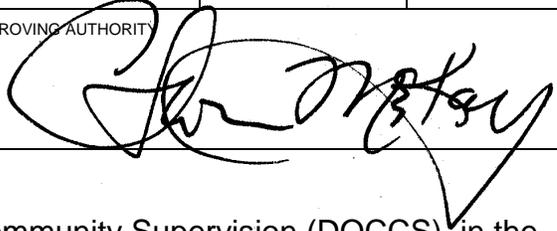


 Corrections and Community Supervision DIRECTIVE	TITLE		NO. 2602
	Diversity Management Complaints		DATE 08/01/2017
SUPERSEDES DIR# 2602 Dtd. 05/05/2016	DISTRIBUTION A	PAGES PAGE 1 OF 4	DATE LAST REVISED
REFERENCES (Include but are not limited to) See Section II Dir. #2010, #2601, #2605, #2607, #2608, #4960 Employees' Manual	APPROVING AUTHORITY 		

- I. **POLICY:** The Department of Corrections and Community Supervision (DOCCS), in the furtherance of diversity and inclusion, and its Affirmative Action and Equal Employment Opportunity Program, shall not discriminate against any person as it relates to terms and conditions of employment because of age, race, religion, creed, color, national origin, sex (including sexual harassment and gender identity), pregnancy, disability, marital status, sexual orientation, military status, arrest and conviction record, veteran's status, domestic violence victim status, or predisposing genetic characteristics. In order to ensure the successful implementation of this program, it is the expectation of the Department that all staff will cooperate fully with the investigatory processes of the Office of Diversity Management. It is also the expectation of the Department that no staff member will interfere, hinder, obstruct, or tamper with an investigation.
- II. **BASIS:** This policy is based upon requirements of the New York State's Human Rights Law, the mandates of Title VI and VII of the Federal Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, Article 15-A of the Executive Law, Departmental Directive #2601, "Equal Employment Opportunity & Affirmative Action Program," and Equal Employment Opportunity in New York State-Rights and Responsibilities, A Handbook for Employees of New York State Agencies.
- III. **REDRESS:**
 - A. Any employee who believes that, based on his or her real or perceived membership in one of the above-listed protected classes (see Section I. Policy), he or she is being harassed or discriminated against may file a complaint with any supervisor or a representative of the Department's Office of Diversity Management. Any employee who believes that they are being retaliated against for having participated in a legally-protected action related to a complaint of discrimination may file a complaint with any supervisor or a representative of ODM (for more information, see Section IV-E. Retaliation). The supervisor will be required to immediately notify the Superintendent, Regional Director, Bureau Chief, or Division Head regarding the complaint, who will forward the complaint to ODM. Any employee who is aware of any act of protected-class based harassment/discrimination or retaliation against another employee related to a complaint of harassment/discrimination shall notify a supervisor so that appropriate action may be taken. The supervisor will be required to immediately notify the Superintendent, Regional Director, Bureau Chief, or Division Head regarding the complaint, who will forward the complaint to ODM. ODM will forward a copy of the complaint to the Office of Counsel and the Governor's Office of Employee Relations (GOER) Workforce Development Unit (WDU). The complaint must involve matters of (sexual) harassment, discrimination, retaliation, or minority/women owned businesses in accordance with the

New York State Human Rights Law, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, Title VI and VII of the Civil Rights Act of 1964, and Article 15-A of the Executive Law.

- B. The Diversity Management complaint process does not address employee grievances otherwise covered by contracts with employee organizations.
- C. The alleged conduct must have a nexus between the alleged action and a protected class category as it relates to harassment, discrimination, and/or retaliation.
- D. "Title VII is not designed to serve as a code of civility to govern workplace professionalism."

IV. PROCEDURE

A. Internal Complaints

1. Any employee who believes that they are being harassed, experiencing discrimination or retaliation, or have witnessed a violation of this policy, should immediately report that violation to his or her supervisor. Complaints are not required to be in writing, however, it is strongly recommended that employees complete [Form #2602A](#), "Diversity Management Complaint Form," and forward it to ODM.

B. Supervisors Who Receive Reports of Complaints

1. Supervisors and management are expected to ensure that employees adhere to this policy. Any supervisor who receives a report or complaint of alleged violations, whether verbal or written, shall immediately report the same to ODM and not attempt to resolve the matter on his or her own. The supervisor shall provide ODM with the complaint and/or in the absence of a complaint form, provide a memorandum including a description of the complaint incident(s) using exact quotations where possible, the date, time, location, and manner in which the complaint was received, and the names and titles of any witnesses who were present.
2. If the complaint involves allegations of physical contact between employees, immediate and appropriate steps should be taken to address the matter and promptly contact the Office of Special Investigations.
3. Pending an investigation by ODM, the Superintendent, Regional Director, Bureau Chief, or Division Head should assess the allegations being reported and take immediate and reasonable action to eliminate the possibility of further alleged incidents of harassment, discrimination, or retaliation. The assessment should include a review of various Agency directives and policies on harassment, discrimination, and retaliation and the Employees' Manual, specifically Section 2, "Conduct and Activities of Employees." This directive and the following directives shall be included as part of this review:
 - Directive #2601, "Equal Employment Opportunity & Affirmative Action Program"
 - Directive #2605, "Sexual Harassment in the Workplace"
 - Directive #2607, "Reasonable Accommodations for Employees and Applicants with Disabilities"
 - Directive #2608, "Non-Discrimination in Employment Based on Sexual Orientation"
 - Directive #4960, "Workplace Violence Prevention Program"

Any violation of the Employees' Manual will be handled as such, and corrective action will be taken by supervisory staff.

C. ODM Responsibilities

All complaints of discrimination, harassment, or retaliation received by ODM will be assessed to determine the appropriate jurisdiction. Claims of retaliation can arise when an employee is subjected to some form of unlawful adverse action in response to a complaint of discrimination or harassment. The complaint can be internal or external. Retaliatory conduct may include demotion, termination, reassignment, harassment, and other forms of adverse actions.

If the allegation in the complaint does not fall within the purview of ODM, it shall be referred to the appropriate office, and the complainant will be notified. If the complaint falls within the jurisdiction of ODM, then the following shall occur:

1. Written acknowledgment shall be sent to the complainant.
2. ODM will assess each complaint on a case by case basis to determine what, if any, interim action is appropriate. The ODM Director and/or designee may recommend the issuance of a Cease and Desist notice to the Respondent. A Cease and Desist is not an accusation of wrongdoing, rather, notification that an allegation has been made, and that, if indeed the action is occurring, it must immediately cease. In addition, ODM will consult with the Bureau of Labor Relations if it's determined that any allegations give rise to consideration of administrative leave and/or suspension during the pendency of the ODM investigation.
3. An Affirmative Action Administrator will conduct an investigation and submit a Draft Investigation Report to the Office of Counsel and WDU.
4. Upon submission of the Draft Investigation Report by the Affirmative Action Administrator, the Office of Counsel will notify ODM if they feel additional investigation is necessitated. In those instances, the Affirmative Action Administrator will follow up accordingly and submit a revised Draft Investigation Report.
5. The Office of Counsel shall determine an appropriate resolution of the complaint, which may include a referral to the Bureau of Labor Relations and/or other administrative action.
6. All parties shall be notified, in writing, by the Office of Counsel, of the outcome of the investigation and that appropriate administrative action will be taken if warranted. However, specific details as to the nature of the administrative actions will not be disclosed.
7. Such complaints and subsequent investigations will be kept confidential to the extent possible. See Section V, Confidentiality, for more detail.

D. External Complaints

1. A copy of any complaint of harassment, discrimination, or retaliation received by a facility Superintendent, Regional Director, Bureau Chief, or Central Office Division Head via another agency, such as the NYS Division of Human Rights or the U. S. Equal Employment Opportunity Commission, shall be promptly forwarded to the Office of Counsel and ODM. The Superintendent, Regional Director, Bureau Chief, or Division Head shall include any supporting documentation relative to the complaint.

2. An Affirmative Action Administrator will investigate the allegations in the complaint and submit a Draft Investigation Report to the Office of Counsel and WDU.
 3. Upon submission of the Draft Investigation Report by the Affirmative Action Administrator, the Office of Counsel will notify ODM if they feel additional investigation is required. In those instances, the Affirmative Action Administrator will follow up accordingly and submit a revised Draft Investigation Report.
 4. The Office of Counsel will prepare and submit a response to the external agency.
 5. Should the external agency request additional information, the Office of Counsel and ODM will coordinate on how best to respond to the request.
 6. The Office of Counsel will take the lead in coordinating any conferences and/or hearings scheduled by an external agency.
 7. The external agency will make a determination regarding the case and notify necessary parties.
- E. Retaliation: Allegations of retaliation that fall within the purview of ODM must be based on participation in a legally-covered action related to a discrimination complaint. A protected action includes, but is not limited to, previously complaining of discrimination or participation in an ODM investigation as a witness. A retaliation complaint should include the type, date, and location of protected action, as well as (1) a description of the behavior that is the subject of the retaliation complaint, and (2) how it is related to the complainant's previous participation in a protected action.
1. ODM will notify the complainant, during an investigation concerning allegations of harassment, discrimination, or retaliation, that he or she may file a subsequent complaint for any additional allegations of harassment, discrimination, or retaliation. Concurrently, the party accused of any subsequent allegation of harassment, discrimination, or retaliation shall be notified that any such action must immediately cease and desist. If underlying allegations of discrimination are investigated and deemed to be unsubstantiated, retaliation against any individual for filing a complaint is a separate and distinct violation of law and Departmental policies. Any conduct that could be construed as retaliation will be fully investigated.

V. CONFIDENTIALITY

During the complaint process, ODM requires the full cooperation of all parties involved. This process is confidential and the utmost discretion must be exercised regarding the use of information obtained. All parties involved in a complaint shall refrain from disclosing information about the case to anyone who does not have a legitimate need or right to know.

Disclosure of records or information is governed by the Department's Employees' Manual, specifically Section 4, "Department Records and Statements," and Directive #2010, "FOIL/Access to Departmental Records." The privacy of all parties involved in a complaint investigation shall be strictly respected insofar as it does not interfere with the Department's legal obligation to investigate allegations of misconduct, to take corrective action, or as otherwise provided by law and Departmental policy. Failure by a participant to comply with the mandates of this Section may result in administrative action.

Copies of records related to an ODM complaint shall not be placed in either the complainant's or the respondent's Personnel History File unless there are specific instructions recommending formal counseling or discipline. ODM will maintain all records for a period of three years, unless a law suit is otherwise pending.