

ENCAP's Employee Handbook includes comprehensive policies that prohibit discrimination, harassment, retaliation in response to complaints, etc. Jackson Lewis PC last reviewed this handbook in 2019 to ensure the document includes all necessary protections.

SECTION XI DISCRIMINATION, HARASSMENT, AND CHILD ABUSE COMPLAINTS AND PROCEDURES

A. Discrimination

Illegal discrimination is defined as actions and/or decisions taken because of an individual's legally-protected characteristics or status which result in harming, limiting or reversing the individual's employment status or employment opportunities on the basis of race, color, sex (including pregnancy), creed, marital status, religion, age, national origin, ancestry, disability, sexual orientation, gender identity or veteran status is a violation of the Agency's personnel policies, except where physical fitness, physical capabilities, sex or age is a bona fide occupational qualification. Any employee or applicant for employment who believes that he or she has encountered unlawful discrimination within the Agency may file a written discrimination complaint.

1. A discrimination complaint may be either informal or formal.
 - a. An informal complaint is one which is made within the Agency, to the Executive Director or designee.
 - b. A formal complaint is a complaint which is made against the Agency to an outside authorized enforcement Agency such as federal, state or local civil rights commissions, the State or Federal Equal Opportunity Commission, or the U.S. Justice Department.
2. No retaliation or recrimination of any kind will be allowed against any person filing a discrimination complaint against the Agency.

3. Informal Complaints

Informal official discrimination complaints to the extent feasible, are addressed by the Executive Director.

- a. The Executive Director or designee will notify the appropriate Agency's Program Supervisor and Deputy Director that a complaint has been filed.
- b. The Executive Director or designee will attempt to resolve the complaint to the complainant's satisfaction. The Executive Director or designee will be given access to any information deemed by him/her necessary to conduct an inquiry into the matters raised by the complainant.
- c. Unless a time extension is approved by the Executive Director or designee in writing and with notification to the appropriate Agency's Program Supervisor and Deputy Director, the Executive Director or designee will conduct a final interview with the complainant no later than 15 working days from the date on which the complaint was made to the Executive Director.

- d. If the complainant is not satisfied with the decision or solution reached by the Executive Director or designee, the complainant may make a formal complaint.

4. Formal Complaints.

A formal complaint of discrimination may be made to any authorized State or Federal enforcement Agency.

B. Harassment

The Agency will not tolerate unlawful harassment. All employees are prohibited from unlawfully harassing any employee or other person in the course of employment.

In general, ethnic or racial slurs, jokes and other verbal or physical conduct relating to any of the following characteristics are harassment when they unreasonably interfere with the person's work performance or create an intimidating work environment: age, sex, race, color, creed, national origin, religion, disability, marital status, sexual orientation, gender identity or any other prohibited basis of discrimination under applicable local, state or federal law.

Sexual harassment has been defined by federal and state regulations as a form of sex discrimination. It can include unwelcome sexual advances, asking for sexual favors, or other physical or verbal conduct of a sexual nature by management or others in the workplace.

Sexual harassment under this policy exists when:

- (a) Supervisors or managers make a submission to such conduct either an explicit or implicit term or condition of employment (including hiring, compensation, promotion, or retention);
- (b) Submission to or rejection of such conduct is used by supervisors or managers in making employment-related decisions such as promotion, performance evaluation, pay adjustment, discipline, work assignments, etc.

Sexual harassment may also exist when employees (or non-employees, such as vendors, customers, customers, regular volunteers or volunteers who are in a program or on work-release) engage in such conduct, and the conduct unreasonably interferes with their work or assignments that creates an intimidating, hostile, or offensive work environment. Actions which could be considered sexual harassment include, but are not limited to the following:

1. Sexual-oriented conversation either spoken or written and/or questions regarding another's sex life or experiences;
2. Jokes, puns, comments, innuendoes, whistling at someone or cat-calls, and teasing in a sexual manner;
3. Making sexual gestures with hands or through body movements;
4. Subtle pressure for sexual activity or multiple requests for dates or other activities;
5. Leering, looking someone up and down, gawking, and making other nonverbal gestures that demean, insult or offend;

6. Display of sexually suggestive software, emails, text messages, etc.;
7. Referring to an adult as a girl, hunk, doll, babe, honey, etc.;
8. Posting or displaying pictures, photos, illustrations or objects in the workplace that are demeaning or offensive;
9. Unwanted physical contact such as touching, patting, pinching, leaning over, or constant brushing against another's body, blocking their movements (entering or leaving an area), and;
10. Demands for sexual favors, accompanied by implied or overt promises of preferential treatment or threats concerning an employee's employment status (such as promotion, performance evaluation, pay-adjustments, discipline, work assignments, etc.).

Sexual Harassment may occur at two levels; among peers (co-workers), or at the supervisory level. If they are comfortable doing so, and if the harassment continues, bring the matter to the appropriate supervisor's attention. When a complaint or incident of sexual harassment involves your immediate Supervisor or another in management, the incident should be reported immediately to the Deputy Director or the Executive Director – this can be done orally or in writing.

In fulfilling the Agency's obligations to maintain a positive and productive work environment, management is expected to halt any harassment of which they become aware of by:

1. Calling attention to the Agency's policy on Sexual Harassment;
2. Fully investigating the situation in collaboration with the Human Resources Manager;
3. Informing the Executive Director, or designee; and
4. Initiating a direct form of disciplinary action based on evidence found.

It is also important to note that sexual harassment does not have to involve conduct of a sexual nature in order to constitute unlawful behavior. For example, abusive, offensive or demeaning behavior that is directed to members of one gender only (whether male or female) may be deemed a form of sexual harassment, even though the conduct was not motivated by sexual desire or gratification. In addition, harassment of a male by another male or female by another female also constitutes an unlawful form of sex discrimination.

All complaints of sexual harassment will be thoroughly investigated and will be treated with the utmost confidence to the extent possible, and consistent with resolution of the problem. In the course of the investigation, the Executive Director may exercise their right to suspend the alleged harasser pending the results of the investigation. If the allegations are substantiated, the alleged harasser will be disciplined up to or including termination, at which time all parties concerned have a right to appeal the decision within ten (10) working days.

Sexual harassment will not be tolerated in the Agency. Employees who report an incident of sexual harassment or who participate in the investigation as witnesses shall not be subjected to any form of retaliation from another employee or the Agency.

In addition, if an employee observes sexual harassment by another employee, supervisor, manager or nonemployee, the employee should immediately report the incident to the individuals above. Appropriate action will also be taken in response to violation of this policy by any nonemployee. All complaints of unlawful sexual harassment that are reported to management or to the appropriate persons above will be treated with as much confidentiality as possible, consistent with the need to conduct an adequate investigation.

C. Child Abuse

It is the policy of ENCAP to ensure a wholesome, safe environment and to train all employees, interns, contractors, and volunteers who work with children within the organization, in the recognition and prevention of child abuse and neglect. This policy addresses accountability, obligations, and responsibility on the part of all employees, contractors, interns, and volunteers who have contact with children under auspices of ENCAP.

This policy also recognizes and cooperates with the requirements and procedures of applicable state and local law regarding the protection of children, including the prevention and response to incidents of actual or suspected abuse of children.

1. Definitions

- a. Child: Under Nebraska law, a person not yet 19 years of age.
- b. Child Abuse: A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:
 - a. Placed in a situation that endangers his or her life or physical or mental health;
 - b. Cruelly confined or cruelly punished;
 - c. Deprived of necessary food, clothing, shelter or care;
 - d. Left unattended in a motor vehicle if minor child is six years or younger;
 - e. Placed in a situation to be sexually exploited by allowing, encouraging, or forcing such minor child to solicit for or engage in prostitution, debauchery, public indecency, or obscene or pornographic photography, films, or depictions;
 - f. Placed in a situation to be sexually abused.
- c. Mandatory Reporting Law (Neb. Rev. Statute 28-711): (1) When any physician, medical institution, nurse, school employee, social worker, or other person has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would result in child abuse or neglect, he or she shall report such incident or cause a report of child abuse or neglect to be made to the proper law enforcement Agency or to the department on the toll-free number established by subsection (2) of this section. Such report may be made orally by telephone with the caller giving his or her name and address, shall be followed by a written report, and to the extent available shall contain the address and age of the abused or neglected child, the address of the person or persons having custody of the abused or neglected child, the nature and extent of the child abuse or neglect or the conditions and circumstances which would reasonably result in such child abuse or neglect, any evidence of previous child abuse or neglect including the nature and extent, and any other information which in the opinion of the person may be helpful in establishing the cause of such child abuse or neglect and the identity of the perpetrator or

perpetrators. Law enforcement agencies receiving any reports of child abuse or neglect under this subsection shall notify the department pursuant to section 28-718 on the next working day by telephone or mail.

2. Responsibility for Reporting Suspected Child Abuse or Neglect

- a. All personnel of ENCAP shall comply with the reporting requirements of Nebraska and any other requirements found in local laws when they have actual knowledge of or reasonable cause to suspect an incident of sexual abuse or misconduct.
- b. Nebraska State law requires any person who suspects that a child has been physically or sexually abused or neglected to report it promptly to Law Enforcement (911) or the Nebraska Department of Health and Human Services (1-800-652-1999). Do not use e-mail to report cases of abuse. If there is an emergency, call local law enforcement immediately.
- c. Should an employee, contractor, intern, or volunteer be the subject of an allegation of child abuse, the employee will immediately notify their Supervisor and the Executive Director of the allegation.
- d. If a staff member suspects a contractor, intern, or volunteer is abusing a child, he/she is required by Nebraska State Law to report it directly to law enforcement (911) or the Nebraska Abuse/Neglect Hotline at 1-800-652-1999. Immediately following, the staff member should inform their Supervisor and the Executive Director. The Executive Director will notify the President of the Board and any key staff to assess and take action regarding the current employment situation of the alleged suspect.

Reporters (employee, contractor, intern, or volunteer) of child abuse/neglect are not required to provide their name when making a report. However, reporters will be asked to provide their name so that, if necessary, the child protective services worker can request additional information. Reporters are protected from liability, provided that the report is made in good faith, and the report is confidential. It may only be released to law enforcement or to a court involving a judicial proceeding.

- e. Due to the confidential and delicate nature of child abuse and neglect situations, the person who reports an incident of abuse cannot be informed of the action taken, or the result of the report.
- f. There shall be no interference with law enforcement or child protective service investigations during the reporting process or as part of the response to those who may be affected by the reported abuse or misconduct.
- g. When admission of or sufficient evidence exists that demonstrates that sexual abuse or misconduct has occurred, the alleged offender shall be immediately relieved of responsibilities in the Agency and placed on suspension pending the outcome of law enforcement, child protective service investigation, and/or an internal investigation.
- h. Notification of the allegation or incident shall be given to liability insurers for the Agency in accord with the terms of applicable insurance policies.
- i. The Executive Director shall serve as spokesperson for the Agency when inquiry is made by the media, membership, or by the general public. All communication, whether in spoken or

written format, shall observe and respect the privacy and reputation of the persons involved and shall adhere to the pertinent law requirements.

- j. Rumors, gossip and passing information that cannot otherwise be verified should be squelched immediately to protect the rights of all parties.

3. Retaliation Prohibited – The Agency prohibits any type of retaliation against any employee who, in good faith, files a complaint under this policy or against any employee who assists in the complaint investigation.