

# LOUISIANA THIRD CIRCUIT COURT OF APPEAL

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## POLICIES AND PROCEDURES ON HARASSMENT IN THE WORKPLACE

### **PHILOSOPHY**

The Louisiana Third Circuit Court of Appeal supports the philosophy that employees have a right to a workplace free from discrimination of any kind. The Louisiana Third Circuit Court of Appeal considers discrimination in the form of harassment contrary to this philosophy. Harassment subverts the mission of this Court in both obvious and subtle ways by destroying an employee's ability to function at his or her highest level and by eroding employee morale. Harassment creates a hostile, abusive, demeaning, offensive or intimidating environment. The policies herein seek to educate both employees and management of the harm resulting from harassment and behaviors which constitute harassment, as well as to eliminate discrimination in the form of harassment from all of the Louisiana Third Circuit Court of Appeal offices.

### **POLICY STATEMENT**

The Louisiana Third Circuit Court of Appeal explicitly condemns discrimination and harassment as a violation of an individual's human rights and dignity and strictly prohibits such conduct by this policy. In addition, workplace harassment is prohibited by Title VII of the Civil Rights Act of 1964. Neither employees, supervisors, nor officials of this Court shall commit or condone discrimination or harassment in any form, and if one does so, he/she shall be subject to disciplinary action up to and including dismissal. A determination of an occurrence of harassment is based upon the nature and context of the conduct. Neither employees, supervisors, nor officials of this Court, shall commit or condone sexual harassment, and if one does so, he or she shall be subject to disciplinary action up to and including dismissal. Copies of the EEOC's informational handout on this topic are attached to this policy.

## **DEFINITIONS AND EXAMPLES OF HARASSMENT**

Harassment generally consists of verbal or physical conduct which denigrates or shows hostility or aversion toward an individual or group of individuals. The Court takes the broadest possible view consistent with law and reason regarding conduct encompassed by the term “harassment.” However, the Court recognizes the rights of managers and supervisors to appropriately counsel and discipline employees, and such activities are not included in the definition of “harassment.” The examples and descriptions provided herein, although not an exhaustive list, should be used as guidelines for determining expected standards of professional and responsible conduct.

Discrimination in the form of harassment includes, but is not limited to, any of the following behaviors or activities which, by their nature, are directed toward any individual or group of individuals because of race, color, religion, sex, national origin, age or disability:

1. Epithets, slurs, negative stereotyping, or jokes targeted at a particular individual or group;
2. Threats, intimidating remarks, hostile acts, physical gestures or actions which serve to threaten, intimidate or denigrate; and/or
3. The circulation of or presence in the work area or on Court premises of any written or graphic material which ridicules or denotes hostility or aversion, or which may be offensive based on a “reasonable person” standard.

## **SEXUAL HARASSMENT**

“Sexual harassment” receives special attention by the Equal Employment Opportunity Commission (EEOC) and this Court. It is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature which:

- (1) Either explicitly or implicitly makes compliance with the conduct term or condition of an individual’s employment;
- (2) Makes submission to or rejection of the conduct a basis for employment decision(s) affecting an individual; and/or

- (3) Has the purpose or effect of unreasonably interfering with an individual's work performance;
- (4) Creates an intimidating, hostile, or offensive working environment.

The following examples of sexual harassment are not an exhaustive list but are provided as guidelines for determining expected standards of professional and responsible conduct:

- Verbal sexual harassment includes innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks and threats; requests for any type of sexual favor (including repeated, unwelcome requests for dates), and verbal abuse or "kidding" that is oriented toward a prohibitive form of harassment, including that which is sexual in nature and unwelcome.
- Nonverbal sexual harassment includes the distribution, display or discussion of any written or graphic material, including calendars, posters and cartoons that are sexually suggestive or show hostility toward an individual or group because of sex; suggestive or insulting sounds, leering, staring, whistling, obscene gestures, content in letters, notes, emails, photos, text messages, tweets and internet postings; or other forms of communication that are sexual in nature and offensive.
- Physical sexual harassment includes unwelcome, unwanted physical contact, including touching, tickling, pinching, patting, brushing up against, hugging, massaging, cornering, kissing, fondling, and forced sexual intercourse or assault.
- Preferential treatment or promises of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward.
- Subjecting, or threats of subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of the employee's job more difficult because of that employee's sex.

Sexual harassment most often occurs between persons having unequal power, authority, or influence, regardless of the sexual preference of the parties involved. Threats of adverse consequences or promises of reward may be

implied solely by circumstances of unequal power. Unequal power, authority, or influence alone may imply a threat of adverse consequence or promise of reward and describes an inherent conflict of interest when an individual exercises supervisory authority over another and engages in verbal or sexual conduct toward the supervised employee. Therefore, any dating or sexual relationship between a supervisor and subordinate, regardless of whether the relationship is consensual, is strongly discouraged by the Court because such relationships tend to create compromising conflicts of interest or the appearance of such conflicts. In addition, such a relationship may give rise to the perception by others that there is favoritism or bias in employment decisions affecting the staff employee. If there is such a relationship, the parties involved need to be aware that one or both may be moved to a different department or other actions may be taken.

### **COMPLAINT PROCEDURE**

It is the duty of every employee who experiences or witnesses behavior which he/she believes may constitute harassment to immediately report such conduct by following the complaint procedures outlined herein. Retaliation against any employee who makes a good faith report of conduct which he/she believes may constitute harassment in violation of this policy, or who provides information during an investigation of a complaint, is strictly forbidden and shall be grounds for disciplinary action up to and including dismissal.

A victim of harassment should immediately inform the offending person, without fear of retaliation or reprisal, that the conduct is unwelcome, offensive and must stop. This is not a requirement, but rather a suggested course of action to immediately and effectively cease the harassment. Regardless of whether an employee communicates the problem directly to the offender, he/she must report all incidents of harassment to his/her supervisor (if not the offending party), and to the Clerk of Court.

Formal complaints should be written and contain the following information:

- 1) Specific description of harassment;
- 2) Where, when and how often the harassment occurred;
- 3) The name(s) of the harassing person(s); and
- 4) The name of witness(es), if any.

The Court shall appoint an investigator, usually the Clerk of Court, to promptly and thoroughly investigate all allegations/complaints of harassment. Confidentiality shall be maintained to the extent possible and practicable throughout the process. The investigator shall submit his/her finding to the Court and to the Clerk of Court (if not the investigator). The Clerk of Court, in conjunction with the Department Head, shall make recommendations to the Court for further investigation, dismissal of the complaint, or disciplinary action up to and including dismissal.

When the harassment complaint is between a supervisory manager who is a judge and a court employee, the Clerk of Court will immediately inform the Chief Judge or, if appropriate, another judge. The judge who receives the complaint shall notify the Chief Judge if the complaint involves a possible violation of federal or state law and/or canon, at which time, the Chief Judge may, at his or her discretion, appoint a third party or outside investigator to review the matter to determine if any immediate actions need to be taken to protect the employee bringing the complaint.

Allegations of judicial misconduct, including sexual harassment, shall be reported to the Judiciary Commission immediately, regardless of the decision to appoint a third party or outside investigator, and the report should include all documents, statements, and reports relevant to the allegations of misconduct or harassment and which are available to the Chief Judge and/or the Clerk of Court at the time of making the report. Pursuant to Louisiana Supreme Court Rule XXIII, Section 23, such reports and supporting documentation are confidential.

### **COMPLAINTS OF FALSE CHARGES**

Because of the nature of the problem, complaints of harassment cannot always be substantiated. Lack of corroborating evidence should not discourage victims of harassment from seeking relief through a formal complaint. However, charges found to have been intentionally dishonest or made maliciously without regard for the truth will subject the complainant to disciplinary action.

### **APPLICATION AND NOTIFICATION OF POLICY**

This policy is applicable to and disseminated to all officials and employees of the Louisiana Third Circuit Court of Appeal in the following manner:

- The policy is disseminated to all Court employees annually via email.
- The policy is permanently placed in the desktop folder for all employees which contains various policy and procedure information.
- The policy is issued to all newly hired Court employees during the new hire onboarding process.
- The policy is located on the Louisiana Third Circuit Court of Appeal's Intranet under "Policies/Manuals/Forms" and on the Court's website.

In accordance with Louisiana ACT 270, the following is effective January 1, 2019, with regard to Sexual Harassment:

- Each public servant, which includes all Court employees and Elected Officials shall receive a minimum of one hour mandatory education and training on preventing sexual harassment during each full calendar year.
- Any person designated by the Court to accept or investigate complaints of sexual harassment must receive additional education and training beyond the one hour per calendar year.
- The education and training required pursuant to this Section may be received either in person or via the internet through training and education materials approved by the public servant's agency head.
- The Clerk of Court as the agency designee for the Louisiana Third Circuit Court of Appeal shall be responsible for maintaining records of the compliance of each Court employee in the agency with the mandatory training requirement.
- Each record of compliance shall be a public record and available to the public in accordance with the Public Records Law.

Mandatory reporting requirements in accordance with ACT 270:

Each agency head shall compile an annual report by February first of each year containing information from the previous calendar year regarding his agency's compliance with the requirements of this Chapter to include:

- The number and percentage of public servants in his agency who have completed the training requirements.

- The number of sexual harassment complaints received by his agency.
- The number of complaints which resulted in a finding that sexual harassment occurred.
- The number of complaints in which the finding of sexual harassment resulted in discipline or corrective action.
- The amount of time it took to resolve each complaint.

These reports shall be public record and available to the public in the manner provided by the Public Records Law.

Agency heads in the judicial branch of state government, including the Louisiana Supreme Court, courts of appeal, district courts, and other courts authorized by Article V of the Constitution of Louisiana, shall submit the report to the Chief Justice of the Louisiana Supreme Court through its designee, the Deputy Judicial Administrator for Human Resources.

The Business Services Manager of the Louisiana Third Circuit Court of Appeal will be the assigned designee for the Chief Judge to collect and maintain the reports and all related records for compliance with this act. A reporting template will be sent to all Chief Judges, Court Administrators and Clerks of Court in the Judicial Branch. The first reports required by La.R.S. 42:344 as enacted by this Act shall be due in February of 2020.

All courts will send their reports via email and hard copy to the Human Resources office at the Louisiana Supreme Court addressed as follows:

Veronica Cheneau,  
Deputy Judicial Administrator—Human Resources  
Louisiana Supreme Court  
400 Royal Street  
New Orleans, Louisiana 70130  
504-310-2317  
[vcheneau@lasc.org](mailto:vcheneau@lasc.org)



# U.S. Equal Employment Opportunity Commission FACT SHEET

## Sexual Harassment

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964. Title VII applies to employers with 15 or more employees, including state and local governments. It also applies to employment agencies and to labor organizations, as well as to the federal government.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- 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.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

It is helpful for the victim to inform the harasser directly that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by providing sexual harassment training to their employees and by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

It is also unlawful to retaliate against an individual for opposing employment practices that discriminate based on sex or for filing a discrimination charge, testifying, or participating in any way in an investigation, proceeding, or litigation under Title VII.

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### FIND THIS ARTICLE ON THE WEB AT:

Facts About Sexual Harassment FSE/4  
<http://www.eeoc.gov/facts/fs-sex.html>

### SEE ALSO:

Filing a Charge of Discrimination  
<http://www.eeoc.gov/employees/charge.cfm>