



COMMISSIONER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

February 3, 2020

MEMORANDUM FOR ALL EMPLOYEES

FROM: Charles P. Rettig *CR*  
Commissioner of Internal Revenue

SUBJECT: Anti-Harassment Policy

**Purpose**

This policy is designed to address unwelcome, hostile and/or abusive conduct before it rises to a level of harassment that creates a hostile work environment. The IRS is committed to fostering a model workplace free of conduct that negatively affects employee engagement and productivity. To provide management with the opportunity to address any potentially harassing conduct, this policy requires that management be notified of any harassing conduct before it becomes severe or pervasive.

Every effort must be made to prevent harassment in general and in particular harassment based on race, color, sex (gender, pregnancy, sexual orientation, gender identity, and transgender status), national origin, religion, age (40 and over), disability (mental or physical), parental status, protected genetic information, and retaliation for engaging in the equal employment opportunity (EEO) process. This policy is applicable regardless if the employee has filed another action, including an EEO administrative complaint, Merit Systems Protection Board (MSPB) appeal or union grievance. Should any unwelcome, hostile and/or abusive conduct occur, this policy sets forth procedures for immediate and appropriate corrective and/or disciplinary action.

**Policy**

The objective of this policy is to prevent or mitigate harm to any employee subjected to harassment based on any of the previously mentioned protected characteristics. This policy prohibits harassment by or of any employee, supervisor, manager, contractor, vendor, applicant, or other individual with whom IRS employees interact with during their work. Harassment can be direct or indirect, and the offender can be a supervisor, co-worker or subordinate. When appropriate, hostile or abusive conduct will be subject to corrective and/or disciplinary action even when it does not meet the threshold for illegal harassment.

## **Distribution**

This policy shall be distributed to all employees upon issuance and annually thereafter. It shall also be made available to employees on the IRS intranet and distributed during the first week of work to all new employees as part of their orientation.

## **Harassment**

### **Legal Definition of Unlawful Harassment**

Harassment is a form of employment discrimination when the offensive conduct becomes a condition of employment, or the conduct is severe or pervasive enough to create a working environment which a reasonable person would consider intimidating, hostile or abusive. Harassment as a form of reprisal for engaging in protected activity is also prohibited by law. For example, the law prohibits harassment to retaliate against someone for filing a complaint of discrimination, openly opposing unlawful discrimination, or participating in a hearing or investigation concerning a discrimination claim.

To establish a viable claim of harassment, a complainant must show (1) membership in a statutorily protected class; (2) subjection to unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on the statutorily protected class; (4) the harassment had the purpose or effect of unreasonably interfering with the complainant's work performance or created an intimidating, hostile or offensive work environment; and (5) there is a basis for imputing liability to the employer. *Omelas v. Department of Justice*, EEOC Appeal No. 01995301 (2002).

### **Employer Liability for Harassment**

The employer is automatically liable for harassment by a supervisor that results in a negative employment action such as termination, failure to promote or hire, and loss of wages. If the supervisor's harassment results in a hostile work environment, the employer can avoid liability only if it can prove that: 1) it reasonably tried to prevent and promptly correct the harassing behavior; and 2) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer.

The employer will be liable for harassment by non-supervisory employees or non-employees over whom it has control (e.g., independent contractors or customers on the premises), if it knew, or should have known, about the harassment and failed to take prompt and appropriate corrective action.

## Examples of Harassing Conduct

- (1) General harassing conduct may include, but is not limited to:
- Making derogatory comments or displaying offensive behavior about a person's religious beliefs or any characteristic protected under Title VII of the Civil Rights Act of 1964 (race, color, religion, sex, or national origin);
  - Making offensive or insulting comments about skin color, ethnic traits or age;
  - Making offensive gestures or negative comments about a mental or physical disability;
  - Sharing inappropriate images, videos, letters or notes;
  - Making offensive or negative comments about a co-worker or employee because of a protected characteristic;
  - Wearing offensive clothing that displays inappropriate images in the workplace;
  - Using racist slurs or slang phrases;
  - Displaying drawings, posters, cartoons or images in the workplace that are offensive to other people based on any protected characteristic; or
  - Making sexually offensive gestures.

While the single use of an epithet that offends another employee will typically not rise to the level of harassment, a single or limited number of epithets or slurs may constitute harassment under certain circumstances. All employees should refrain from the use of any epithets or slurs that, even in jest, might be considered offensive.

- (2) Sexual Harassment - Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:
- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
  - (b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
  - (c) 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 (see 29 CFR §1604.11(a)).

Sexually harassing behavior may include:

- Remarks about a person's appearance, clothing, body parts, or activities;
- Physically blocking a person's movement or standing in their way;
- Descriptions of sexual acts; displaying sexually graphic pictures;
- 'Accidentally on purpose' brushing up against a person;
- Staring or looking a person's body up and down;
- Following an individual around or paying excessive attention to them;
- Telling lewd jokes or sharing stories about sexual experiences;
- Sending unwanted suggestive or lewd emails, letters or other communications,

sharing images of a sexual nature around the workplace, or displaying posters, items or screensavers of a sexual nature;

- Inappropriate and suggestive touching, kissing, rubbing or caressing of a person's body and/or clothing;
- Pressure for dates, despite repeated declinations;
- Repeated requests for sexual favors; or
- Making sexually offensive gestures, remarks or facial expressions.

The harasser may be the same sex or a different sex from the targeted person.

(3) Bullying is the repeated unreasonable action of a manager, employee, contractor and/or vendor towards another, intended to:

- (a) Intimidate;
- (b) Degrade;
- (c) Offend;
- (d) Humiliate; or
- (e) Marginalize the target person or group.

Although bullying is currently not recognized as a legal cause of action, any form of bullying is against the IRS Rules of Conduct and is covered by this policy.

Common examples of workplace bullying include:

- Unwarranted or invalid criticism;
- Blame without factual justification;
- Being treated differently from the rest of your work group;
- Being sworn at;
- Exclusion or social isolation;
- Being shouted at or being intentionally humiliated; and
- Being the target of practical jokes.

(4) Cyber-harassment or cyber-bullying involves using electronic devices, including cellular phones and computers, to transmit harassing or bullying text messages, emails or images to social media sites (Facebook, Twitter, Snapchat, etc.) or blogs is prohibited and may constitute cyber-harassment or cyber-bullying when, for example:

- Posting comments or rumors about someone online that are mean, hurtful, or embarrassing;
- Threatening to hurt someone or telling them to kill themselves;
- Posting a mean or hurtful picture or video;
- Pretending to be someone else online to solicit or post personal or false information about someone else;
- Posting mean or hateful names, comments or content about any race, religion, ethnicity, or other personal characteristics online;

- Creating a mean or hurtful webpage about someone;
- Doxing, which is a form of online harassment used to exact revenge and to threaten to destroy the privacy of individuals by making their personal information public, including addresses, Social Security Number, credit card and phone numbers, links to social media accounts, and other private data.

### **What is NOT Harassment?**

The following would typically not be considered harassment:

- (1) Petty slights and trivial annoyances, a lack of good manners or personality conflicts;
  - Saying or doing something in a playful manner to annoy or cause a reaction;
  - Lack of good manners (not saying good morning, please, thank you, humming or singing loudly to music, even though headphones are being used, etc.);
  - Miscommunications (having a misunderstanding, disagreement or lack of guidance/direction); or
  - Personality conflicts (individuals having differing communication styles).
- (2) Reasonable management actions in support of the work or directions to employees to perform work.
  - Reasonable management actions in support of the work (i.e., providing performance feedback, directing employees to meet with a manager, advising of conduct or time and attendance concerns, monitoring or tracking these and/or the work area/work environment for reasonable business reasons) and/or assigning work and directions to employees to perform work.

### **Preventing Harassment or Bullying Before It Becomes Severe or Pervasive**

If employees believe they are being harassed or bullied, they can but are not required to attempt to resolve the matter by speaking calmly with the person(s) engaging in the inappropriate conduct. They should make it clear that the conduct is unwelcome and/or offensive. If this does not stop the behavior, or the employees are not comfortable discussing the behavior with the harasser, then they should elevate the matter utilizing one of the methods identified in the Reporting Harassment or Bullying section below.

### **Reporting Harassment or Bullying**

Any employee who believes he or she has been subjected to unlawful harassment or bullying that the employee considers unwelcome, disruptive or inappropriate should report the matter to:

- The supervisor of the employee or manager engaging in the harassing or inappropriate conduct;
- Another supervisor or other management official;

- The Chief, Anti-Harassment Section, via the Equity Diversity and Inclusion (EDI) Anti-Harassment Mailbox (\*EDI AHP Mailbox);
- An EEO Counselor (which initiates the EEO process);
- An NTEU Representative; or
- The Employee Resource Center – (866) 743-5748 or TTY (800) 382-8169 or through the IRS KISAM (OS GetServices) online portal.

Employees who know of harassing or inappropriate conduct directed at others are also encouraged to report the matter in a manner described above.

Reporting harassment to the Anti-Harassment Section does not constitute initiation of the EEO process. Even if an employee reports the conduct to management, the Anti-Harassment Section, or an NTEU representative, the employee still has only 45 days from the date of the alleged harassing conduct to initiate the informal EEO process by contacting an EEO Counselor.

### **Confidentiality and Reprisal**

Reports of harassment or inappropriate conduct will be kept confidential to the extent reasonably possible. Retaliation against persons who make claims of harassment or provide information regarding such claims will not be tolerated and should be promptly addressed pursuant to the procedures in this policy.

### **Management and Management Official Responsibilities**

Management must quickly address all allegations of harassment or bullying. Allegations of harassment or bullying involving another manager's employee should be reported promptly to the appropriate manager in that employee's chain of command. Ignoring a report of alleged harassment may subject the agency to liability for damages and may subject the manager who failed to report the allegation to disciplinary action.

Management is required to report all harassment allegations to the Chief, EDI, Anti-Harassment Section via the EDI Anti-Harassment Mailbox (\*EDI AHP Mailbox) within one business day of becoming aware of the allegation, however reporting the allegation to the Chief, EDI, Anti-Harassment Section does not remove the requirement for management to quickly address the allegation.

### **Management Inquiry, Reporting, and Corrective Action**

Management must conduct an inquiry to determine the frequency and severity of the alleged harassing or bullying conduct and take appropriate corrective or disciplinary action. This inquiry can take the form of a full inquiry or limited inquiry. The appropriate inquiry will depend upon the amount of information provided when an allegation is raised. Managers should reduce all actions and findings of the inquiry to writing.

Further, decision-makers should always consult with labor relations (LR) staff prior to taking any disciplinary or adverse actions against alleged harassers.

### (1) Conducting Inquiries

A supervisor or manager who receives an allegation or otherwise becomes aware of harassment or inappropriate conduct involving subordinates within her/his chain-of-command must within ten (10) business days complete the following:

- (a) Determine what conduct is at issue and whether it could be considered harassment or behavior that would reasonably be considered unwelcome, disruptive or inappropriate;
- (b) Determine who may be involved;
- (c) Determine whether any immediate corrective action is required to insulate the alleged victim from further harassment or inappropriate conduct;
- (d) Determine what action is necessary and appropriate to otherwise address the allegation;
- (e) Record the activities and findings of the preliminary inquiry; and
- (f) Notify the Chief, EDI Anti-Harassment, via \*EDI AHP Mailbox of the allegation, who was involved, and what actions were taken to address the allegation.

If the supervisor or manager receiving an allegation cannot take a corrective action to address the matter, they must:

- (a) Notify one of the following officials identified below, within one business day of becoming aware of alleged harassment or bullying:
  - i. The harassing employee's supervisor or second level supervisor, unless the conduct implicates the supervisor or second level supervisor, in which case, notify the Chief, EDI Anti-Harassment Section, via \*EDI AHP Mailbox; or
  - ii. The victim's supervisor or second level supervisor, unless the conduct implicates the supervisor or second level supervisor, in which case, notify the Chief, EDI Anti-Harassment Section, via \*EDI AHP Mailbox.
- (b) Supervisors or second level supervisors in receipt of the report should notify the Chief, EDI Anti-Harassment Section, via \*EDI AHP Mailbox and provide a description of any initial steps taken to address the report. This report will only be sent by the managerial official taking the appropriate action in response to the allegation raised.
- (c) If a supervisor or manager is contacted by an employee outside their chain-of-command, with an allegation of harassment or bullying, that supervisor or manager should **never** refer the employee to another supervisor or manager or tell the individual that he or she cannot assist or direct the employee to another

source for action. Individuals raising allegations should never feel deterred from reporting based on perceived management inaction. At a minimum, the supervisor or manager receiving such an allegation will follow the above identified procedures or notify the Chief, EDI Anti-Harassment, via \*EDI AHP Mailbox.

## **(2) Notifying Appropriate Officials of Allegations**

When an allegation of harassment or bullying is made directly to the Chief, EDI Anti-Harassment Section, she/he shall:

- (a) Immediately acknowledge receipt of the allegation;
- (b) Identify and notify the managerial official at least two levels above the supervisory level of the employee raising the allegation to serve as the Deciding Official. This individual must have authority to impose disciplinary action, if warranted to address the allegation.
- (c) Ensure the Deciding Official appoints an Inquiry Official (fact-finder) who will conduct the inquiry to gather all facts pertaining to the allegation.
- (d) Provide guidance to the identified fact-finder to ensure a thorough inquiry is conducted.

## **(3) Taking Corrective Action**

If it is determined that harassment or inappropriate conduct occurred, corrective action will be necessary.

The Deciding Official will determine the appropriate corrective action by reviewing the report submitted by the Inquiry Official and consulting with the Chief, EDI Anti-Harassment Section and the Labor Relations office as appropriate. The Deciding Official will not implement any corrective actions until these consultations have taken place.

## **Monitoring the Work Environment**

Each Business Operating Division is responsible for ensuring their offices are in full compliance with this policy. Supervisors and managers are responsible for monitoring the work environment, especially after a reported allegation of harassment or bullying, and will conduct a subsequent management inquiry, when needed, to ensure no further violations or incidents of retaliation have occurred.

## **Filing EEO Complaints, Administrative Complaints or Negotiated Grievances**

The purpose of this policy is to prevent, deter and stop harassment in the workplace. Management actions are intended to be corrective and to stop harassment and deter its recurrence. However, corrective action under this policy may not provide the remedies



available (e.g., compensatory damages) through the EEO, collective bargaining or other processes.

Filing an allegation of harassment under this policy **will not** satisfy the requirements for filing an EEO complaint, union grievance or other procedure, and may not result in remedies available through those processes. Additionally, filing an allegation of harassment under this policy **will not** delay the time limits for initiating the aforementioned procedures.

An employee who chooses to pursue statutory, administrative, or collective bargaining remedies for unlawful harassment must elect one of the available forums as follows:

- (1) For an EEO complaint pursuant to 29 C.F.R. Part 1614, contact an EEO counselor in the Office of Equity, Diversity & Inclusion within **45** days from the most recent incident of alleged harassment (or from the effective date of a personnel action if one is involved), as required in 29 C.F.R. § 1614.105(a)(1). EEO counselor contact information is provided in the "Where Do I Go For EEO?" document located on the Employee Resource Center website on the IRS intranet.
- (2) For a collective bargaining claim, file a written grievance in accordance with the provisions of the Collective Bargaining Agreement, within 45 days of the incident or the employee's learning of the incident.
- (3) For an appeal to the MSPB pursuant to 5 C.F.R. § 1201.22, file a written appeal with the Board within **30** days of the effective date of an appealable adverse action as defined in 5 C.F.R. § 1201.3, or within **30** days of the date of receipt of the agency's decision, whichever is later.

The IRS's liability for a finding of harassment in an EEO complaint, MSPB appeal or grievance may depend upon whether the agency was aware of and promptly corrected the hostile or abusive conduct. Therefore:

- (1) If an employee first pursues a claim of harassment through the EEO complaint process, an MSPB appeal or grievance, and the agency was not aware of the allegation, the EDI Counselor or other designee of the office responsible for EEO complaint processing or the responsible individual processing an MSPB appeal or grievance who receives notice of such claim, shall promptly notify the responsible management official of their responsibility to take swift and appropriate action.
- (2) The Chief, EDI Anti-Harassment Section shall be provided the record of actions taken under this policy from the responsible offices handling the EEO complaint, MSPB appeal or grievance.

## **Representation**

Any Bargaining Unit employees involved in the investigation of allegations under this policy (where the EEO, MSPB, and grievances processes have not been initiated) are entitled to NTEU representation only. These individuals will be issued Form 8111, Employee Notification Regarding Union Representation, in accordance with the provisions of the National Agreement, Article 5, Section 4, which permits a person designated by the union to represent the employee during the interview, if the employee desires such representation. No other representation (i.e., attorney, family member, friend, advocate, etc.) is permitted.

## **Administrative Time**

Employees are entitled to a reasonable amount of administrative time to present their allegations or respond to agency requests for information while pursuing allegations or serving as a witness under this policy. Prior to meeting with an Anti-Harassment Specialist, employees must request and obtain approval for administrative time from their immediate manager. The employee must submit their request in writing, with as much advanced notice as possible, preferably no later than five (5) business days in advance, and provide the following in their request:

- Amount of administrative time being requested;
- Stage of the process (initial meeting, follow-up meeting, etc.); and
- Explanation of how the employee determined the amount of time requested.

## **Protection Against Retaliation**

Retaliation against any person who reports an allegation of harassment or bullying, or who participates in the fact-finding process, is prohibited and may result in disciplinary action.

## **Release of Inquiry Report**

Employees raising allegations in accordance with this policy **will not** receive any reports at the conclusion. Any report or other documentation is considered an internal, management document pertaining to another person and is protected by the Privacy Act.

## **Appeal Rights**

There are no appeal rights, reconsideration or other redress associated with the processing of allegations under this policy.

**Authorities**

- (a) Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16;
- (b) The Civil Service Reform Act, 5 U.S.C. § 2302(b)(10);
- (c) Executive Order 11478, as amended May 28, 1998;
- (d) Equal Employment Opportunity Commission Management Directive 715, "Federal Responsibilities Under Section 717 of Title VII and Section 501 of the Rehabilitation Act" (October 1, 2003);
- (e) Equal Employment Opportunity Commission, "Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors," No. 915.002 (June 18, 1999);
- (f) *Burlington Industries v. Ellerth*, 524 U.S. 742 (1998);
- (g) *Faragher v. Boca Raton*, 524 U.S. 775 (1998);
- (h) *Harris v. Forklift Systems, Inc.*, 410 U.S. 17 (1993);
- (i) Internal Revenue Manual, Section 1.2.10.1.8, Policy Statement 1-38 – Equal Employment Opportunity (March 8, 2012); and
- (j) 2019 National Agreement Internal Revenue Service and National Treasury Employees Union

**Effective Date:**