

~~ADMINISTRATIVE - INTERNAL USE ONLY~~

Date: 09/13/2004 (Regulations may contain various dates)

Category: 9 - Equal Opportunity

OPR: OEE0

Title: AR 9-2 HARASSMENT COMPLAINT SYSTEM

**REVISION SUMMARY:** 13 September 2004

AR 9-2 is revised to incorporate guidance from the Equal Employment Opportunity Commission (EEOC), to make complainant rights more explicit. The changes do not affect the substance of those rights of the actual complaint process, which is established by federal regulation.

*Because this regulation has been extensively revised, boldfaced text has not been used.*

*This regulation was revised by the Office of Equal Employment Opportunity,  (secure)*

(b)(3)

**SYNOPSIS.** This regulation sets forth Agency policy, responsibilities, and procedures for handling complaints of harassment.

**2. HARASSMENT COMPLAINT SYSTEM**

**a. AUTHORITY**

- (1) The Central Intelligence Agency Act of 1949, as amended; the Civil Rights Act of 1964, as amended; the Equal Pay Act of 1962, as amended; the Age Discrimination in Employment Act of 1967, as amended; the Rehabilitation Act of 1973, as amended; and other applicable law.
- (2) This regulation implements applicable provisions of Equal Employment Opportunity Commission (EEOC) regulations (29 C.F.R. Part 1614), directives, and advisories, and the statutes on which they are promulgated.
- (3) Executive Order 11478, as amended, (Equal Employment Opportunity in the Federal Government).

**b. POLICY**

- (1) The Agency has adopted a zero-tolerance policy prohibiting all forms of harassment in the workplace. The protections of this regulation apply to all Agency staff, contract employees, applicants, and individuals working on Agency premises.

- (2) All individuals who allege they have been harassed may seek Equal Employment Opportunity (EEO) counseling regardless of the type of harassment alleged or when it occurred, as long as it is work-related. However, to preserve the right to file a formal EEO complaint, allegations of harassment must be reported within 45 days of occurrence and be based on categories covered by Title VII, that is, age (40 or over), color, disability, national origin, race, religion, sex, and reprisal for opposing employment discrimination and/or participating in the EEO process. (See AR 9-3 and Section e(2) of this regulation).
- (3) All individuals covered under this regulation have an obligation to cooperate with any harassment inquiry and to maintain the confidentiality of the process. The responsibility for ensuring a harassment-free workplace lies with all employees.
- (4) This regulation is not intended to add to or diminish any rights afforded by federal EEO laws and regulations.

**c. DEFINITIONS**

- (1) **HARASSMENT, SEXUAL.** Verbal or physical conduct of a sexual nature that is unwelcome and the submission to or rejection of that conduct would negatively affect an individual's work performance, or create a hostile or offensive work environment.

Examples of sexual harassment include, but are not limited to, unwelcome demands, propositions, advances, teasing, dirty jokes, remarks, or questions of a sexual nature; offensive gestures and touching; sexually demeaning words used to describe an individual; and the display in the workplace of sexually offensive objects or pictures.

- (2) **HARASSMENT, NONSEXUAL.** Verbal or physical conduct that denigrates or shows hostility or aversion toward an individual or group, or creates a hostile or offensive work environment, and is based on one of the federally protected categories (for example, sex, race, national origin, religion, age, color, disability, or reprisal for opposing employment discrimination and/or for participating in the EEO process, sexual orientation, or status as a parent).

Examples of nonsexual harassment include, but are not limited to, epithets, slurs, negative stereotyping, threats, intimidation, and other hostile acts. These acts constitute nonsexual harassment whether they are expressed directly toward an individual or group or are contained in materials that are circulated in the workplace, placed on walls or elsewhere on Agency premises.

- (3) **HARASSMENT, OTHER.** Verbal or physical conduct that unreasonably interferes with an individual's work performance (for example, repetitive and non-trivial), but is not based on factors protected by federal law.

Examples of other harassment may include, but are not limited to, coarse language, threatening or boorish behavior, and severe and blatant insensitivities to coworkers.

- (4) **HARASSMENT ALLEGATION.** A harassment allegation is any complaint, report, statement, or personal observation of behavior that is or might constitute prohibited harassment.

- (5) **FORMAL HARASSMENT INVESTIGATION.** A formal harassment investigation is a documented, systematic inquiry into an allegation of harassment conducted by OEE0

or management. All allegations of harassment will be addressed by the Agency's EEO office, but not all allegations will result in a formal investigation.

- (6) **SUPERVISOR.** For purposes of this regulation a supervisor is an Agency employee who oversees and/or evaluates the work of one or more subordinate employees. The supervisory requirements of this regulation also apply to any employee whose training or workplace responsibilities would give him or her the ability to affect the working environment (for example, an OGC attorney, OEEEO officer, human resource officer, or grievance officer).
- (7) **TARGET.** A target is a person who believes he or she has been the object of harassment prohibited by this regulation or who has been subjected to what he or she believes to be a hostile or offensive work environment because of prohibited harassment, whether or not the offensive conduct is specifically directed toward that individual.

#### **d. RESPONSIBILITIES**

##### **(1) Target**

- (a) A target may attempt to resolve an issue informally by making it clear to an alleged harasser that the behavior is offensive and that it must stop. If the alleged harassment continues, the target may initiate a harassment allegation at any time by reporting the behavior to the appropriate supervisor or an EEO counselor.
- (b) When a target knows or has reason to know of an action that would constitute harassment, the target is strongly urged to bring the allegation to the attention of a supervisor or an EEO counselor.

##### **(2) Supervisors**

- (a) Supervisors who are aware of harassment allegations are responsible for stopping the harassment and promptly notifying OEEEO of the allegations.
- (b) Supervisors are to work with OEEEO to facilitate the cooperation of subordinate personnel, limit the knowledge of the allegations to essential personnel, take whatever disciplinary and remedial actions are warranted by the facts, and to protect all parties from reprisal.
- (c) Supervisors will conduct an inquiry into allegations of harassment that fall under paragraph c(3) of this regulation and produce a written summary of that inquiry to be provided to OEEEO and/or management.
- (d) To avoid potential harassment allegations, supervisors who are dating or having an intimate relationship with a subordinate employee are responsible for removing themselves from that employee's chain of command.

##### **(4) OEEEO**

- (a) OEEEO is responsible for overseeing all complaints of harassment.
- (b) OEEEO will conduct a formal inquiry into allegations of sexual and nonsexual harassment as defined in paragraphs c(1) and c(2) of this regulation and produce a written summary of that inquiry for the use of appropriate supervisors or managers.

- (c) OEEO will advise employees and supervisors on how to prevent harassment and how to respond to allegations of harassment. OEEO will also review management's decisions and investigations conducted according to the procedures outlined in paragraph e of this regulation.

**e. PROCEDURES**

A target is entitled to a period of counseling on any allegation of harassment; however, only allegations that meet the definition of harassment outlined in paragraphs c(1) - (3) of this regulation will be investigated according to the processes described below.

**(1) Inquiry**

- (a) Either OEEO or the supervisor (if the alleged harassment falls under paragraph c(3) of this regulation) will commence an inquiry into a harassment allegation by interviewing and taking signed statements from the target, the alleged harasser, and appropriate witnesses. When a target or a witness has requested confidentiality, the officer conducting the inquiry will honor this request to the extent possible.
- (b) The officer conducting the inquiry will notify the COTR and the contracting officer prior to contacting an industrial contractor who has been accused of harassment.
- (c) The officer conducting the inquiry will describe the allegations to the alleged harasser at their first meeting and give him or her an opportunity to respond. The alleged harasser is entitled to a fair statement of the allegations even though such a statement might disclose the target's identity.
- (d) When it is an OEEO officer conducting the inquiry, he or she will provide a written summary of the inquiry to the appropriate management official(s) within 75 days of the allegation. OEEO may extend the 75-day deadline when a supervisor conducts the inquiry or when the basis for the allegation is sexual orientation or status as a parent.

**(2) Complaint Resolution**

- (a) Within 15 calendar days after receipt of the summary of the inquiry, management, in consultation with OEEO, will make the final decision about what corrective action, if any, is required. OEEO and management will reach one of the following conclusions about the harassment allegation(s):
  - (1) **True.** The alleged harassing action occurred.
  - (2) **False.** The alleged harassing action did not occur.
  - (3) **Inconclusive.** The available facts do not permit a definite conclusion as to whether the alleged harassing action occurred.
- (b) If an individual who is found to have engaged in harassment is not solely under Agency control, then the appropriate Agency management official will coordinate any disciplinary measures with the individual's employer.
- (c) Either D/EEO or an appropriate management official will inform the target and the alleged harasser of the conclusion.

**(3) Recordkeeping**

- (a) The results of an harassment inquiry will be recorded in investigative files maintained by D/EEO. After resolution, no record of the complaint will be retained by supervisors, management, or components except those documents that would normally be included in non-EEO systems of records such as a personnel, security, or disciplinary file. A harassment complaint file will include the following:
  - (1) The names of all alleged harassers and accusers.
  - (2) All statements from the alleged harasser, target, and witnesses about the alleged harassment and supporting documentation.
  - (3) All relevant administrative correspondence and forms.
  - (4) All management deliberative records.
  - (5) All records of corrective and disciplinary actions.
- (b) The D/EEO will release information derived from a harassment inquiry only on a strict need-to-know basis and pursuant to a written request that defines a compelling reason to do so. Persons who may be allowed access to this information include:
  - (1) The target.
  - (2) Management officials who are deciding and/or enforcing appropriate disciplinary and remedial actions.
  - (3) The Inspector General or designee.
  - (4) The General Counsel or designee.
  - (5) The Director of Security, or designee.
  - (6) Other appropriate Agency officials as determined by the D/EEO.

**(4) Appeal and Other Recourse**

**(a) Target**

- (1) If OEEO conducted the inquiry and the allegation was based on one of the categories protected by Title VII, then the target may file a formal complaint of discrimination in accordance with federal EEO law. In all other cases (for example, allegation was based on sexual orientation or status as a parent) OEEO's decision is final.
- (2) If management conducted the inquiry, target may appeal to OEEO to review management's decision for thoroughness, completeness, and objectivity; however, OEEO will not initiate a new inquiry into the matter. OEEO's decision regarding management's action will be final.

**(b) Alleged Harasser**

- (1) If disciplinary measures are imposed as a corrective action, the requirements of AR 13-3, Discipline and Accountability will apply, including all appeal and recordkeeping requirements.

- (2) If the alleged harasser believes that the harassment inquiry was discriminatory, based upon factors covered by Title VII, then he or she may file a complaint with OEEEO in accordance with federal law.