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## Harassment Statement & Policy

All Associates of McDaniels are to be treated with respect and dignity. ***Sexual and other forms of unlawful harassment of any employee are strictly prohibited.*** Those guilty of harassment face potential criminal and civil liabilities outside the workplace and are subject to disciplinary actions up to and including termination of employment. All Associates are expected to cooperate in making McDaniels free of harassment, intimidation or discrimination. As examples, harassment will not be tolerated when:

- Any form of harassment unreasonably interferes with work performance.
- Unwelcomed or unsolicited conduct or speech based upon race, sex, creed, religion, national origin, age, color, or disability or other protected status creates a hostile, abusive, intimidating or offensive work environment or circumstances involving quid pro quo.
- Rejection or submission to sexual favors is the implicit or explicit basis for decisions concerning one's employment, assignment, advancement, compensation, or any other condition of employment.
- There is any attempt by any Associate of the Company to retaliate against anyone who complains of harassment or against anyone who participates in any investigation of harassment.

**Definition:** Harassment includes, but is not limited to:

- Unwelcome or unsolicited sexual advances; requests for sexual favors; or other verbal, written, visual, or physical conduct of a sexual nature.
- Slurs, jokes, or other verbal, visual, or physical conduct relating to an individual's race, color, sex, religion, national origin, age, disability, or other characteristic protected by applicable state, local, or federal law.

Some specific behaviors that can constitute sexual harassment are listed below. The items listed are not meant to be a comprehensive list of all conceivable forms of harassment; they are provided for illustrative purposes only. The behaviors do not necessarily have to be specifically directed at an individual to constitute sexual harassment. Comparable activities to those listed substituting race, color, religion, national origin, age, disability, or other protected status can be inferred as harassment.

### Verbal Behavior

- Continuous idle chatter of a sexual nature and graphic sexual descriptions;
- Sexual slurs, sexual innuendos, and other comments about a person's clothing, body, and/or sexual activities;
- Offensive and persistent "risqué" jokes or "jesting" and "kidding" about sex or gender-specific traits;
- Sexual teasing;
- Suggestive or insulting sounds such as whistling, wolf-calls, or kissing sounds;
- Sexually provocative compliments about a person's clothes or the way their clothes fit;
- Comments of a sexual nature about weight, body shape, size, or figure;
- Comments or questions about the sensuality of a person, or his/her spouse or significant other;
- Telephone calls of a sexual nature, to residence, business or other party.
- "Staged whispers" or mimicking of a sexual nature about the way a person walks, talks, sits, etc.,
- Implied or overt threats if sexual attention is not given such as a blatant threat of giving a poor efficiency report, work evaluation, or assignment if sexual favors are not forthcoming;
- Distribution of written or graphic materials that are derogatory or of a sexual nature;
- Repeated unsolicited propositions for dates and/or sexual intercourse.

### **Physical Behavior**

Unwanted physical contact can range from offensive conduct to criminal behavior. One employee may feel that the physical contact is sexual harassment, while another may dismiss it as an annoyance. The examples of behaviors listed below involve actual physical contact with the recipient. (Some of these behaviors are explicitly sexual in nature; some may be accidental.) In any event, this unwanted physical contact should cease immediately when requested by the receiver or one seeking to mediate a resolution. Any actual, or perceived, criminal conduct should be reported to the police or appropriate law enforcement authority.

- Touching that is inappropriate in the workplace such as: patting, pinching, stroking, or brushing up against the body;
- Cornering or mauling;
- Invading another's "personal space";
- Attempted or actual kissing or fondling;
- Physical assaults;
- Coerced sexual intercourse;
- Attempted rape or rape.

### **Gestures and Non-Verbal Behavior**

Gestures are movements of the body, head, arms, hands and fingers, face and eyes that are expressive of an idea, opinion or emotion. Non-verbal behaviors are actions intended for an effect or as a demonstration. Gestures and non-verbal behaviors generally do not involve physical contact. Some gestures are intended only to get the attention of the recipient, while others are intended to provoke a reaction from the receiver. Listed below are examples of unacceptable gestures and non-verbal behaviors that may be in violation of McDaniels' policy on sexual harassment.

- Sexual looks such as leering and ogling with suggestive overtones;
- Licking lips or teeth;
- Holding or eating food provocatively;
- Lewd gestures, such as hand or sign language to denote sexual activity;
- Persistent and unwelcome flirting.

Harassment is forbidden by supervisors, co-workers, vendors, clients, visitors or any class of people who may be on Dealership grounds.

### **Proactive Strategies To Avoid Harassment**

- Keep your hands and body to yourself
- Do not talk about race, religion, sex, color, disability, national origin, age or other protected status on the job
- Treat all Associates and guest with dignity and respect
- Avoid jokes, phrases and gestures with sexual, racial, religious, age, disability or ethnic connotations.
- Respect each person's personal space
- Be sensitive to situations where harassment could occur, particularly in non-traditional work environments.
- Be professional in what you say and do.
- Ask yourself, "Would I be comfortable if this behavior were on the evening news?"

### **Associate's Obligation**

If an Associate believes that they have been harassed or observe conduct that involves the non-permissible harassment of any other Associate or guest in the Dealership, they must *immediately* report the incident/s to their supervisor, the General Manager, the Chief Operating Officer, Human Resources Director or directly to the Dealer/President. In extraordinary cases, the behavior can be reported to other Senior Managers at the Associates' discretion. Harassment may also be reported via email to [harassment@mcdanielsag.com](mailto:harassment@mcdanielsag.com), where it be reviewed by Senior Management. It will then be the responsibility of that any Manager to bring the matter to the most Senior Officer of the Company that is not directly involved in the alleged harassment. That Officer, or their designee, will become the Harassment Investigator for the incident.

The behavior should be reported even if it has not become severe or pervasive. The Associate may report the instance without fear of retaliation or threat of job security. The confidentiality of the report will be protected to the extent possible. However, all should be aware that in Management's investigation into the alleged instances, identities of any or all could become known to witnesses or to other parties involved in the investigation. Managers are obligated to investigate any report of harassment, even if the complainant revokes their charge or asks that no investigation occur!

Managers in particular should be keenly aware of their environment and be sensitive to situations that could constitute harassment, even if it is not directed at them. They are obliged to report any instances of possible harassment to Senior Management that they observe and begin pre-emptive counseling sessions with the offender, or begin complete investigation should the situation warrant.

The company strongly prefers that allegations of any harassment be placed in writing by the complainant immediately, but certainly within 30 days of the alleged action. Written communication is preferred for the clarity and specificity that it offers. The more immediately the activity is reported, the more reliably the Company can investigate and ascertain the facts of the incident. If the employee is unable to write their complaint, the person to whom they are verbally making the complaint should carefully transcribe their accusations and have the Associate sign and date the document. The Company will investigate harassment outside this time window, but all parties should be mindful of the increasing difficulty of gathering accurate information as time increases from the alleged event. The Manager to whom the complaint is being made should thank the Associate for bringing the matter to their attention. Assure them that they will suffer no retaliation for bringing the matter to the Company's attention. Verify the well-being of the Associate making the complaint and take immediate and prudent steps to stop the harassment at once. If the parties have to be separated, then the separation should not burden the Associate who has complained of harassment. An involuntary transfer of the complainant could constitute unlawful retaliation. Other examples of interim measures are making scheduling changes to avoid contact between the parties or placing the alleged harasser on non-disciplinary leave with pay pending the conclusion of the investigation.

The Harassment Investigator should at that time assemble a team (Harassment Investigation Team) of 1 to 3 Senior Managers to assist him in reviewing the complaint and establish a plan for quickly, fairly, and impartially conducting the investigation. The committee should not include any party to the alleged incident, whether they were the complainant or accused. The list of interviewers should be compiled as well as questions to be put forth. Any interviews henceforth should occur with all members of the Team present where practical. Absolutely no outsiders are allowed to sit in on the interview or investigation process for any reason as this is a Company investigation! Remember, innocent until proven guilty is the Team's mode of operation. The role of the Harassment Investigation Team at this point is to gather information, not reach premature conclusions. The accused has certain rights just as the accuser. If the charges are of a particularly serious nature, Management may wish to consider granting the accused time off while the investigation proceeds. Management may also wish to consider separating the alleged victim from direct contact with the harasser. In no way should action be taken that would constitute a negative tangible employee action. Detailed notes should be taken of all appropriate interviews that follow.

Most harassment investigations should be completed within two weeks of the initial complaint being filed. Investigations exceeding this period of time should be brought to the attention of the Dealer/President or Chief Operating Officer, unless they are precluded from the investigation process. The Harassment Investigation Team should verify the details of the complaint with the complainant with at least one of members taking detailed notes. The accused harasser should be among the first interviewed after the Team has a clear and precise understanding of the details of the complaint. A specific explanation of the charges should be detailed with the accused. Every effort to establish facts, not intentions, should be made. Treat the witness with respect and do not prejudice until the evidence is fully collected. A written transcript of the pertinent facts should be made and acknowledged in writing with each witness. Additional witnesses should be interviewed, mindful of protecting the confidentiality to the extent possible of the complainant, accused and other witnesses. All witness should be reminded that there will be no retribution for the testimony, and they should be thanked for cooperating with management. All witnesses and complainants should further be asked to refrain from discussing the matter outside the scope of the investigation process.

When detailed fact-finding is necessary, the investigator should interview the complainant, the alleged harasser, and third parties who could reasonably be expected to have relevant information. Information relating to the personal lives of the parties outside the workplace would be relevant only in unusual circumstances. When interviewing the parties and witnesses, the investigator should refrain from offering his or her opinion.

The following are examples of questions that may be appropriate to ask the parties and potential witnesses. Any actual investigation must be tailored to the particular facts.

#### **Questions to Ask the Complainant:**

- Who, what, when, where, and how: *Who* committed the alleged harassment? *What* exactly occurred or was said? *When* did it occur and is it still ongoing? *Where* did it occur? *How often* did it occur? *How* did it affect you?
- How did you react? What response did you make when the incident(s) occurred or afterwards?
- How did the harassment affect you? Has your job been affected in any way?
- Are there any persons who have relevant information? Was anyone present when the alleged harassment occurred? Did you tell anyone about it? Did anyone see you immediately after episodes of alleged harassment?
- Did the person who harassed you harass anyone else? Do you know whether anyone complained about harassment by that person?
- Are there any notes, physical evidence, or other documentation regarding the incident(s)?
- How would you like to see the situation resolved?
- Do you know of any other relevant information?

#### **Questions to Ask the Alleged Harasser:**

- What is your response to the allegations?
- If the harasser claims that the allegations are false, ask why the complainant might lie.
- Are there any persons who have relevant information?
- Are there any notes, physical evidence, or other documentation regarding the incident(s)?
- Do you know of any other relevant information?

#### **Questions to Ask Third Parties:**

- What did they see or hear? When did this occur? Describe the alleged harasser's behavior toward the complainant and toward others in the workplace.
- What did the complainant tell you? When did s/he tell you this?
- Do you know of any other relevant information?
- Are there other persons who have relevant information?

If there are conflicting versions of relevant events, the employer will have to weigh each party's credibility. Credibility assessments can be critical in determining whether the alleged harassment in fact occurred. Factors to consider include:

- **Inherent plausibility:** Is the testimony believable on its face? Does it make sense?
- **Demeanor:** Did the person seem to be telling the truth or lying?
- **Motive to falsify:** Did the person have a reason to lie?
- **Corroboration:** Is there **witness testimony** (such as testimony by eye-witnesses, people who saw the person soon after the alleged incidents, or people who discussed the incidents with him or her at around the time that they occurred) or **physical evidence** (such as written documentation) that corroborates the party's testimony?
- **Past record:** Did the alleged harasser have a history of similar behavior in the past?

None of the above factors are determinative as to credibility. For example, the fact that there are no eyewitnesses to the alleged harassment by no means necessarily defeats the complainant's credibility, since

harassment often occurs behind closed doors. Furthermore, the fact that the alleged harasser engaged in similar behavior in the past does not necessarily mean that he or she did so again.

Once all of the evidence is in, interviews are finalized, and credibility issues are resolved, the Team should make a determination as to whether harassment occurred. All findings should be supported by a preponderance of the weight of the written facts of the case. Little to no weight should be given to groundless accusations, rumors, or unsubstantiated testimony. The Harassment Investigative Team should prepare a written report detailing their findings, and their proposed remedy. The findings and remedy should first be discussed with the accused, and following as soon as practicable, the Associate making the complaint. All transcripts and findings should be kept together in a separate, confidential file at the Dealership that is not included in the standard personnel files.

In some circumstances, it may be difficult for the Team to reach a determination because of direct contradictions between the parties and a lack of documentary or eyewitness corroboration. In such cases, a credibility assessment may form the basis for a determination, based on factors such as those set forth above.

If no determination can be made because the evidence is inconclusive, the Team should recommend and implement preventive measures for those involved, such as training and monitoring.

### **Corrective Action**

The McDaniels organization will undertake immediate and appropriate corrective action, including discipline, whenever it determines that harassment has occurred in violation of its policy. Management should inform all parties about these measures.

Remedial measures should be designed to stop the harassment, correct its effects on the Associate, and ensure that the harassment does not recur. These remedial measures need not be those that the Associate requests or prefers, as long as they are effective.

In determining disciplinary measures, Senior Management should keep in mind that McDaniels could be found liable if the harassment does not stop. At the same time, they should know that overly punitive measures may subject the Company or Senior Managers personally to claims such as wrongful discharge, and may simply be inappropriate.

To balance the competing concerns, disciplinary measures should be proportional to the seriousness of the offense. If the harassment was minor, such as a small number of "off-color" remarks by an individual with no prior history of similar misconduct, then counseling and an oral warning might be all that is necessary. On the other hand, if the harassment was severe or persistent, then suspension or discharge may be appropriate.

Remedial measures should not adversely affect the complainant. Thus, for example, if it is necessary to separate the parties, then the harasser should be transferred (unless the complainant prefers otherwise). Remedial responses that penalize the complainant could constitute unlawful retaliation and are not effective in correcting the harassment.

Remedial measures also should correct the effects of the harassment. Such measures should be designed to put the Associate in the position s/he would have been in had the misconduct not occurred.

### **Examples of Measures to Stop the Harassment and Ensure That It Does Not Recur**

- Oral or written warning or reprimand;
- Transfer or reassignment;
- Demotion;
- Reduction of wages;
- Suspension;

- Discharge;
- Training or counseling of harasser to ensure that s/he understands why his or her conduct violated the employer's anti-harassment policy; and
- Monitoring of harasser to ensure that harassment stops.

**Examples of Measures to Correct the Effects of the Harassment:**

- Restoration of leave taken because of the harassment;
- Expungement of negative evaluation(s) in employee's personnel file that arose from the harassment;
- Reinstatement;
- Apology by the harasser;
- Monitoring treatment of employee to ensure that s/he is not subjected to retaliation by the harasser or others in the work place because of the complaint; and
- Correction of any other harm caused by the harassment (*e.g.*, compensation for losses).

Federal and state laws may provide Associates' additional rights and remedies not specifically outlined in this procedure. The Equal Employment Opportunity Commission, the Department of Labor, the State Department of Labor, or other government agencies can provide you with the latest laws and regulations concerning harassment. Associates should be mindful of any time limitations the government has in place for reporting claims of harassment.

Further, the Company has an extensive process to deal effectively with the threat of harassment including periodic education meetings. **Some issues that relate to our Harassment Policy may or may not fall within the company's Binding Arbitration Agreement as part of any dispute resolution process.**

A Senior Manager at each Dealership, or his selected Senior Manager, should conduct at least semi-annual reviews of the company's policy with each Associate, and the General Manager will be counseled by the either the Chief Operating Officer or the Dealer/President. Annual reviews that occur in January are an acceptable time to review the Company's policy on an individual basis. The second mandated review should be in a group setting at departmental or company-wide gatherings. Additional company-wide training and guidance should be provided to all personnel if more than two instances of harassment are reported in any quarterly period. All new hires should acknowledge that they have been briefed, trained and given a copy of this document on the organizations' policies on harassment.

Any Associate may request an additional copy of this document from any Senior Manager at any time. That Manager should provide a copy to the Associate within 72 hours to the extent possible, and in no case later than one week.

Any questions regarding the Company's policy or suggestions for improving it should be directed to the Chief Operating Officer or the Dealer/President, or a member of Senior Management.

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Acknowledgement of Receipt

Date