

# Equal Employment Opportunity, Sexual Harassment and Discrimination Policy

Policy Number: HR-03-02

Type of Policy: Human Resources and Personnel

Effective Date: July 1, 2019

All policies are in compliance with federal and state law and statutes and with the Texas Parks and Wildlife Code. The most current version of this policy will always be the online version.

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## PURPOSE

This policy ensures TPWD compliance with applicable laws and requirements regarding equal employment opportunity, sexual harassment and discrimination.

## BACKGROUND

TPWD maintains equal employment opportunity, sexual harassment and discrimination policies consistent with [8 USC §1324b](#); [29 USC §§623, 631, 2615](#); [42 USC §§1983, 2000e, 2000a, 12102, 12112](#); [28 CFR §35.130](#); [29 CFR §1604.11](#); [Government \(Gov't\) Code §554](#); [Health and Safety Code §85.012](#); and [Labor Code Ch. 21 §§52.051, 411.082, 451.001](#).

All TPWD employees must comply with this policy. New employees will receive a copy of this policy within 30 days of employment ([Labor Code §21.010](#)).

## DEFINITIONS

### **disability**

a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such impairment; or being regarded as having such an impairment (42 USC §12102(2)).

### **discrimination or action "because of age"**

refers to action taken on the basis of age against an individual who is 40 years of age or older (29 USC §631; Labor Code §21.101).

### **discrimination or action "because of national origin"**

includes discrimination because of or on the basis of the national origin of an ancestor (Labor Code §21.110).

**discrimination or action "because of religion"**

includes discrimination because of or on the basis of any aspect of religious observance, practice, or belief, unless TPWD is unable to accommodate the religious observance or practice without undue hardship to the conduct of the TPWD business (42 USC §2000e(j); Labor Code §21.108).

**discrimination or action "because of sex"**

action taken on the basis of pregnancy, childbirth or related medical conditions, or action constituting sexual harassment (42 USC §2000e(k); 29 CFR §1604.11(a); Labor Code §21.106).

**harassment**

offensive or unwelcome conduct that is based on race, color, religion, sex, national origin, age, disability or genetic information.

**hostile work environment**

a work environment where harassment is severe or pervasive enough to alter a person's terms and conditions of employment and create an abusive working environment.

**protected characteristic**

a person's race, color, religion, sex, national origin, age, disability or genetic information.

**qualified individual with a disability**

an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires (42 USC §12102(8)).

**retaliation**

discrimination against an individual because the individual has engaged in protected activity (opposed an unlawful employment practice, made a charge of discrimination, or testified, assisted or participated in any manner in an investigation of discrimination).

**POLICY STATEMENT**

TPWD is an equal opportunity employer. All personnel transactions shall be made without regard to race, color, religion, sex (including gender/orientation), national origin, age or disability. Discrimination or other actions taken in violation of this policy is prohibited.

All TPWD employees must complete Equal Employment Opportunity (EEO) and Sexual Harassment training as outlined in TPWD Employee Training Policy ([HR-03-17](#)) within 30 days of employment and every two years after that (Labor Code §21.010(c)).

***EQUAL EMPLOYMENT OPPORTUNITY***

TPWD will not fail or refuse to hire or discharge any individual, or otherwise discriminate against any individual with respect to his or her compensation, terms, conditions or privileges of employment, because of his or her race, color, national origin, sex, religion,

disability or age (42 USC §2000e-2(a)(1); 29 USC §623(a)(1); 42 USC §12112; 29 USC §623; Labor Code §21.051(1)).

TPWD will not limit, segregate or classify employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect an employee's status as an employee, because of the employee's race, color, national origin, sex, religion, disability or age (42 USC §2000e-2(a)(2); 42 USC §12112; 29 USC §623(a)(2); Labor Code §21.051(2)).

TPWD will not retaliate or otherwise discriminate against an individual for engaging in the following:

- opposing discrimination based on race, color, religion, sex, national origin, age or disability, or
- making or filing a charge or complaint, testifying, assisting or participating in any manner in an investigation, proceeding or hearing concerning allegations of discrimination based on race, color, religion, sex, national origin, age or disability (42 USC §2000e-3(a); Labor Code §21.055).

TPWD will not discriminate against a qualified individual with a disability because of the disability in regard to the following (42 USC §12112(a); Labor Code §§21.051, 21.105):

- job application procedures,
- hiring,
- advancement,
- discharge,
- employee compensation,
- job training, and
- other terms, conditions and privileges of employment.

## ***HARASSMENT***

Harassment is a form of prohibited discrimination. TPWD strives to maintain a respectful and productive work environment for employees, volunteers, contractors and the public. It is a violation of this policy to engage in prohibited conduct, regardless of legal liability.

### **I. Sexual Harassment**

A. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when

- submission to such conduct, made either explicitly or implicitly, is a term or condition of an individual's employment;
- submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment (29 CFR §1604.11(a)).
- B. Verbal or physical conduct of a sexual nature, including related to sexual orientation or gender identity, may be offensive to others and is prohibited. This includes but is not limited to remarks, gestures, pictures, jokes, slurs, communications, or touches.
- C. In addition, if an employee is given notice by any person that any such verbal or physical conduct is unwelcome, the conduct must cease immediately upon notice.

## II. Other Types of Harassment

Verbal or physical conduct that is derogatory, demeaning or offensive towards others in relation to a protected characteristic or protected activity is prohibited. This includes but is not limited to remarks, gestures, pictures, jokes, slurs, communications, or touches. In addition, if an employee is given notice by any person that any such verbal or physical conduct is unwelcome, the conduct must cease immediately upon notice.

### ***PUBLIC ACCESS***

TPWD shall provide all persons equal access to the full and equal enjoyment of its goods, services, facilities, privileges, advantages, and accommodations, without discrimination or segregation on the ground of race, color, religion, or national origin (42 USC §2000a).

No qualified individual with a disability shall, on the basis of disability, be excluded from participation in or be denied the benefits of TPWD's services, programs, or activities, or be subjected to discrimination by TPWD (28 CFR §35.130).

### ***OTHER FORMS OF PROHIBITED DISCRIMINATION***

#### I. Workers' Compensation

- A. TPWD shall not discharge or in any other manner discriminate against an employee because the employee has done the following:
  - filed a workers' compensation claim in good faith,
  - hired a lawyer to represent the employee in a claim,
  - instituted or caused to be instituted in good faith a proceeding under the Texas Workers' Compensation Act, or
  - testified or is about to testify in a proceeding under the Texas Workers' Compensation Act (Labor Code §451.001)
- B. TPWD will not suspend or terminate the employment of or otherwise discriminate against an employee for reporting in good faith an alleged violation of an

occupational health or safety law to the division of workers' health and safety of the Workers' Compensation Division of the Texas Department of Insurance (Labor Code §411.082).

II. Reporting a Violation of Law (“Whistleblower”)

- A. TPWD shall not suspend or terminate the employment of, or take other adverse personnel action against, a TPWD employee who reports a violation of law by TPWD or another public employee to an appropriate law enforcement authority if the employee's report is made in good faith (Gov't Code §554.002).
- B. Employees are urged to report any suspected violations of criminal law to the Director of Internal Affairs.
- C. If an employee believes that he or she was suspended, terminated or the subject of other adverse employment action in violation of the law, and the employee wishes to file a complaint regarding the alleged violation, he or she must invoke the applicable complaint procedure of this policy no later than the 90th day after the date on which the alleged violation occurred or was discovered by the employee (Gov't Code §554.006(b), (d)).

III. Refusal to Perform an Illegal Act

TPWD shall not terminate the employment of an employee for refusing to perform an illegal act (Sabine Pilot Service, Inc. v. Hauck, 687 S.W.2d 733 (1985)).

IV. Constitutional Rights

TPWD shall not deny any employee his or her rights, privileges or immunities secured by the Constitution of the United States or the Constitution of the State of Texas (42 USC §1983).

V. Citizenship Status

TPWD shall not discriminate against any individual (other than an unauthorized alien) with respect to the hiring, recruiting of the individual for employment or discharging of the individual from employment because of such individual's citizenship status (8 USC §1324b).

VI. Compliance with a Subpoena

- A. TPWD will not discharge, discipline or penalize in any manner an employee because the employee complies with a valid subpoena to appear in a civil, criminal, legislative or administrative proceeding (Labor Code §52.051).
- B. If an employee is subpoenaed or called as a witness in a personal matter, the employee must use appropriate leave, including leave without pay, to comply with the subpoena. Refer to the agency leave policy for more information.

VII. AIDS-Based Discrimination

TPWD will not discriminate against an individual because the individual has Acquired Immunodeficiency Syndrome (AIDS) or is a Human Immunodeficiency Virus (HIV)

infected individual or is perceived to have AIDS or to be an HIV infected individual or to be at risk for AIDS or HIV (Health & Safety Code §85.012(b)(6)).

VIII. Genetic Information

Discrimination based on the use of certain genetic information in eligibility for employment or insurance coverage is prohibited (Labor Code §21.402).

IX. Family and Medical Leave

- A. TPWD shall not interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the Family and Medical Leave Act.
- B. TPWD shall not discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by the Family and Medical Leave Act.
- C. TPWD shall not discharge or in any other manner discriminate against an employee because the employee has:
  - filed a charge or instituted a proceeding under or related to the Family and Medical Leave Act,
  - given, or is about to give, information in connection with an inquiry or proceeding related to any right provided under the Family and Medical Leave Act, or
  - testified, or is about to testify, in any inquiry or proceeding relating to any right provided under the Family and Medical Leave Act (29 USC §2615).

X. Entitlement to Personal Leave to Care for Sick Foster Child

TPWD shall provide the same entitlement for the use of an employee's personal leave to care for a sick foster child as it affords to employees who use such leave for the care of a sick biological or adoptive child, when the foster child:

- resides in the same household as the employee; and
- is under the conservatorship of the Department of Family and Protective Services (Labor Code § 21.0595).

**COMPLAINT PROCEDURE**

Any employee who becomes aware of conduct that may indicate discrimination or retaliation is urged to promptly bring the matter to the attention of his or her supervisor or the Director of Human Resources or designee in accordance with the complaint process. If TPWD has knowledge of such alleged behavior, an investigation is warranted even in the absence of a formal complaint.

Managers and supervisors are required to report to the Human Resources Division complaints they receive or conduct they are aware of that appears to be a violation of this policy.

The purpose of the complaint process is to provide a formal method for all complaints to be documented by TPWD and to provide recourse to all employees with complaints about discrimination or retaliation. The process is also intended to facilitate objective review and resolution of all complaints at the agency-level where possible. The Human Resources Division handles ALL complaints of violations of state and federal employment laws and provisions of this policy.

I. How to Make and Process Employee Complaints

A. The Employee's Role

- Employee may make a complaint orally or in writing to any TPWD supervisor or manager, or directly to Human Resources.
- Employee should cooperate in the complaint investigation process to assist Human Resources in identifying specific concerns, potential witnesses and other evidence and facts.
- Once the employee has made contact with Human Resources, the employee should only discuss the complaint with others in the workplace who have a need to know, to ensure the integrity of the investigation process. This does not prevent the employee from reporting concerns of retaliation or misconduct as appropriate.

B. The Manager's and Supervisor's Role

- Managers and supervisors must take every complaint seriously.
- Managers and supervisors must notify Human Resources immediately upon receiving a complaint, including any subsequent complaints of retaliation.

C. Human Resources Division's Role

Employee Relations or other designated Human Resources staff will:

- make and maintain records of all complaints.
- produce a written summary of the complaint for the complainant to verify the allegations.
- evaluate the complaint and determine the course of action.
- advise the complainant of the course of action in writing.
- provide written notice of the complaint to the Division Director, Chief Operating Officer and/or Executive Director as necessary based on the complaint.
- conduct an investigation and produce a written report.
- conduct a briefing with the respective Division Director on the results of the investigation and advise the Division Director on appropriate actions.

- maintain a file that includes the investigation report and any corrective action documentation.

## **HISTORY**

Original publication date and subsequent revisions:

- Original effective date: June 2003
- Revision effective dates: November 2004; June 2014; July 1, 2019