

CF OPERATING PROCEDURE
NO. 60-10, Chapter 5

STATE OF FLORIDA
DEPARTMENT OF
CHILDREN AND FAMILIES
TALLAHASSEE, October 9, 2019

Human Resources

UNLAWFUL HARASSMENT AND UNLAWFUL SEXUAL HARASSMENT

5-1. Purpose.

a. This operating procedure reaffirms the Department's commitment to providing a workplace and work environment that do not tolerate harassment, including sexual harassment, of employees and volunteer staff.

b. This operating procedure describes conduct and behavior that the Department deems to be prohibited.

c. This operating procedure describes the training requirements, procedures for investigating and resolving reports or complaints of harassment, including sexual harassment, and notice of possible adverse consequences for failure to comply with this operating procedure or other related laws and regulations.

5-2. Scope. This operating procedure applies to all employees and volunteer staff of the Department.

5-3. Authority. This list of authorities is the foundation upon which this operating procedure is based:

a. Title VII of the Civil Rights Act of 1964, 42 United States Code section 2000d, et. seq., and its implementing regulations, as amended.

b. Section 24(a), Art. I of the Florida Constitution, as amended.

c. State of Florida Executive Order No. 17-319 (December 12, 2017).

d. State of Florida Executive Order No. 19-11 (January 8, 2019).

e. Section 110.1221, Florida Statutes.

f. Section 110.604, Florida Statutes.

g. Section 119.071(2)(g)1. and 2., Florida Statutes.

h. Section 119.071(2)(n), Florida Statutes.

i. Section 760.10, Florida Statutes.

j. Rule 60L-36.005, Florida Administrative Code.

k. Rule 60L-40.001, Florida Administrative Code.

l. CFOP 60-55, Chapter 1, Standards of Conduct and Standards for Disciplinary Action for Department Employees.

This operating procedure supersedes CFOP 60-10, Chapter 5, dated March 13, 2018.

OPR: ASHRC

DISTRIBUTION: A

5-4. Policy of Zero Tolerance. It is the policy of the State of Florida and the Department that harassment, including sexual harassment, are not tolerated in the workplace or the work environment. A complaint or report of harassment, including sexual harassment, cannot be withdrawn after it is reported.

5-5. Prohibited Conduct.

a. This operating procedure describes some familiar forms or examples of harassment or sexual harassment. There may be other examples not mentioned in this operating procedure that, if found, may still be deemed harassment or sexual harassment. For purposes of this policy, "consent" by either person to commit acts that are prohibited by this policy is not a valid defense to what is otherwise harassment or sexual harassment.

b. Sexual Harassment in the workplace refers to any unwelcomed conduct or advances that are sexual in nature. Some conduct may be considered sexual harassment in the workplace when it: interferes with an employee or volunteer's job or job performance; creates an offensive work environment; or intimidates the employee or volunteer that is experiencing the harassment or sexual harassment. Such conduct may range from making or distributing offensive jokes to inappropriate touching or pressuring someone to engage in a personal or sexual relationship. It is not necessary for the patterned behavior to be towards the same person.

c. Title VII of the Civil Rights Act of 1964 and the Florida Civil Rights Act of 1992 refer to two types of sexual harassment in the workplace:

(1) Quid Pro Quo. *Quid Pro Quo* sexual harassment occurs when a person in a position of authority, usually a supervisor, requires an employee to agree to or accept, or participate in inappropriate behavior that is sexual in nature in exchange for a promise of, or obtaining or keeping a job or a job benefit, such as pay raises, appointments to serve on professional groups or committees, favorable action on leave requests and job assignments, or career promotions.

(2) Hostile Work Environment. This type of sexual harassment refers to a pattern of conduct that is unwelcomed, sexual in nature, and pervasive or severe enough to create a hostile, offensive, or abusive work environment. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, abusive, or offensive to a reasonable person. 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, or offensive objects or pictures that interfere with work performance.

(a) The existence of hostile work environment sexual harassment that objectively alters the terms or conditions of employment depends, in part, upon the following elements:

1. The frequency or duration of the sexual conduct or harassment;
2. The severity of the sexual conduct or harassment;
3. Whether the sexual conduct or harassment is physically threatening, humiliating, or a mere offensive utterance;
4. Whether the sexual conduct or harassment unreasonably interferes with the sexually harassed employee's job performance
5. Whether the office or workplace environment is at a level where morale or production is noticeably deteriorating; or

6. Whether the sexual conduct or harassment was directed at a single person or more than one person.

(b) It is not necessary for all elements to be present before hostile work environment sexual harassment can be found. And, the presence of one element can be given greater weight or emphasis over other present or missing factors.

5-6. Complaint Reporting Procedures. Any person who in good faith believes that they were, or are being, harassed or sexually harassed, and any person who witnessed what they believe in good faith to be harassment or sexual harassment, must report it as outlined below. For purposes of this operating procedure, a “good faith belief” of sexual harassment means that the conduct is believed to be sexual in nature and unwelcomed or unwanted.

a. If harassment or sexual harassment is witnessed, experienced, or suspected, the situation must be reported to the Office of Inspector General, or to a supervisor or manager, the Human Resources Director (or someone in the Office of Human Resources, i.e., a Civil Rights Officer or Employee Relations staff member, or other Human Resources staff), or, someone in the Office of the General Counsel. A report is mandatory and must be made as soon as possible to prevent the situation from escalating.

b. The recipient of a report or complaint of harassment or sexual harassment must, in turn, promptly get the information to the Office of Inspector General, if the recipient is not this office.

c. If the person experiencing harassment or sexual harassment, or if a person witnessing harassment or sexual harassment, is comfortable doing so they should, but are not required to, tell the alleged harasser (or the person believed to be the alleged harasser) that the conduct is unwelcomed and must stop.

d. Any Department employee or volunteer who witnesses or suspects the occurrence of harassment or sexual harassment and fails to report it is subject to disciplinary action in accordance with paragraphs 5-7 and 5-12 below.

e. An employee or volunteer who voluntarily reports that they harassed or sexually harassed a Department employee or volunteer will be disciplined, regardless of the anti-retaliation policy in paragraph 5-13 below.

f. To the extent practicable, administrative personnel action will be taken as soon as possible to separate the person being harassed or sexually harassed from the alleged harasser. The action will remain in effect until completion of the review of the report or investigation, if applicable. A change in work place restrictions will be communicated to appropriate supervisory or managerial staff by the Office of Human Resources.

g. The review and, if required, investigation of the complaint or report shall commence promptly after receipt in the Office of Inspector General. Employees and volunteers who are contacted during the investigation of a complaint or report of harassment or sexual harassment for an interview are expected to cooperate by agreeing to the interview. Cooperation also includes being available for questioning during normal business hours, answering questions truthfully, and providing documentation that could help explain other information relevant to the complaint or report. If an employee that is contacted for an interview is a member of an employee union that is recognized by the State of Florida, upon request, a union steward or representative may attend the interview with the employee but may not participate during the interview.

h. If harassment or sexual harassment is found at the conclusion of an investigation appropriate personnel action will be recommended to the Director of Human Resources by the Office of Inspector

General. The Department's disciplinary policies and procedures are applicable to the investigative findings.

i. At the conclusion of the investigation and after imposition of disciplinary action or other agency action, the Office of Human Resources shall confer with the person(s) experiencing harassment or sexual harassment to address any steps that have been taken by the Department and to offer the opportunity to participate in the state's Employee Assistance Program.

5-7. Discipline of Employees and Volunteers.

a. Discipline of a Department employee that is based on a finding of the commission of harassment, including sexual harassment, a violation of this operating procedure, or other related law will be imposed in accordance with the Department's Standards of Conduct and Standards for Disciplinary Action for Department Employees in CFOP 60-55, Chapter 1. The Office of Human Resources will effectuate the intended discipline in accordance with existing policies and procedures, except as provided below. Discipline of a Department volunteer based on a violation of this operating procedure or related law will be the termination of the volunteer status.

b. If the General Counsel believes that modifying the discipline is in the Department's best legal interest, the Director of Human Resources, or designee, must be notified prior to modification. Notice must include the basis for the modification. The Director of Human Resources, or designee, will determine if discipline will be modified. Executive Leadership may be consulted by the Director of Human Resources on an "As Needed" basis to address modification.

5-8. Privacy. A written copy of the summary of the investigation will be provided to the senior executive leader of the workplace where the alleged harassment occurred, as determined to be appropriate by the Secretary or designee. The recipient of such report summary must consult with the Office of Inspector General or the Office of General Counsel, or designee, about disclosing the report summary to others. The degree of privacy afforded to persons who experience harassment or sexual harassment, or the circumstances under which a complaint of harassment or sexual harassment, including other records which are related to the complaint, must be disclosed to third parties are primarily set forth in section 119.071(2)(g)1. and 2., and (n), Florida Statutes ("Florida's Public Records Act"), or other applicable state or federal law or regulation. Requests for a public record must be forwarded to the Office of General Counsel as soon as possible but no later than 3 business days after receipt for review and handling.

5-9. Training. Each person subject to this operating procedure shall be given training on harassment, including sexual harassment, within 30 days of the start of their employment. All other employees, including supervisors and managers, will receive training on an annual basis. Documented evidence of completion of training will be retained in the Human Resources Training Tracking System (HRTS).

5-10. Other Information About Civil Rights.

a. In lieu of complaining to the Office of the General Counsel, the Office of Human Resources, the Office of Inspector General, or to a supervisor or manager as provided in this operating procedure, the person reporting harassment or sexual harassment may file a complaint with these external agencies:

Florida Commission on Human Relations
ATTN: Executive Director
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399
Telephone: 850-488-7082

or,

United States Equal Employment Opportunity Commission
Miami District Office
ATTN: Michael Ferrell, District Director
100 S.E. 2nd Street, Suite 1500
Miami, Florida 33131
Telephone: (800)669-4000
Facsimile: (305) 808-1855
TTY: (800) 669-6920
ASL Video Phone: (844) 234-5122

b. If filed externally with the Equal Employment Opportunity Commission, usually the complaint must be received within 300 calendar days of the occurrence of the alleged incident. If filed with the Florida Commission on Human Relations, the complaint must be received within 365 calendar days of the occurrence of the alleged incident.

5-11. Notice and Acknowledgement. A copy of this operating procedure is available online to each employee and volunteer at <http://ewww.dcf.state.fl.us/asg/pdf/060-10c5.pdf>. A copy of Rule 60L-40.001, Florida Administrative Code, is available online to each employee at <https://www.dms.myflorida.com/content/download/118033/648354/60L-40.pdf>. Each employee is required to E-Acknowledge receipt of the location of this information online in the Human Resources Training System. A copy of the E-Acknowledgement will be retained in the Human Resources Training System.

5-12. Other Reasons for Disciplinary Action. Any person subject to this operating procedure that knowingly makes a false complaint or allegation of harassment or sexual harassment against another employee or volunteer will be disciplined.

5-13. Retaliation. Retaliation against any person who has, in good faith (as defined above), reported or complained of unlawful harassment or sexual harassment, or who has participated in any way in a review, investigation, or proceeding involving allegations or assertions of harassment or sexual harassment, is prohibited. Any person who retaliates against another person in violation of this policy will be disciplined.

BY DIRECTION OF THE SECRETARY:

(Signed original copy on file)

SHELBY JEFFERSON
Human Resources Director

SUMMARY OF REVISED, DELETED, OR ADDED MATERIAL

Changed the processes for reporting, investigating, and determining the results of reports of employee sexual harassment; added definitions of new terms; clarified prohibited employee conduct; removed the Glossary of Terms; added the opportunity for union representation during investigative interviews; provided for reconsideration of discipline; and added a report distribution procedure.