



**OFFICE OF THE GOVERNOR
AMERICAN SAMOA GOVERNMENT**

**EQUAL EMPLOYMENT OPPORTUNITY (EEO)
AFFIRMATIVE ACTION (AA)**

POLICIES AND PROCEDURES

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STATEMENT OF COMMITMENT AND PURPOSE

The purpose of the Equal Employment Opportunity (EEO) policy and Affirmative Action (AA) plan is to ensure nondiscrimination in employment and /or accessibility of all persons considered for employment in the American Samoa Government (ASG) and the business community.

EEO POLICY STATEMENT

The American Samoa Government (ASG) is committed to providing a work environment of equal employment opportunity (EEO) to all employees and applicants and creating a work atmosphere in which all individuals are treated with respect and professionalism. Consistent with this commitment, it is the policy of ASG to provide a workplace free from discrimination, harassment, and retaliation for all employees, contractors and volunteers. This policy applies to all aspects of employment within ASG including recruitment, hiring, promotion, transfer, training, corrective and/or disciplinary action, adverse action, and other terms, conditions, and benefits of employments.

All employees are prohibited from discriminating against anyone on the basis of their protected class. These are:

- Race;
- Color;
- Sex, including pregnancy;
- Religion or creed;
- National origin;
- Age (40 years of age or older);
- Disability;
- Marital status;
- Political Affiliation; or
- Other non-merit consideration.

Under this policy, prohibited discrimination based on sex also includes discrimination based on an employee's sexual orientation or transgender status.

All employees are also prohibited from engaging in behavior that rises to the level of discrimination, harassment or retaliation in violation of:

- Title VII of the Civil Rights Act of 1964 (including amendments);
- Section 808 of the Civil Rights Act of 1968;
- Executive Orders 11063, 11246, and 11375;
- Section 109 of the HUD Act of 1974 and Section 3 of the HUD and Act of 1968;
- American Samoa Administrative Code A.S.A.C. (Title 4 – Chapter 11) Sections 4.1101, 4.0106, 4.0802(b) & 4.1108 and appendix A, and
- American Samoa Code Annotated A.S.C.A. (Title 7) Section 7.0205 (b).
- Age Discrimination in Employment Act of 1967, (“ADEA”) 29 U.S.C. §§ 621 *et seq.*

This policy applies to conduct that occurs in any location operated by ASG and/or any location that can reasonably be regarded as an extension of the workplace, such as an off-site business or social function, or other non-ASG facility where ASG business is being conducted. This policy also applies to conduct that occurs off-duty and is brought back to the workplace, when such conduct adversely affects the individual in a manner otherwise prohibited by this policy. Any employee found to have engaged in discrimination, harassment, or retaliation in violation of this policy will be subject to corrective measures and/or disciplinary action including termination.

CONDUCT VIOLATIONS

The type of prohibited discriminatory, harassing or retaliatory conduct, which may be found to constitute a violation of EEO policy includes, but is not limited to:

- Making employment decisions on the basis of an individual's protected characteristics or class;
- Failing or refusing to hire or otherwise discriminating against any individual with respect to compensation, or other terms, conditions, or privileges of employment, because of such individual's protected characteristics or class;
- Limiting, segregating, or classifying employees in any way that would deprive or tend to deprive any individual employee of an employment benefit, because of such individual's protected characteristics or class;
- Making harassing telephone calls to a coworker, or sending harassing correspondence to a coworker by any means including, but not limited to, public or private email, interoffice mail, facsimile, social media posts or messages or text messaging;
- Changing the terms, conditions, or privilege of employment of an employee in retaliation for filing an EEO complaint or participating in the discrimination complaint process;
- Using discriminatory terms or telling discriminatory jokes that are based on an individual's membership in a protected class or protected status;
- Making unwanted sexual advances, requests for sexual favors or other acts of sexual nature, where submission is made a term or condition of employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to, or actually does unreasonably interfere with an individual's work performance or create an intimidating, hostile, or offensive working environment.
Examples of sexual harassment include, but are not limited to:
 - Unwelcome sexual advances-whether or not they involve physical touching;
 - Sexual epithets, jokes, written or verbal references to sexual conduct, discussions of sex life, comments about a person's body, sexual activity, deficiencies, or prowess;
 - Displays of sexually suggestive objects, pictures, or cartoons;

- Unwelcome leering, whistling, brushing against a person's body, sexual gestures, and suggestive or insulting sexual comments;
- Inquiries into a person's sexual activities;
- and use of electronic media to transmit messages or pictures that include sexual content.

COMPLAINT PROCESS

Complaints may be made either in writing or verbally. Any employee can notify his or her direct supervisor, any other supervisor or the EEO Officer directly of any conduct by another employee that may violate ASG's discrimination, harassment or retaliation policy.

ASG's designated EEO Officer for the purposes of the complaint process is the Director of ASG's Office of the Director of Equal Employment Opportunity. Notification to any employee or staff member of the Office of the Director of Equal Employment Opportunity shall also be considered effective notice to the EEO Officer for purposes of this complaint process. Any such employee or staff member receiving an employee's complaint must document the discussion with employee and submit it in writing to the EEO Officer within three working days from the date the complaining employee informed the EEO employee of the alleged discrimination or violation.

Any manager, supervisor or director receiving an employee's complaint under this Policy must document the discussion with employee and submit it in writing to the EEO Officer within three working days from the date the employee informed the supervisor of the alleged discrimination or violation. Any supervisory employee who receives an employee's complaint under this process and fails to properly notify the EEO Officer of the complaint will be subject to discipline.

The EEO Officer shall be responsible to see that the complaint is handled in the manner prescribed in this Policy. The EEO Officer will inform the Complainant and the Respondent of this Policy and the procedures for resolution.

In sum, complaints may be filed:

- Anonymously (i.e.; online, phone hotline) or by name;
- In writing or orally;
- Within ASG to the employee's direct supervisor, to any other supervisor, or to the EEO Officer (including any employee of the Office of the Director of Equal Employment Opportunity); and/or
- Outside of ASG (i.e.; directly to the EEOC).

Employees using the complaint process will not have to directly confront the individual harassing or retaliating against them to file a complaint.

Any employee participating in the complaint process will retain normal compensation while required to take time away from normal duties to participate in investigations of alleged prohibited harassment and/or retaliation.

The EEO Officer must provide written information to complainants about the process the ASG will take to investigate and address the complaint. At the conclusion of the investigation of the complaint, the ASG must inform the complainant, in writing, of its investigative findings along with a summary of the information gathered during the investigation and all actions taken as a result of the investigation. The ASG may withhold details related to the investigation from the complainant only if necessary to protect the privacy of individuals. If any detail is withheld, the ASG shall provide the complainant with a description of the information withheld and the specific privacy concern.

INVESTIGATION TIMELINE AND PROCESS

ASG will promptly respond (within 30 days)¹ to all complaints of prohibited forms of harassment and/or retaliation by:

- a. Documenting the complaint;
- b. Documenting investigation details, to include interview of relevant parties;
- c. Drafting an investigative report; and
- d. Noting any corrective actions, to include any discipline.

The EEO officer will conduct an initial investigation and a hearing to determine whether the alleged conduct, if substantiated, is prohibited under this Policy.

If the alleged action(s), if substantiated, would violate ASG's EEO policies, a full investigation will be conducted. A full investigation will adhere to the following requirements:

- The investigation shall include a review of the circumstances under which the alleged discrimination occurred; relevant policies and practices related to the complaint; statements relevant to the allegation; and pertinent legal guidance/precedents.
- ASG will make every possible effort to assure the confidentiality of all documents and information acquired during the investigation. However, complete confidentiality cannot be guaranteed.
- The EEO officer shall investigate every case in a fair, consistent and timely manner.
- The EEO officer shall develop and utilize an investigative process for complaints of prohibited forms of harassment and/or retaliation that includes written procedures for a prompt, thorough, and objective investigation of such complaints. The written procedures shall also describe the standards and criteria that must be considered when making findings at the conclusion of the investigation.
- The investigation shall include determining whether the alleged harasser or retaliator has any prior substantiated harassment and/or retaliation complaints against them from the ASG employees and also attempting to determine whether anyone else, other than the ASG employees, has made harassment or retaliation complaints against the alleged harasser or retaliator.

¹ If the ASG EEO Officer requires longer than 30 days to complete the investigation process, it will explain in writing to the complainant who triggered the investigation why the investigation will take longer than 30 days to complete.

- Individuals who investigate complaints of prohibited forms of harassment and/or retaliation shall not be under the direct or indirect supervision of the alleged harasser or retaliator. Consequently, the ASG may need to retain an outside investigator if a high-level official, like a Department Director, is the alleged harasser or retaliator.
- All investigations of complaints of prohibited forms of harassment and/or retaliation must include a written report of how the investigation was conducted, the findings of the investigation, and the steps taken to remedy any harassment or retaliation found during the investigation. The ASG shall store these reports in an electronic manner so they are searchable.
- At any time during the process, the Complainant should promptly notify the EEO office in writing if he/she:
 - decides to withdraw the complaint;
 - files a lawsuit against the ASG or its employees.
- The EEO Officer will notify all appropriate parties regarding the disposition of the complaint.
- If a violation of ASG’s EEO policies is determined, appropriate disciplinary action will be sought against the Respondent and corrective action taken to prevent recurrence. This shall include attendance at a mandatory EEO discrimination prevention training and/or the violation in question may result in corrective and/or disciplinary action up to and including termination, if appropriate, as set forth under Title 7 of the American Samoa Code Annotated (A.S.C.A.). & Title 4 of the American Samoa Administrative Code (A.S.A.C.).
- The Respondent may appeal a “substantiated” finding to the EEO Officer within 10 business days of the closing letter’s date. If no policy violation is found and the Complainant wants to appeal the decision, they may appeal directly to the EEO Officer, within 10 business days of the closing letter’s date. The EEO Officer’s decision will be final.

PROTECTION AGAINST RETALIATION

During the entire complaint process and at the conclusion of the complaint procedure, ASG will protect the rights of employees who make complaints, the respondent, and any witnesses involved. All parties involved have the right to protection from any retaliation behavior or conduct.

Individuals who complain of prohibited forms of harassment and/or retaliation will not have the terms or conditions of their employment altered in a way that might dissuade a reasonable employee from making a complaint. Any employee who makes a good faith complaint about discrimination, harassment or retaliation in the workplace shall be protected from retaliation even if that complaint is later not substantiated by the investigation.

CORRECTIVE ACTION

ASG shall maintain and promote a work environment free from discrimination, harassment, and retaliation. Further, ASG must adhere to EEO discrimination, harassment and retaliation policy

and procedures, applicable local and federal law, as well as comply with its discrimination complaint process and ensure the policy is communicated to all employees.

Moreover, all ASG managers, supervisors and directors must take pro-active steps to prevent discrimination and take immediate and appropriate action to stop any conduct in violation of this policy, regardless of the employee's desire to keep the issue confidential.

Thus, as promptly decided by the appropriate authority, ASG will take corrective measures and/or disciplinary action up to and including termination, if any, when it determines that discrimination, harassment and/or retaliation has occurred, if appropriate, as set forth under Title 7 of the American Samoa Code Annotated (A.S.C.A.), & Title 4 of the American Samoa Administrative Code (A.S.A.C.).

MANAGERS AND SUPERVISORS

ALL ASG managers and supervisors shall:

- Maintain and promote a work environment free from discrimination, harassment, and retaliation;
- Adhere to EEO policy and procedures, applicable local and federal law, discrimination complaint process and ensure the policy is communicated to all employees under their supervision;
- Take pro-active steps to prevent discriminatory conduct that violated this policy, regardless of the employee's desire to keep the issue confidential;
- Ensure that employees under their management or supervision have received EEO policy and training material, as well as copy of the policy;
- Advise their employees of their rights and the process for filing an EEO complaint;
- Failure by a manager and supervisor to adhere to the above responsibilities may result in corrective and/or disciplinary action up to and including termination, if appropriate, as set forth under Title 7 of the American Samoa Code Annotated (A.S.C.A.). & Title 4 of the American Samoa Administrative Code (A.S.A.C.).

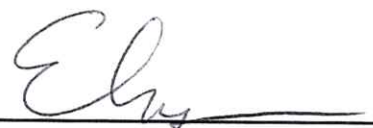
Equal Employment & Opportunity (EEO)

Policy per Consent Decree.

APPROVED BY:



Lemanu P. S. Mauga, Governor



Eseta R. Iosefa, EEO Officer

EFFECTIVE DATE: December 20, 2023

LAST REVISED: January 28, 2013