



# RULES OF THE STATE PERSONNEL BOARD

## 478-1-.03 Antidiscrimination

### (1) Introduction:

- (a) Agencies must comply fully with all federal and state anti-discrimination laws. Agencies will not discriminate against individuals with regard to the terms and conditions of employment, including hiring, rehiring, retention, promotion, and/or the provision of benefits. The information provided in this rule is intended to serve as a summary of the agencies' and employees' obligations with regard to preventing unlawful discrimination and harassment in the workplace.
- (b) For the purposes of this Rule, the following terms and definitions apply in addition to those in 478-1-.02 (Terms and Definitions):
  - 1. A "disability" refers to a physical or mental impairment that substantially limits one or more of an individual's major life activities.
  - 2. A "disabled individual" is an individual who has such an impairment, has a record of such an impairment, or is regarded as having such an impairment.
  - 3. A "qualified individual" with a disability is an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the position that the individual holds or for which he/she has applied.

### (2) Equal Employment Opportunity:

The State is committed to providing equal employment opportunity for all individuals regardless of race, color, creed, national origin, ancestry, citizenship, religion, political opinions or affiliations, age, disability, genetic information, gender, pregnancy, childbirth or related conditions, military or veteran status, or other status protected by federal, or state law or regulation. The State's goal is to ensure that all individuals are treated in a fair and non-discriminatory manner ***throughout the employment process.***

- (a) As part of this commitment, the State prohibits and will not tolerate discrimination against any qualified individual with a disability and seeks to provide reasonable accommodation to all qualified individuals with disabilities. The State also prohibits discrimination against an employee who has a family member with a disability. Similarly, the State strives to reasonably accommodate employees' religious needs.

### (3) Harassment Awareness and Prevention:

# Rules of the State Personnel Board

The State is committed to maintaining a harassment-free workplace. The State prohibits and will not tolerate harassment of a sexual nature and/or harassment based on race, color, creed, national origin, ancestry, citizenship, religion, political opinions or affiliations, age, disability, genetic information, gender, pregnancy, childbirth or related conditions, military or veteran status, or other status protected by federal, or state law or regulation. Such harassment violates an individual's fundamental rights and personal dignity, and undermines the integrity of the workplace.

- (a) The State's policy of maintaining a harassment-free workplace applies to everyone. The State will not permit any employee to be harassed in the course of their work by supervisors, coworkers, or third parties, such as vendors or customers. Any employee who engages in prohibited harassment will be subject to prompt disciplinary action, up to and including termination of employment.
- (b) Employees are expected to be aware of and to refrain from any conduct or behavior that could be construed as harassment. Since harassment can take many forms, it is not possible to provide a complete list of prohibited conduct. While not exhaustive, the following definitions and examples are illustrative of the types of conduct that will not be tolerated in the workplace.
  - 1. **Sexual Harassment:** "Sexual harassment" is unwanted sexual attention of a persistent or offensive nature made by a person who knows, or reasonably should know, that such attention is unwanted. Sexual harassment includes conduct of a sexual nature that is sufficiently severe or pervasive to unreasonably interfere with an employee's job performance or create an intimidating, hostile, or offensive working environment.
    - (i) While sexual harassment encompasses a wide range of conduct, some examples of conduct that are specifically prohibited include:
      - (I) Promising (directly or indirectly) to reward an employee for complying with a sexually-oriented request;
      - (II) Threatening (directly or indirectly) to retaliate against an employee for refusing to comply with a sexually-oriented request;
      - (III) Denying (directly or indirectly) an employment-related opportunity to an employee for refusing to comply with a sexually-oriented request;

# Rules of the State Personnel Board

- (IV) Engaging in sexually suggestive physical contact, including touching another employee in a way that is unwelcome, or restricting an employee's movement;
  - (V) Displaying, storing, or transmitting pornographic or sexually-oriented materials;
  - (VI) Engaging in indecent exposure;
  - (VII) Making obscene gestures or leering;
  - (VIII) Making sexual or romantic advances toward an employee and persisting despite the employee's rejection of the advances;
  - (IX) Using sexually-oriented language, or making inappropriate propositions, jokes, or remarks, including graphic verbal commentary about an individual's body or dress;
  - (X) Inquiring, commenting, or gossiping about someone's sexual preferences, activities, deficiencies or prowess; and
  - (XI) Sending sexually suggestive or obscene letters, notes, or invitations.
- (ii) As these examples illustrate, prohibited sexual harassment can take many forms - physical, verbal, visual, and/or electronic - and can be physical and/or psychological in nature. It can involve males harassing females or other males, and females harassing males or other females. It can also involve harassment by a person in a greater position of authority harassing a subordinate, harassment by individuals in positions of lesser or equal authority, or harassment by persons doing business with or for the State. In addition, sexual harassment can include conversation and/or conduct between consenting participants that is observed or overheard by another employee who finds the behavior hostile and/or offensive.
  - (iii) Sexual harassment does not apply to a consensual relationship between employees as long as the relationship does not enhance or jeopardize the job opportunities of any employee. Employees should recognize the risks and complications that arise from intimate relationships with other employees and proactively address any concerns that might arise. At a minimum, employees are expected to ensure that the relationship does not jeopardize

# Rules of the State Personnel Board

job performance, create a conflict of interest, or result in employment related favoritism.

2. **Other Types of Harassment:** Harassment is also prohibited when it is based on any other protected status, such as race, color, creed, national origin, ancestry, citizenship, religion, political opinions or affiliations, age, disability, genetic information, gender, pregnancy, childbirth or related conditions, military or veteran status, or other status protected by federal, state, or local law or regulation.

- (i) Such harassment includes, but is not limited to, conduct similar to that described above as well as:

- (I) Threats, epithets, derogatory comments, or slurs;

- (II) Derogatory posters, photographs, cartoons, drawings, or gestures; or

- (III) Assault, unwanted touching, or blocking someone's movement.

## **(4) Employee Obligations to Report Discrimination or Harassment:**

It is every employee's responsibility to promptly bring to the agency's attention any incident of harassment or discrimination.

## **(5) Protection from Retaliation:**

The State prohibits and will not tolerate retaliation against anyone for raising a concern about, assisting in an investigation of, and/or filing a complaint concerning discrimination and/or harassment. If an employee believes that an act of retaliation has occurred, the employee must notify their agency as soon as possible. The agency will act promptly to assure compliance with this rule prohibiting retaliation.

## **(6) The Agency's Response:**

Upon receiving a complaint, an agency will conduct a prompt, thorough, and objective investigation of the allegations. All State employees are expected to cooperate in these investigations. Investigations will be conducted in as confidential a manner as possible, and all employees involved in the process are expected to refrain from discussing the matter outside of the investigation process.

# Rules of the State Personnel Board

- (a) If the investigation concludes that improper conduct has occurred, the agency will take corrective and remedial action commensurate with the circumstances, up to and including terminating the employment of employees found to have engaged in such misconduct. Appropriate action will also be taken to deter any future discrimination, harassment, and/or retaliation.
- (b) The agency may authorize appropriate personnel actions to resolve or rectify any past act or alleged act of unlawful discrimination and/or harassment pursuant to the provisions of a valid consent decree, agreement, order, or stipulation.

**Authority:**

O.C.G.A. Secs. 45-20-3, 45-20-3.1, 45-20-4.

**History.** Original Rule entitled "General Provisions" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.

**Amended:** F. Jan. 9, 1986; eff. Dec. 31, 1985, as specified by the Board.

**Amended:** F. Jan. 15, 1987; eff. Dec. 29, 1986, as specified by the Board.

**Amended:** F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.

**Amended:** F. Nov. 8, 1989; eff. June 28, 1989, as specified by the Board.

**Amended:** F. Sept. 3, 1992; eff. Aug. 6, 1992, as specified by the Board.

**Amended:** F. Nov. 16, 1992; eff. Sept. 21, 1992, as specified by the Board.

**Amended:** F. Aug. 10, 1993; eff. July 30, 1993, as specified by the Board.

**Amended:** F. Sept. 23, 1993; eff. Sept. 9, 1993, as specified by the Board.

**Amended:** F. July 20, 1994; eff. July 7, 1994, as specified by the Board.

**Amended:** F. Dec. 7, 1995; eff. Nov. 30, 1995, as specified by the Board.

**Amended:** F. Dec. 31, 1996; eff. Sept. 20, 1996, as specified by the Board.

**Amended:** F. Feb. 7, 1997; eff. Jan. 29, 1997, as specified by the Board.

**Amended:** F. Oct. 8, 1997; eff. Sept. 25, 1997, as specified by the Board.

**Amended:** F. July 31, 2000; eff. July 14, 2000, as specified by the Board.

**Repealed:** New Rule entitled "Antidiscrimination" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.