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<p style="text-align: center;"><u>ADMINISTRATIVE REGULATIONS</u></p>  <p style="text-align: center;">COLORADO DEPARTMENT OF CORRECTIONS</p>	<p style="text-align: center;">REGULATION NUMBER</p> <p style="text-align: center;">1450 - 5</p>	<p style="text-align: center;">PAGE NUMBER</p> <p style="text-align: center;">1 OF 9</p>
	<p>CHAPTER: Staff Personnel</p>	
	<p>SUBJECT: Unlawful Employment Practices / Policy Prohibiting Workplace Discrimination</p>	

I. POLICY

It is the express policy of the Colorado Department of Corrections that discrimination against or harassment of any employee based on race, ethnicity, gender, sexual orientation, age, religion, physical or mental disability, or color is prohibited, and will not be tolerated. The Department of Corrections is committed to implementing fair procedures in employment, and will actively pursue a discrimination-free and harassment-free workplace. Persons who feel they have been the subject of discrimination or harassment in the workplace are encouraged to address these concerns at inception, following these guidelines.

It is acknowledged that workplace discrimination and/or harassment can and does create a negative work environment which may detrimentally affect productivity, efficiency, work attendance, and staff turnover. Therefore, workplace discrimination and/or harassment complaints shall be dealt with quickly and seriously. Persons found guilty of such behaviors may be subject to corrective and/or disciplinary actions, including but not limited to counseling, reprimand, demotion, suspension, or termination.

II. PURPOSE

The purpose of this Administrative Regulation is:

- A. To provide the Department of Corrections with a policy against discrimination and/or harassment in the workplace; and,
- B. To set forth definitions, complaint filing procedures, supervisory responsibilities, investigative procedures, rights of the complainant and accused, and corrective actions.

III. DEFINITIONS

- A. Bona Fide Occupational Qualifications (BFOQ): A legitimate reason for an Appointing Authority to exclude persons on an otherwise illegal basis of consideration, (e.g., only persons of the same sex are allowed to strip search another of the same sex). All BFOQ decisions must be properly justified, documented, and appropriately filed with the DOC Director of Human Resources.

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- B. Colorado Civil Rights Division (C.C.R.D.): The Division of the Colorado Department of Regulatory Agencies, created to investigate complaints on their own behalf and on behalf of the State Personnel Board, of discrimination and/or harassment.
- C. Discrimination: Discrimination for or against any person is expressly prohibited except for bona fide occupational qualifications. Discrimination includes, but is not limited to, actions either committed or omitted specifically because of membership in one or more of the protected classes: race, ethnicity, age, religion, gender, sexual orientation, color, physical or mental disability. Discrimination is also specifically defined as described in the following guidelines and standards adopted by the Colorado Civil Rights Division:
1. Creed and Religious Discrimination Rules. (Rule 50)
 2. Substantive Rules Prohibiting Discrimination on Account of Physical Handicap. (Rule 60)
 3. National Origin Discrimination Rules. (Rule 70)
 4. Filing an Investigation of the Charge. (Rules 10.1-10.65)
 5. Age Discrimination and Employment Act.
 6. Sex Discrimination Rules. (Rule 80)
- D. Equal Employment Opportunity Commission (E.E.O.C.): The Federal investigatory agency of the Department of Justice, which deals with complaints of discrimination/harassment.
- E. Harassment: To irritate, torment, continually annoy or pester, creating an intimidating, hostile or offensive environment.
- F. Respondent: That person, at each level of the grievance process, responsible for addressing and/or answering the grievance issues for the Department of Corrections.
- G. Sexual Harassment: Any unwelcomed sexual advances, request for sexual favors or other verbal or physical conduct of a sexual nature, when:
1. Submission to such conduct is made either explicitly or implicitly a term of an individual's employment;

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2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual;
3. Such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive environment; and/or,
4. Such conduct stereotypes a gender into a degrading, less than desirable status within the workplace, creating an intimidating, hostile or offensive environment. Any deliberate, unwanted or unwelcomed behavior of a sexual nature or sexual stereotyping, whether verbal, non-verbal, or physical.

H. Workplace Discrimination and Sexual Harassment Investigative Team:
A team of specially trained and selected DOC employees assigned on an ad hoc basis to the Inspector General's Office to investigate allegations of workplace harassment/discrimination.

IV. PROCEDURES

A. General:

1. All new employees of the Department of Corrections shall receive a copy of this Administrative Regulation during initial processing by the appropriate Departmental Personnel Office.
2. All employees shall receive training regarding this Administrative Regulation and the grievance procedure during pre-service and through in-service training on an annual basis.
3. Each and every employee who commences an action regarding discrimination/harassment shall be immediately provided with a complete copy of this Administrative Regulation from the supervisor receiving the initial complaint.
4. All employees shall have access to the grievance process as described in the Colorado State Personnel Board Rules, Chapters 10 and 11, as outlined in Attachment "A", Workplace Discrimination and/or Harassment Grievance Procedure Flowchart.

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5. An aggrieved employee is encouraged to utilize the procedures described herein first in the hope that any workplace discrimination and/or harassment claims may be resolved as quickly as possible. If the Colorado State Personnel Board grievance procedures are not utilized, the complainant must be aware of the filing time frames required by other agencies appropriate for possible resolution:
 - a. C.C.R.D.: Must be filed within 6 months/180 days of the alleged incident;
 - b. E.E.O.C.: Must be filed within 300 days of the alleged discrimination/harassment.
6. The Workplace Discrimination and Sexual Harassment Investigative Team may be requested by the complainant or the Appointing Authority at Step 2 or 3 of the grievance process. The Team must investigate allegations at Step 4 of the grievance process. In order to complete the investigation a reasonable waiver of the time lines may be necessary.
7. Reprisals or retaliation by the Department of Corrections or any of its agents or representatives for filing a complaint of alleged discrimination/harassment are expressly prohibited, and constitute separate grievable actions.
8. All records relating to complaints regarding discrimination/harassment are confidential, and only a finding of guilt shall be placed in an employee's personnel file. A confidential file relating to discrimination and/or harassment investigations shall be maintained by the DOC Director of Human Resources.
9. All relevant facts and allegations that the complainant chooses to include must be contained in the initial written grievance complaint because the grievance, after submission of Step 2, cannot be amended if the employee chooses to take the grievance to a higher level.
10. Inaccurate information, maliciously or negligently reported, may be cause for separate corrective and disciplinary action.
11. Allegations of discrimination regarding selection or classification cannot be appealed to the Director of Personnel and therefore should be filed directly to the State Personnel Board or C.C.R.D. within ten (10) days of the incident.

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12. Allegations of sexual orientation discrimination will not be accepted by E.E.O.C.
- B. Rights of the Involved Parties: At each and every level of the grievance process, the involved parties shall have the following rights:
1. A fair and impartial hearing;
 2. To have representation as approved by the Colorado State Personnel Board Rules;
 3. To question the other party involved;
 4. To present up to three (3) witnesses;
 5. To present documentary evidence;
 6. To question any witnesses presented by the other party; and,
 7. To request mediation pursuant to R10-2-1(D) of the Colorado State Personnel Board Rules.
- C. Grievance Procedures: Chapters 10 and 11 of the Colorado State Personnel Board Rules govern the appropriate procedures to file a workplace discrimination and/or harassment complaint. Attachment "A", Workplace Discrimination and/or Harassment Grievance Procedure Flowchart, depicts this process.
- D. Powers of Investigation:
1. The appropriate DOC respondent answering the grievance shall:
 - a. Have the power to interview any and all employees who might be able to make relevant statements regarding the allegations; and,
 - b. Have the power to compel the production of any non-confidential documentary evidence which exists within the official files of the Department of Corrections.
 2. The complainant and/or accused may compel the reviewing respondent to interview:
 - a. The complainant;
 - b. The accused; and/or,

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- c. Any witness(s) of the alleged workplace discrimination/harassment up to three (3) witnesses per side.

E. Respondent Responsibilities:

1. Upon receipt of a workplace discrimination and/or harassment grievance, the respondent must take timely action as outlined by the Colorado State Personnel Board Rules.
2. The supervisory employee receiving the alleged workplace discrimination/harassment complaint shall immediately notify the complainant of the DOC's policy and rights by providing the complainant with a copy of this Administrative Regulation.
3. Upon receipt of a complaint alleging discrimination/harassment, the respondent shall notify the Department Director of Personnel, in writing, within five (5) days of receipt of such complaint to facilitate appropriate Departmental tracking.
4. No attempt to discourage the complaining employee from filing the complaint or to withdraw the complaint shall be made.
5. To the extent possible and allowable by law, the respondent shall protect the identities of both the complainant(s) and the accused party(s), and endeavor to hold the allegations of grievance in confidence.
6. Failure of the respondent to do any of the above described tasks shall constitute a separate offense and shall subject said individual to corrective or disciplinary actions.

F. Corrective Action:

1. It is imperative that the Appointing Authority who responds to a workplace discrimination and/or harassment grievance **NOT** be the same Appointing Authority who will be responsible to administer corrective or disciplinary action against the accused employee. Coordination to insure utilization of the proper Appointing Authority shall be facilitated with the appropriate Deputy Director or Division Director.
2. If, at any step of this process, a finding that workplace discrimination / harassment has occurred, it shall be

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immediately referred for review and proper action pursuant to Chapter 8, Employee Performance, of the Colorado State Personnel Board Rules.

3. After a full review of all pertinent information is made, the decision to correct or discipline the guilty party shall be based upon:
 - a. The nature, extent, seriousness, and effect of the unlawful employment activity;
 - b. The type, frequency, and the time which has elapsed since previous undesirable behavior; and,
 - c. The previous performance evaluation of the guilty employee.
4. Appeals and grievances regarding corrective or disciplinary actions are governed by Chapter 10 of the Colorado State Personnel Board Rules.

G. Records:

1. To the extent possible and allowed by law, the records of the workplace discrimination and/or harassment complaint shall be kept in a separate Department of Corrections file and shall not be placed in the personnel file of the complainant. The complainant shall have the right to inspect his/her personnel file to verify placement did not occur.
2. Upon a finding that workplace discrimination/harassment did occur, such finding along with a record of the corrective or disciplinary action taken shall be placed in the personnel file of the guilty party. The complainant shall have the right to verify through the Department of Corrections Director of Human Resources that the finding of guilt and subsequent corrective or disciplinary action were placed in the personnel file of the guilty party.

V. RESPONSIBILITY

- A. It shall be the responsibility of the Inspector General to:
 1. Select and train objective competent personnel to serve on the ad hoc Workplace Discrimination and Harassment Investigative Team;

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2. Coordinate with the Team members' Appointing Authority and assign specific members of the Team to each investigation on a rotating basis; and,
 3. Supervise the Team; review and approve their work.
- B. All Department of Corrections employees are required to read and adhere to the spirit and letter of this Administrative Regulation.
- C. DOC Personnel Offices providing initial employee processing shall be responsible to provide each new employee with a copy of this Administrative Regulation.
- D. It shall be the responsibility of the Director of Human Resources to:
1. Maintain the confidential files of discrimination and/or harassment investigations;
 2. Approve any BFOQ's within the DOC and maintain the appropriate documentation; and,
 3. Oversee the annual revision of this Administrative Regulation by obtaining interested DOC employee input into the update process.
- E. It shall be the responsibility of the Director of Training to incorporate the content of this Administrative Regulation into the curriculum for both basic and in-service training.
- F. All DOC Supervisors shall ensure that employees under their responsibility receive both pre-service and annual in-service training on this Administrative Regulation and the grievance procedure.

VI. AUTHORITY

- A. Equal Pay Act, 1963, requires equal pay for men and women performing substantially the same work.
- B. Title VII, Civil Rights Act, 1964, prohibits discrimination in employment on basis of sex.
- C. Executive Order D003590 from Governor Roy Romer dated December 10, 1990.

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- D. CRS 24-34-402 (1) et seq.
- E. CRS 24-50-125 et seq.
- F. All rules and regulations promulgated by Colorado Civil Rights Division.
- G. Colorado State Personnel Board Rules
- H. Executive Order 1178, 1969.
- I. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794).
- J. Age Discrimination Act of 1975.
- K. Americans With Disabilities Act 1990 (ADA).

VII. SUPERSESSION

This document supersedes Administrative Regulation 1450-5, dated June 15, 1992.

VIII. STANDARDS

American Correctional Association Standards: 3-4053, 3-4065.

ATTACHMENTS: A. Workplace Discrimination and/or Harassment Grievance Procedure Flowchart

Frank O. Gunter

Frank O. Gunter, Executive Director
Colorado Department of Corrections

DOCUMENT HISTORY:

EFFECTIVE: June 15, 1992
REVISED: March 11, 1993

WORKPLACE DISCRIMINATION AND/OR HARASSMENT GRIEVANCE PROCEDURE FLOWCHART

TIME FRAMES	STEP 1 GRIEVANCE PROCEDURE
Anytime	To initiate grievance if issue is a continuing matter.
Ten (10) days	To initiate Step 1 Grievance <ul style="list-style-type: none"> - After the occurrence of the action being complained of; or, - When the action becomes known to the grievant. <p>Complainant to discuss issue with supervisor, before filing a written grievance unless:</p> <ul style="list-style-type: none"> - If perpetrator is the supervisor, complainant may go to the next level capable of granting relief. - If discrimination is alleged, complainant must also file a written grievance with the Personnel Board with a copy to the Appointing Authority in the same 10 day time frame. The Personnel Board will defer to allow for resolution within the agency. - If harassment by the Appointing Authority or the immediate supervisor is alleged, the complainant may bypass the grievance process and petition the Personnel Board directly. <p>If the supervisor is unable to resolve, it shall be referred to the employee at the lowest level capable of granting relief.</p>

TIME FRAMES	STEP 2 GRIEVANCE PROCEDURE
Three (3) working days from informal discussion	If complaint is not resolved informally at Step 1, the complainant may file a written grievance with the supervisor of the person with whom he/she had the informal discussion.
Three (3) working days from receipt of grievance	Conference held between appropriate respondent/supervisor and the grievant.
Three working days after conference conclusion	Decision rendered, binding unless: <ul style="list-style-type: none"> - Employee elects to proceed, or, - Decision was not made in the prescribed time frame which then allows the grievant to proceed. - Either party may request intervention by the Office of the Inspector General.

TIME FRAMES	STEP 4 GRIEVANCE PROCEDURE
Three (3) working days from receipt of Step 3 decision or should have been received	If complaint not resolved at Step 3, the complainant may file a Step 4 grievance (with copies of all previous grievance steps and decisions) to the Appointing Authority. <p>The Office of the Inspector General must intervene and take charge of the formal investigation.</p>
Five (5) working days from receipt of grievance	Conference held between Appointing Authority or designee and the grievant.
Seven (7) working days after conference conclusion	Decision rendered by the Appointing Authority; binding unless: <ul style="list-style-type: none"> - Employee elects to proceed; or, - Decision was not made in the prescribed time frame which then allows the grievant to proceed.

TIME FRAMES	MEDIATION
AFTER STEP 1 BUT BEFORE THE FILING OF STEP 2	EITHER PARTY MAY SEND A LETTER TO THE PERSONNEL BOARD REQUESTING MEDIATION. <p>ONCE THIS REQUIREMENT IS MET, THE REMAINING GRIEVANCE PROCESS TIME FRAMES ARE SUSPENDED DURING THE PERIOD THAT MEDIATION IS IN PROCESS.</p>

TIME FRAMES	STEP 3 GRIEVANCE PROCEDURE
Three (3) working days from receipt of Step 2 decision or should have been received	If complaint is not resolved at Step 2, the complainant may file a written Step 3 grievance, (with copies of Step 2 grievance and decision) to the person/committee designated by the Appointing Authority.
Three (3) working days from receipt of grievance	Conference held between designee(s) and the grievant.
Five (5) working days after conference conclusion	Decision rendered, binding unless: <ul style="list-style-type: none"> - Employee elects to proceed, or, - Decision was not made in the prescribed time frame which then allows the grievant to proceed. - Either party may request intervention by the Office of the Inspector General.

TIME FRAMES	STEP 5 GRIEVANCE PROCEDURE / PETITION FOR HEARING
Ten (10) days from receipt of Step 4 decision	If complaint is not resolved at Step 4, the complainant must file a Petition for Hearing with one of the following: <ul style="list-style-type: none"> - Personnel Board; - Director/Department of Personnel; or, - Colorado Civil Rights Division <p>Copies shall be sent to:</p> <ul style="list-style-type: none"> - Appointing Authority; - Executive Director; and, - Equal Employment Opportunity Council (Specifying review under the work sharing agreement).
From this point on, the time frames for investigation and response fall under the jurisdiction of the Personnel Board as outlined in the Department of Personnel Rules, Chapters 10 and 11.	