

DEPARTMENT OF VETERANS AFFAIRS

**EQUAL EMPLOYMENT OPPORTUNITY
DISCRIMINATION COMPLAINT PROCEDURES
AND THE PREVENTION OF
HARASSMENT
FOR ALL EMPLOYEES**



**TO REPORT ALLEGATIONS OF HARASSMENT, CONTACT YOUR ORM FIELD
OFFICE (1-888-RES-EE01 OR 1-888-737-3361), OR ONE OF ORM'S EEO COUNSELORS**

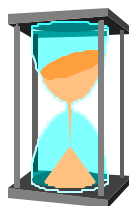
DISCRIMINATION COMPLAINT PROCEDURES



A. Authority for the complaint process:

The discrimination complaint process implements the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act of 1967, as amended; and the Rehabilitation Act of 1973, as amended. The Equal Employment Opportunity Commission (EEOC) promulgates regulations, which set forth the particulars of the complaint process. The EEOC regulations are published in Title 29, Code of Federal Regulations, Part 1614.

The bases for filing complaints are outlined in those regulations. The regulations provide for the acceptance of complaints from any employee, applicant for employment, or former employee who believes that he or she has been discriminated against on the basis of **race, color, religion, sex, national origin, age (40 years and above), disability, or in reprisal for having opposed such discrimination (for example, as an EEO complainant or witness in an EEO complaint)**. Furthermore, discrimination on the basis of an individual's sexual orientation is also prohibited by Executive Order.



B. How to obtain information on the complaint process:

The Office of Resolution Management (ORM) provides discrimination complaint processing services to VA employees, former employees, and applicants for employment. These services include counseling, mediation, investigation, and procedural final agency determinations.

If you believe that you have been the victim of discrimination based on your race, color, religion, sex (including sexual harassment), national origin, age, disability,

or prior EEO activity, you may contact an ORM counselor at your local ORM servicing office or call 1-888-RES-EEO1 (1-888-737-3361). You must contact an EEO Counselor within 45 days of the date of the incident(s). An ORM counselor will assist you by explaining the complaint process and providing you with the information you need to make informed decisions. You have a right to seek assistance from ORM and to file a complaint without fear of coercion, interference, dissuasion, or reprisal.

ORM is committed to ***fairness, integrity, and trust*** throughout the complaint process, and to providing you with timely and high quality equal employment opportunity complaint processing services.

HARASSMENT

It is the policy of the VA that no employee will be subjected to harassment based on race, color, gender, religion, national origin, age, disability, or sexual orientation, and that no employee will be subjected to retaliation because he or she has brought forth such an allegation. Harassment that creates a hostile work environment is unwelcome conduct that is so severe or pervasive that it alters the employee's conditions of employment. It may take the form of verbal remarks, physical conduct, or displays of offensive material.

However, if the conduct is incited or welcome, it is not harassment. Off-color or offensive jokes, even if made repeatedly, are not harassment if the employee bringing forth the allegation participates in the conduct. However, once an individual conveys that the conduct is not welcome, or that the jokes are no longer considered "jokes", any conduct of the same nature that occurs thereafter may be considered harassment. In addition, the complainant need not be the subject of the harassment, but if the harassment creates a hostile environment, the individual may bring a claim.

Participation in the conduct does not always mean the conduct was welcomed. There may be a legitimate fear, particularly in quid pro quo sexual harassment cases (see below). The employee may believe that unless he or she acquiesces to the demand(s), termination will occur or other employment benefits will be withheld.

Allegations of harassment must be dealt with promptly and effectively. An immediate inquiry should be undertaken. Appropriate disciplinary action against any employee who engages in harassing conduct must also be taken. Such allegations should also be given the highest degree of confidentiality possible. Furthermore, employees interviewed, including the alleged victim, should be assured that they will not be subject to retaliation for their participation in any investigation.

SEXUAL HARASSMENT

Policy: The Department of Veterans Affairs policy is to maintain a work environment free of sexual harassment and intimidation. Sexual Harassment is unacceptable conduct in the workplace and **will not be tolerated**.

Mandated, as part of the **Title VII Civil Rights Act of 1964**, each and every working person has the legal right to work in an environment free from harassment on the basis of sex. Harassing conduct of a sexual nature falls within the prohibition of discrimination based on gender.

Sexual harassment is a violation of section 703 of Title VII. **Unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when** (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating hostile, or offensive working environment.

In determining whether alleged conduct constitutes sexual harassment, ORM Field Offices, OEDCA, and EEOC will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. Whether an incident or incidents constitute harassment is a determination to be made from the totality of the circumstances, on a case-by-case basis.

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 necessarily involves a manager or a supervisor, that is, someone with supervisory authority who can carry out the threat or promise.

Sexual harassment may also be explicit or implicit. For example, a supervisor need not explicitly articulate what he or she is requiring the employee to do, but may communicate the same thing effectively through gesture, innuendo, or tone of voice.

The employer is strictly liable for quid pro quo sexual harassment carried out by its managers or supervisors. It does not matter that the employer did not know or could not have known of the harassment.

Hostile environment sexual harassment is also prohibited. This type of sexual harassment occurs when sexual comments or conduct unreasonably interfere with an individual's work performance or create 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 environment harassment can be established even if others do not find the conduct offensive. It may also be established even if both males and females are subjected to the conduct if the conduct affecting one gender is more egregious. Further, a claim will arise even if both the victim and harasser are of the same sex.

The conduct must be sufficiently pervasive, that is, frequent and severe. However, the more severe the conduct, the less frequent it has to be. A one-time incident, if sufficiently egregious, may give rise to a claim.

The agency will also be held liable for a hostile environment created by a supervisor unless it can show that 1) it exercised reasonable care to prevent and correct promptly any sexually harassing behavior; and 2) the victim of the harassment unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

With respect to harassing conduct between fellow employees, an employer **is responsible** for acts of sexual harassment in the workplace if the employer **knows** or should have **known** of the conduct, unless it can show that it took immediate and appropriate corrective action.

An employer may also be **responsible** for the acts of **non-employees**, with respect to sexual harassment of employees in the workplace, where the employer (or its agents or supervisory employees) **knows** or should have **known** of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases ORM, OEDCA, and EEOC will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such non-employees.

Prevention is the best tool for eliminating sexual harassment. An employer should take all steps necessary to **prevent sexual harassment** from occurring. Managers and supervisors must watch for the potential for harassment and take all necessary steps to prevent harassment from occurring. However, if it does occur, the supervisors and managers must ensure the harassment is eliminated in a prompt and effective manner, minimizing the effect on the victim to the extent possible.

A key word in defining sexual harassment is “**UNWELCOMED.**” When any unwanted, unwelcomed, or unsolicited sexual conduct is imposed on a person, and a reasonable person would find it offensive, it is sexual harassment. Even if the conduct is implicit in nature—hidden in subtlety or innuendo—as long as it is unwelcomed and would be considered offensive to the reasonable person, it is unlawful.

The majority of complaints involve subtle forms of harassment, such as sexual remarks, and offhand comments disguised as social interactions. This type of harassment is generally considered hostile environment sexual harassment. When such conduct interferes with a person’s job performance, or creates an intimidating, offensive or hostile work environment, a claim may be brought. There need not be a tangible loss of employment benefits.

It is important to note that the law was intended to protect individuals from sexual harassment and was not intended as an option for solving every workplace dispute. The conduct must substantially affect the work environment of a “reasonable” person to be considered harassment. Unless the conduct is quite severe, a single incident or remark does not generally create a hostile environment. However, a single touching may be sufficient if it is particularly egregious.

THE “WHAT-IF-THEY-WERE-HERE” PRINCIPLE

If you have any doubts that your own conduct may be considered offensive, ask yourself if you would act in this manner if a person with whom you have a personal relationship (for example, a spouse) were observing.

Unchecked sexual harassment can also have less identifiable consequences on others in the workplace. Harassment problems, which are either ignored or denied by supervisors or management, can erode overall morale and productivity, not to mention expose the organization to possible litigation and embarrassing press.

YOU MAY BE A VICTIM OF SEXUAL HARASSMENT IF

- Your co-worker or supervisor asks you out on a date. Although you refused, the co-worker or supervisor continues to ask.
- Your co-worker starts each day with a sexual remark or a dirty joke. Your co-worker insists these are innocent comments but you find them objectionable.
- It seems that you cannot go in and out of the work area without being touched.
- When you come to work, your co-worker(s) constantly eye(s) you up and down in a suggestive manner, which makes you feel very uncomfortable.
- When you come to work, you receive notes or letters from a co-worker. Although your co-worker insists that they are only innocent love notes, the sexual nature of the notes offends you.
- Your manager or supervisor told you it would be good for your career if you went out with him or her.
- Your manager or supervisor asks you out and implies that it would be good for your career if you went out with him or her.
- In the place where you work, there are nude pictures or partially dressed models displayed and these pictures offend you.
- Your co-worker gives you sexually suggestive looks or makes gestures of a sexual nature.

- You recently had an affair with your manager or supervisor. Today you told your manager or supervisor you wanted to break off your sexual relationship. Now, your manager or supervisor says you may not receive your within-grade increase.
- Your co-worker asked you to have sex with him or her. You refuse. You have now found out that your co-worker is spreading rumors and gossip about you.
- When you are at work, your co-worker and supervisor refer to you as sweetheart, honey, baby or sweet-thing. Although you requested that they refer to you by your name, they ignored your request.
- Your co-worker has made many attempts to kiss you on the lips or cheek. Although you have resisted these advances, your co-worker has continued this conduct towards you.
- While at work, your co-worker frequently massages your shoulders, grabs your waist, and places an arm around you.
- It seems that your co-worker cannot walk near you without having to brush up against you.
- Your co-worker blows kisses at you while passing you in the hall, although you ignored this behavior, your co-worker has continued to do this.
- When you are at work, your co-worker asks you when are you going to spend some time with him/her and suggests that you need a drink after work to relax.

WHAT TO DO IF YOU ARE THE VICTIM OF HARASSMENT, INCLUDING SEXUAL HARASSMENT

- Tell the harasser that the behavior is unwanted, unwelcome, and unsolicited.
- Keep a record of any instances of harassment such as dates, places, times, comments, your responses, and witnesses. Also keep a record of follow-up actions.
- Ask co-workers if they observed the behavior or are aware of similar behavior.
- Tell your manager or supervisor about the incident. If the harasser is your supervisor, inform a higher level supervisor.

- You may also report such behavior to an Equal Employment Opportunity (EEO) Counselor in ORM, a union representative if you are a member of a bargaining unit, the Office of Inspector General, or the local EEO Program Manager. You may also contact the Office of Civil Rights for the Veterans Benefits Administration (VBA) or the Office of Civil Rights for the Veterans Health Administration (VHA).
- Please remember if you want to file a formal complaint of harassment and preserve your legal rights under the EEO process, you must contact an EEO Counselor in ORM within 45 days of the occurrence of the conduct believed to be unlawful harassment. To reach an EEO counselor, you may contact your local ORM servicing office or call 1-888-RES-EEO1 (1-888-737-3361).

THINGS YOU SHOULD KNOW



1. Individuals of any sex, age, race, and marital status on any job can be a victim of unwanted sexual advances or attention.
2. VA may be held responsible, depending on the degree of control it has over a non-employee, for harassment by a non-employee temporarily at your place of work, or for harassment by co-workers if you have informed a supervisor of the incident and the VA facility has failed to take immediate and appropriate action. Employers are responsible for acts of harassment in the workplace where the employer, or its agents or supervisory employees, knows or should have known of the illegal conduct.
3. VA is liable for harassment by a supervisor or manager if the employee has suffered a tangible employment loss or harm. For hostile environment created by a supervisor or manager, the agency may limit its liability by showing a) it took preventive measures and promptly corrected any harassing behavior and b) the victim of the harassment failed to take advantage of preventive or corrective opportunities, such as informing the appropriate agency official or following any of the agency avenues available to address such matters (see above), to report the behavior.

4. Appropriate corrective action will be taken against any employee who engages in such conduct. The effect on the victim will be minimized to the extent possible.
5. Federal law prohibits retaliation (reprisal) against any employee who reports unlawful misconduct. VA officials will take appropriate disciplinary action, up to and including removal, against those who retaliate against any VA employee who cooperates, participates, or testifies in cases involving alleged harassment or discrimination.

OFFICE OF RESOLUTION MANAGEMENT
Telephone Directory

OFFICE OF THE DEPUTY ASSISTANT SECRETARY FOR RESOLUTION MANAGEMENT (08).....	(202) 501-2800
ALTERNATIVE DISPUTE RESOLUTION	(202) 501-2925
OFFICE OF THE CHIEF OPERATING OFFICER	(202) 501-2900
OFFICE OF POLICY AND COMPLIANCE (08B)	(202) 501-2680

FIELD OFFICES

<i>SOUTHEASTERN OPERATION</i>	
BAY PINES FIELD OFFICE (08J).....	(727) 319-1193
<i>GREAT LAKES OPERATION</i>	
CLEVELAND FIELD OFFICE (08I).....	(440) 717-2852
<i>CENTRAL PLAINS OPERATION</i>	
HOUSTON FIELD OFFICE (08N).....	(713) 794-7756
<i>MID-SOUTH OPERATION</i>	
LITTLE ROCK FIELD OFFICE (08F).....	(501) 257-1581
<i>NORTHEASTERN OPERATION</i>	
LYONS FIELD OFFICE (08E).....	(908) 604-5349
<i>WESTERN OPERATION</i>	
VANCOUVER FIELD OFFICE (08L).....	(360) 759-1610
<i>MID-ATLANTIC OPERATION</i>	
WASHINGTON, DC FIELD OFFICE (08D).....	(202) 501-2760