



U.S. Occupational Safety and Health Review Commission

(OSHRC 17)

ANTI-HARASSMENT

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TABLE OF CONTENTS

I. PURPOSE.....	1
II. AUTHORITY	1
III. POLICY	1
IV. HARASSMENT	2
V. DEFINITIONS.....	2
VI. RESPONSIBILITIES	3
A. Employees.....	3
B. Managers and Supervisors	4
C. EEO Director	4
D. EEO Counselor	5
E. Human Resources Staff.....	5
VII. REPORTING AND INVESTIGATION PROCEDURES	5
A. Reporting Allegations of Harassment.....	5
B. Inquiries into Allegations of Harassment	6
C. Investigation.....	7
D. Action to Be Taken Upon Completion of the Investigation	7
VIII. CONFIDENTIALITY.....	7
IX. APPROVAL	8



U. S. OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

Anti-Harassment

I. PURPOSE

This directive states the U.S. Occupational Safety and Health Review Commission's ("Review Commission") policy on anti-harassment. This policy is intended to ensure that the Review Commission is taking all necessary steps to prevent harassment in the workplace and to correct harassment that does occur before it becomes severe or pervasive. Additionally, this directive outlines the rights and responsibilities under this policy, identifies the Review Commission officials responsible for the investigation of harassment claims, and provides guidance for initiating and processing complaints alleging harassment in the workplace.

II. AUTHORITY

The Review Commission's duties and responsibilities with regard to establishing an Anti-Harassment Policy are based on requirements established by the Equal Employment Opportunity (EEO) Management Directive 715 (MD 715) pursuant to Title VII of the Civil Rights Act of 1964; the Age Discrimination in Employment Act of 1967; sections 501 and 505 of the Rehabilitation Act of 1973; the Americans with Disabilities Act Amendments Act of 2008; the Civil Rights Act of 1991; and regulations and standards issues hereunder including Title 29 Code of Federal Regulations, Part 1614, governing federal sector EEO, and Executive Order 13087.

III. POLICY

It is the policy of the Review Commission to prohibit harassment and to convey that such conduct will not be tolerated. Employees are encouraged to report harassment to a supervisor or other management official before it becomes severe or pervasive and elevates to the level of a hostile work environment. Harassment based on race, color, religion, gender (sexual or non-sexual), national origin, age (40 or older), disability, genetic information, and retaliation is prohibited by this policy. This directive is separate and apart from the statutory complaint process covering harassment, which is covered under OSHRC's EEO directive (OSHRC 3). Any harassment complaints arising under EEO should be directed to OSHRC's EEO Director.

Additionally, the Review Commission will not condone any form of retaliation towards employees who report incidents of harassment or assist in any inquiry about such a report. This policy applies to all employees in their working relationships and to unlawful harassment by anyone in the workplace, including harassment by co-workers, supervisors, or non-employees.

The goal of this policy is to avoid or minimize harm to any employee subjected to unwelcome, hostile or abusive conduct based on protected group status by ensuring management officials are notified of – and have the opportunity to promptly correct – such conduct.

IV. HARASSMENT

Harassing conduct, which may be oral and/or written, includes, but is not limited to the following:

- Epithets, slurs, jokes, insults, negative stereotyping, or threatening, intimidating or hostile acts, that relate to a person's race, color, sex, gender, national origin, age (40 or older), disability, religion, genetic information, or retaliation;
- Written material (including graphics) which demeans or shows hostility or aversion toward an individual or group because of race, color, sex, gender, national origin, age (40 or older), disability, religion, genetic information, or retaliation and is posted on walls, bulletin boards, e-mail or elsewhere on Review Commission property.

Harassment of an individual based on race, color, sex, national origin, age (40 or older), disability, religion, genetic information, or retaliation is unlawful if submission to, or rejection of, such conduct by an individual is made the basis for an employment decision affecting the individual; or such conduct is sufficiently severe or pervasive as to create a hostile work environment.

Whether harassment creates a hostile work environment is to be determined by looking at all the circumstances, including, but not limited to:

- Whether the conduct was verbally or physically threatening;
- How frequently the conduct was repeated;
- Whether the conduct was hostile and/or patently offensive;
- The context in which the harassment occurred (co-worker or supervisor);
- Whether management responded appropriately when it learned of the harassment; or
- Whether the conduct unreasonably interfered with work performance.

V. DEFINITIONS

Color Harassment – conduct based on the color of a person's skin. Color harassment can occur together with race harassment but may also occur between members of the same race.

Disability Harassment – conduct based on a person's disability, impairment, or additional need, such as an inappropriate reference to disability, unwelcome discussion of the impact of disability, or a refusal to work with people with disabilities. A person with a disability is described as one that:

- Has a physical or mental impairment;
- Has a record of a physical or mental impairment; or
- Is regarded as having such impairment.

Discriminatory Harassment (Unlawful Harassment) – hostile or abusive conduct based on one’s race, color, religion, sex (whether or not of a sexual nature), pregnancy, national origin, age (40 or older), disability, sexual orientation, protected genetic information, parental status, or retaliation.

Racial Harassment – conduct based on a person’s race, ethnic or national origin, such as abusive comments about racial origins or cultural backgrounds, racist jokes, racial slurs.

Retaliation – when employees are treated differently because they are, or were, involved in a protected EEO activity (e.g., seeking or participating in EEO counseling, providing testimony in an EEO investigation or at an EEO hearing, filing a discrimination complaint, or speaking out against discriminatory activities).

Sexual Harassment – conduct that involves unwelcome sexual advances, requests for sexual favors, and other verbal, non-verbal, or physical conduct of a sexual nature when:

- Submission to such conduct is made (either implicitly or explicitly) a term or condition of a person’s job, pay, or career; or
- Such conduct unreasonably interferes with an individual’s performance or creates an intimidating, hostile, or offensive environment.

Sexual Orientation Harassment – conduct based on known or presumed sexual orientation, such as name calling, stereotyping, assault, verbal abuse, or actual or threatened unwanted disclosure of sexuality.

VI. RESPONSIBILITIES

A. Employees

1. Support the Review Commission’s Anti-Harassment policy by becoming familiar with the provisions of the policy, complying with all requirements of the policy, and cooperating with any inquiry under this policy.
2. Monitor one’s own conduct and determine if it could be interpreted as harmful, harassing, or contributing to or creating a hostile work environment.

3. Promptly report any incident of harassment that they experience before it becomes a pattern of misconduct so pervasive and offensive as to constitute a hostile environment.

B. Managers and Supervisors

1. Act promptly and appropriately to prevent harassment in the workplace and prevent retaliation against those who complain of harassment.
2. Report any incidents of harassment that they witness or are otherwise brought to their attention to Human Resources (HR) staff.
3. Receive and handle allegations of harassment promptly and appropriately.
4. In consultation with the EEO Director, provide interim relief to alleged victims of harassment pending the outcome of the investigation to ensure that further misconduct does not occur.
5. Using the procedures set forth below, in consultation with the HR staff, take prompt and appropriate corrective and disciplinary action, up to and including removal, against personnel who have engaged in harassment or who have not carried out their responsibilities under this policy. (*See OSHRC 19 – Workforce Discipline and Adverse Actions.*)

C. EEO Director

1. Ensure that employees are informed of this policy and the procedures to follow in connection with reporting harassment.
2. Provide technical assistance and support to ensure compliance with this policy and provide other assistance as requested.
3. Receive complaints of alleged harassment under this policy and forward to Human Resources staff for investigation.
4. Advise supervisors and managers on the provision concerning interim relief to the alleged victims of harassment pending the outcome of the investigation to ensure further misconduct does not occur.
5. Advise the Chairman or other persons who need to know of allegations of harassment and the resolution of those allegations under this policy.

6. Encourage the use of alternative dispute resolution (ADR) to resolve harassment claims, when appropriate and feasible.
7. Annually designate the EEO Counselor(s).

D. EEO Counselor

1. Receive complaints of alleged harassment under this policy.
2. Educate supervisors and managers on the terms of the Anti-Harassment policy and procedures and their role in the complaint process.
3. Develop a centralized system for tracking and monitoring inquiries or allegations of harassment.

E. Human Resources Staff

1. Follow the complaint and investigative procedures outlined in this policy to investigate allegations of harassment reported by the complainant, supervisors, or managers.
2. Provide advice to managers and supervisors on taking disciplinary actions for conduct that violates this policy.

VII. REPORTING AND INVESTIGATION PROCEDURES

A. Reporting Allegations of Harassment

Any person who believes that they have been the subject of an incident of harassment in violation of this policy should report the matter to anyone in the complainant's supervisory chain of command, HR staff, the EEO Director, or the EEO Counselor. Although an oral report may be accepted, the employee may be required to follow-up the oral complaint in writing. Whether written or oral, the report should include the specific nature of the incident, the date and place of the incident, and the names of all parties involved, as well as all pertinent facts.

The EEO Counselor must be contacted directly by the employee within 45 days of the alleged occurrence of discriminatory harassment. The EEO Counselor will help the employee define the issues and bases of the claim and attempt to resolve them. If the claim cannot be resolved, the Counselor will provide the employee with a Notice of Right to file a formal complaint. This notice will provide the employee with information about how to file a formal complaint of discrimination. The complaint must be filed within 15 days from receipt of the notice.

B. Inquiries into Allegations of Harassment

All allegations of harassment will be promptly and objectively investigated within 10 days of being reported. Based on the nature of the allegation, the investigation will be conducted by the appropriate investigative resources, including outside resources, if conflict of interest issues are present.

1. The supervisor or manager who receives an allegation or witnesses harassment shall immediately:
 - a. Inform the EEO Director, HR staff, or the EEO Counselor and seek guidance as to further actions;
 - b. In consultation with the EEO Director, take action to stop any harassment and prevent further harassment while the allegations are being investigated, including granting appropriate interim relief to the alleged victim of harassment; and
 - c. In consultation with the Human Resources staff, document the allegation(s) received and their efforts to address it.
2. The EEO Director who receives an allegation of harassment, either directly by the complainant or through a supervisor, manager or other source, shall:
 - a. Recommend appropriate action to stop any harassment and prevent further harassment, including granting appropriate interim relief to the alleged victim of harassment while the allegations are being investigated.
3. The EEO Counselor who receives an allegation of harassment, either directly by the complainant or through a supervisor, manager or other source, shall:
 - a. Immediately report the alleged harassment to the EEO Director; and
 - b. Provide the alleged victim of harassment with information regarding their rights and responsibilities under this policy.
4. The Human Resources staff who receives an allegation of harassment, either directly by the complainant or through a supervisor, manager or other source, shall:
 - a. Report the alleged harassment to the EEO Director; and
 - b. Investigate allegations of harassment within 10 days of it being reported.

C. Investigation

1. All allegations of harassment will be subject to a prompt, thorough, and impartial investigation.
2. Immediately following the completion of the investigation, a written summary of the investigation shall be prepared by the investigator. The summary shall be prepared promptly after completion of the inquiry and shall be submitted to the EEO Director and the supervisor who will be responsible for taking disciplinary action against the alleged harasser, if the allegations are true.

D. Action to Be Taken Upon Completion of the Investigation

1. Review Commission management shall promptly evaluate the evidence and determine the appropriate action to take. This responsibility normally rests with the first-line supervisor of the employee alleged to have engaged in the harassment unless the supervisor is involved in the allegation. The EEO Director shall be informed of this decision, including a decision not to act.
2. Where the investigation establishes that an employee did engage in harassment under this policy, the employee shall be subject to appropriate corrective action, disciplinary or otherwise, up to and including removal.
3. Where the inquiry establishes that a manager or supervisor did not properly carry out the responsibilities provided under this policy, the manager or supervisor shall be subject to appropriate corrective action, disciplinary or otherwise, up to and including removal.

VIII. CONFIDENTIALITY

The Review Commission will protect to the furthest extent possible the confidentiality of the employee that pursues a harassment complaint. Moreover, employees who make complaints of harassment or provide information related to such complaints will be protected from retaliation. There may be occasions where complete confidentiality cannot be maintained in order for the investigator to conduct a thorough inquiry of the matter.

All information will be maintained on a confidential basis to the greatest extent possible. The maintenance of records and any disclosures of information from these records shall be in compliance with the Privacy Act, 5 USC § 552(a). Such information, however, may be disclosed to defend the Review Commission in any litigation to which the information may be relevant and necessary. Further, information may be disclosed to those officials and employees within the Review Commission that require knowledge of the information to carry out the purpose and intent of this policy.

