

Unlawful Workplace Harassment

Purpose

The Judicial Branch of North Carolina is committed to providing a workplace in which all persons can expect to be treated with dignity and respect. The purpose of this policy is to:

- establish that the Judicial Branch prohibits any form of unlawful workplace harassment of employees,
 - require that rules are established to ensure that work sites are free from unlawful workplace harassment, and
 - prohibit retaliation against employees who oppose unlawful workplace harassment.
-

Applicability

This policy applies to all employees within the Judicial Branch by establishing standards that apply to all Judicial Branch hiring authorities, managers, and supervisors and creating remedies that are available to all employees of a hiring authority.

Authority

Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act.

Policy Statement

The policy of the Judicial Branch of North Carolina is that no employee may engage in conduct that falls under the definition of unlawful workplace harassment as defined below.

All employees are guaranteed the right to work in an environment free from:

- unlawful workplace harassment, and
 - retaliation against employees who oppose unlawful workplace harassment.
-

Elected and Appointed Hiring Authorities

This policy recognizes that there are numerous independently elected or appointed hiring authorities within the Judicial Branch of government. It also recognizes that the employees of these hiring authorities serve at their pleasure and that final authority and responsibility for all employment decisions rests solely with the hiring authority including:

- hiring,
 - promotion,
 - discipline, and
 - termination.
-

Continued on next page



Unlawful Workplace Harassment, Continued

Elected and Appointed Hiring Authorities,
continued

The North Carolina Administrative Office of the Courts (NCAOC) does not have the authority to direct or review the employment decisions of a hiring authority or to initiate disciplinary action against them or their employees. Nevertheless, all employees of Judicial Branch hiring authorities have a right to work in an environment that is free of all forms of unlawful workplace harassment. All hiring authorities and supervisors have a duty to create and maintain such an environment and the State has the ultimate responsibility for assuring that right and enforcing that duty.

DEFINITIONS

Workplace

Includes, but is not limited to, the actual work site. It may also include:

- home,
- conferences,
- business travel,
- training sessions,
- work related social gatherings, or
- other locations,

where an employee is engaged in activity associated with employment.

Unlawful Workplace Harassment

Unwelcome or unsolicited speech or conduct based upon:

- race,
- sex,
- religion,
- national origin,
- age,
- color,
- disability, or
- genetic information.

Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive.

Continued on next page



Unlawful Workplace Harassment, Continued

Abuse of Authority

An individual's use of power and authority inherent in the position held in a manner which serves no legitimate work purpose and which ought to reasonably be known as inappropriate. It includes the misuse of power in a manner considered:

- intimidating,
- coercive, or
- demeaning.

The legitimate and proper exercise of the hiring authority's right to supervise or manage does not constitute unlawful workplace harassment under this policy. Examples include:

- performance reviews,
 - work evaluation,
 - disciplinary measures taken for any valid reason,
 - reassignment of duties, and
 - termination.
-

Quid Pro Quo This type of harassment consists of:

- unwelcome sexual advances,
- requests for sexual favors, or
- other verbal or physical conduct when
 - submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or
 - submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

Examples:

- A supervisor promises an employee a promotion if the employee agrees to a sexual relationship with the supervisor.
 - A supervisor threatens an employee with unfavorable work conditions if s/he refuses his/her sexual advances.
-

Retaliation

Adverse action taken because of opposition to unlawful workplace harassment.

Continued on next page



Unlawful Workplace Harassment, Continued

Hostile Work Environment

A hostile work environment is one that a reasonable person would find intimidating, hostile or abusive.

A hostile work environment is determined by looking at all of the circumstances of the allegedly harassing conduct including:

- frequency,
 - severity,
 - whether it is physically threatening, or humiliating, and
 - whether it interferes with an employee's work performance.
-

Responsibilities of Judicial Branch Hiring Authorities

All Judicial Branch officials and employees share responsibility for creating a harassment-free workplace. However, it is important to emphasize that the hiring authority carries certain responsibilities for maintaining a harassment-free work environment.

These responsibilities include:

- providing leadership in the prevention of unlawful workplace harassment by fostering a climate of mutual respect;
 - ensuring that all employees are informed of the unlawful harassment policy, and advised of their responsibilities and rights;
 - ensuring that prompt and appropriate action is taken when unlawful workplace harassment is alleged;
 - ensuring fair and equitable procedures for all parties to a complaint of unlawful workplace harassment;
 - taking corrective or disciplinary measures, where necessary; and
 - monitoring compliance with the unlawful workplace harassment policy.
-

Responsibilities of Supervisors and Managers

Employees with supervisory and/or management responsibilities are responsible for carrying out the purpose of this policy by:

- maintaining a high standard of personal conduct in his or her dealings with persons;
 - ensuring that all employees are advised of their rights and responsibilities under this policy, and the courses of action that are open to them;
-

Continued on next page



Unlawful Workplace Harassment, Continued

Responsibilities of Supervisors and Managers, continued

- providing opportunities for education and training related to unlawful workplace harassment to all employees under their supervision; and
 - taking immediate action to report or deal with alleged incidents of unlawful workplace harassment that come to their attention, regardless of a complaint having been made.
-

Responsibilities of All Employees

All employees of the Judicial Branch are responsible for:

- becoming fully informed of the provisions of the unlawful workplace harassment policy and nature of unlawful workplace harassment;
 - treating all persons in the workplace in a manner that is free of unlawful workplace harassment;
 - changing behavior when given indications that it is offensive or harassing to others;
 - taking appropriate action, where possible, when subjected to unlawful workplace harassment; and
 - cooperating fully with those responsible for dealing with a complaint of harassment.
-

Responsibilities of Human Resources

Provide hiring authorities and employees with policies and procedures to comply with the law and prevent unlawful workplace harassment. These will include, at a minimum:

- A policy statement, approved by the Administrative Officer of the Courts, establishing that unlawful workplace harassment or retaliation against employees is prohibited;
 - A process for disseminating to new and existing employees the unlawful workplace harassment policy;
 - Training and other methods (news items, Judicial Branch intranet site) to prevent unlawful workplace harassment;
-

Continued on next page



Unlawful Workplace Harassment, Continued

Responsibilities of Human Resources, continued

- Internal procedures which provide for prompt and impartial investigation of any complaints of unlawful workplace harassment about which the Human Resources Division becomes aware including:
 - Review of the totality of the circumstances based on the presented facts surrounding the misconduct to determine whether the alleged conduct constitutes unlawful workplace harassment;
 - A goal to respond to complaints with remedial action and notification to the grievant within 60 days of receipt of the complaint or inform parties the 60 day objective cannot be met and when a response may be expected;
 - Recommendations regarding disciplinary actions to address unlawful workplace harassment which are, in the judgment of HR staff, consistent and fair

Redress and Grievance

A person who believes that he/she is being subjected to unlawful workplace harassment should take steps without delay to have the problem resolved.

Step	Action
1	A complainant should, but is not required to, confront the harasser and make it known that the behavior is unwelcome.
2	A complainant may report any harassment to his or her immediate supervisor unless the supervisor is involved in the harassment.
3	If the immediate supervisor is involved in the harassment, then report the harassment to the supervisor's supervisor or to the hiring authority, whichever is next in the chain of authority, or, move to step 4 below.
4	A complainant may report the harassment directly to the NCAOC Human Resources Division, employee relations consultant, by completing the Judicial Branch Unlawful Workplace Harassment Complaint Form (Form AOC-A-188). Employees of the NCAOC should use the AOC Complaint Form (Form AOC-A-187)
5	In addition, a complaint may be filed by the complainant with the <ul style="list-style-type: none"> • Equal Employment Opportunity Commission (EEOC), or • civil or legal action may be taken.

Continued on next page



Unlawful Workplace Harassment, Continued

Redress and Grievance, continued

The following complaints may be filed in addition to those already discussed.

If the person complained of is a...	Then...
judge	a complaint may be filed with the Judicial Standards Commission.
attorney	a complaint may be filed with the North Carolina State Bar.
<ul style="list-style-type: none">• district attorney• public defender• clerk of superior court, or• magistrate	a proceeding may be commenced to have the person removed from office.

Records Kept by Complainant

It is recommended that the complainant make note of the details of the harassment. Information should include:

- time(s),
- date(s),
- place(s),
- names of witnesses,
- others affected, and
- any attempts to resolve the situation(s).

Corrective Action

When responding to a complaint of harassment by a:

- Judicial Branch hiring authority, or
- employee of a hiring authority,

the NCAOC Human Resources Division, employee relations consultant may:

- meet with the complainant,
- investigate the situation, and
- recommend appropriate remedial action including suspension or termination.

