



State of Oklahoma
Human Resources Department
A Division of the Office of Management and Enterprise Services
Policies and Procedures
Complaint and Investigation Process

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Approved: Lucinda Meltabarger	Approval Date:

Reference: Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 et seq.; Merit Protection Commission Rules 455: 10-19-35(g), Merit Rule 530:10-3-22

Policy

The purpose of this policy is to prevent and correct discrimination, harassment and workplace violence within OMES by making a complaint and investigation procedure available. It is the policy of OMES to promptly investigate and resolve complaints and reports of discrimination, harassment or workplace violence. It is the policy of OMES to foster an environment where employees and applicants for employment may raise discrimination complaints without fear of reprisal. It is against state and federal civil rights laws and OMES policy to retaliate against any person for asserting his or her civil rights, which includes filing a claim of discrimination or participating as a witness in an investigation. Retaliation and reprisals are not tolerated by OMES.

Procedure

Role of the Human Resources department - to monitor and oversee OMES non-discrimination, anti-harassment, and anti-workplace violence obligations and policies. The Human Resources department also has the responsibility for accepting and processing complaints and investigations. The services of an outside investigator may be obtained when circumstances so warrant such an arrangement. All persons who are designated to investigate complaints shall adhere to the provisions set forth in this internal procedure, and shall be subject to initial training, initial certification, and continuing education provisions pursuant to Merit Rule 530:10-3-22.

Any employee with OMES who believes he or she has been subjected to conduct which violates his or her civil rights based upon race, sex, color, religion, age, national origin, creed, ancestry, disability, genetic information, political affiliation or any other reason prohibited by law is encouraged to promptly confer with a supervisor, manager or Human Resources Department.

Initiating a complaint - A person may report a complaint orally or in writing, to any of the following: a supervisor, manager or Human Resources Department. However, the complaint and investigation procedure is initiated by filing a written complaint with the Human Resources Department.

Time period for filing complaint - Prompt reporting of a discrimination complaint is strongly encouraged, as it allows for rapid response to and resolution of objectionable behavior. Complaints of discrimination should be filed within twenty (20) days of the most recent incident of discrimination or within twenty (20) days of the date the employee becomes aware of or, with reasonable effort, should have become aware of the incident. This time period may be extended for good cause.

Review of complaint - Human Resources department will review the complaint to determine if it demonstrates a showing of discrimination. If the complaint demonstrates discrimination, it will be accepted for investigation immediately. If the complaint does not demonstrate discrimination, Human Resources shall not accept it for investigation. Human Resources shall notify the complaining party within five (5) calendar days of receipt of the complaint whether it has been accepted for investigation. If the complaint is not accepted for investigation, the complaining party may, within five (5) days of the notice, ask the Director of OMES to review the matter. The Director of OMES may:

1. refer the matter to the appropriate decision maker; or
2. determine the complaint to be without merit and deny further consideration of the matter.

Investigation of other reports - Human Resources department may determine, on its own, to investigate allegations of harassment or other alleged discrimination act(s) brought to its attention even when the individual subject to the alleged conduct is reluctant to pursue a complaint.

Internal filing versus external - The Human Resources department is responsible for handling internal complaints of discrimination. The complaining party may elect to have the complaint considered internally in accordance with these procedures, or may elect instead to file a normal charge of discrimination externally with a federal or state agency authorized by law to investigate such charges.

The complaining party may, at any time, file a charge or institute formal proceedings before a federal or state agency. If a formal proceeding before a federal or state agency is instituted, Human Resources will proceed in the manner it believes appropriate under the circumstances, including continuing with its own investigation.

Purpose and scope of investigation - The purpose of the investigation is to gather facts relating to the alleged discrimination to determine whether it is more likely than not the accused party engaged in conduct constituting discrimination. Although the investigation procedure is not considered to be an adversarial process, a party may, at his or her own expense seek the advice of personal attorneys and advisors throughout the process.

Investigative process - The investigator shall determine the scope of the investigation, formulate an investigation plan, notify the head of the department and proceed to interview witnesses. Investigations will include a private and confidential interview with the person(s) filing the complaint, the person or persons alleged to have committed the discrimination, and any witnesses with relevant information.

An investigator will meet with the complaining party and explain OMES' procedure and discuss the complaining party's option to file with an external agency or proceed with the internal complaint procedure, or both.

The accused party or parties will be advised verbally by the investigator of all discrimination allegations contained in the complaint, and given the opportunity to respond to the allegations. Additionally, the accused party or parties will be advised of the requirement to not retaliate against the complaining party or anyone participating in the investigation.

Confidentiality – Confidentiality will be maintained to the extent reasonably possible. All individuals who are involved in the complaint reporting or investigation process are obliged to maintain confidentiality of the proceedings. Employees who discuss a confidential workplace investigation may be subject to discipline up to and including termination. Human Resources will underscore the importance of confidentiality in meetings with parties and witnesses. OMES will take reasonable measures to ensure the confidentiality of the investigation process; however, OMES cannot and does not guarantee that parties and witnesses will maintain

confidentiality. Confidentiality does not mean the details of the complaint will be withheld from the accused party or parties, or that OMES is constrained from divulging details of the complaint or investigation in appropriate circumstances.

Requirement of cooperation - All OMES employees are required to cooperate during an official discrimination complaint investigation. Failure to cooperate may be grounds for disciplinary action. Any participant to a discrimination investigation, who intentionally misdirects the investigation, whether by falsehood or omissions, shall be subject to disciplinary action.

Interim action - OMES may take appropriate action during the pendency of the investigation, including administrative suspension with pay of the accused party.

Timeframe for investigation - Discrimination complaints will be investigated as quickly as possible. The investigation phase shall be concluded within forty-five (45) calendar days from the receipt of the complaint by the Human Resources.

Investigation report - At the conclusion of the investigation, the investigator shall prepare a written report. The investigation report will explain the scope of the investigation and specify the nature of the allegation(s) of discrimination, state the investigator's factual findings, and state recommendations regarding corrective and disciplinary action, if any. The report shall be provided to the Director of OMES. The report is an internal personnel investigation and is not subject to an open records request.

A written summary of the results of the investigation shall be provided to the complaining party or parties and the accused party or parties. The parties may submit to Human Resources written comments and additional information within five (5) days of the parties' receipt of the summary. The summary is an internal personnel investigation and is not subject to an open records request.

Disposition – The Director of OMES shall render a final decision based upon review of the investigation report and related materials provided. The Director of OMES may either accept or modify the determination and recommendation(s) or request further investigation. The parties shall be notified in writing of the final decision. If the Director of OMES determines that discrimination did not occur, the internal discrimination complaint procedure shall be concluded and the complaining party will be informed of his or her rights with regard to external avenues of complaint processing. If the Director of OMES determines the accused party engaged in discriminatory conduct the Director of OMES will direct immediate and appropriate corrective action(s) to be taken, including discipline. Disciplinary actions will be proportional to the seriousness of the offense. Additionally, where appropriate, The Director of OMES may direct non-punitive, remedial measures designed to ensure the complaining party is not subject to repeated discriminatory conduct and to remedy the effects of any discrimination that

may have occurred. If no determination can be made regarding whether the accused party or parties engaged in discriminatory conduct, the Director of OMES may direct preventive measures, such as training and monitoring.

Appeal - The complainant may file an appeal of the Director of OMES's final decision with the Oklahoma Merit Protection Commission within twenty (20) calendar days of his or her receipt of the final decision.

Protection from retaliation - Federal and state law and this policy prohibit any form of retaliation against a person who complains about discrimination. Individuals who give information about a complaint or participate in an investigation are also protected from any workplace reprisals. Any employee who attempts to retaliate against another will be disciplined. Disciplinary action can range from a reprimand up to and including termination from employment.

Follow-up – The Human Resources department may take follow-up measures to ensure the action taken was effective in eliminating the discriminatory conduct and to ensure there has been no retaliation against the complaining employee.