



# State Records Center and Archives

## New Mexico Commission of Public Records

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**SERIES:** Human Resources (SRCA 400)

**NUMBER:** SRCA-406

**TITLE:** Unlawful Discrimination and Sexual Harassment

**PURPOSE:** The purpose of this policy is to define and provide direction to address unlawful discrimination and sexual harassment in the workplace.

**SCOPE:** This policy applies to all SRCA employees.

### **DEFINITIONS:**

**“Equal Employment Opportunity Commission”** (EEOC) means the Federal investigative agency of the United States Department of Justice, which regulates and enforces equal employment opportunity laws, guidelines, standards and rules.

**“Hostile Work Environment”** a legal term used to describe a type of sexual harassment. It can take the form of verbal, visual or physical conduct of a sexual nature that is unwelcome by the complainant, affects the complainant's conditions of employment, and which creates an environment that the complainant finds, and a reasonable person would find intimidating, hostile, abusive or offensive. The conduct can consist of foul language, sexual or sexist remarks or comments, obscene gestures, physical contact, the display of pornographic material, joking, inquiries into a person's sexual habits, bragging about ones' own sexual prowess, repeatedly asking for dates and other activities of a sexual nature.

**“New Mexico Human Rights Commission”** means a Division within the NM Department of Workforce Solutions (formally the NM Department of Labor) charged with the receipt and investigation of allegations and enforcement of the New Mexico Human Rights Act, and other State law prohibiting discrimination in employment because of race, color, sex, sexual orientation, gender identity, religion, national origin, age, disability or retaliation.

**“Retaliation”** means adverse employment action, intimidation or coercion by any employee against any other individual because that person made a complaint alleging unlawful discrimination, sexual harassment or hostile work environment, or because that person testified, assisted, or participated in the investigation or hearing concerning such conduct.

**“Sexual Harassment”** means unwelcome sexual advances, request for sexual favors, hostile work environment, or other verbal or physical conduct of a sexual nature where:

- submission to the conduct is made a condition of employment or submission to or rejection of the conduct is used as the basis for employment decisions (called by the legal term "quid pro quo"); or
- where the conduct unreasonably interferes with work or creates an intimidation, hostile or offensive working environment (called by the legal term "hostile work environment").

Sexual harassment is further defined and described in the guidelines, standards and rules adopted by the United States Equal Employment Opportunity Commission and the New Mexico Human Rights Commission.

**“Unlawful Discrimination Conduct”** means, but is not limited to, unlawful actions either committed or omitted specifically because of a person's race, ethnicity, gender, sexual orientation, gender identity, color, national origin, age, religion, physical or mental disability. Discrimination is further defined and described in the guidelines, standards and rules adopted by the New Mexico Civil Rights Commission and the Equal Employment Opportunity Commission.

**“SRCA”** means the New Mexico Commission of Public Records - State Records Center and Archives.

**A. GENERAL PROVISIONS:** Unlawful discrimination, which includes sexual harassment, violates Title VII of the Civil Rights Act and the New Mexico Human Rights Act [28-11NMSA 1978 et. seq.]. The SRCA is committed to maintaining a work environment free from all forms of unlawful discrimination, including sexual harassment. Unlawful discrimination based on race, color, religion, national origin, ancestry, sex, sexual orientation, gender identity, age, physical or mental handicap or serious medical condition, or spousal affiliation is strictly prohibited. Sexual harassment, a form of illegal discrimination, either explicit or implicit, is also strictly prohibited.

All employees of SRCA will treat other employees, customers, and the general public in a professional manner with dignity and respect. Any employee found to have violated the provisions of this policy shall be subject to disciplinary action up to and including dismissal. Furthermore, *retaliation* against any individual for making a complaint alleging unlawful discrimination or sexual harassment or for participating in an investigation or hearing concerning unlawful discrimination or sexual harassment is also strictly prohibited.

This policy is not for the enforcement of a general civility code. Some conduct (e.g., unprofessional behavior, expressions of animosity or juvenile provocation) may be undesirable and subject to discipline but is not necessarily unlawful discrimination or sexual harassment.

**B. EMPLOYEE NOTIFICATION AND TRAINING:** The most effective means of eliminating unlawful discrimination and sexual harassment from the workplace is through employee training and the prompt reporting of such matters by any individual who has been subjected to, or observed such conduct. The Human Resource Manager is responsible for giving all new employees a copy of this policy upon hire and every year thereafter. Acknowledgements of this policy will be signed by all employees and placed in each employees personnel file. The State Records Administrator may mandate ongoing training for employees as deemed appropriate.

**C. EMPLOYEE RESPONSIBILITY:** All employees have a responsibility to read and become familiar with the provision of this policy. All employees have an obligation to report incidents of unlawful discrimination and or sexual harassment in accordance with this policy.

**D. REPORTING PROCEDURES:** Any employee who believes that they have been subjected to, or witnessed unlawful discrimination and or sexual harassment shall report the incident(s) to the Human Resource Manager, the Deputy, or the State Records Administrator. Employees may file a complaint directly with the United States Equal Employment Opportunity Commission (EEOC) or the New Mexico Human Rights Commission. However, employees are encouraged to utilize the procedures in this policy first to resolve unlawful discrimination and sexual harassment issues.

All employees are encouraged to provide a written statement of the complaint within five working days of an incident. This does not preclude employees from filing complaints within the prescribed time periods by law.

Likewise, all supervisors who have information that an employee has been subjected to, or witnessed unlawful discrimination and or sexual harassment shall report the incident(s) to the Human Resource Manager, the Deputy, or the State Records Administrator.

**E. DISCIPLINE:** Unlawful discrimination and sexual harassment of another employee or a member of the public may result in disciplinary action, up to and including dismissal. Supervisors who fail to promptly report actual or alleged incidents of unlawful discrimination and or sexual harassment may be subject to disciplinary action, up to and including dismissal.

SRCA prohibits employees' from providing false information in any report, investigation, or hearing regarding unlawful discrimination and sexual harassment. Any person found to have provided false information or knowingly files a false complaint may be subject to disciplinary action, up to and including dismissal.

**F. PROHIBITION ON RETALIATION:** SRCA strictly prohibits retaliation against any individual who has filed a complaint alleging unlawful discrimination and or sexual harassment or against any individual who cooperates in an investigation or hearing regarding any such allegation. This includes, but is not limited to, behaviors such as intimidation, coercion, threatening, or taking reprisal against an employee, patron, contractor or nonemployees.

Any employee who believes that they have been subjected to retaliation must report the alleged retaliation to the Human Resources Manager, the Deputy, or the State Records Administrator. Acts of retaliation may result in disciplinary action, up to and including dismissal.

**G. VENDORS, CUSTOMERS, AND OTHER MEMBERS OF THE PUBLIC:** SRCA encourages employees to report unlawful discrimination/sexual harassment from vendors, customers, and the public in general to their supervisor or manager when such harassment relates to work activities or occurs on SRCA property.

**H. CONFIDENTIALITY:** Allegations of unlawful discrimination/sexual harassment will be investigated in as confidential a manner as is practical and appropriate under the circumstances.

[2.3.20.012, 7/01/95; renumbered 3/15/02; renumbered and amended 3/7/2014]

**APPROVED:**

  
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**John Hyrum Martinez**  
State Records Administrator

**EFFECTIVE DATE:**

March 7, 2014