



WASHINGTON, D.C.



FLRA Policy No. 3895

ANTI-HARASSMENT POLICY

Issue Date: 08/24/20

A. GENERAL PROVISIONS

1. **Purpose.** The Federal Labor Relations Authority (FLRA) establishes this policy to ensure that the Agency maintains a workplace free from harassment and takes all necessary steps to address and promptly correct any form of harassing conduct that may occur before it rises to the level of unlawful harassment. This policy serves to supplement, and in no way replace, the Equal Employment Opportunity (EEO) complaint process and other Federal processes. Thus, one or more of these processes may be invoked simultaneously.

2. Statement of Policy.

a. FLRA is committed to maintaining a workplace free from harassment, where all employees are treated with dignity and respect. Harassment of any kind is contrary to the FLRA's values, and undermines employee performance and the efficiency of Government operations. Such behavior is also inconsistent with the merit system principles outlined in the Civil Service Reform Act, 5 U.S.C. § 2302, which make clear that all Federal employees should receive fair and equitable treatment and maintain the highest standards of conduct to promote an efficient and effective workplace.

b. FLRA will promote and maintain a workplace free from harassment, which includes taking clear and immediate steps upon receiving any report of harassing behavior to determine whether any type of remedial intervention, as well as corrective and/or disciplinary actions are warranted, and, if so, to take such actions without delay.

c. FLRA will not tolerate retaliation against any employee for making a good faith report of harassment or for assisting in any inquiry or investigation under these policy and procedures. Complaints of such retaliation will be handled in accordance with the procedures set forth below.

d. This Policy applies to all FLRA employees, contractors, and applicants for employment.

3. Definitions of Harassing Conduct.

a. Harassing conduct prohibited by this policy includes unwelcome verbal or physical conduct - including any type of threatening, demeaning or abusive utterance or action -

based on race, color, religion, sex (including gender identity, sexual orientation, and pregnancy, whether or not of a sexual nature), national origin, age, disability (physical or mental), genetic information, or retaliation (reprisal), even if the conduct has not risen to the level of illegality, where:

i. The behavior can reasonably be considered to adversely affect the employee's work environment; or

ii. An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

b. Isolated incidents of unwelcome conduct need not violate Federal law to be prohibited by this policy. To be unlawful, the conduct must create a work environment considered hostile, intimidating, or offensive to a reasonable person. The broader scope of harassing conduct covered by this policy prohibits harassment associated with any prohibited personnel practice outlined in 5 U.S.C. § 2302 or prohibited by anti-discrimination law protections.

4. **References.**

a. Public Law 88-352, Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000(e)-16);

b. Public Law 93-112, The Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 791 and 794(a));

c. Public Law 93-259, The Equal Pay Act of 1963, as amended (29 U.S.C. § 206(d));

d. Public Law 93-259, Section 15 of the Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. § 633(a));

e. Americans with Disabilities Act of 1990 (42 U.S.C. ch. 126 § 12101)

f. The EEOC Management Directive, MD-715;

g. The Genetic Information Nondiscrimination Act (GINA) of 2008 (42 U.S.C. §§ 2000ff-2000ff-11); and

h. FLRA Policy 3701 – Equal Employment Opportunity

5. **Responsibilities.**

a. All Employees must:

i. Act professionally and responsibly to refrain from engaging in

any type of harassing conduct;

ii. Report promptly - following the procedures set forth below - any incident(s) of harassing conduct that s/he experiences, observes, or otherwise learns about;

iii. Participate in periodic training required by this Policy; and

iv. Cooperate fully with any inquiry or investigation initiated as a result of this policy.

b. Supervisors and other Management Officials must:

i. Attain and maintain the requisite knowledge and training to ensure both their compliance with this policy and their employees' familiarity with this Policy and its requirements;

ii. Act promptly and appropriately to address and correct harassment in the workplace;

iii. Report any incident of harassing conduct they witness, or about which they otherwise become aware;

iv. Receive and handle allegations of harassing conduct promptly and appropriately, utilizing the procedures set forth below;

v. Ensure that all individuals who report harassing conduct or who cooperate during an investigation are protected from retaliation; and

vi. Coordinate with the Anti-Harassment Program Coordinator (the Director, Human Resources Division) to:

(1) Provide interim relief to alleged victims of harassing conduct pending the outcome of an investigation to ensure that further misconduct does not occur; and

(2) Take prompt and appropriate corrective and/or disciplinary action, in coordination with appropriate management officials, against any personnel who, upon proper investigation, are found either to have engaged in harassing conduct or to have failed to carry out their responsibilities under this policy.

c. Anti-Harassment Program Coordinator (AHPC) shall be responsible for:

i. Disseminating this policy and procedures to all employees on a regular (annual) basis and periodically reminding employees of their responsibilities under this policy, particularly the procedures to follow to timely report harassing conduct;

ii. Providing technical assistance and support to Agency managers and supervisors to ensure compliance with this policy, particularly the procedures in place to timely investigate and correct harassing conduct and mitigate the effect on the victim to the maximum extent possible;

iii. Developing and providing periodic training for all employees on this Policy and its procedural requirements, including, as appropriate, additional training for managers and supervisors;

iv. Receiving all allegations of harassing conduct and maintaining a tracking system to monitor inquiries and allegations of harassment;

v. Ensuring that the necessary inquiry and/or investigation into allegations of harassing conduct are prompt, thorough, impartial, and appropriate to the allegation;

vi. Maintaining, in a secure location, a written record of reports made and actions taken pursuant to this policy; and

vii. Assisting managers and supervisors in incorporating into Position Descriptions, where appropriate, performance measures that include compliance with this policy.

d. The Office of the Solicitor shall be responsible for providing legal advice and counsel to Agency managers, supervisors and the Human Resources Division concerning the implementation and interpretation of this policy.

B. PROCEDURES

1. Reporting Harassing Conduct.

a. Any employee who believes that s/he has been subjected to harassing conduct in violation of this policy must report this matter to anyone in the employee's supervisory chain, another supervisor or management official, or the AHPC;

b. Employees who witness or otherwise learn about harassing conduct also are responsible for reporting such behavior. Employees who observe or know of harassing conduct directed at others should report the matter to his or her own supervisor, the supervisor of the harassed employee, any other supervisor or management official, or the AHPC; and

c. All information the Agency receives pursuant to this policy will be maintained on a confidential basis to the greatest extent possible. The maintenance of records and any disclosure of information from these records shall be made in accordance with the Privacy Act, 5 U.S.C. § 552a. Such information, however, may be necessary to disclose in order to defend the FLRA in any litigation to which the information may be deemed relevant.

Furthermore, information also may need to be disclosed to those officials and employees in the Agency with a reasonable need to know in order to carry out the purpose and intent of this Policy and/or their job responsibilities.

2. Agency Response.

a. Preliminary Inquiries into Allegations of Harassing Conduct. A supervisor or manager who witnesses or otherwise becomes aware of an allegation or occurrence of harassing conduct shall immediately:

i. Inform the AHPC and obtain guidance about the next steps the manager or supervisor must take under this policy, including the following:

(1) In consultation with the AHPC, document the details of the allegation of harassment received;

(2) In consultation with the AHPC, take immediate necessary action to stop any harassing conduct and prevent further harassment while the allegations are being investigated, including granting appropriate interim relief to the alleged victim of harassing conduct and documenting all such steps and actions taken;

(3) In consultation with the AHPC, determine the extent which the alleged misconduct should be investigated (including the persons who must be interviewed and the critical facts that must be established); and

(4) In consultation with the AHPC, prepare, promptly upon the completion of the inquiry or investigation, a written summary of the investigation. The summary may be brief, depending upon the complexity and seriousness of the case. The summary shall then be submitted to both the AHPC and the supervisor who would be responsible for taking corrective and/or disciplinary action against the alleged harasser, if the allegations are determined to be well-founded.

b. Ensuring a Proper Investigation. Within ten (10) days of receiving notice of an allegation of harassing conduct (a “complaint”), the AHPC will begin an investigation of the complaint and shall:

i. Ensure that a prompt, thorough, impartial and appropriate inquiry is conducted; and

ii. Recommend appropriate action to stop any harassing conduct and prevent further harassment, including granting appropriate interim relief to the alleged victim while the allegations are being investigated.

c. Timeliness Requirements.

i. A supervisor or manager who becomes aware of allegedly

harassing conduct must take prompt appropriate action even if an employee requests that no action be taken.

ii. A supervisor or manager who becomes aware of allegedly harassing conduct involving employees outside of his/her chain of command must, as soon as practicable, notify the appropriate management officials within such employee's chain of command of the allegation.

iii. Supervisors and managers who become aware of harassing conduct within their own chain of command must, as soon as practicable upon learning of such allegation, notify the AHPC. This notification must include a description of initial steps taken in response to the conduct and, as appropriate and necessary, a plan of action to address the potential ongoing harm resulting from such conduct.

iv. Supervisors and managers whose subordinate has been allegedly subjected to harassing conduct shall immediately begin and promptly conclude a preliminary inquiry to determine the necessary facts, in consultation with the AHPC, and immediately take any other necessary and appropriate action warranted to effectively stop the harassing conduct and otherwise shield the alleged victim from any such further conduct.

3. **Alternate of Supplemental Investigative Procedures.**

a. Deciding whether alternate or further investigation is necessary. The AHPC has the discretion to decide whether further investigation is required, or if the preliminary inquiry is sufficient to determine whether corrective action is necessary. These decisions are fact specific, and must be made on a case- by-case basis.

b. Deciding how investigations will be carried out. When the AHPC determines that further investigation is necessary:

i. The AHPC shall determine who will direct further investigations. Investigators may include management officials outside the chain of supervision in which the alleged harassing conduct occurred, as s/he deems necessary and appropriate.

ii. All investigations shall be conducted promptly, thoroughly, impartially, and in a manner appropriate to the allegation.

4. **Resolving Conflicts of Interest Issues.** If a senior-level manager is implicated in the alleged harassing conduct, the AHPC shall be responsible for conducting the preliminary inquiry and directing any further investigation that is warranted, as well as taking any warranted corrective action in the interim period when the investigation is ongoing. Should the investigation result in a finding that disciplinary action against a senior management official is warranted, the AHPC shall designate the next most senior manager outside the implicated chain of supervision to undertake the necessary disciplinary process.

5. Corrective Action.

a. Within 60 days of receiving a complaint of harassment, the agency will determine if corrective action is necessary, and if necessary, take corrective action. If the investigation results in a finding that harassing conduct occurred, the investigating manager will act promptly to stop the harassing conduct and ensure that further harassment does not occur.

i. To determine the appropriate corrective action, the manager or supervisor whose immediate subordinate is implicated in the report shall promptly consult with the AHPC to determine and undertake the appropriate disciplinary action. Such action will depend upon various factors: the severity and/or pervasiveness of the offense, the response required to end such conduct, the offender's disciplinary history, and the individual circumstances surrounding the offense.

ii. Possible corrective actions may include, but are not limited to:

(1) Counseling. The appropriate management official shall meet with the responsible individual(s), explaining why the specific conduct was inappropriate, and instructing the individual(s) that the harassment may not continue, and any further misconduct may result in more severe formal discipline, up to and including removal;

(2) Training. The appropriate management official shall require the individual(s) to attend specific training on what harassing conduct is, and what workplace conduct is appropriate and permissible; and

(3) Reprimand, Suspension, or Other Disciplinary Action As Warranted. The appropriate management official has the discretion, as warranted by the investigative findings, to impose any type of disciplinary action otherwise available for violations of workplace conduct standards, such as suspension, demotion, or termination.

6. Maintaining Confidentiality, Keeping Records, and Monitoring Compliance.

a. Maintaining Confidentiality. All reports of harassment and related information will be maintained by the Agency on a confidential basis to the greatest extent possible. Disclosures about allegations of harassment, including the identity of the employee alleging violations of this policy shall be kept confidential, except as necessary to conduct an appropriate investigation into the alleged violations, take appropriate action, and/or as otherwise necessary when required by law. Pursuant to EEOC Regulations, FLRA EEO Counselors will inform the AHPC of all counseling activity alleging harassment.

b. Writing Reports and Maintaining Records. A brief written report must be made to the AHPC delineating the findings and the final resolution of each allegation of harassing conduct under this Policy.

i. These written reports must identify the individuals implicated, the specifics of the conduct involved, and the corrective action taken, if any. These records must sufficiently inform the AHPC should s/he need to determine how to address any further incidents;

ii. If requested by the AHPC, written reports may also include a detailed description of the inquiry or investigation, an explanation of any conclusions reached the reasoning for any corrective actions issued, and/or any documents or other tangible evidence obtained during or created as a result of the inquiry or investigation. The length of the report may vary depending upon the complexity and seriousness of the case;

iii. The obligation to keep the FLRA and EEOC informed of his or her current address; and

iv. The AHPC shall maintain the written reports in a secure location. These written reports are protected by the Privacy Act, and will be maintained in accordance with its requirements and exceptions.

C. PARALLEL EEO OR OTHER CLAIMS

1. The procedures set forth in this Policy are separate and distinct from the EEO complaint process, and other Federal processes, which may take place simultaneously. The EEO process is designed to make individuals whole from any injury suffered as a result of discrimination or retaliation for engaging in EEO activity. The intent of the anti-harassment program is to take immediate and appropriate corrective action to eliminate harassing conduct regardless of whether the conduct violates the law.

2. Any employee wishing to raise a harassment complaint through the EEO process pursuant to 29 C.F.R. § 1614 must contact an Agency EEO Counselor **within 45 calendar days** of the alleged harassment.

3. Reporting an allegation of harassment under this Policy does **not** satisfy the EEO requirements for contacting an EEO Counselor and does not suspend the time limits for initiating that contact. Reporting an allegation of harassment under this policy also does not satisfy any requirements for reporting a prohibited personnel practice and does not suspend the time limits for initiating that contact.

4. Employees may pursue a parallel claim of harassment under other Federal anti-discrimination laws while following the procedures of this Policy. Any employee wishing to pursue such parallel claims should do so as soon as possible after the alleged harassment and should not wait for the completion of internal procedures.

5. If an Agency management official receives notice that an employee is pursuing a claim of harassment through the EEO complaint process, or any other Federal process, the official shall treat it as a report under Sections B and C of this policy, unless inconsistent with

applicable regulatory or statutory requirements.

6. The AHPC shall provide the record of actions taken under this Policy to the EEO Director, or any other Agency official handling a parallel claim as appropriate and warranted. However, the EEO Director will not be involved in the day-to-day functions of the Anti-Harassment Program so as to prevent conflicts of interest.

D. **CONSULTATION OPTION.** Employees who have experienced harassing conduct may also receive assistance and advice via the Employee Assistance Program (EAP). The FLRA EAP is an employee benefit program that helps employees with personal and/or work-related problems that may impact their job performance, health, and mental and emotional well-being. Employees may contact EAP at: 1-800-869-0276, or visit the website at www.foh4you.com/. Engaging in the EAP does not constitute a report under this Policy, as this entity does not have an obligation to inform management of allegations of harassing conduct.

This policy is effective on August 24, 2020.

A handwritten signature in black ink, appearing to read "M. Jeffries", is positioned above the printed name.

Michael Jeffries
Executive Director