

### III. POLICY ON ALLEGATIONS AND INCIDENTS OF SEXUAL MISCONDUCT

#### *Personnel Policy Regarding Allegations: What Employees Need to Know*

#### INTRODUCTION

1. **Purpose and Scope:** The problem of unethical sexual conduct is a long-standing problem in society. Within the Church, this issue has caused serious damage to the whole Body of Christ. It has harmed the innocent and undermined trust. Therefore, a pressing need has arisen to acknowledge and address the problem of unethical sexual conduct by clergy, religious, church employees and volunteers. At the same time, the Church must protect the rights of both the accuser and the accused. The Church forbids all sexual misconduct toward or by its lay employees. The entire Church must create an atmosphere where silence, ignorance and minimization are overcome by truth, Christian love and respect.
2. These personnel policies set forth procedures to be followed whenever allegations or incidents of sexual harassment in the workplace or sexual misconduct have occurred involving lay employees.<sup>1</sup> These policies apply to all diocesan organizations and institutions, all parishes and their activities including Catholic schools, and any other Catholic institutions affiliated with the Diocese of Honolulu or any parish in its territory.
3. Norms for clerics<sup>2</sup> and those preparing for ordination<sup>3</sup> are treated in **VI. Instructions Regarding Allegations Against Clerics For Sexual Harassment And Sexual Misconduct.**
4. **Publication of these Policies:** All lay employees of the Church are to be informed of these policies before the commencement of their service. Acknowledgment of these policies shall be made in writing. Such written acknowledgements shall be maintained by the Diocesan Safe Environment Office and in the employee's file at each employment location.
5. **Education:** The Diocese of Honolulu from time to time shall arrange programs and seminars for training and education on issues of interpersonal boundaries, sexual harassment and sexual misconduct. Participation in such programs and seminars is mandatory for lay employees while in the course of employment.
6. **Background Check:** Lay employees, especially those in ministry with minors per the Safe Environment Program shall be subject to a pre-employment background and reference check. This will include a criminal history record check as permitted by federal and state law for any history of sexual misconduct involving minors.
7. **Diocesan Review Board:** To the extent referenced in this policy, the Diocesan Review Board is the council appointed by the bishop that may from time to time assist the human resources director in the review of allegations of sexual harassment or sexual misconduct. Further information is found at <http://www.catholichawaii.org>

---

<sup>1</sup> *Ministry means any activity carried out in the name of the Church on behalf of any person by any clergy, religious, lay employee, volunteer or contractor. Such activity includes but is not limited to counseling, spiritual direction, confession, teaching, worship, service, coaching and social activities.*

<sup>2</sup> *Clerics refers to all priests and deacons, both diocesan and religious.*

<sup>3</sup> *Those in formation include both seminarians and men in formation for the permanent diaconate.*

## SEXUAL HARASSMENT

8. Sexual harassment is a term applicable to the workplace under U.S. and Hawaii employment law. It is commonly defined as unwanted sexual advances or other unwanted or offensive visual, verbal or physical conduct of a sexual nature by one adult toward another adult. Any act of sexual harassment toward a minor is also an act of sexual misconduct. Sexual harassment includes but is not limited to:
  - a. Unwanted sexual advances or propositions.
  - b. Offering jobs, promotions or benefits in exchange for sexual favors.
  - c. Threatening to demote, fire or withhold benefits if an employee protests, refuses or ignores sexual advances.
  - d. Visual conduct such as leering, making sexual gestures or displaying sexually suggestive objects, pictures, cartoons or posters.
  - e. Verbal conduct such as making or using derogatory comments, epithets, slurs or jokes.
  - f. Verbal abuse of a sexual nature such as graphic commentaries about an individual's body.
  - g. Sexually degrading words used to describe an individual.
  - h. Suggestive or obscene letters, notes or invitations.
  - i. Unwanted physical conduct such as touching, assault, impeding or blocking movements.<sup>4</sup>
9. Sexual harassment is completely prohibited by or toward all employees, clerics, religious, volunteers, contractors and any other individual or group while performing service for the Church. Sexual harassment is unacceptable on ecclesiastical property, at ecclesiastical events held at other locations and on church-related trips. All complaints of sexual harassment are to be investigated and acted upon promptly according to the following process.
10. **Step 1 - Confrontation of the Offender:** Any individual who believes that he or she is being harassed has a right to firmly and promptly notify the offender that his or her behavior is unwelcome and inappropriate. The offender is to stop the offensive behavior immediately.
11. **Step 2 - Reporting:** Power and status disparities between an alleged harasser and the subject of harassment may make such confrontation ineffective or undesirable. If, in the judgment of the person being harassed, such informal, direct communication between individuals is ineffective or undesirable, the subject of harassment is required to report the alleged harassment. Individuals who believe they have been or currently are being harassed are required to report such harassment immediately pursuant to **Step 3 or Step 4**. Individuals may wish to document the allegations in writing. A report may also be made by a third party who has certain knowledge of the situation. Reports are to be made as follows:
  - a. For lay employees working for the Diocese of Honolulu, the report of sexual harassment is to be made to the Diocesan Director of Human Resources.<sup>5</sup>
  - b. For lay employees working in parishes, the report of sexual harassment is to be made to the pastor or the Diocesan Director of Human Resources.

---

<sup>4</sup>Definition of sexual harassment from the Hawai'i Civil Rights Commission.

<sup>5</sup> If the diocesan human resources director is absent or recuses him or herself, then the employer (bishop or pastor or principal) is to appoint another person to handle those responsibilities.

- c. For lay employees working for Catholic schools and other Catholic organizations or institutions subject to this policy, the report of sexual harassment is to be made to the principal of the school or the person's supervisor who has authority to hire and terminate employees or to the Diocesan Director of Human Resources.
12. The subject of the alleged harassment also has the right to report the harassment to the Bishop. The Bishop will then refer the situation to the appropriate persons.
  13. **Protection from Retaliation:** No lay employee is in any way to retaliate against an individual who makes a report of sexual harassment. Any acts of retaliation are to be reported immediately, as above. Any person found to have retaliated against someone for reporting sexual harassment will be subject to disciplinary action, including the possibility of termination from employment or contract.
  14. **Step 3 - Informal Resolution:** With the consent of the person making the complaint, the authority receiving the complaint may attempt to resolve the matter in an informal manner. If this can be accomplished then the authority is to write a summary of the complaint and the resolution and send it to the Diocesan Director of Human Resources, who is to maintain copies of the reports. This documentation will result in diocesan authorities being aware of any pattern of harassment by particular individuals.
  15. **Step 4 - Formal Complaint:** The complainant may make a formal complaint either verbally or in writing. It is helpful to the process for the complainant to be as detailed as possible regarding the identity of the accused, the nature of the acts, the time and place of the acts and special circumstances surrounding the acts (e.g., use of drugs or alcohol, force or threats, gifts or promises). If the complainant makes the complaint verbally, the authority receiving the complaint is to document the details of the complaint, which the authority is to sign and date. The complainant is encouraged, but not required, to review the written report for accuracy and sign it. Even if the person making the complaint does not sign the document, the claim will still to be investigated.
  16. **Step 5 - The Investigation:** Any allegation of sexual harassment is to be promptly investigated in a manner that protects the privacy and reputation of the persons involved. Privacy will be maintained for the complainant and the accused throughout the investigation to the extent appropriate under the circumstances and subject to the requirements of applicable federal, state and Canon Law.
  17. The complaint will be investigated by the appropriate leadership person, such as pastor, supervisor or Diocesan Director of Human Resources as appropriate. The pastor or supervisor may refer situations that in their discretion to the Diocesan Director of Human Resources. In more difficult situations, the services of an outside investigator may be used.
  18. In pursuing the investigation, the wishes of the complainant are to be considered. Nevertheless, the person conducting the investigation should thoroughly probe the matter as he or she sees fit.
  19. The accused has the right to a right of defense, which means that he or she must be fully informed of the allegation and evidence against him or her.
  20. **Step 6 - Making the Determination:** In making a determination about whether a violation of these policies has occurred, the person conducting the investigation may consult the Diocesan Review Board. He or she is also free to seek the advice and counsel of the Diocesan Director of Human Services, a civil attorney, or other resources.

21. If the person conducting the investigation finds that a violation of these policies has occurred, the harasser will be subject to appropriate disciplinary action, depending on the severity of the case, and reasonably calculated to prevent further inappropriate conduct. The following are possible disciplinary sanctions:
  - a. Rebuke of the offender and warning that a further infraction could result in termination.
  - b. Withholding of future raise or promotion.
  - c. Reassignment or demotion in his/her employment position.
  - d. Suspension of employment, including possible suspension without pay.
  - e. Termination from employment or contract.
  - f. Exclusion from future service.
22. In situations where a violation of these policies has occurred, it is recommended that the harasser be referred for voluntary therapeutic counseling or other professional training, as dictated by the situation.
23. In all situations, a written summary of the findings of the investigation and the sanctions imposed will be placed in the person's employment file or volunteer record. A copy of the written complaint and the summary of the findings and sanction imposed are to be sent to the Diocesan Department of Human Resources. The Director of Human Resources will also maintain records of his or her own findings and sanctions imposed. In situations where it was determined that no sexual harassment occurred, the reasons for this finding will be included in the report.
24. The complainant will be notified of the conclusions and any sanctions imposed.
25. **Knowingly False Allegations:** If an investigation results in a conclusion that the complainant falsely and knowingly accused another of sexual harassment, the complainant will be subject to possible sanctions, including the possibility of termination of employment or contract. Efforts will then need to be made to restore the good name of the accused, as needed.

### **Sexual Misconduct**

26. **Sexual Misconduct:** Sexual misconduct is defined as any sexual conduct which is contrary to the doctrine or moral teaching of the Catholic Church and any sexual conduct proscribed by the laws of the State of Hawaii. Sexual misconduct includes the following:
  - a. **Sexual misconduct involving an adult:** This form of misconduct between adults may involve activities which are sexual in nature to include sexual touching, lewd talk or jokes, displaying sexual images, indecent exposure, rape or prostitution.
  - b. **Sexual exploitation of an adult:** This form of sexual misconduct involves any kind of sexual interaction between adults involving a power, knowledge or gratification disparity. A power disparity can derive from an unequal role relationship (such as counseling) from advanced age, from the size of the offender or from the manipulative skills of the offender. A knowledge disparity can derive from situations where the offender is older, more intelligent or more developmentally advanced mentally, emotionally or psychologically. A gratification disparity is due to the fact that the primary purpose of the sexual activity is to obtain gratification for the perpetrator and not primarily mutual gratification.
  - c. **Sexual abuse of a minor** is any sexual activity with a child or adolescent under the age of eighteen (18) by an adult. Of their nature, they include power, knowledge and

gratification disparities. Sexual abuse of a minor can involve sexual touching, lewd sexualized talk, exposure to genitals or indecent images, rape, incest, prostitution, pornography or possession of pornography involving minors. It may occur over short or long periods of time and may be accompanied by varying levels of coercion or even physical violence.<sup>6</sup> In Canon Law, a person who habitually lacks the use of reason is considered equivalent to a minor (canon 99).

27. Sexual misconduct by any lay employee in any capacity for the Church is completely prohibited.
28. **Step 1 - Contacting Public Authorities:** If the complaint involves a violation of Hawaii criminal law such as abuse in any form of a minor, the police or Hawaii Department of Human Services/Child Welfare Services are to be contacted immediately in accord with the law of the State of Hawaii.<sup>7</sup> If the person making the complaint fails to contact the public authorities, then the pastor, principal or supervisor who first knows of the complaint is to do so. If that person fails to contact public authorities, then the Office of the Bishop will do so. All involved are to cooperate fully with all public authorities investigating a complaint.
29. The Bishop, or his delegate, may designate a representative to assist the public authorities and to be present at meetings between the public authorities and the accused, if permitted.
30. At the earliest opportunity, the Bishop, or his delegate, will see that the accused is informed of the following:
  - a. That diocesan legal counsel does not represent the accused.
  - b. That the accused has the right to retain his or her own civil or canonical legal counsel.
  - c. Whether such counsel will be provided at diocesan expense.
31. **Step 2 - Reporting to the Bishop:** All allegations of sexual misconduct situations must be reported to the Bishop or Diocesan Director of Human Resources. If pastors, principals or other supervisors first receive the allegation, they will forward the complaint to the Bishop or Diocesan Director of Human Resources, who will then guide the process of evaluation and investigation.
32. **Protection from Retaliation:** No lay employee is in any way to retaliate against an individual who makes a report of sexual misconduct. Any acts of retaliation are to be reported immediately to the Bishop or Diocesan Director of Human Resources. Any person found to have retaliated against another individual for reporting sexual misconduct will be subject to disciplinary action, including the possibility of termination from employment.
33. **Step 3 - Precautionary Measures:** In conjunction with the initial evaluation or at any stage of the process, to prevent scandalous activity, to protect the freedom of witnesses and to guard the course of justice, the supervisor may impose precautionary measures such as temporary removal from service while the complaint is evaluated.

---

<sup>6</sup> *The Federal Child Abuse Prevention and Treatment Act definition of sexual abuse states: "The employment, use, persuasion, inducement, enticement, or coercion of any child to engage in, or assist any other person to engage in, any sexually explicit conduct or simulation of such conduct for the purpose of producing a visual depiction of such conduct; or the rape, and in cases of caretaker or interfamilial relationships, statutory rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children" (42 United States Code Annotated § 5106g [4] [2003]).*

<sup>7</sup> *These reporting requirements are in addition to civil requirements that apply to mandated reporters (Chapter 350, Hawai'i Revised Statutes).*

34. **Step 4 - Initial Evaluation:** The supervisor, with the Diocesan Director of Human Resources and in certain situations, with the Diocesan Review Board, will make an initial evaluation of whether the complaint has the semblance of truth. The supervisor is to consider, among other things, the facts alleged in the complaint and the circumstances surrounding them, the credibility of the accuser and the internal consistency of the complaint itself in making this initial evaluation. This is not a determination for or against the guilt of the accused but to eliminate manifestly false or frivolous allegations. When an allegation has proven to be unfounded but is publicly known, every step possible will be undertaken to restore the good name of the person falsely accused.
35. **Manifestly False or Frivolous Allegations:** After consultation, if the supervisor determines that the complaint does not have at least the semblance of truth, after consultation with the diocesan human resources director, no action will be taken. The complainant is to be informed of the outcome and the accused, if he or she is aware of the allegation, is to be informed of the outcome. If an allegation is later found to be manifestly false or frivolous as a result of the preliminary investigation, this norm shall also apply.
36. **Step 5 - Investigation:** All credible complaints of sexual misconduct will be referred to a team for investigation. If possible, one member of the investigative team shall be an individual who has expertise in dealing with sexual misconduct. Another member of the team will ordinarily be the Diocesan Director of Human Resources.
37. The investigation will inquire about the facts, circumstances and imputability of the accused. The investigation may be deferred if criminal investigations or civil action are pending. Any investigation may also need to be suspended in accord with the law of the State of Hawaii in situations involving the sexual abuse of minors until after the police or the Hawaii Department of Human Services/Child Welfare Services completes its investigation.
38. Keeping in mind that the accused has the right to privacy and the right to a good reputation, at least until an act is proven the investigative team will contact the accused and tell him or her of the nature of the allegation and by whom it was made. The accused must be fully informed of the allegation so that he or she can exercise his or her right of defense. Remind the accused of the prohibition of retaliation for making a complaint of sexual misconduct. The team will take the statement of the accused.
39. The findings by the investigative team will be submitted to the supervisor and in certain situations the Diocesan Review Board. The report will include the opinion of the investigators regarding whether sexual misconduct has occurred and their reasons for their opinion.
40. **Step 6 - Conclusion:** The appropriate supervisor/director will review the results of the investigation and give the accused an opportunity for self-defense. If sexual misconduct is established or admitted, a penalty will be imposed including the following:
  - a. Withholding of future raise or promotion.
  - b. Reassignment or demotion in employment position.
  - c. Disqualification from future service including volunteer work.
  - d. Suspension of employment or contract, including possible suspension without pay.
  - e. Termination from employment or contract.
41. The complainant is also to be informed of the results as soon as possible.
42. The Diocese of Honolulu does not enter into settlements which bind the parties to confidentiality unless the complainant requests confidentiality and this request is noted in the agreement.