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## INTRODUCTION

The Department of Human Services (DHS) will prevent harassment in employment and in provision of its programs, services and activities. This policy has legal authority within the parameters of Title VII of the Civil Rights Act of 1964, as amended, The Pregnancy Discrimination Act, The Equal Pay Act of 1963 (EPA), the Age Discrimination in Employment Act of 1967 (ADEA), Title I and II of the Americans with Disabilities Act of 1990 (ADA), as amended, Sections 501 and 505 of the Rehabilitation Act of 1973, The Genetic Information Nondiscrimination Act of 2008 (GINA), Hawaii Revised Statutes, Chapters 378, Part I and Chapter 368-1.5, and appropriate Hawaii Revised Statutes as may be amended periodically.

State and Federally-funded programs must be planned and administered such that they do not have the effect of denying or delaying services to any particular person or groups of persons seeking services at the DHS. Further, DHS must prevent harassment to ensure all persons are free from harassment in employment and in the provisions of services. Illegal discrimination, harassment, and bullying are prohibited by the DHS' policy and by Federal and State Law and will not be tolerated at the DHS.

DHS will act to curb protected class discrimination or harassment without regard to its severity or pervasiveness and does not require that discrimination or harassment rise to the level of unlawfulness before taking action. Every DHS employee is responsible for assuring that work at the DHS is conducted in an atmosphere that respects the dignity of every employee, and people with whom the DHS conducts business. DHS employees are expected to avoid behavior that could reasonably be perceived as discrimination or harassment prohibited under this policy. In addition, DHS employees are expected to avoid retaliation against an individual who makes a complaint, and/or participates in or provides information for an investigation relating to discrimination and/or harassment. A violation of this policy may result in disciplinary action, up to and including, termination, in accordance with applicable State laws, rules, policies and collective bargaining agreements.

### 1.0 PURPOSE

The primary purpose of this policy is the prevention of discrimination, harassment and bullying in employment and services at the DHS.

### 2.0 REFERENCES, ACRONYMS, AND DEFINITIONS

SEE APPENDIX A.

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### 3.0 POLICY

It is the policy of the DHS to assure equal opportunity for all department employees, applicants for employment, applicants for participation in the DHS programs, and participants in DHS programs without discrimination or harassment on the basis of age, arrest/court records, breastfeeding, child support assignment, citizenship, credit history, disability (physical or mental), domestic/sexual violence victim status, genetic information, National Guard absence, national origin/ancestry, political belief, race or color, religion, relationship status, sex/gender (expression or identity), sexual orientation, veteran status, retaliation for filing a complaint or participating in complaint process, and harassment based on one or more of the groups protected by law.

### 4.0 SCOPE

The DHS is committed to employment/training decisions being based so as to further the principle of equal opportunity and affirmative action, and ensuring that selections for employment/training and promotion decisions are in accordance with the principles of equal opportunity and affirmative action for employees, applicants for employment, applicants for participation, and participants in DHS-sponsored programs.

All services provided to the public by the DHS or DHS-sponsored programs and activities shall be on an equal opportunity, non-discriminatory basis. No person shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination or harassment under any phase or level of program or activity.

This policy applies to all the DHS divisions, their branches, sections and units, as well as its administratively attached agencies and commissions, individuals and organizations that receive State and Federal funds through contracts or other arrangements with the DHS. It covers employees, clients, applicants, and potential applicants for employment and services, service providers, and contractors. This also includes individuals subjected to unlawful harassment because of their association with persons who are protected by non-discrimination law.

### 5.0 RESPONSIBILITIES

Administrative Appeals Office is responsible for developing, implementing and evaluating administrative hearing procedures and processes in provision of DHS services, for conducting hearings that are free from harassment or bullying, and providing interpretation and translation of hearing materials as required.

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Civil Rights Compliance Staff (CRCS) of the Personnel Office is responsible for developing and coordinating DHS' Harassment and Discrimination Complaint Policies as well as Language Access, Self-Evaluation, and Affirmative Action Plans. Also, CRCS serves as liaison between Federal and State agencies and other stakeholders, such as advocacy groups and/or potential applicants; provides technical assistance to divisions and staff offices, administratively attached agencies, and commissions; responds to inquiries from the Equal Employment Opportunity Commission, Hawaii Civil Rights Commission, and others. CRCS also performs other duties relative to civil rights compliance in programs, services, activities, facilities and employment, such as reporting, training and development. The CRCS shares responsibility with divisions, staff offices, administratively attached agencies and commissions for DHS policies and procedures, compliance reporting, training, and the development of tools, notices/documents, processes and training modules relating to civil rights compliance. CRCS may share with divisions the responsibility for developing private/public partnerships to facilitate access.

DHS Director is responsible for leading and monitoring the implementation and prevention of barriers to language, facilities and employment access at the DHS. The Director may delegate any portion to a deputy director, staff officers and/or division administrators.

All DHS Employees are responsible for complying with Federal and State laws, relating to civil rights, including and not limited to, treating all individuals equally and courteously, preventing harassment and/or informing persons of their right to equal access to programs, facilities and employment as well as their right to free interpreter service, reasonable accommodation as qualified, and a right to file a discrimination complaint when they feel their civil rights have been violated and/or an internal complaint when they feel they have been treated unfairly. Employees are responsible for notifying clients of their right to file a discrimination complaint without fear of retaliation and/or to request an administrative hearing when there has been an adverse action such as a denial of benefits. Employees are expected to conduct themselves appropriately while at work and during work-related functions. Employees who experience or observe any job-related harassment or believe they have been treated in a disrespectful manner, have a duty and responsibility to report the incident(s) in order to correct and prevent harassment. When employees have questions or concerns, they may contact DHS' CRCS, the EEO Officer at the Department of Human Resources Development, and/or the Hawaii Civil Rights Commission at the address stated on the complaint instructions.

DHS Organizational Division Administrators and Staff Officers are responsible for preventing harassment and bullying, determining the needs of the population they serve, considering language, culture, and physical accessibility to facilities and employment that are consistent with those needs in compliance with Federal and State laws. Other responsibilities include, but are not limited to: (1) distributing to appropriate staff members policies and procedures regarding harassment prevention, (2) consulting with the CRCS on

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the development and implementation of staff training, (3) collecting and analyzing internal and external data, and (4) notifying and monitoring sub-recipients of compliance with Federal and State laws and assurances relative to harassment prevention, and (5) performing other duties as identified in DHS policies and procedures including seeking external funding and partnerships as needed in coordination with the CRCS.

Sub-Recipients are responsible for complying with civil rights, and other Federal or State laws and assurances relative to harassment, including and not limited to, informing clients and potential clients of their right to file a discrimination complaint when they feel their civil rights have been violated or they have experienced bullying or harassment based on a protected factor.

Contractors and Sub-Contractors are responsible for preventing harassment and bullying in providing their services and for posting required notices relative to harassment.

Managers and Supervisors of the DHS shall ensure that these policies and procedures are carried out in accordance with applicable Federal and State laws, State administrative policies, civil service rules, and collective bargaining agreements. They are responsible for ensuring that their staff are aware of their responsibility to treat all clients and applicants equally and fairly, and to provide assistance to persons with special needs, but not limited to, those alleging harassment or bullying. Managers and supervisors shall also ensure that clients, applicants, recipients, and employees are informed of their right to nondiscriminatory services and employment, reasonable accommodations as qualified, and right to file a discrimination complaint and/or an administrative hearing request when appropriate. Managers and supervisors are responsible for assuring that their staff are adequately trained, and for monitoring, posting, and updating of required notices relative to harassment. They are responsible for promptly, fully and objectively investigating harassment and bullying complaints, determining their merit and taking corrective action(s) as warranted. Managers and supervisors shall ensure an environment that is free from discriminatory practices relating to harassment and bullying. Those who witness or receive reports of harassment shall take immediate and appropriate action to ensure that the harassment ceases. They will ensure consistent application of DHS' Harassment policy and method of administration in the provision of programs, services, contracts with service providers, and/or activities for the public.

## 6.0 DISCRIMINATION COMPLAINT PROCEDURES

Discrimination complaint procedures are available in DHS Policy and Procedures 4.10.1, dated 07-2014, and are applicable to all DHS offices and programs, administratively attached agencies, commissions and private entities receiving Federal and State funds from the DHS. In order for the DHS to maintain consistency in the administration of discrimination complaints procedures and to comply with various requirements, recipients

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who operate Federally/State funded programs for the DHS in the State of Hawaii may use these procedures. Recipients who desire to develop internal complaint procedures must ensure they are reviewed by the DHS CRCS prior to use. Complainants should follow the appropriate DHS Departmental Discrimination Complaint Procedure (4.10.1-2) when filing complaints of harassment.

## 7.0 IMPLEMENTATION

Confidentiality. Confidentiality will be maintained to the extent possible to successfully conduct a thorough investigation. DHS will take appropriate steps to protect the confidentiality of discrimination, harassment and retaliation complaints, investigations, and reports, whether substantiated or unsubstantiated. However, complete confidentiality cannot be guaranteed and information regarding complaints, investigations and reports shall be shared with appropriate individuals and agencies on a “need to know” basis, with due consideration for the safety and security of individuals involved in the investigation. Complainants will be asked to sign a consent/release form indicating their consent or denial to release information. (APPENDIX B dated 06-2014)

Retaliation. The DHS prohibits retaliation against any individual who files a complaint of harassment, participates in complaint proceedings or who otherwise opposes acts of harassment. Employees and applicants have a right to complain about discrimination, harassment, or bullying without fear of retaliation.

Violations of Policy. Employees who violate this policy shall be subject to disciplinary action in accordance with the respective collective bargaining agreement and related DHS policies. Contractors will be at risk of non-renewal of contract. Clients will be at risk for seeking services elsewhere. Applicants for employment, programs and services could be asked to withdraw from applying for programs or services as warranted.

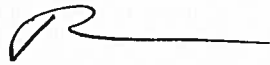
Discriminatory practices will not be tolerated at the DHS in any form. Appropriate measures will be taken to prevent harassment and bullying and to address discriminatory acts.


Disciplinary and other action(s) shall be designed to correspond with the seriousness of the action, be reasonably calculated to stop the harassment or bullying, and to ensure that the harassment will not recur.

With approval of this Harassment Prevention Policy by the Director, this DHS’ policy shall be effective, implemented, and remain in effect until such time it is cancelled or superseded by order of the DHS Director. This policy is in addition to DHS Directive 2014-02 and must be displayed prominently on bulletin boards.

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This part shall supersede any prior directive concerning harassment. Authorized modifications of content will not affect the life of these policies and procedures unless so specified by the Director.

APPROVED:   
\_\_\_\_\_  
Patricia McManaman, Director

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## 2.0 REFERENCES, ACRONYMS, AND DEFINITIONS

### 2.1 REFERENCES

Civil Rights Act, Title VI and VII, as amended  
 Age Discrimination in Employment Act (ADEA)  
 Americans with Disabilities Act (ADA), Title I and II, as amended  
 The Pregnancy Discrimination Act  
 The Equal Pay Act (EPA)  
 Rehabilitation Act, Sections 501 and 505, AND 503 and 504, 1973  
 The Genetic Information Nondiscrimination Act of 2008 (GINA)  
 Appropriate Hawaii Revised Statutes, as added or amended periodically  
 Food Stamp Act (SNAP)  
 Vietnam Era Veterans' Readjustment Assistance Act, Section 402  
 Fair Housing Act, as amended, and others  
 Sections 102 and 103 of the Civil Rights act of 1991  
 The Immigration Reform and Control Act of 1986

### 2.2 ACRONYMS

ADA Americans with Disabilities Act, as amended  
 ADEA Age Discrimination in Employment Act  
 CRCS Civil Rights Compliance Staff  
 DHS State of Hawaii, Department of Human Services, including its administratively attached agencies and commissions  
 DIR Director of the State of Hawaii, Department of Human Services  
 EPA Equal Pay Act  
 GINA Genetic Information Nondiscrimination Act  
 HCRC Hawaii Civil Rights Commission  
 HRS Hawaii Revised Statutes  
 SNAP Supplemental Nutrition Assistance Program

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### 2.3 DEFINITIONS

**Discrimination.** Any action(s) or lack of action(s) by the DHS, which results in disparate treatment or has an adverse impact on a person or group of persons, on the basis of one or more memberships in protected groups (groups protected by Federal and State laws).

**Gender Identity or Expression.** Includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self-image, gender-related appearance, or gender-related expression, regardless of whether that gender identity, gender-related self-image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth.

**Genetic Information.** Includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members (i.e., an individual's family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future.

**Harassment.** Harassment or bullying based on a person's membership in a protected group, including but not limited to, age, arrest/court records, breastfeeding, child support assignment, citizenship, credit history, disability, domestic/sexual violence victim status, genetic information, National Guard absence, national origin/ancestry, political belief (SNAP program), race or color, religion, relationship status, sex/gender (expression or identity), sexual orientation, veteran status, retaliation for filing a complaint or participating in complaint process, and harassment based on one or more protected groups.

Harassment is unlawful when unwelcome behavior becomes so severe and pervasive that it alters a person's terms and conditions of employment, unreasonably interferes with work, or creates an intimidating, hostile or offensive environment. (Behavior that does not meet this definition may be addressable by changes in management practices or by corrective action under other personnel policies.)

**Protected Group.** Means race, color, sex, including gender identity or expression, sexual orientation, condition of pregnancy, act of breastfeeding or expressing milk, religion, national origin, ancestry, age, disability, genetic information, marital or civil union status, arrest and court record (except as permitted by applicable laws), income assignment for child support, national guard absence, uniformed service, veteran status, citizenship (except as permitted by applicable laws), credit history or credit report (unless directly related to a bona fide occupational qualification), domestic or sexual violence victim status if the domestic or sexual violence victim provides notice to his/her employer of such status or the employer has actual knowledge of such status, or any other classification protected under applicable State and Federal laws.



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Protected Group Discrimination or Harassment. Means any unwelcome behavior based on a person's protected group which is sufficiently severe or pervasive and has the purpose or effect of either unreasonably interfering with the person's work performance or creating an intimidating, hostile, or offensive work environment.

Retaliation. Means an adverse action taken or threat of adverse action in response to or in an attempt to prevent an individual from opposing a discriminatory practice or from participating in an employment discrimination investigation or proceeding.

Sexual Harassment. Unwelcome sexual advances or requests for sexual favors or other verbal or physical conduct of a sexual nature is unacceptable when:

- submission to such conduct is made either explicitly or implicitly a term or condition of employment or receipt of services;
- submission to or rejection of such conduct by an individual is used as the basis for employment or receipt of services decisions affecting said individual; or
- such conduct has the purpose or effect of creating an intimidating, hostile or offensive environment.

Examples of verbal sexual harassment might include, but are not limited to, offensive and derogatory comments, jokes of an offensive nature, innuendoes, unwelcome repeated requests for dates or obscene or graphic descriptions of an individual's body, and threats made to a person who refuses a sexual advance.

Examples of non-verbal sexual harassment may include, but are not limited to, sexually suggestive or offensive objects or pictures on cell phones, screen savers, web sites or calendars, written comments, suggestive or offensive sounds, whistling, catcalls or obscene gestures.

Sexual harassment with respect to terms and conditions of employment might include treating a person differently when that individual refuses a sexual advance. Examples of such disparate treatment include, but are not limited to, limiting benefits which other employees presently receive and enjoy, refusing to grant a promotion, giving someone a negative evaluation which does not reflect that person's actual performance, and demoting or terminating a person. For additional examples and preventive measures, see Department of Human Resources Development Policy 601.001, Discrimination/Harassment-Free Workplace, dated October 15, 2013.

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Sexual harassment with respect to provision of services might include treating an applicant, potential applicant, service provider, contractor or client differently when that individual refuses a sexual advance.

Service Provider. Any person, or group of persons, agency, organization, institution, political subdivision, that delivers a program, service or activity with Federal or State financial assistance through contractual, licensing or other arrangements with the DHS.

Sub-Recipient. Any entity that receives Federal or State assistance as a pass-through from the DHS to carry out a program in which the sub-recipient provides services, to and has contact with, applicants and participants in the same manner as DHS if DHS were to administer the program directly. This does not include an individual applicant or participant who is a beneficiary of a program. For example, Medicaid payments to a contractor or provider for providing patient care services to Medicaid eligible individuals are not considered Federal awards expended unless the State requires the funds to be treated as Federal awards expended because reimbursement is on a cost-reimbursement basis (OMSB Circular A-133 - Guidance on distinguishing between a sub-recipient and a vendor is provided in .210).



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CONSENT/RELEASE FORM  
HARASSMENT PREVENTION POLICY

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STATE OF HAWAII

DEPARTMENT OF HUMAN SERVICES

**CONSENT / RELEASE FORM**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

**Please read, initial, sign and date this form.**

I understand that in the course of a preliminary inquiry or investigation, it might be necessary for the Department of Human Services (DHS), Civil Rights Compliance Staff (CRCS) to reveal my identity to persons at the organization under investigation, including personal information that is gathered as a part of the preliminary inquiry or investigation of my complaint. I understand that as a complainant, I am protected by Federal regulations and DHS policies from retaliation for having taken action or participated in action to secure rights protected by non-discrimination statutes. **Confidentiality cannot be guaranteed.**

<b>CONSENT GRANTED</b>	
Initial here if you give consent.	<ul style="list-style-type: none"><li>I have read and understand the above information and authorize DHS CRCS to reveal my identity to persons at the organization under investigation, and to Federal or State agencies that provide financial assistance to the organization, and/or have responsibility for civil rights compliance.</li><li>I authorize the DHS to receive material and information pertinent to the investigation of my complaint. This release includes, but is not limited to: applications, case files, personal records and medical records; and will be used only for authorized civil rights compliance and enforcement activities.</li><li>I understand that I am not required to authorize this release, and I do so voluntarily.</li><li>This authorization is effective for one year from the date of the authorization.</li></ul>

**OR**

<b>CONSENT DENIED</b>	
Initial here if you deny consent.	<ul style="list-style-type: none"><li>I have read and understand the above information. I do not want the DHS CRCS to reveal my identity to the organization under investigation, or to review, receive, or discuss material and consent information pertinent to the investigation of my complaint.</li><li>I understand that by declining consent, it may make the investigation of my complaint more difficult and, in some cases, may result in the investigation to be closed.</li></ul>

Signature \_\_\_\_\_

Date \_\_\_\_\_

RETURN signed and dated form to:

State of Hawaii  
Department of Human Services  
PERS/CRCS  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

SEND questions to: [gwatts@dhs.hawaii.gov](mailto:gwatts@dhs.hawaii.gov)