



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P. O. Box 77960**

**Washington, D.C. 20013**

October 22, 2021

Via Email: [Vonna.Ordaz@nrc.gov](mailto:Vonna.Ordaz@nrc.gov)

Vonna Ordaz, Director  
Office of Small Business and Civil Rights  
Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, Maryland 20852

Dear Director Ordaz:

Thank you for providing the Equal Employment Opportunity Commission's Office of Federal Operations (OFO) with a copy of the Nuclear Regulatory Commission's (NRC) revised *Policy and Procedure for Preventing and Eliminating Harassing Conduct in the Workplace*.

Following the U.S. Supreme Court's decision in *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), EEOC issued *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors in 1999*, requiring federal agencies to establish anti-harassment procedures that contain, at a minimum, the following elements:

1. A clear explanation of prohibited conduct, including:
  - Assurance that the agency will address harassing conduct before it becomes unlawful and
  - A list of all protected EEO bases;
2. A clearly described complaint process that provides accessible avenues for complainants;
3. A complaint process that provides a prompt, thorough, and impartial investigation; and,
4. Assurance that to the extent possible, the agency will protect the confidentiality of the individuals bringing harassment claims;
5. Assurance that employees who make claims of harassment or provide information related to such claims will be protected against retaliation;
6. Assurance that the agency will take immediate and appropriate corrective action when it determines that harassment has occurred.

After reviewing NRC's anti-harassment policy, we find that the document contains elements 2, 4, and 5, but does not comply with elements 1, 3, and 6.

**Element 1: A Clear Explanation of the Prohibited Conduct**

We commend NRC for having a policy that defines harassment and seeks to prevent all unwelcome conduct from rising to the level of unlawful harassment. However, the

policy does not include “genetic information” in the list of EEO protected bases. Additionally, although the policy correctly lists “sexual orientation” as an EEO basis, it does not list “pregnancy” and “gender identity” as EEO protected bases on which sex-based harassment can occur. We expect NRC to revise the policy to include the complete list of EEO protected bases.

### **Element 3: A Prompt, Thorough, and Impartial Investigation**

We commend NRC for having a policy that states the agency must undertake “prompt, fair, and impartial inquiries” of harassment allegations. However, Part G, Question C.2.a.5 of the MD-715 Instructions also requires agencies to begin the investigation within 10 days of receiving notice of harassment allegations. Because NRC’s policy does not contain a timeframe in which the agency must begin investigations, we expect the agency to revise its policy to state that investigations will start within 10 calendar days of notification of harassment allegations.

### **Element 6: Immediate and Appropriate Corrective Action**

NRC’s policy states, “Where the inquiry establishes that an employee did engage in harassing conduct under this Policy, he/she will be subject to appropriate corrective action, disciplinary or otherwise, in accordance with 5 U.S.C. Chapter 75.” However, to comply with EEOC guidance, the policy must state that the agency will take “immediate and appropriate corrective action” whenever it finds that harassment has occurred. See EEOC *Enforcement Guidance: Vicarious Liability for Unlawful Harassment by Supervisors*, V.C.1 (June 18, 1999).

Moreover, we urge NRC to review an EEOC appellate decision, *Tammy S. v. Dep’t of Defense* (Defense Intelligence Agency), EEOC No. 0120084008 (June 6, 2014), at <https://www.eeoc.gov/decisions/0120084008.txt>. In *Tammy S.*, EEOC found the agency did not take immediate corrective action when it waited two months to stop the harassing conduct. Therefore, NRC should revise its policy to state that it will take “immediate and appropriate” corrective action when it finds that harassment occurred, and that such corrective action will be undertaken within 60 calendar days of receiving notice of harassment allegations.

### **Next Steps**

We trust that this review has been constructive and helpful. We expect NRC to revise and re-submit its revised anti-harassment policy and procedures consistent with our feedback by **January 22, 2022**.

We look forward to continuing our work together toward the shared goal of making the federal government a model employer. If you have any questions about this letter,

please do not hesitate to contact Cecilia Grugan at [Cecilia.Grugan@eeoc.gov](mailto:Cecilia.Grugan@eeoc.gov) or (202) 750-1912.

Sincerely,



Lori Grant, Assistant Director  
Agency Oversight Division