



Policy and Procedures
Human Resources

**DEPARTMENT OF FINANCE AND ADMINISTRATION POLICY AND PROCEDURES EQUAL
EMPLOYMENT OPPORTUNITY POLICY**

I. PURPOSE

- A. The purpose of the New Mexico Department of Finance and Administration (“DFA”) Equal Employment Opportunity (“EEO”) Policy (“Policy”) is to protect Employees within the workplace from discrimination, Harassment, and Retaliation.

II. POLICY

- B. Comply with federal and state laws, regulations, and guidance concerning employment of persons with disabilities;
- C. Make all personnel decisions in accordance with this Policy;
- D. Prohibit any form of discrimination against persons on the basis of their disabilities, either perceived or voluntarily disclosed;
- E. Use Disciplinary Action to respond to Retaliation of any kind towards Employees who utilizes any of the DFA policies including but not limited to the DFA Policies and Procedures for Americans with Disabilities Act; and
- F. Treat all information received in the request for accommodation process as Confidential Information.

III. COMPLAINT PROCEDURE

- A. **STEP ONE:** If the grievance/complaint is not satisfactorily resolved through the Informal Grievance procedure, within twenty (20) days of receiving notification, the EEO Officer will issue a dated statement to Employees indicating the Informal Grievance/Complaint has not resulted in resolution and informing Employees that he/she may proceed to the Formal Grievance. Employees must present the Formal Grievance/Complaint in writing to the EEO Officer and division director (or deputy cabinet secretary, if the grievance concerns the division director) within five (5) working days after the EEO Officer’s dated statement. The Formal Grievance/Complaint must be written by completing the Grievance/Complaint Form (see attachment 1) and submitting this form to the division director (or deputy cabinet secretary). The division director (or deputy cabinet secretary) must respond with a decision on the Formal Grievance/Complaint in writing within



Policy and Procedures
Human Resources

twenty (20) working days.

- B. **STEP TWO:** In the event a Complaint still remains unsettled after Step 1, within twenty (20) days of receiving the division director's (or Deputy Cabinet Secretary's) written decision, the Employee may appeal the division director's (or deputy cabinet secretary's) decision to the Agency Head. Such an appeal should be in writing and must be received by the Agency Head's office no later than twenty (20) working days after the Employee receives the division director's (or Deputy Cabinet Secretary's) decision. If an appeal is not timely filed, the division director's (or Deputy Cabinet Secretary's) decision automatically becomes the final agency decision.
- C. **STEP THREE:** The Agency Head may: 1) render a final decision on the matter in writing within twenty-five (25) working days of receipt of the appeal of the division director's (or Deputy Cabinet Secretary's) decision; or 2) assign the matter to the DFA EEO and Complaint Advisory Committee for investigation of the Complaint and written recommendations to the Agency Head so final decision may be rendered within twenty-five (25) working days of receipt of the appeal. Members of the EEO and Complaint Advisory Committee employed within the divisions where a grievance originated will be excluded from the investigatory recommendation process on that particular Complaint.
- D. **Final Decision.** The Agency Head's decision becomes the final agency decision unless the Complaint pertains to an interpretation or application of the State Personnel Board regulations.
- E. **Appeal.** Appeals are made to the State Personnel Director, pursuant to State Personnel Board Rule 1.7.6.13 NMAC (11/14/02). If the Complaint pertains to an interpretation or application of the State's Personnel Board regulations and the Informal and the Complaint Procedures do not produce a satisfactory result for an Employee, then Employees may appeal to the State Personnel Director within thirty (30) days of the final agency decision. The State Personnel Director may appoint a hearing officer and the Director's decision on the grievance shall be final and binding.



Human Resources

IV. RESPONSIBILITIES

G. Division Directors and Supervisory Personnel. All division directors and supervisory personnel of DFA are responsible for:

1. Ensuring that the DFA Policies and Grievance/Complaint Procedures are followed;
2. Maintaining a working knowledge of all DFA policies and be guided by the DFA Policies in all personnel actions; and
3. Take necessary actions to enable their Employees to understand this Policy and their right to file grievances/complaints either informally or formally.

H. DFA Equal Employment Opportunity Officer. The DFA EEO Officer shall have direct access to the Agency Head and has the following responsibilities:

1. **Planning and implementing DFA's EEOP.** Reviewing the personnel policies and practices of the DFA to ensure conformity with the current EEOP.
2. Assisting managerial and supervisory personnel in the identification of problem areas.
3. Setting goals and timetables and developing programs to achieve goals.
4. Designing, implementing, and monitoring internal audit and reporting systems to measure program effectiveness.
5. Serving as liaison for information gathering purposes in education instruction between the DFA, participating administratively attached agencies, and enforcement agencies.
6. Form an EEO and Complaint Advisory Committee and as chair of the EEOP and Advisory Committee selecting the members. Membership on the EEO and Complaint Advisory Committee will include a fair representation of DFA divisions, administratively attached agencies, and a balance of supervisory and non-supervisory personnel.

I. Serving as a member of the DFA Education Committee. Encouraging Employees with grievance/complaints to utilize the DFA written



Policy and Procedures
Human Resources

grievance/complaint procedures for any and all grievance/complaints including allegations of discrimination.

1. Developing a training and education plan as a component of this Policy.
2. Serving as chair of the Administrative Implementation Committee, which is comprised of the DFA division directors. Meetings will be held when necessary to monitor the progress of EEO efforts and for providing input into the development of this Policy.

V. NOTICE PROCEDURES

J. **DISSEMINATION.** The following specific procedures will be followed in order to communicate the provisions of this Policy.

1. Equal Employment Opportunity Officer
 - a) The EEO Officer will assure that a copy of DFA's EEOP and the Grievance/Complaint Procedures is distributed by the DFA Human Resources Bureau to all DFA personnel.
 - b) The EEO Officer will ensure that a copy of the EEOP and the Grievance/Complaint Procedures is distributed by the DFA Human Resources Bureau to all DFA supervisory personnel.
 - c) The EEO Officer is responsible for providing training in, and communication of, the provisions of this program to all staff members on a continuing basis and advising the staff of any changes in policy and implementation procedures. Training and educational sessions will be geared towards:
 - (1) Providing Employees with information regarding the grievance/complaint procedures; and
 - (2) Providing DFA supervisory personnel with information as needed covering various subject areas such as hiring practices, sexual harassment, unlawful discrimination, and Disciplinary Action.
2. Division Directors and Supervisory Personnel
 - a) DFA division directors and supervisory personnel will be responsible for learning the policies, procedures, and substantive aspects of the



Policy and Procedures
Human Resources

DFA's EEOP and the Grievance Complaint Procedures and complying with the EEOP in the exercise of their duties.

- b) DFA division directors and supervisory personnel will ensure that a copy of the DFA EEOP and the Grievance/Complaint Procedures are circulated and maintained in their division for ready access by Employees.
- c) DFA division directors and supervisory personnel will inform DFA Employees of the accessibility of the DFA EEO Officer and encourage them to use the services of the DFA EEO Officer to help understand the DFA grievance/complaint procedures.
- d) DFA division directors will serve on the Administrative Implementation Committee that is responsible for implementing the EEOP and for making recommendations in the interest of implementation of the EEOP.

VI. NOTICE

- K. The following Equal Employment Opportunity Program posters will be displayed at the DFA personnel offices:
 - 1. EEO Is The Law;
 - 2. Age Discrimination poster;
 - 3. New Mexico Human Rights Commission poster; and
 - 4. Any other posting related to the subject of EEO.



VII. COMMITMENT TO PERSONNEL WITH DISABILITIES

- L. **Reasonable Accommodations.** The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination against persons with disabilities in hiring as well as in all terms and conditions of employment. We, as employers, are required to make reasonable accommodations for all known impairments to ensure equal opportunity in the application process and to enable Employees with disabilities to perform the essential functions of the job and to enjoy the same benefits and privileges of employment as enjoyed by Employees without disabilities. In order for a person to obtain the protection offered by the ADA, an individual must have a physical or mental impairment that substantially limits one or more Major Life Activities, have a record of such impairment, or be regarded as having such an impairment.
- M. **Access to DFA facilities is available to clients with disabilities.** Surveys of offices will be completed, and physical improvements made as needed to meet this obligation. All DFA services will be provided to clients with disabilities.

Furthermore, it is the DFA policy and our responsibility under the Americans With Disabilities Act to make reasonable accommodations to assist disabled applicants or Employees in meeting these legitimate criteria, once we are made aware of their disabilities, provided they do not cause undue hardship to the DFA. However, if the subject should arise, our only purpose in discussing a mental or physical impairment is to discern the nature of accommodation that may be appropriate. We may discuss the specific requirements of the job and, to the extent the applicant or Employee is willing to do so, compare those with the applicant's capabilities.

GRIEVANCE/COMPLAINT PROCEDURES

Employees who allege discrimination because of physical or mental impairment have the right to discuss the situation with an immediate supervisor or the EEO Officer. If the situation is unresolved, then Employees may use these procedures. Medical documentation may also be required. At all stages of the complaint procedure, the Employee shall be free from Retaliation of any kind.

Purpose. The purpose of these procedures is to provide Employees with procedure for receiving prompt consideration and early resolution of a Good-faith grievance/complaint pursuant to State Personnel Rule 1.7.6.13 NMAC (11/14/02). Classified Employees are encouraged to use this



Human Resources

written complaint procedure to air and settle any, and all complaints and grievances, including allegations of discrimination and/or Sexual Harassment, and other problems associated with working conditions.

Jurisdiction. Employees who allege discrimination in the workplace based on race, religion, national origin, ancestry, color, sex, physical or mental disability, serious medical condition and/or Sexual Harassment shall use this Policy's procedure. This procedure may also be used to resolve complaints pursuant to State Personnel Board Rule 1.7.6.13 NMAC (11/14/02).

VIII. DEFINITIONS

"Complaint" means an expressed dissatisfaction presented to management by an Employee where the dissatisfaction arises solely from working conditions or relationships and may include allegations of discrimination and/or Sexual Harassment.

"Confidential Information" means all information regarding requests for accommodations, pursuant to New Mexico law, including, but not limited to, N.M.S.A. (1978) § 14-2-1 and State Personnel Board Rule 1.7.1.12 N.M.A.C. "Confidential Information" means information and data of any kind concerning any matters affecting or relating to DFA, the business or operations of DFA, including but not limited to, financial documents and plans, customers, suppliers, partners, marketing strategies, vendors, products, technical product data, product samples, costs, sources, strategies, operations procedures, proprietary concepts, technical advice or knowledge, contractual agreements, software, data, and/or the products, drawings, plans, processes, or other data of DFA not generally known or available outside of the agency. Confidential Information does not include information communicated between only those individuals directly involved in a Complaint. "Confidential Information" includes non-disclosable information and data of any kind concerning any matters affecting or relating to DFA, the business or operations of DFA, including but not limited to, financial documents and plans, customers, suppliers, partners, marketing strategies, vendors, products, technical product data, product samples, costs, sources, strategies, operations procedures, proprietary concepts, technical advice or knowledge, contractual agreements, software, data, and/or the products, drawings, plans, processes, or other data of DFA not generally known or available outside of the Agency. "Confidential Information" includes communication made privately and not intended for further disclosure except to other persons in furtherance of the purpose of the communication.

"Disciplinary Action" means any action taken by an Agency to influence change in an employee's performance or behavior to the expected standard, including Formal Disciplinary Action, Informal Disciplinary Action, and Progressive Disciplinary action, including but not limited to, letters of reprimand, suspensions, demotions, and Dismissal. Disciplinary Action includes punitive action taken to change an employee's performance or behavior to follow the classification description.



Human Resources

“Dismissal” means the involuntary separation from employment with the DFA.

“Employee” means (i) any person in a position in the classified service; (ii) an individual employed by the DFA, receives a wage from DFA, and whose work is under the direct control and supervision of the DFA; (iii) term, probationary, temporary, permanent, and exempt positions; or (iv) an applicant for employment within the DFA. “Employee” does not include independent contractors who perform work for New Mexico.

“Retaliation” means any form of Disciplinary Action, reprisal, intimidation, or retaliation for good faith reporting of incidents of Harassment of any kind, pursuing any Harassment claim or cooperating in related investigations. If an Employee would like more information about the DFA's policy prohibiting retaliation, then contact the DFA HR or supervisor within the Supervisory Chain.

“Sexual Harassment” means any harassment based on someone's sex or gender, sexual orientation, Gender Identity, and the status of transgender. “Sexual Harassment” includes harassment that is not sexual in nature (for example, offensive remarks about an individual's sex, gender, or Gender Identity). “Sexual Harassment” includes: (i) verbal (for example, epithets, derogatory statements, slurs, sexually- related comments or jokes, unwelcome sexual **advances**, or requests for sexual favors); (ii) physical (for example, assault or inappropriate physical contact); (iii) visual (for example, displaying sexually suggestive posters, cartoons, or drawings, sending inappropriate adult-themed gifts, leering, or making sexual gestures). “Sexual Harassment” includes: any unwelcome sexual advances or requests for sexual favors or any other conduct of a sexual nature, when any of the following is true: (i) submission to the advance, request, or conduct is made either explicitly or implicitly a term or condition of employment; (ii) submission to or rejection of the advance, request, or conduct is used as a basis for employment decisions; or (iii) such advances, requests, or conduct have the purpose or effect of substantially or unreasonably interfering with an Employee's work performance by creating an intimidating, hostile, or offensive work environment. “Sexual Harassment” includes any unwanted or repeated physical or verbal act that is sexual, including sexual advances, sexual conduct, verbal or nonverbal sexual suggestions, sexual ridicule or sexual innuendoes that: (a) affects employment status relating to matters of compensation or the terms and conditions of employment; (b) affects employment status relating to matters of compensation or the terms and affects one's ability to obtain credit; (c) affects one's ability to obtain housing, continue housing agreements; or (d) affects one's access to public accommodations. This list is not exhaustive.

“Undue Hardship” means an action requiring significant difficulty or expense, when considered in light of the following factors: (i) nature and cost of the accommodation needed; (ii) overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; (iii) the number of persons employed at such facility; (iv) the effect on expenses



Human Resources

and resources; (v) the overall financial resources of the covered entity; (vi) the overall size of the business of a covered entity with respect to the number of its employees; (vii) the type of operations or operations of the covered entity, including composition, structure, and functions of the workforce of such entity; and (viii) the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

At all stages of the supervisory personnel grievance/complaint procedures, Employees may request the advice of the DFA EEO Officer or any other individual(s) of their own choosing. Employees may use official time to prepare and write the grievance/complaint and to consult with the DFA EEO Officer. All communications and documents submitted by an incumbent to the DFA EEO Officer in the grievance process are confidential except by written permission of the grieving party or as otherwise required by law.

STEP ONE: Informal Grievance/Complaint

An attempt must be made to resolve a problem informally before it is presented in writing as a Formal Grievance/Complaint.

Employees shall first discuss the matter with his or her immediate supervisor in an informal manner. Employees should inform the supervisor that the matter to be discussed is a potential grievance/complaint. The immediate supervisor may request the presence and opinions of the second-line supervisor at this discussion step. If the matter is urgent and the immediate supervisor is not available, or if an Employee has legitimate reasons for not bringing up the matter to their immediate supervisor, the Employee may, informally, present the problem to his second-line supervisor.

Employees must verbally or in writing notify the DFA EEO Officer of an Informal Grievance/Complaint within thirty (30) calendar days of the event or latest event in a series of events giving rise to their grievance/complaint.

In the event any grievance/complaint is against a division director, the Employee shall present the problem to the deputy cabinet secretary as well as notify the EEO Officer.

Employees may also choose to bring the issue to mediation. The goal of mediation is to help people improve their future relations and gain confidence in handling conflicts. The parties do the hard work of speaking for themselves and working out mutually acceptable solutions. Mediation is a voluntary and confidential process and, if opted for, shall be facilitated by trained mediators. Mediation is most likely to resolve a conflict when:

The parties want a resolution, or at least a change.
All the important stakeholders come to the table.



Human Resources

The parties are able to express the reason for their discomfort and distress.
The mediator is able to control and sustain the process.
The parties are capable of living up to their promises.

IX. GENERAL PROVISIONS

If during a formal grievance/complaint, the grievance/complaint is withdrawn or resolved, such action must be attested to in writing by the Employee's supervisor, initialed by the Employee, and filed with the DFA EEO Officer.

Incumbents are encouraged to utilize these written grievance/complaint procedures before presenting the matter to an outside governing body. However, nothing in this grievance/complaint procedure shall preclude an Employee from filing charges of discrimination or Sexual Harassment with a state or federal enforcement agency at any state of the procedure.

A copy of these Grievance/Complaint Procedures shall be made available by the DFA Personnel Officer to Employees.

Time limits specified in this procedure may be extended by mutual consent of the parties.

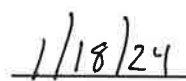
DFA personnel and management shall not in any way retaliate against an individual who files a claim of discrimination and/or Sexual Harassment or Complaint interpreting State Personnel Board Rule 1.7.6.13 NMAC (11/14/02) nor permit an Employee to do so. Retaliation is a serious violation of the EEOP and should be reported immediately. Employees found to have retaliated against another Employee for complaining or grieving will be subject to Disciplinary Action.

Questions

Any questions on this procedure may be directed to the acting DFA EEO Officer, Diane Swan at 505-469-7877.

X. REVIEW AND APPROVAL. This Policy is effective upon the signature of the DFA Cabinet Secretary, below.


Wayne Propst, Cabinet Secretary


Date