



POLICY STATEMENT

Policy Statement 1010

Policy Area: EEO

Effective Date:

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EQUAL EMPLOYMENT OPPORTUNITY ANTI-HARASSMENT POLICY

I. COVERAGE

This Policy Statement applies to all permanent, temporary, and part-time employees, as well as non-employees, such as independent contractors, volunteers, vendors, interns, and guests of the Court Services and Offender Supervision Agency (CSOSA or Agency).

II. BACKGROUND

A. Purpose of the Policy.

This Policy Statement establishes guidelines and procedures for preventing and eliminating sexually harassing conduct and other forms of discriminatory harassment in the workplace. The Agency has zero tolerance for harassment and is committed to providing an environment where all employees are treated with dignity and respect, and are free from unlawful discrimination and/or harassment.

B. Definition of Harassment.

The Equal Employment Opportunity Commission (EEOC) defines harassment as unwelcome conduct that is based on sex (with or without sexual conduct), race, color, religion, national origin, disability, reprisal, and/or age. Harassment becomes unlawful when:

- 1) enduring the offensive conduct becomes a condition of continued employment; or
- 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive; or
- 3) the harassing conduct causes a significant change in the employee's terms, privileges, or conditions of employment.

Consistent with the Agency's Policy Statement on Equal Employment Opportunity ("EEO") and Diversity, (Policy Memorandum No. 2009-07) this Agency, like many others in the federal executive branch, also does prohibit harassment based upon sexual orientation, marital and parental status, and political affiliation. Allegations of harassment based on these non-EEO bases, shall be processed under by the provisions of this Policy Statement. However, these allegations shall not be processed under the Agency's EEO complaint process or form the basis for an EEO complaint, as Title VII of the Civil Rights Act of 1964 does not prohibit discrimination based upon these non-EEO bases, and the EEOC's laws and regulations do not regulate such conduct.

Forms of harassment may include sexual harassment or other non-sexual discriminatory harassment. Sexual harassment can take the form of physical or non-physical conduct, such as words, gestures, or comments. Non-sexual discriminatory harassment includes any type of harassment (other than sexual) which is directed at a person because of his/her race, national origin, religion, color, sex, age, disability, sexual orientation, marital and parental status, political affiliation or reprisal. Harassing conduct may include but is not limited to, offensive jokes, slurs, name calling, bullying, physical assault or threats, intimidation, ridicule or mockery, insults or put downs, offensive objects or pictures, and interference with work performance.

C. Corrective and/or Disciplinary Action Will Be Taken.

The Agency is committed to maintaining a high standard of conduct in the workplace and providing a work environment that is free from harassment. In compliance with federal law, the Agency has established a policy of nondiscrimination which affirms its responsibility to take appropriate steps to prevent and correct unlawful harassment. Harassment will not be tolerated in the workplace. Any employee found to have engaged in any form of harassment, including harassment based on sexual orientation, should expect timely and appropriate corrective and/or disciplinary action, up to and including suspension, demotion, or removal from the Agency.

III. POLICY

A. Reprisal Against Employees Is Strictly Prohibited.

It is the Agency's policy not to tolerate adverse treatment of employees because they report harassment or provide information related to such complaints. Agency employees are prohibited from retaliating against and/or harassing those who report such conduct or behavior. 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.

B. How to Report Harassment.

An employee who believes s/he has been subjected to harassing conduct or bullying behavior is encouraged to notify the Office of EEO, Diversity and Special Programs (OEEO) or someone in their supervisory chain. OEEO has the authority and responsibility to receive and investigate complaints of harassment and/or retaliation. Employees are encouraged to report any behavior they view as harassing conduct. An effective EEO Anti-Harassment policy encourages employees to report harassing conduct before it becomes severe or pervasive. Supervisors and managers have an obligation to report allegations of harassment from subordinate employees and any observed or known incidents of harassing conduct to the OEEO. Allegations of harassment may be pursued by the aggrieved employee as either a harassment complaint with subsequent option to file a formal EEO complaint or as a non-EEO complaint, in which case it would be treated as a request for a management inquiry.

C. Prompt Investigation of Allegations.

Whenever an incident of harassment is pursued as either a harassment complaint or a request for a management inquiry, a prompt, thorough, and impartial investigation will be conducted. Regardless of how the complaint of harassment is pursued, the investigation shall be conducted pursuant to the governing EEOC guidances and applicable laws. If after the harassment investigation has begun or is completed, the employee requests EEO counseling and submits a formal EEO complaint based upon the alleged harassment, the formal EEO complaint shall be conducted pursuant to the governing EEOC regulations and timelines. (See Appendix C).

If pursued as a management inquiry, the investigation shall include a written summary and submission of the management inquiry file. The investigation will be completed as promptly as possible and the written summary and management inquiry file shall be completed no later than 150 days from the date that the allegation was made. 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 until a final decision is rendered. To the extent possible, the Agency will protect the confidentiality of the complainant and the harassment complaint process.

D. Anti-Harassment Training and EEO Training Is Mandatory.

Prevention is the best tool to eliminate harassing conduct in the workplace. Therefore, each employee is required to complete biennial mandatory anti-harassment and EEO training. OEEO is responsible for and shall oversee the annual training for Agency employees.

IV. AUTHORITIES, SUPERSEDURES, REFERENCES, AND ATTACHMENTS

A. Authorities

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

Age Discrimination in Employment Act of 1967 (ADEA) (29 U.S.C. §§ 621 *et seq.*)

Rehabilitation Act of 1973 (Pub. L. 93-112: 29 U.S.C. §§ 791 *et seq.*)

29 Code of Federal Regulations, Parts 1600 - 1691

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 Management Directive (MD) 110 and 715

Executive Order 11478 as amended

B. Policy Supersedures

None

C. Procedural References

PS Prevention of Sexual Harassment Policy Memorandum 2002-2

PS Investigation of EEO Complaints Policy Memorandum 2004-1

PS EEO Policy and Diversity Memorandum 2009-07

D. Attachments

Appendix A. Definitions

Appendix B. General Procedure

Appendix C: EEOC's Complaint Processing Time Lines

APPENDIX A DEFINITIONS

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

- A. Alleged Discriminating Employee – An individual responsible for an action or decision which the complainant believes is discriminatory because of his or her race, color, religion, sex, national origin, age, disability, or in reprisal for prior EEO activity.
- B. Bullying – Behavior that is offensive, abusive, intimidating, malicious or insulting, or abuse of power conducted by an individual or group against others, which makes the recipient feel upset, threatened, humiliated or vulnerable, which undermines their self-confidence and may cause them to suffer stress. Examples of bullying are:
1. physical attack or assault or coercive behavior;
 2. insulting or threatening gestures;
 3. manipulation of the victim's reputation by rumor, gossip, ridicule and/or innuendo;
 4. preventing the victim from speaking by using aggressive and/or obscene language, intimidation;
 5. aggressive behavior or shouting, and
 6. unwarranted or disproportionate criticism of an individual's work performance which is unsupported by the facts.
- C. Cease and Desist Order – An order prohibiting unnecessary contact between the complainant and respondent while an allegation of harassment or retaliation is investigated.
- D. Complainant – An employee who reports an allegation of harassment and/or retaliation to an appropriate Agency official, has initiated a complaint of harassment and/or retaliation, has participated in an investigation of alleged harassment and/or retaliation, or has opposed harassment and/or retaliation in the workplace.
- E. 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.

- F. Disciplinary Action/Discipline - Action taken against an employee who has violated any law and/or the Agency's policies, rules, or regulations. Disciplinary action may include a reprimand, suspension, demotion, or removal from the Agency.

- G. Discrimination - 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, sexual orientation, and/or reprisal, that adversely affects compensation terms, benefits, working conditions, conditions or privileges of employment that result in disparate treatment, or has a disparate impact on employees.

- H. 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.

- I. Disparate Impact - Disparate impact is an employment policy or practice that, while neutral on its face, adversely impacts a particular racial, ethnic or sex group. A neutral policy or practice may have an adverse effect on disabled individuals or religious groups.

- J. Disparate Treatment - Occurs when a person is treated differently from others. The different treatment is both intentional and based on one or more of the protected factors.

- K. 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.

- L. Equal Employment Opportunity Commission – The Federal agency with overall responsibility for adjudicating Federal sector discrimination complaints.

- M. Harassing Conduct - Unwelcome verbal, visual, physical, written or other conduct based on race, color, religion, sex (whether or not of a sexual nature), national origin, age, disability, sexual orientation, or reprisal.

- N. Hostile Work Environment Harassment – Unwelcome comments or conduct based on sex, race, color, national origin, religion, age, disability, and/or reprisal which unreasonably interferes with an employee’s work performance or creates an intimidating, hostile or offensive work environment. Any employee or non-employee in the workplace might commit this type of harassment. The victim can be any employee affected by the conduct, not just the individual at whom the offensive conduct is directed. Comments or conduct that can lead to a hostile work environment can be sexual or non-sexual in nature. Examples of actions that may result in hostile work environment harassment, but are non-sexual in nature, include:
1. Demonstrations of a racial or ethnic nature, such as a use of gestures, pictures, drawings or other objects, which would offend a particular racial or ethnic group;
 2. Comments regarding skin color, race, or other racial/ethnic characteristics;
 3. Making disparaging remarks about a person’s gender;
 4. Negative comments about a person’s religious beliefs (or lack of religious beliefs);
 5. Expressing negative stereotypes regarding a person’s birthplace or ancestry;
 6. Negative comments regarding a person’s age;
 7. Derogatory or intimidating references to a person’s actual or perceived mental or physical disability; and
 8. Negative or disparaging comments about or references to a person’s actual or perceived sexual orientation.
- O. 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 an employee are substantiated.
- P. Investigator(s) – Person(s) who are employed or contracted by the Agency to conduct inquiries into allegation of discriminatory harassment and/or retaliation to determine the facts associated with these complaints.

- Q. Protected EEO Activity – Resisting, opposing or reporting discriminatory harassment; making oral or written complaints about discriminatory harassment to include sexual harassment; or testifying in, assisting in, or otherwise participating in the investigation of a harassment complaint. Such activities are protected regardless of whether the conduct complained of is ultimately proven to have not constituted discriminatory harassment.
- R. Protected Employee – An employee who is participating or has participated in protected EEO activity.
- S. Representative – An advocate who is given the authority to speak for and/or make decision on behalf of another in a particular administrative or judicial forum such as the negotiated grievance or EEO process. A representative may include but is not limited to a coworker, attorney, union representative, friend and/or family member. In addition, the complainant and representative, if employed by the Agency and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their presence is authorized or required by the Agency or the EEOC during the investigation, informal adjustment, or hearing of the complaint.
- T. Respondent – The employee who is accused of discriminatory harassment and/or retaliation.
- U. Reprisal/Retaliation – Retaliation is defined as taking or threatening to take an unjustified employment action against a protected employee, who is participating or has participated in protected EEO activity.

Examples of unjustified employment actions include any negative changes in the terms and conditions of an employee's employment, including such things as transfers, changes in work schedule or assignments, negative performance evaluations, unwarranted discipline, harassment, denial of promotion or work schedule requests, denial of training, or the creation of a hostile work environment.

- V. Sexual Harassment – As defined by federal regulation, unwelcome sexual advances, request for sexual favors, and other communication or physical contact of a sexual nature constitutes 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 a 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.

It should be noted that sexual harassment may occur between persons of the same or different genders or sexual orientations, and that third-parties may also be the victims of a hostile or offensive working environment as a result of communications or conduct not specifically directed at or involving them.

- W. Tangible Employment Action Harassment - Unlawful harassment perpetrated by an individual in authority that 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.) Only individuals with supervisory or managerial responsibility can commit this type of harassment.

APPENDIX B
GENERAL PROCEDURES

A. Where to Report a Complaint of Discriminatory Harassment.

An employee or non-employee who believes he or she has been subjected to discriminatory harassment and/or retaliation is encouraged to contact someone within his or her supervisory chain or the Office of Equal Employment Opportunity. OEEO has the authority and responsibility to receive and investigate internal complaints of discriminatory harassment and/or retaliation arising from complaints of discriminatory harassment.

B. Representation

An employee may elect to be represented by a designated third party. The designated representative need not be an attorney. While a coworker, friend, Union representative, or family member may be a representative, the Agency will not pay for any fees, cost, or expenses of the complainant's designated representative unless otherwise required by law or an order of the EEOC.

C. Confidentiality of the Complaint Process.

All information provided in the investigative process 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 compliance with the Privacy Act, 5 U.S.C. 552a. Such information, however, may be disclosed to defend the Agency in any litigation to which the information is 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 in regards to a particular case.

D. Inquiries into Allegations of Harassing Conduct.

1. A supervisor or manager who receives an allegation of harassment and/or retaliation or witnesses such conduct shall immediately within two business days:

- a. Inform OEEO and his or her supervisor and seek guidance as to further actions;
- b. In consultation with OEEO and OHR, take prompt action to stop any harassing

conduct and prevent further harassment while the allegations are being investigated, including the issuance of a Cease and Desist Order which shall be drafted to prevent the alleged victim from experiencing any further harassing conduct.

2. When OEE0 receives an allegation of harassing conduct, either directly from the complainant or through a supervisor, manager or other source, OEE0 shall: (1) determine whether a detailed fact-finding investigation is necessary; (2) ensure that a prompt, thorough and impartial investigation is conducted; and, if initiated as a management inquiry, the inquiry shall be completed within 150 calendar days and include a complete written summary and the submission of the management inquiry file; and (3) recommend appropriate action to Agency management designed to immediately stop the harassing conduct and prevent further harassment, including recommendations on appropriate interim relief to the alleged victim while the allegations are being investigated. Fact-finding investigations into allegations of harassment will be conducted either by OEE0 or a trained contract investigator in order to avoid any potential conflict of interest.

3. Where an investigation or management inquiry is necessary, OEE0 shall either conduct or arrange to be conducted interviews of the complainant, the respondent and any appropriate witnesses. A written summary of the investigation (“investigative report”) shall be prepared by the OEE0 employee or contractor who conducted the investigation. The investigative report may vary in length, complexity, and depth of analysis, depending on the complexity and seriousness of the case. The investigative report, which shall include findings of fact, credibility assessments, and recommendations, shall be prepared promptly after completion of the investigation. If pursued as a request for a management inquiry, then within 20 calendar days of forwarding the management inquiry report to the Office of the Director, OEE0 will issue a summary of management inquiry to the Complainant and his or her representative, if any, and the alleged discriminating employee.

E. Rights of the Alleged Discriminating Employee.

The person against whom allegations of harassment are made shall be treated like any other witness, consistently and fairly, and shall have access to information to the extent needed to respond to allegations and give evidence. The Agency shall determine what information may be released in accordance with the Privacy Act.

F. Action To Be Taken Upon Completion of the Investigation.

1. Upon completion of the management inquiry, the Office of the Director, or his or her Designee, shall promptly evaluate the investigative report and determine if disciplinary action is appropriate. In addition, the Office of the Director shall assess the matter for

appropriate interim relief to be provided to the complainant. The Director of OEEA shall be informed of this decision, including a decision not to act. In cases of alleged harassing conduct implicating potential criminal conduct, the Office of the Director shall consult with the Office of General Counsel (OGC) and thereafter determine if the matter should be referred to the Office of Professional Responsibility (OPR). The Agency agrees to make every reasonable effort to complete the processes described in this Subsection within 30 calendar days, but in no event will the process time required exceed 60 calendar days, unless otherwise mutually agreed to by the parties.

2. Where the Office of the Director concludes that an employee did engage in harassing conduct under this Policy, or a manager or supervisor did not properly carry out the responsibilities provided for under this Policy, the Office of the Director shall refer the investigative report or management inquiry file to the appropriate management official who shall determine appropriate corrective and/or disciplinary action, up to and including removal from federal service, to be proposed against the employee in violation of the Policy. Employees not satisfied with the agency's resolution may exercise their statutory right.

G. Responsibilities.

1. Managers and Supervisors - All managers and supervisors are responsible for the following:
 - a) Ensuring that the Agency's Anti-Harassment policy is properly implemented.
 - b) Promoting a workplace that is free of discriminatory harassment and retaliation.
 - c) Monitoring the portion of the workplace under their control and supervision to ensure that incidents of harassment and/or retaliation are detected promptly and that each employee is aware of the Agency's discriminatory harassment/retaliation policy and complaint procedures.
 - d) Ensuring that employees who file harassment complaints are protected from retaliation.
 - e) Maintaining, to the greatest extent possible, the confidentiality of those employees who lodge harassment/retaliation complaints or report evidence of such harassment or retaliation.

Managers and supervisors shall not conduct their own internal investigations pertaining

to harassment complaints. They shall comply with Agency procedures for forwarding complaints, cooperating with investigations of allegations of harassment/retaliation, and carrying out remedial and disciplinary actions. However, managers and supervisors have the authority, and should exercise the authority, in consultation with OEEO and/or OHR, to provide interim relief to an alleged victim of harassment consistent with this Policy.

2. Employees – All Agency employees are responsible for the following:
 - a) Supporting the Agency’s policy against harassment.
 - b) Pursuant to training, monitoring their behavior to determine if it could be interpreted as harmful, harassing or contributing to or creating a hostile work environment.
 - c) Knowing their personal rights and the complaint procedure pursuant to agency training.
 - d) Encouraged to report any incident of harassing conduct that s/he experiences to a supervisor or the OEEO before it becomes severe or pervasive.
 - e) Cooperating with any investigation from the OEEO or the Office of Professional Responsibility (OPR).
3. The Office of Professional Responsibility is responsible, in the event of potential criminal conduct, for conducting investigations in connection with reports of alleged misconduct.
4. The Office of General Counsel is responsible for promptly conducting a legal sufficiency review of fact-finding investigation into allegations of harassment. Following review by OGC, the Office of the Director, or his/her designee, as appropriate, will review the investigative report and forward the report to the appropriate management official.
5. Management official – upon referral of an investigative report by the Office of the Director, the appropriate management official will make the initial decision on the nature and form of corrective and/or disciplinary action warranted, based on review and consideration of the investigative report. The management official shall also be responsible for providing appropriate interim relief to the complainant and/or implementing such relief, as directed by the Office of the Director. In the event disciplinary action is appropriate against the respondent, the management official shall consult with OHR to determine the appropriate level of discipline warranted.

6. The CSOSA Office of Human Resources will, as appropriate, refer employee upon request to the Employee Assistance Program (EAP), to obtain counseling support whenever allegations of harassment and/or retaliation are reported. Confidentiality shall be maintained regarding services provided.
7. All Agency Employees - Discriminatory harassment and retaliation training shall be required for all Agency employees. Pursuant to agency training, each Agency employee is also responsible for the following:
 - a) Ensuring that his or her conduct is free from all forms of discriminatory harassment or retaliation, as well as promptly reporting any incident of harassing conduct to his/her supervisor or OEEO;
 - b) Refraining from using sexually explicit profanities, sexually offensive language, and from possessing sexually explicit or offensive materials in the workplace (including, but not limited to, literature, photographs and drawings), visiting pornographic sites on the internet and/or sending such links unsolicited or solicited to other employees in the workplace;
 - c) Cooperating with any investigation by OEEO or OPR; and
 - d) Employees not satisfied with the Agency's resolution may exercise their statutory rights, to include the filing of a formal EEO complaint with OEEO.

H. Penalties

1. Any employee found to be in violation of the Agency's Anti-Harassment Policy shall be subject to disciplinary action, up to and including removal from the Agency.
2. Any manager or supervisor who fails to report discriminatory harassment or fails to take appropriate action to resolve discriminatory harassment complaints shall be subject to disciplinary action, up to and including removal from the Agency.
3. The Anti-Harassment Policy may not be misused to bring false, malicious, or bad faith complaints against other employees. Disciplinary action, up to and including removal from the Agency, may be taken against any person who knowingly files a false or malicious complaint of harassment.

APPENDIX C

