U.S. Merit Systems Protection Board

ANTI-HARASSMENT POLICY AND PROCEDURES

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MSPB Anti-Harassment Policy and Procedures

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1. PURPOSE

Harassment is a form of discrimination that violates Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008; the Genetic Information Non-Discrimination Act of 2008; and Executive Order 11478, Equal Employment Opportunity in the Federal Government, as amended by Executive Order 13087 of May 1998.

The Merit System Protection Board's (MSPB) anti-harassment policy and related procedures are designed to assist the agency in preventing potentially harassing conduct *before* it becomes severe or pervasive within the meaning of anti-discrimination laws. It requires the agency to conduct a prompt, thorough, and impartial inquiry into allegations of harassment and to take immediate and appropriate corrective action when it determines that harassment has occurred. This policy and the related procedures are distinct from the Equal Employment Opportunity Program and process, which focus on providing remedial relief.

This policy and set of procedures replaces the Sexual Harassment Policy and Procedures issued in January 2007.

2. AUTHORITIES

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §2000e-16; the Age Discrimination in Employment Act, 29 U.S.C. §633a; Rehabilitation Act, 29 U.S.C. § 791(g); Civil Service Reform Act, 5 U.S.C. §2302(b) (10); Executive Order 11478, as amended May 28, 1998; Equal Employment Opportunity Commission (EEOC) Enforcement Guidance 915.002 on Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999) and EEOC Management Directive 715, "Federal Responsibilities Under Section 717 of Title VII and Section 501 of the Rehabilitation Act" (October 1, 2003).

3. MSPB POLICY

It is the policy of MSPB to maintain a workplace free from harassment and other forms of discrimination based on race, color, religion, sex (including pregnancy and gender identity), sexual orientation, national origin, age (40 years of age and over), disability (physical and/or mental), family medical history, and genetic information. The agency, therefore, will not tolerate harassment or any other form of unlawful discrimination. Retaliation against any employee[1] for reporting such matters or for assisting in any inquiry about such a report is also prohibited.

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[1] MPSB anti-harassment policy and procedures only covers Federal civil servants. MSPB does not have the authority to address contractor on contractor issues pertaining to harassment, however, it is expected that all contractors conducting work on MSPB premises will refrain from engaging in harassing conduct. For allegations of harassment involving a contractor employee, MSPB supervisors should immediately contact the appropriate Contracting Officer.

4. DEFINITION

Unlawful harassment, as addressed in this policy[2], includes intimidation, ridicule, insult, comments or physical conduct based on race, color, religion, sex (whether or not of a sexual nature), sexual orientation, national origin, age (40 years of age and over), disability (physical and/or mental), family medical history, genetic information and retaliation for raising an issue relating to these protected bases where:

a) an employee's acceptance or rejection of such conduct explicitly or implicitly forms the basis for an employment decision affecting the employee; or

b) the conduct is sufficiently severe or pervasive as to alter the terms, conditions or privileges of the employee's employment, or otherwise create a hostile work environment. This type of harassment typically does not involve discrete personnel actions such as denial of promotion.

The conduct covered by this policy includes hostile conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, or retaliation for raising an issue related to the protected bases, even if the conduct has not risen to the level of illegality. This is because the goal of this order is to avoid, or at least limit, harm to any employee subjected to unwelcome hostile conduct based on a protected characteristic by ensuring that appropriate officials are notified of and have the opportunity to promptly correct such conduct before it becomes so severe or pervasive as to violate the law, or as soon as possible thereafter.

5. RESPONSIBILITIES

A. The Office of Equal Employment Opportunity (OEEO) is responsible for:

1. Developing and providing periodic training for all employees on this policy and procedures and its requirements.

2. Distributing this policy and procedures to all employees on a periodic basis, posting the policy on the MSPB and EEO portal, and reminding all employees of their responsibilities.

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[2] MPSB's anti-harassment policy and procedures are not intended to establish a general civility code for the agency. Therefore, petty slights or minor annoyances are not covered. In addition, harassment covered under MSPB Policy is limited to the definition and protected categories, such as race and gender, provided above and as outlined in anti-discrimination laws and Executive Orders 11478, 12106 and 13087. If the alleged conduct reported by an employee does not meet the definition of harassment under this policy, there are a number of other options the employee may wish to explore to address the concerns. The Office of Equal Employment Opportunity can provide additional information regarding those options.

3. Providing oversight and technical assistance and support to assure compliance with this policy. This includes providing guidance to Office Directors and the Executive Director (ED) on how to provide relief to individuals alleging harassing conduct pending the outcome of a management inquiry.

4. Administering the Equal Employment Opportunity (EEO) Program, including the processing of EEO complaints.

5. Monitoring these procedures and ensuring that they are implemented properly.

B. The Director of Human Resources (HR), is responsible for:

1. Assisting MSPB supervisors and managers to comply with the agency's anti-harassment policy and procedures.

2. Assisting managers and supervisors to identify the most appropriate performance measure in employee plans where compliance with this policy and procedures can be evaluated.

3. Ensuring that performance plans of all supervisors and managers have a performance measure relating to compliance with this policy and procedures.

4. Ensuring that all new employees receive a copy of this policy and procedures.

5. Maintaining all harassment inquiry-related records and files in a secure location.

C. Labor and Employment Counsel (LEC), Office of General Counsel, is responsible for:

1. Providing legal advice and services to all MSPB components on the prevention of harassment.

2. Advising managers and supervisors on appropriate actions and penalties for misconduct in the workplace.

3. Collaborating with OEEO to guide supervisors and managers on options for relief available to individuals alleging harassment pending the outcome of a management inquiry.

4. Collaborating with OEEO on the periodic education and training of managers and supervisors on the agency's anti-harassment policy and procedures.

D. All MSPB Employees are expected to:

1. Understand their rights and responsibilities under this policy and procedures.

2. Participate in periodic anti-harassment training.

3. Refrain from engaging in harassing conduct.

4. Report harassing conduct by employees or others in the workplace.

5. If subjected to harassing conduct, inform the supervisor of the offending employee, or any of the following individuals: her/his supervisor or another supervisor in the work unit, the Office Director, HR Director, or EEO Director.

6. Fully cooperate in any inquiry or investigation.

E. Supervisors and Managers must:

1. Ensure that the workplace is free of harassment.

2. Ensure that their subordinates are aware of this policy and procedures and their requirements and evaluate them on their compliance.

3. Take immediate, appropriate steps to mitigate any alleged harassment of which they are aware.

4. Upon receiving an allegation of harassment involving an employee s/he supervises, immediately initiate an inquiry into the matter, and upon the inquiry's conclusion, notify the Office Director, OGC, the HR Director, and the EEO Director about the outcome and provide a written description of any effort to resolve the matter. Upon receiving an allegation of harassment, a manager and supervisor should also consult immediately with OGC. However, they should not wait more than one day for a response before initiating the inquiry.

5. Monitor the work environment following a report alleging a violation of this policy and procedures to ensure that there are no further violations or incidents of retaliation against any individual who has reported harassment or participated in the inquiry.

6. PROCEDURES

A. Reporting Harassment. The procedures for reporting allegations of harassment are as follows:

1. Any employee who has been subjected to unwelcome hostile or harassing conduct is encouraged to inform the person(s) responsible for the conduct that it is unwelcome and offensive and to request that it stop. If the conduct continues, or if the employee feels uncomfortable confronting the responsible person(s) about the conduct, s/he should report the matter to the first-line supervisor of the offending employee or another supervisor or manager. If an affected person feels uncomfortable going to a supervisor or manager, the individual also has the option of reporting the matter directly to the Office Director, HR Director, or the EEO Director.

2. These procedures do not affect rights under the EEO complaint process. An MSPB employee, at any time, has access to an EEO Counselor. An employee who reports allegations of harassment in accordance with MSPB's anti-harassment procedures *has not* filed an EEO complaint. An employee who wishes to file a discrimination complaint should contact OEEO to request EEO counseling within 45 days of the alleged harassing conduct. An employee may pursue both avenues of redress simultaneously. If the employee initiates EEO Counseling, the EEO Counselor will assist management and the employee to resolve the allegations, but is not authorized to conduct inquiries into employee misconduct. The EEO Counselor, with the consent of the employee, may extend the informal EEO counseling process for an additional 30 days until completion of the process established under this policy and procedures.

3. On those occasions when management officials are not aware of an allegation of prohibited harassment until approached by an EEO Counselor, the management official must immediately inform the appropriate Office Director, who should initiate these procedures.

4. When an employee files a formal EEO complaint regarding prohibited harassment, a copy of any inquiry will be forwarded to OEEO by the manager/supervisor/Office Director who conducted the inquiry for inclusion in the Report of Investigation (ROI).

5. Employees who know of hostile or abusive conduct directed at others are encouraged to report the matter to the supervisor of the offending employee, her/his supervisor or another supervisor in the work unit, the Office Director, the HR Director, or EEO Director.

6. To the extent possible, MSPB will protect the confidentiality of employees who report harassment. However, the agency cannot guarantee complete

confidentiality because it cannot conduct an effective inquiry without revealing certain information to the alleged harasser and potential witnesses. MSPB is committed to ensuring that allegations of harassment are shared only with those who have a need to know.

7. Employees who make reports of prohibited harassment or provide information related to such reports will be protected from retaliation for raising the issue.

B. Conducting Fact-Finding Inquiries into Allegations of Harassment.

1. The fact-finding inquiry will be completed expeditiously and impartially. Within one (1) business day of receipt of allegations of harassment, the supervisor or manager should initiate an inquiry into the matter. If the matter involves the Office Director, then the supervisor or manager should raise the matter to the HR Director, OGC, or the EEO Director, who will inform the ED. The ED, in consultation with these three offices, will determine the most appropriate party to conduct the inquiry.

2. When an allegation is received by the HR Director or the EEO Director, they will acknowledge receipt of the allegation in writing, and will notify management in the office implicated in the allegation. Office management will be required to conduct the inquiry and to take any other necessary and appropriate action as outlined in this section of the procedures.

3. The supervisor or the individual conducting the inquiry should identify, in writing:

    a. What conduct is at issue and whether it could be considered hostile or abusive;

    b. The parties involved;

    c. Whether any immediate action is required to insulate the alleged victim from further hostile or abusive conduct; and

    d. What action is necessary and appropriate to otherwise address the allegation(s).

4. The inquiry should result in a record sufficient to support any corrective and/or disciplinary action taken or to indicate that there is not sufficient evidence to support corrective and/or disciplinary action.

5. When the allegations concern the employee's direct or first-line supervisor or a coworker in the unit, consideration should be given to taking immediate measures before completing the inquiry to ensure that the

opportunity for additional actual or perceived harassment does not occur. Examples of such measures are:

a. Making schedule changes to avoid contact between the parties and using all available tools to separate the parties, including a temporary detail of the supervisor or coworker, expanded telework, placing the supervisor or coworker on non-disciplinary leave with pay pending the conclusion of the inquiry; or

b. Arranging for the employee to report to an alternative supervisor or manager while the inquiry is being conducted, if the employee agrees that this should be done. Such an offer to the employee should be made only after consultation with OGC.

6. *Prior to completion*, the individual conducting the inquiry will consult with the LEC in OGC to ensure that the inquiry and resulting documentation are legally sufficient. The individual conducting the inquiry is encouraged to consult with the LEC *early* for advice on how to complete the inquiry. Upon completion, the conclusions will be communicated to the employee who was the subject of the alleged harassment.

7. If the parties involved in the allegations are members of the Professional Association (PA), the supervisor or manager conducting the inquiry should coordinate with OGC to ensure all labor relations obligations are met in conducting the inquiry.

8. When the supervisor/individual conducting the inquiry determines from the inquiry that no harassing conduct has occurred and no disciplinary action will be required, s/he must first notify OGC, the HR Director, and the EEO Director and provide them with a written summary of the inquiry before notifying the employee who was the subject of the alleged harassment. If an inquiry is closed in this manner, the written summary and any supporting documents will be provided to and maintained by the HR Director. If it is determined that additional fact-finding is warranted, the LEC and/or the EEO Director will respond to indicate what additional information is necessary in order to complete the inquiry and/or to determine whether remedial action is warranted. If the inquiry reveals that harassing conduct occurred, but that it was not related to a basis covered in this policy, management has discretion to act to correct such harassing conduct and take appropriate corrective action against the offender[3].

9. When an inquiry results in a finding that harassment has occurred, corrective action, including efforts to stop ongoing harassment and the

[3] This is consistent with management's general authority to initiate corrective action in response to misconduct.

initiation of disciplinary or adverse action procedures, if appropriate should be immediately taken, in consultation with the EEO Director, the HR Director and the LEC in OGC.

10. When an allegation is received by the HR Director or the EEO Director, they will acknowledge receipt of the allegation in writing, and will notify management in the office implicated in the allegation. Office management will be required to conduct the inquiry and to take any other necessary and appropriate action as outlined in this section of the procedures.

11. Appropriate corrective action, disciplinary or otherwise, up to and including removal, will be taken against any employee who violates this policy, and any supervisor or other management official who fails to perform her/his obligations, including any failure to report known violations of this policy and related procedures.

7. DISTRIBUTION

A copy of this policy shall be made available to all MSPB employees. New MSPB employees will be provided a written summary of this policy as part of the New Employee Orientation. In accordance with 29 C.F.R. § 1614.102(b)(5), this policy will be prominently posted in all designated areas in the workplace, including in each regional and field office and at headquarters.

This policy will also be posted on the EEO portal, the MSPB Portal, and the MSPB public website to provide guidance to MSPB employees and applicants for employment.

8. EFFECTIVE DATE AND IMPLEMENTATION

This policy is effective immediately upon signature.

Susan Tsui Grundmann, Chairman

03·27·2014
Date