

Policies and Procedures

Subject: Anti-Harassment Policy

Effective Date: May 14, 2018

Purpose: Clarify what actions are considered harassment and outline how employees and managers should respond to it. The Commission is committed to providing a workplace that is free from sexual, discriminatory, and workplace harassment.

Who is Covered: This policy applies to everyone who does work for the Commission, whether paid or unpaid, including staff, Commissioners, interns, detailees, volunteers and contractors.

Legal Authorities:

- Title VII of the Civil Rights Act of 1964, as amended
- Age Discrimination in Employment Act of 1967
- Rehabilitation Act of 1973
- Civil Service Reform Act of 1978
- Uniformed Services Employment and Reemployment Rights Act of 1994
- Genetic Information Act of 2008
- Americans with Disabilities Act Amendments Act of 2008

Originating Office: Office of the General Counsel

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1) What is Harassment?

There are two primary types of harassment in the workplace.

Sexual harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature. Sexual harassment can take place between two people of the same gender or sex. A victim of sexual harassment can be of any gender or sex. Actions such as the following are inappropriate and, depending on the circumstances, may in and of themselves meet the definition of sexual harassment or contribute to a hostile work environment:

- Sexual pranks, or repeated sexual teasing, jokes, or innuendo, whether communicated in person, by phone, or via e-mail or other messaging application;
- Verbal abuse of a sexual nature;
- Touching or grabbing of a sexual nature;
- Repeatedly standing too close to or brushing up against a person;
- Repeatedly asking a person to socialize during off-duty hours when the person has said no or has indicated he or she is not interested (supervisors in particular should be careful not to pressure their employees to socialize);
- Giving gifts or leaving objects that are sexually suggestive;
- Repeatedly making sexually suggestive gestures;
- Making or posting sexually demeaning or offensive pictures, cartoons or other materials in the workplace; or
- Off-duty, unwelcome conduct of a sexual nature that affects the work environment.

Discriminatory harassment means verbal or physical conduct that denigrates or shows hostility toward an individual because of his or her race, color, sex, gender, national origin, religion, age, physical or mental disability, sexual orientation, service in the uniformed services, or parental status. Some examples of conduct that might constitute harassment include:

- Racial epithets, "jokes," offensive or derogatory comments, or other verbal or physical conduct based on an individual's race/color;
- Ethnic slurs, workplace graffiti, or other offensive conduct directed towards an individual's birthplace, ethnicity, culture, or foreign accent;
- Verbal or physical abuse, "jokes" or offensive comments based on an individual's age, gender, disability, or sexual orientation; or
- Making, posting, e-mailing, or circulating demeaning or offensive pictures, cartoons or other materials in the workplace that relate to race, ethnic origin, gender or one of the other protected categories listed above, or using U.S. Government equipment to circulate such materials.

In addition, harassment in the workplace may take various forms:

Disparate treatment:

- Disparate treatment means conditioning a personnel action or an employment decision (including, but not limited to, a promotion, demotion, award, or training) on an individual's submission to or rejection of unwelcome sexual conduct or because of the

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individual's race, color, sex, gender, national origin, religion, age, physical or mental disability, sexual orientation, or parental status.

Hostile work environment:

- Hostile work environment means unwelcome or inappropriate conduct that interferes with an individual's work performance or renders the workplace atmosphere intimidating, abusive, or offensive.

Retaliation:

- Retaliation means taking an adverse official or unofficial action against, harassing, or penalizing someone for opposing harassment or specific acts of harassment, for participating in a complaint process related to alleged harassment, or for participating in a proceeding related to alleged harassment. An example of an official action would be not promoting someone, whereas an example of an unofficial action would be excluding someone from an office party.

It is important to remember that *anyone affiliated with the Commission* could be a source of harassment. This includes a supervisor, co-worker, other Commission employee, or a non-employee who has a business relationship with the Commission.

2) Commission Roles and Responsibilities

Commission Chair: The Chair hears appeals from any Commission employee who believes they have been wrongly disciplined under this policy. In the event the Chair is conflicted, his duties shall be carried out by either of the two Vice Chairs.

Executive Director: The Executive Director, based on the advice of the General Counsel, will determine what official personnel actions or other administrative steps are appropriate to protect victims of harassment or to discipline individuals who have engaged in harassing conduct. In the event the Executive Director is conflicted, his duties shall be carried out by the General Counsel.

General Counsel: The Office of the General Counsel (OGC) is the main contact point for questions or concerns about the Commission's anti-harassment policy. OGC has responsibility for investigating or overseeing investigations of alleged harassment on behalf of the Commission. OGC is committed to ensuring that all investigations of harassment are conducted in a prompt, thorough, and impartial manner. The General Counsel is responsible for developing recommendation for the Executive Director with respect to any allegation of harassment. In the event the General Counsel is conflicted, his duties shall be carried out by the Deputy General Counsel.

Victim's Advocate: The Victim's Advocate is the primary point of contact for representing a victim in connection with any claim relating to or involving alleged harassment, including before OGC. The Victim's Advocate role shall be filled initially by two Commission employees: the Operations Program Manager and the Government Affairs Manager.

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Supervisor Responsibilities: Supervisors and other responsible Commission officials who observe, are informed of, or reasonably suspect incidents of possible harassment must immediately report such incidents to OGC, which will either initiate or oversee a prompt investigation. Failure to report such incidents to OGC will be considered a violation of this policy and may result in disciplinary action. OGC will provide guidance as needed on investigating and handling the potential harassment. Supervisors should take effective measures to ensure no further apparent or alleged harassment occurs pending completion of an investigation.

3) The Commission's Response to Harassment

Investigations: Harassment in the workplace is against the law and will not be tolerated. If the Commission receives an allegation of harassment, or has reason to believe such harassment is occurring, OGC will initiate an investigation into the matter within 48 hours. If the allegation is determined to be credible, the General Counsel will make recommendations to the Executive Director of potential measures to end the unwelcome behavior and/or disciplinary actions. The Commission is committed to taking action if it learns of possible harassment, even if the victim does not wish to file a formal complaint.

Retaliation is Prohibited: The Commission will seek to protect the identities of the alleged victim and alleged offender, except as required (for example, to complete an investigation successfully). The Commission will also take the necessary steps to protect from retaliation those employees who in good faith report incidents of potential sexual or discriminatory harassment. It is a violation of both federal law and this policy to retaliate against someone who has reported possible harassment. Violators may be subject to discipline.

Discipline: Employees who have been found by the Commission to have engaged in harassment in contravention of this policy will be subject to discipline or other appropriate management action. Discipline will be appropriate to the circumstances, ranging from a letter of reprimand through suspensions without pay of varying lengths to separation for cause. A verbal or written admonishment, while not considered formal discipline, may also be considered. Individuals who are disciplined for harassing behavior may appeal to the Commission chair, who will make a final determination about the appropriateness of the discipline.

4) Employees' Rights and Responsibilities

Commission Expectations: All Commission employees, including but not limited to Commissioners, staff, supervisors, and senior officials, are required to comply with this policy. Employees are also expected to behave professionally and to exercise good judgment in work-related relationships, whether with fellow employees, business colleagues, or members of the public with whom they come into contact in the course of official duties. Further, all employees are expected to take appropriate measures to prevent harassment. Employees who believe they are being harassed for one of the reasons listed above or who witness potential harassment are encouraged to report the offending conduct so that it can be stopped before it becomes severe or pervasive and rises to a possible violation of law.

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Initial Notice: Any employee who believes he or she has been the target of sexual or discriminatory harassment is encouraged to inform the offending person orally or in writing that such conduct is unwelcome and offensive and must stop. If the employee does not wish to communicate directly with the offending person, or if such communication has been ineffective, the employee has multiple avenues for reporting allegations of harassment and/or pursuing resolution.

Reporting Harassment: Employees are encouraged to report the unwelcome conduct as soon as possible to a responsible Commission official. It is usually most effective—although it is not required—that the official be within the employee's supervisory chain. Responsible Commission officials include the Victim's Advocate, first- or second-line supervisors, the offending person's supervisor, the Commission's Executive Director, OGC, the Commission Chair, and the Commission Vice Chairs.

Pursuing a Resolution: In addition to reporting harassment concerns to a responsible Commission official, employees who believe they have been subjected to sexual or discriminatory harassment (but not hostile work environment that does not involve sexual or discriminatory harassment) may elect to pursue resolution in several ways, including:

- *Mediation:* Mediation is an informal way to resolve office problems using a trained mediator who facilitates communication between the parties to the dispute. If an employee chooses to attempt resolution through mediation, management is obligated by Commission policy to send a representative to the table. If a resolution is not reached, the parties may continue to pursue their rights in any other appropriate forum. Employees may ask for the assistance of a mediator by contacting OGC.
- *EEO processes:* All employees can file an Equal Employment Opportunity (EEO) complaint with the Commission. An employee who wishes to file a complaint under EEO procedures must consult an EEO counselor within 45 days of the alleged incident. It is not necessary for an employee to complain to his/her supervisor before approaching an EEO counselor, nor to attempt informal resolution through mediation or other means. More information about the EEO compliant process is available at https://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm