



District of Columbia Pretrial Services Agency

**POLICY
STATEMENT**

Policy Statement 1005

Policy Area: Agency-wide

Effective Date: April 2, 2009

Susan W. Shaffer, Director

ANTI-HARASSMENT POLICY

I. COVERAGE

All employees, as well as non-employees, who are within Pretrial Services Agency (PSA) leased space or anyone who has access to the Agency's information technology systems.

II. POLICY

A. Purpose

This Policy Statement establishes guidelines and procedures for preventing and eliminating harassing conduct and other forms of discriminatory harassment in the workplace. PSA is committed to providing an environment where all employees and non-employees are treated with dignity and respect and are free from harassment and unlawful discrimination.

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 reasonably minded person would consider intimidating, hostile, or abusive; or
- 3) the harassing conduct causes a significant change in an employee's conditions of employment.

Consistent with the Agency's Policy Statement on Equal Employment Opportunity and Diversity, PSA also prohibits harassment based on sexual orientation.

C. Reporting Harassment

An employee who believes she/he has been subjected to harassing conduct or bullying behavior should promptly notify a supervisor in their supervisory chain, the Office of Human Capital Management (OHCM), or the Office of EEO, Diversity and Special Programs (OEEO). In addition, bargaining unit employees may contact AFGE Union Local 1456 to file a complaint under the negotiated grievance procedure. (See Articles 18 and 24 in the Collective Bargaining Agreement.) OEEO has the authority and responsibility to receive and investigate complaints of harassment and/or retaliation. Employees are responsible for promptly reporting any behavior they view as harassing conduct before it becomes a pattern of misconduct so pervasive and offensive as to constitute a hostile work environment. Supervisors and managers have an obligation to report allegations of harassment from employees and any observed or known incidents of harassing conduct to the OEEO.

D. Investigation of Allegations

Whenever an incident of harassment is reported to management, the Office of Human Capital Management (OHCM), or the Office of Equal Employment Opportunity (OEEO), a prompt, thorough, and impartial inquiry and/or investigation must be conducted. The inquiry/investigation may be conducted by management, OHCM, or OEEO. Notwithstanding who conducts the inquiry/investigation, a final report must be provided to the Office of the Director. The report must include findings as to whether the allegation(s) are substantiated. After learning of harassing conduct or after an allegation of harassment is made, management, in consultation with OEEO and OHCM, must take appropriate measures to stop the harassing conduct and provide appropriate interim relief to the complainant. To the extent possible, PSA protects the confidentiality of the complainant and the harassment complaint.

E. Required Corrective and/or Disciplinary Action

PSA 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, PSA has established a policy of nondiscrimination which affirms its responsibility to take appropriate steps to prevent and correct unlawful harassment. Any employee found to have engaged in any form of harassment may be subject to appropriate and timely corrective and/or disciplinary action up to and including removal from federal service.

F. Reprisal Against Employees Is Strictly Prohibited

PSA does not 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.

G. Mandatory Anti-Harassment and EEO Training

Prevention is the best tool to eliminate harassing conduct in the workplace. As a result, each employee must attend periodic, mandatory anti-harassment and EEO training.

III. RESPONSIBILITIES

A. Managers and Supervisors – All managers and supervisors are responsible for the following:

1. Ensuring that the Agency's Anti-Harassment policy is properly implemented.
2. Promoting a workplace that is free of discriminatory harassment and retaliation.
3. 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.
4. Ensuring that employees who file harassment complaints are protected from retaliation.
5. Maintaining, to the greatest extent possible, the confidentiality of those employees who lodge harassment/retaliation complaints or report evidence of such harassment or retaliation.
6. Managers and supervisors must comply with the procedures for processing complaints, cooperating in inquiries/investigations of allegations of harassment/retaliation, and carrying out remedial and disciplinary actions. Managers and supervisors should exercise their authority, in consultation with OEEO and/or OHCM, to provide interim relief to an alleged victim of harassment consistent with this policy.

B. Employees – All employees are responsible for the following:

1. Supporting PSA's policy against harassment.
2. Monitoring their behavior to determine if it could be interpreted as harmful, harassing or contributing to or creating a hostile work environment.
3. Knowing their personal rights and complaint procedures.
4. Identifying and taking individual action to stop inappropriate behavior.

5. Reporting promptly any incident of harassing conduct that she/he experiences to a supervisor, OHCM, or OEEEO before it becomes a pattern of misconduct so pervasive and offensive as to constitute a hostile work environment.
 6. Cooperating in any inquiry/investigation conducted by management, OHCM, OEEEO, or the Office of Professional Responsibility (OPR).
 7. Understanding that nothing in this policy is intended to discourage an employee from confronting an alleged harasser and telling her or him to stop the harassing conduct.
 8. Attending mandatory anti-harassment and EEO training.
- C. Office of Professional Responsibility is responsible, in the event of conduct that is potentially criminal, or in the event of a conflict as determined by the Office of the Director, for conducting investigations in connection with reports of alleged discriminatory harassment, including sexual harassment.
- D. Office of General Counsel (OGC) is responsible for promptly conducting a legal sufficiency review of the findings of an OEEEO and/or OPR investigation. Following that review, the Office of the Director, or his/her designee, as appropriate, reviews the investigative report and forwards the report to the appropriate management official for action.
- E. Management official – upon referral of an investigative report by the Office of the Director, the appropriate management official makes 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 is also 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 warranted against the respondent, the management official must consult with OHCM on the appropriate level of proposed discipline.
- F. Office of Human Capital Management is responsible for providing advice and counsel to all levels of management, employees, and coordinating with the Employee Assistance Program, as well as outside providers when necessary, to provide counseling support and referral information to individuals alleging discriminatory harassment and/or retaliation upon request. Confidentiality is maintained regarding services provided.

IV. PENALTIES

- A. Any employee found to be in violation of the Agency's Anti-Harassment policy; and
- B. Any supervisor or manager who fails to report discriminatory harassment or fails to take appropriate action to resolve discriminatory harassment complaints; and
- C. Any employee misusing the Anti-Harassment policy by bringing a false, malicious, or bad faith complaint against another employee is subject to disciplinary action, up to and including removal from federal service.

V. 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, Part 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)

E.O. 11478 as amended by E.O. 13087 (05/28/98)

B. Policy Supersedures

None

C. Procedural References

PS Prevention of Sexual Harassment Policy Memorandum 1008

PS Investigation of EEO Complaints Policy Memorandum 2004-1

PS EEO and Diversity Policy Memorandum 2008-10

D. Attachments

Appendix A. Definitions

Appendix B. General Procedures

APPENDIX A DEFINITIONS

A. **Bullying** – Behavior that is offensive, abusive, intimidating, malicious, or insulting, and the abuse of power exercised by an individual or a group against others, which makes the recipient(s) feel upset, threatened, humiliated, vulnerable, or undermines their self-confidence. Examples of bullying include:

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 factual evidence.

B. **Cease and Desist Order** – An order prohibiting unnecessary contact between the complainant and respondent while an allegation of harassment or retaliation is investigated. However, to ensure the continued efficient operation of PSA, interaction between the complainant and the respondent may not be completely prohibited if determined to be required to carry out the employee's respective duties and responsibilities.

C. **Complainant** – An employee who: reports to an appropriate Agency official an allegation of harassment and/or retaliation; has initiated a complaint of harassment and/or retaliation; has participated in an inquiry/investigation of alleged harassment and/or retaliation; has opposed harassment and/or retaliation in the workplace.

D. **Corrective Action** – any action taken by management to stop the harassing conduct, including reassignment or the issuance of a Cease and Desist Order or other actions short of discipline such as counseling or a direct order to stop the harassing conduct.

E. **Disciplinary Action/Discipline** – Action taken against an employee who has violated any law and/or CSOSA or PSA policy, rule, or regulation. Disciplinary action includes a letter of official reprimand, suspension, demotion, or removal from federal service.

F. 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 conditions of employment, results in disparate treatment, or has a disparate impact on employees.

G. 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 complainant's conditions of employment or work environment. This includes sexual harassment and other types of harassment.

H. 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 conditions of employment.

I. Equal Employment Opportunity Commission – The federal agency with overall responsibility for adjudicating employment discrimination complaints.

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

K. Hostile Work Environment Harassment – Unwelcome comments or conduct based on sex, race, color, national origin, religion, age, disability, sexual orientation, 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 may commit this type of harassment. The victim may, in fact, be any employee affected by the conduct, not just the individual at whom the offensive conduct was directed. Comments or conduct that may 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. Demonstration of a racial or ethnic nature such as a use of gestures, pictures or drawings which would offend a particular racial or ethnic group;
2. Making disparaging or negative comments about a person's skin color 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 actual or perceived birthplace or ancestry;
6. Negative comments regarding a person's actual or perceived 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.

L. Inquiry/Investigation – A prompt, thorough, and impartial gathering of facts through interviews and review of appropriate records. The purpose of an inquiry/investigation is to determine if reported allegations made against an employee are substantiated.

M. Investigator(s) – Person(s) who are employed or under contract by CSOSA or PSA to conduct inquiries into allegation of discriminatory harassment and/or retaliation to determine the facts associated with these complaints.

N. 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 constituted discriminatory harassment.

O. Protected Employee – An employee who is participating or has participated in protected EEO activity.

P. Respondent – An employee who is accused of discriminatory harassment and/or retaliation.

Q. Reprisal – Reprisal is defined as the equivalent of retaliation.

R. Retaliation – Retaliation is defined as taking or threatening to take an unjustified employment action against a protected employee.

Examples of unjustified employment actions include any adverse changes in an employee's conditions of employment, e.g., reassignments, changes in work schedule or assignments, negative performance evaluations, unwarranted discipline, harassment, denial of promotion, or the denial of other work related requests, denial of training requests, or the creation of a hostile work environment.

S. 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 conditions of employment, e.g., hiring, firing, promotion, undesirable reassignment, or a significant change in benefits, compensation, work assignment, or denial of a training request. Only individuals with supervisory or managerial responsibility can commit this type of harassment.

APPENDIX B PROCEDURES

A. How to Report Harassment

An employee who believes she/he has been subjected to harassing conduct or bullying behavior should promptly notify a supervisor in their supervisory chain, the Office of Human Capital Management, or the Office of EEO, Diversity and Special Programs. In addition, bargaining unit employees may contact AFGE Union Local 1456 to file a complaint under the negotiated grievance procedure. (See Articles 18 and 24 in the Collective Bargaining Agreement.)

B. Confidentiality of the Complaint Process

All information provided in the inquiry/investigative process is maintained on a confidential basis to the greatest extent possible. The maintenance of records and any disclosures of information from these records must be in compliance with the Privacy Act, 5 U.S.C. § 552a. Such information, however, may have to be disclosed to defend the Agency in any litigation to which the information may be relevant and necessary. Further, information may need to be disclosed to those management officials and employees within the Agency with a need to know in order to carry out the purpose and intent of this policy.

C. Inquiries into Allegations of Harassing Conduct

1. A supervisor or manager who receives an allegation of harassment and/or retaliation or witnesses such conduct must immediately:
 - a. Inform OEEO, OHCM, and his or her supervisor and seek guidance as to further action;
 - b. Take prompt action, in consultation with OEEO and OHCM, to stop any harassing conduct and prevent further harassment while the allegations are being investigated, including taking appropriate measures, including a Cease and Desist Order, to prevent the alleged victim from experiencing any further harassing conduct.
2. When OEEO and/or OHCM receives an allegation of harassing conduct, either directly by the complainant or through a supervisor, manager or other source, OEEO must ensure that a prompt, thorough, and impartial inquiry/investigation is conducted, and recommend appropriate action to stop any harassing conduct and prevent further harassment, including recommendations on appropriate interim relief for the alleged victim of harassing conduct while the allegations are being investigated. In the event of a conflict as determined by the Office of the Director, the investigation must be conducted by OPR.

3. Where an investigation is necessary, OEEO must promptly conduct interviews of the complainant, the respondent, and any appropriate witnesses. A written summary of the investigation, i.e., an investigative report, is prepared by the OEEO or contractor who conducted the investigation. The investigative report must include findings of fact, credibility assessments, and recommendations, and be prepared promptly after completion of the investigation and submitted to the Office of the Director.

D. Action Taken Upon Completion of the Investigation

1. Upon completion of the investigation, the Office of the Director, or his or her designee, must promptly evaluate the investigative report and determine if disciplinary action is appropriate. In addition, the Office of the Director must assess the matter for appropriate interim relief to be provided to the complainant. The Director, OEEO must 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 should consult with OGC and determine if the matter should be referred to OPR.
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 must refer the investigative report to the appropriate management official who determines appropriate corrective and/or disciplinary action, up to and including removal from federal service, to be proposed against the employee in violation of this policy.