

 <p>"focusing on our employees"</p> <p><b>GENERAL ADMINISTRATION &amp; PERSONNEL</b></p>	<p><i>Chapter</i></p> <p>EMPLOYEE CONDUCT</p>
	<p><i>Subject</i></p> <p>Antiharassment / Antidiscrimination</p>

**AUTHORITY** The Transportation Cabinet has developed the policy herein pursuant to:

- Title VII of the Civil Rights Act of 1964
- Kentucky Civil Rights Act
- 29 Code of Federal Regulations (C.F.R.) 1604
- KRS Chapter 344
- KRS 344.040(1)
- KRS 18A.140
- KRS 18A.095
- KRS 509.080(1)(d)
- KRS 532.090(1)
- 101 KAR 1:345
- 104 KAR 1:050 Section 2

**PURPOSE** The Transportation Cabinet is committed to maintaining a work environment free from discrimination and harassment, and this policy applies to all personnel actions, including but not limited to recruiting, hiring, classification, compensation, benefits, promotions, transfers, layoffs, reinstatement, and educational programs.

The Cabinet does not tolerate discrimination or harassment of any kind against any “protected class,” as defined below. Such acts constitute misconduct, which undermines the integrity of the employment relationship, and the offending employee shall be subject to disciplinary action, up to and including dismissal.

**DEFINITIONS** **Affirmative Action (AA)**—Refers to a set of policies and practices within a government or organization seeking to include particular groups based on their gender, race, creed or nationality in areas in which they were excluded in the past such as education and employment

**Complainant**—An employee of the Cabinet or an applicant who formally files a harassment or discrimination complaint in accordance with one or more of the authorities listed above

**DEFINITIONS (CONT.)**

**Confidentiality**—Protection of the privacy and due process rights of the complainant and the accused individual

**Note:** Consultation with others shall be strictly limited to those who may have information about an alleged incident or have a need to know.

**Discrimination**—The unfavorable or unfair treatment of a person or class of people in comparison to others who are not members of the protected class because of race, color, national origin, sex, age (40 or older), religion, sexual orientation, gender identity, veteran status, disability, political affiliation, or smoking status or in reprisal for opposition to discriminatory practices or participation in the Equal Employment Opportunity (EEO) process

**Note:** The Cabinet strictly prohibits job discrimination based on membership in any of the legally protected classes.

**EEO Coordinator**—The administrator of the Cabinet's EEO and Affirmative Action programs, located in the Office for Civil Rights and Small Business Development (OCRSBD)

**EEO Liaison**—The Cabinet's EEO liaisons include the designated representative in each highway district and the EEO coordinator/liaison in OCRSBD

**Equal Employment Opportunity Commission (EEOC)**—The federal agency with jurisdiction to investigate and resolve complaints of discrimination

**Note:** An individual must file a written complaint within 180 days of the alleged discriminatory incident.

**Hostile Work Environment**—A situation in which an employee cannot do his or her job without feeling harassed or threatened

The condition is determined by examining all circumstances, including:

- How frequently the alleged harassment occurs
- How severe the conduct is
- Whether it is physically threatening, intimidating, humiliating, or offensive
- Whether it unreasonably interferes with an employee's work performance

**Kentucky Human Rights Commission**—The state agency with jurisdiction to investigate and resolve complaints of discrimination

**Note:** An individual must file a written complaint within 180 days of the alleged discriminatory incident.

**DEFINITIONS (CONT.)** **Protected Classes**—Those legally protected against discrimination and harassment on the basis of race, color, national origin, sex, age (40 or older), religion, sexual orientation, veteran status, or disability

**Note:** Kentucky law expands “protected classes” to include persons with HIV; gender identity; or persons’ political affiliation or smoking status (if the smoker complies with workplace smoking rules). Kentucky law also prohibits retaliation against persons who have filed a discrimination complaint or assisted someone else in filing a discrimination complaint.

**Quid pro quo**—(“something for something”); one thing in return for another

**Retaliation**—Actions including but not limited to the following:

- Verbal or physical threat against the person involved with a protected activity
- Denial of an employment benefit to which the employee is entitled
- Demotion
- Transfer or temporary assignment to a less-desirable position or location
- Encouragement of a hostile work environment

Three essential elements of retaliation:

- Protected activity—participation in the statutory complaint process
- Adverse actions—negative effects of terms and conditions of employment
- Causal connection—must be the reason for adverse action

**PROHIBITED ACTIVITIES** Employees are entitled to a work environment free from harassment. The Cabinet strictly prohibits verbal or physical conduct by anyone in the workplace that harasses, disrupts, or interferes with work performance or that creates an intimidating, offensive, or hostile work environment.

To ensure an environment free from harassment, the Cabinet prohibits certain behaviors in the workplace, which include but are not limited to:

- Derogatory comments, jokes, or slurs based on one’s membership in one or more of the protected classes
- Unwanted physical contact of any kind, impeding or blocking movement, or physical interference with normal work movement when directed at an individual based on his or her membership in one or more of the protected classes

**PROHIBITED ACTIVITIES  
(CONT.)**

- The display, mailing, or emailing of derogatory posters, cartoons, photographs, or drawings based on protected-class status
- Behavior that sexually harasses another person, as explained below

**SEXUAL HARASSMENT**

No person shall be subjected to or subject another person to unsolicited and unwelcome sexual overtures or conduct, either verbal or physical, in the workplace. Sexual harassment includes unwelcome heterosexual and homosexual advances. Sexual harassment, whether perpetrated by supervisory or nonsupervisory personnel, is unlawful.

Behavior that may constitute sexual harassment includes but is not limited to:

- Touching another person in an unwelcome manner
- Making unwelcome advances or requests for sexual favors
- Using sexually explicit, suggestive, or abusive language
- Making sexually suggestive jokes or degrading remarks about a person, a person's body, or clothing
- Displaying, mailing, or emailing sexually explicit or suggestive literature, pictures, photographs, or objects
- Making submission to sexual advances a condition of employment, continued employment, evaluation, compensation, benefits, promotion, or any other privilege

The Cabinet is committed to preventing sexual harassment of Cabinet employees within the workplace by outside customers, agents, vendors, consultants, contractors, and others who conduct business with the Cabinet when the Cabinet knows, or should have known, of the behavior and fails to take immediate and appropriate corrective action.

The Cabinet is also committed to preventing harassment of outside customers, agents, vendors, consultants, contractors, and others who conduct business in the Cabinet workplace by Cabinet employees when the Cabinet knows, or should have known, of the behavior and fails to take immediate and appropriate corrective action.

**EMPLOYEE MISCONDUCT****TOWARD****NONEMPLOYEE**

The Cabinet prohibits employee harassment or discrimination of anyone with whom the Cabinet conducts business and is an applicant for employment.

In addition to the prohibited activities aforementioned, an employee of the Cabinet who is responsible for providing services or benefits is forbidden from having a romantic or sexual relationship with a customer of the Cabinet when the relationship may pose a real or perceived conflict of interest with the employee's duties as an agent or representative of the Cabinet.

If an employee promises to grant benefits or services to a customer, or threatens to withhold them, to coerce favors, the employee not only could be subject to disciplinary action but also could face prosecution under KRS 509.080(1)(d) of the Kentucky Penal Code. Criminal coercion is a Class A misdemeanor under KRS 532.090(1) and is punishable by up to 12 months in jail.

**EMPLOYEE****RESPONSIBILITY**

It is the responsibility of each Cabinet employee to understand and abide by the policy herein.

If an employee believes that he or she is being subjected to harassment, discrimination, or other prohibited behavior, the employee should tell the perpetrator in specific terms that the behavior is offensive or unwelcome; request, either in person or in writing, that he or she stop; and specify terms for future interactions.

The employee shall:

- Report the prohibited behavior, in writing with signature, to the employee's immediate supervisor; district, office, or department management; an EEO liaison; or the Cabinet's EEO liaison/coordinator in OCRSBD. If the alleged behavior involves the immediate supervisor, the employee shall file the complaint with the next-line supervisor or the Cabinet's EEO liaison/coordinator in OCRSBD. The signed report shall include:

- ◆ Date of occurrence
- ◆ Time of occurrence
- ◆ Location of occurrence
- ◆ Details of situation
- ◆ Description of action
- ◆ Names of witnesses

**EMPLOYEE****RESPONSIBILITY (CONT.)**

- If an employee feels discriminated against because he or she is a member of a protected class, the employee may file a discrimination complaint through one or more of the following channels:
  - ◆ Verbal or written notification to the immediate supervisor; office, department, or district management; an EEO liaison; or the Cabinet's EEO liaison/coordinator in OCRSBD
  - ◆ Grievance procedure (see the Personnel Cabinet's *Employee Handbook*)
  - ◆ Personnel Board appeal
  - ◆ Human Rights Commission
  - ◆ Equal Employment Opportunity Commission

Employees shall file a complaint according to **GAP-902**, "EEO/Civil Rights Complaint Procedures."

No provision herein prevents the complainant from pursuing redress through outside enforcement agencies such as the United States Equal Employment Opportunity Commission, the Kentucky Commission on Human Rights, or the Kentucky Personnel Board.

Retaliation against anyone involved in an investigation is unlawful. Anyone initiating or assisting in an investigation shall not be adversely affected in terms and conditions of employment or discriminated against in any manner because of the complaint. Any employee who reports or substantiates wrongdoing shall not be threatened or subjected to reprisal, either directly or indirectly.

**SUPERVISOR****RESPONSIBILITY**

Supervisors should take steps necessary to prevent harassment, discrimination, or other prohibited behavior from occurring by:

- Affirmatively reinforcing the Cabinet's policies prohibiting such behavior
- Expressing strong disapproval
- Developing appropriate sanctions
- Immediately calling the EEO liaison or the EEO liaison/coordinator in OCRSBD
- Informing employees of their right to file a complaint
- Developing methods to sensitize all concerned

**SUPERVISOR  
RESPONSIBILITY  
(CONT.)**

The supervisor with whom an employee files a complaint or witnesses an incident of inappropriate behavior that may constitute harassment, discrimination, or retaliation should:

- Encourage the employee to file a written and signed complaint and, if the employee refuses to put the complaint in writing, shall write the complaint to the best of his or her ability, using the information provided verbally by the complainant
- Inform the complainant that the Cabinet is required by law to investigate allegations of harassment or discrimination, regardless of the employee's cooperation or participation in the investigation
- Inform the employee that the Cabinet shall protect the confidentiality of the allegation to the extent possible but cannot guarantee complete confidentiality because an effective investigation cannot be completed without revealing certain information to the alleged perpetrator and/or to potential witnesses
- Inform the complainant that the Cabinet shall not tolerate retaliation toward an employee because he or she made a report of alleged harassment or discrimination or assisted with an investigation
- Encourage the complainant to bring any retaliation to the attention of an immediate supervisor; district, office, or department management; an EEO liaison; or the Cabinet's EEO liaison/coordinator in OCRSBD
- Immediately forward the complaint to OCRSBD

**Note:** Inaction by any supervisor after receiving a complaint may result in disciplinary action against the supervisor, up to and including dismissal.

**OCRSBD  
RESPONSIBILITY**

Upon receipt of a complaint, OCRSBD shall:

- Issue, if warranted, a Cease and Desist Memorandum to the alleged perpetrator
- Investigate, if warranted, and make every effort to conclude an investigation and resolve the complaint within 60 days unless an extension is warranted
- Request assistance, if necessary, from the Office of Human Resource Management (OHRM) in an investigation of allegations of sexual harassment or discrimination

**OCRSBD****RESPONSIBILITY****(CONT.)**

- If an extension is warranted, notify complainant and respondent and provide an estimate of the additional time necessary to conclude and resolve the complaint
- Notify the complainant and respondent in writing of the final determination
- Forward a report to OHRM and to the Office of the Secretary

**OHRM****RESPONSIBILITY**

In an effort to ensure that no employee is harassed or discriminated against, OHRM shall:

- Inform new employees in employee orientation sessions of Cabinet policies and procedures pertaining to harassment and discrimination
- Provide all employees training in the Cabinet's policies regarding antiharassment and antidiscrimination and a copy of this antiharassment and antidiscrimination policy
- Take appropriate action to remedy any violation identified in an investigative report from OCRSBD, including disciplinary action when warranted

**DISCIPLINARY****ACTION/SANCTION**

Any employee who engages in discrimination or harassment shall be subject to disciplinary action, up to and including dismissal.

Anyone who retaliates against a complainant, who has assisted in the investigation of a charge, or who interferes with an investigation shall be subject to disciplinary action, up to and including dismissal.

All Cabinet employees have the right to pursue a complaint or grievance without threat of interference, coercion, restraint, or retaliation.

**COUNSELING**

Assistance is available through the Kentucky Employees Assistance Program (KEAP) for those employees that experience personal or work-related problems resulting from workplace harassment or discrimination.

**TRAINING**

All employees shall receive training in the Cabinet's antiharassment and antidiscrimination policies and procedures. The Cabinet shall:

- Provide all Cabinet employees with a copy of the Cabinet's policies and procedures pertaining to antiharassment and antidiscrimination



**TRAINING (CONT.)**

- Post the policies and procedures on the Cabinet's website and display them conspicuously in work areas of the Central Office and the district offices
- Inform new employees of these policies and procedures during employee orientation sessions
- Obtain the signature of each employee acknowledging receipt of the policies and procedures
- Place the signed acknowledgment in the employee's personnel file

All departments of the Cabinet shall maintain files on training regarding antiharassment and antidiscrimination.

Investigators and other personnel involved in the implementation of the antiharassment and antidiscrimination policies and procedures shall receive training as required by the Cabinet.

Every January, employees shall review this anti-harassment and anti-discrimination policy. Supervisors shall ensure that employees complete this review.

**CONTACT  
INFORMATION**

To obtain information or file a complaint, please contact:

Kentucky Transportation Cabinet  
Office for Civil Rights and Small Business Development, 6<sup>th</sup> Floor West  
200 Mero Street  
Frankfort, KY 40622

Phone: (502) 564-3601

Fax: (502) 564-1491

