

**Nuclear Regulatory Commission Anti-Harassment  
Policy  
Policy and Procedures for Preventing and  
Eliminating Harassing Conduct in the Workplace**

**I. Purpose**

This Policy is intended to ensure that the Nuclear Regulatory Commission (NRC) takes appropriate action to accomplish the following:

Prevent sexual harassment and other forms of harassing conduct based on age, color, disability, gender expression, gender identity, genetic information, national origin, pregnancy, race, religion, sex, sexual orientation, and retaliation for engaging in protected Equal Employment Opportunity (EEO) activity in the workplace;

Ensure that employees, supervisors, and managers are aware of their rights and responsibilities in maintaining a work environment that is free from harassing conduct and the options available for reporting claims of harassing conduct;

Provide a prompt, fair, thorough and impartial process for reviewing allegations of harassing conduct as defined in this Policy;

Correct harassing conduct, as defined in this Policy; and

Administer corrective action, which may include disciplinary action, to any employee who violates this Policy.

**II. Relationship to Other Processes**

The procedures in this Policy are separate and apart from any complaint process provided by statute, including the Equal Employment Opportunity (EEO) complaint process administered by the Office of Small Business and Civil Rights (SBCR), as well as any complaint process provided by the collective bargaining agreement (CBA) or other agency policies involving harassment and retaliation. Furthermore, this Policy does not alter the right of an employee to report harassing conduct to the Office of the Inspector General (OIG) or to file a complaint with SBCR.

It should be noted, however, that reporting harassment under this Policy does not satisfy or delay the applicable time limits for initiating an EEO complaint, a union grievance or any other administrative or statutory complaint process.

**III. Authorities**

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-16 (Title VII); the Age Discrimination in Employment Act of 1967, 29 U.S.C. 633a

(ADEA); the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791; the Genetic Information Nondiscrimination Act (GINA), 42 U.S.C. § 2000ff et seq., Executive Order (E.O.) 11478, as amended by Executive Order 13087, May 28, 1998; Equal Employment Opportunity Commission's (EEOC) *Model EEO Programs Must Have An Effective Anti-Harassment Program* (2005); EEOC's Manual Directive 715 (2003); EEOC's Enforcement Guidance: *Vicarious Employer Liability for Unlawful Harassment by Supervisors* (1999); *Bostock v. Clayton County*, 590 U.S. \_\_\_\_ (2020); *Faragher v. Boca Raton*, 514 U.S. 775 (1998); and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).

#### **IV. Definitions**

For purposes of this Policy, harassing conduct is defined as any unwelcome verbal, visual, physical or other conduct (whether or not of a sexual nature) based on age, color, disability, gender expression, gender identity, genetic information, national origin, pregnancy, race, religion, sex, sexual orientation, or retaliation for participation in protected EEO activities. To constitute harassing conduct under this Policy, one of these two conditions must be present:

1. The behavior reasonably can be considered to affect the work environment adversely; or
2. An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

Examples of unwelcome prohibited conduct under part 1 of the definition include, but are not limited to: offensive remarks or comments; ridicule; offensive and derogatory words, phrases, epithets, or jokes; suggestive comments and unwelcome requests for sexual favors; exposure to offensive photographs, explicit drawings, cartoons, e-mails, or other electronic transmissions; unwelcome touching; pinching; grabbing; gesturing; or stalking.

Examples of unwelcome prohibited conduct under part 2 of the definition include, but are not limited to: promoting or not promoting an employee; taking or not taking a personnel action affecting the employee's conditions of employment based on the employee accepting a date or sexual favor.

Generally, this Policy does not consider all rude, uncivil, or disrespectful behavior in the workplace to be harassing conduct, nor does it typically consider a supervisor performing their management duties to be engaging in harassing conduct (e.g., performance managing employees, issuing disciplinary actions, tracking leave and attendance, or enforcing compliance with rules, regulations, agency policy, procedures, and practices).

#### **V. Policy**

It is the Policy of the NRC that harassing conduct by anyone in the workplace is unacceptable and will not be condoned. NRC will maintain a work environment free from the harassing conduct described above. The NRC has determined that the most effective way to maintain such a work environment is to inquire into allegations of

harassing conduct and, if substantiated<sup>1</sup>, treat the offense as misconduct, and determine appropriate corrective action to address the behavior, even if the behavior is not sufficiently severe or pervasive to constitute discriminatory harassment actionable under the civil rights laws.

The current EEO complaint process provides employees specific remedies for unlawful harassment that has already occurred. This NRC Policy, however, is focused on stopping harassing conduct at its earliest stage. A hostile environment that violates EEO law usually requires a showing of a pattern of offensive conduct. Under this Policy, however, the NRC will not wait, nor should the employee wait, for such a pattern to emerge. The NRC will, where possible, act to stop and correct harassing conduct before it becomes unlawful; that is, before it becomes so pervasive or severe as to create an unlawful hostile work environment. Accordingly, the NRC encourages all employees to report any incident of harassing conduct forbidden by this Policy immediately so that complaints can be resolved quickly and fairly. If the NRC is not made aware of harassing conduct, it cannot stop it.

In addition, NRC will not tolerate retaliation against any employee who makes a good faith report of harassing conduct under this Policy or any other policy or procedure, or for assisting in any inquiry about such a report. Allegations of retaliation will be handled in accordance with the procedures outlined in this Policy.

Allegations of harassing conduct will be addressed as promptly as possible. Employees found to have violated this Policy will be held accountable for their actions and may be appropriately disciplined in accordance with the applicable NRC policies and 5 U.S.C. Chapter 75.

## **VI. Roles and Responsibilities**

**A. Agency Employees** Each agency employee is responsible for creating and maintaining a work environment that is free from harassing conduct and is expected to do the following:

1. Be familiar and comply with the requirements of the Anti-Harassment Policy and Procedures;
2. Refrain from engaging in harassing conduct;
3. Promptly report any alleged incident of harassing conduct in accordance with the Procedures in Section VII.; and
4. Timely and fully cooperate with any inquiry conducted under this Policy, this includes maintaining confidentiality.

## **B. Managers and Supervisors**

In addition to the requirements in A. above, each agency manager and

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<sup>1</sup> An allegation is “substantiated” when evidence is found that supports and corroborates the claim. However, “substantiated” does not necessarily equate to having been proven “true.” Rather, it is more akin to a finding that it is more likely than not that the matter occurred as alleged.

supervisor is responsible for the following activities:

1. Immediately report allegations of harassment to the DO.
2. Handling allegations of harassing conduct promptly and appropriately in accordance with the procedures Section VIII.;
3. Implementing interim measures to protect alleged victims of harassing conduct pending the outcome of the inquiry and to ensure that further alleged misconduct does not occur;
4. Administering appropriate corrective action, including disciplinary action, to employees under their supervision who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
5. Taking action to prevent retaliation against individuals who make good faith reports of an allegation of harassing conduct or participate in any inquiry into an allegation of harassing conduct; and
6. Consulting with the agency Designated Official (DO) with respect to all appropriate actions under items B.1. through 4. above.

**C. Chief Human Capital Officer (CHCO), Office of the Chief Human Capital Officer (OCHCO)**

The CHCO is responsible for the following actions:

1. Developing this Anti-Harassment Policy and Procedures, and any related forms, guidance, or informational materials deemed appropriate;
2. Providing advice, technical assistance, and support to managers, supervisors, employees, and others, as needed, regarding this Policy;
3. Ensuring that employees are informed of this Policy and the procedures to follow in connection with reporting harassing conduct by disseminating this Policy statement periodically to all employees and posting it on the NRC website;
4. Ensuring that managers, supervisors, and employees are provided training on this Policy;
5. Identifying the DO; and
6. Ensuring that the identity of the DO is prominently displayed throughout the agency and on the NRC intranet and the identities of the Regional Personnel Officers are prominently displayed in the Regions.

**D. Agency Designated Official**

The agency's DO is responsible for the following actions:

1. Assisting the CHCO in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;
2. Receiving allegations of harassing conduct reported in accordance with Section VII., below;
3. Determining whether an allegation falls within the jurisdiction of this Policy or otherwise interpreting and implementing this Policy;
4. Referring allegations covered by the Agency's Policy to the Office of the Inspector General (OIG) for possible investigation.
5. Conducting or overseeing fair and impartial inquiries into any allegation of harassing conduct, where appropriate. If the OIG decides not to make an inquiry on a referral received under this Policy, the DO has the authority to determine who will conduct the inquiry into any allegation of harassing conduct, including him/herself;
6. Advising managers and supervisors on implementing interim measures to protect against further alleged incidents pending the outcome of the inquiry and to ensure that further harassing conduct does not occur; Interim measures are meant to protect the alleged victim, the alleged harasser, and management from further allegations or incidents.
7. As appropriate, imposing interim corrective measures to immediately stop potential harassing conduct. Such corrective action will be undertaken within 60-calendar days of receiving notice of harassment allegations.
8. Advising managers and supervisors on administering appropriate corrective action, including disciplinary action, to employees who engage in harassing conduct or who do not carry out their responsibilities under this Policy;
9. Advising managers and supervisors on taking action to prevent retaliation against individuals who report alleged harassing conduct or participate in any inquiry into an allegation of harassing conduct;
10. Deciding whether to arrange for mediation services to resolve a dispute arising under this Policy. Mediation services may be offered from a variety of sources including the DO, the Federal Mediation and Conciliation Service, Office of Small Business and Civil Rights (SBCR), a contract mediator, and the HHS Sharing Neutrals Program;
11. Providing technical assistance and support, to ensure compliance with this Policy;
12. Maintaining records of all allegations of harassing conduct brought under this Policy in accordance with the Privacy Act 5 U.S.C. 552a; and
13. Informing all persons reporting allegations that filing a report of harassing conduct under this Policy does not satisfy the requirements

to initiate an EEO complaint, a Merit Systems Protection Board (MSPB) appeal or a grievance; nor does it delay the time limits for initiating those procedures.

**E. Director, Office of Small Business and Civil Rights (SBCR)**

The Director, SBCR is responsible for the following actions:

1. Processing any EEO complaint of discrimination filed under 29 CFR pt. 1614;
2. Providing technical assistance and support, to assure compliance with this Policy;
3. Assisting the CHCO in ensuring that employees are informed of this Policy and the procedures in connection with reporting harassing conduct;
4. Assisting the CHCO and DO in providing training under this Policy; and
5. Informing the DO of allegations of harassing conduct, to the extent permitted by law and EEO regulation.

**F. Office of the Inspector General (OIG)**

The OIG is responsible for:

1. Cases referred from the DO: for allegations that it decides to investigate, OIG will conduct an appropriate investigation; if substantiated, OIG will refer the findings of the investigation to NRC management for appropriate action;
2. Cases not referred from the DO:
  - A. For allegations that it decides to investigate, the OIG will conduct an appropriate investigation; if substantiated, the OIG will refer the findings of its investigation to NRC management for appropriate action;
  - B. For cases it decides not to investigate, the OIG will refer the matter to the DO for action, if any; and
  - C. For record keeping purposes, at the end of any investigation, the OIG will report allegations of harassing conduct to the DO.
3. For all cases in which the OIG conducts an investigation into harassment allegations or misconduct, the OIG will report situations which it determines warrant prompt NRC management action to the DO.

The procedures for reporting harassing conduct are as follows:

- A. Any NRC employee who believes that they have been the subject of an incident of harassing conduct or who has witnessed harassing conduct and/or retaliation in violation of this Policy should immediately report the incident to anyone in his/her management chain, to the DO, or other NRC official such as an EEO or HR Specialist. The Agency official is then responsible for reporting the matter to the DO. All NRC managers and supervisors are required to immediately report allegations of harassment to the DO. All NRC employees may also report any incident of harassing conduct to the OIG via the OIG hotline.
- B. The employee reporting such conduct will be asked to provide details of the incident(s), including but not limited to what occurred, when the incident(s) occurred; name of the alleged harasser and names of any witnesses. Once a report of harassing conduct is made under this Policy, the agency has a duty to conduct an inquiry where appropriate, stop harassing conduct if found, and to take appropriate action, including disciplinary action;
- C. Nothing in this Policy is intended to discourage an employee from telling the alleged harasser to stop the harassing conduct;
- D. Nothing in this Policy is intended to require that an employee communicate with the alleged harasser;
- E. Nothing in this Policy affects the right of an individual to contact the OIG regarding alleged harassing behavior; nor does it affect the right of an individual to participate in the EEO complaint process, file an appeal with the MSPB, an agency administrative grievance, or for bargaining unit employees, initiate a grievance under the NRC-NTEU CBA. Filing a report of harassing conduct under this Policy **does not** satisfy the requirements associated with any complaint, appeal or other statutory or regulatory process that may apply, **nor does it delay the time limits** for initiating those procedures. Section XI. provides further information on statutory and collective bargaining claims; and
- F. All information will be maintained in compliance with the Privacy Act, 5 U.S.C. 552a, as stated in Section X. of this Policy.

## VIII. Conducting an Inquiry

- A. A supervisor or manager who receives an allegation or witnesses harassing conduct shall immediately:
  1. Inform the DO of the allegation;
  2. In consultation with the DO, take appropriate action to stop any potentially harassing conduct and prevent further alleged incidents while the allegations are being investigated, (i.e., providing appropriate interim measures); and
  3. Document the allegation received or witnessed and their efforts

to address it.

- B. When the DO receives an allegation of harassing conduct, either directly from the complainant; through a supervisor, manager, or from other sources, the DO will take the following actions:
  1. Begin the initial inquiry within 10-calendar days of receiving an allegation under this Policy, by sending the alleged harasser a "Notice of Rights<sup>2</sup>" form and scheduling the initial intake interview.
  2. After initial intake, determine if the allegation falls within the scope of the Agency's Policy. If the allegations fall within the Agency's Policy, refer the allegation to the OIG for possible OIG investigation.
  3. If OIG declines investigation, the DO will ensure that a vigorous, impartial and appropriate inquiry is conducted and designate the person(s) who will conduct such an inquiry. (This inquiry may be conducted by the DO, the supervisor, an outside contractor, or any other impartial individual delegated this responsibility by the DO); and
  4. Contact appropriate agency officials in the alleged harasser's chain of command who are not involved in the allegations of harassment and recommend appropriate action to stop any harassing conduct and prevent further harassing conduct while the allegations are being addressed, (i.e., providing appropriate interim measures).
- C. The inquiry will consist of appropriate fact-finding in order to obtain the information relevant to the allegation. As part of the inquiry, the complaining employee may be interviewed regarding the basis of the allegations. Additionally, the alleged harasser as well as other witnesses who may have knowledge of the circumstances of the allegations may also be interviewed. The determination as to the appropriate steps to be followed during the inquiry will be determined by the person conducting the inquiry with oversight by the DO. All individuals contacted in the course of an inquiry will be advised that any retaliation or reprisal against an individual who is an alleged target of harassing conduct, who has made a complaint under this Policy, or who has provided information in connection with a complaint, constitutes a separate violation of this Policy. The inquiry will be completed promptly absent extenuating circumstances.
- D. An inquiry is a neutral, fact-finding process needed to determine whether harassing conduct has occurred. An inquiry shall not, in and of itself, be construed as evidence that the allegations of harassing conduct are true.
- E. The DO, or the individual the DO has designated to conduct the inquiry, shall determine whether sworn declarations will be taken.
- F. When an inquiry by management discloses new, significant information regarding

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<sup>2</sup> Notice of Rights form is a document that explains the rights that the employee may have in connection with this inquiry.

allegations of misconduct by management or employees, the OIG will be notified of these additional facts and provided an opportunity to assume jurisdiction over the matter. However, this is not intended to preclude NRC management from taking appropriate immediate action to carry out its responsibilities to maintain a safe and orderly workplace or to otherwise protect agency interests associated with this Policy.

- G. Upon completion of the inquiry, the individual conducting the inquiry will prepare a written report summarizing the inquiry. The report will be prepared promptly after completion of the inquiry. The report, along with the documentation compiled during the inquiry, will be provided to the DO (if they did not conduct the inquiry). The report will also generally be provided to the first level supervisor of the alleged harasser, unless such supervisor is involved in the allegation. In this situation, the report will be provided to the lowest level supervisor/manager in the alleged harasser's chain of command who is not a subject of the inquiry.
- H. All information will be maintained on a confidential basis to the greatest extent possible and in compliance with the Privacy Act, 5 U.S.C. 552a, as stated in Section X. of this Policy.

## **IX. Action To Be Taken Upon Completion Of The Inquiry**

- A. Upon completion of the inquiry, both the aleger and the alleged harasser will receive Inquiry Outcome Notice documents informing them that either a violation of the Agency's Policy was or was not found to have occurred.
- B. Theappropriate manager or supervisor will receive the report of inquiry.
- C. Upon receipt of the report of inquiry, the appropriate supervisor/manager will promptly evaluate the information and determine the appropriate action, if any. This responsibility normally will rest with the first line supervisor of the employee alleged to have engaged in the harassing conduct, unless such supervisor isinvolved in the allegation. The supervisor/manager should consult with the servicing Labor and Employee Relations Specialist, OCHCO, and the Office of General Counsel as needed to determine the appropriate action.
- D. Where the inquiry establishes that an employee did engage in harassing conduct under this Policy, the NRC will take immediate and appropriate corrective action which will be initiated within 60-calendar days. Further, the harassing employee may be subject to appropriate disciplinary action in accordance with all applicable authorities, including 5 U.S.C. Chapter 75.
- E. Where the inquiry establishes that a supervisor or manager did not properly carry out the responsibilities under this Policy, they will be subject to appropriate corrective action, which may include disciplinary or otherwise, in accordance with allapplicable authorities, including 5 U.S.C. Chapter 75.
- F. The DO will notify the OIG and may, if appropriate, notify SBCR of the outcome of the agency inquiry, including whether the allegation was substantiated, what corrective action was taken; and any other action taken to

address the matter.

## X. Confidentiality

The maintenance of records and disclosures of information from records shall be in complete compliance with the Privacy Act, 5 U.S.C. 552a. All information obtained under this Policy, including but not limited to, reports of harassing conduct, will be maintained confidentially to the greatest extent possible. Such information, however, may be required to be disclosed in connection with proceedings resulting from the harassing conduct, (e.g., disciplinary action). Further, information may need to be disclosed to those officials and employees within the agency with a need to know or as necessary to carry out the purpose and intent of this Policy.

## XI. Statutory and Collective Bargaining Claims

This Policy is in addition to statutory and collective bargaining prohibitions [NRC-NTEU CBA, Article 2] against harassment and the procedures and remedies they provide for addressing unlawful harassment. Filing a report of harassing conduct under this Policy **does not** satisfy the requirements to initiate any complaint, appeal or other statutory or regulatory process that may apply, **nor does it delay the time limits** for initiating those procedures. An employee who chooses to pursue statutory or collective bargaining remedies for unlawful harassment must:

1. Initiate the EEO complaint process pursuant to 29 C.F.R. 1614.§105 by contacting an EEO counselor in the SBCR within 45-calendar days from the date of the alleged harassment (or personnel action if one is involved); or
2. File a grievance under the CBA, Article 46 or agency grievance procedure; or
3. File an appeal to the MSPB within 30-days of an appealable action as defined in 5 C.F.R. §1201.3.;
4. If an employee pursues a claim of harassment through the formal EEO process (including EEO counseling), an MSPB appeal, a union grievance, or an administrative grievance, the agency official who receives the information about such a claim will promptly notify the DO, unless inconsistent with applicable requirements. Because the agency has an obligation to comply with the terms of this Policy regardless of whether a statutory or collective bargaining procedure has been invoked, the DO will promptly initiate an inquiry into the matter, if appropriate, and if a management official has not already done so. Similarly, the DO will provide the Office handling the statutory or collective bargaining claim the record of actions taken under this Policy.