POLICY / PROCEDURE 70-41

Cancels: Pol/Pro 70-13, Sexual Harassment
Pol/Pro 70-26, Discrimination Complaints
Pol/Pro 70-41 dated 6/13/06

8/13/08
Policy Approved By **Date**

Judy Johnson 8/8/08
Procedure Approved By **Date**

Anti-Harassment and Discrimination Policy and Procedure

SEE ALSO: Title VI and VII of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; The Age Discrimination Act of 1975, as amended; The Age Discrimination in Employment act of 1967, as amended; Vietnam-era Veterans Readjustment Act of 1974, as amended; The Americans with Disabilities Act of 1990, as amended; Washington State Law Against Discrimination, RCW 49.60, as amended; Sexual Harassment in the Workplace, RCW 43.01.135; Washington State Executive Order 89-01, Sexual Harassment; Washington State Executive Order 93-03, Reasonable Accommodation; Washington State Executive Order 93-07, Affirmative Action; Washington Administrative Code 357-01-005, Affected groups; Washington State Parks Administrative Policy 70-23, Reasonable Accommodation; Washington State Parks approved Affirmative Action Plan.

This policy applies to all employees and volunteers of the Washington State Parks and Recreation Commission and other persons having business with the agency, including contractors.

1. Purpose

To establish a policy and procedure to address complaints alleging harassment on any basis and harassment or discrimination on the basis of race, color, creed, religion, gender, national origin, age (40+), sexual orientation and gender expression/identity, marital status, Vietnam-era or disabled veteran status, honorably discharged veteran or military status, the presence of a (real or perceived) physical, mental, emotional, or sensory disability, or the use of a trained dog guide or service animal by a person with a disability in any aspect of State Parks' service delivery or employment. This policy also prohibits retaliation for good faith filing of a complaint or participating in an agency investigation.

2. Policy

It is the policy of the Washington State Parks and Recreation Commission to foster a climate in which equity can flourish and bias is removed from all aspects of service delivery and employment. The agency strives to create an environment in which people are treated with dignity, decency and respect. For that reason, the agency will not tolerate harassment or discrimination of any kind against its employees, volunteers, or any visitor to State Parks. Accordingly, complaints alleging harassment or discrimination on the basis of race, color, creed, religion, gender, national origin, age, sexual orientation and gender expression/identity,

marital status, Vietnam-era or disabled veteran status, honorably discharged veteran or military status, the presence of (real or perceived) physical, mental, emotional, or sensory disability, or the use of a trained dog guide or service animal by a person with a disability will receive prompt response. These categories give a person "protected class status." Under this State Park policy/procedure, harassment includes both illegal behaviors and, more broadly, any behavior that creates an offensive and/or intimidating work environment for any employee, regardless of whether the person harassed or offended holds protected class status.

Harassment, discrimination, or retaliation in violation of this policy by employees and volunteers of State Parks will be subject to corrective or disciplinary action, up to and including dismissal.

3. Prohibited Conduct Under This Policy

A. Discrimination:

It is a violation of this policy to discriminate in the provision of any employment opportunities, benefits or privileges, to create or allow discriminatory working conditions, or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, due to the person's protected class status.

B. Harassment:

Unlawful harassment is unwelcome verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her protected class status that:

- Has the purpose or effect of creating an intimidating, hostile, or offensive working environment;
- Has the purpose or effect of unreasonably interfering with an individual's work performance; or,
- Otherwise adversely affects an individual's employment opportunities.

Examples of illegal harassing behavior that denigrates or shows hostility or aversion toward an individual due to protected class status may include, but are not limited to, jokes, slurs, derogatory comments, negative stereotyping, graffiti, offensive material on a bulletin board or in e-mail, and unwelcome comments about the individual's protected class status.

While some inappropriate conduct may not constitute harassment in the legal sense, it is nevertheless the policy of Parks that all employees and volunteers have the right to conduct their work activities in an environment that is professional, comfortable, and free from any form of inappropriate behavior. This includes, but is not limited to, behaviors that others may find intimidating or offensive, such as making derogatory remarks and engaging in unprofessional conduct (e.g., malicious gossiping about an

individual, yelling, making threats, and directing obscene or foul language at another person, regardless of protected class status).

Harassment can occur due to a power differential (i.e. – supervisor and subordinate relationship), between persons of similar status, and by non-employees (volunteers, customers, and vendors) as well as employees. The victim may be a man or woman, and of the same or opposite sex of the harasser.

C. Sexual Harassment and Inappropriate Conduct of a Sexual Nature:

Sexual harassment is an unlawful employment practice prohibited by Title VII of the Civil Rights Act of 1964, RCW 49.60 (Washington State Law Against Discrimination) and Washington State's Executive Order 89-01. Sexual harassment and inappropriate workplace conduct of a sexual nature in any form is also prohibited under this policy. Sexual harassment prohibited by law and by this policy include, but is not limited to, the following conduct:

- Unwelcome verbal or physical conduct of a sexual nature when submission to such conduct, either explicitly or implicitly, is a made a term or condition of an individual's employment (such as promotion, training, overtime assignment, leaves of absence) **or**;
- Unwelcome verbal or physical conduct of a sexual nature when submission or rejection of such conduct by an individual is used as the basis for employment decisions affecting an individual; **or**,
- Unwelcome verbal or physical conduct of a sexual nature when such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or statutory rights, or creating an intimidating, hostile or offensive environment; **or**,
- Unwelcome verbal or physical nonsexual conduct that denigrates or shows hostility toward a person because of his or her gender or sexual orientation when the conduct has the purpose or effect of substantially interfering with a person's work performance or statutory rights, or creating an intimidating, hostile, or offensive environment.

Sexual harassment can be in the form of verbal behavior such as unwanted sexual comments, questions, suggestions, demeaning terms, flirtations, jokes or requests for sexual favors; any non-verbal behavior which may include gestures, leering, pictures or cartoons; and physical behavior such as assault, molestation, touching, patting, pinching, or repeated brushing against a person's body.

Sexual harassment can occur in a variety of circumstances. The victim as well as the harasser may be a woman or a man. The victim does not have to be of the opposite sex. The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee. The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.

Through this policy, State Parks does not intend to regulate social interaction or relationships which are consensual, voluntary and freely entered into by employees or individuals performing business with the office where such relationships do not impact the performance of professional duties. (Employees are referred to Parks Policy 70-6, Employment Practices Concerning Close Relatives for additional information as well.)

D. Responsibilities for Providing a Workplace Free from Harassment or Discrimination

1. All employees, volunteers, contractors and other persons having business with the agency are responsible for maintaining a work environment free from harassment and discrimination. Employees, volunteers, or contractors determined to be in violation of this policy will be subject to appropriate corrective or disciplinary action, up to and including dismissal.

2. It is the responsibility of managers and supervisors to clearly communicate the policy to all employees and volunteers and to provide training to new employees during the orientation phase of their employment. Managers and supervisors shall review the policy annually with staff. Managers and supervisors must also take reasonable steps to prevent harassment and discrimination in their work units and take immediate corrective or disciplinary action if they become aware of misconduct. Failure to do so may result in corrective or disciplinary action, up to and including dismissal.

3. The agency will provide training to employees and volunteers to prevent harassment and discrimination in the workplace. The agency will also ensure that all employees, volunteers, and contractors have access to and understand the policy, including how to report complaints related to this policy. In addition, the agency will provide training to supervisors and managers on how to handle complaints.

E. Retaliation

Retaliation against employees, volunteers or other persons having business with the agency who report, in good faith, harassment or discrimination or who participate in an investigation will not be tolerated. Retaliatory behaviors are acts of reprisal such as open hostility to the complainant, participant, or others involved; exclusion/ostracism of the complainant or others; special attention to, or assignment of the complainant, participant or others to demeaning duties not otherwise performed; or arbitrary supervisory-imposed differences in work rules applied to the complainant, participant, or others involved. An employee who feels he or she has been subjected to adverse retaliatory action or who has knowledge of retaliatory behavior toward another person is required to report the offender to his or her supervisor, manager, or to the Human Resource Director (or designee.)

Any employee found to have retaliated or who has failed to report retaliation is subject to corrective or disciplinary action, up to and including dismissal.

4. Employee Complaint Process

A. Responsibilities

1. The agency encourages reporting of all incidents of harassment and discrimination and retaliation regardless of the offender's identity or position. Individuals who believe they have been harassed or discriminated against should notify his/her supervisor, his/her respective chain-of-supervision, or Human Resources as soon as possible after the alleged violation.

2. The agency requires reporting of all incidences of retaliation. Individuals who believe they have been retaliated against for reporting harassment or discrimination must notify his/her supervisor, his/her respective chain-of-supervision, or the Human Resources as soon as possible after the alleged retaliation.

3. Managers and supervisors have a legal responsibility to act promptly to report and eliminate any harassment, discrimination, or retaliation which exists in their area of responsibility. If a manager or supervisor knows that harassment, discrimination, or retaliation is occurring, **or** receives information from any party that harassment, discrimination, or retaliation might be occurring, he or she must take immediate action to address the situation. Such actions may include, but are not limited to: consulting with the Human Resource Director or designee; speaking directly with the injured person and the alleged offender; developing a specific account of the actions, omissions or occurrences that are alleged to be harassing, discriminatory or retaliatory; interviewing other potential witnesses and gathering relevant evidence, and, taking corrective or disciplinary action against the offender, if appropriate. If the alleged harassment, discrimination, or retaliation is not within their area of responsibility or oversight, managers and supervisors must notify the Human Resource Director, or other appropriate management employee, who must then take prompt steps to address the allegation.

4. The Human Resource Director (or designee) will respond to inquiries and complaints from management and employees regarding harassment, discrimination, or retaliation, will maintain records of these inquiries and complaints as well as their resolution, and together with other staff, will provide information and education to the employees and management on recognizing, understanding, and combating discrimination, harassment, and retaliation. If a complaint cannot be resolved by the immediate supervisor/manager; if there are disputed facts or there is insufficient information; if it is necessary to review documents or to apply legal principles of civil rights law, an investigation (sometimes also referred to as a fact finding) may be necessary. The Human Resources Director or designee will either conduct the investigation or arrange for another objective qualified professional to conduct the investigation. Actions to be done by the assigned investigator may include, but are not limited

to, speaking directly with the injured person, potential witnesses and the alleged offender; developing a specific account of the actions, omissions or occurrences that are alleged to be harassing, discriminatory or retaliatory; gathering of relevant evidence; and, writing and forwarding of a summary report to the appointing authority.

5. To ensure all relevant facts are gathered, managers, supervisors, other employees and volunteers are required to cooperate in all phases of investigation and ensuing actions. In some cases, the investigator may request that a witness maintain confidentiality in order to preserve the integrity of the perception of another witness(es), or to protect falsely accused employees. Failure to comply with this requirement, when stipulated, may result in disciplinary action. It is also an expectation that staff in the work area where the incident occurred and others involved in the investigation will cooperate to minimize disruption and stress in the work unit by refraining from unnecessary dissemination of information and speculation regarding the alleged acts or investigation. After completion of the investigation, the complainant will be informed whether their allegations were substantiated. Management may also provide follow up information to other affected individuals, witnesses, staff, or the work unit, considering the nature of the conduct and circumstances of each case.

6. The agency reserves the right to take action against any employee who makes false accusations or who deliberately gives false information during an investigation.

B. Confidentiality

Investigations of allegations of harassment and discrimination shall be conducted in a prompt and sensitive manner and efforts shall be made during the on-going investigation process to maintain confidentiality, to the extent possible. Once an investigation is completed, confidentiality can no longer be guaranteed. Completed investigative reports may be subject to public dissemination in accordance with state law.

To provide and maintain a workplace free from harassment, discrimination, and retaliation the agency may pursue an inquiry into such allegations, with or without authorization of the complainant and/or injured party.

C. Complaint Procedure

The agency encourages individuals who believe they are being subjected to harassment or discrimination to advise the offender that his/her behavior is unwelcome and request that it be discontinued. Often this action alone will resolve the problem. The agency recognizes, however, that an individual may prefer, or have a need to, pursue the matter

of harassment or discrimination through informal or formal complaint procedures, or is required by this policy to report all instances of retaliation.

1. Informal Procedure

An employee may opt to first discuss their allegations of harassment, discrimination, or retaliation with their immediate non-involved supervisor and request informal resolution of his/her complaint. A non-involved supervisor is defined as the first supervisor in an employee's chain-of-command who is not the subject of the complaint. During informal resolution, the immediate non-involved supervisor will immediately assess the situation by listening to the complainant, clarifying issues, talking to parties involved, including other witnesses if appropriate, and gathering relevant evidence.

Informal resolution may include, but is not limited to, a documented review of agency policy and future conduct expectations, facilitated conflict resolution, mediation services, or other forms of resolution such as additional employee training. Resolution may also include a determination that the complaint is not covered by this policy and should be handled in a different manner.

If during the informal fact gathering it is determined that a policy violation has occurred, the supervisor or manager will immediately contact Human Resources for consultation. If the complaint cannot be resolved informally, **or** the situation cannot be resolved quickly, the supervisor or manager will assist the complainant in making a formal complaint.

At the conclusion of all informal complaint resolutions the supervisor or manager will record in memo format the parties involved, the allegations, the findings, and the complaint resolution. This memo will be promptly forwarded to the Human Resources Director for record keeping purposes.

After informal complaint resolution, supervisors and managers are responsible for appropriate follow-up supervision and monitoring of employee behavior. This includes follow-up with the complainant to inform them of whether or not their allegations were substantiated. Supervisors and managers should ensure that no retaliation occurs as a result of any complaint.

2. Formal Procedure

All allegations of harassment, discrimination, or retaliation that cannot be quickly and effectively resolved will be handled through a more formal procedure. In addition, an employee may initially opt to discuss allegations of harassment, discrimination, or retaliation with the Human Resources Director, or designee, and request formal resolution of his/her complaint.

To ensure prompt and effective formal resolution of the complaint, the complainant should provide as much of the following information as possible to the Human Resource Director, or designee:

- Name, title, work location, and phone number of complainant;
- Name, title, work location, and phone number of the person or persons allegedly harassing or discriminating against the victim;
- A description of the incident(s), including the date(s), location(s), and the presence of any witnesses;
- Witness contact information (if known); and,
- Other pertinent information relevant to the complaint.

Optional Parks Form P-087, Discrimination Complaints, may be utilized.

The Human Resource Director, or designee, will review all formal complaints and determine the appropriate future course of action.

Investigative procedures depend on the nature and complexity of the issue or complaint, and the amount of time the investigation is expected to take. Upon completion of the investigation, a report of findings shall be made to the Human Resource Director and appointing authority. Management shall inform the complainant of the completion of the investigation and whether or not their allegations were substantiated.

3. Other Options

Employees believing that they have been discriminated against based on protected class status have the right to file a complaint directly with the Washington State Human Rights Commission under RCW 49.60.230 or the Federal Equal Employment Opportunity Commission under the Title VII of the Civil Rights Act of 1964.

4. <u>Non-Employee Complaint Process</u>

Volunteers and other persons having business with Parks may report incidents of harassment, discrimination, or retaliation by an employee of the agency to the Deputy Director

Deputy Director
Washington State Parks
7150 Cleanwater Drive SW
P.O. Box 42650
Olympia, WA 98504-2650

Phone: (360) 902-8502

As an alternative, volunteers and other persons having business with Parks may file complaints directly with the Washington State Human Rights Commission under RCW 49.60.230 or the Federal Equal Employment Opportunity Commission under the Title VII of the Civil Rights Act of 1964.