

**RULES OF THE  
DEPARTMENT OF MANAGEMENT SERVICES  
PERSONNEL MANAGEMENT SYSTEM**

**CHAPTER 60L-40  
SEXUAL HARASSMENT, EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION**

**60L-40.001 Sexual Harassment**

**60L-40.002 Equal Employment Opportunity and Affirmative Action**

**60L-40.001 Sexual Harassment.**

(1) Agencies shall not tolerate sexual harassment within the work force. Sexual harassment means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature from any person directed towards or in the presence of an employee or applicant when:

(a) Submission to such conduct is either explicitly or implicitly a term or condition of an individual's employment;

(b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

(c) 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.

(2) Agencies shall make known to their employees that sexual harassment will not be tolerated. Each agency shall make available to employees a copy of this Rule 60L-40.001, F.A.C., and a copy of the agency's procedures for investigating and resolving complaints of sexual harassment. Each employee shall acknowledge understanding and acceptance of this rule and the agency procedure, and documented evidence of the acknowledgement shall be retained in the employee's personnel file.

(3) Agencies shall develop and implement procedures to investigate and resolve complaints of sexual harassment. Agencies shall designate a person or persons to receive complaints of sexual harassment. Complaints shall be reduced to writing, signed by the complainant, and contain at least the following information:

(a) The name, business address, and telephone number of the person filing the complaint;

(b) The name of the person who allegedly committed the act of sexual harassment and the alleged victim; and,

(c) A clear and concise statement of the facts, including pertinent dates, locations, witnesses and other evidence in support of the complaint.

If the complaint does not contain all of this information, the agency shall, in writing, request the complainant to furnish it.

(4) Agencies shall initiate prompt review of all complaints. Agencies shall take steps to protect the privacy of those involved during the review and any related investigation.

(5) During an investigation of sexual harassment, agencies shall fully comply with investigatory

procedures and rights contained in collective bargaining agreements between the State and the certified bargaining representatives for State employees. If the standard agency procedure conflicts with the collective bargaining agreement, the latter shall prevail.

(6) The filing of a complaint pursuant to agency procedure, regardless of disposition, shall not preclude the complainant from also filing a complaint with the Florida Commission on Human Relations (FCHR) or the Federal Equal Employment Opportunity Commission (EEOC). If the complainant files a complaint with either the FCHR or the EEOC, and the agency undertakes an investigation to provide information to those entities, the agency need not also conduct the investigation otherwise required by its own procedures; however, an employee who has committed sexual harassment shall be disciplined regardless of the type of investigation.

(7) Agencies shall discipline any employee who engages in sexual harassment, according to the agency's policy.

(8) Any supervisory or managerial employee who has knowledge of sexual harassment shall immediately report the matter directly to the person the agency has designated to receive complaints of sexual harassment. Failure to do so shall subject the employee to disciplinary action.

(9) Any employee who knowingly files a false complaint of sexual harassment against another employee shall be subject to disciplinary action.

(10) Agencies shall not tolerate retaliation against any person who has in good faith filed a complaint, opposed a complaint, or participated in any manner in an investigation or proceeding, involving allegations of sexual harassment.

*Rulemaking Authority 110.1055, 110.1221, 110.201(1) FS. Law Implemented 110.1221 FS. History—New 1-22-02, Formerly 60L-36.004.*

#### **60L-40.002 Equal Employment Opportunity and Affirmative Action.**

(1) The Department shall assist agencies in ensuring equal employment opportunity. Toward this end, the Department shall:

(a) Provide technical assistance and training in agencies' development and implementation of the affirmative action plan required by subsection 60L-40.002(4), F.A.C.

(b) Provide technical assistance and training in equal employment opportunity and affirmative action principles for agency supervisory employees. The Department may provide these services directly or contract for them, with each participating agency reimbursing the Department for costs incurred through such contract. Once the Department approves the content of any training program, the Department may delegate the training to the agency.

(c) Report to the Governor each year on the implementation, continuance, revision, and results of each agency's affirmative action plan for the previous year. At the Department's request, agencies shall provide information necessary for this report.

(2) Agencies shall not discriminate or take retaliatory action against an individual because that individual has opposed an unlawful employment practice or has made a charge, testified, or participated in any manner in an investigation, proceeding, or hearing relating to equal employment opportunity or

affirmative action.

(3) Each agency shall conduct an analysis of its work force to determine whether underrepresentation exists, that is, whether the percentage of an EEO group within an occupation or an EEO job category is lower than the corresponding percentage in the available labor market. If underrepresentation exists, the agency shall establish annual affirmative action goals in an effort to achieve full utilization of EEO groups underrepresented in its work force.

(4) Each agency shall develop and implement a written plan to promote equal employment opportunity and to meet the agency's established affirmative action goals. The plan shall include the following elements:

(a) Effective date of the plan and the time period that it covers.

(b) Signature of agency head and EEO/AA officer.

(c) EEO/AA officer information.

(d) Policy statement concerning an internal agency complaint procedure, which procedure shall include provisions to advise employees of the procedure and to prohibit retaliation for employing the procedures.

(e) Description of agency organization.

(f) A list of the supervisory personnel to receive training and a schedule for such training.

(g) Work force analysis, which shall include:

1. Statistical comparison of current work force with available labor market in the relevant geographic recruitment area.

2. Previous year's goals and a statement as to whether these goals were met.

3. Measurable goals for the applicable time period for all EEO job categories with underrepresentation. Measurable goals may also be established in occupations with underrepresentation.

4. Recommendations for corrective action, where necessary.

*Rulemaking Authority 110.1055, 110.112(2), 110.112(2)(a), 110.1221, 110.201(1)(a) FS. Law Implemented 110.105(2), 110.112(1), 110.1221, 110.233(1), 110.403(1)(h), 110.605(1)(d) FS. History—New 1-1-02, Amended 4-3-03, Formerly 60L-33.007.*