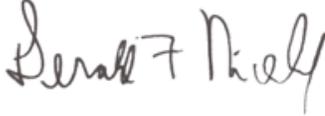


TD  T DEPARTMENTAL POLICY State of Tennessee Department of Transportation	Policy Number: 230-15
	Effective Date: October 24, 2005
Approved By: 	Supersedes: September 16, 2005
SUBJECT: Disability Discrimination Policy	

RESPONSIBLE OFFICE: Human Resources Office.

AUTHORITY: The Americans with Disabilities Act of 1990, as amended. TCA 4-3-2303. Title I regulations regarding employment of 29 CFR Part 1630, Title II regulations regarding public entities of CFR Part 35. Department of Personnel policy concerning “Investigations of Allegations of Illegal Discrimination and Harassment”, dated August 12, 2005. If any portion of this policy conflicts with applicable state or federal laws or regulations, that portion shall be considered void. The remainder of this policy shall not be affected thereby and shall remain in full force and effect.

PURPOSE: The purpose of this policy is to state the Department’s EEO policy of non-discrimination based on disability.

APPLICATION: All persons seeking access to programs, services or facilities of the Tennessee Department of Transportation. All employees of the Tennessee Department of Transportation and all persons seeking employment or conducting business with the Department.

DEFINITIONS: Retaliation is defined as overt or covert acts of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against an individual or individuals exercising rights under this policy.

POLICY: It is the policy of the Department to prohibit discrimination or harassment against any qualifying individual with a disability on the basis of disability in regards to the Department’s hiring and employment practices, or in the admission or access to, or treatment or employment in, its programs, services or activities. The Department shall comply with applicable requirements of Section 503 and 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, the Department of Personnel Policies Rules and Regulations, as well as any other applicable law pertaining to disability non-discrimination.

PROCEDURE: The Tennessee Department of Transportation hereby adopts the compliant procedure process issued by the Tennessee Department of Personnel including form PR-0411 “Intake/Referral and Investigative Memorandum process”, copy attached, which from time to time may be revised by the Department of Personnel.

HOW TO REPORT DISABILITY DISCRIMINATION INCIDENTS

If an employee, applicant for employment, or third party believes he/she has been subjected to conduct that violates this policy, he/she must report those incidents as soon as possible after the event occurs.

Employees and applicants for employment may file a complaint with the department's Office of Civil Rights, Human Resources Director, the department head, their supervisor(s), or to:

ADA Coordinator

Office of Human Resources

Suite 400, James K. Polk Building

505 Deaderick Street

Nashville, TN 37243

Telephone: (615) 741-3461 or 741-4984 or FAX (615) 253-1477 or TTY Relay (800) 848-0298

Under no circumstances is the individual alleging disability discrimination and/or harassment required to file a complaint with the alleged harasser. If an employee or applicant believes he/she cannot file a complaint within his/her agency, that person should contact the Department of Personnel, EEO/AA Division or Employee Relations Division (615-741-2958).

Individuals who wish to file a complaint are encouraged to submit the complaint in writing and to include a description of the incident(s) as well as the dates(s), time(s), place(s) and any witnesses.

If a complaint involves an assistant commissioner, deputy commissioner, or the commissioner, an employee or applicant for employment may file the complaint directly with the Department of Personnel, EO/AA Division.

HOW TO REPORT RETALIATION INCIDENTS

In an employee, applicant for employment or third party believes he/she has been subjected to retaliation for engaging in protected conduct under this policy, he/she must report incidents as soon as possible after the event occurs.

Any employee, applicant for employment, or third party who makes complaints of disability discrimination and/or harassment or provides information related to such complaints will be protected against retaliation. If retaliation occurs, the employee, applicant for employment, or third party should report the retaliation in the same manner as he/she would report a workplace harassment complaint.

HOW COMPLAINTS ARE INVESTIGATED AND RESOLVED

The ADA Coordinator in the Office of Human Resources will conduct a thorough and neutral investigation of all reported complaints of workplace disability discrimination, harassment and/or retaliation as soon as practicable. Generally, an investigation will include an interview with the complainant to determine if the conduct in issue violates this policy. If the department determines that the conduct falls within the terms of this policy, the department will interview the alleged offender and any other witnesses who have direct knowledge of the circumstances of the allegations.

The department retains the sole discretion to determine whether a violation of this policy has occurred and to determine what level, if any, of disciplinary action is warranted.

If a complaint involves an assistant commissioner, deputy commissioner, or the commissioner, the Department of Personnel, EEO/AA Division will investigate the complaint on behalf of the department and report the results to the appropriate agency or authority.

HOW CONFIDENTIALITY IS TREATED

To the extent permitted by law, the State will try to maintain the confidentiality of each party involved in disability discrimination and/or harassment investigation, complaint or charge, provided it does not interfere with the department's ability to investigate the allegations or to take corrective action. However, the State cannot guarantee confidentiality. Any documents that are made or received in the course of the investigation

are public records under the State's Public Act, unless otherwise exempted by state law. Unless such exemption applies, state law will prevent the State from maintaining confidentiality or investigative records.

DIRECTIVE TO SUPERVISORY PERSONNEL

Supervisory personnel who receive a complaint alleging disability discrimination or learn by any means of conduct that may violate this policy must immediately report any such event to the department's Human Resources Director, ADA Coordinator, or to the Office of the Commissioner.

CORRECTIVE ACTION FOR VIOLATION OF THIS POLICY

Any employee who engages in conduct that violates this policy or who encourages such conduct by others will be subject to corrective action. Such corrective action includes, but is not limited to, mandatory participation in counseling, training, disciplinary action, up to and including termination, and/or changes in job duties or location.

Supervisory personnel who allow disability discrimination, harassment and/or retaliation to continue or fail to take appropriate action upon learning of such conduct will be subject to corrective action. Such corrective action includes, but is not limited to, mandatory participation in counseling, training, disciplinary action, up to and including termination, and/or changes in job duties or location.

OTHER PROVISIONS

When a complaint is filed, the investigator will inform the complainant, accused and witnesses of the statement of limitation on confidentiality included in the Intake/Referral process. The investigator will also inform the complainant, accused, and witnesses of the strict prohibition of retaliation, as defined in this policy.

The investigator will communicate information concerning the allegations only to those to whom the investigator is authorized to report such matters.

The investigator will issue a letter to the accuser and the accused concerning the outcome of the investigation. A copy this letter will be forwarded to the Office of the Commissioner, TDOT.

All documents generated by the investigation and any subsequent disciplinary action shall be preserved and only disposed of in accordance with the appropriate State rule.

Any disciplinary action taken requires that records of such action be maintained in the disciplined employee's personnel file subject to the Department of Personnel's rules concerning the retention of disciplinary records.

The supervisor is responsible for maintaining the proper performance level, conduct and discipline of employees under his/or her supervision. When corrective action is necessary resulting from violation of policy, the supervisor must take the appropriate disciplinary action.

INTAKE/REFERRAL FORM

STATEMENT CONCERNING CONFIDENTIALITY

Pursuant to Tennessee Code Annotated § 10-7-502(a), "all state . . . records . . . shall at all times, during business hours, be open for personal inspection by any citizen of Tennessee, and those in charge of such records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law." Accordingly, the State cannot and does not guarantee the confidentiality of this document or any notes, files, reports, or other documents, whether created by the State or received from the complainant, accused, or witnesses.

NAME OF COMPLAINANT OR PERSON REPORTING EVENT:

TELEPHONE NUMBERS OF COMPLAINANT OR PERSON REPORTING EVENT:

WORK: _____

HOME: _____

IS YOUR HOME TELEPHONE NUMBER UNLISTED? YES _____ NO _____

MOBILE: _____

NAME OF AGENCY AND DIVISION INVOLVED:

NAME OF PERSON(S) WHO ALLEGEDLY DISCRIMINATED AGAINST YOU OR HARASSED YOU?

RELATIONSHIP OF ALLEGED ACCUSER TO YOU (I.E. DIRECT SUPERVISOR, CO-WORKER):

DATE OF EARLIEST OCCURRENCE OF EVENTS?

DATE OF LATEST OCCURRENCE OF EVENTS?

WERE THERE OTHER EMPLOYEES WHO WERE TREATED BETTER IN SIMILAR CIRCUMSTANCES? PLEASE CHECK ONE: YES _____ NO _____

IF YOU ANSWERED YES TO THE PREVIOUS QUESTION, PLEASE PROVIDE THE NAMES OF THE EMPLOYEES WHO WERE TREATED BETTER AND DESCRIBE HOW THEY WERE TREATED BETTER:

PLEASE LIST BELOW ANY PERSONS (WITNESSES, FELLOW EMPLOYEES, SUPERVISORS, OTHERS) WHO MAY HAVE ADDITIONAL INFORMATION TO SUPPORT OR CLARIFY THIS COMPLAINT. EXPLAIN WHAT INFORMATION EACH CAN PROVIDE.

WHAT EXPLANATION DO YOU THINK THE AGENCY OR ACCUSED WILL GIVE AS TO WHY YOU WERE TREATED IN THIS MANNER?

PLEASE IDENTIFY ANY OTHER INFORMATION (INCLUDING DOCUMENTARY EVIDENCE SUCH AS DIARIES, JOURNALS, RECORDINGS, EMAILS, VOICEMAILS, CORRESPONDENCE, ETC.) THAT YOU THINK IS RELEVANT TO THIS MATTER.

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WHAT DO YOU WANT TO HAPPEN AS A RESULT OF THIS COMPLAINT?

IF YOU HAVE TOLD ANYONE ELSE ABOUT THIS MATTER, PLEASE LIST THE NAME(S) AND RELATIONSHIP(S) (CO-WORKER, FAMILY MEMBER, ETC.)

SIGNATURE OF COMPLAINANT: _____

DATE: _____

IF COMPLETED BY SUPERVISOR OR AGENT OF STATE AS A RESULT OF INTERVIEWING A COMPLAINANT, PLEASE PROVIDE THE FOLLOWING INFORMATION:

PRINTED NAME: _____

SIGNATURE: _____

TITLE: _____

AGENCY AND/OR DIVISION: _____

WORK TELEPHONE NUMBER: _____

DATE COMPLAINT RECEIVED: _____

DATE FORM COMPLETED: _____

REASON FOR DELAY, IF ANY, BETWEEN THE DATE THE COMPLAINT WAS RECEIVED AND THE DATE THE FORM WAS COMPLETED:

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NAME AND TITLE OF PERSON TO WHOM THE FORM WAS FORWARDED FOR ACTION:

DATE ON WHICH THE FORM WAS FORWARDED:

INVESTIGATION MEMORANDUM FORMAT

1. **Complainant's name, job title, agency, location**
2. **Initiation of investigation:**
 - a. Persons involved in conducting investigation
 - b. Date complaint received by agency
 - c. Person in agency who initially received complaint
 - d. Date investigation began and, if applicable, reason for any delay
3. **Description of complaint**
 - a. General nature of events giving rise to complaint, including dates of alleged events
 - b. Person(s) accused of inappropriate behavior and organizational relationship to complainant
4. **Statements and evidence gathered in the investigation**
 - a. Complainant
 - i. Specific allegation(s). If more than one allegation, list each separately
 - ii. Additional witnesses named by complainant
 - iii. Resolution desired by complainant
 - b. Person accused of inappropriate behavior. If more than one, list each separately
 - i. Specific response(s) to allegation(s). If more than one, list each separately
 - ii. Additional witnesses named by accused
 - c. Witnesses interviewed
 - i. Name and job title. If more than one, list each separately
 - ii. Evidence about specific allegations (noting firsthand knowledge v. secondhand knowledge)
 - iii. Additional witnesses, if any
5. **Summary of evidence**
 - a. Corroboration of specific allegations
 - b. Non-corroboration of specific allegations
 - c. Other pertinent information
6. **Conclusions concerning violation of policy. INCLUDE ONLY AT THE DIRECTION OF THE AGENCY.**
7. **Appendices**
 - a. List of potential witnesses not interviewed and reason
 - b. List of attachments (documentary evidence)