

U.S. Merit Systems Protection Board



SEXUAL HARASSMENT POLICY AND PROCEDURES

Sexual Harassment Policy

TABLE OF CONTENTS

Section	Page
1. Purpose.....	1
2. Scope	1
3. Authorities.....	1
4. Definitions.....	1
5. Responsibilities	3
A. Equal Employment Opportunity Division (EEOC).....	3
B. Human Resources Director (HRD)	3
C. Office of General Counsel	4
6. Policies and Procedures	4
A. Relationships in the Workplace	4
B. Reporting Sexual Harassment.....	4
C. Conducting Fact-Finding Inquiries into Allegations of Sexual Harassment	5
D. Responsibilities and Obligations	5
7. Distribution	7
8. Effective Date and Implementation	7
 Attachment	
Attachment 1 – Changes History	8

1. PURPOSE

This policy provides guidance to promote prompt reporting of sexual harassment allegations and to ensure that appropriate corrective action is taken regarding allegations of sexual harassment that are brought to the attention of management. This policy replaces MSPB Directive 1600.1, Sexual Harassment Policy, issued April 15, 2002.

2. SCOPE

This policy applies to all MSPB employees, contractors and applicants for employment.

3. AUTHORITIES

- A. 42 U.S.C. 2000e2 (a)
- B. 29 C.F.R. 1604.11: Sexual Harassment.
- C. EEOC Notice No. 915.002: Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors (June 18, 1999).
- D. E. O. 13152, 3 C.F.R. 264 (2001), amending E.O. 11478, Equal Employment Opportunity in Federal Government, 3 C.F.R. 803 (1966-1980).
- E. EEOC Notice No. N-915-050: Guidance on Defining Sexual Harassment and Establishing Employer Liability (March 19, 1990).

4. DEFINITIONS

- A. **Alternative Dispute Resolution (ADR)**. A dispute resolution mechanism outside the traditional adjudicative process used to resolve workplace and other legal conflicts.
The OEEO may assist an individual who wishes to participate in ADR.
- B. **Definition of Sexual Harassment**. Sexual harassment is unwanted or unwelcome conduct that can be verbal or nonverbal and may consist of sexual advances, requests for sexual favors or physical conduct of a sexual nature.
 - (1) **Quid Pro Quo (“This for That”)**. Submission to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature made, either explicitly or implicitly, a term or condition of employment or is used as the basis for employment decisions affecting individual. Terms and conditions of employment include, but are not limited to, hiring, promotion, demotion and increases in salary.
 - (2) **Hostile Environment**. Unwelcome sexual advances, requests for sexual favors, or any verbal, physical or other conduct that creates an intimidating, offensive or hostile environment that unreasonably interferes with an employee’s performance or the terms and conditions of his or her employment.

C. **Day**. Calendar day, unless otherwise specified.

D. **General Principles**.

- (1) The affected person, as well as the harasser, may be a woman or a man. Same sex harassment is prohibited conduct.
- (2) The affected person can be anyone who is subject to offensive conduct, including a contractor, appellant, appellant's representative, agency representative and MSPB customer.
- (3) The harasser can be a MSPB employee, contractor, appellant, appellant's representative, agency representative or customer.
- (4) The conduct can occur outside the workplace but may still be prohibited if work-related.
- (5) Unlawful sexual harassment may occur without economic injury to or discharge of the affected person.
- (6) If the conduct is unwelcome or unwanted, it may be harassment even if the affected person does not resist, as long as the affected person submits or participates against his or her will.
- (7) The determination as to whether sexual harassment has occurred includes considering the frequency and severity of the inappropriate conduct. Generally, sexual harassment is not based on a single, non-egregious incident. However, certain behavior can be so severe that a single incident may constitute sexual harassment. For example, Commerce Clearing House (CCH) EEOC Decisions (1983) ¶ 6834 (violation found where the harasser forcibly grabbed and kissed charging party while they were alone in a storeroom).
- (8) Conduct that a reasonable person would find offensive, even if not of a severity or frequency to constitute sexual harassment, may result in disciplinary action against those engaging in the conduct.
- (9) Once aware of an incident or alleged incident, management must take immediate, appropriate and effective corrective action. However, managers and supervisors should discuss the matter only with those with a need to know and in a confidential manner.
- (10) When filing a complaint of discrimination with the Office of Equal Employment Opportunity, an affected person may request confidentiality.

E. **Examples of Inappropriate Conduct.**

(1) Verbal Conduct:

- (a) Sexual jokes or suggestive verbal communication.
- (b) Unwelcome telephone calls of a sexual nature.
- (c) Degrading or demeaning remarks of a sexual nature.
- (d) Using threats of punishment to attempt to force sexual activity or other sexual conduct.
- (e) Sexual propositions that, either overtly or by implication, promise rewards.
- (f) Whistling or calling out to someone in a sexual way.

(2) Nonverbal Conduct:

- (a) Distribution or display of materials of a sexual nature, this includes but is not limited to posters, calendars, screen savers or similar items.
- (b) Suggestive body language such as ogling, staring, leering, lewd licking of lips, or suggestive touching of oneself.
- (c) Unwelcome letters, notes or e-mails of a sexual nature.
- (d) Unwelcome and deliberate touching such as patting, stroking and rubbing.

5. RESPONSIBILITIES

- A. **Equal Employment Opportunity Division (EEOD).** Responsible for administering MSPB's Equal Employment Program, including processing EEO complaints of discrimination by MSPB employees, applicants for employment or former employees, when those individuals believe they have been discriminated against, harassed or retaliated against in violation of EEO laws, regulations and Executive Orders. The EEOD provides guidance, training and assistance to employees, supervisors and managers on the identification, prevention and elimination of sexual harassment in the workplace.
- B. **Human Resources Director (HRD).** Responsible for providing advice and guidance to employees and managers on human resources issues and prohibited personnel practices associated with OPM anti-discrimination policies. Additionally, HRD provides guidance to managers on management

responsibilities when an issue of sexual harassment has been alleged or disclosed.¹

- C. **Office of General Counsel (OGC)**. Responsible for providing legal advice and services to all MSPB components in a broad range of legal practice areas, including the prevention of sexual harassment.

6. POLICIES AND PROCEDURES

- A. **Relationships in the Workplace**. A voluntary, consensual sexual or romantic relationship between individuals who have a direct supervisory relationship is generally not considered to be sexual harassment. However, such relationships are inappropriate and may violate the Standards of Ethical Conduct for Employees in the Executive Branch. If such a personal relationship begins to develop, the parties involved must take action to end their supervisory-subordinate relationship. As soon as management becomes aware of such a personal relationship, it must terminate the supervisory-subordinate relationship of these individuals.
- B. **Reporting Sexual Harassment**. The responsibilities and procedures for reporting allegations of sexual harassment are as follows:
- (1) An affected person is encouraged to report any instance of sexual harassment to his or her first-line supervisor 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 to the EEOD, HRD or OGC.
 - (2) While an affected person is encouraged to report the matter under section B (1) so that appropriate action can be taken, he or she is not required to report the matter. The individual may file a complaint of discrimination as an alternative to, or in addition to, reporting the matter under B (1). If the individual elects to file a complaint of discrimination, he or she must do so by contacting the EEOD within **45 calendar days** of the alleged harassment.
 - (3) Within three (3) working days of becoming aware of any occurrence or allegation(s) of sexual harassment, a manager or supervisor must inform the Human Resources Director, regardless of whether any other notification has been made and even if the affected person communicates his or her desire not to have the matter reported.

¹ Inquiries conducted by management under this policy do not constitute initiation of the EEO complaint procedure pursuant to Title 29 Code of Federal Regulation part 1614.

C. Conducting Fact-Finding Inquiries into Allegations of Sexual Harassment.

(1) **Allegations Against Directors and Senior Executive Service (SES) Officials.**

The Human Resources Director will immediately inform the Chief of Staff of any allegation(s) of sexual harassment involving any MSPB Director or SES Official.

The Chief of Staff may conduct his or her internal investigation where the circumstances warrant or may refer the matter to the Office of Equal Employment Opportunity.

(2) **Allegations Against Other Persons.** HRD will arrange for an independent fact-finding inquiry or take other appropriate action regarding allegations against persons other than those specified in C (1) above.

(3) The fact-finding described herein does not, and is not intended to, supplement the inquiry that may occur if the individual initiates the EEO discrimination complaint process with the EEOD.

D. Responsibilities and Obligations. All employees (including contractor employees)

have specific responsibilities for creating and maintaining an environment free of sexual harassment.

(1) **Managers and Supervisors.** In addition to being responsible for ensuring that the workplace is free from sexual harassment, managers and supervisors must:

- (a) Take immediate, appropriate steps to mitigate the alleged harassment. This may include separating the alleged harasser from the affected person. This should be done in consultation with HRD and OGC.
- (b) Within three (3) working days of becoming aware of the allegation(s), notify HRD.
- (c) Inform the alleged harasser that an allegation has been made because of his or her conduct and describe the nature of the conduct.
- (d) Inform the alleged harasser that if he or she has committed the alleged offending conduct, or anything that could be mistaken for it, that conduct should cease immediately.

- (e) Inform the alleged harasser who is a decision-maker or has a supervisory relationship with the affected person, that any future interactions with the affected person must not constitute either retaliation or any other act of unlawful discrimination.
- (f) Take other action, if necessary, to ensure that any individual who informs management of alleged harassment or files a complaint with the OEEEO is not retaliated against, coerced or intimidated in any way.
- (g) Assist MSPB management and other appropriate authorities, as may be necessary, in obtaining information, making necessary inquiries, and making efforts to resolve informal complaints regarding sexual harassment.
- (h) Periodically inform their employees that sexual harassment is prohibited conduct that will not be tolerated and that disciplinary action, up to and including removal, will be taken against any person found to have engaged in sexual harassment.

(2) **Employees.** Each employee must:

- (a) Ensure that his or her conduct is not sexually offensive to other employees, contractors, job applicants or the public.
- (b) Cooperate with inquiries into complaints of alleged sexual harassment by providing information in the employee's possession.
- (c) Notify his or her immediate supervisor or higher-level management officials upon becoming aware of any conduct or action that appears to constitute sexual harassment.
- (d) Not engage in any intimidating or demeaning conduct against an affected person.

(3) **Affected Person.** Any individual who believes he or she is affected by an unlawful act of sexual harassment should do the following:

- (a) Inform the alleged harasser that the conduct is unwelcome and that it should cease immediately.
- (b) An affected person may report alleged harassment with or without either
 - 1) requesting that the alleged harasser cease the conduct, or 2) notifying the alleged harasser that a report will be made.

- (c) Document the circumstances surrounding the alleged sexual harassment, including the substance of any conversation with the alleged harasser or anyone else regarding the matter.

 - (d) If the offending conduct continues after informing the alleged harasser or
if the affected person chooses not to confront the alleged harasser, the affected person should immediately report the matter to a supervisor, manager, the HRD or the EEOD.
- (4) **Alleged Harasser**. After the alleged harasser is advised that his or her conduct or actions are perceived as being hostile, offensive or unwanted, the individual has an obligation and responsibility to:
- (a) Ensure that the conduct complained of ceases immediately and that his or her future conduct or actions do not constitute and would not reasonably be perceived as sexual harassment;
 - (b) Refrain from engaging in **any** retaliatory conduct; and,
 - (c) Cooperate with any fact-finding inquiry into the alleged misconduct.

7. DISTRIBUTION

A copy of this policy shall be made available to all MSPB employees. All new MSPB employees will be provided a written summary of this policy as part of the new employee orientation process. In accordance with 29 C.F.R. § 1614.102(b) (5), this policy will be prominently posted in all Personnel and EEO Offices throughout designated areas in the workplace. Regional and field offices will designate an area solely for EEO purpose to post policies, publicize the names, business telephone numbers and business addresses of EEO Counselors, post a notice of the time limits and necessity for contacting a Counselor before filing a complaint, and the telephone number and address of the EEO Director. Additionally, this policy will be posted on MSPB Intranet to provide guidance to MSPB employees, and on the internet to provide guidance to applicants for employment with MSPB.

8. EFFECTIVE DATE AND IMPLEMENTATION

This policy is effective immediately upon signature.

Neil A. G. McPhie, Chairman

Date

Attachments

ATTACHMENT 1

Changes

January 2007

Issuance of New Policy