



## DEPARTMENT OF PUBLIC SAFETY

### EXAMPLES OF DISCRIMINATORY, HARASSING, AND RETALIATORY CONDUCT



#### PROHIBITED CONDUCT

The following examples are provided to assist employees in understanding the conduct that may violate this policy. The lists of examples are not exhaustive, and other conduct may violate this policy. Employees shall report any behavior that is based upon any individual's real or perceived age, race, sex (including sexual harassment), national origin, disability, color, religion, sexual orientation, veteran status, marital status, gender identity, spousal affiliation, genetic information, or participation in a claim or investigation that they find offensive, inappropriate, or retaliatory, regardless of whether it appears on any of these lists.

#### A. Discriminatory Conduct

Discrimination involves actual behavior towards group members or individuals who possess or are perceived as possessing qualities or characteristics of a protected class group. It involves excluding or restricting a member of one group from opportunities that are available to other groups; or treating a member of one group differently than a member of another group in a similar situation where the difference in treatment is because of an individual's protected class.

**EXAMPLES OF CONDUCT THAT MAY CONSTITUTE PROTECTED CLASS DISCRIMINATION** (includes conduct based upon an individual's real or perceived age, race, sex, national origin, disability, color, religion, sexual orientation, veteran status, marital status, gender identity, spousal affiliation, or genetic information).

##### 1. Pre-employment

- a. Publishing a job advertisement that shows a preference for or discourages someone from applying for a job because of their protected class (i.e. individuals of certain races or genders need not apply).
- b. Recruiting new employees in a way that discriminates against them because of their protected class (i.e. only sending the job advertisement to organizations that serve a particular racial group).
- c. Basing hiring decisions on stereotypes and assumptions about an applicant's protected class (i.e. failing to hire someone because of their race or gender).

##### 2. Current employees

- a. Making decisions about job assignments and promotions based on an individual's protected class (i.e. giving preference to employees of a certain race when making shift assignments; using race to determine the granting of breaks, leave, assignment of work stations, or other terms or conditions of employment).
- b. Differences in the payment of wages or employee benefits where those differences are because of an individual's protected class (i.e. paying employees of one race less than employees of another race because of their respective



## DEPARTMENT OF PUBLIC SAFETY

### EXAMPLES OF DISCRIMINATORY, HARASSING, AND RETALIATORY CONDUCT



racess; or only providing training opportunities to employees of one race or gender).

- c. Making decisions about discipline or discharge based on an individual's protected class (i.e. if two employees commit a similar offense, they should not be disciplined differently when the reason for the difference is due to the race of one individual).
- d. Giving a negative or false employment reference (or refuse to give a reference) because of an individual's protected class.

#### 3. Service beneficiaries

- a. Refusing to provide a service to an otherwise qualified individual or group of individuals because of the individual's or the group's protected class.
- b. Providing inferior access, quality, quantity, or timeliness of services to an individual or group of individuals because of the individual's or the group's protected class.
- c. Providing services in an inferior manner to an individual or group of individuals because of the individual's or the group's protected class.
- d. Subjecting an individual beneficiary or group of beneficiaries to harsher rules or requirements related to services than other beneficiaries because of protected class.

#### B. Harassing Conduct

Harassment can involve individuals being harassed either by members of the same or another protected class. Although harassment may involve a harasser in a position of greater authority than the victim, individuals in positions of lesser or equal authority also can be found responsible for engaging in prohibited harassment.

**EXAMPLES OF CONDUCT THAT MAY CONSTITUTE PROTECTED CLASS HARASSMENT** (includes conduct based upon an individual's real or perceived age, race, sex, national origin, disability, color, religion, sexual orientation, veteran status, marital status, gender identity, spousal affiliation, or genetic information.)

##### 1. Physical Attacks

Intentional physical conduct such as grabbing, hitting, tripping, or touching someone in an unwelcome manner because of that person's protected class (this conduct may also be criminal in nature)

##### 2. Verbal, Electronic, or Written Expressions Such as:



## DEPARTMENT OF PUBLIC SAFETY

### EXAMPLES OF DISCRIMINATORY, HARASSING, AND RETALIATORY CONDUCT



- a. Use of slurs and name calling.
- b. Ridicule or mockery based on a protected class.
- c. Insults or put-downs based on a protected class.
- d. Comments, remarks, jokes, stories, or suggestions based on a protected class.
- e. Derogatory comments about a person's protected class such as racial ancestry or the racial ancestry of his/her family members, of other members of the person's racial group, or of those with whom he or she chooses to associate.
- f. Protected class-specific derogatory comments about a person's skin color, hair texture, facial features, or other physical characteristics.
- g. Derogatory comments that are not explicitly based upon a protected class, but are motivated by animus towards that class.
- h. Stating or suggesting that a person must or should perform certain assignments because of that person's protected class characteristics.
- i. Stating or suggesting that a person may not perform certain assignments because he or she belongs to a particular protected class.
- j. Obscene, lewd, or sexually explicit comments, jokes, or suggestions concerning or focusing on the sexuality or supposed sexual characteristics of a particular protected class such as a racial group.
- k. Any of the above communicated verbally, electronically, or in any form of written communication.

#### **3. Favorable or Unfavorable Treatment Such As:**

- a. Subjecting an employee to unfavorable performance evaluations, threats of termination, denial of promotion, or intentionally making performance of the employee's job more difficult because of that employee's protected class or unwillingness to accept protected class based hostile behavior or comments.
- b. Denying, directly or indirectly, an employee an employment-related opportunity, because of that employee's protected class or unwillingness to tolerate protected class based hostile behavior or comments.

#### **C. Sexually Harassing Conduct**

Sexual harassment is a form of sex (gender) discrimination. To constitute sexual harassment, conduct and actions need not be overtly sexual in nature.

An individual may still be adversely affected by conduct of sexual harassment even if s/he is not the one directly harassed.



## DEPARTMENT OF PUBLIC SAFETY

### EXAMPLES OF DISCRIMINATORY, HARASSING, AND RETALIATORY CONDUCT



Sexual harassment can be physical and/or psychological in nature. An aggregation of a series of incidents can constitute sexual harassment even if one of the incidents considered on its own would not be harassing.

Sexual harassment can involve males or females being harassed by members of either sex. Although sexual harassment may involve a harasser in a position of greater authority than the victim, individuals in positions of lesser or equal authority also can be found responsible for engaging in prohibited harassment.

#### EXAMPLES OF CONDUCT THAT MAY CONSTITUTE SEXUAL HARASSMENT

\*\*\*Some of the conduct listed below may also be criminal in nature.

##### 1. Physical Attacks

- a. Rape, sexual molestation, or attempts to commit these assaults.
- b. Intentional physical conduct such as unwelcome touching, hugging, kissing, pinching, patting, grabbing, poking, or brushing against another employee's or client's body, hair, or clothing.
- c. Engaging in sexually suggestive physical contact or touching of another employee or a client in a way that is unwelcome.
- d. Engaging in indecent exposure.

##### 2. Verbal, Electronic, or Written Expressions Such as:

- a. Propositions of a sexual nature.
- b. Sexual comments, remarks, jokes, stories, or suggestions.
- c. Names or labels such as "honey," "sweetie," "doll," "babe," "baby," "sexy", "hottie", etc.
- d. Name-calling or derogatory comments, whether sexual or not, about an employee based on his or her sex or sexual orientation.
- e. Derogatory comments about an employee or client based on stereotypes or assumptions about that employee's or client's sex, including derogatory comments about the capabilities of members of a particular sex such as "women don't belong in this kind of work," or "women aren't strong enough to do this job" or "women are too emotional."
- f. Comments regarding an individual's body or physical characteristics.
- g. Comments or intrusive questions about a person's sexuality, sexual experience, sexual behavior, sexual or dating relationships, or sexual orientation.
- h. Turning work discussions to sexual topics.
- i. Repeatedly asking a person who is not interested for a date.



## DEPARTMENT OF PUBLIC SAFETY

### EXAMPLES OF DISCRIMINATORY, HARASSING, AND RETALIATORY CONDUCT



- j. Making sexual or romantic advances toward an employee or client and persisting despite the employee's or client's rejection of the advances.
- k. Any of the above communicated verbally, electronically, or in any form of written communication.

#### **3. Actions Such As:**

- a. Excessive and unwanted attention in the form of love letters, cards, notes, telephone calls, texts, or gifts.
- b. Touching or rubbing oneself sexually in the presence of another person.
- c. Sexually oriented gestures.
- d. Intentionally standing close to or brushing up against a person.
- e. Following or hovering around (leaning over) another person.
- f. Leering at someone/looking a person up and down.
- g. Intentionally blocking a person's path.
- h. Preventing an employee from doing a job; failing to provide assistance in doing a job; or taking any action to make a job more difficult for an employee based on a belief that members of that employee's sex should not do certain types of work.
- i. Displaying or transmitting pornographic or sexually oriented materials or images (whether using personal or departmental equipment such as cell phones or tablets) in the workplace or using the Department's equipment or facilities to display or transmit these materials.

#### **4. Favorable or Unfavorable Treatment Such As:**

- a. Preferential treatment or promises of preferential treatment to any employee or client for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward.
- b. Promising directly or indirectly, an employee or client a reward, if the employee complies with a sexually oriented request.
- c. Subjecting an employee to unfavorable performance evaluations, threats of termination, denial of promotion or intentionally making performance of the employee's job more difficult because of that employee's unwillingness to engage in sexual conduct.
- d. Denying, directly or indirectly, an employee an employment-related opportunity, if the employee refuses to comply with a sexually oriented request.

#### **D. Retaliatory Conduct**



## DEPARTMENT OF PUBLIC SAFETY

### EXAMPLES OF DISCRIMINATORY, HARASSING, AND RETALIATORY CONDUCT



Retaliation occurs when an individual makes a report, files a formal charge, or speaks up against conduct which s/he reasonably believes constitutes discrimination, harassment, hazing, or when an employee cooperates in good faith in an investigation, proceeding, or hearing of an allegation of discrimination, harassment, or hazing, and then is treated negatively by his or her employer or another employee because of his or her complaint or report.

#### EXAMPLES OF CONDUCT THAT MAY CONSTITUTE RETALIATION

1. Ignoring, shunning, isolating, or refusing to work with or assist another individual because that individual has complained about protected class discrimination, harassment, or prior retaliation.
2. Threatening, directly or indirectly, to retaliate against an employee or client if the employee or client refuses to comply with a sexually oriented request.
3. Giving an individual inferior or less desirable working assignments or conditions because that individual has complained about protected class discrimination, harassment, or prior retaliation.
4. Name calling, derogatory statements, or threatening physical gestures or conduct towards another individual because that individual has complained about protected class discrimination, harassment, or prior retaliation.
5. Communication of threats for another, either directly or indirectly, to an individual because that individual has complained about protected class discrimination, harassment, or prior retaliation.
6. Taking any disciplinary action or negatively evaluating an individual because that individual has complained about protected class discrimination, harassment, or prior retaliation.
7. Any effort by supervisors or co-workers or employees to "get back" at or punish an individual because that individual has complained about protected class discrimination, harassment, or prior retaliation.
8. Taking any of the actions described above because an individual has made a charge, testified, assisted, or participated in any manner in an investigation conducted by the DPS EEO Officer, the EEOC, or the New Mexico Human Rights Bureau or has opposed any practice made unlawful by civil rights policies or laws.

#### E. Additional Examples

##### EXAMPLES OF OTHER CONDUCT THAT MAY CONSTITUTE SEXUAL OR PROTECTED CLASS HARASSMENT

1. Displaying or making signs, pictures, cartoons, caricatures, calendars, postcards, graffiti, objects, banners, bumper stickers, buttons, promotional materials, reading materials, or other materials that are sexually suggestive, pornographic, demeaning, or derogatory toward persons based on their protected class such as gender, race,



## DEPARTMENT OF PUBLIC SAFETY

### EXAMPLES OF DISCRIMINATORY, HARASSING, AND RETALIATORY CONDUCT



or sexual orientation, or bringing into the work environment or exhibiting any such material at work.

2. Reading or otherwise publicizing in the work environment materials that are in any way sexually revealing, sexually suggestive, pornographic, demeaning, or derogatory toward persons based on their protected class such as gender, race, or sexual orientation.
3. Displaying signs or other materials purporting to exclude any individual by sex or other protected class, except in the case of restroom gender designations and gender designations on other semi-private locker/changing rooms.
4. Displaying or distributing pamphlets or other printed materials on Department property if those materials declare the supremacy or superiority of a particular racial or ethnic group or specify that any race or ethnic group is inferior to any other.
5. Refusing to work with an employee or client because of that employee's protected class such as sex, race, or sexual orientation or that of a person with whom the employee associates.
6. Sabotaging or interfering with an employee's or client's work because of that employee's protected class such as sex, race, or sexual orientation or that of a person with whom the employee or client associates.
7. Hiding, destroying, or otherwise tampering with an employee's or client's work equipment because of that employee's or client's protected class such as sex, race, or sexual orientation or that of a person with whom the employee or client associates.
8. Making false reports about an employee's work performance because of that employee's protected class such as sex, race, or sexual orientation or that of a person with whom the employee associates.
9. Stranding, abandoning, or refusing to provide backup to a fellow employee on the job because of that employee's protected class such as sex, race, or sexual orientation or that of a person with whom the employee associates.
10. Refusing to work with, assist, or follow orders of another employee because of that employee's protected class such as sex, race, or sexual orientation or that of a person with whom the employee associates.
11. Continuing any protected class harassing or discriminatory behavior after an employee or client has objected.

#### F. Hazing



## DEPARTMENT OF PUBLIC SAFETY

### EXAMPLES OF DISCRIMINATORY, HARASSING, AND RETALIATORY CONDUCT



A form of harassing conduct whereby an employee, regardless of service or rank, without proper authority causes another employee to suffer or be exposed to any activity which is cruel, abusive, humiliating, oppressive, demeaning, or harmful. Soliciting or coercing another to perpetrate any such activity is also considered hazing. Hazing need not involve physical contact of employees; it can be verbal or psychological in nature. Actual or implied consent to acts of hazing does not eliminate the culpability of the perpetrator.

**Hazing does not include command-authorized or operational activities; the requisite training to prepare for special operations missions; authorized physical training; or the mission of the Law Enforcement or State Police Academy.**

#### **EXAMPLES OF CONDUCT THAT MAY CONSTITUTE HAZING**

1. Physically striking another in order to inflict pain.
2. Piercing another's skin in any manner.
3. Forcing or requiring the consumption of excessive amounts of food, alcohol, drugs, or other substances.
4. Playing callous tricks.
5. Threatening or offering violence or bodily harm to another.
6. Forced or coerced tattooing, greasing, or painting.
7. Ingestion of vile substances.
8. Branding or burning of another's skin in any manner.
9. Forced or coerced shaving of body parts.
10. Forced or coerced servitude.
11. Whipping, kicking, or beating.
12. Public nudity.
13. "Drop-offs" or "dumps" in unfamiliar locations.
14. Paddling.
15. Lock-ups or being confined to small spaces.
16. Being duct taped or some other physical restraints.