

# Georgia Department of Public Safety Policy Manual

SUBJECT <b>EMPLOYEE COMPLAINT RESOLUTION PROCEDURE</b>	POLICY NUMBER <b>8.04</b>
DISTRIBUTION <b>ALL EMPLOYEES</b>	REVISED DATE <b>5/7/2020</b>
	POLICY REVIEWED <b>5/7/2020</b>

## 8.04.1 Purpose

The purpose of the Employee Complaint Resolution Procedure is to ensure that employees have access to fair and timely consideration of their concerns. Complaints shall be processed in accordance with State Personnel Board Rule 478-1-20.

## 8.04.2 Policy

Employees and their respective supervisors/managers are encouraged to make reasonable attempts to resolve concerns prior to a written complaint being filed.

However, it is the policy of the Department of Public Safety, once a complaint has been filed, to make a reasonable effort to understand the nature of the complaint, the issue involved, and the relief requested. This is an obligation for the employee and for management. The employee is responsible for stating with specificity the nature of the complaint and the relief requested.

## 8.04.3 Procedures

### A. Definitions

1. Agency Complaint Resolution Coordinator – The DPS Director of Human Resources.
2. Classified employee –An employee who was in the Classified Service as of June 30, 1996 and who has remained in a classified position without a break in service since that date.
3. Complaint - a claim by an eligible employee that the employee's personal employment has been affected by unfavorable employment decisions or conditions due to unfair treatment.
4. Complaint Review Official –An impartial individual designated to conduct a complaint review.
5. Department – Department means the Georgia Department of Public Safety.
6. Employee Complaint Form - a form provided by the Department for the filing of employee complaints.

7. Filing - the act of an employee submitting an Employee Complaint Form to the Director of the Human Resources Division for the Department of Public Safety.
8. Harassment – physical, verbal, or non-verbal/visual conduct that is either directed toward an individual or reasonably offensive to an individual because of his or her race, color, national origin, religion, age, disability, genetic information, sex (which does not meet the definition of sexual harassment as defined in this policy), political affiliation, protected uniform service, or legally protected category other than sex.
9. Receipt – means the date and time at which a document is delivered to the addressee by mail, electronic transmission, or personal delivery.
10. Retaliation – an act or omission intended to, or having the reasonable foreseeable effect of, punishing or otherwise impacting an individual for submitting (or assisting with submitting) a complaint or reporting discrimination or harassment, for participating in a discrimination or harassment investigation or proceeding, or for otherwise opposing discrimination or harassment.
11. Sexual Harassment – physical, verbal, or non-verbal/visual conduct that is either directed toward an individual or reasonably offensive to an individual because of his or her sex. Sexual harassment includes physical, verbal, or non-verbal/visual conduct constituting
  - a. Unwanted sexual attention, sexual advances, requests for sexual favors, sexually explicit comments, and other conduct of an expressed or obviously implied sexual nature, by an individual who knows, or reasonable should know, that such conduct is unwanted or offensive; and
  - b. Conduct that is hostile, threatening, derogatory, demeaning, or abusive or intended to insult, embarrass, belittle, or humiliate an individual because of his or her sex, regardless of whether the underlying reason for the conduct is apparent.
12. Workday – Workday is Monday through Friday (8:00 a.m. through 4:30 p.m.) exclusive of official state holidays.

**B. Eligibility**

1. Eligible Employees
  - a. Any employee may use the Employee Complaint Resolution Procedure for timely-filed, eligible issues, except an employee who:
    - 1) Has been notified of separation from employment; or
    - 2) Is seeking relief on the same matter through other administrative or judicial procedures.
  - b. A complaint filed by an eligible employee prior to becoming ineligible will cease to be processed through this procedure upon the employee's separation from employment or upon the employee's filing for relief on the same matter through another administrative process or judicial process.
2. Eligible Issues:

An employee may use the Employee Complaint Resolution Procedure to address a complaint related to any:

- a. Allegation of unlawful discrimination based on race, color, national origin, religion, age, disability, genetic information, sex (which does not meet the definition of sexual harassment as defined in this policy), political affiliation, protected uniform service, or other legally protected category;
  - b. Allegation of harassment other than sexual harassment;
  - c. Retaliation for filing a complaint or participating in the Employee Complaint Resolution Procedure;
  - d. Retaliation or intimidation for exercising any right provided under the Rules of the State Personnel Board or policies of the Department;
  - e. Erroneous, arbitrary or capricious interpretation or application of policies, procedures, rules, regulations, ordinances or statutes,
  - f. Unsafe or unhealthy working condition(s), and
  - g. For classified employees only: written reprimand or written confirmation of an oral reprimand.
3. Ineligible Issues:

An employee cannot use the Employee Complaint Resolution Procedure to address a complaint related to:

- a. Sexual harassment or related retaliation (which shall be handled under the procedures provided in the Statewide Sexual Harassment Prevention Policy);
- b. Unlawful discrimination containing allegations of sexual harassment (such complaints will be handled under the procedures provided in the Statewide Sexual Harassment Prevention Policy);
- c. Suspension, demotion, salary reduction, or separation from employment that is not retaliatory;
- d. Issues that are pending or have been adjudicated by the State Personnel Board, the Georgia Commission on Equal Opportunity or through other state or federal administrative or judicial procedures;
- e. Issues that are subject to appeal, review or relief as provided for in other Department policies and procedures;
- f. Performance expectations and evaluations;
- g. Actions implementing a Reduction in Force or furlough plan;
- h. Selection of an individual to fill a position unless it is alleged that the selection violates an applicable State Personnel Board rule, policy, law or regulation;
- i. Permanent changes in work hours or duties and responsibilities unless a change is unsafe or unlawful;
- j. Temporary work assignments that do not exceed 90 calendar days;

- k. Budget and organizational structure, including the number or assignment of positions in any organizational unit;
- l. Relocations of employees unless the relocation qualifies for reimbursement under Office of Planning and Budget regulations;
- m. Internal security practices established by the Department;
- n. For unclassified employees only, written reprimand or confirmation of an oral reprimand, or
- o. Any matter which is not within the jurisdiction or control of the Department.

C. Filing a Complaint

- 1. An eligible employee accesses the Employee Complaint Resolution Procedure by timely filing an Employee Complaint Form with the Human Resources Director.
- 2. A complaint is considered received on the day it is delivered to the Human Resources Director by mail, electronic transmission, or personal delivery.
- 3. The complaint must be filed on the designated Employee Complaint Form within ten (10) workdays of the occurrence of the subject of the complaint or within ten (10) workdays of the date the employee becomes aware or should have reasonably been aware of the problem. The Human Resources Director, or designee, has the discretion to grant a waiver or extend the filing deadline.
- 4. The complaint shall contain the following
  - a. A statement of the eligible issue(s) involved;
  - b. The parties involved;
  - c. The date(s), if known that the incident(s) or violation(s) occurred;
  - d. How the employee was unfavorably affected or treated;
  - e. The relief sought, and
  - f. Any policy, procedure, rule, regulation, ordinance or statute at issue, and how it was erroneously interpreted or applied.

D. Processing a Complaint

- 1. Determination of Complaint Eligibility
  - a. Within ten (10) workdays of receiving a complaint, the Human Resources Director will review the complaint to determine the timeliness and eligibility of the issue(s) and provide a written determination to the complaining employee.
    - 1) If the issue is not eligible to proceed through the Employee Complaint Resolution Procedure, the written determination will include the specific reasons for the determination and notice that the formal complaint process is being terminated (or if the complaint is related to sexual harassment, notice will be given to explain that the complaint will be handled under the Statewide Sexual Harassment Prevention Policy).

- 2) If the issue is eligible, the written determination will specify the manner in which the complaint will be processed (i.e. through the Employee Complaint Resolution Procedure or through a separate Department procedure for addressing allegations of unlawful discrimination and/or harassment). A copy of the determination will be provided to the first level of supervision having the authority to grant the requested relief.

## 2. Complaints Alleging Unlawful Discrimination or Harassment

When a complaint involves allegations of unlawful discrimination and/or harassment based on race, color, national origin, religion, age, disability, sex (which does not meet the definition of sexual harassment as defined in this policy), genetic information, political affiliation, protected uniform service, or other legally protected category, the Human Resources Director will review and process the complaint in one of the following ways:

- a. Allow the complaint to proceed as set forth in this policy;
- b. Investigate the complaint in accordance with Policy 5.01, Anti-Harassment and Prohibited Workplace Behavior (other than a complaint of sexual harassment or related retaliation. The time limit for determining eligibility and processing a complaint must not exceed 120 calendar days, or
- c. Advise the employee, in writing, that the Department has concluded processing the complaint and the employee may present the matter to the Georgia Commission on Equal Opportunity or the Equal Employment Opportunity Commission.

## 3. Complaint Review Process

- a. The Human Resources Director, after consultation with the Commissioner, will appoint a Complaint Review Official to review the complaint.
- b. Within 15 workdays of appointment, the Complaint Review Official will conduct a review of the complaint. The Complaint Review Official has discretion regarding how to conduct the review and may do any of the following:
  - 1) Base the review solely on written statements and documents provided;
  - 2) Interview the employee, witnesses, and others;
  - 3) Meet with the parties to facilitate an agreement,
  - 4) Clarify and/or interpret relevant laws, rules, policies, procedures, etc.; or
  - 5) Explore alternative resolutions.
- c. If the parties resolve the issue(s) during the complaint review process, the Human Resources Director will provide written notice to the complaining employee and supervisor confirming resolution and the conclusion of the Employee Complaint Resolution Procedure.
- d. If the parties do not resolve the issue(s) during the complaint review process the Complaint Review Official will issue written findings and recommendations to the Commissioner, or designee.

- e. The Commissioner, or designee, will review the findings and recommendation(s) of the Complaint Review Official and issue a written decision regarding the complaint and requested relief. The Commissioner, or designee, is not bound by the findings or the recommendation(s) of the Complaint Review Officer. The decision of the Commissioner will be final and will conclude the Employee Complaint Resolution Procedure.
- f. The maximum time for determining eligibility and processing a complaint through the Employee Complaint Resolution Procedure is 90 calendar days. The time frame is extended to 120 calendar days when a complaint is investigated in accordance with Policy 5.01, Anti-Harassment and Prohibited Workplace Behavior. Complaints of sexual harassment or related retaliation shall be investigated in accordance with the time frames and procedures referenced in the Statewide Policy.

#### E. Extension of Time Limits

1. Upon the agreement of all parties to a complaint, any time limit specified in this policy may be extended.
2. The Human Resources Director or the Complaint Review Official may unilaterally extend any time limit specified in this policy due to emergency, medical disability, legally mandated absence on the part of a relevant party involved with the complaint issues or review process, or due to operational necessity. The employee shall be immediately notified of the period of, and reason for, the extension.

#### F. Group Complaints

1. Employees having a common complaint may sign and submit one group complaint identifying up to two of the employees as selected spokespersons for the group.
2. Employees who choose to file a group complaint waive their individual rights to file separate complaints on the same subject.

#### G. Consolidating Complaints

The Human Resources Director may consolidate complaints as follows:

1. Multiple complaints filed by an employee into a single complaint.
2. Separate complaints filed by two or more employees regarding the same issue(s) into a group complaint.

#### H. Preparation Time

1. An employee utilizing the Employee Complaint Resolution Process will be excused from duty for up to four hours during regular working hours, as approved by the immediate supervisor, to prepare a complaint. Such preparation time is without loss of pay or charge to leave.
2. Preparation time shall include such activities as preparing a complaint, meeting with witnesses and reviewing the employee's personnel file. Meetings with the Complaint Review Official are considered work time and do not count as preparation time.

3. Under no circumstances shall an employee be granted more than twelve hours per calendar year for such purposes.
4. Employees using the Employee Complaint Resolution Procedure must obtain supervisory approval before using preparation time during regular work hours. A request to prepare during a particular time may be denied due to operational or other business needs.
5. The Human Resources Director, or designee, has the authority to resolve any dispute regarding the determination of reasonable and necessary time for preparing a complaint and participating in the process.

I. Assistance

The Human Resources Director, or designee will assist or advise employees in the procedure for filing or processing a complaint. However, neither the Human Resources Director nor any employee in the Human Resources Division shall be an advocate or a representative for the employee or any employee in a complaint. Any complaint that is determined to fall within the definition of sexual harassment as defined in this policy must be processed in accordance with the Statewide Sexual Harassment Prevention Policy.

J. Withdrawal of Complaint

1. An employee may voluntarily withdraw his/her complaint at any point during the process by submitting a request in writing to the Human Resources Director.
2. The Employee Complaint Resolution Procedure shall be considered terminated once the complaint has been withdrawn and it may not be refiled.

K. Appeal Rights for Classified Employees

1. Upon receipt of the final decision on a complaint and provided remedy is not available through the Georgia Commission on Equal Opportunity, a classified employee may file an appeal in writing with the Office of State Administrative Hearings if:
  - a. The employee is not satisfied with the final decision on the merit of a complaint alleging violation of the Rules of the State Personnel Board; or
  - b. The employee is not satisfied with the final decision on a complaint related to relocation, alleged unlawful discrimination, or alleged unjust coercion or reprisal because of an appeal or internal complaint proceeding; or
  - c. The employee believes the Department violated the procedure outlined in State Personnel Board Rule 20, Employee Complaint Resolution Procedure, while processing the complaint.
2. The appeal must be filed or postmarked within ten (10) calendar days of receipt of the final decision on the complaint. Untimely appeals will not be processed.
3. The appeal must include the specific provision(s) of the rule(s) alleged to have been violated and any documentation which would support the allegation.

L. Improper use of Complaint Process

1. No employee will be penalized formally or informally, for voicing a complaint in a

reasonable, business-like manner, or for participating in the complaint resolution procedure. Anyone who intentionally supplies false or misleading information in connection with a complaint or anyone who attempts to or actually harasses, intimidates, or retaliates against an employee for using the Employee Complaint Resolution Procedure or for providing information in connection with a complaint will be subject to disciplinary action up to and including termination of employment.

2. Any employee who files a frivolous complaint or files a complaint for vexatious purposes or for harassment, shall be subject to disciplinary action up to and including dismissal from employment.