UNLAWFUL HARASSMENT AND UNLAWFUL SEXUAL HARASSMENT

5-1. **Purpose.**

a. This operating procedure reaffirms the Department’s commitment to providing a workplace and work environment that do not tolerate harassment or sexual harassment for employees, volunteer staff, all citizens participating in state programs administered by the Department, and for others who interact with the Department.

b. This operating procedure clarifies and describes the conduct that the Department deems to be harassment or sexual harassment and, therefore, prohibited. Further, this operating procedure describes the complaint, investigation, and resolution processes.

c. Lastly, this operating procedure provides for privacy of persons involved in the investigation process and consequences for failure to comply with this operating procedure.

5-2. **Scope.** This operating procedure applies to all employees, including contracted employees, and volunteer staff of the Department.

5-3. **Authority.**

a. Title VII of the Civil Rights Act of 1964, as amended.


d. Section 24(a), Art. I of the Florida Constitution, as amended.

e. State of Florida Executive Order No. 17-319 (December 12, 2017).

f. Section 110.1221, Florida Statutes.

g. Section 110.604, Florida Statutes.

h. Section 119.071(2)(g)1. and 2., Florida Statutes.

i. Section 119.071(2)(n), Florida Statutes.

j. Section 760.10, Florida Statutes.

k. Rule 60L-36.005, Florida Administrative Code.

l. Rule 60L-40.001, Florida Administrative Code.
m. CFOP 60-55, Chapter 1, Standards of Conduct and Standards for Disciplinary Action for Department Employees.

5-4. Policy of Zero Tolerance. It is the policy of the State of Florida and the Department that harassment and sexual harassment are forms of unlawful discrimination that are not tolerated in the workplace or the work environment. Both state and federal laws prohibit harassment and sexual harassment in the workplace and in the work environment.

   a. If harassment or sexual harassment is witnessed, experienced, or suspected, tell a supervisor or manager, or someone in management, including the Human Resources Director, someone in the Office of Human Resources, someone in the Office of the General Counsel, or someone in the Office of Civil Rights, as soon as possible to prevent the situation from escalating.

   b. If the person experiencing harassment or sexual harassment is comfortable doing so, inform the harasser (or the person believed to be the alleged harasser) directly that the conduct is unwelcome and that it must stop. If the person experiencing harassment or sexual harassment is not comfortable telling the harasser to stop, the matter must, at least, be reported to a supervisor or other manager, or to someone described above. The supervisor, manager, or other staff in turn, is responsible for getting the information to an appropriate office promptly.

   c. Similarly, if a person witnessing harassment or sexual harassment is comfortable doing so, inform the harasser (or the person believed to be the alleged harasser) directly that the conduct is unwelcome and that it must stop. If the person witnessing harassment or sexual harassment is not comfortable telling the harasser to stop, the matter must, at least, be reported to a supervisor or other manager, or to someone described above. The supervisor or other manager, in turn, is responsible for getting the information to one of the offices in the above paragraph promptly.

   d. Any person who witnesses or suspects harassment or sexual harassment and fails to follow these reporting procedures will be disciplined. Similarly, the harasser who voluntarily reports that they committed an act that is deemed harassment or sexual harassment as described in this operating procedure or by law or regulation will be disciplined, regardless of the anti-retaliation policy herein below.

5-5. Prohibited Conduct.

   a. This operating procedure describes some forms of harassment or sexual harassment. If a specific incident or situation is not described in the examples below, the actual conduct is still harassment or sexual harassment if it creates a workplace or work environment that is prohibited by this operating procedure.


   c. Harassment is unwelcome conduct that is based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. Harassment becomes unlawful where:

      (1) Enduring the offensive conduct becomes a condition of employment or continued employment; or,

      (2) The conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, abusive, or offensive to a reasonable person.
d. Anti-discrimination laws also prohibit harassment against a person(s) in retaliation for filing a discrimination charge; testifying or participating in any way in an investigation, proceeding, or lawsuit conducted under the above-listed laws; or, opposing unlawful employment practices that are reasonably believed by the individual(s) to discriminate against them or others in violation of the above-listed laws.

e. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of illegality. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, abusive, or offensive to a reasonable person.

f. Offensive conduct may include, but is not limited to, offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, or offensive objects or pictures that interfere with work performance. Harassment can occur in a variety of circumstances, including, but not limited to, the following:

(1) The harasser can be the offended person’s supervisor, a supervisor in another area, an agent of the employer, a co-worker, or a non-employee.

(2) The offended person or reporter does not have to be the person harassed but can be anyone affected by the offensive conduct.

(3) Unlawful harassment may occur without economic injury to, or discharge of, the person experiencing the harassment.

g. Sexual Harassment in the workplace refers to any unwelcome conduct or advances that are sexual in nature. Certain behaviors may be considered sexual harassment in the workplace when they interfere with an employee’s job or job performance, create an offensive work environment, or intimidate the employee experiencing the sexual harassment. Such behaviors may range from making or distributing offensive jokes, to inappropriate touching, or pressuring someone to engage in a personal or sexual relationship.

h. Title VII of the Civil Rights Act of 1964 refers to two types of sexual harassment in the workplace:

(1) **Quid Pro Quo.** *Quid Pro Quo* harassment occurs when a person in a position of authority, usually a supervisor, requires employees to tolerate inappropriate behavior that is sexual in nature as a condition of obtaining or keeping a job, or a job benefit, including raises or promotions. A *Quid Pro Quo* claim need only consist of a single occurrence. For instance, a superior who demands that an employee kiss him or her in exchange for a promotion has committed *Quid Pro Quo* sexual harassment.

(2) **Hostile Work Environment.** This type of sexual harassment refers to a pattern of conduct that is unwelcome, sexual in nature, and pervasive in the workplace, or is severe enough to create a hostile, offensive, or abusive work environment. While *Quid Pro Quo* sexual harassment requires only a single act, actions constituting a hostile work environment must be frequent, ongoing, and/or severe in nature. The existence of a hostile work environment and the character of the sexual harassment will depend upon the following elements:

(a) Whether the harasser was a supervisor or co-worker;

(b) Frequency of the conduct;

(c) Whether the conduct was verbal, physical, or in other forms;
(d) Whether the conduct was blatantly offensive or clearly hostile in nature;

(e) Whether the conduct was directed at a single person or more than one person; or,

(f) Whether there was a single harasser or if others joined in the harassment.

5-6. **Complaint Reporting Procedures.** Any person who in good faith believes that they were, or are being, harassed or sexually harassed, and any person who witnessed what they believe in good faith to be harassment or sexual harassment, must report it to a supervisor, manager, or someone in management, including the Human Resources Director, someone in the Office of Human Resources, someone in the Office of the General Counsel, or someone in the Office of Civil Rights.

   a. A supervisor or manager who receives a report or complaint from an employee must report it to the Director of Human Resources or the Office of the General Counsel promptly. Complaints to the Office of the General Counsel will be promptly forwarded to the Director of Human Resources for further review and appropriate action.

   b. To the extent practicable, action will be taken to eliminate further contact between the subject(s) of the complaint and the person(s) experiencing or reporting harassment or sexual harassment until the conclusion of the complaint's assessment and, if warranted, an investigation.

   c. The review and investigation of the complaint shall commence promptly after receipt of the complaint in the Office of Human Resources. The investigation shall be completed as soon as possible. As appropriate, the Office of Human Resources will involve the Office of Inspector General in the investigatory process when needed based on the circumstances surrounding a specific case. If harassment or sexual harassment is found, discipline will be imposed against the person(s) found to be a harasser.

   d. Following an investigation and after imposition of disciplinary or other corrective action, the Office of Human Resources shall confer with the person(s) reporting the harassment or sexual harassment or the person(s) experiencing harassment or sexual harassment, as appropriate, to address any steps that have been taken by the Department and to offer any resources available from the state's Employee Assistance Program.

5-7. **Privacy.** The degree of privacy afforded to persons who experience harassment or sexual harassment, or the circumstances under which a complaint of harassment or sexual harassment, including other records which are related to the complaint, must be disclosed to third parties are primarily set forth in section 119.071(2)(g)1. and 2., and (n), Florida Statutes (Florida’s Public Records laws), or other applicable state or federal law or regulation.

   a. The Department’s policy governing responses to public records requests is as follows:

      (1) Information relating to a complaint of harassment or sexual harassment, and all records relating to the complaint, will not be disclosed under a public records request until:

         (a) There is a finding of “Reasonable Cause;” or,

         (b) The investigation becomes inactive.

      (2) However, the complaint or other record may be disclosed under a public records request if it is made part of the official record of a hearing or court proceeding.
b. Information relating to a complaint of harassment or sexual harassment, and all records relating to the complaint, will be disclosed to:

(1) The Florida Commission on Human Relations or the Equal Employment Opportunity Commission upon their request; or,

(2) Any other state or federal agency that is authorized to have access to such complaint or records in the furtherance of such agency’s official duties required by law.

c. If the person experiencing harassment or sexual harassment chooses not to file a complaint with a court or an appropriate administrative agency or entity (i.e., the Florida Commission on Human Relations, or the Equal Employment Opportunity Commission, or the Department’s Office of Civil Rights) and that person requests that records of the complaint remain confidential, no complaint or record relating to an allegation of harassment or sexual harassment will be disclosed pursuant to a public records request per section 119.071(2)(n), Florida Statutes.

5-8. Training. Each person subject to this operating procedure shall be given training on harassment and sexual harassment within 30 days of the start of their employment. All other employees, including supervisors and managers, will receive training on a quarterly basis. Documented evidence of participation in training shall be retained in the personnel file.

5-9. Other Federal, State, and Departmental Civil Rights.

a. In lieu of complaining to the Office of the General Counsel, the Office of Human Resources, or to a supervisor or manager as provided in this operating procedure, the person experiencing harassment or sexual harassment may file a complaint with these external agencies:

Florida Commission on Human Relations
ATTN: Executive Director
4075 Esplanade Way, Room 110
Tallahassee, Florida 32399
Telephone: 850-488-7082

or,

United States Equal Employment Opportunity Commission
Miami District Office
ATTN: Michael Ferrell, District Director
100 S.E. 2nd Street, Suite 1500
Miami, Florida 33131
Telephone 800-669-4000
Facsimile: (305) 808-1855
TTY: (800) 669-6920
ASL Video Phone: (844) 234-5122

b. If filed externally with the Equal Employment Opportunity Commission, usually the complaint must be received within 300 calendar days of the occurrence of the alleged incident. If filed with the Florida Commission on Human Relations, the complaint must be received within 365 calendar days of the occurrence of the alleged incident.
c. Alternatively, a complaint may also be filed directly with the Department’s Office of Civil Rights.

(1) If filed with the Office of Civil Rights, the complaint must be received within 365 calendar days of the occurrence of the alleged incident. The contact information for the Office of Civil Rights is:

Office of Civil Rights  
ATTN: Human Resources Administrator – Civil Rights  
1317 Winewood Boulevard, Building 1, Suite 140  
Tallahassee, Florida 32399-0700  
Phone: 850-487-1901

(2) In accordance with Rule 60L-40.001, Florida Administrative Code, a complaint (including a verbal complaint) filed with the Office of Civil Rights must, at a minimum, include the following information:

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

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

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

(3) Internal complaints filed with the Office of Civil Rights will be reviewed, investigated, decided, and written notice of the finding sent to the filing person as soon thereafter as possible.

5-10. Notice and Acknowledgement. A copy of this operating procedure is available online to each employee at http://eww.dcf.state.fl.us/asg/pdf/060-10c5.pdf. A copy of Rule 60L-40.001, Florida Administrative Code is available online to each employee at https://www.dms.myflorida.com/content/download/118033/648354/60L-40.pdf. Each employee is required to E-Acknowledge receipt of the location of this information online in the Human Resources Training System. A copy of the E-Acknowledgement will be retained in the Human Resources Training System.

5-11. Other Reasons for Disciplinary Action. Any person subject to this operating procedure that knowingly makes a false complaint or allegation of harassment or sexual harassment against another employee will be disciplined.

5-12. Retaliation. Retaliation against any person who has, in good faith, reported or complained of unlawful harassment or sexual harassment, or who has participated in any way in a review or investigation or proceeding involving allegations or assertions of harassment or sexual harassment is prohibited. Any person who retaliates against another person in violation of this operating procedure will be disciplined.

5-13. Other Information. If there are questions about this operating procedure, contact the Office of Human Resources or the Office of Civil Rights. If additional reading material is desired or needed to clarify the purpose or intent or application of the operating procedure to specific situations, please review the authorities cited above.
SUMMARY OF REVISED, DELETED, OR ADDED MATERIAL

The operating procedure has been completely revised and re-written.
GLOSSARY OF TERMS USED IN THIS OPERATING PROCEDURE

a. Administrative Authority. An individual who has authority to take disciplinary action.

b. Alleged Discriminatory Official. The employee, supervisor, manager, volunteer, or vendor who is alleged to have engaged in the discriminatory or retaliatory action.

c. Charging Party. The employee, applicant, client, or volunteer, filing a complaint of discrimination or retaliation.

d. Department. The Department of Children and Families.

e. Civil Rights Officer. The individual, appointed by the Assistant Staff Director for Civil Rights and the Regional Director, Circuit or Hospital Administrator, who is responsible for equal employment, service delivery and civil rights activities within Headquarters, a Region or Circuit, or a Mental Health Treatment Facility.


g. Harassment. Unwelcomed conduct that is motivated by in whole or in part by race, color, sex, religion, national origin, disability, and/or age.

h. Respondent. The Department of Children and Families.

i. Retaliation. Any form of reprisal or adverse action taken against a person who in good faith has participated in filing or the investigation or prosecution of a complaint alleging harassment, including sexual harassment, or against a person who has opposed an unlawful employment practice or activity prohibited by state or federal laws or by Department policies.

j. Sexual Harassment. Any form of unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature from any person whether directed towards or in the presence of an employee, applicant, client, or volunteer when:

(1) Submission to such conduct is made, either explicitly or implicitly, a term or condition of an individual’s employment, or service delivery;

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

(3) Such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment.