and any action(s) taken relating to a specific employee or employees is confidential. Dissemination of confidential information shall be limited to persons with a need to know to conduct an investigation.

(iii) The investigation may include interviews with the employee who made the complaint, with the alleged harasser, with other employees, including former employees, with knowledge of the actions, and may include gathering other materials related to the complaint;

(iv) Any actions taken by management to resolve the complaint shall be based on facts verified during the investigation. Actions may include disciplinary action, as provided in the discipline policy, 2.21.6905 et seq. Other actions may include, but are not limited to, educating the harasser about sexual harassment, counseling, increasing office awareness about sexual harassment and its prevention, disseminating the agency's policy and procedure, and taking action with

respect to acts of non-employees which result in reports of sexual harassment of employees in the workplace; and

(v) management should document steps taken to resolve the complaint.

(3) Employees who are not personally victims of sexual harassment, but observe actions which they have interpreted to be harassment, may bring such actions to the attention of the EEO officer.

(4) Management is not obligated to investigate and respond to a report of alleged sexual harassment, if the incident or action occurred more than three years prior to the report. (Eff. 6/10/88.)

2.21.1306 VIOLATIONS OF POLICY (1) Substantiated violations of this policy may result in disciplinary action in compliance with the discipline handling policy, ARM 2.21.6505 et seq. Appropriate discipline may include discharge, if the initial violation is sufficiently severe or if lesser violations are repeated.

(2) If disciplinary action is taken as the result of a report of sexual harassment, an employee may file a grievance under the grievance policy, ARM 2.21.8001 et seq., or through a grievance procedure available through collective bargaining agreements or statute. (Eff. 6/10/88.)

2.21.1307 OTHER COMPLAINT FILING OPTION (1) An employee may concurrently file a complaint of unlawful discrimination with the human rights commission. The complaint must be filed either:

- (a) within 180 days of the alleged incident; or
- (b) if the employee initiates action to resolve the alleged sexual harassment in accordance with an agency or contract grievance procedure, within 300 days of the alleged incident. (Eff. 6/10/88.)

Rules 8 through 10 reserved

2.21.1311 CLOSING (1) This policy shall be followed unless it conflicts with negotiated labor contracts which shall take precedence to the extent applicable. (Eff. 7/15/83.)

Any questions or conflicting interpretation of this policy shall be referred to your supervisor or the EEO Officer. If you are an EEO officer with a question for the State Bureau of Services, the Department of Administrative Services, additional guidance is available through interpretation of this policy.

This policy supercedes the previous policy titled sexual harassment, with the same number, dated 07/15/83.

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2.21.1301 SHORT TITLE (1) This subchapter may be cited as the sexual harassment prevention policy. (Eff. 6/10/88.)

2.21.1302 POLICY AND OBJECTIVES (1) It is the policy of the state of Montana as an employer:

(a) to provide state employees with a working environment free from sexual harassment;

(b) to communicate the state's sexual harassment prevention policy and reporting procedures to employees and supervisors;

(c) to recognize the unique nature of complaints of sexual harassment, to encourage early reporting by employees, and to resolve complaints promptly, confidentially, and at the lowest management level possible; and

(d) to prohibit retaliation against any employee because he or she has made a report of alleged sexual harassment or against any employee who has testified, assisted, or participated in any manner in an investigation of a report.

(2) It is the objective of this policy to develop guidelines for the state and for agency sexual harassment prevention programs in compliance with governor's executive order no. 1-82, the Montana Human Rights Act, and section 703 of Title VII of the Civil Rights Act of 1964.

(3) It is not the purpose of this policy to intrude upon the personal lives of employees or to interfere with social relationships. Sexual harassment, however, is unacceptable behavior when carrying out the business of state government and will not be condoned or tolerated. (Eff. 6/10/88.)

2.21.1303 DEFINITIONS As used in this sub-chapter, the following definitions apply:

(1) "Sexual harassment" means:

(a) sex discrimination within the meaning of Title VII of the Civil Rights Act of 1964 and the Montana Human Rights Act; and

(b) unwelcome sexual advances, requests for favors and other verbal or physical contact of a sexual nature when: