

U.S. Office of Personnel Management’s Anti-Harassment Policy and Procedures

I. Purpose

This document constitutes the U.S. Office of Personnel Management’s (OPM) anti-harassment policy and procedures. This document replaces the agency's previous policy and updates and outlines the process under which allegations of harassment (both sexual and non-sexual) should be reported, investigated, and resolved.¹ This document is intended to enhance OPM's exercise of reasonable care to prevent and correct promptly any harassing conduct in the workplace, consistent with applicable law.

II. Definition of Harassment

Harassment is a form of discrimination and violates Federal law. For the purposes of OPM's Anti-Harassment Policy, “harassment” means any unwelcome comment(s) (including work-related virtual communications and/or social media) or physical conduct of a discriminatory nature, based on one or more protected status(es), including race, color, sex, sexual orientation, age, national origin, disability, religion, genetic information (including family medical history), pregnancy, childbirth, or related medical conditions, or retaliation because of prior protected EEO activity when:

- (1) submitting to such conduct (sexual or non-sexual) is made a term or condition of an individual's employment;
- (2) submitting to, or rejection of, such conduct by an individual is used as the basis for employment decisions affecting the individual; or
- (3) the conduct has the purpose or effect of unreasonably interfering with a person's work performance and/or creating an intimidating, hostile, or offensive work environment.

Unwelcome comment(s) or physical conduct of a discriminatory nature may constitute harassment whether directed at an individual or group or when overheard or observed by someone other than the target(s).

¹ This document is consistent with the U.S. Supreme Court's case law on harassment, including, in particular, *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998) and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

The incidents comprising an allegation of a hostile work environment must be “sufficiently severe or pervasive to alter the conditions of [one’s] employment and create an abusive working environment.” *Harris v. Forklift Systems, Inc.*, 510 U.S. 17, 21 (1993). Under certain circumstances, however, a single, unwelcome comment or single unwelcome physical contact may be sufficient to alter the conditions of one’s employment and create a hostile work environment.² Further, the unwelcome environment must be both objectively and subjectively offensive, that is, one that a reasonable person would find hostile or abusive, and one that the victim in fact did perceive to be so.

If a current or former OPM employee (as defined in 5 U.S.C. § 2015) is uncertain whether particular conduct constitutes harassment within the meaning of the Anti-Harassment Policy, the individual should contact a supervisor, a management official in the employee's chain of command with whom the employee feels comfortable, or the Anti-Harassment Coordinator (see section IV below) for clarification.

III. OPM's Anti-Harassment Policy

OPM prohibits harassing conduct (sexual or non-sexual) on any of the bases listed above in any OPM workplace or in any work-related situation at any other location during or outside normal duty hours. OPM does not tolerate workplace harassment and will take prompt and appropriate action to address all unwelcome conduct before it rises to the level of unlawful harassment or becomes severe and pervasive.

OPM also prohibits retaliation against an employee who alleges harassment, as defined above, or who assists in any inquiry related to allegations of harassment.

Any employee who engages in harassment is subject to the full range of disciplinary actions, up to and including dismissal, as appropriate. The same is true if an employee engages in retaliation against an employee(s) who alleges harassment or assists in any inquiry related to allegations of harassment.

² See, e.g., *Weaver v. U.S. Postal Service*, EEOC No. 0120065324 (EEOC OFO 2008) (single intimate bodily contact); *Lashawna C. v. Department of Labor*, EEOC No. 0720160020 (EEOC OFO 2017) (single religious slur); *Arellanes v. Department of Defense, Defense Threat Reduction Agency*, EEOC No. 01A63349 (EEOC OFO 2006) (single racial slur).

NOTE: OPM may also commence an adverse action against an employee who engages in conduct that does not meet the legal standard for discriminatory harassment, where such adverse action will promote the efficiency of the service.

OPM's Anti-Harassment Policy incorporates the requirements and protections contained in OPM's current Equal Employment Opportunity (EEO) Policy and OPM's current policy on Prohibited Personnel Practices. Specifically, through these policies, OPM prohibits employment discrimination (including harassment) on the basis of race, color, sex, sexual orientation, age, national origin, disability, religion, genetic information (including family medical history), pregnancy, childbirth or related medical conditions, or retaliation because of prior protected EEO activity. OPM further prohibits retaliation for protected EEO activity. Discrimination (including harassment) based on non-job-related status, including political affiliation, parental status, and marital status, is also prohibited. OPM's Anti-Harassment Policy does not change any existing collective bargaining agreement or statutory complaint processes covering harassment.

OPM will inform new employees about OPM's Anti-Harassment Policy in new employee orientation. Current employees will be periodically reminded about OPM's Anti-Harassment Policy separately or as part of other training programs.

IV. Anti-Harassment Coordinator

OPM maintains a permanent Anti-Harassment Coordinator position to ensure a consistent, timely, and effective response to workplace harassment. During any period where this position is vacant, the Director of OPM is responsible for designating an employee within the OPM to serve as OPM's Anti-Harassment Coordinator (AHC). The Director may delegate responsibility to make this designation to a different person in the Office of the Director.

The AHC is responsible for the following:

- Developing and delivering an updated, approved training program to all OPM employees, including supervisors and managers, on OPM's Anti-Harassment Policy and Procedures. All OPM staff will be required to complete the training within six months of its availability. Thereafter, new or returning employees will be required to complete the training within three (3) months of onboarding, and existing employees will be required to complete training annually.

- Receiving reports of a harassment allegation and initiating prompt, thorough, and impartial investigations, either from employees or from supervisors/managers who observed or received reports of alleged harassment from an OPM employee, where such reports are submitted prior to the use of any contractual or statutory complaint process. The primary goal of AHC investigations is to ascertain the facts pertinent to the incident, the actual cause (if in dispute) of the incident, the outcome of the incident, and, where the evidence supports a determination of harassment, what actions can and should be taken to increase the probability that similar incidents will be prevented in the future, including disciplinary actions as appropriate. The investigation must include, at a minimum, interviews with key individuals such as the alleged harasser, the alleged harasser, and any witnesses to alleged harassment.
- Where the employee pursues a collective bargaining or statutory claim after submitting a report to the AHC, the AHC will provide the office handling the collective bargaining or statutory claim the record of actions taken under this policy upon completion of the investigation.
- Providing guidance to OPM staff regarding compliance with OPM's Anti-Harassment Policy and Procedures (including serving as a technical resource for management investigations of harassment reports);
- Serving as the lead investigator for investigations of harassment reports from former OPM employees;
- Determining the appropriate management official(s), in consultation with OPM's Office of the General Counsel, to advise on results of any investigation and recommendations if evidence supports a determination of harassment covered by this policy;
- Maintaining a tracking system to monitor the status of cases and retaining written records of reports of alleged harassment, investigations undertaken, findings, and corrective action (if any), and maintaining the confidentiality of this information to the extent feasible. Records will be retained in accordance with the Privacy Act, 5 U.S.C. 552a, and applicable record retention policy for administrative complaint processing; and
- Recusing oneself from involvement in the processing of an EEO complaint, union grievance, or Merit Systems Protection Board (MSPB) appeal filed by an

employee claiming harassment where a report of the harassment was received and/or processed by the AHC.

V. Responsibilities of All OPM Employees

Each OPM employee is responsible for the following:

- Acting professionally and refraining from harassing conduct;
- Familiarizing themselves with the provisions of OPM's Anti-Harassment Policy and Procedures and complying with all requirements of this Policy;
- Participating in OPM's Anti-Harassment Policy and Procedures trainings;
- Promptly reporting any incidents of observed or alleged harassment to an appropriate official, as described in Section VI, Initial Requirements for Pursuing an Action; and
- Cooperating with any inquiry conducted under this Policy.

VI. Initial Requirements for Pursuing an Action

Each OPM employee who believes that they have been subjected to harassing conduct must:

- Promptly report any concerns of alleged harassment to the employee's direct supervisor; or
- If the employee does not feel comfortable reporting to the employee's direct supervisor, promptly report the incident(s) to another management official in the employee's chain of command; or
- If the employee does not feel comfortable reporting to another management official in the employee's chain of command, promptly report the incident(s) to any OPM management official; or
- If the employee does not feel comfortable reporting to a management official in or out of their chain of command, promptly report the incident(s) to the AHC.

Although OPM understands that it can be difficult to report instances of potential harassment, OPM cannot correct such conduct if the conduct is not known to persons in the agency who would be in a position to take corrective action. When an employee

does not promptly report an incident of potential harassment and take reasonable steps to follow the procedures outlined in this Policy, such inaction could impact the outcome of a subsequent harassment claim.³

VII. Responsibilities of OPM Supervisors and Managers

All OPM supervisors and managers are responsible for:

- Complying with Section V. Responsibilities of All OPM Employees;
- Taking appropriate steps to: (1) prevent harassment in the workplace; (2) promptly correct harassment, if it occurs; (3) prevent retaliation against those who complain of harassment; (4) promptly correct such retaliation, if it occurs; and (5) within 10 calendar days, inform the AHC of any harassment report received under paragraph VI(1) or VI(2), or any harassment observed, whether reported or not, to facilitate a prompt investigation.⁴
- Working collaboratively with the AHC, when requested, to: (1) cooperate with investigations by the AHC; (2) take reasonable and prompt action to address the allegations of harassment, including taking interim steps as appropriate, pending the outcome of the investigation, and prevent recurrence of any harassment during and following an investigation; and (3) work with the AHC to provide all information and documentation necessary to support a thorough investigation by the AHC.
- Taking immediate and appropriate corrective and disciplinary action, in consultation with the relevant program offices, including Human Resources and the Office of the General Counsel, against personnel who are ultimately found to have engaged in harassment or who have not carried out their responsibilities under this Policy;⁵ and

³ Under federal law, failure to report harassing conduct may constitute a defense against a complaint of harassment. See *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998) and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

⁴ OPM has a duty to investigate and correct harassment, even if the alleged victims indicate they do not want the matter investigated or corrected.

⁵ Generally, the determination of whether corrective and disciplinary action will be taken against such personnel will be made within 60 calendar days of issuance of the report to management finding harassment.

- Protecting the confidentiality of employees reporting harassment to the extent feasible, as discussed more fully in Paragraph VIII below.

VIII. Confidentiality

OPM will protect the confidentiality of employees reporting allegations of harassment to the extent feasible. OPM will maintain records created under this Policy in accordance with applicable law. The maintenance and release of records under this Policy is governed by the Privacy Act, 5 U.S.C. 552a. Furthermore, this information may be disclosed to those OPM officials and employees who have a need to know in order to perform their duties, including the need to conduct a thorough and impartial investigation. The disclosure of such information may also be necessary to defend OPM in any litigation to which the information may be relevant.

IX. Relationship to Statutory and Collective Bargaining Claims

Filing a report of alleged harassment under OPM's Anti-Harassment Policy and Procedures does not satisfy complaint processing obligations (including, for example, time limits) established by law for pursuing statutory remedies or established by collective bargaining for pursuing remedial schemes created under collective bargaining agreements. An employee who chooses to pursue remedies for unlawful harassment established by collective bargaining or law must follow the collective bargaining agreement or the statutes and regulations governing such actions.

Accordingly, the filing of a complaint with OPM Anti-Harassment Coordinator does not stop or change the timeframes required for filing of a formal complaint under the negotiated grievance process and/or the administrative grievance process. Further, it does not stop or change the timeframes required for filing of informal or formal complaints in matters for which you may have regulatory or statutory appeal rights, such as complaints to:

- the [Merit Systems Protection Board](#);
- the [Equal Employment Opportunity Commission](#); or
- the [Office of Special Counsel](#)

Please follow the links below to learn more about your rights and responsibilities under those programs:

- [AFGE Local 32 Collective Bargaining Agreement](#)
- [AFGE Local 2450 Collective Bargaining Agreement](#)