



Court Services and Offender Supervision Agency
for the District of Columbia

POLICY STATEMENT

Policy Statement 1011

Policy Area: EEO

Effective Date: 1/1/11

Approved:



Adrienne Poteat, Deputy Director

SEXUAL HARASSMENT POLICY

I. COVERAGE

This Policy Statement is addressed to all Court Services and Offender Supervision Agency (CSOSA) staff and applies to Federal employees, contract employees and volunteers under the direction or control of CSOSA. The staff covered by this policy will be referred to as “employees.”

II. BACKGROUND

A. Purpose of the Policy

The Agency is committed to maintaining a high standard of conduct in the workplace and providing a work environment of mutual respect that is free from sexual harassment. Sexual harassment is a serious offense that will not be tolerated in the workplace by the Agency. In compliance with federal law, the Agency shall take positive action where necessary to eliminate sexual harassment or remedy its effects. An employee found to have engaged in sexual harassment against any other employee may expect swift and appropriate disciplinary action.

B. Definition of Sexual Harassment.

Sexual harassment is a form of sex discrimination and is an "unlawful employment practice" prohibited by Title VII of the Civil Rights Act of 1964, as amended. Sexual harassment is defined as “Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or

effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.”

III. POLICY

A. Sexual Harassment and Inappropriate Sexual Conduct towards Employees is Strictly Prohibited.

Agency employees are prohibited from engaging in sexual harassment or inappropriate sexual conduct. It is the policy of the Agency to investigate such allegations in a prompt, thorough, and impartial manner and take all necessary steps to stop the harassment. If the allegations are substantiated, the harasser shall be subject to appropriate disciplinary action. Any employee found to have engaged in any form of sexual harassment should expect timely and appropriate corrective and/or disciplinary action, up to and including suspension, demotion or removal from the Agency.

B. Reprisal Against Employees Is Strictly Prohibited.

It is also the policy of the Agency to prohibit retaliation against any employee for reporting allegations of sexual harassment or assisting in any action related to allegations of sexual harassment. Employees are protected from retaliation after filing a complaint or after witnessing sexual harassment and reporting it. Agency employees are prohibited from engaging in retaliation against those who report such conduct, and shall be subject to appropriate disciplinary action if the allegations of reprisal/retaliation are substantiated. Agency employees found to have engaged in retaliatory conduct or behavior should expect timely and appropriate corrective and/or disciplinary action up to removal from the Agency.

C. Sexual Harassment Prevention Training Is Mandatory.

Prevention is the best tool to eliminate sexual harassment in the workplace. Therefore, each employee shall complete sexual harassment training every two years or as otherwise directed by Agency management. The Agency will implement other prevention methods in accordance with any other applicable law, rule, or regulation.

IV. AUTHORITIES, SUPERSEDESURES, REFERENCES AND ATTACHMENTS

A. Authorities

Title VII, Civil Rights Act of 1964 (42 U.S.C. §§ 2000 *et seq.*)

Code of Federal Regulations, Title 29, Parts 1604 and 1614

Civil Service Reform Act of 1978 (5 U.S.C. § 2301 *et seq.*)

EEOC's Enforcement Guidance on Vicarious Employer Liability for Unlawful

Harassment by Supervisors, Notice 915.002 (06/18/99)

EEOC's Enforcement Guidance on *Harris v. Forklift Sys.*, Notice 915.002 (03/08/94)

B. Supersedures

Policy Memorandum 2002-2 (01-07-03)

C. Procedural References

PS 1005 Alternative Dispute Resolution Program

PS 2001 Personal Use of Information Technology Resources

D. Attachments

Appendix A. Definitions

Appendix B. General Procedures

Appendix C. EEO Complaint Process Flow Chart

APPENDIX A

DEFINITIONS

For the purpose of this Policy Statement, the following definitions apply:

- A. Cease and Desist Order - An order prohibiting unnecessary contact between the complainant and respondent while an allegation of harassment or retaliation is investigated.
- B. Complainant - An employee who reports an allegation of sexual harassment and/or retaliation to an appropriate Agency official has initiated a complaint of sexual harassment and/or retaliation, has participated in an investigation of alleged sexual harassment and/or retaliation, or has opposed sexual harassment and/or retaliation in the workplace.
- C. Corrective Action - any action taken by management to stop the harassing conduct, to include, the reassignment, transfer, or placement on administrative leave of an employee, or the issuance of a Cease and Desist Order or other actions short of disciplinary action such as oral counseling or a directive to stop the harassing conduct.
- D. Disciplinary Action/Discipline - Action taken against employees who have violated any law, and/or CSOSA's policies, rules or regulations. Disciplinary action may include a reprimand, suspension, demotion, or removal from the Agency.
- E. Discrimination - Under the governing EEOC statutes, discrimination refers to any act or failure to act, impermissibly based in whole or in part on a person's race, color, religion, sex, national origin, age, disability, and/or reprisal that adversely affects privileges, benefits, working conditions, results in disparate treatment, or has a disparate impact on employees.
- F. Discriminatory Harassment - Occurs when improper actions of employees or non-employees are motivated by race, color, sex, religion, national origin, age, disability, sexual orientation, or reprisal, and culminate in a tangible employment action or the actions are so severe and pervasive as to alter the conditions of the complainant's work environment. This includes sexual harassment and non-sexual harassment.
- G. Equal Employment Opportunity - The goal of laws, rules, and regulations which makes discrimination on the basis of a person's race, color, religion, sex, national origin, age, disability and/or reprisal unlawful and/or illegal when it affects a person's application, selection and/or terms, privileges, or conditions of employment.
- H. Equal Employment Opportunity Commission (EEOC) - The federal agency with overall responsibility for adjudicating federal sector discrimination complaints.

- I. Investigation - A prompt, thorough and impartial gathering of facts through interviews and review of appropriate records. The purpose of an investigation is to determine if reported allegations made against someone are substantiated.
- J. Investigators - Persons who are employed or contracted by CSOSA or PSA to conduct inquiries into allegations of sexual harassment and retaliation to determine the facts associated with sexual harassment and/or retaliation complaints.
- K. Protected Activity - Resisting, opposing or reporting sexual harassment, making oral or written complaints about sexual harassment, or testifying in, assisting in, or otherwise participating in the investigation of a sexual harassment complaint. Such activities are protected regardless of whether the conduct complained of is ultimately proven to have constituted sexual harassment.
- L. Protected Employee - An employee who is participating or has participated in protected EEO activity.
- M. Respondent - The employee who is accused of sexual harassment and/or retaliation.
- N. Retaliation - For purposes of this Policy Statement, retaliation is defined as taking or threatening to take an unjustified employment action against an employee because that employee resisted, opposed or reported sexual harassment, made oral or written complaints about sexual harassment, or testified or otherwise participated in the prosecution and investigation of a sexual harassment complaint. Examples of unjustified employment actions include any unwarranted negative change in the terms, and conditions of an employee's employment, including such things as transfers, changes in work schedule, negative performance evaluations, unwarranted discipline, harassment or denial of promotion or work schedule requests, or denial of training, or the creation of a hostile work environment.
- O. Sexual Harassment - Unwelcome sexual advances, requests for sexual favors, and other communication or physical conduct of a sexual nature constitute sexual harassment when:
 - 1. submission to such conduct is made a term or condition of employment, either explicitly or implicitly;
 - 2. submission to or rejection of such conduct by an employee is used as the basis for employment decisions affecting such employee;
 - 3. such conduct has the purpose or effect of unreasonably interfering with an employee's work performance; or
 - 4. such conduct is sufficiently severe or pervasive as to create an intimidating, hostile, or offensive working environment.

The first two examples are generally designated as “tangible employment action;” while the third and fourth examples are generally designated as “hostile work environment.” Either form of sexual harassment may occur between persons of the same or different genders or sexual orientations. Also third-parties may also be the victims of a hostile work environment as a result of communications or conduct not specifically directed at or involving them.

- P. Tangible Employment Action. Unlawful sexual harassment perpetrated by an individual in authority ultimately leads to a tangible employment action. A tangible employment action occurs when a management official’s harassing conduct results in some significant change in an employee’s employment status (e.g., hiring, firing, demotion, failure to promote, promotion, undesirable reassignment, compensation decision, or a work assignment).
- Q. Inappropriate Sexual Conduct - The following list includes examples of prohibited inappropriate conduct that may, under the circumstances, constitute sexual harassment under the law. This list is not an exhaustive list, but is provided to illustrate the range of conduct that is prohibited at work or during any work-related activities, including those Agency activities that occur off-site. The list includes acts that are sexual in nature, acts that may be sexual under certain circumstances, and acts that may be inappropriate behavior for CSOSA employees even while not meeting the legal definition of sexual harassment:
1. Oral or Written Communications
 - a) Making suggestive or sexual comments about another person’s or one’s own anatomy, figure, appearance;
 - b) Asking personal questions about an employee’s sex life, or sexual preferences, habits, or history;
 - c) Subjecting another employee to information about one’s own sex life, sexual preferences, habits, or history;
 - d) Describing, showing, transmitting, or otherwise disseminating sexually explicit acts or fantasies;
 - e) Extending a social invitation to a person who has made it clear that s/he is not interested;
 - f) Turning work discussions to sexual topics;
 - g) Telling sexual or sexist jokes;
 - h) Referring to employees or other persons in sexist or sexual terms;
 - i) Repeatedly contacting an employee at work or at home or initiating contact outside of the workplace about non-work related matters when the employee

has made it clear that s/he has no interest in such contact; or

- j) Other communications that are intended to communicate a sexual message.

2. Non-Verbal and Physical Conduct

- a) Looking a person up and down, and/or fixing eyes on sexual parts of a person's anatomy;
- b) Giving unwanted gifts, letters, notes;
- c) Making suggestive facial or physical gestures;
- d) Displaying sexually explicit or sexually suggestive pictures, images, or objects;
- e) Uninvited physical contact such as touching a person's body, hair or clothing;
- f) Other non-verbal, physical conduct that is intended to communicate a sexual message; or use of one's body to physically block or prevent a person from leaving/exiting the immediate area.
- g) Transmitting sexually explicit, profane, obscene, intimidating, defamatory or otherwise unlawful or inappropriate material such as pornography in the office, via e-mail, or down-loading such materials from the Internet (see also PS 2001, Personal Use of Information Technology Resources).

APPENDIX B

GENERAL PROCEDURES AND RESPONSIBILITIES

A. Reporting Sexual Harassment or Reprisal.

1. An employee who believes that he or she has been subjected to sexual harassment, inappropriate sexual conduct or retaliation should contact the Office of Equal Employment Opportunity, Diversity and Special Programs (OEEO). Allegations of harassment may be pursued by the aggrieved employee as either an EEO complaint within the EEO forum within 45 calendar days of the last incident or as a non-EEO complaint, in which case it would be treated as a management inquiry.
2. Prompt Investigation of Allegations: Whether an incident of harassment is pursued as either an EEO complaint or a management inquiry, a prompt, thorough, and impartial investigation will be conducted. If it is pursued as an EEO complaint, the investigation shall be conducted pursuant to the governing EEOC regulations and timelines outlined in the flow chart of Appendix C.

If pursued as a management inquiry, the investigation will be completed as promptly as possible, but no later than 150 days. In the event of a management inquiry, the employee/victim of harassment and/or their designated representative shall be fully apprised of the results of the investigation within 10 business days of the Agency's actions/decisions.

After learning of harassing conduct or after an allegation of harassment is made, management, in consultation with OEEO and the Office of Human Resources (OHR), shall take appropriate measures to stop the harassing conduct and provide appropriate interim relief to the complainant. Such interim relief may include, but is not limited to, reassigning the alleged harasser or the aggrieved employee to new duties and/or new work space during the duration of the investigation. To the extent possible, the Agency will protect the confidentiality of the complainant in the harassment complaint process.

B. Where to File a Complaint:

1. An employee who believes s/he has been subjected to sexual harassment or inappropriate sexual conduct and/or retaliation pertaining to allegations of sexual harassment should immediately contact OEEO. The OEEO has the authority and responsibility to receive and investigate internal complaints of sexual harassment and/or retaliation arising from complaints of sexual harassment.

Agency employees retain their rights to request a hearing on their sexual harassment complaint with an EEOC Administrative Law Judge if the investigation of their complaint is not completed within 180 days of filing a formal complaint with the OEEO, or alternatively file a civil action in U.S. District Court.

Employees not satisfied with the Agency's resolution may exercise their applicable statutory appeal rights.

- C. Representation. Bargaining unit employees have the right to be represented by their Union Local, an attorney or another third party of their choosing.
- D. Responsibilities
1. The EEO Office has the authority and responsibility to receive and investigate complaints of sexual harassment and/or retaliation arising from complaints of sexual harassment.
 2. Managers and Supervisors - All managers and supervisors are responsible for the following:
 - a) Ensuring that the policies regarding sexual harassment and retaliation are implemented and enforced and known by staff.
 - b) Promoting a workplace that is free of sexual harassment and retaliation.
 - c) Monitoring the portion of the workplace under their control and supervision to ensure that incidents of sexual harassment and/or retaliation are detected promptly and that each employee is aware of the Agency's sexual harassment/retaliation policy and complaint procedures.
 - d) Ensuring that employees who file sexual harassment complaints are protected from retaliation.
 - e) Maintaining, to the greatest extent possible, the confidentiality of those employees who lodge sexual harassment/retaliation complaints or report evidence of sexual harassment or retaliation.
 - f) Managers and supervisors do not have the authority to conduct their own internal investigations pertaining to sexual harassment complaints. They must comply with procedures for forwarding complaints, cooperating with investigations of allegations of sexual harassment/retaliation, and carrying out remedial and disciplinary actions.
 3. The Office of Professional Responsibility (OPR) is responsible for the following activities in connection with reports of alleged sexual harassment or inappropriate sexual conduct:
 - a) Conducting administrative investigations dealing with allegations of harassment or misconduct issues against employees of CSOSA, which could lead to criminal prosecution.
 - b) Reporting directly to the Director and/or Deputy Director of CSOSA as appropriate and conducting reviews or investigations on possible instances of

violation of laws or regulations and allegations of employee misconduct. The purpose of OPR investigations is to determine whether allegations of employee misconduct are substantiated.

4. The Office of General Counsel (OGC) will conduct a legal sufficiency review of OEEO's investigation. Following review by OGC, the Director and/or Deputy Director of CSOSA will review investigative reports and forward them to the appropriate management official.
5. Management official – The appropriate management official will, in consultation with the Office of Human Resources, make the initial decision on whether disciplinary action is warranted, based on review and consideration of the OEEO investigative report investigation.
6. The CSOSA Office of Human Resources will coordinate with the Employee Assistance Program (EAP), as well as outside providers when necessary, to provide counseling support and referrals to individuals alleging sexual harassment and/or retaliation who request such assistance. Confidentiality shall be maintained regarding services provided.
7. All Agency Employees - Sexual harassment training shall be required for all Agency employees. Each Agency employee is also responsible for the following pursuant to Agency training:
 - a) Ensuring that his or her conduct is free from all forms of sexual harassment or retaliation.
 - b) Refraining from using sexually offensive language, and from possessing sexually explicit or offensive materials (including literature, photographs and drawings), visiting pornographic sites on the internet and or sending such links unsolicited to other employees in the workplace.
 - c) Cooperating with any investigation from EEO or OPR.

D. Penalties

1. Any Federal employee found to be in violation of the Agency's Sexual Harassment Policy may be subject to disciplinary action. Contract employees and volunteers found to be in violation of this policy may have their services terminated.
2. Any manager or supervisor who fails to report sexual harassment or fails to take appropriate action to resolve sexual harassment complaints may be subject to disciplinary action.

E. False Claims

The Sexual Harassment Policy may not be misused to bring false, or malicious, or bad faith complaints against other employees. Disciplinary action may be taken against any person who knowingly files a false or malicious complaint of sexual harassment.

Appendix C
 CSOSA's Complaints Flow Process

