

The following proposed changes fall under section 5 of the 15th JDC Employee Code of Conduct.

Section 5.1 is amended to remove the words “including sexual harassment,” adds Section 5.1a, and amends 5.3 and 5.3a.

5. HARASSMENT AND DISCRIMINATION

- 5.1 The Court expressly prohibits any form of harassment, discrimination or ill treatment based on an employee’s race, color, religion, gender, age, disability, sexual orientation, national origin, ancestry, uniformed service member status, or the exercise of any legal rights.
- 5.1a *Harassment may be physical or verbal and include offensive behavior which would cause a reasonable person to feel annoyed, threatened, intimidated, alarmed, or in fear of his/her safety.*
- 5.2 All employees are responsible for helping ensure that the workplace is kept free of harassment and discrimination of any kind.
- 5.3 It is critical for any employee who experiences or witnesses possible harassment to report it promptly.
- 5.3a The person designated to receive complaints for the Court is the Court Administrator. If the Court Administrator is not available, is the focus of the complaint, or if the victim prefers to report to another person, then the complaint should be alternatively directed to the Administrative Hearing Officer.
- 5.4 All complaints will be treated seriously, kept confidential as possible, and investigated fully. However, the Court cannot guarantee complete confidentiality where it would conflict with the Court’s obligation to investigate.
- 5.5 The Court expressly forbids any retaliation of any kind against employees who make a good faith report of possible harassment.

In compliance with new legislation, Section 5.6, a through l, is added.

- 5.6 **Sexual Harassment** – the following policy complies with Act 270 of the 2018 Regular Session (effective 1/1/19); Title VII of the Civil Rights Act of 1964; and Title 29 - Labor, Part 4, Sec. 1604.11, Code of Federal Regulations.
- 5.6a The Court shall not tolerate unwelcome sexual advances, requests for sexual favors, and other verbal, physical or inappropriate conduct of a sexual nature when the conduct explicitly or implicitly affects an individual’s employment or the holding of office, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, humiliating or offensive work environment.
- 5.6b Sexual harassment can involve one or more incidents and actions, and may be:
 - Physical** – unwelcome patting, pinching, stroking, kissing, hugging, fondling or inappropriate touching; use of job-related threats or rewards to solicit sexual favors.
 - Verbal** – comments on a worker’s appearance, age, private life, etc.; sexual comments, stories, or jokes; sexual advances; repeated and unwanted social invitations for dates or physical intimacy; insults based on the sex of the victim; condescending or paternalistic remarks; sending sexually explicit messages by phone or email.
 - Non-verbal** – display of sexually explicit or suggestive material; sexually-suggestive

gestures; whistling; leering; use of job-related threats or rewards to solicit sexual favors.

5.6c Sexual harassment can occur in a variety of circumstances, including but not limited to the following examples:

- 1) Harassment does not have to be of a sexual nature, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.
- 2) Both victim and the harasser can be either a woman or a man, and the victim and harasser can be of the same sex.
- 3) The harasser's conduct must be unwelcome.
- 4) The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the Court, such as a client, provider, vendor, or other entity employee.
- 5) The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- 6) Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision, such as the victim being fired or demoted. However, unlawful sexual harassment may occur without economic injury to or discharge of the victim.

5.6d **Mandatory training.** Per R.S 42:343(A)(1), each public employee shall receive a minimum of one hour of training on preventing sexual harassment during each full calendar year of his/her public employment or term of office, as the case may be.

5.6e Any person designated by the agency to accept or investigate a complaint of sexual harassment in the agency shall receive additional education and training.

5.6f **Designated persons.** The person designated to receive complaints for the Court is the Court Administrator. If the Court Administrator is not available, is the focus of the complaint, or if the victim prefers to report to another person, then the complaint should be alternatively directed to the Administrative Hearing Officer.

5.6g **Filing a complaint.**

- 1) The victim should, if possible, inform the harasser directly that the conduct is unwelcome and must stop. The Court acknowledges that sexual harassment may occur in unequal relationships (i.e., between a supervisor and his/her subordinate), and that it may not be possible for the victim to inform the alleged harasser.
- 2) If the victim cannot directly approach the harasser, he/she can speak to the designated person appointed to receive complaints of sexual harassment.

5.6h **Informal complaint.** If the victim wishes to deal with the matter informally, the designated person will:

- 1) Give an opportunity to the alleged harasser to respond to the complaint
- 2) Ensure that the alleged harasser understands the complaints mechanism; is informed that no retaliation against the victim or witnesses will be tolerated; and that truthfulness and cooperation in the investigation are required.
- 3) Facilitate discussion between both parties to achieve an informal resolution which is acceptable to the complainant, or refer the matter to a designated mediator within the Court to resolve the matter.
- 4) Ensure that a confidential record is kept of what happens
- 5) Follow up after the outcome of the complaints mechanism to ensure that the behavior has stopped

- 6) Ensure that the process is done as quickly as possible, and in any event begun within 24 hours of the complaint being made

5.6i **Formal complaint.** If the victim wants to make a formal complaint, or if the informal complaint has not led to a satisfactory outcome for the victim, the formal complaint mechanism should be used to resolve the matter.

The person carrying out the investigation will:

- 1) Interview the victim and the alleged harasser separately
- 2) Interview other relevant third parties separately
- 3) Decide whether or not the incident(s) of sexual harassment took place
- 4) Produce a report detailing the investigations, findings and any recommendations
- 5) If the harassment took place, decide what the appropriate remedy is for the victim, in consultation with the victim (i.e., an apology, a change in working arrangements, a promotion if the victim was demoted as a result of the harassment, training for the harasser, discipline, suspension, dismissal)
- 6) Follow up to ensure that the recommendations are implemented, that the behavior has stopped and that the victim is satisfied with the outcome
- 7) If it cannot be determined that the harassment took place, the designated person may still make recommendations to ensure proper functioning of the workplace
- 8) Keep a record of all actions taken
- 9) Ensure that all records concerning the matter are kept confidential
- 10) Ensure that the process is done as quickly as possible, and in any event begun within 24 hours of the complaint being made

5.6j **Sanctions and disciplinary measures**

Anyone who has been found to have sexually harassed another person under the terms of this policy is liable to any of the following sanctions:

- 1) Verbal or written warning
- 2) Adverse performance evaluation
- 3) Reduction in wages
- 4) Transfer
- 5) Demotion
- 6) Suspension
- 7) Termination

5.6k **Retaliation prohibited.** The Court expressly forbids any retaliation of any kind against employees who make a good faith report of possible harassment.

5.6l **Annual reporting.** The Chief Judge shall compile an annual report by February first of each year containing information from the previous calendar year regarding his agency's compliance with the requirements of this Chapter, as detailed in R.S. 42:344(A), and submit the report to the Chief Justice of the Supreme Court.