

Division of Administrative Law

State of Louisiana



JOHN BEL EDWARDS
Governor

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Director

POLICY PROHIBITING SEXUAL HARASSMENT

PURPOSE: Through this policy and the mandatory training required of all employees, DAL seeks to:

- Unequivocally state intolerance for sexually inappropriate behavior;
- Identify the broad scope of such prohibited behavior;
- Establish an effective, uniform reporting process;
- Establish an effective, uniform investigative process;
- Trigger prompt action to protect against recurrence of the prohibited behavior;
- Ensure resolution that imposes appropriate corrective action;
- Protect complainants and individuals involved in the investigative process from harassment, reprisal, or retaliation; and
- Respect confidentiality and the privacy rights of employees.

This policy establishes a procedure to administratively report and address complaints of sexually inappropriate behavior. It is not in any way intended to replace or supersede the statutory or regulatory rights regarding sexual harassment available to employees under federal and state law, including Title VII of the Civil Rights Act (42 U.S.C. § 2000e et seq.), the Louisiana Employment Discrimination Law (La. R.S. 23:301 et seq.), and La. R.S. 42:341-345. Specific timelines and requisites of law apply to filing a complaint with the Equal Employment Opportunity Commission (EEOC) or the Louisiana Commission on Human Rights (LCHR).

APPLICABILITY: This policy applies to all DAL employees regardless of position, status, or authority. This includes classified and unclassified employees, full-time, part-time, seasonal, and temporary employees. The prohibitions of this policy are equally applicable to appointing authorities, executive management, administrators, directors, managers, supervisors, staff, students, and interns.

In keeping with DAL's intention and duty to maintain a work environment free of harassment and discrimination, this policy also applies to non-employees, including visitors and individuals who transact business with DAL such as vendors, maintenance personnel, clients, contractors, and consultants. These non-employees are prohibited from engaging in the behavior prohibited by this policy, and are protected from experiencing such behavior by DAL employees.

This policy applies to not only the customary workplace and work locations where DAL employees may be assigned, but also prohibits such behavior while traveling to a work location, at conferences, workshops, trainings, business trips, and business-related social events. Additionally, the behavior prohibited by this policy applies to off-duty, off-premises behavior that

has an impact upon and relation back to the working relationship.

POLICY: Employees of DAL have an expectation and right to be treated with respect and dignity, and to work in a professional environment free of harassment and discrimination. Left unregulated, harassment and discrimination, regardless of nature or degree, undermine the integrity of the employment relationship, debilitate morale, dedication, and loyalty, compromise equal employment opportunities, and significantly interfere with the mission of DAL.

DAL strives to maintain a workplace that fosters mutual respect and promotes harmonious, productive working relationships. To accomplish this, DAL prohibits and will not tolerate sexual harassment or any behavior of a sexual nature that intimidates, exploits, insults, demeans, disrespects, or embarrasses any employee or other individual in the workplace.

Prevention and elimination of sexually inappropriate behavior requires the personal involvement and commitment of every DAL employee. Unless and until management is apprised of its occurrence, corrective action to address such behavior cannot be taken. Through this policy and related training requirements, DAL seeks to reinforce its unyielding intolerance of sexually inappropriate behavior, and encourage employees who experience, observe, or are informed of such behavior to promptly initiate the reporting process set forth in this policy. Employees can be assured that DAL will objectively and thoroughly investigate reports; implement preventive measures to protect against recurrence; impose corrective action to address violations; and protect complainants and individuals involved in the investigative process from any form of harassment, reprisal, or retaliation.

EMPLOYEE RELATIONS DESIGNEE: DAL recognizes that an employee experiencing sexually inappropriate behavior may be reluctant to file a complaint. DAL has appointed the Executive Staff Officer as the Employee Relations Designee to serve as a central point of contact. This individual has specialized training and expertise in handling employment concerns.

This individual is available to discuss the contents of this policy, answer questions related to the reporting process, receive complaints, and coordinate and conduct the investigative process. Generalized inquiries and questions regarding this policy will be maintained in strict confidence. In some instances, follow-up inquiries or initiation of the investigative process by the Employee Relations Designee may be required. Investigation may be necessary even when the employee desires to maintain anonymity, requests that no action be taken, or insists that a formal complaint not be lodged. In general, informal complaints or requests to delay investigation unless or until a future occurrence cannot be honored and will be treated the same as a formal complaint, thus triggering the investigative process.

In the event of the unavailability of the Employee Relations Designee, an employee needing immediate assistance should contact DAL's Human Resources Section.

TRAINING: DAL recognizes that implementation of a policy prohibiting sexually inappropriate workplace behavior standing alone is insufficient to prevent and address such behavior. To support this policy and create a culture wherein employees willingly report concerns and lodge complaints, DAL requires all employees to successfully complete training on this policy upon hiring and on a

continuing basis thereafter. Failure to complete the mandatory training may result in disciplinary action, up to and including termination. At a minimum, DAL mandates the following training for its employees:

- Upon hiring, all new employees will be provided a copy and instructed to carefully review this policy. Within 30 days of the hiring date, all new employees are required to meet with their hiring manager or other individual so designated to discuss any concerns or uncertainties regarding their responsibilities under this policy. The employee and hiring manager are required to sign an Acknowledgement and Certification to verify that this process has been successfully completed.
- Within 30 days of the hiring date, all new employees are required to complete the Comprehensive Public Training Program's (CPTP) most recent training on sexual harassment. Certification of successful completion will be documented through CPTP.
- All employees, on an annual basis thereafter, are required to complete the CPTP's most recent training on sexual harassment by December 31st of each year. Certification of successful completion will be documented through CPTP.
- Within 30 days of attaining a supervisory position, all new supervisors are required to complete the CPTP's most recent training on sexual harassment designated for management personnel. This training, which emphasizes identifying, preventing, and responding to sexually inappropriate behavior, is thereafter to be completed every two years. Certification of successful completion will be documented through CPTP.

PROHIBITED CONDUCT: Sexually inappropriate behavior takes many forms. It can be explicit and overt, such as a demand for sexual favors, or subtle and implied, such as leering and innuendo. It can be intended or unintended, with the determination of inappropriateness evaluated from the perspective of a reasonable person and without regard for the purpose or motive of the accused. It can involve behavior by a person of either gender towards a person of the same or opposite gender. It can involve conduct by a supervisor or manager towards a subordinate employee, or conduct by one employee towards another employee of equal, lesser, or greater rank, status or authority. It can involve words or actions by a person external to DAL such as a visitor, vendor, maintenance personnel, client, contractor, or consultant. An employee can be affected merely as an observer of sexually inappropriate behavior directed towards another.

Sexual harassment, a form of prohibited discrimination, is defined by the EEOC as unsolicited and unwelcomed sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature wherein:

- A) Submission to such conduct is explicitly or implicitly a term or condition of employment; or
- B) Submission to or rejection of such conduct is used as a basis for employment decisions (hiring, firing, advancement, performance evaluations, wages, duty assignments, shifts, training opportunities, or other such conditions of employment or career development); or

- C) Such conduct has the purpose or effect of unreasonably interfering with the employee's work performance or creates an intimidating, hostile, or offensive work environment.

However, DAL's focus is upon a broader and more general prohibition against sexually inappropriate behavior. DAL rightfully recognizes the inappropriateness of even occasional and non-sensational words or actions of a sexual nature. While not satisfying the legal standard to constitute sexual harassment, such behavior can be offensive and negatively influence the work environment. For this reason, DAL prohibits all sexually inappropriate behavior, regardless of severity, pervasiveness, or identifiable impact.

For illustrative purposes only, sexually inappropriate behavior, even on an occasional basis, includes, but is not limited to:

- **Verbal:** Unwelcomed sexual flirtations, advances, propositions, or demands; unwelcomed sexual remarks, teasing, jokes, pranks, innuendo, insults, or inquiries; sexually insensitive or derogatory comments; unwelcomed repeated requests for dates or social engagement; inappropriate comments regarding a person's physical attributes; comments regarding sexual activities, exploits, prowess, or accomplishments; use of vulgar, crude or sexually offensive language; sexually insulting noises, catcalls, or whistling; stereotypical comments; repeatedly referring to an individual as "honey," "babe," "sugar," etc.
- **Non-Verbal:** Gestures of a sexual nature; lustful looks, staring and leering; displaying sexually revealing or suggestive pictures, cartoons, caricatures, drawings, photographs, magazines, books, graffiti, or objects; transmitting sexually oriented emails, texts, letters, writings, communications, and images.
- **Physical:** Unwelcomed physical contact including kissing, touching, embracing, hugging, massaging, rubbing, fondling, groping, tickling, pinching, and patting; invading another's space by leaning over, purposefully cornering, or blocking passage; sexual assault, battery, and rape.

CONFRONTING THE ACCUSED: An employee experiencing unwelcomed behavior may choose to tell the offender to cease the behavior. Doing so may be sufficient to prevent recurrence. However, if the behavior continues, the concern should be reported promptly.

DAL recognizes that confronting an offender in this fashion can be discomforting, especially in those situations in which the offender is within the employee's supervisory chain of command. Therefore, DAL does not require employees to do so, and certainly does not require that this be done before using the reporting procedure provided in this policy.

REPORTING PROCEDURE: Early reporting of sexually inappropriate behavior enhances the credibility of the complainant and facilitates the investigative process. Prompt initiation of the investigation enhances the ability to identify witnesses and preserve evidence, and protects against faltering memories occasioned by the passage of time. For these reasons, employees are

encouraged to report such behavior as soon as possible, and discouraged from waiting to cumulate offenses or the recurrence of the offensive behavior.

DAL does not require a fixed reporting time or deadline – the sooner, the better is preferred, and immediate reporting is the ideal. The initial report need only convey the occurrence of words or actions that are offensive and need not provide details. This report can be verbal (in person or via telephone) or in writing (letter, memo, email, text), and need not utilize a specific form. The report can be made to the employee's direct supervisor. However, if the complaint involves the supervisor or, regardless of reason, the employee prefers not to involve that supervisor, the report can be made to any supervisor or manager at DAL, or directly to the Employee Relations Designee. Supervisory personnel receiving a report of sexually inappropriate behavior are immediately required to inform the Employee Relations Designee of the information provided.

Anonymous complaints are discouraged; however, if an anonymous complaint is submitted, it should contain as much detail as possible including the name(s) of the accused and all witnesses, locations, dates, times, and description(s) of all behaviors experienced, and any previous reports of similar behavior to management. Without this level of detail, the ability to conduct a thorough investigation may be impeded.

INVESTIGATION OF COMPLAINTS: All reports and complaints of sexually inappropriate behavior shall be directed to the Employee Relations Designee who shall assess the information provided. Management personnel in a need-to-know capacity will be apprised of the complaint. An assessment of the preliminary information provided will be done to determine whether action should be taken to prevent further occurrence of the offensive behavior. For example, it may be appropriate to authorize leave or temporarily reassign personnel.

The investigation will be given priority and begin as soon as practicable. In most instances, the investigation will be conducted by a designated team identified by management. This team approach permits the investigators to evaluate the information gathered during the investigative process from different perspectives, enhances objectivity, and ensures thoroughness.

The investigation generally will begin with an interview of the complainant who will be required to provide details to facilitate the investigative process, such as the behavior complained of, the date, time, and location of the occurrence, the identity of witnesses, and any writings, records, logs, recordings, pictures, or other documentation supporting the complaint. Individuals possessing relevant information will be interviewed. Once all available information has been evaluated, the accused will be interviewed.

All individuals called upon to participate in the investigation are required to fully cooperate and provide truthful responses. Employees, including the accused, do not have the option of remaining silent or declining to get involved. Those questioned may be required to prepare a written statement or provide a recorded statement. Employees are hereby informed that polygraph examinations may be employed as an investigative tool.

The investigation will be conducted expeditiously, professionally, and with due regard for the rights of all involved. To the extent allowed by law, the investigation will be conducted in a confidential manner, with only those in a need-to-know position involved. To preserve the integrity of the investigative process, employees will be instructed that the complaint and all

information provided during the interview are to remain confidential. Employees are prohibited from obstructing or interfering with the investigation, which includes questioning or confronting any individual participating in the investigation.

Upon completion of the investigation, the Employee Relations Designee will apprise management of the outcome and recommendations for resolution. Until a final decision is made, the investigative team will remain available to receive new information.

Employees must understand that despite the best efforts and thoroughness of the investigative process, not all complaints can be substantiated. This does not indicate, however, that the complaint was contrived or made in bad faith. As such, employees are encouraged to file good faith complaints without regard for the ultimate outcome.

COMPLAINT RESOLUTION: Upon conclusion of the investigation, the complainant and accused will be apprised of the outcome. Management's decision is final and concludes DAL's internal administrative investigative process.

Given the wide range of behaviors prohibited by this policy, a number of factors will determine the resolution decided upon by management. Most notably, the nature, circumstances, frequency, and severity of the behavior, and whether the behavior recurs after having been previously addressed will heavily influence the action to be taken. Complainants can be assured that any employee found, after investigation, to have engaged in sexual harassment or other inappropriate behavior of a sexual nature will be subject to corrective action. This may include counseling, reprimand, suspension, reduction in pay, demotion, or dismissal. In conjunction with such corrective actions, other appropriate measures, including additional training, relocation, reassignment, job restructuring, etc., may be utilized to protect against the recurrence of the inappropriate behavior.

Regardless of the outcome, the complainant has the option of pursuing a claim under state or federal law. Initiation of such a claim is not dependent upon the outcome nor completion of DAL's administrative investigation.

To initiate a claim under federal or state law, employees are referred to the Equal Employment Opportunity Commission and the Louisiana Commission on Human Rights:

EEOC District Office
Hale Boggs Federal Building
500 Poydras Street, Suite 809
New Orleans, Louisiana 70130
800-669-4000 (Voice)
504-589-2958 (TDD)
504-595-2844 (Fax)
<https://www.eeoc.gov/>

LCHR
1001 N. 23rd Street, Suite 268
Post Office Box 94094
Baton Rouge, Louisiana 70804
225-342-6969 (Voice)
888-241-0859 (TDD)
225-342-2063 (Fax)
<http://gov.louisiana.gov/page/lchr>

PERSONAL LIABILITY: An individual experiencing sexually inappropriate behavior in the workplace has the right to file a claim or initiate civil litigation under state or federal law. When

this occurs, as an employer, the State of Louisiana may be cast in judgment or a settlement of claims may be negotiated to avoid the risk of litigation. In either event, the financial burden falls upon the taxpayers of this state.

To reduce this impact, upon determination that an employee has engaged in sexually inappropriate workplace behavior, La. R.S. 42:351 mandates that consideration be given to requiring that the employee reimburse all or a portion of any judgment or settlement that may result from a claim or civil litigation. The process and factors to be considered in making this determination are set forth in La. R.S. 42:353, which also authorizes the Attorney General to file suit against an employee to enforce the state's right to reimbursement and indemnification.

Accordingly, DAL employees are hereby informed that dire consequences, in the nature of employment sanctions and personal financial liability, may result from any violation of the prohibitions and requirements of this policy.

NON-RETALIATION AND FOLLOW-UP: Resolution of the complaint via imposition of corrective or other action does not conclude the complaint process. DAL maintains an affirmative duty to protect its employees from harassment, reprisal, or retaliation. This protection extends to any employee making a good faith complaint of sexually inappropriate behavior, as well as those individuals providing information or participating in the investigative process. Employees can be assured that if a complaint is made and an investigation reveals that harassment, retaliation, or reprisal has occurred severe disciplinary action will be imposed.

To ensure this protection, the Employee Relations Designee will follow-up with the complainant to determine whether there has been a recurrence of the behavior complained of or whether the complainant has suffered any adverse consequence for having filed a complaint. Such follow-up will occur at periodic intervals. The follow-up inquiries will seek to identify readily identifiable repercussions such as a disciplinary action, poor performance evaluation, etc., as well as subtler forms of reprisal such as ostracism, avoidance, non-inclusion, etc.

RESPONSIBILITIES: It is the responsibility of all employees, regardless of rank, status, or authority, to ensure compliance with this policy. Reporting the behavior prohibited by this policy is mandatory. Complaints must be truthful and made in good faith. False and/or malicious complaints of sexual harassment may be subject to disciplinary action, up to and including termination.

Cooperative participation and candor in the investigative process are mandatory. When an allegation of sexual harassment has been received, or there is reason to believe sexual harassment is occurring, immediate and appropriate steps will be taken to ensure that the matter is promptly investigated and addressed. DAL is committed to take appropriate action, even if the individual does not wish to file a formal complaint. Information related to complaints and investigations will remain confidential to the fullest extent possible. Employees cooperating in an investigation shall maintain the confidentiality of the investigation to protect the reputations of all involved.

SUPERVISORS: Supervisors shall ensure that employees are aware that sexual harassment is strictly prohibited at DAL. Supervisors who observe incidents of sexual harassment must

take immediate corrective action without waiting for a victim complaint. Any supervisor who receives a complaint of sexual harassment must immediately report the complaint to the General Counsel or Director. Failure to report incidents will be considered a violation of this policy and may result in disciplinary action.

EMPLOYEES: Any employee who knows or reasonably believes that sexual harassment is occurring or has occurred, whether to the employee directly or to someone else, is obligated to inform his/her Supervisor, General Counsel, or Director immediately.

VIOLATIONS: Given the devastating impact that sexual harassment and sexually inappropriate workplace behavior have on working relationships, DAL will aggressively address violations of this policy. After investigation and satisfaction of due process requirements, corrective action may be imposed for the following:

- Failure to comply with mandatory training requirements;
- Failure by a supervisor or manager to timely report a complaint of sexually inappropriate behavior;
- Failure to participate or cooperate in the investigative process;
- Providing false information or withholding information during questioning;
- Filing a false, malicious, or frivolous complaint; or
- Harassment, reprisal, or retaliation towards a complainant or anyone involved in the investigative process.

EXCEPTIONS: Exceptions or deviations from the provisions of this policy require the express approval of the Director.

QUESTIONS: Questions, comments, or concerns regarding this policy should be addressed to DAL's General Counsel.

APPROVED:


EMALIE A. BOYCE, DIRECTOR 4 May 2021
DATE

POLICY REVIEW INFORMATION:	
Date: 03/19/2019	Action Taken: Policy established. This policy specifically addresses sexual harassment and behavior of a sexual nature in the workplace. DAL's "Workplace Discrimination and Harassment Policy," effective September 19, 2013, provides a broad understanding of the prohibitions of various forms of harassment and discrimination. The provisions of DAL's "Workplace Discrimination and Harassment Policy" on sexual harassment and those in conflict with this policy are repealed and replaced by this policy.
Date: 05/04/2021	Action Taken: Section on Personal Liability added.