



## CIVIL RIGHTS SEXUAL HARASSMENT COMPLAINT Procedure

Lead Division: Civil Rights

Revision Date: July 1, 2005

Signed by: Freddie Jones,  
Civil Rights Division Administrator

Supersedes: Policy 2.15,  
January 23, 2001

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### **PURPOSE:**

Sexual harassment is an unlawful employment practice, which potentially can subject both VDOT and the harasser to financial liability. VDOT intends to avoid such liability by prohibiting the practice of sexual harassment of any employee, applicant for employment, contractor, or volunteer and requiring that its employees refrain from conduct that could give rise to allegations of sexual harassment. VDOT also intends to provide a workplace that is free of sexual harassment to ensure a productive environment. VDOT will not tolerate any form of retaliation directed against an employee or third party who either complains about sexual harassment or who participates in any investigation concerning sexual harassment.

VDOT shall make affirmative efforts to educate employees regarding conduct that constitutes or may lead to allegations of sexual harassment, and to inform them of potential consequences if they engage in the prohibited behavior. These affirmative efforts shall include, but not be limited to:

- Communication of VDOT's sexual harassment policy and DHRM's Policy No. 2.30.
- Sexual Harassment Awareness and Prevention Training for all VDOT employees

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### **PROCEDURE:**

Employees should immediately report incidents involving alleged sexual harassment to their supervisor, Section Head, Residency Administrator, District Civil Rights Manager, the Civil Rights Division Administrator, the District Human Resources Manager, or the Central Office Human Resources Manager. Applicants for employment should report incidents involving alleged sexual harassment to the District Civil Rights Manager or Human Resources Manager, the Civil Rights Division Administrator or the Central Office Human Resources Manager. In no instance should an employee or applicant alleging sexual harassment be required to report such allegations to the alleged harasser. Complaints filed with VDOT must be filed within 180 days of the alleged harassment. Individuals may also report such conduct to the Department of Human Resource Management's Office of Equal Employment Services or the United States Equal Employment Opportunity Commission.

**VDOT Procedures:** Employees and applicants for employment seeking to remedy sexual harassment may file a complaint with the District Civil Rights Manager or the Civil Rights Division Administrator. Complaints must be filed within 180 days of the alleged harassment. All allegations of sexual harassment, whether verbal or written, are considered formal complaints and

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shall be reviewed by a Civil Rights professional in consultation with Human Resources, to determine if an investigation is warranted. In addition to seeking a remedy through the Civil Rights Division, employees may also use the Commonwealth's Grievance Procedures to address certain workplace actions. Grievances must be initiated with VDOT's Human Resources Department within 30 calendar days of the action or event being challenged.

**State Procedures:** Employees and applicants for employment seeking to remedy sexual harassment may follow the State Employees' Discrimination Complaint Procedures, which is administered by the Department of Human Resources Management's Office of Equal Employment Services. Complaints must be filed within 180 days of the alleged harassment.

**Federal Procedures:** Employees and applicants for employment seeking to remedy sexual harassment may file a complaint with the United States Equal Employment Opportunity Commission (EEOC). Complaints must be filed within 300 days of the alleged harassment.

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### **ROLES AND RESPONSIBILITIES:**

#### **Civil Rights:**

Civil Rights Managers and other designated Civil Rights professionals have the full responsibility and duty to investigate allegations of sexual harassment and to advise the Civil Rights Division Administrator as well as the District and Division Administrators of such allegations. Investigative findings and recommended courses of action are discussed with the Civil Rights Division Administrator and the Office of the Attorney General. For investigations that result in a finding of a violation, Civil Rights will consult with Human Resources to determine if disciplinary action is appropriate and if so, the level of discipline. Civil Rights professionals are also responsible for conducting training on sexual harassment and for communicating this policy to employees.

#### **Human Resources:**

Human Resources Managers have the responsibility and duty to provide advice and assistance to managers and supervisors, in conjunction with Civil Rights Managers, on proposed corrective actions. Human Resources Managers also have the responsibility to determine, when necessary, pre-disciplinary action to be taken pending the completion of an investigation as well as the appropriate corrective action to recommend to managers and supervisors upon completion of an investigation.

#### **Managers and Supervisors:**

Managers and supervisors have a duty to notify the Civil Rights Division Administrator or District Civil Rights Manager for their respective districts of allegations of sexual harassment brought to their attention. They are responsible for taking immediate action, when warranted, as soon as they become aware of an allegation. At the conclusion of the Civil Rights Division's investigation, Managers and/or Supervisors should implement corrective actions based on the recommendations provided by the Human Resources Manager.

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Any Manager and Supervisor who fails to notify the Civil Rights Central Office or the Civil



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Rights District Office of an allegation could potentially be considered a party to the offense, if the harassment continues or appropriate corrective action is not taken, even though the Manager or Supervisor may not have engaged in the alleged behavior. Managers and Supervisors may be subject to disciplinary action, including demotion or discharge, for failing to notify a Civil Rights professional and/or for failing to respond appropriately to allegations.

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### **EFFECTIVE DATE:**

This policy is effective July 1, 2005, and will remain in effect until amended.

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### **PENALTIES FOR ENGAGING IN SEXUAL HARASSMENT:**

**Antidiscrimination** laws provide that employers may be liable for the discriminatory acts of their supervisors, which is any individual with authority to undertake or recommend tangible employment decisions affecting an employee or any individual with authority to direct an employee's daily work activities.

**Antidiscrimination** laws also provide that employers may be liable for the discriminatory acts of employees and non-employees, such as vendors and contractors, who engage in severe or pervasive harassment so as to create a hostile work environment

Any employee who engages in conduct determined to be sexual harassment, or who encourages such conduct by others, shall be subject to corrective action. Such corrective action may include receiving counseling or discipline including termination, depending on the specific facts and circumstances surrounding the incident.

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### **FURTHER INFORMATION:**

For the purpose of this policy, the following terms are defined as follows:

**Sexual Harassment** is defined by the United States Equal Employment Opportunity Commission (EEOC) as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment;
- Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that individual; and/or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

Forms of behavior which may be considered sexual harassment include, but are not limited to:

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- Verbal – Specific demands for sexual favors, sexual innuendoes, sexually suggestive comments, jokes of a sexual nature, sexual propositions, sexual threats, derogatory, demeaning or belittling comments based on gender.
  - Non-Verbal – sexually suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, obscene gestures.
  - Physical – Unwelcome physical contact, including touching, pinching, brushing the body, coerced sexual intercourse, sexual assault.
  - Behavioral – actions motivated by gender, such as sabotaging work, isolating a person from job-related activities

In addition to being prohibited in the work environment, these behaviors are also not to be tolerated at agency-sponsored activities, such as conference, workshops, retreats, etc, or while attending any outside activity as a representative of VDOT.

Sexual harassment does not refer to behavior and /or occasional compliments of a socially acceptable nature. Also, the First Amendment protects some forms of expression in the workplace but there is no protection for conduct that is so severe and pervasive that it unreasonably interferes with an individual's work performance, or creates a hostile work environment.

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