



**Civil Rights & Diversity
Issuance System**



CRD – 009

Date: February 25, 2021

Office: Office of Civil Rights and Diversity

Subject: Procedures for Addressing Allegations of Discriminatory Harassment

1. **PURPOSE.** To establish an expedited process for reviewing allegations of harassment, effectively ending harassment, and taking appropriate disciplinary action if such conduct occurs.

This document supplements, but does not replace, existing equal employment opportunity (EEO) complaint procedures under 29 CFR Part 1614 and administrative or collective bargaining grievance procedures.

2. **SCOPE.** This issuance applies to all bureaus, offices, and organizations of the Department of the Treasury, including the Offices of Inspector General, within the Department. The provisions of this issuance shall not be construed to interfere with or impede the authorities or independence of the Offices of Inspector General.
3. **CANCELLATION.** Human Capital Issuance System, Chapter 900-008, Transmittal Number TN-08-005, Procedures for Addressing Allegations of Discriminatory Harassment dated June 10, 2008.
4. **EFFECTIVE DATE.** This policy is effective with the date of signature.
5. **REFERENCES.**
 - a. 29 C.F.R. Part 1604.11

- b. U.S. Equal Employment Opportunity Commission (EEOC), *Enforcement Guidance Vicarious Employer Liability for Unlawful Harassment by Supervisors* (1999)
- c. *Burlington Industries v Ellerth*, 524 US. 742 (1998)
- d. *Faragher v. Boca Raton*, 524 US. 775 (1998)
- e. *Harris v Forklift Systems, Inc*, 410 US 17 (1993)
- f. Equal Employment Opportunity Commission (EEOC) Management Directive 715 (MD-715) (2015)

6. **POLICY.** The Department of the Treasury has zero tolerance for discriminatory harassing conduct against an employee or applicant for employment based on race, color, sex (including pregnancy, sexual orientation, and gender identity), national origin, religion, parental status, protected genetic information, disability, age, or retaliation for prior protected EEO activity. Additionally, employees are protected from harassment by non-employees and employees will be held accountable for harassment of non-employees in work-related situations. In certain circumstances, the Department retains jurisdiction over harassment by an employee toward another employee, even if the harassment take place outside of the workplace and during off-duty hours.

Reporting an allegation of harassment under this issuance does not satisfy the requirements for filing an EEO complaint or union grievance, and does not delay the time limits for initiating those procedures. Thus, an employee may choose to pursue statutory, administrative, or collective bargaining remedies for unlawful harassment, in addition to instituting the procedures outlined in this issuance. If an employee chooses to pursue those remedies, the employee must elect one of the available forums as follows:

- a. For an EEO complaint pursuant to 29 CFR Part 1614, contact an EEO counselor through the appropriate EEO Office within 45 calendar days of the most recent incident of alleged harassment (or the effective date of a personnel action if one is involved) or when the employee or applicant became aware of the alleged discriminatory act, as required in 29 CFR §1614.105(a).
- b. For a collective bargaining grievance, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement.
- c. For an appeal to the Merit Systems Protection Board (MSPB) pursuant to 5 CFR § 1201.22, file a written appeal with the Board within 30 days of the effective date of an appealable adverse action as defined in 5 CFR § 1201.3.
- d. A decision to contact an EEO counselor will not prevent an employee from filing a collective bargaining grievance or an MSPB appeal. However, an employee must elect to file a formal EEO complaint or a negotiated grievance procedure, but not both. Similarly, an employee may not pursue both a formal EEO complaint and a MSPB

appeal. An EEO complaint filed after a grievance or MSPB appeal has been filed on the same matter shall be dismissed.

7. DEFINITIONS.

- a. Harassment: Harassment is hostile or abusive conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, pregnancy, sexual orientation, gender identity, protected genetic information, parental status, or retaliation for participation in prior EEO activity (hereinafter referred to as protected groups).
- b. Unlawful Harassment: Unlawful harassment includes unwelcome intimidation, ridicule, insult, or physical conduct based on a protected group where:
 - 1) Such conduct by a supervisor culminates in a tangible employment action (i.e., a significant change in employment status or benefit); or
 - 2) The conduct is sufficiently severe or pervasive as to alter the terms, conditions, or privileges of the employee's employment, unreasonably interferes with work performance, or otherwise creates a hostile work environment. Common workplace occurrences, such as workplace changes or restructuring, directions to perform work or to comport oneself appropriately or issuing performance appraisals, are unlikely to rise to a violation of law. Petty slights, annoyances, and isolated incidents (unless extremely serious) will not rise to the level of unlawful harassment. To be unlawful, the conduct must create a work environment that would be intimidating, hostile, or offensive to a reasonable person. However, harassing conduct that is not unlawful may serve as the basis for disciplinary action.

Examples of harassing conduct include, but are not limited to:

- Epithets, slurs, stereotyping or threatening, intimidating, or hostile acts that relate to an individual's protected group status;
- A practice or repeated instances of jokes or pranks that are hostile or demeaning and are based on an individual's protected group status; and
- Written or graphic material that degrades or shows hostility or aversion toward an individual or group because of their protected group characteristics and is displayed on walls, bulletin boards, or other locations or is circulated in the workplace.

A single utterance of an ethnic, sexual or racial epithet that offends an employee generally would not be severe enough to constitute unlawful harassment in violation of Title VII or any other anti-discrimination statute. However, it is the Department's policy that such conduct is inappropriate in the workplace and should not be tolerated.

- c. **Sexual Harassment:** Sexual harassment refers to unwelcome advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature; such conduct constitutes harassment when:
- 1) Submission to such conduct is made either explicitly or implicitly a term or condition of employment; or
 - 2) Submission to or rejection of such conduct by an individual is used as the basis of employment decisions affecting such individuals; or
 - 3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Examples of sexually harassing conduct include, but are not limited to:

- A manager or supervisor conditioning a promotion, job assignment, or other tangible job benefit on acquiescence to unwelcomed sexual conduct, or penalizing an individual for refusing to participate in such conduct;
 - Sexist or stereotypical remarks about a person's clothing, body, appearance, or activities;
 - Sexually oriented jokes, stories, remarks, or discussions;
 - Descriptions of sexual acts;
 - Posting or displaying sexually graphic pictures anywhere in the workplace;
 - Deliberately touching, pinching, patting, or giving inappropriate looks to another person;
 - Pressure for dates or sexual activity;
 - Unwelcome telephone calls, email messages, social network postings or letters of a sexual nature; or
 - Demands for sexual favors.
- d. **Retaliatory Harassment:** Retaliatory harassment is harassing conducted based on a person's prior protected EEO activity. One type of protected activity is participation- an individual is protected from retaliation for having filed an EEO complaint, testifying, assisting, or participating in any manner in an investigation, proceeding, or hearing under federal anti-discrimination laws. Another type of protected activity is reasonable opposition to any practice made unlawful under federal anti-discrimination laws. Additionally, requesting a reasonable accommodation for a disability or religious belief is

protected activity. Retaliatory harassment may be unlawful even if it is not severe or pervasive enough to create a hostile work environment, as long as it might deter a reasonable person from asserting his or her EEO rights.

- e. **Conduct Covered:** The conduct covered by this policy is broader than the legal definition of unlawful harassment listed in Section 7, Paragraph B. It includes hostile or abusive conduct based on a protected group, even if the conduct is not sufficiently severe or pervasive so as to alter the conditions of employment. The goal of this policy is to stop unwelcome conduct before it rises to the level of unlawful harassment and to prevent unwelcome conduct from occurring. Employees are encouraged to report harassing conduct, whether experienced or observed, in order to ensure that appropriate officials are notified of and have the opportunity to promptly correct-such conduct.

8. RESPONSIBILITIES. Each bureau shall:

- a. Identify an Anti-Harassment Coordinator as well as establish procedures for conducting a harassment inquiry *outside of the EEO process*.
- b. Maintain a hotline number for reporting incidents of sexual harassment.
- c. Develop and publicize procedures that provide for the reporting of allegations of harassment, conducting an inquiry and making appropriate determinations based on the results of the inquiry.

1) **Reporting Allegations of Harassment.** Bureaus shall determine to whom an employee should report an allegation of discriminatory harassment and notify all employees of their reporting options. This may include a management official, a supervisor, Human Resources or EEO Office, or an Anti-Harassment Coordinator. Bureau procedures should allow an individual to report such allegations to an official outside of his/her immediate supervisory chain. The reporting of the allegation(s), whether written or oral, should include the specific nature of the incident, date and place of the incident, names of the parties involved, as well as all pertinent facts.

- a) Employees are responsible for reporting harassing conduct, whether experienced or observed. While isolated incidents of harassment generally do not violate Federal law, a pattern of incidents may. Employees must take advantage of the preventive or corrective opportunities provided by the Department and its bureaus and offices.
- b) Employees who make reports of discriminatory harassment should be informed of their right to seek counseling from the appropriate EEO Office and the timeframes for doing so. Employees should be informed that the purpose of this procedure is to take appropriate actions to end improper conduct, while the EEO process is designed to make the employee whole or provide remedial relief.

- c) If an employee first raises a complaint of harassment in the EEO counseling process, the EEO Officer or designee will promptly notify the bureau's Anti-Harassment Coordinator of the allegations and inform the employee of the notification. This will not stop or postpone the EEO process and any information gathered during the internal harassment inquiry will be made available to the EEO investigator, if a formal complaint is filed and accepted by the Department.
- 2) **Internal Harassment Inquiry.** The bureau's Anti-Harassment Coordinator is responsible for initiating an internal harassment inquiry. The inquiry is intended to determine if improper conduct occurred, not whether the conduct rises to a violation of anti-discrimination law. Allegations of harassment will be reviewed in a prompt and impartial manner. The bureau's Anti-Harassment Coordinator will ensure an inquiry into the allegations of harassment begins within 10 calendar days of notification of the allegation. The scope and formality of the inquiry is determined on a case-by-case basis, depending on the nature and complexity of the allegations. Inquiries should consist of interviews with all persons with relevant information, including the individual accused of the harassing conduct, and a review of any written or electronic information related to the alleged harassment. Absent extenuating circumstances, the inquiry should be completed within 30 calendar days of the notification, and the bureau must reach a decision and, if necessary, take appropriate corrective action on the harassment allegations within 60 days of receiving notice of the harassment allegations. The bureau must also ensure there is a firewall between the bureau's Anti-Harassment Coordinator and the bureau's EEO Office. Therefore, the bureau EEO Office cannot conduct the inquiry nor can the bureau EEO Director serve as the decision maker regarding inquiry findings.
- a) Management, to the extent possible, will ensure all individuals who report alleged harassment or who cooperate during an inquiry are protected from retaliation.
 - b) To the extent possible, bureaus will protect the confidentiality of individuals bringing harassment claims. Disclosures about allegations of harassment will be made only on a "need to know" basis, in order to determine the facts surrounding the allegation and to take appropriate action. Records relating to harassment complaints should be kept confidential on the same need-to-know basis.
 - c) Managers must take appropriate action once they have been apprised of allegations of harassment, *even if an employee requests that no action be taken.*
 - d) Depending on the nature of the allegation, management should take appropriate steps during an inquiry to ensure that further harassment does not occur. Such steps may include changing the work location and assignments of the individuals and granting appropriate leave. Management should also discuss the proposed steps that they plan to take to prevent further harassment with their legal advisors to avoid any challenges that could be perceived as being retaliatory.

- e) If improper conduct is found, management will take immediate and appropriate corrective action to stop the harassing conduct and ensure it does not reoccur. Appropriate disciplinary action, properly documented, will be taken in all cases where improper conduct is found to have occurred.
 - f) If it is determined that discipline is warranted, the information from the inquiry that is the basis for the disciplinary action must be shared with those against whom disciplinary or adverse action has been proposed. Information gathered during the internal harassment inquiry will be made available to the EEO Investigator, if an EEO complaint is filed and accepted by the Department on the same or a related matter.
- 3) **Reporting Allegations of Sexual Harassment.** If an allegation of sexual harassment is raised by the employee during the harassment inquiry or during the EEO counseling process or is raised directly to a management official, a supervisor, or Human Resources staff, the bureau's Anti-Harassment Coordinator shall be notified. The reporting of the sexual harassment allegation(s) to the bureau's Anti-Harassment Coordinator, whether written or oral, should include the specific nature of the incident, date and place of the incident, names of the parties involved, as well as all pertinent facts. Depending on the nature of the allegation, management may need to take immediate interim action to ensure further harassment does not occur. Such steps may include changing the work location and assignments of the individuals and granting appropriate leave.
- a) The bureau's Anti-Harassment Coordinator shall contact the appropriate Inspector General (IG) office within ten (10) calendar days of being notified of the sexual harassment allegation. The bureau's IG Office will determine if a separate IG investigation is warranted based on the sexual harassment allegation summary submitted to the IG by the bureau's Anti-Harassment Coordinator.
 - b) Notifying the IG of the sexual harassment allegation does not terminate or postpone any ongoing harassment inquiry and taking any immediate or appropriate corrective action if the bureau determined harassment occurred. Additionally, the EEO counseling or subsequent stage of the EEO complaint process will continue regardless of whether the IG takes jurisdiction of the allegation.
 - c) Bureau IG Offices contact information is as follows:

Office of Inspector General
U.S. Department of the Treasury
1500 Pennsylvania Ave. NW
Washington, DC 20220
Email: OIGCounsel@oig.treas.gov or Hotline@oig.treas.gov
Website: www.treasury.gov
Phone: 202-927-0650 or 1-800-359-3898

Treasury Inspector General for Tax Administration (TIGTA), Internal Revenue Service, and Internal Revenue Service Chief Counsel employees only:

TIGTA Hotline
P.O. Box 589
Ben Franklin Station
Washington, DC 20044-0589
Website: www.tigta.gov
Phone: 1-800-366-4484

Special Inspector General for Troubled Asset Relief Program (SIGTARP) employees only:

SIGTARP Hotline
1801 L. ST. NW, 4th Floor
Washington, D.C., 20220
Website: www.sig tarp.gov
Phone: (877) 744-2009

- d. Establish a process to monitor the progress of the inquiries of harassment allegations initiated by the bureau's Anti-Harassment Coordinator and track the timeliness of processed inquiries as outlined in Section 8, Part 2. in order to address annual reporting requirements of EEOC's MD 715.
- e. Ensure the bureau EEO Office notifies the bureau's Anti-Harassment Coordinator of all EEO informal counseling activity alleging harassment in order for the Anti-Harassment Coordinator to initiate an inquiry. If an individual has exercised the right to anonymity during the informal EEO counseling process, the agency generally should not disclose the name of the alleged victim to the Anti-Harassment Coordinator in those cases. However, the EEO office should, nonetheless, immediately relay all other known details of the harassment allegations so that the bureau's Anti-Harassment Coordinator can meet its duty to take prompt and appropriate action to address the harassment allegations.

Additionally, EEO offices should relay harassment allegations to bureau's Anti-Harassment Coordinator in a manner that preserves confidentiality to the greatest extent possible, except as necessary to conduct a thorough and fair investigation. Therefore, harassment allegations should only be shared with persons who have a need to know about them.

- f. Negotiate with bargaining unit representatives any new/revised policies and procedures to address allegations, as appropriate.
- g. Provide annual training to ensure all employees are aware of the procedures for reporting harassment.

h. Provide a copy of any new/revised policies and procedures to the Office of Civil Rights and Diversity (OCRD).

9. **OFFICE OF PRIMARY INTEREST.** Office of the Assistant Secretary for Management and Office of Civil Rights and Diversity.

10. **POLICY REVIEW.** The provisions of this Issuance are subject to modifications by changes in pertinent statutes and EEOC regulations. The applicable provision or provisions shall be amended or superseded effective on the dates specified in any statutory or regulatory change, and OCRD shall issue interim guidance addressing the change as soon as practicable. This Issuance will be reviewed after five years.

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Director
Office of Civil Rights and Diversity