



ARIZONA DEPARTMENT OF TRANSPORTATION POLICIES AND PROCEDURES

PER-9.02 Nondiscrimination Complaint System Policy

Effective: February 14, 2020
Supersedes: PER-9.02 (1/11/2007)
Responsible Office: Civil Rights (602)-712-8946

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NOTICE: This policy and procedure does not create a contract for employment between any employee and the Arizona Department of Transportation. Nothing in this policy and procedure changes the fact that all uncovered employees of the Arizona Department of Transportation are at-will employees and serve at the pleasure of the appointing authority.

2.01 PURPOSE

To define the Arizona Department of Transportation (ADOT) policy regarding discrimination, retaliation, and harassment while presenting examples of policy violations and explaining the procedures for resolving complaints.

2.02 SCOPE

This policy applies to all ADOT employees.

2.03 AUTHORITY

Arizona Revised Statutes (A.R.S.) §41-1461
Arizona Revised Statutes (A.R.S.) § 41-1463
Arizona Revised Statutes (A.R.S.) § 41-1464
Arizona Revised Statutes (A.R.S.) § 41-1465
Arizona Revised Statutes (A.R.S.) § 41-1466
Arizona Revised Statutes (A.R.S.) § 41-1467
Arizona Revised Statutes (A.R.S.) § 41-1468
Arizona Civil Rights Act (ACRA)
Arizona Executive Order 2003-22
R2-5A-104 (Prohibition Against Discrimination, Harassment and Retaliation)
R2-5A-501 (Standards of Conduct)
R2-5A-901 (Complaint System)
R2-5A-902 (Complaint Procedures)
The Age Discrimination in Employment Act of 1967(ADEA)
The Americans with Disabilities Act of 1990 as amended (ADAAA)
The Equal Pay Act of 1963 (EPA)
The Genetic Information Nondiscrimination Act of 2008 (GINA)
The Pregnancy Discrimination Act

Title VII of the Civil Rights Act of 1964 (Title VII)

2.04 BACKGROUND

Arizona Department of Transportation (ADOT) in accordance with Title 23 Part 200.9(b) (1) of the Code of Federal Regulations established an ADOT Civil Rights Office to develop and implement guidelines for compliance with Federal and State civil rights nondiscrimination laws. The compliance includes the investigation of complaints alleging discrimination.

2.05 DEFINITIONS

ADOT Civil Rights Office (CRO)	The office within ADOT that includes the Affirmative Action Program, the Americans with Disabilities Act Program, the Equal Employment Contractor Compliance Program, Title VI Nondiscrimination Program, which includes the Employee/Public Discrimination Complaint Program and is responsible for receiving complaints, determining applicability under the complaint system, investigating or assigning the complaint to the appropriate individual within the office for review or investigation, and tracking the processing of complaints.
Complainant	Refers to any person filing a complaint alleging a violation of this policy.
Days	Business days unless otherwise specified.
Department	The Arizona Department of Transportation
Director	The Director of the Arizona Department of Transportation.
Disability	A physical or mental impairment that substantially limits a major life function of an individual; having a history of such impairment or being regarded as having such impairment.

Discrimination by Type:

Age Discrimination – involves treating an applicant or employee less favorably because of his or her age. ADEA forbids age discrimination against people who are age 40 or older.

Disability Discrimination – occurs when an employer or other entity covered by the ADA, as amended or the Rehabilitation Act, as amended, treats a qualified individual with a disability who is an employee or applicant unfavorably because he/she has a disability.

Equal Pay/Compensation Discrimination – EPA requires that men and women in the same workplace be given equal pay for equal work. The jobs need not be identical but they must be substantially equal.

Genetic Information Discrimination – Under Title II of GINA, it is illegal to discriminate against employees or applicants because of genetic information. Title II of GINA prohibits the use of genetic information in making employment decisions, restricts employers and other entities covered by Title II from requesting, requiring or purchasing genetic information, and strictly limits the disclosure of genetic information.

Harassment – is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the American with Disabilities Act of 1990, (ADA). Harassment becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable

person would consider intimidating, hostile, or abusive.

National Origin Discrimination – involves treating applicants or employees unfavorably because they are from a particular country or part of the world, because of ethnicity or accent, or because they appear to be of a certain ethnic background (even if they are not).

Pregnancy Discrimination – involves treating an applicant or employee unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

Race/Color Discrimination – involves treating an applicant or employee unfavorably because he/she is of a certain race or because of personal characteristics associated with race (such as hair texture, skin color, or certain facial features). Color discrimination involves treating someone unfavorably because of skin color complexion. Discrimination can occur when the victim and the person who inflicted the discrimination are the same race or color.

Religious Discrimination – involves treating an applicant or employee unfavorably because of his or her religious beliefs. The law protects not only people who belong to traditional, organized religions, such as Buddhism, Christianity, Hinduism, Islam, and Judaism, but also other who have sincerely held religious, ethical or moral beliefs.

Retaliation – EEO laws prohibit punishing job applicants or employees for asserting their rights to be free from employment discrimination including harassment.

Asserting these EEO rights is called “protected activity”. Participating in a complaint process is protected from retaliation under all circumstances. Other acts to oppose discrimination are protected as long as the employee was acting on a reasonable belief that something in the workplace may violate EEO laws.

Sex Discrimination – involves treating an applicant or employee unfavorably because of that person’s sex.

Sexual Harassment – it is unlawful to harass an applicant or employee because of that person’s sex. Harassment can include “sexual harassment” or unwelcome sexual advances, request for sexual favors, and other verbal or physical harassment of sexual nature. Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex. 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 employer, such as a client or customer.

Examples of conduct that can violate this policy include, but not limited to:

- Explicit sexual behavior by a supervisor, manager, co-worker, visitor, client or other entity with whom the employee interacts during the course of employment;
- Implicit request for sex;
- Direct or indirect pressure for dates or sexual activity;
- Pinching, patting, hugging, or

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other unwelcome touching;

- Leering or gawking;
- Posting or circulation of sexually graphic materials including, but not limited to, cartoons, pictures, posters, or calendars;
- Sexually derogatory comments, including slurs, jokes, and other inappropriate remarks;
- Reprisals or threats after a negative response to sexual advances;
- Unwelcome sexual advances;

Conditioning favorable terms and conditions of employment upon a positive response to abusive remarks or conduct targeted at only one sex, even if the context of the abusive remarks is not sexual.

(EEOC) U.S. Equal Employment
Opportunity Commission

A federal agency charged with investigating and resolving allegations of discrimination, harassment or retaliation related to employment.

Employee

All covered, uncovered, contract, part time and temporary employees and interns.

Informal Resolution

An informal process where opposing parties can voluntarily negotiate resolution of their dispute with the help of CRO.

Office of the Attorney General,
Civil Rights Division

The office within the Arizona Department of Law charged with investigating and resolving complaints of discrimination, harassment, and

retaliation.

Respondent

The individual accused of the discriminatory action, harassment or retaliation.

Witness

Persons, who may have seen, heard or have information related to the complaint.

2.06 POLICY

Arizona Department of Transportation (ADOT) is committed to the prohibition against unlawful discrimination, harassment and retaliation in the workplace. It is the policy of ADOT that all employees shall comply with all federal and state anti-discrimination laws. ADOT and its employees shall not unlawfully discriminate against any individual with regard to the terms and conditions of employment, including hiring, pay, leave, insurance benefits, retention, and rehiring. Any ADOT employee who engages in conduct in violation of this policy may be disciplined or separated from employment with ADOT. All allegations of discrimination will be promptly assessed by the Civil Rights Office (CRO) to determine if the complaint contains the required elements to be elevated into an investigation.

Equal Opportunity Employment: Arizona Department of Transportation (ADOT) shall provide equal employment opportunity for all individuals regardless of race, color, national origin, religion, age, disability, genetic information, sex, pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation. It is the policy of ADOT that all individuals are treated in a fair and non-discriminatory manner throughout the application and employment process.

Harassment Prohibited: Harassment of a sexual nature or harassment based on race, color, national origin, religion, age, disability, genetic information, sex, pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation is prohibited. Arizona Department of Transportation (ADOT) prohibits the unlawful harassment of any employee in the course of the employee's work by supervisors, co-workers, or third parties, such as vendors or customers. Any ADOT employee who engages in unlawful harassment may be disciplined or separated from employment with ADOT.

Protection from Retaliation: ADOT does not permit or tolerate retaliation against anyone for raising a concern about, assisting in an investigation of, or filing a complaint in good faith concerning unlawful discrimination or harassment. Any ADOT employee found to have engaged in retaliation against another individual for reporting or assisting in the investigation of any allegations of unlawful discrimination may be disciplined or separated from employment with ADOT.

It is the responsibility of **all** ADOT employees to promptly bring any allegation of unlawful discrimination, harassment or retaliation related to ADOT, to the attention of the CRO. Failure to do so will be a violation of this policy. Any complaint alleging unlawful discrimination,

harassment or retaliation must be submitted in accordance with the procedures described in this policy and not under ADOT's Employee Grievance Policy.

This policy does not affect other rights and remedies under federal and state statutes prohibiting employment discrimination. Employees who believe that they have been subjected to discrimination because of their race, color, religion, sex, pregnancy, age, national origin, genetic information, or disability may also file a charge of employment discrimination with the Arizona Attorney General's Civil Rights Division and the Equal Employment Opportunity Commission (EEOC). Charges filed with the Arizona Civil Rights Division must be filed within 180 days following the most recent act of discrimination. Charges filed with the Equal Employment Opportunity Commission (EEOC) must be filed within 300 days following the most recent act of discrimination. The filing of an internal complaint of discrimination pursuant to this policy will not impact those statutes of limitations. No ADOT employee who elects to file a charge with either the Arizona Attorney General's Civil Rights Division or the Equal Employment Opportunity Commission (EEOC), or who testifies in an investigation by either of those agencies, will be retaliated against or denied internal rights or remedies on account of that charge filing or testimony.

2.07 COMPLAINT SYSTEM

- A. Employees will initiate the complaint process with ADOT - CRO **within 180 days of the action giving rise to the complaint and clearly outline the allegations to be addressed** by submitting a completed ADOT Discrimination Incident Report (ADIR) form ([Click Here](#)), including whether the basis of the allegation is based on:
 1. Unlawful discrimination based on race, color, religion, sex (including pregnancy), age (40 years or older), national origin, genetic information, or on the basis of a disability;
 2. Allegation of sexual harassment of other form of harassment;
 3. Retaliation for filing a complaint;
 4. Retaliation or intimidation for exercising any right under state or federal law.
- B. In accordance with personnel rule (R2-5A-901 C) a complainant shall not be allowed the use of state time or state property to prepare a complaint, prepare for a meeting with agency management or to meet with a representative. Subject to supervisory approval and the operational needs of the unit, a complainant may request available compensatory or annual leave for this purpose.
- C. Multiple complaints by an employee may be consolidated into a single complaint. Separate complaints filed by two or more employees regarding the same issue or issues may be consolidated into a group complaint. Employees having a common complaint may submit one group complaint, identifying one complaint as the selected spokesperson for the group. Employees who choose to file a group complaint are prohibited from filing separate complaints on the same issue.

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- D. Once a complaint is submitted to ADOT- CRO, it may not be amended. If additional documentation is submitted by the complainant after the initiation of the complaint, the reviewing or investigation official may remand the complaint to the complainant for reconsideration and resubmission.
- E. An employee, who has an allegation of or becomes aware of a situation involving unlawful discrimination, harassment or retaliation, can report the allegation or complaint by submitting an ADOT Discrimination Incident Report (ADIR) to the CRO at:

Arizona Department of Transportation
Civil Rights Office
206 S. 17th Ave., Suite 150, MD 155A
Phoenix, AZ 85007
(602) 712-8946

- F. The ADOT Discrimination Incident Report (ADIR) ([Click Here](#)) shall include **“all facts”** and circumstance involved in the alleged violation, including the following information:
 - 1. Description of the incident(s);
 - 2. Name(s) of individual(s) involved;
 - 3. Name(s) of witness(es);
 - 4. The date(s) the discrimination or harassment occurred (if known);
 - 5. Resolution sought;
 - 6. Federal or state law alleged to have been violated.
- G. Complaint Procedures:
 - 1. The CRO shall notify the Director of all verbal or written complaints of discrimination or harassment reported by an employee immediately upon receipt of a complaint.
 - 2. Employees who are told or otherwise become aware that discrimination or harassment is occurring must immediately report the allegation or complaint to the ADOT- CRO.
 - 3. The CRO shall acknowledge receipt of the complaint to the complainant no later than five business days after receipt of the written complaint.
 - 4. The CRO will conduct an assessment of the complaint and intake interview with the complainant to determine if the complaint meets the requirements to be elevated into an investigation. This determination should be done within two days after acknowledging receipt of the complaint.

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5. Within seven business days of receipt of the complaint CRO will send a notice to the complainant to inform the complainant on the decision to elevate or not to elevate their complaint to an investigation.
 6. If the complaint is elevated to an investigation CRO shall assign the complaint to a civil rights investigator for investigation within 10 business days. The investigation shall be completed within 50 business days of receipt of the written complaint. A thirty (30) day extension may be requested due to extenuating circumstances.
 7. **Dismissal.** A complaint may be dismissed by the CRO for the following reasons:
 - a) The complaint was not made within 180 days of the most recent discriminatory act.
 - b) If the CRO does not have jurisdiction over the complaint submitted for review or investigation.
 - c) Accepting all factual allegations as true, the complaint does not include information from which a determination can be that the incident was because of the complainant's race, color, sex, religion, national origin, age, disability, sexual orientation or retaliation.
 - d) Lack of cooperation from the complainant.

The CRO will provide the complainant with the reason for the dismissal in writing.

8. **Informal Resolution.** The Civil Rights Office may attempt to informally resolve discrimination complaints filed using the ADIR form.

The Civil Rights will review the complaint and may make a limited inquiry into the complaint. The purpose of the limited review is to obtain information regarding the complaint and to determine if it is possible to resolve the complaint informally. In cases where it is possible to resolve the complaint without a formal investigation, the informal resolution will be documented and the complainant will be advised of the informal resolution in writing. If the complainant agrees with the informal resolution, the complainant will sign an agreement form prepared by the CRO. The signed informal resolution will be attached to the complainant's ADIR and retained by the CRO.

9. **Formal Investigation.** The CRO is responsible for conducting formal investigation of complaints of discrimination. The investigative process is non-adversarial. This means that the civil rights investigator will collect evidence regardless of the parties' position with respect to the evidence. The purpose of the investigation is to collect facts to

determine if there has been a violation of ADOT's Nondiscrimination policy and Arizona Personnel Rule (R2-5A-104).

10. Barring resolution of the complaint by agreement of the parties, the CRO shall forward a written investigative report to the Director, or designee, within 10 business days of completion of the review or investigation.
11. The Director, or designee, shall review the investigative findings and issue a determination in writing to the complainant. A copy of the response shall be provided to the ADOT CRO.
12. A statement advising that retaliation against an employee for filing a complaint in good faith will not be tolerated or permitted.
13. A statement specifying that a grievance filed by a covered employee under R2-5B-403 that includes an allegation of discrimination or harassment shall be reviewed or investigated under the provisions of R2-5A-901, and not the grievance system.

H. Reviewed by Director:

1. A complainant who is not satisfied with the ADOT Director's response to a complaint alleging discrimination or harassment, may elevate the complaint to the Arizona Department of Administration (ADOA) Director within five business days after the receipt of ADOT Director's response. The ADOA Director will furnish a copy of the final decision to the Director of ADOT and the complainant within 20 business days following receipt of the complaint by the ADOA Director. The 20 business days may be extended by the ADOA Director with the concurrence of the complainant. The decision of the ADOA Director is the final step in the complaint procedure.
2. The response will refer the complainant to the appropriate entity if the complainant is dissatisfied with the final step of the complaint procedure.

2.08 RECORDKEEPING

The CRO will retain all records of complaints, ADA accommodation, and investigative reports for **two years** from the date of making the record or the personnel action involved, whichever occurs later, however, in the case of involuntary termination of an employee associated with an discrimination investigation, the CRO will retain the records associated with the employee involuntarily terminated for **one year** from the date of termination.

Records Relating to an EEOC Charge of Discrimination

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Where a charge of discrimination has been filed under Title VII, the ADA, or GINA, by the EEOC against ADOT, the CRO will retain all records related to the charge or action until final disposition of the charge or action. The date of final disposition means the date of expiration of the statutory period within which the aggrieved person may bring an action in a U.S. District Court or, where such an action has been brought, the date on which such litigation is terminated.

2.09 CORRESPONDING POLICIES

PER-2.01 Internal Americans with Disabilities

PER-2.02 Americans with Disabilities

PER-17.01 Affirmative Action Implementation

PER-18.01 Title VI External Nondiscrimination

PER-4.01 Uncovered Employee Discipline

PER-5.01 Personnel Investigation

PER-5.05 Guideline for Progressive Discipline

PER-9.01 Covered Employee Grievance Procedure