New Mexico
Department *of* Finance
and Administration

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Policy and Procedures
Human Resources

HARASSMENT PREVENTION POLICY

The New Mexico Department of Finance and Administration ("DFA") is committed to maintaining a workplace free from Harassment. The DFA has a zero-tolerance policy for any form of Harassment, and Employees are required to work in a manner that prevents Harassment in the workplace. The DFA's Harassment Policy ("Policy") is one component of the DFA's commitment to supporting Diversity in the Workplace and a discrimination-free workplace and provides procedures for reporting, investigating, and remedying Harassment. Employees have a right to a workplace free from Harassment, and Employees can enforce this right by filing a complaint with the DFA using this Policy.

I. POLICY

The DFA is committed to ensuring the DFA workplace is free of Harassment and enforcing this Policy against Harassment. However, the effectiveness of the DFA's efforts depends largely on Employees reporting inappropriate workplace conduct. If Employees do not report Harassment, the DFA may not become aware of a possible violation of this Policy and may not be able to take appropriate Disciplinary Action. To this end, DFA's policies are as follows:

A. The Policy applies to all Employees;

B. Zero-tolerance for Harassment of any kind;

C. Zero-tolerance for Sexual Harassment of any kind;

D. Zero-tolerance for Retaliation of any kind;

E. Promptly and diligently investigate reports of Retaliation, Harassment, or Sexual Harassment of any kind, in accordance with this Policy;

F. Use Discplinary Action to respond to reports of Retalitaion, Harassment, or Sexual Harassment of any kind, in accordance with this Policy; and

G. All information within and related to reports of Retaliation, Harassment, or Sexual Harassment of any kind shall be treated entirely as Confidential Information.

II. PROCEDURE.

If an Employee has either: (i) been subjected to Retaliation, Harassment, or Sexual Harassment; or (ii) witnessed Retaliation, Harassment,or Sexual Harassment, then the Employee must report the incident using Steps One through Five, below. *All information contained within and related to reports of Harassment, Sexual Harassment, or Retaliation shall be treated as Confidential Information.*

A. **STEP ONE: Report.** Submit a Harassment Complaint Form, attached as Appendix A ("Complaint Form"), to the DFA HR or supervisor within the Supervisory Chain. Upon receipt of a Complaint Form, the supervisor and/or the DFA HR, must *immediately* meet with the Complainant and *immediately* complete the Harassment Evaluation form ("Evaluation Form"). All responses must be fully documented on the Evaluation Form.

B. **STEP TWO: Evaluate.** Upon completion of the Evaluation Form, the Evaluation Form must be immediately forwarded to the Division Director and the DFA HR. *All documented responses, and any other documentation, photos, videos, or supporting information relative to the complaint, must be forwarded to the DFA HR, regardless of whether further action is deemed necessary or the Complainant asks that no action be taken.*

C. **STEP THREE: Investigate.** All reports of Harassment, Discrimination, or Retaliation must be promptly, thoroughly, and impartially investigated. The DFA HR may either investigate or assign the investigation to a manager or supervisor in the area. The investigation may include individual interviews with the parties involved and where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge. If circumstances so require, *and as a last resort*, the DFA HR may assign an outside investigator to the matter. The DFA HR will monitor and review the results of the investigation. If the DFA HR uses an outside investigator, the investigator must submit a written report to the DFA HR immediately upon completion of the investigation. Written reports must include: (i) an assessment of the case; (ii) recommendations for Disciplinary Action to be taken; and (iii) investigation completion date. *All Complaints and information related to Complaints must be investigated in as confidential a manner as is practical and appropriate under the circumstances. Guarantees of confidentiality or anonymity cannot be granted, as investigative requirements and confrontation rights take precedence. During the investigative process, witnesses, or potential witnesses who are interviewed, will have the responsibility to maintain all information from the interviews as Confidential Information. Breaches of confidentiality by an Employee will result in Disciplinary Action.*

D. **STEP FOUR: Determination.** The appropriate management who is at or above the Division Director level *and* not involved in the incident, must issue a determination in collaboration with the DFA HR and the DFA Office of General Counsel ("OGC") representative before making a determination as to which, if any, remedies and/or Disciplinary Action should be taken. A determination will be rendered within fifteen (15) calendar days of completion of the investigation.

E. **STEP FIVE: Monitor.** If the report in a Complaint Form is substantiated, then the DFA management must: (i) take Disciplinary Action; (ii) monitor the situation to ensure the Harassment has stopped; and (iii) ensure that all Employees involved in a Harassment complaint are protected from Retaliation.

F. **CONFIDENTIAL INFORMATION.** All information related to a Complaint Form shall be privileged Confidential Information and thus is non-disclosable. This means, Complaint Forms are NOT subject to the New Mexico Inspection of Public Records Act.

G. **FALSE CLAIM.** If an investigation finds that a Complainant knowingly falsely accuses another of Harassment, Sexual Harassment, or Retaliation, then the Complainant is subject to Disciplinary Action.

III. **TRAINING.** Employees must receive Harassment training within one (1) year of the Employee's start date. If training is not possible within one (1) year, then the Agency Head may approve a two (2) month extension.

IV. **VIOLATIONS OF THIS POLICY.** Violations of this Policy will result in Disciplinary Action.

V. **DEFINITIONS**

A. **"Agency"** means any state department, bureau, division, branch, or political subdivisions of the state and any of their branches, agencies, departments, boards, instrumentalities or institutions bound by the New Mexico State Personnel Board Rules and Regulations.

B. **"Agency Head"** means the DFA Cabinet Secretary.

C. **"Board"** means the state personnel board.

D. **"Bureau"** means the Human Rights Bureau of the Labor Relations Divisions of the New Mexico Workforce Solutions Department.

E. **"Confidential Information"** means all information regarding complaints, pursuant to New Mexico law, including, but not limited to, N.M.S.A. (1978) § 14-2-1 and State Personnel Board Rule 1.7.1.12 N.M.A.C. "Confidential Information" means information and data of any kind concerning any matters affecting or relating to DFA, the business or operations of DFA, including but not limited to, financial documents and plans, customers, suppliers, partners, marketing strategies, vendors, products, technical product data, product samples, costs, sources, strategies, operations procedures, proprietary concepts, technical advice or knowledge, contractual agreements, software, data, and/or the products, drawings, plans, processes, or other data of DFA not generally known or available outside of the agency. Confidential Information does not include information communicated between only those individuals directly involved in a complaint. "Confidential Information" includes non-disclosable information and data of any kind concerning any matters affecting or relating to DFA, the business or operations of DFA, including but not limited to, financial documents and plans, customers, suppliers, partners, marketing strategies, vendors, products, technical product data, product samples, costs, sources, strategies, operations procedures, proprietary concepts, technical advice or knowledge, contractual agreements, software, data, and/or the products, drawings, plans, processes, or other data of DFA not generally known or available outside of the Agency. "Confidential Information" includes communication made privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication.

F. **"Complainant"** or **"Claimant"** means any person who claims to be aggrieved by Harassment, Sexual Harassment, Unlawful Discriminatory Practice, or Retaliation and who has filed a complaint with the DFA HR, or supervisor within the Supervisory Chain, in accordance with this Policy.

G. **"Diversity in the Workplace"** means an acknowledgement of all people in the workplace equally, regardless of their differences.

H. **"Disciplinary Action"** means any action taken by an Agency to influence change in an Employee's performance or behavior to the expected standard, including letters of reprimand, suspensions, demotions, and Dismissal.

I. **"Dismissal"** means the involuntary separation from employment with the DFA.

J. **"Electronic"** means communication made by any electronic transmittal, including, but not limited to: telephone calls, voicemails, text messages, emails, and instant messaging.

K. **"Employee"** means (i) any person in a position in the classified service; (ii) an individual employed by the DFA, receives a wage from DFA, and whose work is under the direct control and supervision of the DFA; (iii) term, probationary, temporary, permanent, and exempt positions; or (iv) an applicant for employment within the DFA. "Employee" does not include independent contractors who perform work for New Mexico.

L. **"Gender Identity"** means a person's self-perception, based on the person's appearance, behavior or physical characteristics, that the person exhibits more masculinity or femininity or the absence of masculinity or femininity whether or not it matches the person's gender or sex assigned at birth.

M. **"Harassment"** means harassment based on an Employee's race, religion, creed, national origin, ancestry, age, physical or mental disability, citizenship, genetic information, past, present or prospective service in the uniformed services, or any other characteristic protected under applicable federal, state or local law. "Harassment" includes Sexual Harassment of any kind. "Harassment" includes, but is not limited to: (i) Verbal (for example, epithets, derogatory statements, slurs, derogatory comments or jokes); (ii) Physical (for example, assault or inappropriate physical contact); (iii) Visual (for example, displaying derogatory posters, cartoons, drawings, or making derogatory gestures). "Harassment" includes Sex Discrimination and Sexual Harassment.

N. **"Involuntary Separation"** means involuntary removal of an Employee from the classified service.

O. **"Retaliation"** means any form of discipline, reprisal, intimidation or retaliation for good faith reporting of incidents of Harassment of any kind, pursuing any Harassment claim or cooperating in related investigations. If an Employee would like more information about the DFA's policy prohibiting retaliation, then contact the DFA HR or supervisor within the Supervisory Chain.

P. **"Sex Discrimination"** includes, but is not limited to, the following:

(1) "Sexual Harassment" means any harassment based on someone's sex or gender, sexual orientation, Gender Identity, and the status of transgender. "Sexual Harassment" includes harassment that is not sexual in nature (for example, offensive remarks about an individual's sex, gender, or Gender Indetity). "Sexual Harassment" includes: (i) verbal (for example, epithets, derogatory statements, slurs, sexually related comments or jokes, unwelcome sexual advances or requests for sexual favors); (ii) physical (for example, assault or inappropriate physical contact); (iii) visual (for example, displaying sexually suggestive posters, cartoons, or drawings, sending inappropriate adult-themed gifts, leering, or making sexual gestures). "Sexual Harassment" includes: any unwelcome sexual advances or requests for sexual favors or any other conduct of a sexual nature, when any of the following is true: (i) submission to the advance, request, or conduct is made either explicitly or implicitly a term or condition of employment; (ii) submission to or rejection of the advance, request, or conduct is used as a basis for employment decisions; or (iii) such advances, requests, or conduct have the purpose or effect of substantially or unreasonably interfering with an Employee's work performance by creating an intimidating, hostile, or offensive work environment. "Sexual Harassment" includes any unwanted or repeated physical or verbal act that is sexual, including sexual advances, sexual conduct, verbal or nonverbal

sexual suggestions, sexual ridicule or sexual innuendoes that: (a)affects employment status relating to matters of compensation or the terms and conditions of employment; (b) affects employment status relating to matters of compensation or the terms and affects one's ability to obtain credit; (c) affects one's ability to obtain housing, continue housing agreements; or (d) affects one's access to public accommodations. This list is not exhaustive.

(2) "Pregnancy, childbirth, or related medical condition" means women affected by pregnancy, childbirth or related medical conditions shall be treated the same as other persons who are temporarily disabled for all employment-related purposes, including receipt of benefits including benefits and benefit programs; further, women affected by pregnancy, childbirth or related medical conditions shall be treated the same as other persons who are temporarily disabled in the areas of credit, housing and public accommodations.

Q. **"Supervisory Chain"** means the hierarchical structure within the DFA. Employee's immediate or first line supervisor is the first step in the supervisory chain.

R. **"Unlawful Discriminatory Practices"** means those unlawful practices and acts specified in N.M.S.A. (1978) § 28-1-7.

VI. **REVIEW AND APPROVAL.** This Policy is effective upon the signature of the DFA Cabinet Secretary, below.

Wayne Propst, **Cabinet Secretary**

12.29.23
Date