



**HEADQUARTERS
DEFENSE HUMAN RESOURCES ACTIVITY
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ALEXANDRIA, VA 22350-4000**

OPERATING INSTRUCTION

SUBJECT: Anti-Harassment Policy and Procedures

References: (a) DoD Instruction 1020.04, "Harassment Prevention and Responses for DoD Civilian Employees," June 30, 2020
(b) HQ, DHRA Director's Anti-Harassment Policy Statement
(c) Title 10, Code of Federal Regulation
(d) 29 CFR Part 1614, Federal Sector Equal Employment Opportunity
(e) HQ, DHRA Employee Discipline and Accountability Operating Instruction
(f) Title 5, Code of Federal Regulation

1. PURPOSE

- 1.1 This Operating Instruction (OI) serves as the Defense Human Resources Activity's (DHRA) Anti-Harassment Policy and provides procedures for preventing and promptly correcting harassment in the workplace. The DHRA Enterprise continually strives to maintain a work environment where harassment is not tolerated, and respect and civility are promoted. To this end, DHRA's goal is to ensure a workplace that is free of unlawful harassment based on an individual's race, color, religion, sex, national origin, age, disability, genetic information, retaliation, or any other basis protected by law.
- 1.2 In accordance with the reference (a) and (b), DHRA is committed to taking all necessary steps and precautions to prevent unlawful harassment in the workplace and to address allegations of harassment in the workplace promptly before the harassment becomes severe or pervasive.

2. APPLICABILITY

This Operating Instruction applies to the Defense Human Resources Activity (DHRA). DHRA consists of a Headquarters function and individual Centers with unique missions.

3. DEFINITIONS

- 3.1 Anti-Harassment Coordinator: The Anti-Harassment Coordinator provides policy interpretation, coordination, and oversight for the Anti-Harassment policies and procedures.
- 3.2 Employee: All civilian employees and military members in accordance with reference (c), permanently or temporarily under the authority of the DHRA Enterprise who are paid with appropriated or non-appropriated funds. This does not include contractors.
- 3.3 Harassment: Harassment is unwelcome conduct that is based on race, color, religion, sex, national origin, older age (beginning at age 40), disability, or genetic information (including family medical history). To be considered illegal harassment under the law, the behavior must also (1) result in an intimidating, hostile, offensive work environment; (2) unreasonably interfere with an individual's work performance; or (3) otherwise

adversely affect an individual's employment opportunities. The EEOC describes two types of harassment that change the conditions of employment: (1) harassment that results in a tangible employment action, which is an action that significantly changes an employee's employment status, such as hiring, firing, promoting, demoting, changing work assignments, and reassigning an employee; and (2) harassment that is so severe or pervasive that it creates a hostile work environment, which is a work environment that a reasonable person would consider intimidating, hostile, or abusive.

3.3.1 Non-sexual Harassment: Examples of non-sexual harassment prohibited by this policy include but are not limited to; offensive epithets, slurs, stereotyping, intimidating acts, demeaning banter, teasing, jokes, questions, gestures, innuendos or the dissemination of or posting of written or graphic materials that show hostility toward individuals because of their protected status (see 4.3 for what constitutes a protected status).

3.3.2 Sexual Harassment: A specific type of harassment involving unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where: (1) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of an individual's employment and is used as the basis for employment decision(s) affecting such individual; or (2) 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.

3.4 Inquiry: Process of ascertaining facts and collecting evidence sufficient to support a final determination of whether an allegation of harassment occurred.

3.5 Manager: Any military member or a civilian employee responsible for the oversight of daily activities and who falls within the chain of command directly between the employee and the DHRA Director.

3.6 Reprisal: A form of retaliation that involves taking, threatening, or recommending taking an unfavorable personnel action (demotion, termination of employment, negative administrative actions, not given same opportunities as peers, etc.), or withholding, threatening, or recommending withholding a favorable personnel action, for making, preparing to make, or being perceived as engaging in the anti-harassment process.

3.7 Retaliation: Conduct that punishes an employee for asserting his or her rights to be free from harassment.

3.8 Supervisor: A military member or civilian employee who directly supervises two or more civilian employees.

4. POLICY

4.1 It is DHRA policy that requiring managers and supervisors must ensure compliance with the provisions of this policy.

4.1.1 The DHRA Enterprise is committed to maintaining a workplace that is free from unlawful harassment. DHRA provides all personnel the opportunity to achieve their full potential to improve unit cohesion, military readiness, and mission

execution. DHRA will not tolerate unlawful harassment in the workplace or retaliation against any employee for reporting harassment under this OI or any other policy or procedure, or for assisting in any inquiry or investigation about such a report. Employees who violate this policy will be subject to possible disciplinary or other action.

- 4.1.2 In addition to maintaining a workplace free from unlawful harassment based on an individual's race, color, religion, sex, national origin, age, disability, genetic information, or retaliation, DHRA will also not tolerate inappropriate behavior even if it does not meet the legal definition of harassment under Title VII of the Civil Rights Act of 1964, as amended. DHRA has determined that the most effective way to limit inappropriate behavior or harassing conduct that does not meet the threshold of being unlawful harassment, is to address the misconduct in accordance with references (a) and (b).
- 4.1.3 This anti-harassment policy is intended to supplement, not replace or supersede, other complaint processes that permit employees to pursue complaints of alleged harassment. The process established by this OI is entirely separate and apart from any Collective Bargaining Agreement, Administrative Grievance or Statutory Equal Employment Opportunity Complaint Process covering discriminatory harassment that is focused on providing remedial relief to the employee affected by the discrimination. An employee who reports harassment in accordance with this OI has not filed an EEO complaint under reference (d). An employee who wishes to file an EEO complaint must contact the agency's EEO office within 45 days of the alleged harassment.

5. RESPONSIBILITIES

- 5.1 The DHRA Director, Deputy Director and HQ, DHRA Chief of Staff (CoS) shall oversee the implementation of this OI and ensure compliance at all levels of the DHRA enterprise with this policy.
 - 5.1.1 HQ, DHRA CoS shall, in addition to the responsibilities outlined in this section, act as or designate a fact-finder to conduct fact-finding into allegations of harassment where necessary. In appropriate cases, rather than engaging in fact-finding, the HQ, DHRA CoS may treat all of the allegations as true and proceed to an assessment of whether or not the allegations rise to the level of unlawful harassment.
 - 5.1.2 Fact-finder will be selected and appointed in writing by the DHRA Director.
- 5.2 The Anti-Harassment coordinator shall:
 - 5.2.1 Provide advice, technical assistance, and support to managers, supervisors, employees, and others, as needed, to achieve and maintain compliance with this OI.
 - 5.2.2 Ensure that employees receive periodic training concerning prevention of harassment, and that managers receive training in the requirements for addressing complaints of alleged harassment and, if required, the procedures for conducting harassment inquiries/investigations.

- 5.2.3 Develop and implement guidelines for evaluating and monitoring trends in allegations raised in inquiries/investigations conducted under this policy, to include plans for assessing the overall effectiveness of this policy and implementing best practices to help promote a workplace free of harassment.

5.3 DHRA Center and Office Directors, supervisors, and management officials shall:

- 5.3.1 Promote a workplace free from harassing conduct.
- 5.3.2 Ensure that their subordinates are aware of this OI and its requirements, and that managers at all levels are held accountable for adhering to this policy by acting promptly, in accordance with this OI, to address any harassing conduct of which they are aware.
- 5.3.3 Comply with the requirements of this OI and maintain a work environment where employees are free to report harassment without fear of retaliation against any employee who complains of harassment or is involved in any harassment inquiry.
- 5.3.4 Participate in required anti-harassment training and ensure that subordinates complete this required training.
- 5.3.5 Protect the confidentiality of employees who allege or report harassment, to the fullest extent possible.
- 5.3.6 Ensure that sexual assault and other reported crimes are referred to appropriate law enforcement organizations.
- 5.3.7 Evaluate subordinate managers and supervisors on their performance in complying with this OI.
- 5.3.8 Promptly notify the Anti-Harassment Coordinator of allegations of harassment, normally within ten (10) business days.
- 5.3.9 Act promptly to prevent and correct alleged harassment when it is observed or reported.
- 5.3.10 In consultation with Defense Logistics Agency, Labor Management and Employee Relations and OGC following the conclusion of a harassment inquiry, take appropriate and prompt corrective action, if warranted, including possible disciplinary or other action, against employees who have engaged in harassment or have failed to carry out their responsibilities under this policy.

5.4 DHRA employees shall:

- 5.4.1 Act professionally and refrain from any form of harassment in the workplace.
- 5.4.2 Comply with the provisions of this policy.
- 5.4.3 Promptly report incidents of alleged harassment.
- 5.4.4 Cooperate fully in any inquiry or investigation.
- 5.4.5 Complete anti-harassment training as required by the agency.

5.5 The Fact finder shall:

- 5.5.1 Be at least a GS-13.
- 5.5.2 Be equal to or above the grade/rank of the alleged offender.

- 5.5.3 Be at the GS-15 or equivalent level if the offender is unknown or has not been clearly identified.
- 5.5.4 Will consult with an OGC attorney appointed for that purpose before beginning the inquiry and throughout the inquiry.
- 5.5.5 Maintain confidentiality consistent with this policy.
- 5.5.6 Conduct inquiries and investigations within the scope of the case specific appointment letter.
- 5.5.7 Immediately notify the appointing authority in the event there is a conflict of interest.
- 5.5.8 Immediately report any criminal activity to the appointing authority (the HQ, DHRA CoS).
- 5.5.9 Carry out a prompt, thorough, and impartial inquiry into allegations of harassment.

6. PROCEDURES

6.1 Reporting Harassment

- 6.1.1 An employee who believes that he or she has been subjected to or has witnessed harassment or hostile or abusive behavior based on any of the protected categories outlined in Section 3.3 of this policy, should immediately report the incident to his or her manager or supervisor, or to the manager or supervisor of the employee who engaged in the inappropriate conduct and document the incident using the DHRA Anti-Harassment Intake Form.
- 6.1.2 Employees should report harassment as soon as it happens and are encouraged to do so as promptly as possible, which is generally no later than 45 days from the date of the alleged incident or when they were made aware.
- 6.1.3 If the employee believes that his or her manager or supervisor is the source of the harassment, or if the employee is reluctant to report the matter to his or her manager, then the employee should promptly report the conduct to another member of management who may be outside of the employee's specific chain of command.
- 6.1.4 In the alternative, employees may also report allegations of harassment to the Anti-Harassment Coordinator Complete an IDP annually.

6.2 Responding to Harassment Allegations

- 6.2.1 Following an initial report of harassment, the agency has a duty to exercise reasonable care to prevent and promptly correct any prohibited conduct. If the reported conduct is covered under this policy, the agency must launch a prompt, thorough, and impartial inquiry of the alleged harassment as described in Section 6.3 below.
- 6.2.2 Any DHRA supervisors or managers who witnesses what they believe to be harassment, or become aware of a harassment allegation made by any employee,

should promptly notify their Component Director, the CoS for Headquarter, DHRA and the Anti-Harassment Coordinator.

- 6.2.3 If an employee pursues a claim of harassment through the EEO process, an MSPB appeal, or a union grievance, the appropriate office designated to process such claims will make proper notifications as prescribed by law.
- 6.2.4 Once the HQ, DHRA CoS receives the harassment complaint, he or she must first assess whether the alleged conduct is covered under this policy in consultation with the Anti-Harassment Coordinator and OGC, and if the alleged conduct is not covered by this policy, notify the complaining employee of that determination promptly.
- 6.2.5 If the alleged harassing conduct is covered by this policy, the HQ, DHRA CoS shall promptly take the following steps:
 - 6.2.5.1 Acknowledge receipt of the report of potential harassment and take appropriate actions to ensure safety of the aggrieved party usually within ten (10) business days.
 - 6.2.5.2 Appoint an appropriate individual, if appropriate to conduct an inquiry/investigation into the facts and circumstances of the harassment allegation(s) and inform the complaining employee of the assigned individual who will directly communicate with the complaining employee.
 - 6.2.5.3 Advise the employee that he or she has an obligation to timely and fully cooperate in the inquiry/investigation, and failure to do so will not stop the inquiry/investigation from proceeding but will limit the information upon which a determination of whether the employee was subjected to harassment is made and may affect any potential corrective action.
 - 6.2.5.4 Notify the employee that information obtained during the inquiry/investigation will be used for official purposes and maintained on a confidential basis to the greatest extent practicable.
 - 6.2.5.5 Inform the employee that the agency will not tolerate retaliation against any employee who either makes an allegation of harassment, or hostile or abusive conduct, or participates in any inquiry regarding such allegation(s).
 - 6.2.5.6 Advise the employee of his other right to contact an EEO counselor to begin the EEO complaint process, and inform the employee that he or she must initiate such contact within 45 days of the harassing incident to file a timely complaint.
 - 6.2.5.7 Inform the employee of his or her entitlement to a reasonable amount of official time, upon request to his or her immediate supervisor, to gather and submit all relevant information associated with the allegation of

harassment, and to respond to requests for information from the official conducting the inquiry.

6.2.5.8 Grant appropriate interim relief to the alleged victim of harassment and take steps to prevent further harassment while fact-finding is pending. management initiates an inquiry/investigation into the allegation(s).

6.2.5.9 All harassment inquiries, if undertaken must be initiated as soon as management becomes aware of the situation, normally within ten (10) business days after the initial report of harassment has been received.

6.3 Conducting the Harassment Inquiry/Investigation

6.3.1 The agency official assigned to conduct a harassment inquiry should normally make initial contact with the complainant within ten (10) business days of receiving his or her assignment to interview the complainant and begin a prompt, thorough, and impartial inquiry into the alleged harassment.

6.3.2 All findings of fact will be documented in a written report.

6.3.3 Harassment inquiries/investigations must be completed as soon as possible. Under most circumstances, an inquiry/investigation should be completed within 30 calendar days of the date of assignment. On occasion, additional time may be needed to complete the inquiry/investigation (e.g., when the reported incident involves multiple allegations of harassment or numerous witnesses, or when travel is necessary). If the circumstances of the inquiry/investigation require additional time, the official assigned to conduct the inquiry must notify the appointing authority to request an extension. Generally, this additional time should not exceed 15 calendar days after the date of the extension request.

6.3.4 The scope of a given harassment inquiry will depend upon the specific allegations and circumstances at issue as determined by the appointing authority (the HQ, DHRA CoS), in coordination with the Anti-Harassment Coordinator. After a thorough review of the allegations and supporting facts, the investigating official may determine that only a limited inquiry/investigation may be appropriate. Likewise, the investigating official may find that other cases may warrant a more detailed inquiry based upon the facts and circumstances presented. A fact-finding official desiring to narrow or widen the scope of the investigation to which he or she is appointed must seek approval of same from the DHRA CoS.

6.3.5 For all inquiries/investigations, regardless of scope, agency fact-finding officials shall:

6.3.5.1 Review the employee's initial Anti-Harassment Intake Form, and any supporting documentation.

6.3.5.2 Consult with the DHRA OGC attorney appointed for that purpose.

6.3.5.3 Conduct interviews with witnesses including the individual alleging harassment, the alleged harasser, and any witnesses to the alleged harassing conduct. See the Joint Inspector General Investigations Guide

(<https://www.dodig.mil/Programs/DoD-Joint-Inspector-General-Program/References/>) for specific guidance on conducting interviews.

- 6.3.5.4 Request from all witnesses interviewed a signed and dated statement of facts made under penalty of perjury pursuant to 28 U.S.C. § 1746.
- 6.3.5.5 Request and compile any relevant supporting documents or other evidence from the individual alleging harassment, alleged harasser, and witnesses.
- 6.3.5.6 Inform all persons interviewed of the prohibition against retaliation for participating in a harassment inquiry/investigation pursuant to this OI.
- 6.3.5.7 Consult with the Anti-Harassment Coordinator regarding any employee requests to have legal representation present for the harassment inquiry. While employees are not entitled to legal representation for the purposes of a harassment inquiry, any request for a representative to participate must be made in writing and in advance of any scheduled interview or meeting. The Anti-Harassment Coordinator, after consulting with OGC, will determine whether such request will be granted and define the terms and conditions of any participation by such representative. Any legal representation an employee chooses to obtain is solely at the employee's expense and the legal representative may be required to sign a confidentiality agreement to participate in any proceedings.
- 6.3.5.8 Ensure that inquiries address only allegations of unlawful harassment based on race, color, religion, sex, national origin, age, mental or physical disability or genetic information. If other types of allegations are raised during the inquiry/investigation, the investigating official should seek advice from Anti-Harassment Coordinator and/or the assigned attorney to determine if the matters raised should be referred elsewhere for appropriate action.

6.4 Preparing the Report of Inquiry

- 6.4.1 The investigating official should prepare a report of inquiry/investigation (ROI) regarding the allegations of harassment generally within 30 calendar days of being assigned to the matter. The ROI should contain the following:
 - 6.4.2 A statement that the inquiry was conducted pursuant to this anti-harassment OI and is consistent with its procedures.
 - 6.4.2.1 A description of the allegations raised the alleged harasser's response, if any, and an overview of relevant testimony from witnesses, including any observed credibility assessments.
 - 6.4.2.2 Statements under penalty of perjury from witnesses along with any relevant evidence obtained through the course of the inquiry
- 6.4.3 Once the ROI is complete, the Anti-Harassment Coordinator shall forward the report to OGC.

- 6.4.4 Final ROIs must be signed and submitted to the appointing officer (HQ, DHRA CoS), who, after review of the ROI, will contact an appropriate manager or supervisor, normally within 10 business days, for further action as appropriate, which could include potential corrective or disciplinary action in accordance with reference (e), but which will be left to the discretion of the manager or supervisor and not dictated by the HQ, DHRA CoS.
 - 6.4.5 After the final ROI is forwarded to the appropriate manager or supervisor, the Anti-Harassment Coordinator will notify the individual reporting the alleged harassment of the completion and outcome of the process to the extent permitted under the Privacy Act. An individual who makes a report of harassment does not have a need to know and may not be provided the outcome of any disciplinary action against a harasser, nor is he or she to be provided with a copy of the ROI.
7. CORRECTIVE ACTION
- 7.1 Following receipt of a ROI with substantiated allegations of harassment, management must act promptly to initiate corrective action against offending employees.
 - 7.2 The responsibility for initiating corrective action normally rests with the first level supervisor of the offending employee unless there is a conflict of interest or other basis for reassigning this responsibility within the discretion of management.
 - 7.3 Upon completion of any corrective action, written confirmation of the actions taken will be forwarded to Anti-Harassment Coordinator for inclusion in the record.
 - 7.4 Where allegations of harassment are substantiated in the ROI and the manager or supervisor responsible for initiating corrective action does not take corrective action, he or she must document, in writing, why no corrective action has been taken. This documentation must be forwarded to the respective Component Director of the manager responsible for taking corrective action normally no later than 14 business days after the responsible manager or supervisor receives the ROI.
 - 7.5 A manager or supervisor who fails to carry out his or her responsibilities as provided in this OI, including taking necessary steps to prevent and promptly correct harassment in the workplace, may be subject to corrective measures, including appropriate disciplinary or performance-based actions.
 - 7.6 Any employee who retaliates against any individual who either reports harassment and/or provides information in response to a harassment inquiry/investigation may be subject to appropriate disciplinary or other action.
8. CONFIDENTIALITY AND RECORDKEEPING
- 8.1 Information relating to reports of harassment are maintained on a confidential basis to the greatest extent possible.
 - 8.2 The identity of the employee making allegations of harassment is confidential, except where necessary to conduct an appropriate investigation of the allegations or when otherwise required by law.

- 8.3 If an employee informs a supervisor or manager of alleged harassment and asks the official to keep the matter confidential and not act, agency management cannot honor this request. Agency supervisors and managers have a duty to act promptly to prevent and correct alleged harassment when it is observed or reported and failure to do so could lead to liability on the part of the agency. In addition, a supervisor or manager's failure to act can also result in disciplinary or other action against the supervisor.
- 8.4 The Anti-Harassment Coordinator shall maintain all reports of harassment and related records in a secure location. These records are protected in accordance with reference (f).
- 8.5 The maintenance of records and any disclosures of information from these records shall be in compliance with reference (f).
- 8.6 Information gathered pursuant to this OI may be disclosed as necessary to defend the agency in any litigation in which the information may be relevant and necessary, or for any other purpose consistent with law, regulation, or agency policy.
9. EFFECTIVE DATE: The Effective Date of this OI is on the date of the signature below.

William H. Booth
Director