

## APPENDIX H

### POLICY AND GUIDELINES AGAINST DISCRIMINATION IN EMPLOYMENT BASED ON SEXUAL ORIENTATION

#### I. STATEMENT OF POLICY

- A. No State agency or department shall discriminate against an applicant or employee because of sexual orientation. An agency or department will be deemed to have engaged in such a prohibited employment practice if it refuses to hire, appoint, promote, retain, grant permanent appointment or assign work, or engage in other conduct which otherwise adversely affects the employment opportunity of applicants or employees on the basis of sexual orientation of the employee or applicant.
- B. No State agency or department shall discriminate on the basis of sexual orientation against any individual in the provision of any services or benefits by such State agency or department.
- C. Harassment on the basis of sexual orientation will not be countenanced within the State service in the employment relationship. Sexual advances, requests for sexual favors and other verbal or physical conduct of a ridiculing or sexual nature constitute a prohibited employment practice when
  - 1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
  - 2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  - 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.

#### II. GUIDELINES

- A. In determining whether alleged conduct constitutes a prohibited employment practice, the Governor's Office of Employee Relations will examine the totality of circumstances, such as the nature of the alleged violative conduct and the context in which the alleged incidents occurred. The determination of the propriety of a particular action will be made from the facts on a case by case basis.
- B. An agency is responsible for such prohibited conduct between fellow employees in the workplace where the agency, or its supervisory employees, know or should have known of the conduct, except when it can show that it took immediate and appropriate corrective action.
- C. Employees who have engaged in a prohibited practice may be subject to appropriate agency or department action.

#### III. DEFINITIONS

- A. Sexual Orientation - A private preference of an individual protected by Executive Order No. 28 for heterosexuality, homosexuality, or bisexuality; or a history of such

a preference; or an identification with having such a preference.

- B. Discrimination - Any conduct which has the purpose or effect of making sexual orientation the basis for an employment decision, or which interferes with an employee's work performance, or which creates an intimidating, hostile or offensive work environment.