



Human Resources Issuance System



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Office: Office of Civil Rights and Diversity

Subject: Procedures for Addressing Allegations of Discriminatory Harassment

1. PURPOSE. This policy is intended to assure that the Department of the Treasury takes all necessary steps to prevent sexual harassment and other forms of discriminatory harassing conduct in the workplace and to respond quickly if such conduct occurs. This policy also sets forth procedures for addressing allegations of discriminatory harassment outside of the EEO and grievance processes.

This policy supplements, but does not replace, existing EEO complaint procedures under 29 C.F.R. Part 1614 and administrative or collective bargaining grievance procedures. The policy establishes an expedited process for reviewing allegations of harassment, effectively ending harassment, and taking appropriate disciplinary action.

2. SCOPE. This policy applies to all bureaus, offices, and organizations of the Department of the Treasury. The authority of the Inspectors General is set forth in Section 3 of the Inspector General Act and the Internal Revenue Service Restructuring and Reform Act, and defined in Treasury Order 114-01 (OIG) and Treasury Order 115-01 (TIGTA), or successor orders. The provisions of this policy shall not be construed to interfere with that authority.

3. EFFECTIVE DATE. This policy is effective with the date of this Chapter.

4. REFERENCES.

A. U.S. Equal Employment Opportunity Commission, *Equal Employment Opportunity (EEO) Management Directive 715* (October 1, 2003)

B. U.S. Equal Employment Opportunity Commission, *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors* (June 18, 1999)

C. *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998)

D. *Faragher v. Boca Raton*, 524 U.S. 775 (1998)

E. *Harris v. Forklift Systems, Inc.*, 410 U.S. 17 (1993)

5. **BACKGROUND.** In October 2003, the Equal Employment Opportunity Commission (EEOC) issued Management Directive 715 (MD 715), which established that a model EEO program should issue policies and procedures to address discriminatory harassment. Discriminatory harassment is harassment based on sex (including sexual harassment), race, color, religion, national origin, age, disability, and retaliation. The EEOC policy was based on the requirements established by the Supreme Court in two decisions concerning harassment liability, *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998), and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), and is designed to ensure all federal agencies create a work environment that is free from sexual and non-sexual harassment.

6. **POLICY.** The Department of the Treasury has zero tolerance for discrimination against an employee or applicant for employment based on race, color, sex, national origin, religion, disability or age. The Department does not tolerate reprisal or retaliation based on opposition to discrimination, participation in the discrimination complaint process, or reporting or assisting in an inquiry relating to allegations of discrimination. Discrimination based on sexual orientation, protected genetic information or parental status is also prohibited. Unlawful harassment of an employee based on the employee's race, color, sex, national origin, religion, disability, age, protected EEO activity, sexual orientation, protected genetic information or parental status is a form of discrimination and is therefore prohibited. Treasury also prohibits harassment – abusive or hostile conduct based on protected status – that is not so severe or pervasive as to alter an employee's terms or conditions of employment.

7. **DEFINITIONS.**

A. **Harassment.** Harassment is hostile or abusive conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, protected genetic information, parental status or retaliation.

B. **Unlawful Harassment.** Unlawful harassment includes unwelcome intimidation, ridicule, insult, or physical conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, protected genetic information, parental status or participation in EEO activity (hereinafter referred to as protected groups) where:

1) An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct; or

2) The conduct is sufficiently severe or pervasive as to alter the terms, conditions, or privileges of the employee's employment, or otherwise create an abusive work environment. This type of harassment typically does not involve

personnel actions such as a denial of promotion. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of unlawful harassment. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to a reasonable person. However, harassing conduct that is not unlawful may serve as the basis for disciplinary action.

Examples of harassing conduct include, but are not limited to:

- Epithets, slurs, stereotyping or threatening, intimidating, or hostile acts that relate to race, color, religion, sex, national origin, age, disability, sexual orientation or parental status, or to an individual's protected activity;
- A practice or repeated instances of jokes or pranks that are hostile or demeaning and are based on an individual's protected group status; and
- Written or graphic material that degrades or shows hostility or aversion toward an individual or group because of their protected group characteristics and is displayed on walls, bulletin boards, or other locations, or is circulated in the workplace.

A single utterance of an ethnic, sexual or racial epithet that offends an employee generally would not be severe enough to constitute unlawful harassment in violation of Title VII or any other anti-discrimination statute. However, it is the Department's policy that such conduct is inappropriate in the workplace and should not be tolerated.

C. Conduct Covered. The conduct covered by this policy is broader than the legal definition of unlawful harassment listed in Section 7, Paragraph B. It includes hostile or abusive conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, protected genetic information, parental status or retaliation, even if the conduct has not risen to the level where the conduct becomes sufficiently severe and pervasive so as to alter the conditions of employment. The goal of this policy is to avoid or minimize harm to any employee subjected to unwelcome, hostile or abusive conduct based on protected group status by ensuring appropriate officials are notified of—and have the opportunity to promptly correct—such conduct.

8. **PROCEDURES.** Bureaus must establish and publicize procedures which provide for the reporting of allegations of harassment, conducting an inquiry and making appropriate determinations based on the results of the inquiry.

A. Reporting Allegations of Harassment. Bureaus should determine to whom an employee should report an allegation of discriminatory harassment. This may be a management official, a supervisor, or the Human Resources or EEO Office. Bureau procedures should allow an individual to report such allegations to an official outside of his/her immediate supervisory chain. The report, whether written or oral, should include

the specific nature of the incident, date and place of the incident, names of parties involved, as well as all pertinent facts.

1) Employees are responsible for reporting behavior they view as harassment. While isolated incidents of harassment generally do not violate Federal law, a pattern of incidents may. Employees must take advantage of the preventive or corrective opportunities provided by the Department and its bureaus and offices.

2) Employees who make reports of discriminatory harassment should be informed of their right to seek counseling from the appropriate EEO Office and the timeframes for doing so (See Section 8, Paragraph C). Employees should be informed that the purpose of this policy is to take appropriate actions to end improper conduct, while the EEO process is designed to make the employee whole or provide remedial relief.

B. Internal Harassment Inquiry. Bureaus must determine what office will have responsibility for conducting an internal inquiry. The inquiry is intended to determine if improper conduct occurred. Allegations of harassment will be reviewed in a prompt and impartial manner. Inquiries should consist of interviews with all persons with relevant information, including the individual accused of the harassing conduct, and a review of any written or electronic information about the alleged harassment.

1) Management will ensure all individuals who report alleged harassment or who cooperate during an inquiry are protected from retaliation.

2) Disclosures about allegations of harassment will be made only on a “need to know” basis, in order to determine the facts surrounding the allegation and to take appropriate action.

3) Managers must take appropriate action once they have been apprised of allegations of harassment, *even if an employee requests that no action be taken.*

4) Depending on the nature of the allegation, management may take appropriate steps during an inquiry to ensure that further harassment does not occur. Such steps may include changing the work location and assignments of the individuals and granting appropriate leave.

5) If improper conduct is found, management will act promptly to stop the harassing conduct and ensure it does not reoccur. Appropriate disciplinary action, properly documented, will be taken in all cases where improper conduct is found to have occurred.

6) If it is determined that discipline is warranted, the information from the inquiry that is the basis for the disciplinary action must be shared with those for whom disciplinary or adverse action has been proposed. Information from an inquiry

will be provided also to an EEO Investigator, if an EEO complaint is filed on the same or a related matter.

- C. Filing Statutory or Administrative Complaints or Negotiated Grievances.** The purpose of this policy is to effectively end any harassing conduct that has occurred, deter its occurrence in the future, and limit any liability of the Department. However, corrective action under this policy does not provide all the remedies otherwise available in the EEO or collective bargaining processes.

Reporting an allegation of harassment under this policy **does not** satisfy the requirements for filing an EEO complaint or union grievance, and does not delay the time limits for initiating those procedures. Thus, an employee may choose to pursue statutory, administrative, or collective bargaining remedies for unlawful harassment. If an employee chooses to pursue those remedies, the employee must elect one of the available forums as follows:

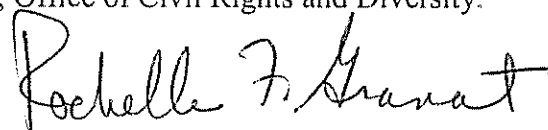
- 1) For an EEO complaint pursuant to 29 CFR Part 1614 (and for filing a complaint under the Department's modified EEO process for complaints based on sexual orientation, parental status or protected genetic information), contact an EEO counselor through the appropriate EEO Office within 45 calendar days of the most recent incident of alleged harassment (or the personnel action if one is involved), as required in 29 CFR §1614.105(a)(1).
- 2) For a collective bargaining grievance, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement.
- 3) For an appeal to the MSPB pursuant to 5 CFR § 1201.22, file a written appeal with the Board within 30 days of the effective date of an appealable adverse action as defined in 5 CFR § 1201.3.
- 4) A decision to contact an EEO counselor will not prevent an employee from filing a collective bargaining grievance or an MSPB appeal. However, an employee must elect to file a formal EEO complaint or a negotiated grievance procedure, but not both. Similarly an employee may not pursue both a formal EEO complaint and a MSPB appeal. An EEO complaint filed after a grievance or MSPB appeal has been filed on the same matter shall be dismissed.

9. RESPONSIBILITIES.

Bureaus Heads are responsible for:

- A. Developing policies and procedures to address allegations of harassment within their bureaus;

- B. Negotiating policies and procedures to address allegations of harassment with bargaining units, as appropriate;
 - C. Providing periodic training to ensure all employees are aware of the procedures for reporting harassment; and,
 - D. Reporting to the Director, Office of Civil Rights and Diversity (OCRD), on policies and procedures developed in the bureau, for inclusion in the Department's MD 715 annual report.
10. OFFICE OF PRIMARY INTEREST. Office of the Deputy Assistant Secretary for Human Resources and Chief Human Capital Officer; Office of Civil Rights and Diversity.



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