

U.S. Merit Systems Protection Board



ANTI-HARASSMENT POLICY AND PROCEDURES

December 1, 2023

Anti-Harassment Policy and Procedures

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1. PURPOSE AND BACKGROUND

This document implements anti-harassment policy requirements described in the Equal Employment Opportunity Commission’s (EEOC) Management Directive (MD) 715, requiring agencies to establish effective anti-harassment programs.¹ The EEOC issued sections II (A) and (C) of MD-715, requiring model EEO programs to promulgate written procedures for addressing harassment in the workplace. The legal authority for this requirement was 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).

It is the U.S. Merit Systems Protection Board’s (MSPB) policy that its worksites shall be free from harassment, including sexual harassment and sexual misconduct. MSPB will not tolerate harassment and other forms of discrimination based on race, national origin or ethnicity, color, religion, sex (including pregnancy, sexual orientation, and gender identity or expression), age (40 years of age and over), disability, genetic information (including family medical history), or reprisal for protected activity. Retaliation against any employee for reporting such matters, including sexual harassment or sexual misconduct, or for assisting in any inquiry about such a report, is strictly prohibited. Agency employees are expected to maintain the highest standards of conduct to ensure proper performance of duties and uphold model workplace principles.

The goal of this policy is to promote a workplace that is free from harassment; address any 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, before such behaviors become widespread, common, or repeated throughout the agency.

This policy supersedes the previous MSPB Anti-Harassment Policy and Procedures dated June 6, 2022.

2. SCOPE

This policy applies to employees, applicants, contractors, interns, and visitors to MSPB offices.²

3. AUTHORITIES

- A. [Equal Employment Opportunity Management Directive 715](#) (2003).
- B. [Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors](#) (1999).

¹ For detailed information about the Commission’s requirements, see EEOC’s Federal sector online resource: [Model EEO Programs Must Have An Effective Anti-Harassment Program](#).

² Only employees may request a full inquiry under these procedures. However, contractors, interns, and visitors to MSPB worksites may report harassment by an MSPB employee, and such conduct will be addressed by select mechanisms in this procedure; furthermore, non-employees in MSPB worksites are required to adhere to high standards of conduct in their interactions with MSPB employees.

- C. [Title VII of the Civil Rights Act of 1964](#), as amended.
- D. [The Rehabilitation Act of 1973 \(29 U.S.C. Section 791\)](#), as amended.
- E. [Americans with Disabilities Act Amendments Act of 2008](#).
- F. [Age Discrimination in Employment Act of 1967](#).
- G. [EEOC Regulations To Implement the Equal Employment Provisions of the Americans With Disabilities Act Amendments Act, as Amended](#) (2011).
- H. [Title I of the Americans with Disabilities Act of 1990 \(ADA\)](#).
- I. [Genetic Information Nondiscrimination Act of 2008](#).
- J. [Executive Order 13672](#) (2014).

4. DEFINITION

Harassment, in the context of this policy, is a form of employment discrimination that includes unwelcome conduct based on race, national origin or ethnicity, color, religion, sex (including pregnancy, sexual orientation, and gender identity or expression), age (40 years of age and over), disability, genetic information (including family medical history), and retaliation for protected activity, where:

- an employee's acceptance or rejection of such conduct explicitly or implicitly forms the basis for an employment decision affecting the employee; or
- the conduct is sufficiently severe or pervasive as to alter the terms, conditions, or privileges of employment, or otherwise create a hostile work environment. This type of harassment typically does not involve discrete personnel actions such as denial of promotion or an adverse action (like a counseling or reprimand) from a supervisor.

Examples of harassment include but are not limited to: offensive or derogatory jokes, memes or cartoons; racial, ethnic, disability, or sex-based slurs; pressure for dates or sexual favors; bullying or intimidation; ridicule, insult, or abusive comments; and unwelcome physical gestures or contact, based on any protected characteristic.

Harassment can occur in a variety of circumstances in the workplace, including, but not limited to, the following:

- The harasser can be a person in the target's supervisory chain, a supervisor in another area, a coworker, or a subordinate.
- Anyone affected by the offensive conduct may make a harassment report, even someone who is not specifically the target.
- Unlawful harassment may occur without tangible injury to the target.

Employees are encouraged to inform the harasser directly that the conduct is unwelcome and must stop. Certain circumstances may leave the employee uncomfortable with directly confronting the harasser. For this and other reasons, employees should also report harassment to management at an early stage to prevent its escalation.

5. GENERAL PROVISIONS

Separation Between the Anti-harassment and EEO Processes.

The agency's anti-harassment process and EEO process are separate and distinct. The Anti-harassment process seeks to prevent harassment and address and resolve harassing conduct. The EEO process is designed to make individuals whole for discrimination that already has occurred and to prevent the recurrence of the unlawful discriminatory conduct. The agency's Anti-harassment process does not affect an employee's right to file an EEO complaint, nor does it alter required timelines for filing such a complaint. Employees may access either or both processes as discussed later in this document.

The agency must ensure that the employee who is raising allegations of harassment is fully aware that MSPB's anti-harassment process is entirely separate from the EEO complaints process. Therefore, each employee reporting harassment will be provided with a Notice of Rights and Responsibilities clearly stating the distinctions between the two processes. (See Appendix A. Notice of Rights and Responsibilities of Employees Alleging Harassment.)

Confidentiality.

The agency will maintain information reported and gathered about allegations of harassing conduct as confidential, to the greatest extent practicable. MSPB does not guarantee complete confidentiality since it cannot conduct effective fact-finding without revealing certain information to the alleged harasser and potential witnesses. However, information about allegations of harassment should be shared only with those who need to know about it. For those conducting investigations, they should explain that they will maintain as much confidentiality as possible in view of the requirements of the investigation. Investigators should explain that they will maintain as much confidentiality as feasible, but the agency may still have a responsibility to investigate the matter.

6. RESPONSIBILITIES

- A. **Chairman**, or their designee, will ensure that an effective anti-harassment procedure is established and issue a signed, annual policy statement affirming its principles.
- B. **The Anti-Harassment Officer**, or their designee, will:
 - (1) Ensure an effective anti-harassment policy and procedure, in collaboration with the EEO Director and Human Resources (HR) Director;

- (2) Serve as Anti-Harassment Program manager, and be the primary point of contact for persons alleging harassment and managers receiving allegations of harassment, and conduct inquiries, or designate management officials as appropriate to conduct inquiries, as described in this procedure;
- (3) Work with the HR Director to ensure that the performance plans of all supervisors include an element covering compliance with this procedure;
- (4) Provide the EEO Director with annual data and narratives regarding actions taken under this procedure, for the purpose of determining the agency's compliance with EEOC's directives and requirements;
- (5) Work in partnership with the EEO Director to provide appropriate training to all employees regarding this procedure;
- (6) Collaborate with the EEO Director to ensure dissemination of the annual EEO policy statement from the Chairman, and to evaluate the performance of the anti-harassment program generally;
- (7) Ensure posting of information about the anti-harassment policy and procedure, and be identified clearly in the posting as a consultant for supervisors and employees;
- (8) Receive reports of alleged violations of this policy, and as described in the procedure, make or direct further investigation into such reports as necessary;
- (9) Maintain a written record of reports made and actions taken pursuant to this policy and procedure;
- (10) Assist managers and supervisors in ensuring that appropriate corrective action is taken;
- (11) Assist with consultation of union representatives, as needed;
- (12) Protect the confidentiality of employees who report harassment, to the extent practicable; Maintain proper tracking and files in accordance with this policy and procedure; and
- (13) Act as, or designate, a fact-finder to conduct an investigation into allegations of harassment where the need for fact-finding is indicated.

C. **Supervisors** are expected to:

- (1) Understand their rights and responsibilities under these procedures;
- (2) Refrain from engaging in harassing conduct;
- (3) Cooperate fully in any inquiry under this procedure;
- (4) Participate in training as required by the agency;

- (5) Promote a workplace free from harassing conduct;
- (6) Ensure that their staff are aware of this procedure and its requirements;
- (7) Act promptly to address any harassing conduct of which they are aware;
- (8) Notify their own chain of command of reported or observed harassing conduct;
- (9) Take prompt corrective action when it is determined that harassment has occurred, including disciplinary action, following consultation with the HR Director and OGC; and
- (10) Maintain confidentiality of employees who report harassment, to the extent practicable under the circumstances.

D. **Employees** are expected to:

- (1) Understand their rights and responsibilities under these procedures;
- (2) Refrain from engaging in harassing conduct;
- (3) Report harassing conduct in the workplace, to a supervisor, the Anti-Harassment Officer, the HR Director, or the EEO Director, if subjected to harassing conduct or witnessing harassing conduct;
- (4) Cooperate fully in any inquiry under these procedures; and
- (5) Participate in training as required by the agency.

E. **Director of the Office of Equal Employment Opportunity (OEEO)** will:

- (1) Collaborate with the Anti-Harassment Officer and HR Director to ensure an effective anti-harassment policy and procedures;
- (2) Receive harassment allegations and ensure the information is provided to the appropriate Anti-Harassment Officer;
- (3) Provide guidance on all EEO matters to employees, supervisors, and management officials;
- (4) Collaborate with Anti-Harassment Officer to ensure dissemination of the annual EEO policy statement from the Chairman, and
- (5) Evaluate the effectiveness of the anti-harassment program and prepare narratives and statements for MD-715 purposes.

F. **Director of Human Resources (HR)** will:

- (1) Collaborate with Anti-Harassment Officer and the EEO Director to ensure an effective anti-harassment policy and procedures;
- (2) Receive harassment allegations and ensure the information is provided to the appropriate Anti-Harassment Officer; and
- (3) Provide guidance on all HR matters to employees, supervisors, and management officials related to this policy and procedure.

G. **Office of General Counsel (OGC)** will:

- (1) Be consulted by, and provide legal advice regarding anti-harassment matters to, supervisors, managers, the Anti-Harassment Officer, and the HR Director, as needed; and
- (2) Consult with the HR Director if disciplinary personnel actions are indicated as a result of fact-finder conclusions.

H. **Fact-Finders** will:

- (1) Be appointed to conduct a prompt and thorough investigation into the allegation(s) of harassment, to the extent that the manager or supervisor does not personally act as the fact-finder;
- (2) Not be subordinate to any official involved in the matter being investigated;
- (3) Be impartial and competent to perform the fact-finding, as verified by the appropriate Anti-Harassment Officer; and
- (4) Upon the completion of the fact-finding, prepare a fact-finding Report to be given to the Anti-Harassment Officer. If the fact-finder is not the Anti-Harassment Officer, the fact-finder shall notify the servicing officer that the report has been completed.

7. PROCEDURE

A. **Reporting Harassment.** Any employee who believes that they have has been subject to or witnessed harassment in violation of this policy, 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 person about the conduct, they should report the matter promptly to:

- (1) Their first line supervisor;
- (2) Another management official in their supervisory chain;
- (3) The Anti-Harassment Officer;

- (4) The HR Director; or
 - (5) The EEO Director.
- B. **Response to Harassment Reports.** An official who is informed of, otherwise becomes aware of, harassing conduct, must inform the Anti-Harassment Officer, and initiate an inquiry immediately to determine:
- (1) The conduct at issue, and whether it may constitute harassment;
 - (2) Who may be involved in the incident(s);
 - (3) Whether immediate action is required to insulate the alleged target from the alleged harasser³; and
 - (4) What steps may be advisable, as appropriate, to address the claim.
- C. **Actions of the Anti-Harassment Officer.** The Anti-Harassment Officer may convene a group discussion with the HR and EEO Director if it appears the nature of the allegation is unsuitable for the anti-harassment policy and procedure. If the allegation is deemed unsuitable, the Anti-Harassment Officer will notify the employee of that fact, in writing, with an explanation. If the allegation is deemed suitable for this procedure, the Anti-Harassment Officer will promptly:
- (1) Acknowledge receipt of the allegation in writing, and if the Anti-Harassment Officer was the direct recipient of the allegation, will notify management in the office implicated in the report, their higher-level management official, and OGC;
 - (2) Designate a primary fact-finder to conduct an inquiry; and
 - (3) Take any other necessary and appropriate action.
- D. **Further Investigation.** The Anti-Harassment Officer and OGC will determine how the inquiry will be carried out and direct further investigation. The Anti-Harassment Officer may engage management officials from outside the responsible office, conduct the inquiry, or engage an outside investigative service if they deem it necessary. The inquiry must be conducted without delay, impartially, and in a manner appropriate to the allegation.
- E. **Conducting Fact-finding.** Where fact-finding is deemed by the Anti-Harassment Officer to be necessary, supervisors or managers will act as the fact-finder to conduct an inquiry

³ For instance: Making schedule changes to avoid contact between the parties and using all available tools to separate them, including a temporary detail of the alleged harasser; expanded telework; placing the alleged harasser on non-disciplinary leave with pay pending the conclusion of the inquiry; arranging for an employee to report to an alternate supervisor while the inquiry is being conducted. OGC will be consulted before implementing any changes.

into allegations of harassing conduct. The appointed fact-finder may not be in the reporting supervisory chain nor subordinate to any official or employee involved or alleged to be involved in the matter.

The primary goal of fact-finding is to ascertain the facts pertinent to the incident, what caused the incident, the outcome of the incident, and what actions need to be taken that will improve the probability that similar incidents will be prevented in the future.

The fact-finder should conduct this inquiry as an official duty. Conflicts with pre-existing, regular duties should be resolved within the management chain.

The Anti-Harassment Officer shall also ensure that designated fact-finders have been provided a copy of this procedural document and have had an opportunity to re-familiarize themselves with its requirements.

There may be some situations where minimal fact-finding is needed. For example, if the alleged harasser does not deny the accusation, the fact-finder may be able to limit their assessment to meeting with the reporting employee and the alleged harasser. All fact-finding – no matter the scope – needs to be a documented, detailing the incident, a description of the inquiry and factual findings, with a copy to the Anti-Harassment Officer, and, if an EEO complaint has concurrently been filed, also to the EEO Director.

- F. **Authorizing the Fact-finding.** Upon a determination that fact-finding and a formal report is needed, the Anti-Harassment Officer will either:
- (1) Conduct the fact-finding, or
 - (2) Prepare an authorization letter designating a fact-finder and outlining the scope of the inquiry.

The essential elements of the authorization letter are set forth in Appendix C: Sample Fact-Finding Authorization Letter.

- G. **Conducting Interviews.** The fact-finding shall include, at a minimum, interviews with key individuals such as the alleged target, the alleged harasser, and any witnesses to the conduct or incidents in question. For a detailed discussion on conducting interviews, see Appendix D: Interview Tips. For examples of appropriate questions to ask alleged targets, alleged harassers, and other witnesses, see Appendix E: Questions to Ask Parties and Witnesses. Several other considerations impacting the interview process are addressed therein.
- H. **Retaliation Prohibition.** Fact-finders should be aware that the anti-harassment process prohibits retaliation against employees who report harassment or who provide information related to such allegations. Therefore, when conducting interviews, the

official who interviews the parties and witnesses should remind interviewees about the agency's prohibition against retaliation.

- I. **Concluding Fact-finding.** There is no set formula to dictate when enough information has been gathered to ensure that a fact-finder has fully completed an inquiry. The following guidelines are offered to assist with determining when enough testimony and evidence have been collected:
 - (1) When all parties and witnesses with relevant information have been interviewed, and relevant physical evidence collected.
 - (2) When the preponderance of testimonial and physical evidence indicates that the facts of the case in question have been, or have not been, substantiated.
 - (3) When the testimony is redundant and it is unlikely that further testimony will discover new information essential to the fact-finding.
- J. **Notifying the Alleged Target.** The assigned Anti-Harassment Officer will notify the employee who reported the harassment of the completion of the procedure, and outcome to the extent permitted under the Privacy Act and/or other applicable law. A target does not need to know, and may not be provided with, the outcome of any disciplinary action against an alleged harasser. Except if required by the EEO investigation or as part of an appropriate discovery request, a target is not to be provided with a copy of the fact-finding report. The Anti-Harassment Officer may consult with the HR Director, OGC, the Privacy Officer, and/or the EEO Director about this notification.
- K. **Taking Corrective Action.** If at any time during the investigative process or thereafter, it is determined that harassing conduct has occurred, corrective action should be taken, which may include interim relief for the target and/or disciplinary action for the harasser. Interim relief must occur within 30 days of receiving the complaint. Disciplinary action, to the extent possible, must be initiated within 60 days of receiving the investigative report, if applicable.

To determine the appropriate corrective action, the Anti-Harassment Officer will consult with the program office implicated in the report and with OGC, as appropriate. The action necessary will depend on the severity or pervasiveness of the offense, the action required in order to end such conduct and prevent its recurrence, the harasser's prior disciplinary and conduct history, and other factors which Federal personnel regulations require to be considered. A non-exhaustive list of possible corrective actions follows:

- (1) Meeting with or counseling the responsible party about their conduct;
- (2) Training on appropriate conduct in the workplace;
- (3) Transferring the responsible party to a work location that provides distance from the reporting party; or if requested by the reporting party, transferring the reporting party to a different work location;

- (4) Suspension;
- (5) Demotion;
- (6) Removal from the Federal service.

All corrective action must be documented by the deciding official or supervisor and should be carried out in consultation with the HR Director and OGC.

Supervisors and management officials who fail to perform their obligations as set forth in this policy and procedures may also be subject to disciplinary action, up to and including removal.

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

All reports of harassment and related information will be maintained as confidential to the greatest extent possible. The identity of the employee alleging violations of this policy will be kept confidential, except as necessary to conduct an appropriate investigation into the alleged violations or when otherwise required by law. Names of the parties and witnesses, however, will be included in final reports.

Where the EEO Director or Anti-Harassment Officer concludes that a full inquiry and fact-finding are not necessary, the Anti-Harassment Officer must still prepare a summary report that acknowledges: (1) the allegations, (2) the assessment conducted, and/or (3) the rationale for conducting a limited or no inquiry. A copy of that report will be maintained by the HR Director, and employees will be informed as to whether it will be included in their personnel file.

M. Notification to the Professional Association.

The Agency will provide data collected in Appendix H annually to the Professional Association.

8. DISTRIBUTION

A link to this policy shall be made available to all MSPB employees, posted on the MSPB intranet landing page (Portal) and the OEEEO portal. New MSPB employees will be provided with this information as part of employee orientation. A link to this policy shall also be made available on the MSPB public website.

9. EFFECTIVE DATE AND IMPLEMENTATION

This policy is effective immediately upon signature.



Cathy A. Harris, Acting Chairman

December 1, 2023

Date

Appendix A:

Notice of Rights and Responsibilities of MSPB Employees Alleging Harassing Conduct

Employees who believe they have been subjected to harassing conduct have the right to:

1. Report the matter immediately. In the event that the employee’s first-line supervisor is the alleged harasser, the employee shall contact the second-level supervisor, the Anti-Harassment Officer, the HR Director, or the EEO Director (the “Responding Official”).
2. Expect that the Responding Official, if not the Anti-Harassment Officer, will report the alleged incident of harassing conduct to the Anti-Harassment Officer.
3. Pursue the matter under MSPB’s Anti-Harassment Policy and Procedures, the EEO complaint procedures, or both processes simultaneously. **The process established under the Anti-Harassment Policy and Procedures is entirely separate and apart from the EEO complaint process. An employee who reports harassment in accordance with the Anti-Harassment Policy and Procedures has not filed an EEO complaint under 29 CFR Part 1614. A consultation with a management official is not EEO counseling for purposes of filing an EEO complaint. An employee who wishes to file a complaint of discrimination must contact the EEO Director within 45 days of the most recent act alleged to be harassment.**
4. Confidentiality will be maintained to the extent practicable. MSPB cannot guarantee complete confidentiality because it cannot conduct an effective fact-finding without revealing certain information to the alleged harasser and potential witnesses.
5. Present and pursue the allegation of harassing conduct free from restraint, interference, coercion, harassment, and reprisal.
6. Prompt notification upon completion of the fact-finding. However, to the extent that disciplinary action is taken, the employee shall not be apprised of the disciplinary action taken against a harasser.

Employees alleging harassment have the responsibility to:

1. Fully cooperate with the presentation of information, to include scheduling of interviews or meetings, responding to correspondence, providing requested material or information, and identifying individuals who may have information relevant to their allegations, in the processing of their allegations of harassing conduct.
2. Notify the Anti-Harassment Officer or their designee of any questions or concerns about the Anti-Harassment Policy and Procedures.

I acknowledge that received a copy of this form and a copy of the Agency’s Anti-Harassment Policy and Procedures.

Employee Name and Signature Date

Agency Official Date

Appendix B:
Investigation Process Information for Alleged Harassers

1. MSPB must inform the alleged harasser that an allegation of harassing conduct has been brought against them. This must include the name of the alleged target, the allegations brought, and when the allegation was reported.
2. As a person identified or alleged to be responsible for harassing conduct, the employee will be asked to provide information relating to the allegations. The alleged harasser is responsible for fully cooperating with the fact-finding process.
3. If there are individuals who can provide information concerning the allegations of harassment, the alleged harasser should be prepared to furnish the supervisor, the Anti-Harassment Officer, or the fact-finder with their contact and employment information. The fact-finder will determine what interviews and documentation are necessary.
4. The information in the Fact-Finding Report is protected by the Privacy Act, and the information contained therein may only be shared on a “need to know” basis, meaning as part of performing a person’s official duties.
5. If the parties involved in the allegations are members of the bargaining unit, the supervisor or manager conducting the inquiry should coordinate with OGC to ensure all labor relations obligations are met in conducting the inquiry.
6. An alleged harasser must notify the Anti-Harassment Officer of any questions or concerns they may have about the Anti-Harassment Policy and Procedures.

**Appendix C:
Sample Fact-Finding Authorization Letter**

Date:

To:

From: [insert Anti-Harassment Officer's name]

Subject: Authorization of Fact-Finding

_____, an employee in [insert MSPB office] has raised an allegation of harassment. In accordance with MSPB's Anti-Harassment Policy and Procedures, I hereby authorize the individual identified below to conduct a fact-finding into this allegation.

Name

Job Title

Upon identification, _____ will expect your complete cooperation in this matter.

[insert Anti-Harassment Officer's signature block with name and job title]

cc:

Fact-Finder/Designee

Appendix D: Interview Tips

1. Purpose of the Interview Questions. Fact-finders must understand that the purpose of interviews is to obtain relevant facts. Relevant facts are those that are important to deciding the previously identified allegations. They are outcome determinative; therefore, fact-finding questions must be designed to obtain the relevant facts. Also, remember that for every piece of disputed evidence, there should be a factual finding.
2. Interviewing Techniques. Interviewing techniques will vary depending upon the facts, circumstances, and witnesses. Consider the following suggestions as techniques to elicit the best, most reliable information from interviewees:
 - a. All questions asked during the interview must be directed toward discovering the answers to who, what, when, where, and how.
 - b. Avoid beginning with too-specific questions, as they may inhibit the witness. They may feel that only those items mentioned are pertinent and no more.
 - c. The first set of questions should establish the witness' title and office for the record.
 - d. The second set of questions should establish the witness' knowledge of the events. Elicit a description of the scene first; then ask about the related action. Asking open-ended questions allows the witness to tell their version of events. Once they have related the narrative, specific questions may be asked to clarify key points and gather additional information.
 - e. Compound questions are confusing and should be avoided. Ask simple questions without clauses that the witness might miss or be confused by.
 - f. Avoid leading questions—that is, ones that suggest an answer. Examples: "This isn't the first time you've called the alleged target after 10 PM, is it?" or, "You confronted your coworker in the hallway, didn't you?" Leading questions can lead to distortions of the events, witness intimidation, or false memories.
 - g. Problems can also arise when asking questions that are answered by a simple yes or no. This limits the witness to answering only specific questions, and in many instances the witness has a tendency to answer affirmatively just to be agreeable. They are appropriate in limited situations, where a direct response is important.
 - h. Keep the format simple and carefully choose the language as word choice can affect an answer.
 - i. Actual interview: If fact-finding addresses specific events, inquire about all events during the relevant timeframe in chronological blocks of time. For each block ask, who, what, when, where, and how. Examples include:
 1. What was the alleged conduct?
 2. Who was present?

3. What was said?
 4. What exactly occurred?
 5. When did it occur?
 6. Where did it occur?
 7. How did this affect you?
 8. How did it occur?
 9. Where did it happen?
 10. Who else may have information or have been present?
- j. The fact-finder should also determine the following:
1. What was said or done?
 2. Who said it or did it?
 3. When was it said or done?
- k. The fact-finder should keep in mind the following:
1. Always ask if there is any other information they have about the situation that they believe could be significant.
 2. Don't tell one witness what another specific witness said.
 3. Always maintain control.
 4. Don't discuss personal opinions or conclusions.
 5. Don't make accusatory statements.
 6. Resolve contradictions.
- l. The fact-finder should always ask the individual reporting the alleged harassment and the alleged harasser, to identify individuals that they believe have information relevant to the allegations. Reminder: character witnesses who have no knowledge of the alleged harassment are not individuals with relevant information.
- m. The fact-finder should remind all interviewees that the MSPB prohibits retaliation against individuals participating in an investigation, and that interviewees should report concerns about retaliation promptly to the Anti-Harassment Officer.
3. Interview Closing Phase.

a. At the end of every interview, bolster the witness, whether they are friendly or hostile. This can be accomplished by using the following statements:

1. "Is there anything else you think I need to know?"
2. "If you have any doubts, is there anything else you think you should tell me?"
3. Remind the witness, "This is for the record."

b. Always give the witness the opportunity to contact the fact-finder if additional information is later recalled or comes to their attention. Not everyone can think of every detail on the spot, especially under what is likely a very stressful circumstance, and the questioning may well trigger further search of memory and available records. This is normal and routine.

Appendix E:

Questions to Ask Parties and Witnesses

The following are examples of questions that may be appropriate to ask the parties and potential witnesses. Any actual fact-finding should be tailored to the particular facts.

1. Questions to Ask the Alleged Target:

- a. Who, what, when, where, and how: Who engaged in the alleged conduct? What exactly occurred or was said? When did it occur and is it still ongoing? Where did it occur? How often did it occur? How did it affect you?
- b. How did you react? What was your response when the incident occurred or afterwards?
- c. Are there any persons who have relevant information? Was anyone present when the alleged conduct occurred? Did you tell anyone about it? Did anyone see you immediately after the alleged conduct?
- d. Did the person who believe harassed you engage in what you consider inappropriate conduct toward anyone else at that time? Do you know whether anyone complained about the inappropriate conduct by that person?
- e. Are there any notes, physical evidence, or documentation regarding the incident(s)?
- f. How would you like to see the situation resolved?
- g. Do you know of any other relevant information?

2. Questions to Ask the Alleged Harasser:

- a. What is your response to the allegations? Give us your recollection of the who, what, when, where, and how concerning the alleged event(s).
- b. Are there any persons who have relevant information?
- c. Are there any notes, physical evidence, or other documentation regarding the incident(s)?
- d. Do you know of any other relevant information?

3. Questions to Ask Third Parties:

- a. What did you see or hear? When did this occur? Describe the alleged harasser's behavior toward the target and toward others in the workplace.
- b. What, if anything, did the target tell you? When did they tell you this?
- c. Do you know of any other information you think is relevant?
- d. Are there other persons who you think may have relevant information?

**Appendix F:
Sample Statement of Facts**

STATEMENT OF FACTS

I, _____, [position title, grade, and series], [location], MSPB, make the following statement freely and voluntarily to _____, who has identified themselves to me as a fact-finder for the agency, obtaining information and fact-finding in relation to an allegation(s) of harassment in violation of MSPB policy.

I have been informed that this statement may be used in evidence. I understand that this statement may be shown to interested and relevant parties and those with a legal right to know.

[STATEMENT]

I have read the above statement, consisting of [X] pages, and it is true and complete to the best of my knowledge.

Witness Signature and Date

Appendix G: Fact-Finding Report Template

The Fact-Finding Report will vary from case to case. In simple cases, for example, an incident that occurs with the supervisor present, the report may consist of a supervisor’s brief memorandum to the file describing the inappropriate conduct and what was done to address it. In more complex cases, the fact-finder will need to prepare a more in-depth document. However, the document should be as concise as possible, laying out only the necessary information to decide whether prompt action should be taken to address the matter, and if so, what action is needed. The template below provides an outline of the information to be provided when it is determined that an in-depth report is appropriate.

1. Preliminary Statement.

a. Identify the authority for conducting fact-finding. The paragraph should generally read as follows: “This fact-finding was authorized by [name/title] on [date] per memorandum dated [date].”

b. Identify the purpose and scope of the fact-finding.

I. The initial purpose of the fact-finding should be concisely stated. For example:

“to conduct a fact-finding into whether harassment in violation of MSPB policy occurred when . . .”

II. The fact-finding should always be limited in scope to just the allegation for which the fact-finding has been authorized. However, if during the course of the fact-finding, information was provided to the fact-finder that goes beyond the scope of the current fact-finding, a note to the reader should be provided:

Example: “Fact-finding was limited to the alleged incident. Two employees and one contractor found to have knowledge pertinent to the incident were interviewed.”

Example: “During the course of the fact-finding, two other employees made two additional allegations of harassment by [name].”

2. List or Summary of Witnesses Interviewed.

3. Findings of Fact.

- a. Findings go to the who, what, when, where, and how. Findings are the resolutions of the details.
- b. The findings should be set forth in a narrative addressing all the pertinent evidence. In a good narrative, the issues are set out and resolved in an orderly way. The simplest way to organize the narrative is to describe the allegation and then describe what each witness had to say about it.
- c. Keep in mind that there must be a reference to exhibits, to the extent they exist, in support of every factual assertion. Therefore, after every factual statement, any exhibits supporting that statement should be identified in parentheses. The exhibits are not repeated in the narrative; they are described. This must be done correctly and fairly. It is not fair, for example, to describe a witness as “admitting” a fact when he merely stated it and the fact does not bear on his culpability. In other words, watch the use of emotionally-charged language. Such language will impair credibility.

4. Signature.

- a. The fact-finder shall sign the Fact-Finding Report.
- b. Signatures reflect the accuracy of the Fact-Finding Report and view of the fact-finder.

5. Exhibits.

- a. This section of the Fact-Finding Report includes an index of all exhibits, if any, supporting the findings and a descriptive heading of each. The exhibits should be included in their entirety. The Fact-Finding Report is incomplete if the exhibits are not part of the package.
- b. This section includes any material referred to or considered in the findings of fact, e.g., e-mails and photographic images.
- c. Exhibits may also include signed statements from the parties and witnesses, depending on the complexity and severity of the allegations.

**Appendix H:
Harassment Activity Reporting/Tracking Form**

MERIT SYSTEMS PROTECTION BOARD

Harassment Activity Reporting/Tracking

Case Number	Date Allegation Reported	Time In Inventory	Basis(es)	Issue(s)	Relationship of Alleged Harasser and Target (e.g., supervisor- employee; employee- employee)	Fact- Finder	Status
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Appendix I: Frequently Asked Questions

What is harassment for the purpose of this policy and procedures?

Harassment is any unwelcome conduct, verbal or physical, based on an individual's membership in a protected class as outlined in the MSPB EEO Policy Statement, including as retaliation for making reports or allegations of harassment or providing information related to such allegations when: (1) The behavior can reasonably be considered to adversely affect the work environment, and/or (2) an employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

What are some examples of harassment as defined above?

The following are examples of conduct that may be considered harassment:

- (1) Threatening that rejection of sexual overtures will affect appointments, promotions, transfers, or evaluations;
- (2) Belittling caricatures or objects depicting persons of a particular race, national origin, religion, or other protected characteristic;
- (3) Racial, ethnic, or sex-based jokes, memes, cartoons, or stories;
- (4) Teasing, mimicking, or repeatedly commenting on an individual's disability, accent, or other protected characteristic;
- (5) Offensive comments, jokes, or suggestions about an employee's gender, including conformity or non-conformity;
- (6) Obscene or lewd comments, slurs, jokes, epithets, suggestions, or gestures;
- (7) Commenting on an employee's body or sexual characteristics;
- (8) Displaying nude or sexually suggestive objects, pictures, images, or cartoons;
- (9) Continuing prohibited behavior after a co-worker has objected;
- (10) Laughing at, ignoring, or retaliating against an employee who raises a harassment allegation; and
- (11) Bullying, intimidating, or threatening behavior.

What if I believe I have been harassed, but not based on the reasons above?

MSPB's Anti-Harassment Policy and Procedures are not intended to establish a general civility code. Therefore, petty slights or minor annoyances are not covered. In addition, harassment is limited to the definition and protected categories as defined in the annual EEO Policy Statement. If the alleged conduct does not involve one of these categories, or you are not sure whether it does or not, but the behavior is nonetheless unwelcome and offensive, you may still wish to report it to your supervisor or the Anti-Harassment Officer, who can then decide whether the Anti-

Harassment Program is the appropriate venue. There may be other options you may wish to explore to address your concerns. The HR Director or bargaining unit officer can provide additional information regarding those options.

Where should I go to report harassment?

MSPB employees who believe they have been the target of harassment should report the matter immediately to their first-line supervisor, another management official in their reporting structure, Anti-Harassment Officer, HR Director, EEO Director, or other management official.

What is the intent of the MSPB Anti-Harassment Policy and Procedures?

The Anti-Harassment Policy and Procedures sets up a process for management to address allegations of harassment and take immediate and appropriate corrective action, including use of disciplinary action to eliminate harassing conduct regardless of whether the conduct violated the law. The goal is to address harassing conduct at the earliest possible stage before it can become “severe or pervasive” harassment within the meaning of anti-discrimination laws.

Is reporting harassment the same as filing an EEO complaint?

No. The Anti-Harassment Policy and Procedures do not affect an employee’s rights under the EEO complaint process. The Anti-Harassment process is entirely separate and apart from the EEO complaint process. This means that an employee who reports harassment in accordance with the Anti-Harassment Policy and Procedures has not filed an EEO complaint. **An employee who wishes to file an EEO discrimination complaint should contact the EEO Director within 45 days of the alleged harassing conduct.**

What are the roles of managers and supervisors?

Managers and supervisors are responsible for maintaining a work environment free of harassment. Managers or supervisors who observe or are made aware of allegations of harassing conduct are required to act promptly, effectively, and in accordance with MSPB’s Anti-Harassment Policy and Procedures in order for there to be a determination of the scope of the alleged harassing conduct and so corrective or disciplinary action can be implemented as appropriate and necessary.

What is the role of the Anti-Harassment Officer?

The Anti-Harassment Officer is responsible for serving as the point of contact for all anti-harassment matters. Their role includes, but is not limited to, assisting managers and supervisors in addressing allegations of harassment and maintaining official records. For instance, the Officer determines whether to proceed with an investigation, helps ensure that a proper fact-finding process is completed, and ensures that prompt and appropriate corrective action is taken if MSPB determines that harassing conduct has occurred.

If I report harassment, will the information provided be kept confidential?

All information shall remain confidential to the greatest extent possible, based on the severity of the circumstances, in accordance with the Privacy Act. Information is restricted to those who

have a “need to know” and may include the Anti-Harassment Officer, fact-finders, witnesses, the alleged harasser, and supervisors who are required to take action on the matter raised. In matters involving allegations of sexual assault, the grave illegality of the alleged actions may require escalation to a greater number of individuals.

If I’m a contractor or intern who believes I have been harassed by an MSPB employee, what should I do?

Contact MSPB’s Anti-Harassment Officer, HR Director, or EEO Director for information and guidance.

If I report harassment and then change my mind about going forward with the allegations, what happens?

Depending on the circumstances, MSPB may still be obligated to assess the allegations and take appropriate measures to ensure a harassment free work environment. The Anti-Harassment Officer will make that determination.

If I make a report of harassment, will it remain confidential?

All reports of hostile or abusive conduct, and related information, will be maintained on a confidential basis to the greatest extent possible. The identity of the employee alleging harassment will be kept confidential, except as necessary to conduct an appropriate investigation into the alleged violations or when otherwise required by law.

What happens if there are no witnesses to a claim of harassment?

Even if there are no witnesses, the agency will conduct an inquiry and talk to those persons involved.

Is it possible to be harassed by someone who is not my supervisor?

Yes. The harasser does not have to be your supervisor for the harassment to be illegal. MSPB has a responsibility to provide a workplace free from harassment, whether the harasser is your supervisor, a supervisor in another department, a co-worker, or a subordinate.

Can I be punished for complaining about harassment?

No. It is against the law and a violation of Title VII for you to be retaliated against for reporting harassment. If you believe you have been subjected to retaliation, please contact the EEO Director immediately.

What if I witness inappropriate conduct?

Employees who know of harassing or abusive conduct directed at others are encouraged to report the matter to the supervisor of the offending employee, another supervisor or other management official, the Anti-Harassment Officer, HR Director, or EEO Director.

**Appendix J:
Privacy Act Information**

1. Managers, supervisors, and other officials receiving allegations of harassment should provide the alleged target with a Privacy Act Statement. During fact-finding, fact-finders should provide all witnesses in the fact-finding with a copy of the Privacy Act Statement. The following Privacy Act Statement should be used.

Any information concerning this matter shall not be disclosed, discussed, or shared with other individuals unless they have a direct need to know in the performance of their official duties. Unauthorized disclosure of any information concerning this matter may result in CIVIL and CRIMINAL penalties.

2. When providing document(s) for review or signature, fact-finders should use the following coversheet containing the Privacy Act Statement.

PRIVACY ACT DATA COVER SHEET

DOCUMENTS ENCLOSED ARE SUBJECT TO THE PRIVACY ACT OF 1974

Contents shall not be disclosed, discussed, or shared with individuals unless they have a direct need to know in the performance of their official duties.

Deliver this document(s) directly to the intended recipient. DO NOT send to, or drop off, with a third party.

The enclosed document(s) may contain personal or privileged information and should be treated as “Controlled Unclassified Information.” Unauthorized disclosure of this information may result in CIVIL and CRIMINAL penalties. If you are not the intended recipient or believe that you have received this document(s) in error, do not copy, disseminate, or otherwise use the information, and contact the owner/creator or MSPB’s Chief Privacy Officer in the Office of the Clerk of the Board regarding the document(s).