



ARIZONA DEPARTMENT OF TRANSPORTATION POLICIES AND PROCEDURES

PER-9.02 Nondiscrimination Complaint System Policy

Effective: May 1, 2014
Supersedes: PER-9.02 (1/11/2007)
Responsible Office: Civil Rights (602)-712-8946

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NOTICE: This policy and procedure does not create a contract for employment between any employee and the Arizona Department of Transportation. Nothing in this policy and procedure changes the fact that all uncovered employees of the Arizona Department of Transportation are at-will employees and serve at the pleasure of the appointing authority.

2.01 PURPOSE

To define the Arizona Department of Transportation (ADOT) policy regarding discrimination, retaliation, and harassment while presenting examples of policy violations and explaining the procedures for resolving complaints.

2.02 SCOPE

This policy applies to all ADOT employees.

2.03 AUTHORITY

[Arizona Revised Statutes \(A.R.S.\) §41-1401](#)

[Arizona Revised Statutes \(A.R.S.\) § 41-1461](#)

[Arizona Revised Statutes \(A.R.S.\) § 41-1463](#)

[Arizona Revised Statutes \(A.R.S.\) § 41-1464](#)

Age Discrimination in Employment Act of 1967 (ADEA)

Americans with Disabilities Act of 1990 as amended (ADAAA)

Arizona Civil Rights Act (ACRA)

Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964 as amended

Executive Order 2003-22

Genetic Information Nondiscrimination Act (GINA)

R2-5A-104 (Prohibition Against Discrimination, Harassment and Retaliation)

R2-5A-501 (Standards of Conduct)

R2-5A-901 (Complaint System)

R2-5A-902 (Complaint Procedures)

2.04 BACKGROUND

Arizona Department of Transportation (ADOT) in accordance with Title 23 Part 200.9(b)(1) of the Code of Federal Regulations established an ADOT Civil Rights Office to develop and implement guidelines for compliance with Federal and State civil rights nondiscrimination laws. The compliance includes the investigation of complaints alleging discrimination.

2.05 DEFINITIONS

Department	The Arizona Department of Transportation
ADOT Civil Rights Office (CRO)	The department within ADOT that includes the Affirmative Action Program, the Americans with Disabilities Act Program, the External Discrimination Complaint Program (Title VI), and the Internal Discrimination Complaint Program, and is responsible for receiving complaints, determining applicability under the complaint system, investigating or assigning the complaint to the appropriate individual within the agency for review or investigation, and tracking the processing of complaints.
Complaint	Refers to any person filing a complaint alleging a violation of this policy.
Days	Business days unless otherwise specified.
Director	The Director of the Arizona Department of Transportation.
Disability	A physical or mental impairment that substantially limits a major life function of an individual; having a history of such impairment or being regarded as having such impairment.
Discrimination	Includes but is not limited to: Preferential treatment of one individual or group over another similarly situated individual or group because of race, color, religion, sex, pregnancy, age, national origin, genetic information, or disability:

	Sexual Harassment;
	Harassment of any individual because of the individual's race, color, religion, sex, pregnancy, age, national origin, genetic information, or disability;
	Failing or refusing to provide a reasonable accommodation to a qualified person with a disability.
Discrimination based on disability	Treating an individual with a disability less favorable than a similarly situated person without a disability;
	Favoring a person with one disability over a person with a different disability;
	Refusing to provide a reasonable accommodation which is necessary to enable a qualified individual with a disability to perform the essential functions of his or her job.
U.S. Equal Employment Opportunity Commission (EEOC)	A federal agency charged with investigating and resolving allegations of discrimination, harassment or retaliation related to employment.
Employee	All covered, uncovered, contract, part time and temporary employees and interns.
Harassment because of race, color, religion, sex, pregnancy, national origin, age, genetic information, or disability	Involves unwelcome and unsolicited conduct upon an individual's race, color, religion, sex, pregnancy origin, age, genetic information or disability when: <ol style="list-style-type: none">1. Submission to the conduct is made either explicitly or implicitly a term or condition of employment;

2. Submission to or rejection for such conduct by an employee is used as a basis for an employment decision affecting the employee;
3. The conduct has the purpose or effect of substantially interfering with an employee's work performance and creating a hostile, intimidating or otherwise offensive working environment. Prohibited harassment includes, but is not limited to:
 - A. Derogatory comments, epithets, or slurs directed at an individual because of that individual's race, color, religion, sex, pregnancy, national origin, age, genetic information, and/or disability;
 - B. Posting or circulating written or graphic materials, including but not limited to, cartoons, pictures, posters, or calendars containing derogatory comments, epithets or slurs based upon an individual's race, color, religion, sex, pregnancy, national origin, age, genetic information, and/or disability;
 - C. Abusive or derogatory remarks or conduct targeted at identifiable groups which are identified based upon their race, color, religion, sex, pregnancy, national origin, age, genetic information, and or disability.

Mediation	An informal process where opposing parties can voluntarily negotiate resolution of their dispute with the help of a neutral person (mediator).
Office of the Attorney General, Civil Rights Division	The office within the Arizona Department of Law charged with investigating and resolving complaints of discrimination, harassment, and retaliation.
Respondent	The individual accused of the discriminatory action, harassment or retaliation.
Retaliation	Taking an adverse employment action against an employee because the employee has made a complaint, participated in an investigation regarding an allegation of a violation of this policy, or because the employee has the opposed practices prohibited by this policy.
Sexual Harassment	Unwelcome and unsolicited conduct of a sexual nature when: <ol style="list-style-type: none">1. Submission to the conduct is made either explicitly or implicitly a term or condition of employment; or2. Submission to or rejection of such conduct by an employee is used as a basis for an employment decision affecting the employee;3. The conduct has the purpose or effect of substantially interfering with an employee's work performance and creating a hostile, intimidating or otherwise offensive working environment.

Examples of conduct that can violate this policy include, but not limited to:

- A. Explicit sexual behavior by a supervisor, manager, co-worker, visitor, client or other entity with whom the employee interacts during the course of employment;
- B. Implicit request for sex;
- C. Direct or indirect pressure for dates or sexual activity;
- D. Pinching, patting, hugging, or other unwelcome touching;
- E. Leering or gawking;
- F. Posting or circulation of sexually graphic materials including, but not limited to, cartoons, pictures, posters, or calendars;
- G. Sexually derogatory comments, including slurs, jokes, and other inappropriate remarks;
- H. Reprisals or threats after a negative response to sexual advances;
- I. Unwelcome sexual advances;
- J. Conditioning favorable terms and conditions of employment upon a positive response to abusive remarks or conduct targeted at only one sex, even if the context of the abusive remarks is not sexual.

2.06 POLICY

Arizona Department of Transportation (ADOT) is committed to the prohibition against unlawful discrimination, harassment and retaliation in the workplace. It is the policy of ADOT that all employees shall comply with all federal and state anti-discrimination laws. ADOT and its employees shall not unlawfully discriminate against any individual with regard to the terms and conditions of employment, including hiring, pay, leave, insurance benefits, retention, and rehiring. All allegations of discrimination will be promptly investigated, and any employee who engages in conduct in violation of this policy will be disciplined or separated from employment with ADOT.

Equal Opportunity Employment: Arizona Department of Transportation (ADOT) shall provide equal employment opportunity for all individuals regardless of race, color, national origin, religion, age, disability, genetic information, sex, pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation. It is the policy of ADOT that all individuals are treated in a fair and non-discriminatory manner throughout the application and employment process.

Harassment Prohibited: Harassment of a sexual nature or harassment based on race, color, national origin, religion, age, disability, genetic information, sex, pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation is prohibited. Arizona Department of Transportation (ADOT) prohibits the unlawful harassment of any employee in the course of the employee's work by supervisors, co-workers, or third parties, such as vendors or customers. Any ADOT employee who engages in unlawful harassment will be disciplined or separated from employment with ADOT.

Protection from Retaliation: Arizona Department of Transportation (ADOT) does not permit or tolerate retaliation against anyone for raising a concern about, assisting in an investigation of, or filing a complaint in good faith concerning unlawful discrimination or harassment. Any ADOT employee found to have engaged in retaliation against another individual for reporting or assisting in the investigation of any allegations of unlawful discrimination will be disciplined or separated from employment with ADOT.

It is the responsibility of **all** Arizona Department of Transportation (ADOT) employees to promptly bring any allegation of unlawful discrimination, harassment or retaliation related to ADOT, to the attention of the Civil Rights Office. Failure to do so will be a violation of this policy. Any complaint alleging unlawful discrimination, harassment or retaliation must be submitted in accordance with the procedures described in this policy and not under ADOT's Employee Grievance Policy.

This policy does not affect other rights and remedies under federal and state statutes prohibiting employment discrimination. Employees who believe that they have been subjected to discrimination because of their race, color, religion, sex, pregnancy, age, national origin, genetic information, or disability may also file a charge of employment discrimination with the Arizona Attorney General's Civil Rights Division and the Equal Employment Opportunity Commission (EEOC). Charges filed with the Arizona Civil Rights Division must be filed within 180

days following the most recent act of discrimination. Charges filed with the Equal Employment Opportunity Commission (EEOC) must be filed within 300 days following the most recent act of discrimination. The filing of an internal complaint of discrimination pursuant to this policy will not impact those statutes of limitations. No employee of this Department who elects to file a charge with either the Arizona Attorney General's Civil Rights Division or the Equal Employment Opportunity Commission (EEOC), or who testifies in an investigation by either of those agencies, will be retaliated against or denied internal rights or remedies on account of that charge filing or testimony.

2.07 COMPLAINT SYSTEM

- A. Employees will initiate the complaint process with Arizona Department of Transportation (ADOT) - Civil Rights Office within 180 days of the action giving rise to the complaint and clearly outline the allegations to be addressed by submitting a completed [Employee Discrimination Incident Report \(EDIR\) form \(See Exhibit A\)](#), including whether the basis of the allegation is based on:
 1. Unlawful discrimination based on race, color, religion, sex (including pregnancy), age, national origin, genetic information, or on the basis of a disability;
 2. Allegation of sexual harassment or other form of harassment;
 3. Retaliation for filing a complaint;
 4. Retaliation or intimidation for exercising any right under state or federal law.
- B. A complainant shall not be allowed the use of state time or state property to prepare a complaint, prepare for a meeting with agency management or to meet with a representative. Subject to supervisory approval and the operational needs of the unit, a complainant may request available compensatory or annual leave for this purpose.
- C. Multiple complaints by an employee may be consolidated into a single complaint. Separate complaints filed by two or more employees regarding the same issue or issues may be consolidated into a group complaint. Employees having a common complaint may submit one group complaint, identifying one complaint as the selected spokesperson for the group. Employees who choose to file a group complaint are prohibited from filing separate complaints on the same issue.
- D. Once a complaint is submitted to the Arizona Department of Transportation (ADOT) - Civil Rights Office, it may not be amended. If additional documentation is submitted by the complainant after the initiation of the complaint, the reviewing or investigation official may remand the complaint to the complainant for reconsideration and resubmission.
- E. An employee, who has an allegation of or becomes aware of a situation involving unlawful discrimination, harassment or retaliation, can report the allegation or complaint by submitting an Employee Discrimination Incident Report (EDIR) to the Civil Rights Office at:

Arizona Department of Transportation
Civil Rights Office
206 S. 17th Ave., Suite 183, MD 155A
Phoenix, AZ 85007
(602) 712-8946

- F. The [Employee Discrimination Incident Report \(EDIR\) \(See Exhibit A\)](#) shall include all facts and circumstance involved in the alleged violation, including the following information:
1. Description of the incident(s);
 2. Name(s) of individual(s) involved;
 3. Name(s) of witness(es);
 4. The date(s) the discrimination or harassment occurred (if known);
 5. Resolution sought;
 6. Federal or state law alleged to have been violated.
- G. Complaint Procedures:
1. The Civil Rights Office shall notify the Director of all verbal or written complaints of discrimination or harassment reported by an employee immediately upon receipt of a complaint.
 2. Employees who are told or otherwise become aware that discrimination or harassment is occurring must immediately report the allegation or complaint to the Arizona Department of Transportation (ADOT) - Civil Rights Office.
 3. The complaint shall include all facts and circumstances involved in the alleged violation, including:
 - a. Description of the incident(s);
 - b. Name(s) of individual(s) involved;
 - c. Name(s) of witness(es);
 - d. The date(s) the discrimination or harassment occurred (if known);
 - e. Resolution sought;
 - f. Federal or state law alleged to have been violated.
 4. The Civil Rights Office shall acknowledge receipt of the complaint to the complainant no later than five business days after receipt of the written complaint.

5. The Civil Rights Office shall initiate an investigation into the alleged complaint and will have 60 business days to complete the investigation. A thirty (30) day extension may be requested due to extenuating circumstances.
6. Barring resolution of the complaint by agreement of the parties, the Civil Rights Office shall forward a written recommendation to the Director, or designee, within 10 business days of completion of the review or investigation.
7. The Director, or designee, shall review the findings and recommendations and issue a decision in writing to the complainant. A copy of the response shall be provided to the ADOT Civil Rights Office.
8. A statement advising that retaliation against an employee for filing a complaint in good faith will not be tolerated or permitted.
9. A statement specifying that a grievance filed by a covered employee under R2-5B-403 that includes an allegation of discrimination or harassment shall be reviewed or investigated under the provisions of R2-5A-901, and not the grievance system.

H. Reviewed by Director:

1. A complainant who is not satisfied with the Arizona Department of Transportation (ADOT) Director's response to a complaint alleging discrimination or harassment, may elevate the complaint to the Arizona Department of Administration (ADOA) Director within five business days after the receipt of ADOT Director's response. The ADOT Director will furnish a copy of the final decision to the Director of ADOA and the complainant within 20 business days following receipt of the complaint by the ADOA Director. The 20 business days may be extended by the ADOA Director with the concurrence of the complainant. The decision of the ADOA Director is the final step in the complaint procedure.
2. The response will refer the complainant to the appropriate entity if the complainant is dissatisfied with the final step of the complaint procedure.
3. When the Arizona Department of Transportation (ADOT) Director administers the action to an employee, the ADOT Director shall send a copy of the employee's letter to the Arizona Department of Administration (ADOA) Director. If the ADOT Director determines that no action will be taken, the ADOT Director shall notify the ADOA Director.

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2.08 CORRESPONDING POLICIES

[PER-2.01 Internal Americans with Disabilities Policy](#)

PER-5.05 Guideline for Progressive Discipline

Exhibit A

Employee Discrimination Incident Report



FOR OFFICE USE ONLY		COMPLAINT TRACKING NUMBER:
Name:	Job Title:	Telephone:
Division:	Org. #:	Work Location:
Supervisor's Name:	Supervisor's Telephone:	
Complaint of alleged discrimination based on: Check appropriate box(es)		
<input type="checkbox"/> Race	<input type="checkbox"/> Color	<input type="checkbox"/> Genetic Information
<input type="checkbox"/> Sex	<input type="checkbox"/> Disability	<input type="checkbox"/> Religion
<input type="checkbox"/> Age (40+)		<input type="checkbox"/> Retaliation for Prior Civil Rights Activity
		<input type="checkbox"/> National Origin
		<input type="checkbox"/> Pregnancy
Type of Action: Check appropriate box(es)		
<input type="checkbox"/> Demotion	<input type="checkbox"/> Discharge / Termination	<input type="checkbox"/> Reasonable Accommodation
<input type="checkbox"/> Failure to Hire	<input type="checkbox"/> Forced Resignation	<input type="checkbox"/> Sexual Harassment
<input type="checkbox"/> Non-Promotion	<input type="checkbox"/> Reduction in Force (RIF)	<input type="checkbox"/> Non-sexual Harassment
<input type="checkbox"/> Discipline	<input type="checkbox"/> Equal Pay	
<input type="checkbox"/> Other (Specify)		

Date(s) of Occurrence:		
<i>Explain the issue in detail. Include all important information documentation, such as dates, places, etc. Use attachments to explain the issue, if necessary.</i>		
<i>What do you suggest be done to remedy this?</i>		
Employee's Signature:		Date:

Submit to: ADOT Civil Rights Office
 Mail Drop 155A, 206 S. 17th Avenue, Room 183, Phoenix, AZ 85007
 Phone 602.712.8946, Fax 602.239.6257
 Email: CivilRightsOffice@azdot.gov