

**HHS OFFICE OF HUMAN RESOURCES (OHR)**

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**Department of Health and Human Services**  
**Anti-Harassment Policy and Procedures**

Reviewed and Approved by:

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Date

The contents of this policy are effective to the extent permitted by law, regulation, and all the applicable provisions of all appropriate collective bargaining agreements. Any part of these procedures found to be noncompliant or ineffective will be revised or rescinded, as appropriate, to ensure successful achievement of the Department's mission, goals, and objectives.

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## HHS Anti-Harassment Policy and Procedures

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## HHS Anti-Harassment Policy and Procedures

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### **I. Introduction:**

The Department of Health and Human Services (the “Department” or “HHS”) and its Operating and Staff Divisions (“Agency” or “Agencies”) have an affirmative obligation to create and maintain a work environment in which employees are treated with dignity and respect. The environment must be one of mutual trust and the absence of intimidation, bullying and harassment. In addition, the Secretary’s Equal Employment Opportunity (EEO) Policy incorporates the value of a diverse workforce, the expectation of a safe and secure workplace free from harassment or fear of reprisal. Therefore, the Department will not tolerate unlawful discrimination or harassment of any kind. Through enforcement of this policy, the Department seeks to prevent, correct and, where it exists, eliminate unacceptable behavior that is inconsistent with this policy.

This policy covers all Department and Agency employees, regardless of position. As such, each is expected to comply with this policy and to take appropriate measures to ensure that he or she does not engage in the prohibited conduct. Management will take appropriate action against any employee who violates this policy. Appropriate action includes verbal and written counseling, reprimands, suspensions, demotion or removal from one’s position and from the Federal Service.

### **II. Policy:**

In compliance with all applicable federal and state anti-discrimination and anti-harassment laws and regulations, the Department and its Agencies will enforce this policy in accordance with the following definitions, guidelines and procedures:

Filing a complaint under these procedures is not equivalent to filing an EEO complaint of discrimination, under 29 CFR 1614, or a grievance, under the administrative or negotiated procedures noted in the applicable Collective Bargaining Agreement (CBA), if any.<sup>1</sup>

#### ***A. Workplace Harassment:***

For purposes of this policy, workplace harassment is defined as any verbal or physical conduct<sup>2</sup> that intimidates or coerces an employee, co-worker or any person working for or on behalf of the Department. Verbal attacks (including racial and ethnic slurs or derogatory remarks), that, impairs his or her ability to perform his or her job are included in the definition of harassment.

Harassment of any kind, including sexual harassment, is prohibited. Immediate and appropriate action will be taken against any Department employee found to be in

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<sup>1</sup> This Anti-Harassment Policy and Procedures does not, nor is it intended to, supersede the policies and/or procedures of any collective bargaining agreement in effect as of the date of publication.

<sup>2</sup> Conduct that is based on protected classes (i.e., Race, Color, Religion, Sex, National Origin, Age (40 and over) or Sex) constitutes a violation of 29 CFR 1614, and, thus falls within the purview of Title VII and the Department’s EEO office. All other alleged violations are covered by this policy.

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violation of this policy. To be unlawful, the conduct must be so severe or repeated or pervasive such that it creates a work environment that is hostile, intimidating or offensive to a reasonable person. For the purpose of these procedures, the “reasonable person” standard considers the complainant’s perspective and assesses if a reasonable person exposed to the same or similar circumstances would find the environment hostile, intimidating, or offensive.<sup>3</sup>

### ***B. Definitions:***

(1) Workplace harassment is considered to have occurred when:

(i) The conduct was sufficiently severe or pervasive (e.g., a pattern) enough to create an environment that is hostile, or intimidating to a reasonable person exposed to the same or similar circumstances.<sup>4</sup>

(2) Inappropriate conduct occurs when the complainant has not solicited or invited the conduct and regards it as unacceptable, (outside of work assignments or instructions) and the complainant is not an active participant in the behavior. *Note: submission does not mean the conduct was welcomed.* Examples include:

- Sexual advances/pressures for dates. (Violator must be told that behavior is unacceptable, or unwelcomed)
- Inappropriate or racial slurs, comments, and innuendos.
- Rude or obnoxious remarks or comments.
- Inappropriate touching.
- Inappropriate gestures, expressions, pictures or graffiti.
- Actions or behaviors that adversely impact Agency operations, productivity and/or work environment.
- Threats made against others or other threatening behavior.
- Psychological bullying<sup>5</sup> or intimidation, such as: making statements which are false, malicious, disparaging, derogatory, rude, disrespectful, abusive, obnoxious, demeaning, belittling, or that have the intent to hurt others' reputation.
- Physical intimidation or aggression (e.g., holding, restraining, impeding or blocking movement, following, stalking, inappropriate contact or advances, bullying, or any other forms of inappropriate touching or gestures).
- Inappropriate communication such as slurs, epithets, ridicule, insults, displaying

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<sup>3</sup> For dangerous or life-threatening behavior, please refer to the Procedures for Handling Disruptive Employees, Personnel Threats or Emergencies (Attachment #1).

<sup>4</sup> Although isolated incidents may not rise to the level of “harassment”, the actions must be addressed in accordance with the Department’s disciplinary policy, (see generally, HHS Instruction 752 and the HHS Residual Standards of Conduct.)

<sup>5</sup> Workplace bullying is defined as repeated health-harming mistreatment of one or more persons by one or more perpetrators. It is abusive conduct that is threatening, humiliating or intimidating; verbal abuse, or conduct that is intrusive or interferes with or sabotages the target’s ability to work.

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objects, pictures, graffiti, etc. This type of inappropriate communication could happen in person, on the phone, through other electronic means of communication, etc.

- (3) Liability attaches if (i) the Department or Agency management knew or should have known of the harassment and (ii) failed to take immediate and appropriate action to investigate the behavior. Knowledge is assumed if:
- The victim complains about harassment to the appropriate official;
  - The conduct occurred in the presence of a manager or supervisor and they were aware of it;
  - The conduct is widespread; or
  - The complainant put the alleged violator on notice.

### III. Roles and Responsibilities:

#### A. *Employee Complainants:*

- Timely report incidents of workplace harassment to any appropriate HHS manager or supervisor. In cases where the employee's supervisor, or someone within the employee's chain of command, is the offender, employees may file a complaint with any management official who is outside of the employee's chain of command, if necessary.
- Cooperate fully with management's investigation of the complaint.
- Report any acts of retaliation related to making a good faith report of harassment, or for assisting with an investigation.
- Be aware that management cannot guarantee confidentiality or anonymity when investigating a workplace harassment complaint. Management may be required to inform those with a need-to-know the details surrounding the workplace harassment complaint or the questioning of witnesses may not maintain confidentiality.
- Take advantage of the Employee Assistance Program (EAP) counseling services, or other personal counseling services, when necessary, to address personal problems relating to the workplace harassment.
- Request special accommodations from management. (e.g., temporary parking, etc.).

#### B. *Agency Managers and Supervisors:*

- Inform employees about policies and procedures for handling incidents of workplace harassment.
- Treat all reports of workplace harassment seriously and respond appropriately.

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- Consult with a Labor and Employee Relations (LER) Specialist immediately regarding allegations of workplace harassment, irrespective of whether or not complainant elects to file a formal complaint.
- Where required, timely investigate the alleged harassment; documenting the investigative findings; taking appropriate action, including disciplinary action, to remedy the situation; and, making a good faith effort to prevent future incidents from occurring.
- Take steps to prevent retaliation against complainants who allege workplace harassment or those who are involved in management inquiries.

### ***C. Employee Relations:***

- Advise, guide, and assist supervisors and managers with investigating allegations of workplace harassment.
- Recommend solutions, actions and/or discipline, and interim relief for individuals alleging workplace harassment.
- Advise managers and supervisors on the provisions of the collective bargaining agreement and other applicable laws, rules, regulations, policies, and procedures.

## **IV. Procedures for Reporting & Adjudicating Violations:**

Agency management will handle all complaints submitted under this policy swiftly and confidentially to the extent possible based on staffing. Also, lodging a complaint will in no way be used against the complainant or have an impact on the individual's employment status. However, filing groundless or malicious complaints, as determined by the investigator(s), is deemed an abuse of this policy and, thus, will be treated as a violation. Employees must still maintain acceptable workplace behavior.

- (1) In accordance with the policies noted under the Roles and Responsibilities, employees may file a complaint with any appropriate Agency management official if the violator is in the chain of command.
- (2) Agency management officials, in consultation with LER, will make a determination regarding whether an official investigation is warranted.<sup>6</sup>
  - a) If yes, determine scope and select the investigative lead. (Investigators will follow procedures outlined in the collective bargaining agreement for bargaining unit employees.)
  - b) If no, determine the appropriate action to take and execute.
- (3) Investigator(s) will prepare a written report of the findings, and submit it to the

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<sup>6</sup> Investigation leads may include manager(s), supervisor(s), the HHS Office of the Inspector General (OIG), a contract investigator or other qualified individuals. (Note - The particulars of each case will influence who will lead the investigation.)

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appropriate management official(s) and the LER Specialist.<sup>7</sup>

- (4) If supported by the findings, the management official will work with LER to determine appropriate corrective action against the offender or the accuser, or both.
  - (5) Management official will notify the complainant when the investigation is complete and provide guidance on next steps, if any.
  - (6) Management official and LER will maintain official copies of the complaint and investigative documents, including all witness statements and findings report, in accordance with the Department's Records Retention policy and procedures.
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### V. REFERENCES

- (A.) EEO and Prohibited Discrimination and Anti-Harassment Policy dated April 20, 2015, or its successor
- (B.) HHS Instruction 752: Discipline and Adverse Action dated March 20, 2009, or its successor
- (C.) 45 CFR Part 73, HHS Residual Standards of Conduct
- (D.) OHR Standard Operating Procedures for Handling Disruptive Employees, Personnel Threats or Emergencies
- (E.) HHS Understanding and Responding to Workplace Violence Handbook dated January 2008

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<sup>7</sup> Generally speaking, employees reporting workplace misconduct are not entitled to receive a copy of the report of investigation. In addition, they are not entitled to information regarding what, if any, disciplinary action management took against the harasser(s).