

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 112.07	PAGE 1 of 9
		EQUAL EMPLOYMENT OPPORTUNITY and POLICIES AGAINST WORKPLACE DISCRIMINATION AND HARASSMENT	

EFFECTIVE: March 1, 1980
REVIEWED: July 31, 2006
REVISED: November 8, 2007
REVISED: September 26, 2008
REVISED: September 24, 2009
REVISED: September 30, 2010
REVISED: September 27, 2011
REVISED: September 21, 2012
REVISED: October 25, 2013
REVISED: December 5, 2014
REVISED: September 30, 2015
REVISED: June 30, 2016

SUMMARY of REVISION/REVIEW

Revised Title of AR; Incorporated AR 112.05. Added Pregnancy on Pages 2, 3 and 4; Section II.B.1.c. added referral to ARs 004.01 and 004.02 for situations involving a disability; included reference to workplace discrimination throughout the AR. Attachments A, C, D and E updated. Removed ACA standards for Adult Parole.

APPROVED:



Scott R. Frakes, Director
Nebraska Department of Correctional Services

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 112.07	PAGE 2 of 9
		EQUAL EMPLOYMENT OPPORTUNITY and POLICIES AGAINST WORKPLACE DISCRIMINATION AND HARASSMENT	

PURPOSE

To provide guidance on the enforcement of equal opportunity within the Nebraska Department of Correctional Services (NDCS). This policy complies with the Nebraska Fair Employment Practice Act (Neb. Rev. Stat. §§48-1101 to 48-1125), the governing State Personnel Rules and Regulations and applicable Union Contracts and defines workplace discrimination and workplace harassment (WPH) terms, all employees' responsibilities, supervisory responsibilities, investigation procedures, complaint rights and corrective actions.

GENERAL

It is NDCS policy to subscribe to the principles of the Federal Civil Rights Act of 1964, the Nebraska Fair Employment Practice Act, all federal and state regulations promulgated thereunder and the State of Nebraska Equal Employment Opportunity (EEO) Policy and to create a working environment within Corrections free from discrimination and harassment.

POLICY STATEMENTS

- I. Equal Employment Opportunity – is the right of all persons to work and to advance on the basis of merit and ability without regard to race, color, national origin, religion, sex (including pregnancy), age, disability or marital status. These rights include, but are not limited to, recruitment, hiring, training, promotion in all job classifications at all levels, discipline, transfers, benefits, and educational opportunities.
- II. Employment Selection – will be made based upon demonstrated abilities and qualifications. No person shall, on grounds of race, gender, color, disability, national origin, age, religion, marital status, political belief, or any other non-merit factor, be excluded from employment with NDCS.
- III. Workplace discrimination – no employee will be subjected to discrimination and/or harassment on the basis of race, color, sex, religion, national origin, age, pregnancy or disability.
 - A. Pregnancy – includes an individual who is pregnant, who has given birth, or who has a related medical condition.
 - B. Disability – includes a qualified individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that the individual holds or desires.
- IV. Workplace harassment –no employee will be subjected to any verbal or physical conduct of a discriminatory nature, (inflammatory comments, jokes, printed material and/or innuendo), based, in whole or in part, on race, color, sex, religion, age, disability, pregnancy or national origin, when:
 - A. Such conduct has the purpose or effect of creating an intimidating, hostile or offensive working environment; OR
 - B. Such conduct interferes unreasonably with a person's work or employment opportunities or has the purpose of or effect of creating an intimidating, hostile or offensive environment.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 112.07	PAGE 3 of 9
		EQUAL EMPLOYMENT OPPORTUNITY and POLICIES AGAINST WORKPLACE DISCRIMINATION AND HARASSMENT	

- V. Sexual harassment – no employee will be subjected to any un-welcomed sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature, when:
1. Submission to such conduct is made, either explicitly or implicitly, a term of an individual's employment or a condition to receipt of services by a recipient of the agency's services; OR
 2. Submission to or rejection of such conduct by an individual is used as the basis for employment or agency decisions affecting an employee or a recipient of the agency's services; OR
 3. Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or the receipt of services by a recipient of the agency's services, or of creating an intimidating, hostile or offensive environment.

PROCEDURES:

I. EQUAL EMPLOYMENT OPPORTUNITY

- A. The Department establishes a policy statement that clearly communicates a definitive position of equal opportunity. This policy statement is signed and reissued by the agency Director/designee on an annual basis. Each Facility/Program posts copies of the Agency's EEO Policy Statement in a prominent area (Attachment A).
- B. All Programs ensure equal opportunity exists for all NDCS positions. Bona Fide Occupational Qualifications (BFOQ) may be requested by writing to the Director's office through the Human Resources office. BFOQ includes bids on post/job assignments, vacancies and days off as provided for in the NAPE labor contract.
- C. When receiving Nebraska or Federal Equal Opportunity complaints of disparate equal opportunity, Programs immediately notify the NDCS Legal office. The Legal Office, with assistance from the Program and Human Resources, submits the agency response.
- D. Any employee whose action(s) cause non-compliance is subject to disciplinary action.

II. POLICIES AGAINST WORKPLACE DISCRIMINATION AND HARASSMENT

The Agency Personnel Investigator is the Agency Discrimination/WPH contact.

A. ALL EMPLOYEES' RESPONSIBILITIES

Any employee witnessing or hearing any type of possible workplace discrimination and/or harassment has the responsibility to report it in writing to their supervisor, Warden/Program Administrator or Agency WPH Contact (402-479-5890). Any failure by an employee to report that he/she witnessed or overheard possible workplace discrimination and/or harassment shall be considered to be a violation of this policy and shall be subject to appropriate corrective or disciplinary action. An employee still has the responsibility to report in cases where the parties involved have indicated

	<p style="text-align: center;">ADMINISTRATIVE REGULATION</p> <p style="text-align: center;">Department of Correctional Services State of Nebraska</p>	<p style="text-align: center;">NUMBER 112.07</p>	<p style="text-align: center;">PAGE 4 of 9</p>
		<p>EQUAL EMPLOYMENT OPPORTUNITY and POLICIES AGAINST WORKPLACE DISCRIMINATION AND HARASSMENT</p>	

they are not offended, have resolved the matter informally between themselves or there is no complainant.

B. SUPERVISOR/MANAGER RESPONSIBILITIES

Workplace discrimination and/or harassment creates a negative work environment, which will affect productivity, efficiency, work attendance and turnover of staff. In addition, allegations of workplace discrimination and/or harassment, which are not appropriately responded to by the agency, may place NDCS and the State of Nebraska in a position of potential liability to the victim of such workplace discrimination and/or harassment. It is essential that supervisory/management personnel take all workplace discrimination and/or harassment complaints or situations seriously.

1. Receipt of Complaint

Any supervisor/manager who receives a complaint alleging workplace discrimination and/or harassment, who is aware of a situation involving a potential workplace harassment, or in the event the complainant doesn't allege WPH but there are allegations relating to race, color, sex, religion, national origin, age, pregnancy or disability, the supervisor/manager is required to:

- a. Follow and complete the Workplace Discrimination and/or Harassment Complaints/Allegations Supervisor's Checklist (Attachment D).
- b. Immediately report the complaint or situation, in writing, to the Warden/Program Administrator/Designee, along with a copy of the completed Workplace Discrimination and/or Harassment Complaints/Allegations Supervisor's Checklist. The Warden/Program Administrator/Designee shall immediately report this information to the Agency Director through the Agency Discrimination/WPH contact for instructions on further processing of the complaint.
- c. For a situation involving a disability, please refer to AR 004.01 ADA Policy and AR 004.02 ADA Policy – Inmates & the Public.

2. Failure to Report

Any failure by a supervisor/manager to report such workplace discrimination and/or harassment complaints or situations shall be considered to be a violation of this policy and shall subject the supervisor/manager to appropriate corrective or disciplinary action.

A supervisor still has the responsibility to report in cases where the parties involved have indicated they are not offended, have resolved the matter informally between themselves or there is no complainant.

	<p style="text-align: center;">ADMINISTRATIVE REGULATION</p> <p style="text-align: center;">Department of Correctional Services State of Nebraska</p>	<p style="text-align: center;">NUMBER 112.07</p>	<p style="text-align: center;">PAGE 5 of 9</p>
		<p>EQUAL EMPLOYMENT OPPORTUNITY and POLICIES AGAINST WORKPLACE DISCRIMINATION AND HARASSMENT</p>	

3. Notification of Policy

Any supervisor/manager receiving a complaint alleging workplace discrimination and/or harassment shall immediately give the complainant a copy of the Agency Equal Employment Opportunity and Policy Against Workplace Discrimination and/or Harassment, AR 112.07. The complainant and respondent to the complaint will sign a receipt for the copy (Attachment E).

4. Confidentiality

Any supervisor/manager receiving a complaint or report of workplace discrimination and/or harassment or where there are allegations relating to race, color, sex, religion, national origin, age, pregnancy or disability shall protect the identity of the complainant(s) and of the accused party(ies) and shall hold the allegations of workplace discrimination and/or harassment in confidence pending appropriate action by the agency.

C. RIGHTS OF COMPLAINANTS

1. Right to Report

In the event that any employee of this agency believes that he/she has been or is being subjected to workplace discrimination and/or harassment, that person has the right to report such alleged workplace discrimination and/or harassment to any supervisor/manager, the Agency Discrimination/WPH contact, the State Affirmative Action Office, Nebraska Equal Opportunity Commission or State Ombudsman for assistance.

- a. Any employee who believes he/she is being subjected to workplace discrimination and/or harassment is encouraged, but not required, to directly inform the offending person(s) that such conduct is offensive and must stop.
- b. If the aggrieved person does not wish to communicate directly with the offending person(s), or if direct communication has been ineffective, the aggrieved person is encouraged to immediately report the alleged workplace discrimination and/or harassment to any supervisor, to the Agency Director or to the Agency Discrimination/WPH contact or other entities previously mentioned in Section II.A. of this policy.
- c. In reporting allegations of workplace discrimination and/or harassment, complainants should take care to state specific facts including, wherever practical, the identity of the person(s) who committed such workplace harassment, the date, time and place of the alleged discrimination and/or harassment, what was specifically done or said and the identity of any witnesses who were present.
- d. All complaints shall be investigated in a timely and confidential manner.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 112.07	PAGE 6 of 9
		EQUAL EMPLOYMENT OPPORTUNITY and POLICIES AGAINST WORKPLACE DISCRIMINATION AND HARASSMENT	

2. Nebraska Equal Opportunity Commission (NEOC)/Federal Equal Employment Opportunity Commission (EEOC) Complaints

- a. Persons who wish to report allegations of workplace discrimination and/or harassment also have the right, at any time, to file a complaint with the Nebraska Equal Opportunity Commission (NEOC) and/or the Federal Equal Employment Opportunity Commission (EEOC). IT IS NEITHER NECESSARY OR REQUIRED THAT AN EMPLOYEE OF THE AGENCY FILE A CHARGE OF WORKPLACE DISCRIMINATION AND/OR HARASSMENT WITH THE AGENCY BEFORE FILING A FORMAL COMPLAINT WITH THE NEBRASKA EQUAL OPPORTUNITY COMMISSION OR WITH THE FEDERAL EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. There is nothing to prevent an employee from filing formal charges with the Nebraska Equal Opportunity Commission and/or the Federal Equal Employment Opportunity Commission, while at the same time reporting the allegation of workplace discrimination and/or harassment within the agency.
- b. Because of the legally mandated filing period restrictions imposed for filing formal charges of workplace discrimination and/or harassment with the Nebraska Equal Opportunity Commission and the Federal Equal Employment Opportunity Commission (300 days), it is recommended that any employee who believes he or she has been discriminated against or harassed and who wishes to file such charges with the Nebraska Equal Opportunity Commissions and/or Federal Equal Employment Opportunity Commission take the necessary steps to file such charges as soon as possible.

D. **INVESTIGATION PROCEDURES FOR WORKPLACE DISCRIMINATION AND/OR HARASSMENT COMPLAINTS**

1. Initiation of Investigation

Once a determination is made that a possible workplace discrimination and/or harassment policy violation exists, the Agency Director or Agency Discrimination/WPH contact shall immediately take all necessary steps to ensure the report is promptly and thoroughly investigated by the agency. The Agency Director or Agency Discrimination/WPH contact will approve appointment of an investigating officer.

2. Complaint Notification of Policy

The investigating officer shall be obligated to make certain the complainant has been advised of the agency policy concerning workplace discrimination and/or harassment and of the complainant's rights concerning pursuit of such allegations.

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 112.07	PAGE 7 of 9
		EQUAL EMPLOYMENT OPPORTUNITY and POLICIES AGAINST WORKPLACE DISCRIMINATION AND HARASSMENT	

3. Confidentiality

Since investigations of alleged workplace discrimination and/or harassment are personnel matters, persons involved shall maintain confidentiality. Information concerning a complaint shall not be released to anyone who is not a party to or involved in the investigation.

E. RESOLUTIONS

1. Conflict Resolution

The investigating officer or complainant may seek conflict resolution by bringing the offensive behavior to the attention of the accused party (ies) and holding a meeting of Conflict Resolution, thereby securing agreement the behavior will cease. If such conflict resolution is elected, the involved parties receive written notice of agreement to participate in conflict resolution (Attachment F). The investigating officer shall submit a report to the Agency Director through the Agency Discrimination/WPH contact.

2. Informal Resolution/ Corrective Counseling Log

The Warden/Program Administrator may recommend to the Agency Director a corrective counseling log (CCL) be issued based on the total circumstances of the situation. As with any recommendation, the Agency Director shall approve or disapprove the recommendation.

3. Formal Resolution

Upon completion of the investigation, the investigating officer shall prepare a written report, stating the findings of the investigation, and make recommendations to the Warden or Program Administrator and/or his/her Designee. The Warden or Program Administrator and/or his/her Designee shall then review the report and supporting documentation and make a recommendation for further action to the Agency Director through the Agency Discrimination/WPH contact for the Agency Director's review and approval prior to taking any action.

F. DIRECTOR/DESIGNEE DISPOSITION

Upon review of the recommendations of the Warden/Program Administrator the Agency Director shall render a final decision regarding the complaint and specify any action to be taken.

If upon investigation, an allegation of workplace discrimination and/or harassment is found to be substantiated, the Agency Director/Designee shall approve appropriate action against the employee found responsible for such workplace discrimination and/or harassment.

This may consist of informal corrective action, formal disciplinary action or dismissal of the complaint. If formal disciplinary action, the applicable Labor Contract or State

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 112.07	PAGE 8 of 9
		EQUAL EMPLOYMENT OPPORTUNITY and POLICIES AGAINST WORKPLACE DISCRIMINATION AND HARASSMENT	

Personnel Rules and Regulations is followed.

- G. The Warden/Program Administrator/Designee will meet with the complainant when the investigation is concluded and a determination has been made by the Agency Director.
- H. If the complainant is dissatisfied with the agency's action in response to a complaint of workplace discrimination and/or harassment, then the complainant may contact the State Affirmative Action Office, Nebraska Equal Opportunity Commission or the State Ombudsman for the purpose of requesting that office conduct an independent investigation of the allegation of workplace discrimination and/or harassment.
- I. Documentation

Documentation pertaining to the complaint and investigation, including the report of the investigating officer, shall be maintained by the agency in a separate investigative file.
- J. Retaliation Prohibited

Complainants and other persons involved in the investigation of an allegation of workplace discrimination and/or harassment shall not be subjected to retaliation, coercion, intimidation or fear of reprisal.

REFERENCE

- I. State of Nebraska Classified Systems Personnel Rules and Regulations, Chapter 14.
- II. Nebraska Association of Public Employees and State of Nebraska Labor Contract, Article 10.
- III. ATTACHMENTS
 - A. Nebraska Department of Correctional Services Equal Employment Opportunity Policy (REV 04/2016)
 - B. State of Nebraska Workplace Harassment Policy, REV 3/10
 - C. Nebraska Department of Correctional Services – Workplace Harassment – Statement of Policy REV, 04/2016
 - D. Workplace Harassment Complaints/Allegations Supervisor's Checklist (DCSA-per-014-pc, REV, 04/2016)
 - E. Receipt of AR 112.07 (DCS-A-per-015-pc REV 04/2016)
 - F. Example notification of Conflict Resolution, REV, 4/11
 - G. Flowchart, REV 01/12

	ADMINISTRATIVE REGULATION Department of Correctional Services State of Nebraska	NUMBER 112.07	PAGE 9 of 9
		EQUAL EMPLOYMENT OPPORTUNITY and POLICIES AGAINST WORKPLACE DISCRIMINATION AND HARASSMENT	

I. AMERICAN CORRECTIONAL ASSOCIATION (ACA) STANDARDS

- A. Standards for Adult Correctional Institutions (ACA) (4th edition): 4-4053, 4-4056, 4-4054 and 4-4429-1.
- B. Performance Based Standards for Adult Community Residential Services (ACRS) (4th edition): 4-ACRS-7E-05.