

# Model Policy on Workplace Fairness

## Note to employers

The Oregon Workplace Fairness Act requires all Oregon employers to adopt a written policy containing procedures and practices to reduce and prevent specific types of unlawful discrimination and sexual assault.

At a minimum, the policy must:

- (a) Provide a process for employees to report prohibited conduct;
- (b) Identify the individual or position (for example the Store Manager or HR Director) as well as an alternate individual or position to whom an employee can report prohibited conduct;
- (c) Include a statement that an employee who pursues legal action on alleged conduct prohibited by ORS 659A.030, 659A.082 or 659A.112 must do so no later than five years after the occurrence of the violation;
- (d) Include a statement that an employer may not require or coerce an employee to enter into a nondisclosure or nondisparagement agreement, including a description of the meaning of those terms;
- (e) Include an explanation that an employee claiming to be aggrieved by unlawful discrimination or sexual assault may voluntarily request to enter into a settlement, separation or severance agreement which contains a nondisclosure, nondisparagement, or no-rehire provision only if the employee has at least seven days to revoke the agreement after signing; and
- (f) Include a statement that advises employers and employees to document any incidents involving unlawful discrimination and sexual assault.

All employers must:

- (a) Make the policy available to employees within the workplace;
- (b) Provide a copy of the policy to each employee at the time of hire;
- (c) Provide to each person with whom the employer seeks to enter into an agreement which releases a claim of conduct prohibited by ORS 659A.030, 659A.082 or 659A.112 with a copy of the policy in the language the employer typically uses to communicate with the person; and
- (d) Require any individual who is designated by the employer to receive complaints to provide a copy of the policy to an employee at the time that the employee discloses information regarding prohibited discrimination or harassment.

## Sample Language

[Insert organization name], “the organization,” prohibits unlawful discrimination and harassment. This policy defines these terms and provides a complaint procedure for employees who believe they have been the victims of prohibited conduct. This policy applies to all matters related to hiring, firing, transfer, promotion, benefits, compensation, and other terms and conditions of employment.

## Discrimination and Workplace Harassment

It is [insert organization name] policy to provide a work environment free from unlawful discrimination or harassment on the basis of race, color, religion, sex, sexual orientation, national origin, marital status, age, expunged juvenile record, performance of duty in a uniformed service or physical or mental disability, or any other characteristic protected by local law, regulation, or ordinance.

It is our policy that all employees, customers, clients, contractors, and visitors to the work site are entitled to a respectful and productive work environment free from behavior, action, or language that constitutes workplace harassment or discrimination. The “workplace” includes when employees are on company premises, at a company-sponsored off site event, traveling on behalf of the company, or conducting company business, regardless of location.

The policy prohibits any conduct at work that a reasonable person in the individual’s circumstances would consider unwelcome, intimidating, hostile, threatening, violent, abusive, or offensive. It also prohibits employment actions, including hiring, promotion, termination, and compensation decisions, to be taken based on a protected characteristic. This policy also prohibits any form of retaliatory action toward an employee for filing a complaint of discrimination or harassment, or for participation in an investigation of a complaint.

Workplace harassment can be based on national origin, age, sex, race, disability, religion, sexual orientation, gender identity, or gender expression. It may also encompass other forms of unwelcome, hostile, intimidating, threatening, humiliating, or violent behavior that is not necessarily illegal, but still prohibited by this policy.

Sexual harassment is a form of workplace harassment and includes, but is not limited to, the following types of conduct:

- Unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature when such conduct is directed toward an individual because of that individual's sex and submission to such conduct is made either explicitly or implicitly a term or condition of employment; or submission to or rejection of such conduct is used as the basis for employment decisions affecting that individual.
- Unwelcome verbal or physical conduct that is sufficiently severe or pervasive to have the purpose or effect of unreasonably interfering with work performance or creating a hostile, intimidating or offensive working environment.

## Sexual Assault

Unwanted conduct of a sexual nature that is inflicted upon a person or compelled through the use of physical force, manipulation, threat, or intimidation.

## Prohibited Conduct

This policy prohibits conduct based on an individual’s protected class status. Although by no means all-inclusive, the following examples represent prohibited behavior:

- Physical harassment, including but not limited to unwelcome physical contact such as touching, impeding or blocking movement, or any physical interference with work;

- Verbal harassment, including but not limited to disparaging or disrespectful comments, jokes, slurs, innuendoes, teasing, and other sexual talk such as jokes, personal inquiries, persistent unwanted courting and derogatory insults;
- Nonverbal harassment, including but not limited to suggestive or insulting sounds, obscene gestures, leering or whistling;
- Visual harassment, including but not limited to displays of explicit or offensive calendars, circulation of derogatory content, posters, pictures, drawings or cartoons that reflect disparagingly upon a class of persons or a particular person; or
- Sexual harassment, as described above, including but not limited to unwelcome sexual advances, requests for favors in exchange for conduct of a sexual nature, submission to unwelcome conduct of a sexual nature in exchange for a term of employment, or other conduct of a sexual nature.

### Penalties

We will not tolerate discriminatory conduct, harassment, or sexual assault. Any individual found to have engaged in such conduct may face disciplinary action up to, and including, dismissal. The company may also subject managers and supervisors who fail to report known harassment – or fail to take prompt, appropriate corrective action — to disciplinary action, including potential dismissal.

### Retaliation Protections

[Insert organization name] prohibits retaliation against any employee for filing a complaint regarding conduct in violation of this policy. [Insert organization name] will not tolerate retaliation against any employee for raising a good faith concern, for providing information related to a concern, or for otherwise cooperating in an investigation of a reported violation of this policy. Any employee who retaliates against anyone involved in an investigation is subject to disciplinary action, up to and including dismissal.

### Reporting Procedure

Any employee aware of or experiencing discrimination, harassment or sexual assault in the workplace should report that information immediately to a company designee. Specifically, an employee may make the report verbally or in writing to the employee's immediate supervisor or higher management, if the employee prefers. As an alternative, an employee may report the harassment to the company's human resource office. Employees may report to any of the persons listed above, regardless of any particular chain of command. All employees are encouraged to document any incidents involving discrimination, harassment, and sexual assault as soon as possible.

### Nondisclosure or Nondisparagement Agreements

Under this policy, a **nondisclosure agreement** is any agreement by which one or more parties agree not to discuss or disclose information regarding any complaint of work-related harassment, discrimination, or sexual assault, including the amount or terms of a settlement.

A **nondisparagement agreement** is any agreement by which one or more parties agree not to discredit or make negative or disparaging written or oral statements about any other party or the company.

A **no-rehire provision** is an agreement that prohibits an employee from seeking reemployment with the company and allows a company to not rehire that individual in the future.

The organization will not require a former, current or prospective employee to enter into any agreement if the purpose or effect of the agreement prevents the employee from disclosing or discussing conduct constituting discrimination, harassment, or sexual assault.

An employee claiming to be aggrieved by discrimination, harassment, or sexual assault may, however, voluntarily request to enter into a settlement, separation, or severance agreement which contains a nondisclosure, nondisparagement, or no-rehire provision and will have at least seven days to revoke any such agreement. The organization will not offer a settlement on the condition of a request for these terms.

#### Time Limitations

Nothing in this policy precludes any person from filing a formal grievance in accordance with a collective bargaining agreement [if applicable], the Bureau of Labor and Industries' Civil Rights Division or the Equal Employment Opportunity Commission. Note that Oregon state law requires that any legal action taken on alleged discriminatory conduct (specifically that prohibited by ORS 659A.030, 659A.082 or 659A.112) commence **no later than five years** after the occurrence of the violation. Other applicable laws may have a shorter time limitation on filing.