

POLICY

Approved by: Howard H. Eley, Commissioner	Policy Number: 39
Signature: 	Supersedes:
Application: Finance & Administration Employees, Volunteers, Consultants, Contractors, Finance & Administration Service Recipients, and Finance & Administration Grant Sub-recipients	Effective Date: February 01, 2021
Authority:	Rule:

Subject:

F & A WORKPLACE RESPONSE TO SEXUAL MISCONDUCT, DOMESTIC VIOLENCE AND DATING VIOLENCE

I. Statement of Purpose.

The purpose of this policy is to foster prevention and reduction of workplace-related incidents of sexual misconduct, domestic violence, and dating violence involving grant funded or supported employees, volunteers, consultants, and contractors of the Tennessee Department of Finance & Administration ("F & A") and to express F & A's commitment to a safe and supportive organizational climate. This policy does not replace or alter any provisions contained in F & A Nondiscrimination Policy and Complaint Procedure (Policy No. 36), F & A Investigations of Allegations of Illegal Discrimination and Harassment Policy (Policy No. 37), or policies of the Tennessee Department of Human Resources regarding workplace harassment, discrimination, or abusive conduct in the workplace, but is supplemental and in addition to said policies. This policy is required by the US Department of Justice Office on Violence against Women (OVW) to satisfy and remain in compliance with applicable OVW federal grant conditions.

II. Persons Covered by this Policy.

This policy applies to all OVW grant funded or grant supported employees, volunteers, consultants, and contractors of F & A and its grant subrecipients, who are referred to herein as "covered persons." Currently the only covered persons within F & A are employed within or affiliated with the F & A Office of Criminal Justice Programs (OCJP). OCJP has notified each grant subrecipient of its responsibility to implement a policy outlining a workplace response to sexual misconduct and domestic and dating violence, and to produce it to OCJP upon request.

III. Definitions.

"Adjudication" includes a conviction, issuance of a final protection order, court-ordered diversion, or other judicial finding that the covered person has engaged in domestic violence, dating violence, sexual assault, or stalking.

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"Covered employee, volunteer, consultant, or contractor" (or "covered person") means OVW grant funded or grant supported personnel.

"Domestic violence," "dating violence," "sexual assault," and "stalking" have the meanings given in 34 U.S.C. § 12291(a).

"Sexual misconduct" means sexual assault, stalking, and sexual harassment.

"Sexual harassment" means 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, whether such activity is carried out by a supervisor or by a co-worker, volunteer, or contractor.

"In the workplace" An individual is considered to be in the "workplace" of the recipient or subrecipient while in, or using the resources of, the recipient's or subrecipient's offices or facilities, using its equipment or vehicles, engaging in approved telework, on work-related travel, or otherwise conducting business on behalf of the recipient or subrecipient. The availability and nature of the response to a workplace-related incident may depend on the location at issue.

"Workplace-related incidents" of sexual misconduct, domestic violence, and dating violence include acts, attempted acts, or threatened acts by or against covered persons that occur in the workplace or that occur outside the workplace but have an impact on the workplace or otherwise undermine the ability of the recipient or subrecipient to carry out the grant-funded project.

IV. Scope of Policy.

- (A) This policy seeks to establish agency procedures for: Responding to allegations of workplace-related incidents of sexual misconduct, domestic violence, and dating violence by or against a covered person;
- (B) Providing workplace supports for covered persons who are victims of sexual misconduct, domestic violence, or dating violence; and
- (C) Identifying adjudications that will result in a covered person being prohibited from occupying positions working with victims or other vulnerable populations that could undermine the ability of F & A or a grant subrecipient to carry out the grant-funded project, and articulating the standards for granting any permissible exemption or exception to such prohibition.

V. Responding to Allegations.

- (A) Allegations of sexual misconduct, domestic violence, or dating violence by or against covered persons in violation of this policy may be submitted to the F & A Civil Rights Coordinator at the following address:

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Tennessee Department of Finance and Administration
Civil Rights Coordinator and Civil Rights Investigator
312 Rosa L. Parks Avenue, Suite 2000
WRS Tennessee Tower
Nashville, TN 37243-1102
FA.CivilRights@tn.gov

- (B) All Complaints must be filed in writing and include your name, address, and telephone number. If you are filing on behalf of another person, include your name, address, telephone number and your relation to that person (for example, friend, attorney, or parent). Your Complaint must be submitted on the F & A Domestic Violence Complaint Form or in a similar writing which contains all information requested on the F & A Domestic Violence Complaint Form. All Complaints will remain confidential to the extent permitted by law but confidentiality is not guaranteed.
- (C) Upon receipt of the complaint, the F & A Civil Rights Coordinator will: (a) notify the complaining party that the complaint was received;(b) evaluate the complaint and address the need for additional information; and (c) determine whether the complaint includes allegations that must also be reported to other agencies to remain in compliance with applicable state or federal law.
- (D) If the Coordinator determines that the reported conduct falls within the terms of this policy, the Coordinator shall conduct a thorough and neutral investigation, which includes an interview of the complaining party, and any other witness(es) who have direct knowledge of the circumstances of the allegations. The offending party will subsequently be interviewed after appropriate safety measures are in place for the complaining party, and after notifying the complaining party that the offender will be interviewed.
- (E) If the Coordinator determines that the reported conduct best falls within the terms of another policy, the Coordinator will review the complaint following the procedures established in that policy or forward the complaint to the proper agency for review. No complaint will be forwarded without first notifying the complaining party.
- (F) At the conclusion of the investigation, the Civil Rights Coordinator will prepare a letter summarizing the investigation and findings and provide same to the complaining party and the parties alleged to have violated this policy. When required by F & A policy, state or federal law, the Civil Rights Coordinator will report complaints and violations to appropriate authorities.
- (G) Any covered F & A employee engaging in conduct that violates this policy or encouraging such conduct by others will be subject to corrective action. Such corrective action includes, but is not limited to, mandatory participation in counseling, training, disciplinary action, up to and including termination, and/or changes in job duties or location.
- (H) If an investigation is conducted by the Coordinator, all related documents will be retained by the Coordinator and will remain confidential to the extent permitted by law. If the investigation is conducted by another division within F & A or by another state agency, it will be retained by that

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division/agency according to the applicable records retention and confidentiality policies.

VI. Workplace Supports for Victims.

Covered persons who submit a complaint alleging a violation of this policy will be provided the following supports:

1. At the request of the complaining party or if determined to be advisable by the Coordinator, F & A will provide alternative work locations to separate the complaining party from the alleged perpetrator during work related activities throughout the course of the investigation and thereafter if warranted;
2. F & A will offer available EAP services if the complaining party is a state employee.
3. 3. F & A will provide contact information for the domestic violence hotline, and other information regarding public services available to the complaining party.
4. F & A will permit available annual or sick leave to be used by a complaining party if necessary to facilitate agency support of a victim, when recommended by the Coordinator, permitted by policies of the TN DOHR, and approved by the complaining party's appointing authority.
5. F & A will place covered F & A employees accused of violating this policy on administrative leave during the pendency of the investigation if recommended by the Coordinator and approved by the appointing authority.

VII. Prohibited Adjudications.

- (A) A covered person adjudicated to have committed an offense constituting domestic violence, dating violence, sexual assault, or stalking as defined herein or by comparable Tennessee law is prohibited from occupying a position that could undermine the ability of F & A or its subrecipients to carry out the grant-funded project, such as a position working with victims and other vulnerable populations.
- (B) To assure compliance with (A) above, on or before July 1, 2021, F & A will conduct a name based background check through the Tennessee Bureau of Investigation and a Dru Sjodin Federal Sex Offender Registry check (<https://www.nsopw.gov/>) on all current covered employees of F & A Office of Criminal Justice Programs. Thereafter, all candidates for VAWA grant funded or grant supported positions must submit to a name based background check and a Dru Sjodin Federal Sex Offender registry check in connection with onboarding for employment with F & A. OCJP will advise the F & A Office of Human Resources when a position is filled that requires a criminal background check and registry check and will work with HRO to see that checks are completed as required by this policy.
- (C) On July 1, 2026, and every five years thereafter, F & A will conduct repeat name based criminal background checks and federal sex offender registry checks on all covered persons.

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- (D) All background checks conducted pursuant to this policy will be conducted in accordance with the consent, confidentiality, and retention procedures outlined in F & A Criminal Background Check Policy (Policy No. 35).
- (E) If the background check or registry check reveals an adjudication of an offense constituting domestic violence, dating violence, sexual assault, or stalking as defined herein or by comparable Tennessee Law, the person is not eligible to fill a grant funded or grant supported position. If the person is employed by F & A or has been offered employment by F & A, the applicable provisions of the F & A Criminal Background Check Policy (Policy No.35) will be followed to provide the person with an opportunity to respond to the background check finding.
- (F) If an adjudication of an F & A employee or candidate is revealed, no exceptions will be granted unless OCJP leadership and the F & A Human Resource Office determine an exception to be warranted after reviewing all relevant information, including any explanation provided by the covered person, in light of the following considerations:
- The specific duties and responsibilities of the position such as whether the position works with victims and other vulnerable populations;
 - The bearing, if any, that a covered person's criminal history may have on the fitness or ability to perform the duties required by the position;
 - The amount of time that has elapsed since the covered person's conviction or release;
 - The age of the covered person at the time of the commission of each offense;
 - The frequency and seriousness of each offense;
 - The potential for harm to the Department and its service recipients if the same offense(s) were to recur;
 - Any information produced by the covered person regarding his or her rehabilitation and good conduct since the occurrence of an offense;
 - Any public policy considerations with respect to the benefits of employment for covered persons with criminal histories; and
 - Whether the adjudication undermines the ability of F & A or its subrecipients to carry out the grant-funded project.
- (G) If an adjudication is revealed in connection with a covered contractor, volunteer, or consultant, the person will not be placed into a grant funded or grant supported position.