



RULES OF THE STATE PERSONNEL BOARD

478-1-.03 Antidiscrimination

(1) Introduction:

The State is committed to providing equal employment opportunity for all individuals and ensuring that all individuals are treated in a fair and non-discriminatory manner **throughout the employment process**. This includes protection from discrimination, harassment, and retaliation in the workplace. The information provided in this Rule is intended to serve as a summary of agency and employee obligations with regard to preventing unlawful discrimination and harassment in the workplace.

While there are multiple types of workplace harassment, incidents of sexual harassment present unique challenges which warrant special emphasis and implementation of a particularized approach to the prevention, detection, and elimination of sexual harassment from the state workplace. Therefore, in accordance with Executive Order 01.14.19.02, Executive Branch agencies shall receive, process, and investigate complaints and reports of sexual harassment and connected retaliation based on the procedures provided in the Statewide Sexual Harassment Prevention Policy. Please refer to the Statewide Policy for specific information regarding the reporting and handling of sexual harassment complaints and reports.

(2) Applicability:

This Rule applies to Executive Branch employers, local departments of Public Health, and Community Service Boards. It does not apply to other public corporations, authorities, or the Board of Regents of the University System of Georgia.

(3) Definitions:

For the purposes of this Rule, the following terms and definitions apply in addition to those in 478-1-.02, *Terms and Definitions*:

- (a) "Disability" means a physical or mental impairment that substantially limits one or more of an individual's major life activities.
- (b) "Disabled individual" means an individual who has such an impairment, has a record of such an impairment, or is regarded as having such an impairment.
- (c) "Discrimination" means unequal treatment of an otherwise qualified applicant or employee in hiring, promotion, discharge, or terms and conditions of employment when the decision is based on an individual's race, color, creed, national origin, ancestry, citizenship, religion, political opinions or affiliations, age, disability, genetic

Rules of the State Personnel Board

- information, sex, pregnancy, childbirth or related conditions, military or veteran status, or other status protected by federal or state law or regulation.
- (d) “Harassment” means physical, verbal, or non-verbal/visual conduct that is either directed toward an individual or reasonably offensive to an individual because of his or her race, color, creed, national origin, ancestry, citizenship, religion, political opinions or affiliations, age, disability, genetic information, military or veteran status, or status other than sex protected by federal or state law or regulation. Note: Harassment based on sex is also strictly prohibited by the Statewide Sexual Harassment Prevention Policy, which should be referenced for guidance on the reporting and handling of sexual harassment complaints and reports.
- (e) “Qualified individual with a disability” means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the position that the individual holds or for which he/she has applied.
- (f) “Retaliation” means an act or omission intended to, or having the reasonably foreseeable effect of, punishing or otherwise impacting an individual for submitting (or assisting with submitting) a complaint or reporting discrimination or harassment, for participating in a discrimination or harassment investigation or proceeding, or for otherwise opposing discrimination or harassment.
- (g) “Sexual harassment” means physical, verbal, or non-verbal/visual conduct that is either directed toward an individual or reasonably offensive to an individual because of his or her sex. Therefore, for purposes of this Rule, “sexual harassment” includes physical, verbal, or non-verbal/visual conduct constituting:
1. unwanted sexual attention, sexual advances, requests for sexual favors, sexually explicit comments, and other conduct of an expressed or obviously implied sexual nature, by an individual who knows, or reasonably should know, that such conduct is unwanted or offensive; and
 2. conduct that is hostile, threatening, derogatory, demeaning, or abusive or intended to insult, embarrass, belittle, or humiliate an individual because of his or her sex, regardless of whether the underlying reason for the conduct is apparent.

(4) Discrimination Awareness and Prevention:

The State is committed to maintaining a discrimination-free workplace. Discrimination as defined in this Rule is strictly prohibited.

Rules of the State Personnel Board

- (a) Agencies must comply fully with all federal and state anti-discrimination laws. Agencies will not discriminate against individuals with regard to the terms and conditions of employment, including but not limited to hiring, rehiring, retention, promotion, and/or the provision of benefits.
- (b) The State prohibits and will not tolerate discrimination against any qualified individual with a disability and seeks to provide reasonable accommodation to all qualified individuals with disabilities. The State also prohibits discrimination against an employee who has a family member with a disability. Similarly, the State strives to reasonably accommodate employees' religious needs.

(5) Harassment Awareness and Prevention:

The State is also committed to maintaining a harassment-free workplace. Harassment as defined in this Rule is strictly prohibited. Such harassment violates an individual's fundamental rights and personal dignity and undermines the integrity of the workplace.

- (a) The State's policy of maintaining a harassment-free workplace applies to everyone. The State will not permit any employee to be harassed in the course of their work by supervisors, coworkers, or third parties, such as vendors or customers. Any employee who engages in prohibited harassment will be subject to prompt disciplinary action, up to and including termination of employment.
- (b) Employees are expected to be aware of and to refrain from any conduct or behavior that could be construed as harassment. Examples of harassment include, but are not limited to:
 - 1. threats, epithets, derogatory comments, slurs;
 - 2. derogatory posters, photographs, cartoons, drawings, gestures; or
 - 3. assault, unwanted touching, or blocking someone's movement.

(6) Retaliation Awareness and Prevention:

- (a) The State prohibits and will not tolerate retaliation. The State is committed to creating a work environment where no employee is discouraged from submitting a complaint or a report of discrimination or harassment.
- (b) Agencies and employees are prohibited from retaliating against an employee for:

Rules of the State Personnel Board

1. submitting (or assisting with submitting) a complaint or report of discrimination or harassment;
 2. participating in a discrimination or harassment investigation proceeding; or
 3. otherwise opposing discrimination or harassment.
- (c) If an employee believes that an act of retaliation has occurred, the employee must notify their agency as soon as possible. The agency will act promptly to assure compliance with this rule prohibiting retaliation.

(7) Obligations to Report Discrimination, Harassment, or Retaliation:

- (a) Employees who have experienced harassment, discrimination, or retaliation are strongly encouraged to submit a complaint. Employees who have witnessed or otherwise have reason to believe that another employee is being or has been subjected to harassment, discrimination, or retaliation shall promptly report this information to a supervisor, manager, human resources official, or to the agency's designee for receiving such reports.
- (b) Supervisors and managers are obligated to report incidents of harassment, discrimination, or retaliation to a higher-level manager, human resources official, or to the agency's designee for receiving such reports.

(8) The Agency's Response:

- (a) Upon receiving a complaint of discrimination based on any protected status or a complaint of harassment or retaliation based on a protected status other than sex, an agency will conduct a prompt, thorough, and objective investigation of the allegations. All state employees are expected to cooperate in these investigations. Investigations will be conducted in as confidential a manner as possible, and all employees involved in the process are expected to refrain from discussing the matter outside of the investigation process.
- (b) If the investigation concludes that improper conduct has occurred, the agency will take corrective and remedial action commensurate with the circumstances, up to and including terminating the employment of employees found to have engaged in such misconduct. Appropriate action will also be taken to deter any future discrimination, harassment, and/or retaliation.

Rules of the State Personnel Board

- (c) Complaints of sexual harassment or retaliation related to a complaint of sexual harassment shall be received, processed, and investigated in accordance with procedures provided in the Appendix to the Statewide Sexual Harassment Prevention Policy.
- (d) Complaints of discrimination based on any protected class that also contain allegations of sexual harassment or related retaliation will be received, processed, and investigated in accordance with procedures provided in the Appendix to the Statewide Sexual Harassment Prevention Policy.

Authority:

O.C.G.A. §§ 45-20-3, 45-20-3.1, and 45-20-4 (duties and functions of the State Personnel Board and Department of Administrative Services related to the Rules of the State Personnel Board)

State Law References:

Ga. Const. Art. 1, Sec. I, Para. II. (Equal Protection Clause)
O.C.G.A. §§ 45-19-20, et seq. (Fair Employment Practices Act of 1978)

Federal Law References:

U.S. Const. amend. XIV (Equal Protection Clause of the Fourteenth Amendment)
42 U.S.C. §§ 2000e, et seq. (Title VII of the Civil Rights Act of 1964)
42. U.S.C. §§ 12101, et seq. (Americans with Disabilities Act of 1990)

Other References:

Ga. Exec. Order No. 01.14.19.02 (Jan. 14, 2019),
https://gov.georgia.gov/sites/gov.georgia.gov/files/related_files/document/01.14.19.02.pdf

Statewide Sexual Harassment Prevention Policy effective March 1, 2019
<http://doas.ga.gov/assets/Human%20Resources%20Administration/Sexual%20Harassment%20Prevention%20Policy/Statewide%20Sexual%20Harassment%20Prevention%20Policy%20FINAL.pdf>