

COMMONWEALTH OF PUERTO RICO  
DEPARTMENT OF HOUSING

DEPARTMENT OF HOUSING  
AND ATTACHED AGENCIES  
REGULATION FOR THE  
PREVENTION AND FILING OF  
SEXUAL OR GENDER  
DISCRIMINATION AND  
SEXUAL HARASSMENT  
COMPLAINTS



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HARASSMENT COMPLAINTS**

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**1. Title**

This document shall be known as the “**Department of Housing and Attached Agencies Regulation for the Prevention and Filing of Sexual or Gender Discrimination and Sexual Harassment Complaints**”.

**2. Statement of Public Policy and Purpose**

The Bill of Rights, Article II, Section I, of the Constitution of the Commonwealth of Puerto Rico establishes that the dignity of a human being may not be violated and that we are all equal under law. Section 1 clearly states that no discrimination of any kind whatsoever may exist for reasons of race, color, sex, birth, origin or social condition, nor for political or religious beliefs. Likewise, Section 8 under Article 11, states that every person has the right to be protected under the law from any abusive attacks against their honor, reputation and private or family life. In Keeling with these values, the Government of the Commonwealth of Puerto Rico has drafted various laws that protect the Puerto Rican labor force in multiple ways. Among the laws being enacted by the Legislative Assembly, are the laws prohibiting all forms of gender discrimination. Sexual harassment on the job, in addition to being a form of gender discrimination, is a practice that goes against the best interest of the State and, therefore, shall not be tolerated in any of its manifestations.

It is the public policy of the Department of Housing (hereinafter DH) to comply with all of the legal rules and jurisprudence that protects its employees, visitors or third parties not employed by or otherwise associated with the DH, and therefore hereby states that **Discrimination on the basis of Sexual Orientation or Gender Identity and Sexual Harassment** in all of its manifestations is absolutely forbidden among employees, supervisors, contractors, visitors or third parties not employed by or otherwise associated with the DH. This Regulation states the measures that shall prevent this; it describes the procedure to be followed to file complaints, it establishes the investigative procedures used to determine the facts and imposes the necessary disciplinary actions for any noncompliance with what is established herein.

Employees and contractors shall be responsible for providing a good example for the staff to follow and for maintaining strict compliance with this Regulation. With the purpose of carrying out the public policy established by this **Regulation**, the Assistant Secretary of Human Resources shall periodically verify that compliance with the law and with this **Regulation** is kept.

No behavior whatsoever shall be allowed, on behalf of any employee, functionary, contractor or visitor or third parties not employed by or otherwise associated with the DH, which could be interpreted as some form of unwanted sexual advance, expressed by means of direct or indirect insinuations of a sexual nature and which may include anything from the most subtle and disguised forms of verbal exchange or physical contact to simple or aggravated sexual assault. Any person who allegedly incurs in said forbidden behavior shall be subject to an investigation and sanctioned in proportion to the severity of their offense if found to have incurred in the charges raised against them. The DH is bound by law to keep said workplace free of any discrimination due to **Sexual Orientation or Gender Identity and Sexual Harassment**, where visitors, employees, contractors, supervisors and third parties not employed by or otherwise associated with the DH can feel respected and free from any threat of a sexual nature. In order to achieve this objective the following actions shall be taken:

1. Disseminate this public policy among all employees and contractors;
2. Advertise on the DH website so that job seekers may know of the legal protections that exist against this kind of offensive behavior;
3. Inform Directors and Supervisors, either through talks or by written documentation, about their responsibilities in maintaining a workplace that is free from any **Discrimination due to Sexual Orientation or Gender Identity and Sexual Harassment**;
4. Inform Directors and Supervisors of their duty to immediately report to the acting Assistant Secretary of Human Resources any complaint initiated by any person alleging that they are a victim of **Discrimination due to Sexual Orientation or Gender Identity and Sexual Harassment**;

### 3. Legal Grounds

This **Regulation** is disseminated by virtue of the powers conferred to the Department of Housing under Law No. 97 of June 10, 1972, as amended, known as the "Organic Law of the Puerto Rico Department of Housing" and, in harmony with Law Number 170 of August 12, 1988, as amended, known as the "Commonwealth of Puerto Rico Law of Uniform Administrative Procedures", to enact the regulations and procedures it needs in order to best perform its functions.

In addition, it is hereby established in accordance with the **Bill of Rights of the Constitution of the Commonwealth of Puerto Rico, Article II, Section 1**, which states that the dignity of a human being may not be violated, that all men (human beings) are equal before the Law and that no discrimination whatsoever shall exist for reason of race, color, sex (gender), birth, origin or social condition nor for their political or religious beliefs, and under **Title VII of the Federal Civil Rights Act of 1964**, as amended, which forbids any type of employment discrimination.

On the other hand, this Regulation is adopted in harmony with the following laws:

**Law No. 17 of April 22, 1988**, as amended, which forbids sexual harassment on the job and imposes on all employers the responsibility to establish clear public policies against sexual harassment on the job and appropriate and effective internal procedures to address sexual harassment complaints. That by means of an amendment to the aforementioned Law No. 17, it is forbidden to use the computer or email systems to send, receive or create messages or documents with contents that discriminates for reason of race, gender, creed, political ideas or social or national origin, or which may be construed as sexual harassment.

**Law No. 69 of July 6, 1985**, as amended, which requires strict compliance with equal employment rights, as much for men as for women and forbids any discriminatory actions for reasons of sex (gender).

**Law No. 100 of June 30, 1959**, as amended, which protects employees and job seekers against employer discrimination either for race, color, sex, birth, origin or social condition, for political or religious beliefs, age, sexual orientation, gender identity, for having been a victim or being perceived as a victim of domestic violence, sexual aggression or stalking, for having veteran status or for any physical or mental disability.

The Matthew Shepard and James Byrd, Jr., **Hate Crime Prevention Act** of 2009, 18 USC ss. 249, included gender, sexual orientation and gender identity in the federal list of hate crimes.

**Law No. 22-2013** which establishes the prohibition of discrimination for reasons of sexual orientation or gender identity as a public policy of the Commonwealth of Puerto Rico.

#### **4. Purpose**

This Regulation has the purpose of preventing and forbidding all **Discrimination due to Sexual Orientation or Gender Identity and Sexual Harassment** in the DH in accordance with our laws. In addition, it establishes the internal administrative procedures that address sexual harassment complaints and implements a prevention, education and counseling program on the DH's public policy regarding sexual harassment on the job. Lastly, it responds to the DH's interest in informing job seekers, visitors, contractors or their representatives and third parties of their sexual harassment prevention and punishment policy.

#### **5. Scope**

This **Regulation** applies to all DH functionaries and employees regardless of their level or hierarchy, and to persons not employed by them, such as: job seekers, visitors, contractors or their representatives or third parties not employed or otherwise associated with the DH.

Any person who understands that an act of **Discrimination due to Sexual Orientation or Gender Identity and Sexual Harassment** has been committed against them, or who has witnessed such an act being committed against another person, by any of the aforementioned persons, may file a complaint



pursuant to this **Regulation**.

## **6. Definitions**

For the purposes of this Regulation, the following terms shall have the meaning stated in the following:

1. **Department:** Means the Department of Housing and its attached agency: The Public Housing Administration (PHA).
2. **Contractor:** Means any natural or legal entity, their representatives or employees, who holds a contract relationship with the DH, including contracted personnel for miscellaneous services and those working under contract as professionals or consultants.
3. **Directors:** Means the Directors assigned to direct the different DH areas.
4. **Functionary or employee:** Means any person who holds a DH job or position, including regular, irregular, transitory or probationary employees and preselected employment candidates.
5. **Gender Identity:** The way in which a person identifies him or herself, how they know themselves to be, with regard to their gender which may or not correspond to their biological sex or that assigned to them at birth. In order to achieve the purposes established under Law No. 22-2013, this definition is to be interpreted as broadly as may be necessary in order to extend its benefits to all citizens exposed to an episode or pattern of discrimination and in accordance with the Mathew Shepard and James Byrd, Jr. Federal Hate Crime Prevention Act, Public Law No. 111-34 (2009).
6. **Investigators:** Means a DH person or group assigned by the Secretary to investigate the facts, interview the parties and witnesses involved, and prepare a written report on the matter with their recommendations.
7. **Sexual Orientation:** Means the capacity that each person has to feel an emotional, affective or sexual attraction for persons whose gender is different than theirs or who are of the same gender, or who have more

than one gender. In order to achieve the purposes established under Law No. 22-2013, this definition is to be interpreted as broadly as may be necessary in order to extend its benefits to all citizens exposed to an episode or pattern of discrimination.

8. **Employer:** Mean the DH or its attached agency.
9. **Complaint:** Means any verbal or written Claim made by an employee, functionary, contractor, visitor or by third parties not employed by or otherwise associated with the DH, stating that they were or are the object of sexual harassment or that they witnessed said acts being committed against another person, with the purpose of initiating an investigation. In case that the claim is made in writing, it must be signed and dated by the employee, functionary, contractor or third party not employed by or otherwise associated with the DH.
10. **Frivolous or malicious complaints:** Means any claim made by an employee, functionary, contractor or visitor of the DH, or by third parties not employed by or otherwise associated with the DH, for **Discrimination due to Sexual Orientation or Gender Identity and Sexual Harassment**, while being aware of the falseness of the claim, showing recklessness and clear contempt for the truth.
11. **Respondent:** Means the person against whom the allegations of committing acts that constitute sexual harassment on the job are being claimed.
12. **Claimant:** Means the person affected by an act of sexual harassment, or who witnessed said act being committed against another person, and has the right to file a complaint pursuant to the procedure established by this Regulation.
13. **Human Resources:** The support unit responsible for receiving complaints regarding possible acts of discrimination and harassment. The unit responsible for receiving and orienting the claimant and of carrying out all

of the other functions described in this **Regulation**.

14. **Reprisals:** Means when the employer or supervisor fires, suspends or imposes more onerous working conditions or otherwise discriminates in any way, because the functionary or employee has complained or has offered testimony on some complaint, claim or administrative procedure.
15. **Assistant Secretary of Legal Affairs:** Means the support unit that intervenes in the process related to a **Discrimination due to Sexual Orientation or Gender Identity and Sexual Harassment** complaint.
16. **Supervisor:** Means any DH functionary or employee who holds any control or whose recommendation is considered in order to hire, classify, fire, promote, transfer, set compensation for or with regard to other working conditions, such as scheduling, workplace, tasks or functions that an employee or group of employees performs or could perform or regarding any of the other employment terms and conditions, or any person who carries out supervisory tasks on a day-to-day basis.
17. **Victim:** Means the person against whom an act of **Discrimination due to Sexual Orientation or Gender Identity and Sexual Harassment** has been committed as defined under this **Regulation**.
18. **Visitor:** Means any person who is not a DH functionary, employee or contractor, as defined under this **Regulation**, who comes to the DH on some business.



## 7. **Forms of Sexual Harassment on the Job**

Sexual harassment on the job consists of any type of unwanted sexual approach, requirements for sexual favors and any other form of verbal or physical behavior of a sexual nature, or reproduced using any means of communication including, but not limited to, the use of multimedia tools through information networks or by any electronic means, when one or more of the following circumstances are given:


- Where submitting to said behavior implicitly or explicitly becomes a

term or condition for employment.

- Where submitting or rejecting said behavior becomes the basis on which employment decisions are taken.
- Where said behavior tends to interfere with the work performance or to create an intimidating, hostile or offensive working environment.
- Sexual harassment, as previously described, applies to situations in which the forbidden behavior occurs between people of the same gender or between people with different genders.

In other words, and in the interest of being amply clear for the purposes of this **Regulation**, the described behavior is hereby forbidden regardless of the way in which it is manifested between the sexes, be it between a man and a woman, woman to man, woman to woman or man to man. Sexual harassment includes any type of unwanted physical or verbal approach or pressure of a sexual nature, arising from the employment relationship and which creates a hostile, tense and difficult environment in which to carry out the job's functions. The preceding description is not limitative. The DH recognizes that other behaviors not described herein may also constitute sexual harassment or result in a hostile working environment, as said terms have been defined in the state and federal courts of Puerto Rico and the United States.

We are possibly facing a sexual harassment case when:

- 
- There is some kind of pressure or approach of a sexual nature which includes physical or verbal behavior.
  - The approach or the verbal or physical behavior is not welcome by the victim.
  - It arises from the employment relationship. In other words, that the harassment behavior arises from an existing employment relationship, in which the victim is an employee or comes into contact with the harasser, because the latter holds a supervisory position, or is a coworker or client

or visitor to the workplace.


Sexual harassment on the job can manifest itself in many ways. Jurisprudence and the law have identified two modalities in which sexual harassment can present itself: an exchange or quid pro quo, and a hostile or offensive environment.

### **7.1. The Exchange or Quid Pro Quo Modality**

The exchange or quid pro quo modality occurs when a supervisor makes a requirement, invitation, request, exigency or demand for someone under their supervision to agree to some type of unwanted sexual relation. If the supervised party refuses, the supervisor informs them that reprisals could be taken against them or that their benefits or employment conditions could be affected. This form of harassment must arise from someone who has power, authority, or who is acting as the supervisor, because otherwise they would not be able to fulfill the promise of benefits or threat of reprisals.

### **7.2. The Hostile or Offensive Environment Modality**

A hostile or offensive modality arises when an environment is created where the harasser's alleged sexual behavior is severe and offensive and has the purpose or effect of unreasonably interfering with the harassed person's work performance or when a tense, intimidating, bothersome, hostile or offensive environment is created in the workplace. This type of harassment may come from a coworker or an outside person, such as a visitor, contractor or some other person who does business with or is visiting the employer's facilities.

 This type of harassment occurs when the figure of authority is intimidating enough to create a real sense of fear in the employee over the threat of losing an employment specific benefit. A hostile environment can also be generated between coworkers, with jokes or comments made in bad taste or with a sexual content, unwanted invitations, offenses, obscene or offensive signs, physical contact, among others.

### **7.3. Sexual Harassment Actions and Manifestations**

The unwelcomed actions that may constitute sexual harassment may vary. The

amount of persistence needed for an act to constitute sexual harassment is reduced by the severity or gravity of the unwanted act. Examples of some of the more common actions and manifestations of sexual harassment may include:

- ❖ Language or expressions of a sexual nature, the telling of offensive jokes of a sexual nature, pranks and obscene comments, winks and compliments;
- ❖ Telephone calls and/or text messages with a sexual content;
- ❖ Double-meaning expressions that may be considered offensive due to their sexual content;
- ❖ Lewd or obscene gestures or actions, insistently staring at various body parts;
- ❖ Propositions and insinuations of a sexual nature;
- ❖ The display of sexually offensive, indecent or pornographic material or obscene drawings;
- ❖ Pinching, squeezing and rubbing;
- ❖ Kissing and caressing;
- ❖ Constant and direct invitations to go out on a date, or to go dancing or to drink alcoholic beverages and to diner, among others, even when these are not rejected;
- ❖ Attempts to engage in sexual acts or a sexual relationship as such;
- ❖ Exposure of genitals;
- ❖ Requiring sexual relations;
- ❖ Attempted sexual assault;
- ❖ Sexual assault:
- ❖ Use of the computer or email system to send, receive or create documents with contents that discriminates against gender or is of a sexual nature;

- ❖ Any repeated behavior of a sexual nature that tends to create an undesired working environment.


The preceding examples constitute possible acts of sexual harassment on the job. These are listed only as an example of the typical behaviors associated with this subject and should not be viewed as limiting to these effects. Other unwelcomed actions may also constitute sexual harassment and are not included in this list. However, that does not mean that said actions are not forbidden by this **Regulation**. Any employee or person that is covered by this **Regulation** who feels they have been the object of an unwelcomed act and who feels that said act constitutes sexual harassment, must immediately report it to the Assistant Secretary of Human Resources of the DH, as established in this Regulation.

## **8. Prohibitions**

Sexual harassment is absolutely forbidden to all DH personnel regardless of gender, level or years of service. Sexual harassment is also forbidden to any person under contract, subcontract and any independent contractor or their representatives, who provides their services at or for the DH while their contracts remain in effect.

The DH forbids all forms of, among others, gender discrimination. Therefore, for the purposes of this **Regulation** all of the terms used in reference to a person or position include both genders.

## **9. Factors used to Determine Sexual Harassment Behavior**

 The following points are considered in order to determine whether an alleged behavior constitutes sexual harassment on the job:

- ✓ All of the circumstances surrounding the facts, as well as the nature of the approach or sexual requirements and the context in which the alleged behavior occurred. Determining the illegality of the alleged behavior shall be based on the facts of each particular case and taking into account the applicable laws at the time when the facts occurred.
- ✓ The working relationship between the parties involved; to determine if the

person who committed the sexual harassment acts was acting under their capacity as a supervisor or representative of the employer. There is no need to establish whether or not the representative or supervisor who committed the sexual harassment acts was directly supervising the claimant.

- ✓ The entire investigation on the alleged behavior, as carried out either by the DH investigator or by subcontracted personnel, the parties, their testimonies and all additional information arising from the investigation.

#### **10. Functions and Duties of the Assistant Secretary of the Office of Human Resources with regard to Preventing Sexual Harassment on the Job**

The functions and duties of the Assistant Secretary of the Office of Human Resources with regard to the Prevention of **Discrimination due to Sexual Orientation or Gender Identity and Sexual Harassment** on the job are the following:

- To oversee the implementation, dissemination and compliance of the public policy established by this **Regulation**.
- To provide guidance for all newly arriving functionaries and employees about the DH's public policy with regard to **Discrimination due to Sexual Orientation or Gender Identity and Sexual Harassment** on the job and the relevant provisions of this **Regulation** or any other that may apply. During said guidance, he may provide the functionaries and employees with a copy of this **Regulation** and any other literature with regard to discrimination and sexual harassment on the job, and ensure that each functionary and employee understands the public policy contained in this **Regulation** and its applicable procedures.
- Offer guidelines to all DH personnel to keep them up to date on everything relating to sexual harassment on the job.
- To keep a copy of the receipt confirmation for this Regulation in the functionary or employee's file as well as evidence of their assistance to



the sexual harassment guidance sessions being offered.

- To periodically disseminate and distribute a copy of the DH's public policy with regard to sexual harassment on the job to functionaries and employees.
- Offer guidance on sexual harassment on the job to all functionaries, employees, job seekers, contractors and visitors or third parties not employed by or otherwise associated with the DH who request it, either by themselves or in coordination with resources that are knowledgeable on the matter.
- To ensure that the DH complies with all of the provisions established under the aforementioned Law No. 17, with regard to sexual harassment on the job, the aforementioned Law No. 69 and the aforementioned Law No. 100, as well as with any other legal provision that applies under our current legal system.
- To receive, inform and orient the functionary, employee, job seeker, contractor, visitor or third parties not employed by or otherwise associated with the DH that alleges to be a victim of sexual harassment. This can be done personally or by telephone, if the person affected wishes to remain anonymous.
- To ensure compliance with the procedures established in order to process, investigate and award the sexual harassment complaints filed pursuant to this Regulation.
- To keep everything that is entrusted to him confidential.
- To follow up on sexual harassment complaints filed in the DH and to ensure compliance with the relevant internal regulations.
- To make recommendations to the Secretary on appropriate provisional measures that should be taken to prevent the claimant from continuing to be exposed to the denounced behavior or to protect them from possible reprisals once the complaint has been filed and to ensure that these

measures remain in effect during the established term.

## **11. Procedure for Filing, Investigating and Awarding Complaints**

Any DH functionary or employee who is a witness to an act of **Discrimination due to Sexual Orientation or Gender Identity and Sexual Harassment**, being committed by any functionary, employee, contractor or their representatives or any visitor or third party not employed by or otherwise associated with the DH, is obligated to report it immediately as established under Article 11.1 of this **Regulation**.

Any functionary or employee who has knowledge of or feels they have been the object of sexual harassment on the job, in any of its modalities, is duty-bound to file a complaint following the procedures established herein, within the term of two (2) months from the last occurrence of an act of sexual harassment. When the complaint is presented by a job seeker, visitor or by third parties not employed by or otherwise associated with the DH, or a contractor, the same procedure and term applies.

The duty of any of the persons involved to file a complaint as established in this Article, whether or not they are DH employees, must be strictly observed. The DH encourages the filing of such complaints as soon as the DH employee or unemployed person understands that they have been the object of behavior that is prohibited under this **Regulation**.

The complaint shall be processed confidentially and diligently until its final resolution. Any person who intervenes in the process must avoid any unreasonable delays in resolving the controversy.

### **11.1. Filing the Complaint**

#### **11.1.1. Process**

The functionary, employee, contractor, visitor or third parties not employed by or otherwise associated with the DH, who understands that an act of sexual harassment has been committed against them, may file a verbal or written complaint before the Assistant Secretary of Human Resources. If a Director,

Supervisor or any of the functionaries or employees should learn of an alleged act of **Discrimination due to Sexual Orientation or Gender Identity and Sexual Harassment**, this must immediately be referred to the Assistant Secretary of Human Resources. In the event that the direct Supervisor is the respondent, the claimant may file their complaint before another supervisor. Any information they receive must be kept in the strictest confidentiality.

- Once the Assistant Secretary of Human Resources is made aware of the verbal or written complaint he may immediately inform the claimant with regard to their rights and the recourses available under the law.
- The complaint may be presented verbally at first, but later it must be formalized in writing. If the complaint is made verbally, the Assistant Secretary of Human Resources shall draft a minute on the issues reported by the claimant.
- The claimant is responsible for drafting the complaint, which must be signed.
- The fact that the complaint is not sworn does not in itself constitute an impediment to carrying out an investigation into the alleged facts and to proceed in taking any provisional measures or other actions that may be appropriate.
- Once the Assistant Secretary of the Office of the Assistant Secretary of Human Resources has received a completed complaint as established under Section 11.1.4, the Secretary and the respondent shall be notified in person or by certified mail with return receipt no later than three (3) working days as of the date on which the complaint is received.
- In cases in which the Secretary determines not to participate, he shall delegate his role in the process to the Sub-Secretary or to any other functionary he assigns.


Job seekers, contractors, visitors or third parties not employed by or otherwise associated with the DH, shall file their complaints before the Assistant Secretary

of the Office of Human Resources and the procedure established in this **Regulation** shall be followed.

The Secretary, under his own initiative and in writing, may order an investigation into the behavior of a functionary, employee, contractor, visitor or unemployed third party for an alleged **Discrimination due to Sexual Orientation or Gender Identity and Sexual Harassment**; At this stage, the Secretary or the delegated functionary may also, at their own initiative, take all of the measures that they feel are necessary in order to protect any person from future acts that may constitute sexual harassment.

#### **11.1.2. Complaint Dismissal at the Claimant's Request**

In those cases in which the claimant wishes to withdraw the filed complaint, the request must be made in writing and signed, to the Assistant Secretary of the Office of Human Resources, who must then instruct the claimant in that regard within a term no greater than two (2) working days as of the receipt of the notice to withdraw the complaint, unless good cause is shown. As a part of these instructions, the Assistant Secretary of Human Resources shall notify the claimant that they have five (5) working days as of the day on which they receive these instructions to reinstate their complaint, warning them that if they choose not to do so, the complaint shall be dismissed and filed, without further action. Said notice shall be made in writing and the claimant must sign one page as receipt confirmation for the same.

 The foregoing is not an impediment for the Secretary to continue with an investigation of the complaint for reasons of his own.

#### **11.1.3. Frivolous Complaints**

Any functionary or employee, who knowingly files a frivolous sexual harassment complaint against another person, shall be subject to disciplinary measures as established under Article 14 of this Regulation.

#### **11.1.4. Contents of the Complaint**

Any **Discrimination due to Sexual Orientation or Gender Identity and Sexual**

**Harassment** complaint that is filed must meet the following requirements:

1. It must be made in writing.
2. It must contain the personal information of the claimant: name, position, place of work, postal address, telephone number, relationship with the respondent, as well as a clear and specific account of the facts or actions that constitute sexual harassment; the date and place where such facts occurred and the date on which the complaint was submitted.
3. It shall identify the respondent by their full name, position, the office in which they work and the postal address, or provide sufficient information with which to identify said party.
4. It shall identify the witnesses and provide any other pertinent information that may support the complaint.
5. The respondent's signature.

#### **11.1.5. Confidentiality**

The complaint filed by any functionary, employee, contractor, visitor or third party not employed by or otherwise associated with the DH, shall be processed and investigated under the highest degree of **confidentiality** possible to protect the dignity of the parties involved. Any functionary or employee, including the claimant, who willingly reveals the identity of the parties or who discloses the information that was gathered or provided during the course of any of the stages involved in the processing of a complaint involving sexual harassment on the job to unauthorized parties, shall be subject to disciplinary measures as established under **Article 14** of this **Regulation**.

The DH shall not take any reprisals against any person who offers truthful and well-intentioned information, regarding a possible act of **Discrimination due to Sexual Orientation or Gender Identity and Sexual Harassment**. The DH may disclose any such information in compliance with an order from a court that has jurisdiction over the matter being investigated.

#### **11.2. Investigation of the Complaint**

### **11.2.1. Investigation Assignment**

The Secretary shall assign a person or group to investigate the facts. Without limiting the Secretary's choice of assignment as investigator or as a part of the group, it should be made clear that the Assistant Secretary of Human Resources and the attorneys of the Legal Division may also participate as investigators. This assignment may also include any outside resource trained to work with these situations that may be assigned by the Secretary. The Secretary shall notify the parties of the investigator or group of investigators he has assigned, within three (3) working days following the assignment.

### **11.2.2. Challenging the Investigator Assignment**

Any of the parties may challenge the investigator assignment and request that a new investigator is assigned when there are reasons to believe that there is a conflict of interest, partiality or any other situation, which may be construed as not allowing the investigation to be carried out or to be carried out in an objective and impartial manner.

The request must be made in writing and addressed to the Secretary no later than two (2) working days after the party has received the notice of investigator assignment or becomes knowledgeable, during the course of the investigation, of any situation that may motivate said request. The Secretary must reach a decision with regard to said request within the following two (2) working days after receiving the request, except for good cause. Upon any request that challenges the investigator assignment, the term assigned to him in order to carry out his assignment shall be interrupted and shall not be resumed until his assignment is made final.

### **11.2.3. Carrying out the Investigation**

Any investigation of a complaint filed due to **Discrimination due to Sexual Orientation or Gender Identity and Sexual Harassment** must meet with the following:


It shall cover all of the facts being claimed and may include, among other things,

the taking of sworn statements, either written or spoken and recorded, of the claimant, the respondent and of all persons having knowledge of the alleged facts, or of possible witnesses that may be identified during the course of the investigation. Any person that gives a statement shall be sworn in and given the appropriate warnings. All statements and any other document collected shall become a part of the investigation file.

- The investigation shall be thoroughly carried out, regardless of whether the harassment has ceased or whether the victim submits or agrees to the insinuations or invitations of a sexual nature that are the object of the complaint.
- During the same, no queries shall be made into the history or past sexual behavior of those involved, nor shall it be taken into account for any reason during the procedure.
- The investigation procedure shall be carried out in the most confidential manner possible, to safeguard the affected parties.

#### **11.2.4. Obligation to Cooperate with the Investigation**

The functionaries, employees, contractors, visitors or third parties not employed by or otherwise associated with the DH, have the obligation to cooperate to their fullest extent with the investigations made in cases involving sexual harassment on the job.

 Any functionary or employee who obstructs an investigation, knowingly provides false information, either in whole or in part, or conceals information that is pertinent to the investigation or to the award of a sexual harassment complaint, when such has been required of them by a competent authority, shall be subject to disciplinary measures as established under **Article 14** of this **Regulation**.

#### **11.2.5. Witness and Collaborator Protection**

During the course of the procedures, measures shall be taken to protect the witnesses and other persons who collaborate with the investigation, including those whose participation in the investigation is not mentioned in the file of said

functionary or employee. Also, the witness or collaborator may file a complaint when decisions are made with regard to their position, employment conditions or when they find themselves affected by actions taken by their supervisors or coworkers that are directly related to their collaboration during the investigation. Witnesses and collaborators shall be informed of these rights.

### **11.3. Report, Recommendations and Findings**

#### **11.3.1. Term to Provide the Secretary with the Investigation Report**

Once the investigation into the complaint has been concluded, the investigator shall submit a written report to the DH's Legal Division along with the case file. The report on the investigation must be submitted to the Legal Division within twenty (20) working days following the assignment of an investigator. The Secretary may extend this term for no more than ten (10) additional working days.

#### **11.3.2. Contents of the Investigation Report**

The Investigation Report shall include:

1. An account of the contents of the complaint.
2. A detailed account of the information and findings obtained from the investigation, listing the documents contained in the file, including the sworn statements, if any.
3. Its findings, based on the available information and on the alleged facts, on whether or not there is sufficient cause to initiate the procedure for disciplinary measures or others that may apply under the law.
4. Investigator recommendations and comments.

#### **11.3.3. Report by the Legal Division**

Once the investigation report has been evaluated, the Legal Division shall present their recommendations to the Secretary, based on the facts and on applicable law, along with the case file. The Legal Division shall have to submit their recommendations within a term no greater than fifteen (15) calendar days



from the time they received the Investigation Report.

The Secretary may adopt, modify or dismiss the recommendations made by the Legal Division taking into account the applicable law, the findings regarding the facts and the nature or seriousness of the alleged behavior.

## **12. The Secretary's Ruling**

### **12.1. Dismissal of the Complaint**

If the evidence cannot establish the validity of the complaint, the Secretary shall exclusively notify the parties of the results by certified mail with return receipt or by hand delivery. The notice shall state:

1. The right of the claimant to request a reconsideration from the Secretary within the term of ten (10) calendar days as of the notice of findings or order.

2. It shall inform the claimant of their right to request an appeal before the Public Service Appeals Committee within the term of thirty (30) calendar days after the final decision has been notified.

3. If no request for reconsideration or for an appeal is made, the complaint shall be filed.

### **12.2. Measures Related to Functionaries or Employees**

If there are sufficient grounds to apply a corrective or disciplinary action, as far as the administrative procedure is concerned, actions shall be taken against the functionary or employee who has incurred in the forbidden behavior of sexual harassment on the job and against all personnel who acted against the rules that govern the matter or were noncompliant with their duties and obligations, as established under Section 12.4 and following of this **Regulation**.

### **12.3. Measures Related to Contractors, Visitors or Third Parties Not Employed by or Otherwise Associated with the DH.**

In the case of persons under contract, subcontract, independent contractors or their representatives, or visitors or third parties not employed by or otherwise associated with the DH, the Secretary shall take whatever corrective measures


are within his reach and may be applied according to law.

If the respondent is a contractor and incurs in the forbidden behavior, their contract shall be rescinded and may not be renewed nor shall any future contract whatsoever be awarded to them by the DH. All contracts for miscellaneous, consultant or professional services must include a clause establishing that the contract shall be rendered null and void if the complaint is proven.

In addition, the Secretary may order any visitor or third parties not employed by or otherwise associated with the DH who commits sexual harassment acts against a DH functionary or employee to leave the premises immediately. He may also deny entry to any person, visitor or third parties not employed by or otherwise associated with the DH who has previously incurred in sexual harassment acts against a functionary, employee, visitor or third parties not employed by or otherwise associated with the DH.

In these cases, the Assistant Secretary of the Office of Human Resources, in coordination with the office of Legal Affairs, shall draft a letter for the appropriate action to be approved by the Secretary. Also, the parties shall be notified of the decisions made.

#### **12.4. Letter of Intent to Impose Disciplinary Measures Against a Functionary or Employee**

 If after examining the report by the Legal Division, the Secretary feels that disciplinary measures should be applied, he shall ask the Assistant Secretary of the Office of Human Resources, in coordination with the Office of Legal Affairs, to prepare a letter of intent to impose disciplinary measures, and submit it to the Secretary for consideration. The Secretary shall notify the functionary or employee of the charges in writing, and have it delivered personally or through certified mail with return receipt.


##### **12.4.1. Contents of the Letter of Intent to Impose Disciplinary Measures Against a Functionary or Employee**

The letter of intent to impose disciplinary measures shall include:

1. A description of the inappropriate behavior of which the functionary or employee is being accused.
2. The applicable regulatory provisions.
3. The relevant facts.
4. The disciplinary measure to be imposed.
5. The laws, regulations or rules that were infringed upon.
6. Information for the functionary or employee with regard to their right to request an informal administrative hearing, within the term of ten (10) calendar days as of the [date of the] notice. They shall also be informed that if the functionary or employee does not request an informal administrative hearing within the established term, or does not appear at the assigned administrative hearing, the alleged facts shall be admitted.

#### **12.5. Informal Administrative Hearing at the Request of the Functionary or Employee**

If an informal administrative hearing is requested, the Secretary shall refer the request to the to the Office of Legal Affairs to have it coordinated and notified. An Informal Administrative Hearing shall be held no later than fifteen (15) working days as of [the date of] its request. In it, the functionary or employee shall have the opportunity to present their version of the facts being contested, as well as whatever evidence that may be pertinent to the case.

 A notification of an Informal Administrative Hearing shall be sent to the functionary or employee at least seven (7) calendar days in advance of the hearing. If there are reasons that would justify the suspension of the hearing, the functionary or employee shall be notified of this at least three (3) calendar days in advance of the hearing.


The Informal Administrative Hearing should not be suspended, unless the functionary or employee requests it in writing and stating the reasons that justify the suspension request. Said request must be submitted at least three (3) calendar days prior to the date set for the hearing.

The Secretary may grant a second and last chance within a reasonable term, if the functionary or employee can justify being unable to appear at the hearing. If the functionary or employee were suspended from his job with pay, the extended time must be discounted from their vacation or sick leave, as applies.

The Informal Administrative Hearing shall be held before an authorized representative for the Secretary. If the hearing is held before an authorized representative, he shall provide a written report on the matter with his recommendations for the Secretary. This report shall be considered confidential.

#### **12.6. Secretary's Findings on Whether to Impose Disciplinary Measures**

After the Informal Administrative Hearing is held, or having expressly renounced it, or implicitly done so by the functionary or employee's inaction, if the Secretary feels that the disciplinary action should be applied, he shall notify the functionary or employee in writing of the corresponding charges and the disciplinary action to be taken against them, which may be a suspension from work and pay, dismissal or any other disciplinary action that may apply to the functionary or employee. The notice shall advise them of their right to appeal before the Public Service Appeals Committee within the corresponding term for it, pursuant to **Article 12.7** of this **Regulation**.

 Any employee or job seeker who feels they have been the victim of discrimination due to their sex (gender) on the job, may, in addition to the administrative sanctions that may be imposed by the DH, or without the need to exhaust the administrative recourse, take civil action to recover any pecuniary damages that said act may have caused. Any sanction imposed by the courts, shall not be a substitute or an impediment to imposing the corresponding administrative sanctions, if any.

The Secretary shall notify the Office of Training and Consulting on Labor Matters and the Administration of Human Resources (OCALARH in Spanish) the names of the functionaries and employees that have been dismissed from the DH.

#### **12.7. Appeal**

Any functionary or employee who is affected by the Secretary's final ruling, may appeal said ruling before the Public Service Appeals Committee within the term of thirty (30) calendar days after the receipt of the notice.

### **13. Provisional Measures to Protect the Claimant**

#### **13.1. Authorization of the Measures**

After a verbal or written complaint has been filed for sexual harassment on the job, the Secretary shall authorize whatever provisional measures may be necessary to protect the claimant against possible reprisals while the case is being investigated and with the purpose of avoiding continued exposure of the victim to the alleged behavior.

#### **13.2. Determining the Applicable Measures**

The provisional measures shall be established based on the facts for each case. The Assistant Secretary of the Office of Human Resources, either by his own initiative or by request from the supervisor or the investigator assigned to the complaint, shall recommend the pertinent provisional measures that should be taken to the Secretary. The Assistant Secretary of the Office of Human Resources must properly implement them, as authorized by the Secretary.

These measures may be:

1. The reassignment of the claimant or the respondent to another work unit, if this does not harm the claimant.
2. Temporarily suspend the respondent from his job with pay.
3. The corresponding measures shall be taken so that the claimant, during the course of his work, shall not have to be alone with the respondent. If necessary, the working relationship shall be maintained by the presence of other persons, in writing or by other means.
4. Approve vacation leave for any of the parties concerned.
5. Any other provisional measure that is deemed convenient and necessary.

#### **13.3. Purpose of the Measures**

Provisional measures have the purpose of protecting the claimant, after the complaint has been filed, from uncomfortable situations or reprisals.

The adoption of any provisional measures shall have no bearing on the respondent or on the claimant, it shall not constitute a sanction, and nothing whatsoever may be inferred by its implementation. Provisional measures may be annulled, modified or become permanent, according to the requirement of each case.

The participation of the witnesses shall not be noted on their personnel file. Also, the witness may file a complaint if decisions are made with regard to their employment conditions or if they find themselves affected by actions taken by their supervisors or coworkers that are directly related to their participation in the investigation.

#### **14. Disciplinary Measures**

Any violation of the provisions of this Regulation by functionaries or employees shall constitute a serious offense which on first occurrence may entail from a minimum suspension from job and salary of fifteen (15) working days to dismissal. Any repetition of this behavior shall constitute sufficient cause for dismissal.

In the case of a repetition, the sexual harassment related disciplinary sanctions that were imposed upon the functionary or employee shall be taken into account, regardless of the time that has elapsed or their place of work within the government system of the Commonwealth of Puerto Rico.

If the investigation that is carried out as part of the complaint procedure cannot establish that the respondent incurred in any behavior that constitutes sexual harassment on the job, but the evidence shows behavior that is improper or harmful to the interpersonal relationships on the job, the Secretary may apply a corrective or disciplinary measure.

If the investigation that was carried out as part of the procedure should find that any third parties, involved or not in the complaint, in any way violated this

**Regulation**, the DH regulations or any other law or regulation, the DH shall impose such disciplinary measures or refer them to other agencies as it may deem pertinent.

**15. Sexual Harassment by or against Persons who are not Employed by the Office**


**15.1. Notice to the Assistant Secretary of the Office of Human Resources**

Functionaries or employees of the DH must notify the **Assistant Secretary of the Office of Human Resources** of any sexual harassment acts being committed against them by persons who are not employees of the DH. Visitors or third parties who are not DH employees must notify the Secretary of any sexual harassment acts being committed against them by DH employees or functionaries. The complaint shall be processed as established under Article 11 of this **Regulation**. The Secretary shall take the corresponding measures depending on the amount of control that the DH has with regard to the respondent and on any other legal responsibility that the DH may have.

**16. Term of Limitation**

DH functionaries or employees, as well as persons who are not employees, such as: job seekers, visitors, third parties not employed by or otherwise associated with the DH and contractors or their representatives, may file a sexual harassment complaint within the term of sixty (60) calendar days from the time when the last act occurred.

**17. Other Forms of Recourse**

 The functionary or employee who feels they have been the object of sexual harassment may avail themselves of the procedures established under **Law No. 17 of April 22, 1988**, as amended, by filing a complaint before the Antidiscrimination Unit of the Labor Department or before the Equal Employment Opportunity Commission (EEOC) without the need to exhaust the administrative recourses established under this **Regulation**. In addition, the claimant must be informed that the administrative procedure established under this Regulation has no effect on the one (1) year term of limitation for initiating legal action under the

aforementioned **Law No. 17**.

**18. Processing and Placement of Complaint Records**

Once the investigation is concluded, the **Assistant Secretary of the Office of Human Resources** shall file the sexual harassment complaint report record at the Office of Human Resources in a sealed envelope and with the highest degree of confidentiality possible, identified by three data groups separated by dashes. The first data group shall identify it as a sexual harassment complaint (QHS in Spanish), the second data group shall identify the fiscal year in which the complaint was received and the third data group shall identify the number assigned to the complaint.

Example: QHS-13-01 means that this is a sexual harassment complaint, of the fiscal year 2013-2014 and its sequential number is 01, in other words, it is the first one received during that fiscal year.

This is the way in which the sexual harassment complaint file shall be processed between the **Office of Human Resources**, the Office of the Secretary, the Office of Legal Affairs and other concerned areas. The file shall contain the complaint, the investigator's report, all of the sworn statements, if any, evidence and information pertinent to the investigation.

**19. Severability Clause**

If any of the provisions of this Regulation were to be declared null and void by a competent court, said ruling shall not affect the validity of the remaining provisions of the same.

**20. Effectiveness**

This **Regulation** is effective immediately.

Approved in San Juan, Puerto Rico, today [August 18](#), 2014.



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Secretary