

**U.S. Department of Transportation
Policy Framework for the
Prevention of Harassment**



U.S. Department of Transportation
Office of the Secretary
Washington, DC

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Subject: POLICY FRAMEWORK FOR THE PREVENTION OF HARASSMENT

SECTION 1. GENERAL INFORMATION

A. PURPOSE

This Policy Framework establishes for the U.S. Department of Transportation (DOT or Department) a Department-wide outline for preventing and addressing harassing conduct in the workplace. The purpose of this Policy Framework is to affirm the Department's commitment to maintaining a work environment free from harassing conduct and to provide guidance and instruction to the Department's Operating Administrations (OAs)¹ on establishing procedures for receiving, coordinating, reviewing, processing, and resolving allegations of harassing conduct.² These procedures will help the Department fulfill its obligations: (1) to address and prevent harassing conduct before it becomes severe or pervasive; (2) to conduct a prompt, thorough, and impartial investigation into allegations of harassing conduct; and (3) to take immediate and appropriate corrective action when harassing conduct occurs.

The rationale for this Policy Framework is premised on the need for effective anti-harassment policies and procedures to prevent and promptly correct harassing conduct in the workplace. Such policies and procedures establish a means for taking immediate and appropriate corrective action, including the use of disciplinary action, to prevent and eliminate harassing conduct regardless of whether it violates the law. This purpose differs from the Equal Employment Opportunity (EEO) complaint process, which is designed to provide relief, including monetary damages and equitable relief, for victims of conduct that constitutes unlawful harassment or discrimination and to deter the recurrence of such unlawful harassment and discrimination. Thus, the goal of this Policy Framework is to enable DOT to address harassing conduct at the earliest possible stage, i.e., before it becomes unlawful harassment within the meaning of anti-discrimination law.

¹ As used in this Policy Framework, the term "Operating Administration" includes both the Office of the Secretary of Transportation (OST) and the Department's Operating Administrations.

² The Federal Aviation Administration (FAA) Accountability Board fulfills the requirements set out in this Policy Framework. The Accountability Board procedures are set forth in FAA Order 1110.125B.

B. AUTHORITIES

This Policy Framework is based upon and conforms to the legal and regulatory requirements and guidance as set forth below:

1. 42 U.S.C. § 2000e, *et seq.*, Title VII of the Civil Rights Act of 1964.
2. 29 U.S.C. § 633a, Nondiscrimination on Account of Age in Federal Government Employment.
3. 29 U.S.C. § 631, Age Discrimination in Employment Act of 1967.
4. 29 U.S.C. § 791(g), Rehabilitation Act of 1973.
5. 5 U.S.C. § 2302(b)(1), Prohibited Personnel Practices.
6. 42 U.S.C. § 2000ff, Title II of the Genetic Information Nondiscrimination Act of 2008; see also 29 Code of Federal Regulations (CFR) Part 1635 (2011).
7. 5 U.S.C. Chapter 71, Federal Service Labor-Management Relations Statute of 2012.
8. 5 CFR Part 724, Implementation of Title II of the Notification and Federal Employment Antidiscrimination and Retaliation Act of 2002.
9. 29 CFR § 1614.102(a)(3).
10. Federal Acquisition Regulation (FAR) Clause 52.222-26 – Equal Opportunity.
11. Executive Order 11478, Equal Employment Opportunity in the Federal Government, August 8, 1969, as amended by Executive Order 13087, May 28, 1998, and Executive Order 13672, July 21, 2014.
12. Management Directive 715, EEO Reporting Requirements for Federal Agencies.
13. Model EEO Programs Must Have an Effective Anti-Harassment Program, U.S. Equal Employment Opportunity Commission.
https://www.eeoc.gov/federal/model_eeo_programs.cfm.
14. Secretarial Policy Statement on Equal Employment Opportunity.
15. Secretarial Policy Statement on the Prevention of Harassment.

SECTION 2. SCOPE

For purposes of this Policy Framework, harassing conduct means unwelcome conduct (whether oral, written, graphic, or physical) based on race, color, sex, national origin, religion, age, disability, marital status, pregnancy, genetic information, sexual orientation, or gender identity, including sexual harassment or retaliation for engaging in protected activity, and which:

1. Creates or may reasonably be expected to create an intimidating, hostile, or offensive work environment;
2. Unreasonably interferes with an individual's performance of work; or
3. Otherwise adversely affects an individual's terms and conditions of employment or employment opportunities.

Harassing conduct may include isolated incidents of unwelcome, inappropriate, and offensive conduct that does not rise to the level of unlawful harassment actionable under Title VII of the Civil Rights Act of 1964 or any other Federal Civil Rights law.

Examples of harassing conduct prohibited by this Policy Framework, and which may also constitute unlawful harassment, include, without limitation, the following:

- A. Conduct that denigrates or shows hostility or aversion to an individual because of race, color, sex, national origin, religion, age, disability, genetic information, sexual orientation, or gender identity, including sexual harassment and retaliation for engaging in protected activity.
- B. Unwanted or uninvited touching, acts of physical violence, actual, implied, or veiled threats of violence, as well as making inappropriate and offensive statements that disrupt the workplace, even if they fail to reach the level of unlawful harassment.³
- C. Whether in-person or through other forms of electronic, online, or social media communication:
 1. Using epithets, insults, slurs, negative stereotypes, or threats, intimidation, or other acts that a reasonable person would find offensive (even if claimed to be jokes or pranks) and that may relate to an individual's protected characteristics or protected status;
 2. Displaying or sharing offensive written or graphic material displayed physically or electronically that denigrates or shows ill will or aversion toward an individual or group;
 3. Making unwelcome sexual gestures or overtures, and unwanted or uninvited touching or attention of a sexual nature;
 4. Making a statement that rejection of gestures, overtures, touching, or attention of a sexual nature will affect appointments, promotions, transfers, or evaluations;
 5. Language, gestures, leering, or body language that a reasonable person would find inappropriately suggestive, insulting, intimidating, demeaning, offensive, or discriminatory (race, gender, or other);

³ Managers should be aware of violent behaviors and utilize "The DOT Guide to Preventing and Managing Workplace Violence," December 2012.

6. Teasing, mimicking, or repeatedly commenting on an individual's physical or mental ability, accent, or protected status;
7. Making or sharing comments, jokes, or suggestions about an individual's protected characteristics or protected status that a reasonable person would find inappropriate and offensive;
8. Commenting on an individual's body or sexual characteristics in a manner that a reasonable person would find inappropriate and offensive;
9. Displaying nude or sexually suggestive objects, pictures, images, or cartoons or communications of a sexually suggestive nature;
10. Continuing harassing conduct after a co-worker has objected;
11. Retaliating against an individual who raises or participates in reporting an allegation of harassment, or objects to unprofessional conduct; or
12. Engaging in conduct or communication (in-person or electronic) that a reasonable person would consider bullying, intimidating, threatening, or negatively impacting the work environment.

All DOT employees are responsible for maintaining a workplace free of harassing conduct when interacting with other DOT employees, contractors, applicants, interns, volunteers, visitors, and other individuals who are not employed by DOT. This Policy Framework does not cover allegations of harassment brought by contractors against their own (contractor) supervisors and/or contractor coworkers. Nor does it cover allegations of discrimination involving non-selections, disciplinary actions, promotions, performance management, or other personnel actions.

This Policy Framework is also separate and apart from any collective bargaining agreement provision or statutory complaint process covering unlawful harassment, including complaints under the Federal Sector EEO Process. Individuals who allege discrimination based on Title VII of the Civil Rights Act of 1964 or other Federal Civil Rights laws may also contact an EEO counselor or the Office of Civil Rights as described in Section 4.⁴

SECTION 3. DOT POLICY ON THE PREVENTION OF HARASSMENT

The Department is committed to fostering a work environment free of harassing conduct. All DOT employees must comply with EEO principles while working to fulfill the Department's mission and are expected to ensure a workplace free of harassing conduct by engaging in conduct that is consistent with this policy. The foregoing standards of conduct apply to DOT employees while on official duty in the DOT workplace or off-site, and while off duty when there is a nexus to DOT and an impact on working relationships that could adversely affect an individual's ability to perform

⁴ An individual may choose to engage in the EEO process in addition to or instead of the Anti-Harassment procedures. Detailed information is available at: <https://www.transportation.gov/civil-rights/complaint-resolution/equal-employment-opportunity-complaint-process>.

official duties, and could reasonably be a basis for management to lose confidence in the ability of the individual against whom allegations are made to perform job-related duties.

Harassment on the basis of race, color, sex, national origin, religion, age, disability, marital status, pregnancy, genetic information, sexual orientation, or gender identity is prohibited under this policy, as is sexual harassment or harassment based on retaliation for prior protected activity. Harassing conduct is inappropriate and prohibited even if it does not rise to the level of unlawful harassment actionable under Title VII of the Civil Rights Act of 1964 or any other Federal Civil Rights law. Although an unlawful harassment/hostile environment claim usually requires a pattern of offensive conduct, the Department will not wait for such a pattern to emerge before addressing harassing conduct. Rather, DOT will act before harassing conduct becomes severe or pervasive such as to constitute a hostile environment or unlawful harassment.

All OAs must establish an Anti-Harassment Coordinator to receive complaints about harassing conduct consistent with Section 5.B of this Policy Framework. Individuals who believe they have been subject to harassing conduct may, without fear of retaliation, seek the immediate assistance of a management official, the OA Anti-Harassment Coordinator, OA Human Resources Office, or OA Civil Rights Office. The Department will not tolerate retaliation against any employee for making a good-faith report of harassing conduct under this or any other policy or procedure, or for assisting in any investigation about such a report. Complaints of such retaliation shall be handled pursuant to the procedures in this Policy Framework.

A manager or supervisor who becomes aware of work-related harassing conduct is expected to take immediate (not later than two work days) and appropriate corrective action, which may be on an interim basis pending completion of an investigation, to stop the conduct and prevent it from recurring. Violations of the law prohibiting harassment or violations of this policy will result in appropriate disciplinary actions against individuals found to have violated this policy, up to and including termination of employment, in accordance with due process, Federal personnel management merit systems principles (5 U.S.C. § 2301 and implementing regulations), and any applicable collective bargaining agreement. Managers or supervisors who knew or should have known about harassing conduct and failed to take prompt and appropriate corrective action will also be subject to appropriate disciplinary action. All employees are prohibited from retaliating against and/or harassing those who report harassing conduct issues.

Employees are not required to report allegations of harassing conduct to their immediate supervisor when the supervisor is the alleged harasser. Anyone affected by an incident of alleged harassing conduct, including witnesses to such conduct, may make a report.

SECTION 4. RELATIONSHIP TO EEO COMPLAINT PROCESS

- A. This Policy Framework is separate and apart from the EEO complaint process and does not affect an individual's right to file an EEO complaint of unlawful harassment, retaliation, or discrimination, or any timeframe(s) established by the EEOC. Individuals may file EEO complaints by contacting their respective OA Civil Rights offices within 45 calendar days of the alleged unlawful harassment, retaliation, or discrimination, regardless of whether an individual utilizes an OA's procedures for reporting harassing conduct. If an individual raises issues of harassing conduct during the EEO complaint process, the EEO Counselor will notify the Anti-Harassment Coordinator so that a prompt investigation can occur and immediate corrective action can be implemented, if warranted.

- B. Complaints based on marital status, sexual orientation, or gender identity may also be filed directly with the Office of Special Counsel. For complete information on what complaints can be filed with the Office of Special Counsel and on the filing of such complaints, contact the Office of Special Counsel or visit www.osc.gov.
- C. Individuals choosing to file complaints under other processes such as an OA's Civil Rights Office or the Office of Special Counsel may also report harassing conduct according to their OA's reporting procedures. Please note, however, that an individual's use of the OA's reporting procedures for harassing conduct does not result in an individual complaint of unlawful harassment in accordance with EEO laws and regulations, and does not initiate EEOC counseling. Individuals who wish to pursue an EEO complaint must separately contact their EEO or Departmental Civil Rights staff within 45 calendar days of the alleged discriminatory event(s), following the established procedures. Individuals may elect to report harassing conduct using the anti-harassment procedures, EEO complaint process, or both.
- D. Using an OA's procedures for reporting harassing conduct also does not satisfy the requirements for filing a grievance under a negotiated grievance procedure for employees covered by a collective bargaining agreement.

SECTION 5. ROLES AND RESPONSIBILITIES

A. THE DEPARTMENTAL OFFICE OF HUMAN RESOURCE MANAGEMENT (DOHRM) AND THE DEPARTMENTAL OFFICE OF CIVIL RIGHTS (DOCR)

- 1. Jointly support the effective implementation of the Secretary's Policy Statement on the Prevention of Harassment.
- 2. Provide policy guidance, direction, and support to the OAs on the prevention of harassing conduct.
- 3. Conduct reviews of new anti-harassment procedures prior to implementation, and thereafter on an annual basis.

B. HEADS OF OPERATING ADMINISTRATIONS

- 1. Provide the framework for a workplace free from harassing conduct.
- 2. Promote a climate of professionalism and civility.
- 3. Appoint an Anti-Harassment Coordinator to receive complaints about harassing conduct. The Anti-Harassment Coordinator may be a shared resource that is partially dedicated to the Anti-Harassment program, but the anti-harassment and EEO programs must have separate decision makers.
- 4. Ensure that procedures for reporting allegations of harassing conduct that address the allegations in a timely, impartial, and efficient manner are developed and implemented.
- 5. Hold managers and supervisors accountable for addressing allegations of harassing conduct including the initiation of prompt (not later than two work days), thorough, and impartial investigations, and taking immediate corrective action, if appropriate.

C. OPERATING ADMINISTRATIONS

1. Develop anti-harassment procedures for reporting and conducting investigations related to allegations of harassing conduct, and submit them to DOHRM and DOCR for review and evaluation prior to implementation.
2. Communicate the OA's anti-harassment procedures to individuals.
3. Post the OA's procedures regarding allegations of harassing conduct on the OA's intranet and/or website.
4. Post the Anti-Harassment Coordinator's contact information, including an email address and telephone number, on the OA's intranet and/or website.
5. Provide periodic education and training, on at least an annual basis, regarding prevention of harassing conduct for DOT employees and new supervisors and managers, and refresher education and training for current supervisors and managers.
6. Ensure employees are aware of the different OA-specific venues and procedures for reporting and resolving allegations of harassing conduct, including mediation, and the responsibilities of all parties involved.
7. Ensure allegations of harassing conduct are promptly reported, and investigations are conducted promptly and impartially in accordance with the OA's procedures.
8. Provide advice and guidance to all individuals on reporting allegations of harassing conduct.
9. When appropriate, refer to and make available timely EEO counseling and/or mediation services to individuals who believe or allege they have been subjected to unlawful harassment and have filed an informal complaint or EEO complaint.
10. Ensure supervisors and managers are aware of appropriate penalties and disciplinary action for substantiated allegations of harassing conduct.
11. Assist with reporting allegations of harassing conduct by a non-DOT employee to the appropriate office.
12. Report substantiated allegations of harassing conduct by a non-DOT employee to the Anti-Harassment Coordinator or, if appropriate, the Contracting Officers' Representative.
13. Maintain records and related documents on complaints of harassing conduct, investigations, and outcomes in accordance with policy and regulation, including names, dates, type of harassing conduct, and organizational location.
14. Annually analyze data collected about complaints of harassing conduct to assess organizational trends and determine whether training or other actions are necessary.

D. MANAGERS AND SUPERVISORS

1. Maintain a workplace free of harassing conduct.
2. Foster a workplace culture of civility and professionalism.
3. Communicate managerial responsibility to act on allegations of harassing conduct.
4. Act promptly and appropriately to prevent harassing conduct and retaliation against those who allege harassment or report alleged harassing conduct.
5. Immediately report (not later than 2 work days), to their OA's Human Resources office, Civil Rights Office, or designated anti-harassment program coordinator, any incident of harassing conduct witnessed or otherwise brought to their attention.
6. Take immediate action, if appropriate, to prevent or mitigate harassing conduct pending the outcome of an investigation into the allegations.
7. Take prompt and appropriate corrective, remedial, or disciplinary action against employees found to have engaged in harassing conduct and against persons who failed to take appropriate measures to prevent, eliminate, or correct such harassing conduct.
8. Maintain confidentiality regarding the identity of those individuals reporting allegations of harassing conduct, witnesses who provide information about allegations of harassing conduct, and individuals against whom allegations are made, consistent with the need to investigate alleged incidents of harassing conduct, as required under applicable laws, statutes, and policies.
9. Know what resources and assistance are available to address harassing conduct in the workplace.

E. ANTI-HARASSMENT COORDINATOR

1. Accept complaints of harassment from all individuals (including DOT employees, applicants for employment, former employees, contractors, and others).
2. Conduct prompt, thorough, impartial investigations, or refer the responsibility for investigating complaints to the appropriate staff.
3. Collect relevant information about complaints of harassing conduct as specified in this Policy Framework, and maintain case files, in accordance with the Privacy Act of 1974.
4. Depending on the organizational position of the Anti-Harassment Coordinator, either recommend appropriate corrective and disciplinary action to the official responsible for implementation (within the OA HR office or OA leadership), or track recommendations for corrective and disciplinary action and notify Executive Management about failures to effectuate any such recommendations.

F. EMPLOYEES

1. Exhibit and demonstrate professionalism and civility at all times, including during times of disagreement.
2. Refrain from engaging in any harassing conduct as defined in this policy.
3. Comply with EEO principles and acceptable conduct standards.
4. Comply with all anti-harassment policy requirements and cooperate in any investigation concerning allegations of harassing conduct.
5. Communicate, in a professional manner, that harassing conduct is unwelcome to the person exhibiting the behavior, when such communication is appropriate to the situation, and/or communicate with a manager or supervisor about any such circumstances.
6. Promptly report any conduct believed to be discriminatory or retaliatory, and any harassing conduct observed to a management official, OA Human Resources Office, OA Civil Rights Office, or OA anti-harassment program office. If the person to whom the harassing conduct was reported fails to take prompt action, the employee shall immediately report the alleged harassing conduct to the OA Anti-Harassment Coordinator.

SECTION 6. REQUIREMENTS FOR ANTI-HARASSMENT PROCEDURES

- A. All OA anti-harassment procedures must comply with DOT's Policy Framework for the Prevention of Harassment, all applicable laws, rules, and regulations, and other relevant policies. Programs must be reviewed annually to ensure compliance and effectiveness. The procedures must explicitly state that the purpose of the program is to address harassing conduct before such conduct rises to the level of unlawful harassment and that all information will remain confidential to the greatest extent possible, consistent with the need to investigate the underlying complaint.
- B. Each OA's anti-harassment procedures for reporting and addressing allegations of harassing conduct must, at a minimum, include the following elements:
 1. Provide a clear explanation of prohibited conduct and the possible range of consequences.
 2. Clearly identify multiple avenues for individuals to report allegations of harassment and retaliation.
 3. Provide assurances that employees, witnesses, and others who provide information concerning allegations of harassing conduct will be protected from retaliation.
 4. Ensure that the identity of individuals bringing claims of harassing conduct, witnesses who provide information about allegations of harassing conduct, and individuals against whom allegations are made, remain confidential to the extent possible, consistent with the need to investigate alleged incidents of harassing conduct.

5. Accept complaints from any individual alleging harassing conduct. Employees (current and former), applicants, interns, volunteers, contractors, visitors and other individuals who are not employed by DOT may submit complaints about harassing conduct within the scope of this Policy Framework.
6. Encourage timely submission of complaints. Although there is no deadline for submitting a complaint, a lengthy time between the occurrence of the harassing conduct and submission of the complaint may make it more difficult to investigate the allegation and/or to take corrective action. OAs may, therefore, establish a process requiring individuals to explain a delay in reporting to allow individuals to proceed with older allegations.
7. Provide for a prompt fact-finding process, to begin immediately after receipt of the allegations. The scope of fact-finding will depend on the nature of the allegations and in some instances an investigation will not be necessary. Where an investigation is necessary, it should be conducted without delay and normally be completed within 10 work days after receiving the complaint, depending on the complexity of the allegations. The investigation should be thorough, independent, impartial, and separate from the EEO investigation process. Investigative findings should be documented in writing.
8. Accommodate the temporary separation, when necessary and appropriate, of the alleged harasser from the individual making the allegations, to ensure the individual's safety and avoid either perpetuation of any possible unlawful conduct, future retaliatory conduct, or other misconduct.
9. In compliance with adverse action and due process procedures under Federal personnel management merit system principles (5 U.S.C. § 2301 and implementing regulations), as well as any applicable collective bargaining agreement, ensure immediate and appropriate corrective or disciplinary action, up to and including possible removal from Federal service, of employees engaging in harassing conduct.
10. Provide a requirement for education and training of DOT employees, on at least an annual basis, about harassing conduct, the anti-harassment reporting procedures, the types of conduct that violate anti-harassment policies, DOT's commitment to prevent harassing conduct in the workplace, the responsibilities of supervisors and managers when they learn of alleged harassing conduct, and the prohibition against retaliation.
11. Inform employees that the use of an OA's anti-harassment procedures does not prevent an individual from filing an EEO complaint of harassment or discrimination, or a grievance under a negotiated grievance procedure or modify any required timeframes for the use of such processes.
12. Conduct an annual evaluation and review of the OA's anti-harassment process, in consultation with DOCR and DOHRM, to ensure compliance with this Policy Framework and effectiveness. This evaluation shall include, at a minimum, a review of the number and bases of allegations, timeliness of investigations, and conformity with any changes in the law.

SECTION 7. APPROVALS

- A. OAs shall submit their procedures for reporting and addressing allegations of harassing conduct to DOHRM and DOCR within 90 days of the effective date of this Policy Framework for review and evaluation prior to implementation. OAs with established anti-harassment programs shall submit their program documents to DOHRM and DOCR for review and evaluation within 90 days of the effective date of this Policy Framework.
- B. OAs may modify their program without prior approval from the Department provided such modifications comply with the requirements in this Policy Framework. A copy of the modified program must be submitted to DOHRM and DOCR.

EFFECTIVE DATE AND IMPLEMENTATION

This Policy Framework is effective immediately upon signature.



Lisa M. Williams
Director, Departmental Office of
Human Resource Management

Date: 6/21/2019



Charles E. James, Sr.
Director, Departmental Office of
Civil Rights

Date: June 21, 2019

Effective Date: The date of last signature.

Review Date: Three years from effective date.

Distribution: Human Resource Council, Civil Rights Directors, and OST Administrative Officers