POLICY:

It is the Ohio Department of Transportation’s (Department) policy to take affirmative action in accordance with all applicable federal and state laws, rules, regulations, and guidelines regarding discrimination, harassment (including sexual harassment), and retaliation. Discrimination or harassment against employees and applicants due to race, color, religion, sex (including sexual harassment), sexual orientation, national origin (ancestry), disability, age (40 years or older), military status (past, present, or future), or genetic information is illegal.

It is unlawful for any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice. It is also unlawful to retaliate against any person who has made a charge of discrimination, testified, assisted or participated in any manner in any investigation, proceeding, or hearing.

The Department encourages all employees to assist in the effort to achieve equal opportunity. Violations of this policy may be cause for disciplinary action up to and including dismissal.

PURPOSE OF THE POLICY:

To establish procedures for the reporting of discriminatory incidents; to stress that discrimination, harassment (including sexual harassment) and retaliation will not be tolerated in the workplace.

AUTHORITY:

Age Discrimination in Employment Act (ADEA)
Americans with Disabilities Act (ADA)
Code of Federal Regulations Title 29, Part 1605.1
Executive Order 2011-05K
Ohio Revised Code Chapter 4112
Ohio Administrative Code § 123:1-49-02
Pregnancy Discrimination Act (PDA)
Title II of the Genetic Information Nondiscrimination Act (GINA)
Title VII of the Civil Rights Act of 1964
Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 USCS 4311
SCOPE:

The Anti-Discrimination, Anti-Harassment (including Sexual Harassment), and Anti-Retaliation policy is applicable to all districts, regions, divisions, offices, and work units within the Department.

FISCAL IMPACT:

Not applicable.

DEFINITIONS:

Age: Discrimination/harassment based on years of age (40 years or over).

Color: Discrimination/harassment based on skin-tone. Equal opportunity cannot be denied any person because of his/her racial group or perceived racial group, his/her race-linked characteristics (e.g., hair texture, color, facial features), or because of his/her marriage to, or association with, someone of a particular race or color.

Disability: Discrimination/harassment based on a physical or mental impairment that substantially limits one or more major life activities of the individual including having a record of such impairment or being regarded as having such impairment. (42 U.S.C. § 12102(2))


Genetic Information: Genetic information includes information about an individual’s genetic tests and the genetic tests of an individual’s family members, as well as information about any disease, disorder, or condition of an individual’s family members (i.e. an individual’s family medical history). Family medical history is included in the definition of genetic information because it is often used to determine whether someone has an increased risk of getting a disease, disorder, or condition in the future. (Title II of the Genetic Information Nondiscrimination Act of 2008)

National Origin & Ancestry: Discrimination/harassment based on birthplace, ancestral, cultural, family descent or lineage; linguistic characteristics common to a specific nationality; marriage or association with persons of a national origin group; membership or association with organizations identified with or promoting the interests of a national origin group’s attendance or participation in schools, churches, temples, or mosques generally associated with a national origin group; or a surname associated with a national origin group.
OCRC: Ohio Civil Rights Commission.

Race: Discrimination/harassment based on physical, tribal, ancestral, cultural, geographic or linguistic characteristics common to a specific ethnic group or stock including but not limited to persons having origins in any of the original people of the Americas, Europe, Africa, Australia, Antarctica, or Asia.

Religion: Discrimination/harassment based on the religious nature of a practice or belief (CFR Title 29, Part 1605.1). Religious practices include moral or ethical beliefs as to what is right or wrong, which are sincerely held with the strength of traditional religious views.

Sex: Discrimination/harassment against any employee or applicant for employment because of his/her sex in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals on the basis of sex is also considered discrimination. Discrimination on the basis of pregnancy, childbirth, or related medical conditions constitutes unlawful sex discrimination under the Pregnancy Discrimination Act, which is an amendment to Title VII of the Civil Rights Act of 1964.

Sexual Harassment: Occurs when unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when this conduct explicitly or implicitly affects an individual’s employment, unreasonably interferes with an individual’s work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual Orientation: A person’s actual or perceived homosexuality; bisexuality; or heterosexuality, by orientation or practice, by and between adults who have the ability to give consent.

Military Status: Discrimination/harassment based on service in the uniformed services, which is defined under Ohio Revised Code § 5903.01(G) as performance of a duty, on a voluntary or involuntary basis, in a uniformed service under competent authority. This includes active duty, active duty for training, initial active duty for training, inactive duty for training, full-time national guard duty, the commissioned corps of the public health service, and any other category of persons designated by the president of the United States in time of war or emergency, performance of duty or training by a member of the Ohio organized militia, and the period of time for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to
perform any duty in a uniformed service. Ohio law prohibits discrimination on the basis of an individual’s past, current or future military status in hiring, promotion, tenure, discharge, pay, fringe benefits, job training, classification, referral, terms, conditions and privileges of employment, or any other matter directly or indirectly related to employment.

PROCEDURE:

Reporting Discrimination, Harassment (including Sexual Harassment), or Retaliation:
Any employee, client, customer, member of the public, or applicant who believes that he or she is a victim of discrimination, harassment, or retaliation should report such incident(s) to:

- The Department’s Office of Equal Opportunity
- State of Ohio, Department of Administrative Services, Equal Opportunity Division (DAS/EOD)
- EEOC
- OCRC

A formal complaint may be filed with any or all of the following entities:

- Office of Equal Opportunity within 6 months (http://www.dot.state.oh.us/Divisions/ODI/EqualOpportunity/Pages/default.aspx)
- DAS/EOD within 30 days (http://www.das.ohio.gov/eod/)
- EEOC within 300 days (http://www.eeoc.gov/)
- OCRC within 6 months (http://crc.ohio.gov/)

Complaints regarding sexual orientation may be reported to the Office of Equal Opportunity and/or DAS/EOD.

Investigatory Process for Complaints filed with the Office of Equal Opportunity:

A complaint can be filed with the Office of Equal Opportunity within 6 months of the alleged discriminatory act. The individual will need to complete an EEO Discrimination Complaint Form (ADM 4400). A copy of the complaint form is attached to this policy. The Office of Equal Opportunity will conduct a formal investigation of the complaint. In most circumstances, the Office of Equal Opportunity will render a decision within 60 days of the filing of the complaint whether probable cause exists to prove an act of discrimination, harassment (including sexual harassment), or retaliation occurred.

The complainant may request a hearing within 15 calendar days of receipt of the findings through DAS/EOD if he/she is not satisfied with the Office of Equal Opportunity’s decision. Written request must be sent to:
Equal Opportunity Division  
Department of Administrative Services  
4200 Surface Road  
Columbus, OH 43228

If a hearing request is granted, DAS/EOD will select a hearing officer to preside over the proceedings and to render a decision on the case. The Department will have 30 days to act on the decision of the hearing officer, if any action is required. The complainant may request a final review of the decision by DAS/EOD if he/she is not satisfied with the hearing officer’s decision.

**Investigatory Process for Complaints filed with DAS/EOD:**

A complaint can be filed with DAS/EOD within 30 days of the most recent incident of discrimination, harassment, or retaliation. The individual will need to complete the ADM 4400, which is available online. Within 60 days from the filing of the complaint, the Department will render a decision of whether probable cause exists to prove an act of discrimination, harassment (including sexual harassment), or retaliation occurred.

The complainant may request a hearing within 15 calendar days of receipt of the findings through DAS/EOD if he/she is not satisfied with the Department’s decision. Written request must be sent to:

Equal Opportunity Division  
Department of Administrative Services  
4200 Surface Road  
Columbus, OH 43228

If a hearing request is granted, DAS/EOD will select a hearing officer to preside over the proceedings and to render a decision on the case. The Department will have 30 days to act on the decision of the hearing officer, if any action is required. The complainant may request a final review of the decision by DAS/EOD if he/she is not satisfied with the hearing officer’s decision.

**Investigatory Process for Complaints filed with EEOC and/or OCRC:**

A complaint can be filed with OCRC within 6 months and/or with EEOC within 300 days of the most recent incident of discrimination, harassment, or retaliation. Complaints filed with EEOC and/or OCRC will be investigated by the applicable enforcement agency.

**SUPERVISORY AND MANAGEMENT REPORTING REQUIREMENT:**

When a supervisory or management employee witnesses, is notified of, or otherwise becomes aware of offensive conduct that is based on membership in a protected class as defined herein, that supervisor or manager must report the conduct to his or her higher-level supervisor or to the Office of Equal Opportunity. Ultimately, the Office of Equal Opportunity must be made aware
of the conduct. Reporting under this requirement is mandatory, not discretionary, and full disclosure of all information about the incident is required.

ENFORCEMENT:

Acts of discrimination, harassment (including sexual harassment), and retaliation in the workplace are inappropriate and will not be tolerated. Acts of discrimination, harassment, and retaliation may be cause for disciplinary action, up to and including termination.