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## ADMINISTRATION POLICY

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## Policy Statement

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It is the policy of the EnviroCert International, Inc. (ECI) that all employees and non-employees assume responsibility for maintaining a work environment free from all forms of sexually harassing conduct and/or behavior.

### Zero Tolerance

It is the policy and intent of ECI to provide employees a safe work environment free from sexual harassment. Sexual harassment and any form of sex discrimination including harassment based on gender or sexual orientation will not be tolerated by ECI.

Therefore, for the purposes of this policy, “Zero Tolerance” means:

- 1) Inappropriate behavior and policy violations will be addressed seriously and
- 2) Appropriate corrective action(s) or disciplinary action(s) will be taken when policy violations occur, even if violations are not so serious as to be unlawful.

For example, even though a sexual comment does not in itself rise to the level of creating a hostile work environment under the law, such a comment is unacceptable in the workplace, violates the work environment under the law, such a comment is unacceptable in the workplace, violates ECI’s Zero Tolerance Policy, and will be subject to a corrective action.

A program to eliminate sexual harassment from the workplace is not only required by law, but it is the most practical way to avoid or limit damages if harassment should occur despite preventative efforts.

### BACKGROUND

The impacts of sexual harassment in the workplace include negative health consequences for harassed individuals, low morale and productivity, high employee turnover, risk of litigation and criminal charges as well as negative perceptions of the organization in the public arena.

### PURPOSE

The purpose of this policy is to provide all ECI employees, applicants, licensees, and consumers with a uniform method of to addressing allegations and complaints of sexual harassment in the ECI workplace. ECI affirms its moral and legal obligation to ensure

that all employees are provided a harassment free environment to realize their goals and function effectively in the workplace.

All employees should be made aware of the seriousness of violations of the Sexual Harassment Prevention Policy. All employees are expected to adhere to a standard of conduct, and understand their responsibility to maintain a sexual harassment free work environment. Managers and supervisors will understand their responsibility to enforce conduct that is respectful of all persons within the work environment.

## **APPLICABILITY**

This policy applies to all employees, subcontractors, consultants, Board Members, Committee Members, and temporary staff of ECI.

## **DEFINITION OF SEXUAL HARASSMENT**

Sexual harassment is defined as unsolicited, unwanted and unwelcome sexual advances, requests for sexual favors, sexual demands and or other verbal, physical, visual or written conduct of a sexual nature directed to persons of the same or opposite sex, when it unreasonably interferes with a person's work performance or creates an intimidating, hostile, or offensive work environment.

Such acts are considered sexual harassment when:

1. Submission to such conduct is either an explicit or implicit term or condition of employment.
2. Submission to, or rejection of, such conduct is used as a basis for an employment decision affecting the individual.
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

The courts have defined two forms of sexual harassment:

1. **Quid Pro Quo** (Latin, meaning "this for that") or conditional sexual harassment: This form of sexual harassment occurs when a supervisor or manager:

Demands, as an explicit or implied term or condition of employment decisions, a subordinate submit to sexual advances (this may include situations which begin as reciprocal relationships, but which later ceased to be reciprocal): and/or

Makes requests for sexual favors, or other verbal, visual, or physical conduct of a sexual nature that is an explicit or implied term or condition of employment decisions.

Examples of quid pro quo harassment include:

Requests for sexual favors in exchange for a promotion or raise;

Express or implied statement that a person will be demoted or fired if he or she does not submit to a sexual request or actually carrying out a threat.

**Hostile Work Environment** - This form of sexual harassment occurs when an individual is subjected to unwelcome sexual advances or other gender based conduct that is sufficiently severe or pervasive to interfere with an individual's work performance or creates an intimidating, hostile, or offensive work environment. The courts look at the totality of the circumstances surrounding the alleged incidents of harassment to determine whether unlawful conduct has occurred. A single incident involving unwelcome sexual behavior is harassment, but may not necessarily serve as a basis for a hostile work environment complaint unless it is either severe or repeated, and management does nothing to stop the behavior.

ECI will adopt the Federal Ninth Circuit Court standards of a "reasonable person" of the same gender as the complainant to their evaluation of whether the conduct is severe or pervasive enough to create a hostile work environment ("Ellison Standard"). This standard recognizes that men and women react differently to unwanted sexual conduct. It acknowledges that conduct that many men consider harmless is often objectionable and offensive to the "reasonable woman." The Ellison Standard instructs the fact-finder to evaluate the unwanted sexual conduct in light of the gender-specific experiences and perspective of the victim.

A consensual relationship may lead to claims by non-involved employees who believe that they were disadvantaged when favoritism is shown to a paramour, but is not shown to an employee who did not have a romantic relationship with the employee granting the favors. If such sexual favoritism is widespread, it can create an atmosphere where employees believe they must consent to such relationships as a term or condition of employment.

Any employee, who initiates or persists in conduct that is viewed by another as being of a sexual nature, assumes the risk of liability and the possible penalties for such conduct. An employee who violates the ECI Sexual Harassment Prevention Policy may face a range of disciplinary actions, including dismissal. Furthermore, offending employees, including supervisors and non-supervisors, can be held personally liable for monetary damages (and may be required to pay for their own attorney) if an offended employee files a lawsuit.

**Intent vs. Impact** – Whether the conduct is considered unwelcome is determined by the recipient of the behavior. The intent of the alleged harasser is irrelevant. Therefore, it is the impact of the behavior and the victim’s perception of the situation, not the intent of the alleged harasser that determines if sexual harassment has occurred.

## TYPES OF SEXUAL HARASSMENT

Sexual harassment is behavior that threatens, intimidates, humiliates, embarrasses, or irritates. Types of prohibited sexual harassment include, but are not limited to the following:

**Written:** Sexually aggressive or obscene letters, notes, email messages, or invitations.

**Visual:** Leering, or making sexual gestures. Displaying sexually suggestive objects, pictures, cartoons, posters or drawings in hard copy or on-line.

**Verbally:** Using sexually patronizing terms such as “honey,” “doll,” or “babe,” using sexually derogatory comments, slurs, jokes, remarks, invitations, epithets, or making verbal sexual advances or propositions.

Note: In addition to using graphic or sexually explicit language, other gender-neutral language, spoken in the suggestive tone of voice or accompanied by visual or physical harassment, can also be considered sexual harassment.

**Physical:** Sexual assault, attempted rape, impeding or blocking movements, touching or indecent exposure, such conduct, even in a single incident, may constitute actionable sexual harassment or criminal conduct. Criminal violations should be reported immediately to the proper law enforcement authorities. Common physical gestures like hugging or other physical contact can be properly taken in context with other comments and/or behaviors.

**Other:** Sexual advances which are unwanted. This may include situations that began as reciprocal attractions, but later ceased to be reciprocal. Reprisals or threats after a negative response to sexual advances; implying or actually withholding support for appointment, promotion, transfer or change of assignment; initiating a rejection on probation, an adverse action, or suggesting that a poor performance report will be prepared, if requests for sexual favors are not met. Hazing employees in the work environment; this may include being dared or asked to perform unsafe work practices, or having tools and equipment stolen, moved, etc. because of a person’s gender or sexual orientation; causing an employee to feel stressed about a situation involving unwelcome behavior of a sexual nature.

## **DEFINITION OF SEX AND GENDER**

Sex includes, but is not limited to pregnancy, childbirth, or medical conditions related to pregnancy, or childbirth. Sex also includes, but is not limited to, a person's gender.

Gender is defined as the employee's or applicant's actual sex or the employer's perception of the employee's or applicant's sex, and includes the employer's perception of the employee's or applicant's identity, appearance, or behavior, whether or not that identity, appearance, or behavior is different from that traditionally associated with the employee or applicant's sex at birth.

Sexual orientation means heterosexuality, homosexuality, and bisexuality.

## **ROLES AND RESPONSIBILITIES**

ECI will take "all reasonable steps to prevent harassment from occurring." If an employer has failed to take such preventative measures, the employer can be held liable for the harassment. ECI managers or supervisors who do not enforce a work environment free of sexual harassment, or who do not provide adequate guidance and assistance to employees are subject to disciplinary action up to and including termination.

### **Employees are responsible for:**

Under State law, any person (employee) may be personally liable for his/her own acts of unlawful harassment, including harassment based on sex or gender per Government code Section 12940. This means that a co-worker who harasses his or her colleagues may have a judgment levied against his or her own assets. Therefore, each employee has the responsibility not to engage in sexually harassing conduct.

All employees who perceive they are victims of sexually harassing behavior should understand the importance of promptly informing the individual(s) that his/her behavior is unwelcome, offensive, in poor taste, or highly inappropriate. Any employee who perceives the comments, gestures, or actions of another employee or supervisor to be sexually harassing should communicate to that person that such behavior is unwelcome. However, failure to express opposition to the unwelcomed behavior does not prevent the employee from filing a complaint nor does it in any way exonerate the harasser.

Any employee, including a supervisor, who believes he/she has been sexually harassed or asked to perform a sexual favor, should immediately report the incident to a supervisor. If the harasser is the employee's supervisor or if the employee does not feel that the situation was adequately resolved, he/she should report the incident(s) to a higher-level supervisor or to the Executive Director or President of the Board. Any employee who witnesses this type of behavior is strongly encouraged to report it to an appropriate supervisor. If the harasser is an employee's immediate supervisor, the

witness should report the incident to another supervisor or to the Executive Director or President of the Board.

**ECI shall have the Executive Director ensure the following:**

Follow the procedures for reporting a Sexual Harassment Complaint listed in this document when employees report complaints of sexual harassment;

On an annual basis, ensure that all employees are given ECI's *Discrimination Policy and Complaint Procedures and Sexual Harassment Prevention Policy* prior to the need to know.

After each annual review of the policies, ensure that each employee reads and signs the "Acknowledgement of Receipt and Understanding" forms for each Policy.

Establish and maintain a working environment that is free from discrimination, intimidation, ridicule, and insult.

Take immediate and appropriate corrective action to prevent or stop sexual harassment. This responsibility applies even if the complaint is withdrawn or if the complainant requests that no action be taken.

The actions of managers and supervisors, and for acts of other employees and non-employees if management knew, or should have known, of such acts and failed to take immediate and appropriate action. Managers/supervisors who engage in sexual harassment may be held personally liable for harassment.

- Ensuring that all employees are informed of ECI's discrimination complaint process and sexual harassment prevention policy prior to the need to know, and again when a complaint is brought forth.
- Providing complainants an opportunity to discuss the matter with a trained EEO Counselor/Specialist.
- Investigating complaints of sexual harassment in a timely, thorough and confidential manner.
- Taking appropriate action against the harasser where a violation of the policy has occurred or sexual harassment is found.
- Taking action to remedy the situation in a manner, which protects potential future victims.
- Protecting the employee(s) complaining of harassment from any form of reprisal/retaliation.
- Conducting or sponsoring mandatory sexual harassment prevention training, such as interactive classroom or on-line computer based training. Supervisors

and managers should attend training every two years. Employees should attend similar training in the same training year as supervisors and managers.

- Make best efforts to ensure that complaints (formal or informal) are investigated in a timely, thorough, and confidential manner and are immediately reported to the Board of Directors.

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## Procedures

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### **Filing a Complaint**

All Sexual Harassment complaints are considered formal complaints and will be investigated. Any employee, consumer, applicant or licensee who believes he/she has been sexually harassed may file a written complaint with the Executive Director or President of the Board in accordance with the Non-Discrimination Policy and Complaint Procedures, using the attached Sexual Harassment/Discrimination Complaint Form.

Employees who believe they are or have been the victims of sexual harassment should report the incident promptly.

All criteria, including timelines and the appeal process, as specified in the Non-Discrimination Policy and Complaint Procedures, will be followed to investigate and resolve complaints of sexual harassment.

The Executive Director or the President of the Board is responsible for providing leadership in resolving informal and formal complaints of discrimination by working with complainants, and/or investigating a complaint.

A third party (a witness to an incident who is offended by the conduct) can also bring a complaint to the attention of the Executive Director or President of the Board.

### **Responding to Complaints:**

The Executive Director or President of the Board is responsible for developing and implementing a plan to resolve discrimination complaints. Based on the nature of the

allegations, the plan can include (1) counseling, (2) informal complaint resolution procedures, or (3) formal complaint investigation and findings.

Throughout the investigation, only people who have a business need to know will be informed of the investigation and everyone with whom the investigator talks will be required to keep the investigation confidential.

### **Role of the Executive Director in Complaints of Sexual Harassment**

When a complaint of sexual harassment is brought, the Executive Director's responsibility shall include:

- Listen to the complaint as soon as it is brought to your attention. Do not postpone the meeting with the alleged victim.
- Do not promise confidentiality or anonymity, although you can promise discretion. Inform the employee that the organization must take appropriate action even if the employee insists that no investigation occur or that nothing be done.
- Permit the employee to tell his/her story without interruption.
- Listen objectively. Do not judge the employee or imply that the employee may have "asked for it" or invited the alleged advances or conduct.
- Document the incident. Obtain the details of the alleged harassment, the names of possible witnesses, and a description of how the alleged harassment affected the employee's well-being and work environment. Ask for any documentation from the complainant to support the allegations.
- Ask the employee to describe his/her current, and/or former relationship with the alleged harasser, and whether that person is a co-worker, supervisor, subordinate, or friend. Determine if the parties have had any other difficulties working together.
- Ask the employee if he/she objected verbally to the alleged conduct or indicated to the alleged harasser the conduct was unwanted or unwelcome.
- Determine the remedy sought by the employee.
- Assure the employee that you take the matter seriously and will make an immediate inquiry into the allegation.
- Advise the employee of his/her right to file a discrimination complaint. Provide the employee with a copy of the Department's Sexual Harassment Prevention Policy and the Non-Discrimination Policy & Complaint Procedures, including the Statement of rights.

- Remind the employee of his/her right to be free from reprisal/retaliation for complaining. Advise the employee that he/she should immediately bring any incidents of reprisal/retaliation to your attention.
- Record and document the complaint and perform an immediate preliminary investigation to determine the validity of the complaint. Document all reminders that the employee has a right to file a discrimination complaint, the right to be free from retaliation, and the right to a harassment free work environment.
- Initiate appropriate and immediate action against the alleged harasser (respondent) where sexual harassment is found.

### **CONSEQUENCES/VIOLATIONS**

Violators of this policy will be subject to immediate disciplinary action, which may include letters of reprimand, suspension, demotion, and/or dismissal. The violator may also be subject to civil and/or personal liability.

ECI also recognizes that false accusations of sexual harassment can have a serious effect on an innocent person's reputation and character and, therefore, any individual found to have filed a false accusation/complaint may be subject to disciplinary action. Each complaint will be evaluated on a case-by-case basis.

All employees who testify in any investigation(s) are required to cooperate with the investigation and to tell the truth. Employees who do not cooperate or who compromise the integrity of the investigation by violating confidentiality may be subject to disciplinary action.

Supervisors/managers may be subject to disciplinary action for failure to take appropriate and expedient corrective action to ensure a safe work place.

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## **Related Documents**

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### **ECI Documents:**

Title of Related ECI Policy, Procedure, or Form linked when possible

### **Other Documents:**

Title of Related External Document Linked when possible

**Related Links:**

Linked Title of Related Informational Item

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**Appendices**

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Appendix A: Annual Acknowledgement of Receipt and Understanding of the Sexual Harassment Prevention Policy Form,

Appendix B: Discrimination Complaint Process Statement of Rights Form,

Appendix C: Equal Employment Opportunity Office Sexual Harassment/Discrimination Complaint Form,

Appendix D: Sexual Harassment/Discrimination Complaint Form Instructions;

Appendix E: ECI Privacy Policy Statement.