



District of Columbia Pretrial Services Agency

Policy Statement 1006

Policy Area: EEO

Effective Date: April 24, 2009

POLICY STATEMENT

A handwritten signature in cursive script, appearing to read "Susan Shaffer", is written over a horizontal line.

Susan W. Shaffer, Director

PREVENTION OF SEXUAL HARASSMENT

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. BACKGROUND

All persons have a right to work in an atmosphere of mutual respect that is free from sexual harassment. Sexual harassment is a serious offense that is not tolerated in the workplace by the Agency. The Equal Employment Opportunity Commission (EEOC) defines harassment as "deliberate, repeated, unsolicited, or unwelcome sexual advances of all types." A person is harassed sexually when submission to conduct of a sexual nature is made, either explicitly or implicitly, a term or condition of employment; submission to or rejection of that conduct is used as the basis for employment decisions affecting an individual; or, when that conduct unreasonably interferes with work performance, or creates an intimidating, hostile, or offensive work environment.

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. The Agency is committed to maintaining a high standard of conduct in the workplace and providing a work environment that is free from sexual harassment. In compliance with federal law, the Agency has established a policy of nondiscrimination which affirms the responsibility of PSA to maintain a workplace free from sexual harassment. This responsibility includes a requirement to take preemptive action when necessary to eliminate such practices or remedy their effects.

III. POLICY

It is the policy of the Agency to prohibit sexual harassment and retaliation against any employee for reporting allegations of sexual harassment or assisting in any action related to allegations of sexual harassment. Agency employees are prohibited from engaging in sexual harassment or inappropriate sexual conduct and from engaging in retaliation against those who report such conduct. Any employee found to have engaged in any form of harassment and/or retaliation may be subject to appropriate and timely corrective and/or disciplinary action up to and including removal from federal service. Employees are protected from retaliation after filing a complaint or after witnessing sexual harassment and reporting it. An employee who believes s/he has been subjected to sexual harassment, inappropriate sexual conduct, or retaliation should immediately contact the Office of Equal Employment Opportunity, Diversity and Special Programs (OEEO). The OEEO has the authority and responsibility to receive and investigate complaints of sexual harassment and/or retaliation arising from complaints of sexual harassment. 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). Prevention is the best tool to eliminate sexual harassment in the workplace. As a result, each employee must attend mandatory prevention of sexual harassment training every two years.

When sexual harassment affects employment decisions or creates a hostile working environment, it is both a violation of Title VII of the Civil Rights Act of 1964 and the Civil Service Reform Act of 1978 (specifically, prohibited personnel practices, 5 USC § 2301). The Agency:

- Provides a work environment free of sexual harassment;
- Prohibits all sexual harassment, explicit or implicit;
Complies with all laws and regulations governing sexual harassment, taking immediate, appropriate action both when sexual harassment is alleged or proven; and,
- Ensures availability of formal complaint channels for allegations of sexual harassment to all 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.*)
Equal Pay Act of 1963 (29 U.S.C. §§ 206 *et seq.*)
Rehabilitation Act of 1973 (29 U.S.C. §§ 791 *et seq.*)
Code of Federal Regulations, Title 29, Part 1614
Civil Service Reform Act of 1978 (5 U.S.C. § 2301 *et seq.*)

B. Supersedures

Policy Memorandum 2002-2 (Dated January 7, 2003)

C. Procedural References

PS 1005 Alternative Dispute Resolution Program
PS 2001 Personal Use of Information Technology Resources

D. Attachments

Appendix A. Definitions
Appendix B. Procedures
Appendix C. Request for an EEO Counselor Form

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. 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.
- B. Complainant - An individual who alleges s/he is the victim of sexual harassment and/or retaliation (as the direct victim or witness to such conduct) or who files a sexual harassment and/or retaliation complaint.
- C. 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.
- D. 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.
- E. 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.
- F. 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.
- G. Protected Employee – An employee who is participating or has participated in protected EEO activity.
- H. Respondent - The employee who is accused of sexual harassment and/or retaliation.
- I. 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 adverse changes in an employee's conditions of employment, e.g., reassignments, changes in work schedules 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.

J. 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 is used as the basis for employment decisions affecting an individual;
3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or
4. such conduct creates 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.

K. Inappropriate Sexual Conduct - The following list includes examples of sexual harassment. It is not an exhaustive list but provides illustrations of conduct that is prohibited in the workplace 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 employees even when not meeting the legal definition of sexual harassment:

1. Oral or Written Communications
 - a) Making suggestive or sexual comments about another individual's or one's own anatomy, figure, appearance;
 - b) Asking personal questions about an individual's sex life, or sexual preferences, habits, or history;
 - c) Subjecting another individual 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 individuals in sexist or sexual terms;
 - i) Repeatedly contacting an individual at work or at home or initiating contact outside of the workplace about non-work related matters when the person 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, fixing eyes on certain parts of a person's anatomy;
 - b) Giving unwanted gifts, letters, notes;
 - c) Making suggestive facial gestures;
 - d) Displaying sexually explicit or sexually suggestive pictures, images, or objects;
 - e) Transmitting sexually explicit, profane, obscene, intimidating, defamatory or otherwise unlawful or inappropriate material in the office, via e-mail, or downloading such materials from the Internet (see PS 2001, Personal Use of Information Technology Resources);
 - f) Uninvited physical contact such as touching a person's body, hair or clothing; or
 - g) Other non-verbal, physical conduct that is intended to communicate a sexual message.

APPENDIX B PROCEDURES

A. Where to File a Complaint:

1. An individual who believes s/he has been subjected to sexual harassment or inappropriate sexual conduct should immediately contact the Office of Equal Employment Opportunity, Diversity and Special Programs (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. 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).
2. Agency employees may retain their rights to file a sexual harassment complaint with an EEOC Administrative Law Judge if they have not received an investigative file and notice of their right to a hearing within 180 days of filing a formal EEO complaint.

B. When to File:

An employee must initiate the complaint process within 45 calendar days of the incident or behavior that is the subject of the complaint, or in the case of ongoing or continuing behavior, within 45 calendar days of the most recent incident.

C. Combined Complaints of Sexual Harassment and Other Forms of Discrimination or Harassment

The OEEO has authority to investigate claims of sexual harassment and retaliation as a result of complaints of sexual harassment.

D. Procedures for Complaints Submitted to the OEEO:

1. Informal Counseling

- a) Contact the OEEO within 45 days of the alleged discriminatory act.
- b) Complete informal counseling within 30 days, unless extended for not more than 60 days.
- c) Employees have the right to be accompanied, represented and advised by a representative of their choice throughout the complaint process including the counseling stage.
- d) Employees should remain mindful that the EEO Counselor is not an advocate for either the aggrieved person or the Agency.
- e) Employees who choose to have a representative must give the OEEO written notice of their representative's name and address.

- f) During counseling, employees have the right to remain anonymous. Once a formal complaint is filed, however, the complaint is not confidential. Information is shared with others on a strictly need to know basis.
- g) To request an EEO Counselor, an employee must complete and submit a *Request for EEO Counselor Form* (See Appendix C).

2. Formal complaint

- a) If the allegation(s) in the complaint is accepted, an independent investigation will be completed within 180 days of the postmark date of the complaint. If the complainant files the complaint in person, an independent investigation will be completed within 180 days of the date the complaint is filed. For information on the EEOC appeal process, employees should contact the OEEO Office.

- b) Complaints must be mailed or delivered to:

Director
Office of Equal Employment Opportunity, Diversity and Special Programs
655 15th Street NW
Suite 840
Washington, DC 20005

- 3. Complainants may request in writing an interim personnel action that serves to separate them from the respondent(s) while the complaint is pending. Management reserves the right to determine where the complainant is reassigned. Reassignment may be temporary pending the outcome of the investigation. The action may be issued by the PSA Director, Deputy Director, or appropriate Office Director.

E. Responsibilities

- 1. Managers and Supervisors are responsible for the following:

- a) Ensuring this Policy Statement is implemented.
- 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 and reported promptly and that each employee is aware of the Agency's sexual harassment/retaliation policy and complaint procedures.

- d) Ensuring that individuals 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.

Note: Managers and supervisors do not have the authority to conduct their own internal investigations into sexual harassment complaints. Managers and supervisors must comply with procedures for forwarding complaints promptly, cooperating with investigations of allegations of sexual harassment/retaliation, and carrying out remedial, corrective, and disciplinary actions.

2. 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 that could lead to criminal prosecution.
 - b) Reporting directly to the Director and/or Deputy Director of PSA 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.
3. The Office of General Counsel (OGC) conducts a legal sufficiency review of OPR's investigation. Following review by OGC, the Director and/or Deputy Director of PSA reviews investigative reports and forwards them to the appropriate Office Director.
4. A Management official is the appropriate manager or supervisor who makes the initial decision on whether disciplinary action is warranted based on review and consideration of the report of investigation.
5. The PSA Office of Human Capital Management is responsible for providing advice and counsel to all levels of management and employees, and coordinating 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 is maintained regarding services provided.
6. All Employees must attend sexual harassment and retaliation training. Each employee is also responsible for the following:
 - a) Ensuring that his or her conduct is free from all forms of sexual harassment and 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 sending such links and/or email messages to other individuals in the workplace.
- c) Cooperating in an investigation conducted by OEEO or OPR.

F. Penalties

1. Any employee found to be in violation of the Prevention of Sexual Harassment policy; and
2. Any supervisor or manager who fails to report sexual harassment or fails to take appropriate action to resolve sexual harassment complaints; and
3. Any employee misusing the Prevention of Sexual 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.

APPENDIX C



**Court Services and Offender Supervision Agency
for the District of Columbia**

**REQUEST FOR AN EEO COUNSELOR
(INTAKE PROCESS)**

DATE OF REQUEST: _____

NAME: _____

Job Title/Series/Grade: _____

Place of Employment: _____

Branch: _____ Supervisor: _____

Work Address: _____

Home Address: _____

Work Phone: _____ Home Phone: _____

Email Address: _____ Fax No.: _____

NAME OF REPRESENTATIVE (IF APPLICABLE): _____

Address: _____

Work Phone: _____ Home Phone: _____

Email Address: _____

DATE OF INITIAL CONTACT: _____

Office Visit _____ Telephone _____ Other _____

DATE OF ALLEGED INCIDENT: _____

BASIS (ES):

____ Race (Specify) _____ Color (Specify) _____ Sex (Specify)
____ Age (Date of Birth) _____ Religion (Specify) _____ National Origin (Specify)
____ Disability (Specify Physical or Mental) _____ Reprisal (Identify prior event)

SUMMARY OF ISSUES: _____

FOR EEO OFFICE USE ONLY

DATE EEO COUNSELOR ASSIGNED: _____

NAME OF EEO COUNSELOR: _____

COMMENTS: _____
