

EMPLOYEE RELATIONS

And ETHICS NOTES

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For the REE Agencies, USDA

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For management advice on issues of Employee Relations and Government Ethics, please do not hesitate to call your servicing specialist.

All past issues of ER Notes are now on the Employee Relations Branch (ERB) webpage at <http://www.afm.ars.usda.gov/hrd/er/index.htm>.

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Workplace Harassment and Disrespectful Conduct

Workplace harassment is unacceptable.

All employees share responsibility for contributing to a discrimination-free and harassment-free work environment, but Federal managers are *held accountable* for correcting problems that they notice or are brought to their attention. The REE agencies and USDA have civil rights policies forbidding illegal harassment including sexual harassment. Also, USDA and Federal policies and regulations prohibit disrespectful conduct in the workplace. Disrespectful language and behaviors in the workplace are unacceptable and, if tolerated, can escalate into illegal harassment.

What constitutes illegal workplace harassment?

Recent court rulings have determined that whenever there is unwelcome conduct based on a legally-protected status (gender, religion, race, color, national origin, age and disability) and that misconduct affects a person's job, it could be determined to be illegal harassment. If that offensive conduct creates a "hostile" work environment with respect to any of the protected statuses, the Agency might be liable. With regard to sexual harassment, the courts have ruled that illegal sexual harassment concerns not only sexually-based conduct, but can include nonsexual gender-based harassment.

A hostile environment includes telling off-color jokes, using demeaning or inappropriate terms, indecent gestures, hostile physical contact, granting or withholding job favors, using crude or offensive language, discussing sexual activities, commenting on physical attributes, etc.

What creates a hostile work environment?

To create a hostile work environment, unwelcome conduct based on a protected status must also be “severe or pervasive enough to create a work environment that a reasonable person would find abusive.” A court will consider such factors as the frequency of the unwelcome discriminatory conduct; the severity of the conduct; whether the conduct was physically threatening, humiliating, or a mere offensive utterance; whether the conduct unreasonably interfered with work performance; the effect on the employee’s psychological well-being; or whether the harasser was a superior in the organization. Also, trivial, isolated incidents do not create a hostile work environment. A long pattern of ridicule and abuse can constitute illegal harassment. Given the many factors that create a hostile work environment, supervisors and Agency officials must address incidents of unwelcome conduct before they become severe or pervasive.

Whose job it is to stop workplace harassment?

Managers and supervisors have a primary duty to keep the workplace respectful and free from offensive and harassing behavior. First, check your own behaviors. It might not be obvious to managers that they may be contributing to an offensive environment by laughing at jokes or tolerating behaviors that might be offensive to others. USDA Bulletin 735-1, Employee Responsibilities and Conduct, states that managers are prohibited from: “Failing to take appropriate action on complaints or proven acts of sexual harassment, if a supervisor who knew or should have known of those acts.” If you are a witness to harassment, or harassment is reported to you, seriously investigate reports and take action to build a respectful work place. Supervisors who fail to take corrective action once harassment has been reported may be subject to disciplinary action. Call your servicing Employee Relations Specialist for advice and guidance.

Since the boundaries are not clearly marked in cases of discriminatory harassment, the best course of action is for employees to avoid all conduct in the workplace that is *potentially* offensive. When you see conduct that is disrespectful, ask yourself: Is this verbal or physical behavior potentially offensive to another, or to witnesses? Is there disrespectful language or behavior involved? Might an employee feel he or she must tolerate this type of conduct to keep his or her job? Might this conduct make another employee’s job environment unpleasant? If yes, put a stop to the conduct.

Employees have a duty to behave in a professional manner; to treat others with respect; and to report sexual harassment, workplace harassment, or misconduct to their supervisors.

How to handle discourtesy and disrespectful language and behavior.

It is stated in Bulletin 735-1 that USDA prohibits disrespectful conduct in the workplace. It specifically prohibits conduct that is “disgraceful” or “prejudicial to the Government,” conduct where employees are “harassing employees by word or action, or knowingly making false accusations against

employees,” or “displaying discourtesy or disrespect to a coworker, another Federal employee, or a member of the public when acting in an official capacity.” It also prohibits employees from “making threats against other employees or members of the public.” An employee who demonstrates disrespectful or insolent language or behavior to a supervisor or other employees should be counseled immediately, cautioned about his or her unacceptable behavior, and warned that it could result in future disciplinary action. This includes any disrespectful conduct toward you, the manager. Setting an appropriate tone in the workplace prevents problems.

I’ve tolerated disrespect in my workplace. How do I start to correct the problem now?

It’s never too late to correct misconduct. Your servicing Employee Relations Specialist can assist in offering tools to correct this kind of behavior. We can provide sample memos of “Office Expectations” or provide guidance on acceptable work rules and consequences for breaking those rules. You may want to provide an annual “Workplace Conduct Expectations” memo at an all-hands staff meeting. See our last issue of ER Notes (1st Quarter 2005) on how to conduct an effective counseling session with an employee who is breaking the rules you set. We can also provide assistance with memos of caution to take that first step in warning an employee that you are serious about maintaining a respectful workplace. We will support and help you in enforcing other rules of conduct you set for your lab or office.

Failure to Follow Supervisory Instructions

True or false? *An employee does not need to follow a supervisor’s instructions if he or she knows a better way to do the task, or does not agree with the assignment.*

Failing to follow supervisory instructions is one of the most common kinds of misconduct. It may stem from the fact that employees may not understand that they are expected to follow their supervisor’s instructions in almost all cases, regardless of whether or not they agree with those instructions. However, when an employee fails to follow supervisory instructions, it is disruptive to efficient operations in your lab or office and can result in a waste of taxpayer dollars.

This problem needs to be corrected, first by communicating to employees your expectations. You need to provide clear rules, instructions, tasks, and expectations. If the employee receives clear communication of what is expected, he or she must follow those instructions in most cases.*

*Employees must follow supervisory instructions unless the employee perceives that they are illegal or would threaten his or her personal safety. Supervisory instructions have to be legitimate and work-related, not arbitrary or capricious. You can provide instructions on how you want a task done and the deadline for doing the task, or you can provide instructions on workplace conduct such as how you expect leave to be requested or how you expect your employees to conduct themselves in the workplace. If you have a problem with inappropriate language or behaviors at work that are disruptive to the work, you can set out your expectations on proper communications or conduct. As long as you communicate a legitimate work rule, an employee needs to follow that rule.

“Obey now, grieve later.”

Once the order or instruction is given, your employee may offer you suggestions on how to do something differently or reasons they should not or could not follow your instructions. But, they are still obliged to follow your instructions. There is a work rule: "Obey now, grieve later." This means that employees are generally required to follow orders or instructions first and raise complaints or disputes after compliance. The existence of personal beliefs or the possibility of inconvenience does not provide a sufficient justification for refusal to comply with a lawful order.

No firm followthrough?

If you fail to follow up on your order or instruction to an employee, it may be perceived by the employee that the instruction did not need to be followed. Constantly extending deadlines may undermine your authority to give instructions and have them followed.

What is the "efficiency of the Service?"

Disciplinary action serves to correct behaviors that adversely affect the mission of the Agency. The phrase "efficiency of the Service" is the only valid reason Federal managers can take disciplinary or conduct-related adverse actions against employees. Federal employees should be working in a manner that results in efficient accomplishment of the Agency's mission. Employees who do not follow instructions, however minor, adversely affect your unit's mission accomplishment, and ultimately the Agency's mission accomplishment.

Intention?

The Agency does not need to prove intent for a failure to follow supervisory instructions. All that is required is that a person in a position of authority gave a clear and proper order and that it was communicated to the employee. Sometimes you will not know why an employee is not following your instructions. It is best to ask the employee why they did not follow the instruction. It might be a performance inability rather than misconduct. The more information you gather, the more you will understand what is needed to correct the problem.

"It's not in my position description."

You can assign work that is not specifically addressed in the employee's position description. It's called "other duties as assigned." Employees must perform duties as assigned that are within the general boundaries of their job requirements. But, if you are worried that you are assigning work above an employee's grade level, then contact your classification specialist.

Disciplinary Action

If you have provided clear instructions and the employee refuses or does not follow them (for any reason), first check with the employee to make sure the instruction was clear and understood. Follow your instruction up in writing. Once you have clearly communicated an instruction or order to an employee, a failure to follow that instruction should be followed by a caution or disciplinary action. Contact your ER Specialist for information.

2005 Annual Ethics Retreat & Scientific Roundtable

REE Ethics Officials for ARS, CSREES, ERS, and NASS gathered for the 2005 Annual Ethics Retreat on April 19th - 21st. Highlights included a welcome from Secretary of Agriculture, Mike Johanns, and special presentations by experts such as: Richard Painter, Special Assistant to the President, Associate White House Counsel; Cheryl Kane-Piasecki, Sr. Desk Officer, Office of Government Ethics (OGE); and Lenny Loewentritt, Deputy Associate General Counsel, General Services Administration (GSA).

The most significant working session of the 2005 Retreat was the USDA Scientific Roundtable for USDA Scientists and Ethics Officials. Recent media coverage has focused on Federal scientists misusing their official position to engage in lucrative outside endeavors for their own personal financial gain. Specifically, attention has focused on the conflicts of interest that arise when Federal scientists provide professional services, which are related to their official duties, to outside organizations in a personal capacity rather than through existing Federal mechanisms. A limited number of improprieties by Federal scientists, and subsequent public response, prompted both congressional and OGE inquiries.

The USDA Scientific Roundtable gathered scientific leaders from across the Department to explore local business strategies that would not only strengthen USDA's current partnerships in the scientific community, but also ensure that USDA scientists continue to maintain the utmost public integrity in the performance of official duties. Scientific research at USDA is inherently a collaborative activity, which involves engaging a multitude of non-Federal organizations such as: academic institutions; industry trade groups; non-profit and for-profit organizations; and consumers. The Federal Ethics laws govern, in important respects, the structure of these relationships and the type of activities that are permissible within them. Ultimately, the Conflict of Interest laws require that we delineate a boundary between USDA as a public body, and non-Federal organizations as private bodies – this includes professional associations and scientific societies. As a result, a certain amount of tact and prudence is required to ensure that USDA scientists maintain a level of public integrity that is essential to fostering public trust in Government.

Participants at the USDA Scientific Roundtable considered several current issues including:

- Teaching in an official capacity – Does Agency appropriation specifically require or provide for teaching at non-Federal entities? If not, can it be inferred?
- Service as a Board Member/Officer in non-Federal Organizations – Can we distinguish types of organizations where full participation can be performed in an official capacity? Are waivers appropriate?
- University Dealings – Which activities with universities further the mission of the Agency? Which activities do not? How should we treat designations of stature by such universities, and what are the designations that universities bestow which provide an automatic conflict of interest? What activities should be specified in a Memorandum of Understanding?
- Editorial Services – Official interaction vs. personal interaction - where to draw the line?

If you are interested in commenting on the issues above for the Scientific Roundtable committee discussions, or have any questions concerning these issues, please contact the REE Ethics Office. The Scientific Roundtable will reconvene within the near future.

ER and Ethics Notes

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