

**Office of Diversity & Civil Rights  
POLICY/PROCEDURES**

<b><u>SUBJECT:</u></b> EQUAL EMPLOYMENT OPPORTUNITY PREVENTION OF DISCRIMINATION, HARASSMENT AND RETALIATION IN THE WORKPLACE	<b><u>DATE OF ISSUE:</u></b> June 2015	<b><u>POLICY/PROCEDURE #</u></b> 1.2
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**I. STATEMENT OF POLICY**

MassDOT/MBTA believes that everyone should be treated with respect and dignity and supports the right to work in an environment that is free from discrimination, all forms of harassment, including sexual harassment, and retaliation. It is the MassDOT/MBTA’s policy that no member of its personnel community, whether supervisory or non-supervisory, may discriminate against or harass another employee. It is the MassDOT/MBTA’s policy that no member of its personnel community, whether supervisory or non-supervisory, may retaliate against another employee for raising allegations of discrimination or harassment. Furthermore, Title VII of the Civil Rights Act of 1964 and the applicable statutes of the Commonwealth prohibit discrimination on the basis of race, color, gender, national origin, ancestry, religion, creed, disability, age, sexual orientation, genetic status, gender identity, criminal records, active military status, or veteran status. This policy also applies to clients, vendors, outsourced personnel, contractors or others who visit the MassDOT/MBTA’s property. Harassment based on a protected characteristic includes both overt acts of oral, written or physical abuse, and more subtle – but equally damaging – forms of offensive conduct, including the use of epithets, slurs or negative stereotyping such as name-calling, racial insults, other verbal abuse, or the display or circulation of hostile or denigrating graphic or written material. Threats of violence or any acts or gestures intended to harass or intimidate another person are prohibited

This policy describes examples of conduct that are both prohibited and potentially unlawful and affords employees, vendors, contractors and others who visit MassDOT/MBTA’s premises the right to file a complaint without fear of retaliation when they believe their protections under this policy have been violated.

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## II. PROHIBITED CONDUCT

MassDOT/MBTA fully supports the right of all employees of MassDOT/MBTA to work in an environment that is free from discrimination, harassment and retaliation. Therefore, inappropriate and offensive conduct based on race, color, gender, national origin, creed, ancestry, religion, disability, age, sexual orientation, genetic status, gender identity, veteran status legally protected class or characteristic, is prohibited and in violation of this policy. Furthermore, this policy prohibits retaliation against anyone who reports an incident of alleged harassment or who cooperates in an investigation, regardless of basis.

Discriminatory practices by employees, vendors, or non-employees will not be tolerated and are unacceptable and shall be punishable pursuant to this policy

## III. DEFINITIONS

A. Sexual harassment is defined by federal regulations as:

Unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when: (1) submission to such conduct is made either explicitly or implicitly a term or condition to an individual's employment; (2) submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting the individual; or (3) such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive employment environment.

B. Sexual harassment is a form of sex discrimination that is illegal under both Title VII of the Civil Rights Act of 1964 (federal law) and M.G.L. c.151B (state law). These laws provide that unwelcome sexual advances, requests for sexual favors, and other physical or verbal conduct of a sexual nature, constitute sexual harassment when:

- submission to or rejection of such advances, requests or conduct is made either explicitly or implicitly a term or condition of an individual's employment or a basis for employment decisions affecting the individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, humiliating or sexually offensive work environment.

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C. Examples of conduct that may constitute sexual harassment:

Sexual harassment within the meaning of this policy refers to behavior of a sexual nature that is inappropriate in the workplace and personally offensive. Sexual harassment occurs in a variety of situations which share a common element—the inappropriate introduction of sexual activities or comments into the workplace environment.

Sexual harassment often involves relationships of unequal power. Such situations may include elements of coercion, such as when a supervisor requests sexual favors and this becomes a criterion for granting privileges of favorable treatment on the job to a subordinate. However, sexual harassment may also involve relationships among “equals,” such as when repeated advances or demeaning verbal comments by a co-worker towards another co-worker have a harmful effect on a person’s ability to perform his or her work. Sexual harassment may also involve employee behavior directed at non-employees or non-employee behavior directed at employees. Sexual harassment may occur without regard to the gender or sexual orientation of the harasser or person harassed.

Examples of conduct which may, depending upon the circumstances, constitute sexual harassment include the following:

- sexual flirtations, advances or propositions
- verbal abuse, innuendo, or faxes, emails or web pages of a sexual nature
- inappropriate physical touching
- obscene gestures or suggestive or insulting sounds
- demands for sexual favors accompanied by an implied or overt threat concerning an individual’s employment status or promises of preferential treatment
- indecent exposure
- display of sexually suggestive objects, pictures, posters, cartoons, email, computer images or cell phone images (including texting)
- continued or repeated jokes, language, epithets or remarks of a sexual nature

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These behaviors are unacceptable in the workplace itself and in other work related settings, such as social events and travel. If an individual is found to have violated this policy, he or she will be subject to corrective discipline, up to and including termination of employment.

D. Harassment, other than sexual harassment, is defined by federal regulations as:

Verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of his or her protected status, or that of his or her relatives, friends, or associates, and that (1) has the purpose or effect of creating an intimidating, hostile, or offensive working environment; (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment opportunities.

E. Discrimination is defined as:

any act, or failure to act, which has the purpose or effect of limiting, excluding, or denying a person's employment opportunity because of race, color, gender, national origin, creed, ancestry, religion, disability, age, sexual orientation, genetic status, gender identity, or veteran status.

F. Retaliation is defined as:

any adverse action (firing, suspension, demotion, transfer, etc.) taken against an individual because he or she either opposed employment practices that violated this policy or participated in a civil rights investigation or proceeding.

#### IV. ZERO TOLERANCE

The aforementioned prohibited forms of conduct under this policy are not limited to conduct that meets a strict legal definition of severity and pervasiveness. To the contrary, this policy prohibits **any** inappropriate and offensive statement or conduct that is either sexual in nature or based on actual or perceived race, color, gender, national origin, creed, ancestry, religion, disability, age, sexual orientation, genetic status, gender identity, veteran status or other legally protected status.

Examples of conduct prohibited under this policy include, but are not limited to:

- slurs, jokes, caricatures, cartoons, graffiti, faxes, web pages, or cell phone images (including texts) which are based on an individual's race, color, gender, national origin, creed, ancestry, religion, disability, age, sexual orientation, genetic status, gender identity, veteran status or other protected characteristic

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- refusals to extend normal workplace assistance to a co-worker based on the co-worker's race, color, gender, national origin, creed, ancestry, religion, disability, age, sexual orientation, genetic status, gender identity, veteran status or other protected characteristic, status or activity
- denial of desirable work assignments, work placements, or other employment benefits based on an individual's protected characteristic, status or activity
- shunning, intimidating, obstructing, or interfering with an individual's work based on the individual's protected characteristic, status or activity such as reporting an alleged incident of harassment or cooperating in an investigation

Under MassDOT/MBTA's policy, behavior of this sort which offends common standards of decency will not be tolerated, even if the behavior is not legally actionable as a violation of law. Employees who violate this policy will be disciplined and, in appropriate circumstances, discharged.

**V. EMPLOYEE RESPONSIBILITIES**

Each employee of MassDOT/MBTA is personally responsible for ensuring that he or she does not discriminate against, harass or retaliate against any other employee or non-employee in the workplace pursuant to this policy. Each employee is responsible for cooperating in, and providing information relevant to, any MassDOT/MBTA investigation of alleged discrimination, harassment, or retaliation if requested to do so by a person authorized by MassDOT/MBTA to conduct the investigation. Refusal to participate in an investigation, intentionally making false or misleading statements in an investigation, or withholding material information in an investigation may be grounds for discipline and, in appropriate cases, discharge. Each employee is responsible for reviewing knowledge of these policies annually and is required to participate in training relevant to this policy as required by MassDOT/MBTA.

**VI. SUPERVISOR AND MANAGER RESPONSIBILITIES**

It is the responsibility of each supervisor, manager, foreperson and official to strictly enforce the terms of this policy. Supervisors, managers, or department heads who become aware of possible incidents of discrimination, harassment, or retaliation in their departments, even in the absence of a formal complaint, should take immediate and appropriate actions to eliminate the conduct. Supervisory staff must also immediately report all such incidents to the Office of Diversity and

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Civil Rights (ODCR). Supervisory staff is responsible for reviewing knowledge and implementation of these policies. All supervisors are required to receive training relevant to this policy as required by MassDOT/MBTA.

**VII. DISCIPLINE**

If an investigation of a complaint reveals that a supervisor or employee has engaged in actions or conduct constituting of discrimination, harassment, or retaliation, or is found otherwise to have failed to carry out the responsibilities of MassDOT/MBTA employees as set out in this policy, or other relevant MassDOT/MBTA policies, disciplinary action will be taken, up to and including discharge. The disciplinary action taken will depend upon the circumstances of the situation, including the employee's prior record and the seriousness of the violation. The Area or Department will take disciplinary action in accordance with the appropriate disciplinary procedure after consultation with the Office of Labor Relations and Employment Law and the Office of Diversity and Civil Rights.

**VIII. ROLE OF THE OFFICE OF DIVERSITY AND CIVIL RIGHTS**

All MassDOT/MBTA Areas, Departments, Districts, and Unions are responsible for enforcement of MassDOT/MBTA's policies, procedures and obligations affecting equal employment opportunity. The primary functions of ODCR include complaint investigation and resolution, education and training, compliance monitoring and assessment, and planning. ODCR also offers assistance to any supervisor or employee who has questions or concerns about MassDOT/MBTA's Equal Employment Opportunity Policies and how best to comply with them, and welcomes any inquiries about these matters from supervisors, managers and employees.

  
Stephanie Pollack  
Secretary & CEO

  
Frank DePaolo  
Acting General Manager and Rail & Transit Administrator

  
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