

April 7, 2008

THE PREVENTION OF SEXUAL HARASSMENT

1. PURPOSE: This Veterans Health Administration (VHA) Directive defines policy for implementing the Program for the Prevention of Sexual Harassment in VHA. *NOTE: This policy applies to all employees and covers employees outside of the workplace while conducting government business, and non-employees while conducting business in the Department of Veterans Affairs (VA) workplace.*

2. BACKGROUND: Sexual harassment is a violation of Title 7 Section 703. It is a form of employee misconduct that seriously undermines the integrity of the employment relationship.

a. Specifically, sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature not only when the conduct is made as a condition of employment, but when the conduct creates an intimidating, hostile or offensive working environment. Sexual harassment is not limited to explicit demands for sexual favors. It also may include such actions as:

- (1) Sexually-oriented verbal kidding, teasing, or jokes;
- (2) Repeated sexual flirtations, advances or propositions;
- (3) Continued or repeated verbal abuse of a sexual nature;
- (4) Graphic or degrading comments about an individual or the individual's appearance;
- (5) The display of sexually suggestive objects or pictures;
- (6) Subtle pressure for sexual activity; and
- (7) Physical contact such as patting, hugging, pinching, or brushing against another's body.

b. Although sexual harassment can take a variety of forms, two distinct categories of such claims are consistently recognized; they are:

(1) **Quid pro quo Sexual Harassment.** Quid pro quo sexual harassment occurs when sexual favors are sought in return for job security, benefits, or opportunities. It can be in the form of a threat such as "perform sexual favors or get fired," or "your job will become intolerable unless sexual favors are granted." Even if the supervisor does not follow through with any action, the threats alone may constitute a hostile work environment. Sexual harassment may also include rewarding an employee in return for sexual favors, such as giving cash awards, higher ratings, or promotions. Quid pro quo sexual harassment involves a manager or supervisor, that is, someone with supervisory authority who can carry out the threat or promise.

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VHA is strictly liable for quid pro quo sexual harassment carried out by its managers or supervisors. Based on Supreme Court decisions, it does not matter if the employer did not know or could not have known of the harassment. No form of sexual harassment or retaliation is tolerated.

(2) **Hostile Work Environment Sexual Harassment.** Hostile work environment sexual harassment occurs when sexual comments or conduct unreasonably interfere with an individual's work performance or creates an intimidating, hostile, or offensive work environment. A supervisor or co-worker may be responsible for this type of conduct or a non-employee in certain circumstances. Hostile work environment harassment can be established even if others do not find the conduct offensive. Hostile environment third-party sexual harassment occurs when employees, who are not themselves harassed, must work in an atmosphere where such harassment is pervasive. If preferential treatment is given to employees who grant sexual favors, the motivation and work performance of other employees may be negatively affected. VHA is liable for preventing a hostile work environment. Supervisors and managers must show:

(a) They exercised reasonable care to prevent and correct promptly, any sexually harassing behavior, and

(b) The victim of the harassment unreasonably failed to take advantage of any preventive or corrective opportunities that VHA provides.

c. Jokes, remarks, teasing, rude or obnoxious behavior, pranks, non-sexual conduct or questions that contain sexual overtures can be a form of sexual harassment; are not acceptable in the Department of Veterans Affairs (VA) professional work environment; and are not condoned. Managers and supervisors who tolerate such behavior by failing to take immediate appropriate action, or who retaliate against employees who report incidents of sexual harassment, are subject to disciplinary action.

3. POLICY: It is VHA policy that VHA officials at the field and VHA Central Office levels must maintain a work environment free from sexual harassment and intimidation, and be in full compliance with VHA and VA policies and applicable Federal regulations; to include the requirement that employees must receive a minimum of 2 hours training on the Program for the Prevention of Sexual Harassment within 60 days of employment and thereafter a minimum of 2 hours refresher training every 2 years.

4. ACTION

a. **Chief Workforce Management and Consulting Officer.** The Chief Workforce Management and Consulting Officer is responsible for ensuring that:

(1) There is a written policy designed to prevent sexual harassment; and that this policy is included in employee and supervisory orientations, manuals, newsletters, and regular personnel communications.

(2) Each Program Officer ensures that all program employees receive a minimum of 2 hours training on the Program for the Prevention of Sexual Harassment within 60 days of employment and thereafter a minimum of 2 hours refresher training every 2 years.

(3) All VHA employees are notified that:

(a) They are expected to refrain from all forms of sexual harassment.

(b) Employees engaging in sexually harassing activities are subject to appropriate disciplinary action.

(c) Persons who believe they are victims of sexual harassment need to contact an Equal Employment Opportunity (EEO) Counselor in the Office of Resolution Management (ORM), a union representative if the employee is a member of a bargaining unit, the Office of Inspector General, or the local EEO or Affirmative Employment Specialist.

(d) Sexual harassment is illegal.

b. **VISN Director.** The VISN Director is responsible for ensuring:

(1) The VISN office has a written policy designed to prevent sexual harassment; and that this policy is included in employee and supervisory orientations, manuals, newsletters, and regular personnel communications.

(2) Employee education and training efforts designed to prevent sexual harassment are provided in accordance with Department and Administration policies. *NOTE: Prevention is the best tool for eliminating sexual harassment.*

c. **Facility Director.** The Facility Director is responsible for ensuring:

(1) There is a written facility policy designed to prevent sexual harassment; and that this policy is included in employee and supervisory orientations, manuals, newsletters, and regular personnel communications.

(2) All facility employees must receive a minimum of 2 hours training on the Program for the Prevention of Sexual Harassment within 60 days of employment and thereafter a minimum of 2 hours refresher training every 2 years. Sexual harassment is unacceptable conduct in the workplace and is not tolerated.

(3) All facility employees are notified that:

(a) They are expected to refrain from all forms of sexual harassment.

(b) Employees engaging in sexually harassing activities are subject to appropriate disciplinary action.

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(c) Persons who believe they are victims of sexual harassment need to contact an EEO Counselor in ORM, a union representative if the employee is a member of a bargaining unit, the Office of Inspector General, or the local EEO or Affirmative Employment Specialist.

(d) Sexual harassment is illegal.

5. REFERENCES

- a. VA Manual MP-7, Part I, Chapter 2, Section F.
- b. Section 703 of Title VII of the Civil Rights Act of 1964.
- c. Plan No. 1 of 1978, issued pursuant to Title 5 United States Code (U.S.C.) 901, et seq.
- d. Executive Order 12106 (44 Code of Federal Regulations 1053, January 3, 1979).
- e. Employment Opportunity Commission Regulations and Guidelines on Discrimination Because of Sex, Title 29-Labor, Part 1604 at http://www.eeoc.gov/types/sexual_harassment.html.

6. FOLLOW-UP RESPONSIBILITY: The Chief Workforce Management and Consulting Officer and the EEO/Affirmative Action Team (10A2E), is responsible for the contents of this Directive. Questions may be addressed to (202) 461-7290.

7. RESCISSION: VHA Directive 2002-071 is rescinded. This VHA Directive expires on April 30, 2009.

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