



**PROCEDURES
EXECUTIVE AND LEGISLATIVE BRANCHES
DEPARTMENT OF PERSONNEL MANAGEMENT**

SECTION:	SEXUAL HARASSMENT	NO 03-XVI-003
SUBJECT:	SEXUAL HARASSMENT	RELEASE DATE: 03-10-03
CROSS REFERENCE:	NNPPM Section XVI.F SEXUAL HARASSMENT POLICY; XIII.F. CONTENTS OF DISCIPLINARY ACTIONS AND G. TABLE OF PENALTIES; XI.B.3.C ADMINISTRATIVE LEAVE	REVISION DATE: 05-12-03

PURPOSE

To provide employees with procedural information regarding Navajo Nation sexual harassment policies.

APPLICABILITY

These procedures apply to all employees within the Executive and Legislative Branches.

DEFINITIONS

ALLEGED –

Stated, asserted, claimed or charged.

FINDINGS –

Determinations from the evidence gathered through an investigation; a conclusion by way of reasonable inference from the evidence collected.

INVESTIGATION –

A formal or informal examination or inquiry into a complaint or allegation of sexual harassment.

SEXUAL HARASSMENT –

Unwanted (unwelcome) conduct of a sexual nature, whether verbal or physical, when:

- submission to or rejection of this conduct by an individual is used as a factor in decisions affecting hiring, evaluation, promotion or other terms of conditions of employment; or,
- this conduct substantially interferes with an individual's employment, performance on the job, or creates an intimidating, hostile, or offensive working environment.

Examples of sexual harassment may include, but are not limited to:

Nonverbal actions; leering; gesturing of a sexual nature; unwanted sexual advances;
demands for sexual favors in exchange for favorable treatment or continued employment;
repeated sexual jokes, flirtations, advances, or propositions;
verbal abuse of a sexual nature;
verbal commentary about an individual's body;
touching, rubbing, pinching, whistling, assaulting, suggestive insulting
coerced sexual acts, or rape;
environmental harassment; display in the work place of sexually suggestive objects or pictures.

Such behavior is unacceptable in the work place and in other work related settings including business trips and business related social events.

PROCEDURES

Reporting a Complaint

1. A complaint or allegation of sexual harassment should be reported to the complainant's immediate supervisor and to the immediate supervisor of the accused. The complaint will be in writing and a copy sent to the Employee Relations Section, Department of Personnel Management.
2. If the immediate supervisor of the employee reporting the complaint is the subject of the complaint or allegation, the written report should be directed to the next higher level supervisor. The intent is to have the complaint referred to an objective, higher level supervisor who is not involved in the allegation of sexual harassment.

3. The complaint should provide as much information as possible regarding the alleged incident(s) of sexual harassment. A guide to preparing a complaint is to answer all of the following: who, what, where and when.
 - Who is the alleged harasser?
 - What happened? What are the circumstances constituting sexual harassment?
 - Where did the alleged incident(s) occur?
 - When did the alleged incident(s) occur?

The complaint should also indicate if there were any witnesses to the incident(s) and include any other relevant information.

The Investigation

1. Upon receipt of the complaint, the Department of Personnel Management will advise the appropriate Program Director that it is his/her responsibility to conduct an investigation into the allegation(s). The Program Director may appoint one or more individuals within the Department or Division to conduct the investigation and present the findings to the immediate supervisor of the accused.
2. The investigation should achieve several goals:
 - a. Determine whether sexual harassment in fact occurred.
 - b. Set the stage for related employment decision
 - c. Protect others from potential sexual harassment
3. The investigation should also determine the elements of who, what, where, when and why. There are no rules defining "proper" or "inappropriate" investigations. Each investigation must be specific to the facts and circumstances of the particular situation.
4. The complainant, the accused, and any witnesses or persons identified by the parties as having knowledge of the incident(s) should be interviewed. The investigator will document all interviews.
5. An allegation of sexual harassment must be investigated in a manner so as to protect as much as possible, the privacy of all persons involved. However, it will be necessary in the course of the investigation to disclose the facts and the name of the complainant to alleged witnesses and the accused. All individuals involved are to maintain confidentiality throughout the investigatory process to extent practical and appropriate.
6. During the period of investigation, the employee accused of sexual harassment may be placed on Administrative Leave with pay pursuant to the Personnel Policies Manual Section X.B.3 for an initial period of five

working days. An extension of the leave may be requested for up to an additional 15 working days. Total Administrative Leave shall not exceed 20 working days.

7. A Personnel Action Form (PAF) for the commencement of leave and another for the conclusion must be submitted to the DPM.

A request for extension and a PAF must also be completed if additional time is required to complete the investigation.

8. Prior to the completion of the investigation, the accused will be provided a copy of evidence collected and given an opportunity to prepare a response. Both the evidence collected and the response will assist the investigator(s) in rendering findings. Such findings serve as the basis for determining whether disciplinary action is warranted and if so, recommending what penalty will be imposed.
9. The complainant and the accused will be notified in writing of the outcome of the investigation by the appropriate supervisor.
10. Individuals found to have engaged in misconduct constituting sexual harassment will be disciplined, up to and including discharge from employment.
11. Divisions, Departments and Programs will not, in any way, retaliate against an employee or witness who makes a report of sexual harassment, nor shall they permit any employee to do so. A person found to have retaliated against another individual for reporting sexual harassment will be subject to disciplinary action provided for sexual harassment offenders.
12. The accused will be instructed by his/her supervisor, in writing not to engage in any retaliatory conduct against the complainant.
13. False accusations or complaints – if an employee intentionally reports false accusations of sexual harassment, he/she will be subject to appropriate sanctions, including the possible discharge from employment.

Initiating Disciplinary Action – Contents of Disciplinary Actions.

When an employee is found to have committed the offense of Sexual Harassment pursuant to the Personnel Policies Manual, Table of Penalties No. 16, a written notice of disciplinary action must be prepared by the appropriate supervisor and should contain the following information:

1. an appropriate identification of the party, including position title and department;
2. the date on which the violation(s) occurred, or when such acts are of a continuing nature and are the basis for the disciplinary action, the period of time when the acts occurred;
3. identify by reference to the Table of Penalties, the type of offense(s) committed, the penalty being imposed;
4. a clear and concise statement of the facts constituting the alleged violation(s);
5. an explanation to the employee of his/her right to appeal the disciplinary action pursuant to Section XIV, Employee Grievance; and
6. the employee's acknowledgement of receipt of the disciplinary notice, or if the employee refuses to acknowledge, the notation that the employee refused to sign and the date.

Rights of the Accused

1. The accused is entitled to be informed of the allegation(s) and to respond to the allegation(s). The accused shall also be afforded the opportunity to prepare a response to the evidence collected during the investigation.
2. Any leave imposed for investigative purpose shall be with pay.
3. A regular status employee may exercise his/her grievance rights if disciplinary action is initiated.
4. When the findings of an investigation do not support the charge of sexual harassment, the accused will be returned to his/her regular position immediately.

FORMS REQUIRED:

Personnel Action Forms

ATTACHMENTS:

1. Sample Personnel Action Forms - Administrative Leave
Suspension
Termination

DISTRIBUTION