

Anti-Harassment Policy and Complaint Procedure

Purpose

It is the U.S. Election Assistance Commission (EAC) policy to ensure that every employee enjoys a non-hostile work environment free of discrimination or harassment of any kind. All employment decisions; such as hiring, promoting, training and rewarding, will be made exclusively on the basis of job-related criteria; e.g., employees' knowledge, skills, abilities and performance. Disciplinary actions will be taken solely on the bases of employees' behavior and performance. Discrimination of any kind based on race, color, religion, sex, sexual harassment, national origin, age, handicap, sexual orientation, reprisal, marital status, political affiliation, parental status or non-job-related conduct is forbidden and subject to appropriate disciplinary action. EAC is proud of its record in providing equal employment opportunity to all and will seek to prevent, correct and discipline behavior that violates this policy.

Scope

All employees, regardless of their positions, are covered by and are expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur. Appropriate disciplinary action will be taken against any employee who violates this policy. Based on the seriousness of the offense, disciplinary action may include verbal or written reprimand, suspension, or termination of employment.

Prohibited Conduct Under This Policy

EAC, in compliance with all applicable anti-discrimination and harassment laws and regulations, enforces this policy in accordance with the following definitions and guidelines:

DISCRIMINATION

It is a violation of EAC's policy to discriminate in the provision of employment opportunities, benefits or privileges; to create discriminatory work conditions; or to use discriminatory evaluative standards in employment if the basis of that discriminatory treatment is, in whole or in part, the person's race, color, national origin, age, religion, disability status, gender, sexual orientation, gender identity, genetic information, parental status, marital status or political affiliation.

RACE

Discrimination based on race is prohibited by Title VII of the Civil Rights Act of 1964. Racial discrimination occurs when persons are treated differently than others who are similarly situated because they are members of a specific race; e.g., White, Black, Asian, etc. Examples of employees who are similarly situated may be those working in the same position and pay band, or under the same line of supervision.

Racial discrimination also occurs when persons are treated differently because of unalterable characteristics; e.g., physical features indigenous to their race. Courts have held that racial discrimination in employment can also occur when employees are treated differently because of their interracial dating or marriage, or their membership in racially oriented groups.

COLOR

Title VII of the Civil Rights Act of 1964 prohibits discrimination based on color. This type of discrimination occurs when persons are treated differently than others who are similarly situated because of the color of their skin. Color discrimination can occur together with race discrimination, but may also occur between members of the same race.

NATIONAL ORIGIN

Discrimination based on national origin is prohibited by Title VII of the Civil Rights Act of 1964. National origin discrimination includes that based on an individual's or his or her ancestors' place of origin, or physical, cultural or linguistic characteristics. Other examples include discrimination based on marriage to, or association with, persons of a national origin group; attendance or participation in schools or religious organizations used by a national origin group; and an individual's or spouse's name which is associated with a national origin group. Requiring employees to speak English at all times, including breaks and lunch periods, is an example of an employment practice that discriminates against persons whose primary language is not English.

AGE

Discrimination based on age is prohibited by the Age Discrimination in Employment Act of 1967. For Federal employees, the protected age group is age 40 and above, with no upper age limit. Age discrimination also occurs among age groups who are over age 40; e.g., the selection of a 45-year old candidate may appear to be discriminatory to 55-year old candidates if it can be shown that management has never selected a candidate at or above age 55.

Excluding older employees from training opportunities, denying them special work assignments which would give them experience for promotions or awards, and attempting to persuade or influence them to retire are other examples of age discrimination.

RELIGION

Discrimination based on religion is prohibited by Title VII of the Civil Rights Act of 1964. In defining religious discrimination, the United States Supreme Court held that religion is not limited to Orthodox or well-recognized denominations; e.g., Catholic, Baptist or Judaism. All that is required is a sincere and meaningful belief equivalent to the belief in God held by the more well-recognized religions. Atheists are also protected.

Religious discrimination can occur in two ways. The first is by treating employees or applicants for employment differently because of their religion. The second occurs when an employment rule or policy violates a fundamental belief, principle or practice of one's religion and management fails to provide an accommodation. Religious practices are not limited to worship, but may include attendance at meetings and retreats, or the wearing of certain attire.

Management's obligation to accommodate begins when the employee notifies them of the need for an accommodation. Once notified, management should consider alternatives and offer one

which would not create an undue hardship for the agency or disadvantage other employees. Undue hardships are determined on a case-by-case basis.

DISABILITY STATUS

Discrimination based on disability is prohibited by the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990. Disability discrimination can occur in two ways. The first occurs when employees or applicants are treated differently on the basis of their physical or mental disabilities. The second occurs when management fails to make reasonable accommodation for the disabling condition(s).

A person with a disability is defined as one who has a physical or mental impairment which substantially limits one or more major life functions; e.g., walking, speaking, breathing, learning, etc.; one who has a record of such, or one who is regarded as having a disability.

Management must make reasonable accommodation to the known physical or mental limitations of qualified applicants or employees with disabilities unless the accommodation would impose an undue hardship upon the agency. Qualified persons with disabilities are those who, with or without accommodation, can perform the essential elements of the job. Otherwise qualified applicants with disabilities may not be rejected for employment on the grounds that reasonable accommodation would have to be made.

Reasonable accommodation can include modifying job-related procedures, tasks or requirements (other than critical generic job tasks), adjusting the employee's work schedule, altering the physical work space, providing special equipment, providing readers for the visually impaired, interpreters for the hearing impaired, etc. Medical proof of disability is usually required when an employee requests an accommodation. The reasonableness of the accommodation and the creation of undue hardships are determined on a case-by-case basis.

See EAC's reasonable accommodation policy for the criteria to evaluate requests and the procedures to obtain equipment, readers, interpreters and personal assistants.

GENDER

Discrimination based on sex is prohibited by Title VII of the Civil Rights Act of 1964. Sex discrimination may occur in two ways. The first is a policy or practice which treats similarly situated men or women differently from the opposite gender. The second occurs when a gender-neutral policy or practice has a disproportionate adverse effect on one of the genders.

Discrimination in violation of this policy will be subject to disciplinary measures up to and including termination.

GENDER IDENTITY

Discrimination based on gender identity is not specifically prohibited under federal law at this time, however; in [*Macy v. Dep't of Justice*, EEOC Appeal No. 0120120821, 2012 WL 1435995 \(April 20, 2012\)](#), the EEOC held that intentional discrimination against a transgender individual

because that person's gender identity is, by definition, discrimination based on sex and therefore violates Title VII.

GENETIC INFORMATION

Discrimination based on genetic information is prohibited by Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA). Examples GINA discrimination include:

- An employer may not use genetic information in making decisions regarding hiring, promotion, terms or conditions, privileges of employment, compensation, or termination.
- An employer may not use genetic information in making decisions regarding admission or employment in any program for training and retraining, including on-the-job training.

PARENTAL STATUS

Executive Order 13152 states explicitly that discrimination based upon an individual's status as a parent is prohibited within the Executive Branch of the Federal Government. The Executive Order adds parental status to the list of categories for which discrimination is prohibited. The other categories are race, color, religion, sex, national origin, handicap, age, sexual orientation, marital status, political affiliation and conduct not adversely affecting employee performance.

The Executive Order is designed to prevent intentional discrimination against employees solely because they are parents. It is not designed to place other employees at a disadvantage or to give parents preference.

The Executive Order refers to "status as a parent" as the status of an individual who, with respect to an individual who is under the age of 18, or who is 18 or older but is incapable of self-care because of a physical or mental disability, is: a biological parent; an adoptive parent; a foster parent; a stepparent; a custodian of a legal ward; *in loco parentis* to such an individual; or actively seeking legal custody or adoption of such an individual.

A person stands "in loco parentis" when he or she has day-to-day responsibility to care for and financially support a child. A biological or legal relationship is not necessary. The Executive Order does not cover a person who simply provides daily childcare to a family.

If you believe you have been discriminated against on the basis of parental status, under certain circumstances, you may seek assistance from the Merit Systems Protection Board, Office of Special Counsel; negotiated grievance procedure; equal employment opportunity (EEO) discrimination complaints process; or your first-line supervisor or someone higher in your chain of management.

MARITAL STATUS

Discrimination based on marital status is prohibited by the Code of Federal Regulations, 5 CFR 720.901. This type of discrimination occurs when management demonstrates a preference for employees or applicants who are married or single. An example would be assuming that married employees have family responsibilities which limit their ability to travel, and hiring only those applicants who are known to be single for a job requiring much travel.

POLITICAL AFFILIATION

The United States Code, 5 USC 2302, prohibits discrimination based on political affiliation. Discrimination based on political affiliation occurs when management demonstrates a preference for, or aversion to, employees or applicants belonging to a particular political party or having associates with connections to a particular political party. An example might be hiring only those applicants, and promoting only those employees, known to be members of a given party during a period when that party heads the administration.

SEXUAL ORIENTATION

Discrimination based on sexual orientation is directed at persons who are gay, lesbian, bisexual or transgender, who are perceived to be gay, lesbian, bisexual or transgender or who associate with persons who are gay, lesbian, bisexual or transgender. This may take the form of harassment or treatment that is different than that afforded similarly situated employees or applicants.

To address sexual orientation discrimination, employees should contact the Office of Human Resources (OHR). Employees' right to address sexual orientation discrimination derives from EAC's policy, not from Equal Employment Opportunity Commission (EEOC) regulations which govern other types of discrimination complaints processing. If counseling does not lead to a resolution, complainants will be told in writing of their right to file a formal complaint and given the procedure for doing so. Following an EEO investigation, the Employee Equal Opportunity Office at the General Services Administration (GSA), EAC's shared service provider, makes the final decision on the complaint. Unlike complaints based on other forms of discrimination, sexual orientation complainants do not have appeal rights to EEOC.

HARASSMENT

EAC prohibits harassment of any kind, including sexual harassment, and will take appropriate and immediate action in response to complaints or knowledge of violations of this policy. For purposes of this policy, harassment is any verbal or physical conduct designed to threaten, intimidate or coerce an employee, co-worker, or any person working for or on behalf of EAC.

The following examples of harassment are intended to be guidelines and are not exclusive when determining whether there has been a violation of this policy:

- Verbal harassment includes comments that are offensive or unwelcome regarding a person's national origin, race, color, religion, gender, sexual orientation, age, body, disability or appearance, including epithets, slurs and negative stereotyping.
- Nonverbal harassment includes distribution, display or discussion of any written or graphic material that ridicules, denigrates, insults, belittles or shows hostility, aversion or disrespect toward an individual or group because of national origin, race, color, religion, age, gender, sexual orientation, pregnancy, appearance, disability, sexual identity, marital status or other protected status.

SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination and is prohibited by Title VII of the Civil Rights Act of 1964. In 1980, the Equal Employment Opportunity Commission issued guidelines defining sexual harassment as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when any of three criteria are met:

- Submission to the conduct is made either explicitly or implicitly a term or condition of employment;
- Submission to or rejection of the conduct is used as a basis for employment decisions; or
- The conduct has the purpose or effect of unreasonably interfering with work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment may be verbal or physical, exhibited by a man to a woman, by a woman to a man, or within the same gender. Examples of behaviors which could constitute sexual harassment are touching, sexual innuendo, suggestive comments, threats, and nude or sexual pictures, cartoons or calendars, etc.

REPRISAL

Discrimination based on reprisal is prohibited by Title VII of the Civil Rights Act of 1964.

Reprisal occurs 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.

Lodging a bona fide complaint will in no way be used against the employee or have an adverse impact on the individual's employment status. However, filing groundless or malicious complaints is an abuse of this policy and will be treated as a violation.

Any person who is found to have violated this aspect of the policy will be subject to discipline up to and including termination of employment.

NON-JOB-RELATED CONDUCT WHICH DOES NOT ADVERSELY AFFECT THE PERFORMANCE OF EMPLOYEES AND APPLICANTS FOR EMPLOYMENT

The Civil Service Reform Act of 1978 prohibits discrimination on the basis of non-job-related conduct which does not adversely affect the performance of employees or applicants for employment. EAC's policy prohibits employees who are authorized to take, direct others to take, recommend, or approve any personnel action from discriminating on the basis of non-job-related conduct. Authorized employees are held responsible for the prevention of prohibited personnel practices, as well as for compliance with, and enforcement of, all applicable civil service laws, rules and regulations.

Applicants and employees are protected from inquiries into, or actions based upon, non-job-related conduct; e.g., religious, community or social affiliations, or sexual orientation. They are also protected from any infringement of due process, self-incrimination or other constitutional rights. However, applicants competing for positions may receive credit for paid or unpaid religious, civic, welfare, service and organizational work which demonstrates possession of the knowledge, skills or abilities needed to perform the duties of the positions being filled.

In determining the suitability or fitness of an employee or applicant, this policy does not prohibit EAC managers from taking into account the employee's or applicant's conviction for any crime under the laws of any state or the District of Columbia.

MAINTAINING A NON-HOSTILE WORKPLACE FREE OF DISCRIMINATORY HARASSMENT

EEOC regulation 29 CFR, Part 1614, Section 102 (a) (3) requires agencies to remove every form of prejudice or discrimination from personnel policies, practices and working conditions. A hostile work environment allows ridicule, abuse, insults or derogatory comments that are directly or indirectly based on race, color, national origin, sex, sexual harassment, religion, age, handicap, sexual orientation, reprisal, marital status, political affiliation or parental status. It is further defined as an offensive or intimidating environment that unreasonably interferes with work performance or that otherwise adversely affects employment opportunities. Personal conversations that can be overheard by other employees who consider the conversation offensive can also create a hostile environment.

Management is responsible for maintaining a non-hostile work environment and can be held accountable for, not only their behavior, but that of their employees. If an employee makes abusive or derogatory comments of the type noted above to another employee and the matter comes to management's attention, management must take prompt action.

Such allegations should be confirmed with the employees directly involved in the incident along with any witnesses who might have firsthand information. It is very important to demonstrate to concerned employees that the allegations are taken seriously and that management will not

condone offensive behavior. Disciplinary or other remedial action should reflect management's findings during the course of the inquiry.

EAC will follow guidance regarding harassment established by the Equal Employment Opportunity Commission (EEOC) and standards regarding harassment set by the Supreme Court in two landmark decisions: *Burlington Industries, Inc. v. Ellerth* 118 S. Ct. 2257 (1998) and

Faragher v. City of Boca Raton, 118 S. Ct. 2275 (1998). In these decisions, the Supreme Court made clear that employers are subject to vicarious liability for unlawful harassment by supervisors. Liability is premised on two principles: 1) an employer is responsible for the acts of its supervisors; and 2) employers should be encouraged to prevent harassment and employees should be encouraged to avoid or limit the harm from harassment.

Employees are responsible to come forward and report any behavior they view as harassment *before* it becomes severe or pervasive. While isolated incidents of harassment generally do not violate federal law, a pattern of incidents may be unlawful. Employees are also responsible to take advantage of any preventive or corrective opportunities provided by EAC or to otherwise avoid harm.

Managers have a responsibility to maintain a workforce environment that is free from harassment. When an employee complains to management about alleged harassment, management is obligated to investigate the allegation regardless of whether the complaint conforms to a particular format or is made in writing.

Confidentiality

All complaints and investigations are treated confidentially to the extent possible, and information is disclosed strictly on a need-to-know basis. The identity of the complainant is usually revealed to the parties involved during the investigation, and the Director of Human Resources will take adequate steps to ensure that the complainant is protected from retaliation during and after the investigation. All information pertaining to a complaint or investigation under this policy will be maintained in secure files within the OHR.

Procedures and Responsibilities

A. Procedures Applicable to All EAC Employees

1. Each EAC employee shall be responsible for:
 - a. Acting professionally and refraining from harassing conduct;
 - b. Becoming familiar with the provisions of this policy, complying with all requirements of the policy, and cooperating with any inquiry under this policy; and
 - c. Promptly reporting, pursuant to procedures found below, any incident of harassing conduct that he or she experiences before it becomes a pattern of misconduct so pervasive and offensive as to constitute a hostile environment.

EAC cannot correct harassing conduct if the conduct is not known. When an employee unreasonably fails to take advantage of this procedure and does not promptly report an incident of harassing conduct as set forth herein, EAC reserves the right to raise this failure to report as a defense against a suit for harassment, in accordance with Faragher and Ellerth.

B. Responsibilities of Supervisors and Managers

All supervisors and managers shall be responsible for:

- a. Acting promptly and appropriately to prevent harassment in the workplace, and retaliation against those who complain of harassment;
- b. Reporting, pursuant to procedures found below, any incident of harassing conduct that they witness or is otherwise brought to their attention;
- c. Receiving and handling allegations of harassing conduct promptly and appropriately, utilizing the procedures found below;
- d. In consultation with the Director of Human Resources, providing interim relief to alleged victims of harassment pending the outcome of the investigation to ensure that further misconduct does not occur; and
- e. Using the procedures set forth below, in consultation with the Director of Human Resources, taking prompt and appropriate corrective and disciplinary action, up to and including removal, against personnel who have engaged in harassing conduct or who have not carried out their responsibilities under this policy.

C. Responsibilities of the Office of Human Resources (OHR)

The Director, Human Resources, shall be responsible for disseminating the policy statement annually to all employees. Distributing this procedures document to all EAC offices and posting it on the EAC website;

- a. Ensuring that employees are informed of this policy and the procedures to follow in connection with reporting harassing conduct;
- b. Conducting or overseeing fair and impartial inquiries into allegations of harassing conduct
- c. Providing technical assistance and support, to assure compliance with this policy and providing other assistance as requested;
- d. Receiving allegations of harassment under this policy and promptly notifying the Executive Director of the allegation; and
- e. Providing advice to managers and supervisors on taking disciplinary actions for conduct that violates this policy, as consulted.

D. Responsibilities of General Counsel

The General Counsel shall be responsible for providing legal advice to management concerning the implementation and interpretation of this policy.

E. Responsibilities of the Executive Director

The Executive Director shall be responsible for:

- a. Taking appropriate action to enforce this policy; and
- b. Working closely with the Director of Human Resources to ensure that this policy is properly implemented.

Reporting Harassment

The procedures for reporting incidents of harassing conduct are as follows:

- A. Any person who believes that he or she has been the subject of an incident of harassing conduct in violation of this policy should report this matter: to anyone in the complainant's supervisory chain; or to the Director of Human Resources.
- B. 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 complete compliance with the Privacy Act, 5 U.S.C. 552a. Such information, however, may have to be disclosed to defend EAC in any litigation which the information may be relevant and necessary. Further, information may need to be disclosed to those officials and employees within the agency with a need to know in order to carry out the purpose and intent of this policy.

Inquiries into Allegations of Harassing Conduct

- A. A supervisor or manager who receives an allegation or witnesses harassing conduct shall immediately:
- B. Inform the Director of Human Resources and seek guidance as to further actions;
- C. In consultation with the General Counsel, take action to stop any harassing conduct and prevent further harassment while the allegations are being investigated, including granting of appropriate interim relief to the alleged victim of harassing conduct;
- D. In consultation with the General Counsel, document the allegation received and his or her efforts to address it.
- E. When the Director of Human Resources receives an allegation of harassing conduct, either directly by the complainant or through a supervisor, manager or other sources, he or she shall: Ensure that a prompt, thorough, impartial and appropriate inquiry is conducted;

- F. In consultation with EAC's leadership, determine appropriate action to stop any harassing conduct and prevent further harassment, including granting appropriate interim relief to the alleged victim of harassing conduct while the allegations are being investigated.
- G. Where an investigation is necessary, a written summary of the investigation shall be prepared by the individual conducting the inquiry, in consultation with the Director of Human Resources. (The summary may be brief, depending on the complexity and seriousness of the case.) The summary shall be prepared promptly after completion of the inquiry and shall be submitted to the supervisor who would be responsible for taking disciplinary action against the alleged harasser, if the allegations are true.
- H. The summary of the investigation or other documentation prepared under this procedure shall be kept confidential, to the extent possible. The maintenance of records and any disclosures of information from these records shall be in complete compliance with the Privacy Act, 5 U.S.C. 552a. Such information, however, may have to be disclosed to defend EAC in any litigation to which the information may be relevant and necessary. Further, information may need to be disclosed to those officials and employees within the agency with a need to know in order to carry out the purpose and intent of this policy.

Action To Be Taken upon Completion of the Inquiry

- A. Upon completion of the inquiry, and in consultation with the General Counsel, agency management shall promptly evaluate the evidence and determine the appropriate action to take. This responsibility normally shall rest with the first line supervisor of the employee alleged to have engaged in the harassing conduct unless such supervisor is involved in the allegation. In cases of complex or egregious alleged harassing conduct, the supervisor and the Director of Human Resources should seek the counsel of the Office of the Inspector General. If a General Counsel (GC) employee is involved in the allegation, the Director of Human Resources will solicit assistance from GSA, a shared service provider, for legal advice to GC management.
- B. Where the inquiry establishes that an employee did engage in harassing conduct under this policy, he or she shall be subject to appropriate corrective action, disciplinary or otherwise, in accordance with Chapter 75 of the Civil Service Reform Act, up to and including removal.
- C. Where the inquiry establishes that a manager or supervisor did not properly carry out the responsibilities provided for under this policy, he or she shall be subject to appropriate corrective action, disciplinary or otherwise, in accordance with Chapter 75 of the Civil Service Reform Act, up to and including removal.