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Delaware Judicial Branch Respectful Workplace and Anti-Discrimination Policy

1. PURPOSE

The State of Delaware Judicial Branch ("Judicial Branch") is committed to establishing a workplace in which all Employees treat each other and the public with dignity, courtesy, and respect. The Judicial Branch complies with all applicable State and Federal anti-discrimination and anti-harassment laws and regulations and will not tolerate unlawful discrimination or harassment of any kind. The Judicial Branch has developed the *Judicial Branch Respectful Workplace and Anti-Discrimination Policy* ("Policy"), to educate Employees about actions that constitute harassment and discrimination. It also includes Procedures ("Procedures") for reporting and investigation of conduct that may violate this Policy. Through consistent and impartial application of this Policy and Procedures the Judicial Branch seeks to prevent behavior that would violate this Policy.

All Employees are covered by and must comply with this Policy. Any Employee found to have violated this Policy will be subject to appropriate discipline, including but not limited to, written reprimand, suspension, or termination, depending on the seriousness of the violation.

2. SCOPE

This Policy applies to all Judicial Branch Employees as defined in the Judicial Branch Personnel Rules, including Judicial Officers, part-time Employees, temporary Employees, casual/seasonal Employees, interns, volunteers, and contractors.

This Policy defines and prohibits conduct that is unacceptable in the official workplace, and in any work-related setting outside the official workplace (including but not limited to business trips, business meetings, and Employer sponsored events).

Judicial Branch Employers shall, at a minimum, comply with this Policy, but may, with the approval of the Chief Justice, adopt more rigorous provisions that may apply to that Court or Judicial Branch Agency.

This Policy and Procedure does not preempt or supersede any legal procedures or remedies otherwise available under State or Federal law, and do not create any individual rights or causes of action not already existing and recognized under State or Federal law. Initiating a complaint under this Policy does not extend any applicable deadlines for filing a complaint

under State or Federal law or regulations. In the case of any conflict between this Policy and any applicable law or regulation, the law or regulation applies or supersedes.

This Policy does not restrict or prohibit communications or actions protected or required by State or Federal law.

3. DEFINITIONS

Complainant. An individual who makes a complaint and begins the complaint process under this Policy.

Complaint. A written expression of dissatisfaction or concern about how an Employee believes they are being treated in the workplace. Verbal expressions will be documented in writing by the Complainant or HR.

Discrimination. The unjust or prejudicial treatment of an individual or individuals, based on their membership in a protected class.

Employer. Individually or collectively, a Court, Administrative Office of the Courts, or Nonjudicial Agency. Nonjudicial Agencies include the Office of the Child Advocate, Office of the Public Guardian, Maternal and Child Death Review Commission, and Delaware Nursing Home Residents Quality Assurance Commission.

Harassment. Unwelcome conduct an individual experiences that is based on that individual's protected class. Harassment becomes unlawful when: 1) enduring the offensive conduct becomes a condition of continued employment; or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. The behavior does not need to be intentional to be considered harassment.

Hostile Work Environment. A workplace that is characterized by harassment that is: unwelcome, because of the Employee's protected class status, severe enough to change the conditions of employment and create an abusive environment that the Employee themselves and any reasonable person would find abusive. A hostile work environment can be created by anyone in the work environment. For example, supervisors, other employees or third parties, including members of the public.

Investigation. Upon receiving a Complaint, the Investigator assigned to evaluate the Complaint will develop an impartial and thorough factual record upon which to make findings on the allegations raised in the Complaint. This will include interviewing the Complainant Employee, interviewing any witnesses, interviewing the Respondent, documenting all the information, analyzing all the information, and making an Investigation Finding and Report.

Investigation Findings. Complaint Investigations will result in one of the following conclusions: substantiated, partially substantiated, or unsubstantiated.

Substantiated Complaint. A finding that the evidence developed in the Investigation of the alleged conduct corroborates or verifies the allegations asserted in the Complaint.

Partially Substantiated Complaint. A finding that the evidence developed in the Investigation of the alleged conduct corroborates or verifies some but not all allegations asserted in the Complaint.

Unsubstantiated Complaint. A finding that the evidence developed in the Investigation of the alleged conduct did not support or verify the allegations asserted in the Complaint.

Investigator. A Human Resources (HR) Employee or other designee assigned to conduct the inquiry into the allegations asserted in the Complaint.

Protected Class. An individual's race, protective hairstyle, color, national origin, gender, age, sex, pregnancy, marital status, family responsibilities, sexual orientation, gender identity or expression, veteran's status, religion, genetic information, disability, status as a victim of domestic violence, sexual assault and/or stalking, or any other category recognized by State or Federal law.

Respondent. The individual(s) against whom a Complaint is made and who is afforded the opportunity to respond to a Complaint under this Policy.

Retaliation. An act of reprisal, interference, restraint, penalty, discrimination, intimidation, or harassment against any individual(s) taken because that individual(s) has exercised rights under this Policy, or State, or federal anti-discrimination laws, and that would reasonably discourage the individual from making a complaint.

Sexual Harassment. Conduct defined and prohibited in 19 *Del. C.* § 711A(c), which includes when an Employee is subjected to unwelcome sexual advances, requests for favors, and/or other verbal or physical conduct of a sexual nature when 1) submission to such conduct is made explicitly or implicitly a term or condition of Employee's employment; 2) submission to or rejection of such conduct is used as the basis for employment decision affecting an Employee; or 3) such conduct has the purpose or effect of unreasonably interfering with an Employee's work performance or creating an intimidating, hostile, or offensive work environment.

Working Days. The days on which the Court is open for business Monday through Friday. Working days exclude Saturdays, Sundays, holidays and state closures (e.g. snow days).

4. POLICY

To ensure a safe and respectful workplace free of discrimination and harassment, the Judicial Branch has established and will impartially enforce the following Policy:

4.1. Conduct constituting Discrimination or Harassment is prohibited.

4.1.1. The following conduct constitutes Discrimination under this Policy:

- Withholding or providing employment opportunities, benefits, or privileges based on an Employee's protected class status, or
- Creating unequal working conditions based on an Employee's protected class status, or
- Using different work evaluation standards for Employees based on the Employee's protected class.

4.1.2. The following conduct constitutes Harassment under this Policy:

- Verbal Harassment – Unwelcome or offensive comments on an Employee's appearance, age, private life, etc.; or threats of any kind.
- Physical Harassment – Unwelcome or offensive physical contact with an Employee, including patting, hugging, pinching, kissing, violence, etc.; inappropriate staring or gestures; or distribution, display, or discussion of written or graphic materials that ridicule, denigrate, or insult, an individual or group based on a protected class status.
- Sexual Harassment –
    - Verbal Sexual Harassment – Unwelcome or suggestive comments, innuendos, jokes, sexual propositions, lewd remarks, whistling, grunting, or threats; requests for any type of sexual favor (this includes repeated, unwelcome requests for dates); verbal abuse or "kidding" that is oriented towards a prohibited form of harassment, including that which is sexual in nature and unwelcome; and using different work evaluation standards for Employees based on the Employee's protected class.
    - Nonverbal Sexual Harassment – Distribution, display, or discussion of any written or graphic material, including calendars, posters, and cartoons that are sexually suggestive or show hostility toward an individual or group because of sex; suggestive or insulting sounds; leering; staring; whistling; obscene gestures; content in letters and notes, facsimiles, e-mail, photos, text messages, social media,, and internet postings; or other forms of communication that is sexual in nature and offensive.
    - Physical Sexual Harassment – Unwelcome, offensive, or unwanted physical contact, including touching, tickling, pinching, patting, brushing up against, hugging, cornering, kissing, fondling, and assault.
    - Quid Pro Quo Sexual Harassment – Providing or withholding employment benefits such as raises, promotions or optimal shifts, or making employment decisions based on compliance with sexual

advances. For example, a supervisor promising an Employee a raise in exchange for going on a date or sexual favors.

4.1.3. Repeated or intermittent patterns of engagement in any or all of the above conduct constitutes a Hostile Work Environment and is prohibited.

4.2. Discipline, intimidation, or reprisal against any Employee because of the Employee's good faith filing or responding to a Complaint under this Policy or participating in an Investigation under this Policy constitutes Retaliation and is prohibited.

4.3. Any Employee found to have engaged in conduct prohibited by this Policy will be subject to appropriate disciplinary action. Based on the seriousness of the offense, this may include: written reprimand, suspension, or termination of employment.

4.4. Employers must distribute this Policy to all Employees who must then acknowledge, by written signature, receipt and understanding of this Policy within thirty (30) Working days of initial hire, or within thirty (30) Working Days of distribution of this Policy.

4.5. Employers must post in the workplace, in a visible location where other notices are customarily posted, the Delaware Department of Labor ("DOL") Sexual Harassment Notice. Employers must also provide the DOL Notice to all new Employees upon hire.

4.6. At a minimum, Employees are required to participate in interactive training to prevent sexual harassment and other forms of discrimination as described and prohibited by this Policy within one (1) year of commencement of employment, and thereafter every two (2) years, as provided by the Employer. An Employer may choose to require additional training or offer training on a more frequent basis.

4.7. Employers are required to maintain records of and annually track complaints under this Policy. Sexual harassment Complaints must be tracked separately.

4.8. Communications or actions protected or required by State or Federal law are not prohibited by this Policy.

5. PROCEDURES

Any Employee who experiences conduct prohibited by this Policy may, but is not required to, directly inform the alleged offender that the conduct is unwelcome. Any Employee who experiences conduct prohibited by this Policy can file a Complaint in accordance with the Procedures below.

The Judicial Branch will thoroughly and impartially investigate all Complaints. Every individual involved in a Complaint will be treated with courtesy and respect (the Complainant, Respondent, witnesses, etc.). Filing a Complaint in good faith will not adversely impact an Employee. Filing a Complaint in bad faith is a violation of this Policy. If a Complaint is proven to be false or malicious, the Employee will be subject to discipline, up to and including termination.

5.1 Confidentiality. The Judicial Branch and the Employer will maintain the confidentiality of all aspects of the Procedures to the extent legally possible. All information (written, verbal, etc.) and all involved individuals' privacy will be protected to the extent permitted under the Judicial Branch's and Employer's legal obligations and obligation to conduct a fair and thorough Investigation. All individuals involved in a Complaint must also maintain strict confidentiality throughout and after the conclusion of the Procedures.

5.2 Complaint Procedures. The Judicial Branch has established the following procedures for initiating a Complaint under this Policy. Prompt reporting of Complaints are encouraged so that all matters are fairly and thoroughly investigated and addressed.

A Complaint may only be submitted by an individual Employee. If from personal observation or from Employee contact, a Supervisor or Manager becomes aware of alleged conduct prohibited under this Policy, the Supervisor or Manager must inform the Employer's HR representative.

If an Employee believes they have experienced conduct prohibited by this Policy, they may initiate either an Informal Complaint or a Formal Complaint.

5.2.1 Informal Complaint Procedure.

5.2.1.1 To initiate an Informal Complaint, an Employee may contact – verbally or in writing – any of the following designated Staff members responsible for receiving Complaints:

- Manager
- Supervisor
- HR Representative

5.2.1.2 If one of the designated Staff members is the alleged Respondent, the Employee may contact a different designated Staff member within the list.

5.2.1.3 Upon receipt of an Informal Complaint, the Staff member will:

- Immediately record the dates, times and reported facts of the alleged incident;
- Ensure the Employee understands the Informal Complaint process;
- Ensure the Employee is aware that initiating an Informal Complaint does not preclude the Employee from initiating a Formal Complaint or from pursuing other legal avenues;
- Contact the alleged Respondent to inform them of the Informal Complaint, obtain their response, and ensure the Respondent understands the Informal Complaint process;

- If possible, facilitate a discussion between both parties to achieve an informal solution;
- If a solution is reached, make a confidential record of the solution;
- The Informal Complaint procedure may take up to thirty (30) calendar days. If a longer timeframe is necessary, the Complainant and Respondent will be notified;
- Within thirty (30) calendar days of the resolution, follow up with both parties to confirm that the conduct has stopped.

If the matter is not resolved through the Informal Complaint Procedure, the Complainant may initiate a Formal Complaint at any time. If the matter is not successfully resolved, the Supervisor or Manager must report the allegation(s) in writing only to their Employer's HR representative as soon as reasonably possible. HR will communicate with others as necessary.

5.2.2 Formal Complaint Procedure.

5.2.2.1 To initiate a Formal Complaint, an Employee may submit a Complaint Form to any of the following Staff members responsible for receiving Complaints:

- Manager
- Supervisor
- HR Representative

5.2.2.2 Within five (5) Working Days of receiving a Complaint Form, or being advised by a Supervisor or Manager of an alleged violation of this Policy, the Employer's HR representative will review and initiate an Investigation. If a Supervisor or Manager receives a Complaint Form or is advised of an alleged violation, they are to report it to the HR representative immediately.

5.2.2.3 If multiple Complaints are received on the same issue, the HR representative may consolidate the submissions to address the issue more effectively and efficiently.

5.2.2.4 Upon initiating an Investigation, an HR Employee or designated party will be assigned as an Investigator.

5.2.2.5 The Investigator will notify the alleged Respondent in writing that they are the subject of a Formal Complaint, and to ensure the Respondent understands the Formal Complaint process.

5.2.2.6 If a Complaint involves an outside vendor, consultant, or similar independent contractor, the Investigator will notify the outside vendor, consultant, or similar independent contractor of the complaint, and the matter will be addressed jointly with the outside entity's employer.

5.2.2.7 If the Formal Complaint involves a member of the public, the matter will be directly handled with the member of the public on a case-by-case basis.

5.2.2.8 During the Investigation, the Investigator will interview the Complainant, the Respondent, and any witness; review relevant documents and other media; and conduct other investigative actions to determine whether the alleged conduct occurred.

5.2.2.9 Interviews may be recorded with prior written consent of both the Investigator and the individual being interviewed or their representative. If either party refuses the recording, no participants will be allowed to record the interview or subsequent proceedings.

5.2.2.10 Employees must cooperate fully with any investigation covered under this Policy. Failure to cooperate with investigations may result in disciplinary action.

5.2.2.11 As soon as reasonably possible but no longer than ninety (90) Calendar Days after receiving a Complaint, the Investigator will conclude the Investigation. If additional time is needed to complete the Investigation, the Investigator will notify in writing, the Complainant, the Respondent, and the Employer HR.

5.2.2.12 Upon completion of the Investigation, the Investigator will prepare a written report consisting of the Investigation findings, conclusion, and recommendations.

5.2.2.13 Based on the findings and criteria in this Policy, the Investigation will contain one of the following conclusions: Substantiated, Partially Substantiated, or Unsubstantiated.

5.2.2.14 If the Investigation concludes the Complaint is Substantiated and a violation of this policy occurred, the Investigator will work collaboratively with the Employer's management representative to determine appropriate corrective action. Corrective action may include, but is not limited to, mandatory referral to the Employee Assistance Program ("EAP") (as available), additional training, and disciplinary action up to and including termination.

5.2.2.15 If the Investigation concludes the Complaint is Unsubstantiated, or Partially Substantiated, or if it is determined that there has been no violation of this Policy, the HR representative may still recommend action (e.g., additional training, voluntary EAP referral, etc.).

5.2.2.16 Within five (5) Working Days of concluding the Investigation, the Investigator will meet with the Complainant and the Respondent separately and notify each of the investigative conclusion.

5.2.2.17 Any corrective action is to be administered within thirty (30) Working Days of the latter of these meetings by the Respondent's supervisor/manager. If additional time is needed, the Complainant and Respondent will be notified.

5.2.2.18 Any disciplinary action(s) will be processed in accordance with the Judicial Branch Personnel Rules (and/or Collective Bargaining Agreement ("CBA") where applicable).

5.2.2.19 If a Complaint involves alleged conduct by a Respondent who has also been charged with a criminal offense, the Employer and Investigator will cooperate with the Deputy Attorney General (DAG) assigned to the criminal complaint and the Respondent's counsel throughout the Complaint Procedure. This may cause the Investigation to exceed the Complaint Procedure ninety (90) Working Day time frame.

5.3 Filing a Complaint in accordance with this Policy will not extend any statutory or regulatory time frames that may be otherwise available or applicable to the alleged conduct.

5.4 The process in this Respectful Workplace Anti-Discrimination Policy will not serve as an appeal to any administrative decision (grievances pursuant to the Judicial Branch Personnel Rules or a CBA, discrimination charges filed at the DOL, or Equal Employment Opportunity Commission.)

5.5 Employee Assistance Program. The Employee Assistance Program provides confidential counseling services to Employees enrolled in one of the State's health plans. Any Employee wishing to confidentially discuss an incident or seeking information and/or advice of a personal nature are encouraged to contact the EAP. The EAP's role in such cases is limited to personal counseling and treatment for the Employee client. Contacting the EAP is not notification to the Judicial Branch of a potential harassment or discrimination issue.

6. ASSOCIATED POLICIES AND FORMS

Respectful Workplace and Anti-Discrimination Complaint Form

Delaware Sexual Harassment Notice from Department of Labor

Delaware Judicial Branch Respectful Workplace and Anti-Discrimination Policy

This is to certify that I have read, reviewed, and understand the provisions set forth in the Delaware Judicial Branch Respectful Workplace and Anti-Discrimination Policy as presented to me on the date of signature.

Employee Signature: Date :

Print Name: