

<b>WEST VIRGINIA DEPARTMENT OF HOMELAND SECURITY</b>		<b>Policy &amp; Procedure EEO #3</b>
		<b>Pages 4</b>
<b>CHAPTER:</b> EEO	<b>REFERENCE &amp; RELATED STANDARDS:</b> West Virginia Code § 5F-2-2, Civil Rights Act of 1964, Equal Pay Act of 1963, Age Discrimination Act of 1975, Vocational Rehabilitation and Other Rehabilitation Services Act of 1973, Americans with Disabilities Act of 1990, Anti-Discrimination Act of 1977, Pregnancy Discrimination Act of 1978, Providing Urgent Maternal Protections (PUMP) for Nursing Mothers Age Discrimination in Employment Act of 1967, Uniform Services Employment and Reemployment Rights Act, Genetic Information Nondiscrimination Act of 2008, The Immigration Reform & Control Act of 1986, 1990 & 1996, and the West Virginia Human Rights Act, WV Code §5-11-1 <i>et seq</i> , WV Division of Personnel Policy DOP-P6 Prohibited Workplace Harassment, WV Code § 21-3-19.	
<b>SUBJECT:</b> DHS Equal Employment Opportunity (EEO) Investigations Unit		
<b>Date:</b> February 26, 2024		<b>EFFECTIVE:</b> April 1, 2024

**APPLICABILITY**

Operated under the direction of the Department of Homeland Security EEO Director, the primary jurisdiction of the DHS EEO Investigative Unit will be to investigate EEO offenses taking place on the grounds of and locations operated by the WV Department of Homeland Security, including the Division of Corrections and Rehabilitation, Administrative Services, Emergency Management, Justice and Community Services, Protective Services, State Fire Marshal, West Virginia Intelligence Fusion Center, and the Parole Board.

**PURPOSE**

To provide the most effective and efficient delivery of services.

**CANCELLATION**

Any previous written instruction on the subject including DHS policy directive 3; DHS Equal Employment Opportunity (EEO) Investigations Unit dated November 1, 2022. This document is not all inclusive and management has the authority and discretion to address any issues not specifically mentioned herein.

**DEFINITIONS**

The following terms are defined as listed within the scope of this policy:

**Substantiated allegation** An allegation that was investigated and the investigation produced sufficient evidence to determine the event did occur.

**Unfounded allegation** An allegation that was investigated and determined not to have occurred.

**Unsubstantiated allegation** An allegation that was investigated, and the investigation produced insufficient evidence to make a final determination as to whether the event occurred or not.

## **PROCEDURES**

### **1. Investigative Unit**

The Investigative Unit will provide investigative services to divisions of DHS as directed by the DHS EEO Director.

- a. Investigations into circumstances or allegations of equal employment opportunity violations will be conducted, as appropriate, in a thorough, professional, and impartial manner.
- b. The terminal goal of each investigation is to follow the evidence developed to a logical and supported conclusion that the allegations have been found to be substantiated, unfounded or unsubstantiated, as defined herein.
- c. Investigations will also be conducted in a manner consistent with ensuring the safety of the public, and agency employees, and the safe, orderly, secure operation of each of the agencies, their facilities, office, and support locations.

### **2. DHS EEO Director**

The DHS EEO Director will exercise the responsibility and authority for all EEO Investigative Unit administrative and operational matters. The DHS EEO Director will exercise significant discretionary latitude and professional judgment. The DHS EEO Director will directly report to the Deputy in the Office of the Secretary or designee.

- a. The DHS EEO Director will establish and maintain an organizational structure.
  - i. The DHS EEO Director may appoint a Lead Investigator to assist with the administration of operations for the Investigative Unit.
  - ii. The Lead Investigator will be assigned to exercise responsibility for investigative services and activities assigned to EEO Investigators within facilities, office, and support locations operations.
  - iii. The Lead Investigator may be designated, as appropriate, to oversee certain specialized investigative functions or activities.

### **3. Investigative Priorities; Initiating or Assigning Investigations**

- a. Investigative priorities are acts of physical violence, any racial, religious, or ethnic group tensions, prejudice, disorder, discrimination, or illegal workplace harassment acts reported or existing; and whether a Complainant would experience irreparable harm if an investigation was delayed.
  - i. A claim supported by strong evidence of physical violence or threats raises priority and should receive priority in claim handling.
  - ii. These claims should receive greater investigatory attention and resources to ensure timely and quality enforcement action.
  - iii. Investigators will follow the evidence wherever it takes them and shall be aware of the time constraints involved in each situation.
- b. EEO claims will be assessed and referred, as may be determined appropriate, for investigation as follows:

- i. All EEO claims received will be reviewed by the agency DHS EEO Director. If the agency DHS EEO Director determines that the complaint requires investigation, the matter will be reviewed with the Lead EEO Investigator.
- ii. The DHS EEO Director shall assign the claim to two Investigators and an investigation shall be conducted.
- iii. In the case of sexual harassment or gender harassment there will be one male and one female Investigator assigned.
- iv. The Investigator shall submit their EEO investigative report to the DHS EEO Director within forty-five business days of being assigned.
- v. The Investigator shall submit a written request for an extension to the DHS EEO Director if the investigative report cannot be complete within forty-five business days.

4. **Notification of State Police – Matters Requiring Criminal Investigation Assistance**

Under the discretion of the DHS EEO Director, any sufficient and/or credible information that suggests a felony, misdemeanor, or any other criminal activity or conduct, requiring outside assistance with a criminal investigation shall be reported to the CID Director.

- a. It is the policy of the DHS Office of EEO Services, that the State Police is the law enforcement agency of primary jurisdiction whenever outside assistance is required with any criminal investigation.
- b. If the investigation involves potential criminal conduct, it is critical that the DHS EEO Director or agency consult with an attorney in the DHS General Counsel's office to determine the appropriate course of action.
- c. Whenever the DHS EEO Director believes that there is sufficient, credible information that a felony or serious misdemeanor has taken place, notification of the West Virginia State Police shall be made as soon as practicable after consult with an attorney in the DHS General Counsel's office. All sexual assault and sexual abuse allegations will be reported immediately to the DHS General Counsel's office by the DHS EEO Director.
- d. The person making the notification shall record the date, time, and name/rank of the law enforcement officer, or civilian employee receiving the notification.

5. **Investigative Reports and Tracking**

- a. The DHS EEO Director will establish and maintain a system whereby they track all EEO investigations authorized.
- b. Upon completion of each investigation, the Investigator will generate a comprehensive written report using a standardized format as established by the DHS EEO Director.
- c. Reports shall fully develop findings of fact and investigative conclusions with the goal of characterizing each allegation as either substantiated, unfounded, or unsubstantiated.
  - i. Reports **shall not** make any recommendations regarding discipline in matters involving state employees or contract employees, regardless of the agency involved. **The determination of disciplinary sanctions is the sole province of the employee's appointing authority or designee.**
  - ii. Reports **shall not** make any recommendations regarding the filing of criminal charge(s) for the alleged violation of a specific section of the West Virginia criminal code. **The determination of appropriate criminal charges is the sole province of the appropriate prosecuting attorney.**

**5. Confidentiality Agreement Statement**

Investigators must supply, on record for reading and signature, the Confidentiality Agreement Statement.

- a. If the employee chooses not to sign the Confidentiality Statement, the Investigator will note that on the record and on the form.
- b. Refusal to sign the Confidentiality Agreement statement does not prevent the employee from being interviewed.

**6. Professional Decorum**

- a. Any questioning, inquiry, or investigation shall take place in a professional manner. Common courtesies and due respect shall be afforded to all individuals during the investigative process.
- b. Confidentiality will be maintained, as appropriate, during each step of the investigative process.

**7. Investigation Review**

- a. The DHS EEO Director shall establish protocols for the internal investigative review of the Unit investigative reports.
- b. In all cases in which an investigation takes place, the DHS EEO Director shall provide a complete copy of the case file with all exhibits to the appropriate attorney in the Legal Department, and responsible agency official of the agency involved.

APPROVED SIGNATURE:



DATE:

