

# **Anti-Harassment Policy**

**National Labor Relations Board  
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## **I. PURPOSE**

The National Labor Relations Board (“NLRB” or “Agency”) takes seriously its obligations to maintain a work environment free from discrimination, including harassment. Each employee plays an important role in the success of the Agency, and each should be treated with respect, kindness and decency.

Harassment is unwelcome conduct based on a protected class (race, color, religion, sex [including pregnancy, sexual orientation, or gender identity], national origin, age [40 or older], disability and genetic information [including family medical history], reprisal, or EEO activity that alters the employee’s conditions of employment because such conduct creates a hostile work environment or results in a tangible employment action. A hostile work environment claim is comprised of a single act or a series of separate acts that collectively constitute one unlawful employment practice. Whether allegations are sufficient to establish a claim of harassment must be determined based on all of the surrounding circumstances, including the frequency of the conduct; the severity of the conduct; whether the conduct is physically threatening or humiliating, or a mere offensive utterance; and whether the conduct unreasonably interferes with the employee’s work performance. Managers and employees are responsible for preventing harassment from occurring and stopping any workplace harassment. This includes harassment based on a disability, which is prohibited. The Agency will take seriously all allegations of workplace harassment. When reported, the Agency will initiate an inquiry and will, as appropriate, conduct a prompt, thorough, and impartial investigation into allegations of harassment.

The Equal Employment Opportunity Commission (EEOC) requires agencies to implement anti-harassment policies and procedures separate from the Federal sector EEO complaint process. To that end, the NLRB is instituting the following Policy to address harassment allegations in the workplace timely and appropriately.

Once this procedure is put in place, there will be two separate and independent processes, whereby employees may make allegations of harassment. The EEO complaint process is statutorily required, with deadlines prescribed by law, regulation, and directives; the NLRB anti-harassment Policy is an internal investigation process to maintain a harassment-free workplace and to take prompt and effective action when allegations of harassment arise. When experiencing harassment, employees have the option to initiate the Federal Sector EEO process, by contacting an Agency EEO counselor or the Agency’s Office of EEO, file a complaint pursuant to this Policy, or both.<sup>1</sup>

This policy covers employees at the workplace and when they are outside of the workplace while conducting Agency business or attending an Agency-sponsored training conference or events. The policy also covers employees who are not themselves the object of harassment, but who work in a setting where harassment of others is sufficiently severe or pervasive as to alter the conditions of their employment. In addition, this policy can be invoked by Agency employees to address harassment by non-employees who conduct business with the Agency.

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## **II. DEFINITIONS**

<sup>1</sup> Employees represented by a union may also choose to file a contractual grievance, which may be subject to arbitration.

## **A. Harassment**

Any inappropriate, unwelcome conduct, verbal or physical, based on an individual's race, color, national origin, sex (including pregnancy, sex stereotyping, gender identity or expression, sexual orientation), religion, age (40 or older), disability, prior protected EEO activity, status as a parent, marital status, political affiliation, or protected genetic information including family medical history) when the conduct can reasonably be considered to adversely affect the work environment or terms and conditions of the affected person's employment, or an employment decision impacting upon an affected person is based on the affected person's acceptance or rejection of such conduct.

Types of harassment that may violate the NLRB's anti-harassment policy include but are not limited to:

1. Oral or written communications related to membership in one of the groups set forth above that contain offensive name calling, jokes, slurs, negative stereotyping, hostility or threats. This includes comments or jokes that are distasteful or targeted at individuals or members of the groups set forth above.
2. Nonverbal conduct, such as staring or leering that can objectively be construed as harassment based on the categories listed above.
3. Physical conduct, such as assault or unwanted touching.
4. Distribution or display of visual images, such as derogatory or offensive pictures, cartoons or drawings. Such prohibited images include those in hard copy or electronic form.
5. Imitating an employee's disability.
6. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual (quid pro quo).
7. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature, including offensive remarks about a person's sex. (as defined above to include pregnancy, sex stereotyping, gender identity or expression, sexual orientation).

## **B. Harassment Prevention Officer (HPO)**

Key liaison responsible for managing harassment allegations from the intake of an allegation through the disposition.

## **C. Deciding Management Official (DMO)**

Supervisor or manager responsible for reviewing the investigative file, issuing a written determination as to whether harassment occurred, and recommending corrective, preventative, or remedial measures when appropriate. The DMO may also serve as the investigator.

## **D. Investigator**

Person responsible for investigating harassment allegations and compiling the investigative file.

### **E. Administrative Investigation Cadre (AIC)**

Group of designated Investigators designated to conduct administrative investigations.

### **F. Management**

The manager, who is within the supervisory chain of the alleged harasser(s); is not substantively involved in the harassment allegations; and/or who has the authority to take corrective, preventative, remedial and/or disciplinary action with respect to the individual(s) involved in the harassment allegations.

### **G. NLRB Anti-Harassment & Hostile Work Environment Case Tracking System**

System allowing management information and case tracking for harassment allegations.

## **III. GUIDING PRINCIPLES**

The Agency's policy related to conducting administrative investigations of harassment allegations will adhere to the following guiding principles:

- A. The Agency will begin the investigatory process promptly (within 10 calendar days) after receipt of each allegation;
- B. Management, when appropriate, will implement prompt and appropriate interim measures;
- C. The Agency will appoint impartial investigators to conduct investigations;
- D. Investigators will act impartially when gathering witness statements and relevant information;
- E. Investigations will be kept confidential to the maximum extent possible. Information gathered in the investigation will be shared only with those Agency and management individuals who have a need to know in order to fulfill the responsibilities in this Policy, or to fulfill any other obligation within the scope of their federal employment, such as when an investigator is required to provide evidence during an EEOC investigation;
- F. The alleged harasser(s) will not have supervisory authority over the HPO, the Investigator, or the DMO responsible for disposition of the allegation, and will not have any direct or indirect control over the investigation;
- G. In consultation with the Office of Special Counsel and Labor Relations (SCLR), the DMO will objectively consider the relevant factual findings, statements, and documents and issue a written determination as to whether harassment occurred and make recommendations to management officials for timely corrective, preventative, remedial, or disciplinary action, where appropriate;
- H. The Agency will maintain documentation related to harassment complaints, including investigation(s) and determination(s), in accordance with Agency policy, the Federal retention schedule, and litigation hold notices; and
- I. The Agency will not tolerate reprisal or retaliation against an employee who makes a harassment complaint or reprisal or retaliation against any employee who provides information in relation to a harassment complaint.

#### **IV. RESPONSIBILITIES OF THE NLRB CHAIRMAN AND GENERAL COUNSEL**

The Chairman and General Counsel of the NLRB will:

1. Delegate to their respective designees the responsibilities to serve as the Deciding Management Official pertaining to complaints under this Policy;
2. Jointly designate an individual to serve as the Harassment Prevention Officer;
3. Provide the necessary resources to ensure investigations avoid unreasonable delays;
4. Ensure that all managers and supervisors are provided access to and periodic training on this Policy and their role in the complaint process; and
5. Will intervene if it becomes apparent that allegations of harassment are not being processed, investigated, and/or remedied, in accordance with this policy.

#### **V. KEY POSITIONS**

##### **A. Harassment Prevention Officer (HPO)**

The HPO will:

1. Serve as the program manager administering the procedures pursuant to this Policy;
2. Monitor harassment allegations in the Tracking System;
3. Designate and maintain a list of investigators, forming the AIC;
4. Coordinate training for NLRB managers and supervisors on this policy and the prevention and elimination of harassment in the workplace;
5. Confer with SCLR on selecting the appropriate investigator, on the scope of investigatory questions, and on the investigatory plan;
6. Ensure that investigators act diligently;
7. Ensure each investigation ultimately receives a disposition, which will include a closeout letter to the alleging employee and alleged harasser;
8. Designate an alternative to serve when the HPO is unavailable for any reason;
9. Exercise authority, consistent with this Policy, to ensure that employees alleging harassment and witnesses with relevant information cooperate with an investigation. If a witness fails to cooperate during an investigation, investigator(s) will confer with SCLR, if needed, to determine additional steps to ensure compliance.
10. Carry out the following responsibilities:
  - i. Maintain appropriate standards of ethical conduct and neutrality when handling harassment allegations;
  - ii. Maintain appropriate confidentiality;
  - iii. Consistent with the Pre-Investigation Procedures, below, determine whether a fact-finding investigation is necessary;
  - iv. In consultation with SCLR, collaborate with management to determine whether interim remedial measures are appropriate while the investigation is pending;

- v. In consultation with SCLR, confer with appropriate management personnel, the investigator(s), and/or OHR staff, if needed, to determine additional steps to ensure compliance;
- vi. Identify investigators responsible for conducting investigations in accordance with this Policy;
- vii. Review each investigatory file;
- viii. In consultation with SCLR and appropriate management, make calibrated recommendations for corrective, preventative, remedial or disciplinary measures, where appropriate;
- ix. Maintain the component investigation records, per requirements set forth in this Policy;
- x. Input data into the Tracking System (including preventative or corrective actions) and report findings to the Office of Human Resources (OHR), as set forth in this Policy;
- xi. Attend all mandatory harassment prevention related training; and
- xii. Comply with all requirements as described in this Policy.

## **B. Investigators**

### 1. Responsibilities

- i. Maintain appropriate standards of ethical conduct and neutrality when handling harassment allegations;
- ii. Maintain appropriate confidentiality;
- iii. Conduct harassment investigations as set forth in this Policy;
- iv. Maintain investigation records, per requirements set forth in this Policy; and
- v. Attend all mandatory harassment prevention related trainings.

### 2. Investigators performing an inquiry into allegations of harassment may include:

- i. Supervisor or Manager (outside the alleging employees' chain of command);
- ii. HPO;
- iii. DoFA/Human resources staff;
- iv. Cadre of trained Agency investigators (non-bargaining unit); or
- v. Contract investigator (e.g., external contract or interagency MOU);

### 3. Training Requirements

- i. Investigators must complete training for EEOC investigator certification or equivalent; and
- ii. Investigators must attend at least 8 hours of annual refresher training to maintain EEOC investigator certification, or equivalent.

## **C. Deciding Management Official (DMO)**

- 1. Consistent with Agency's delegations under its disciplinary process, the DMO will generally be the person who would otherwise be assigned as the proposing

official per Agency delegations. The Agency maintains the discretion to delegate the DMO assignment to a different management official.

2. Responsibilities of DMO
  - i. Maintain appropriate standards of ethical conduct and neutrality when handling harassment allegations;
  - ii. Maintain appropriate confidentiality;
  - iii. Review each investigatory file;
  - iv. In consultation with SCLR, determine whether harassment occurred and document that determination in writing;
  - v. If harassment is found to have occurred, initiate appropriate corrective action, or as appropriate, refer investigatory file to other management official, providing a recommended corrective action;
  - vi. If harassment is found not to have occurred, but the DMO finds that another type of misconduct took place, initiate corrective action or refer for such action as appropriate;
  - vii. If DMO finds that neither harassment nor other misconduct took place but determines that preventative action may be appropriate to address conflict and to minimize the risk of disruption in the workplace, initiate or make recommendations for such preventative action;
  - viii. Notify the HPO of the decision and provide the HPO with the written determination and all supporting documents;
  - ix. Maintain the investigation records, per requirements set forth in this Policy;
  - x. Complete all mandatory harassment prevention related training; and
  - xi. Comply with all requirements as described in this Policy.

## **VI. REPORTING HARASSMENT ALLEGATIONS**

To ensure the Agency conducts a timely investigation, employees are encouraged to report harassment allegations promptly to the HPO through the designated anti-harassment email: [antiharassment@NLRB.gov](mailto:antiharassment@NLRB.gov). However, employee complaints are not required to be submitted to this email, nor are they required to be in writing or conform to a particular format. An employee can also inform any supervisor or manager of alleged harassment (the report does not need to be made to an employee's direct supervisor). Any supervisor or manager who is notified of a concern of alleged harassment must promptly inform the Agency HPO regarding any allegations of harassment. When an employee raises a concern to their supervisor or manager about alleged harassment, the supervisor or manager should provide them with a fact sheet which informs them that they may also contact an EEO Counselor or the Agency's Office of Equal Employment Opportunity (OEEO) at (202) 273-3891.<sup>2</sup>

## **VII. INCOMING ALLEGATION PROCEDURES**

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<sup>2</sup> Employees covered by a collective bargaining agreement may have additional rights to file a grievance.



- A. When a manager or supervisor learns that an employee has alleged harassment, the manager must promptly notify the HPO, which will generally be within two (2) business days of receipt of the allegations.
- B. The HPO will treat an anonymous allegation in the same manner as a non-anonymous allegation.
- C. The HPO is responsible for informing appropriate management officials of allegations made under this Policy.
- D. When an employee seeks counseling on a harassment allegation from OEEEO, that office will immediately notify the HPO. (HPO cannot be from OEEEO).
- E. The HPO will open a new case in the Tracking System.
- F. After the HPO receives the allegation, the HPO will promptly notify the alleging employee, generally within ten (10) calendar days, when the HPO has started an inquiry into the allegations and remind the alleging employee of their right to file a grievance or seek EEO counseling.
- G. In consultation with SCLR, the HPO will promptly conduct a review of the allegations to determine whether a fact-finding investigation is necessary. If the HPO has not already, the HPO will contact the alleging employee at this time to gather additional information.
- H. After gathering any pertinent information, the HPO, in consultation with SCLR, will determine the appropriate next steps. Next steps may include closing out the case with no further investigatory action necessary or referring the case for a fact-finding investigation.
  - a. If the HPO determines that circumstances do not warrant additional fact-finding in the form of a full investigation, the HPO will document this determination and the rationale for reaching this decision and will promptly close the complaint. If the HPO closes the complaint, the HPO will issue the alleging employee a closeout letter. The content of the closeout letter will vary based on the nature of the investigation but will generally include sufficient information to advise the parties of the investigation conclusions.
  - b. When appropriate, the HPO may refer related issues uncovered in their initial review to management for further actions.
  - c. If the HPO determines that a fact-finding investigation is necessary, the Agency will begin the pre-investigation procedures.
- I. As appropriate, the HPO, SCLR, and management shall confer to consider appropriate effective interim remedial action. This may include, but is not limited to, changing work schedules or granting telework flexibility so that the alleging employee avoids contact with the alleged harasser; temporarily reassigning the alleged harasser; or, in rare circumstances, placing the alleged harasser on administrative leave consistent with applicable regulations pending the conclusion of the investigation. The HPO, SCLR, and DMO will collaborate to recommend appropriate interim remedial action, taking care to ensure that the employee bringing the allegations of harassment is not adversely impacted, even temporarily, based on having brought forward their concern. The collaboration between HPO, SCLR, and DMO will continue throughout the completion of the investigation.

- J. If a reporting employee has concerns relating to the fair and neutral nature of the investigation, the reporting employee should raise those concerns with the HPO to allow the HPO to make a determination as to whether a different investigator should be appointed, or additional investigation is required. If a reporting employee believes they have been the subject of retaliation in response to their reporting, they should report this to the HPO who may initiate further investigation over this claim and who will also provide information about their right to file an EEO complaint.

## **VIII. PRE-INVESTIGATION PROCEDURES**

- A. If the HPO determines that a fact-finding investigation is necessary, the HPO, in consultation with SCLR, will appoint an investigator, who is a designated member of the AIC, to conduct the investigation. If there is more than one investigator assigned to an individual investigation, the HPO will identify a lead investigator. If an employee brings allegations against the General Counsel or a Board Member, the Agency may use external, non-agency employee investigators to conduct the investigation. That external investigator will be selected by and report to the HPO.
- B. Once the HPO appoints the investigator(s), the following will occur promptly:
  - a. The HPO will inform management and the alleging employee, in writing, that a formal investigation will occur.
  - b. The investigator(s) will review the allegations and develop a written plan that will identify the scope of the investigation; identify relevant agency/government-wide policies; identify possible witnesses and documentary evidence; determine the order of the interviews, and modify the investigative plan as necessary.
  - c. The investigator(s) will develop interview questions or an allegation outline and logistics for interviews.
  - d. The investigator(s) will consult with SCLR, as appropriate, to determine whether union involvement or notification is necessary.
  - e. Once assigned, the investigator(s) will consult with SCLR for guidance throughout the investigatory process described above.

## **IX. TIMING**

Investigators will initiate investigations promptly, within ten (10) calendar days of receiving notification of an allegation, including those initially raised in the EEO complaint process. The HPO will provide regular updates, generally in writing, to management, the alleging employee, and the alleged harasser. The HPO will ensure investigations progress in a timely fashion.

## **X. INVESTIGATION PROCEDURES**

- A. Investigator(s) will identify and interview relevant witnesses, including the alleging employee, addressing the full scope of the identified allegations.<sup>3</sup>

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<sup>3</sup> NLRBU represented employees should refer to the MOU between the Agency and the NLRBU for information relating to an employee's right to representation and union notification of bargaining unit employee interviews.

- B. When contacting relevant witnesses to schedule an interview, including employees alleging harassment, alleged harassers, and other third-party witnesses, the investigator will provide them with a fact sheet, which, in addition to information referenced in section VI, also provides information regarding right to representation.
- C. Investigator(s) will remain neutral and gather relevant and material facts, and documents.
- D. Investigator(s) will consult with SCLR prior to the collection of any electronically stored information, including but not limited to emails, documents, files originating from or stored in electronic format.
- E. Investigator(s) will obtain signed statements from witnesses.
- F. Investigator(s) will conduct follow-up interviews, if necessary.
- G. Investigator(s) will discuss with the HPO or with the DMO any information obtained, developed, or observed during the investigation.
- H. If a witness fails to cooperate during an investigation, Investigator(s) will confer with appropriate managerial personnel, the HPO, SCLR, and/or OHR staff, if needed, to determine additional steps to ensure compliance.
- I. The investigator(s) will consult with SCLR throughout the investigatory process described above.

## **XI. POST-INVESTIGATION PROCESS**

- A. Investigator(s) will provide signed written statements from the interviewees and all supporting documentation to the HPO, who will forward to the appropriate DMO. The HPO will update the Tracking System to annotate the date the HPO transmits the file to the DMO.
- B. In consultation with SCLR, the DMO will review the file and may request additional information or follow-up interviews after the initial interviews in order to make a determination. SCLR will advise the DMO on the legal elements of harassment. Based on the review of the complete investigative file and input from Agency counsel, the DMO will make a written determination as to whether the facts presented constitute harassment.
  - a. If there is a finding of harassment, SCLR will advise management of potential disciplinary options appropriate. The DMO may initiate or recommend to management additional forms of corrective, preventative, or remedial measures, as necessary. If it is determined that harassing conduct has occurred, corrective action should be taken which includes interim relief and/or disciplinary action. Interim relief must occur within 60 days from receiving the complaint. Disciplinary action must be initiated within 60 days of receiving the investigative report, if any.
  - b. If there is no finding of harassment but a finding that other kinds of misconduct occurred, the DMO, with advice from SCLR, will consider all options for corrective, preventative, or remedial measures and initiate or refer them, as appropriate.
  - c. If there is a finding that neither harassment nor other misconduct took place but that preventative action may be appropriate to address conflict and to minimize

the risk of disruption in the workplace, the DMO may initiate or make recommendations for such preventative action.

- C. Prior to taking any corrective, preventative or remedial action, management will consult with SCLR and OHR staff.
- D. The DMO will promptly notify the HPO of their decision and provide the HPO with the written determination and all supporting documents. The HPO will enter this information into the Tracking System.
- E. Management will advise the HPO of any corrective/preventative/remedial action taken, to include the effective date of such action. The HPO will enter this information into the Tracking System.
- F. The HPO will provide a closeout letter to the alleged harasser and separately, to the alleging employee after the investigation is complete. The content of the closeout letter will vary based on the nature of the investigation but will generally include sufficient information to advise the parties of the investigation conclusions.
- G. The HPO will close out the case in the Tracking System. When closing a case, the HPO will explain the reason for closing the case.
- H. The HPO, Investigator, and the DMO will maintain physical notes (either or both handwritten and/or typed) and investigative files in accordance with the National Archives and Records Administration's (NARA) retention schedules and consistent with any applicable litigation holds. The NARA Schedule is accessible on the NARA website. The HPO is responsible for maintaining a complete investigative file, excluding any Investigator or DMO notes, within the agency's Tracking System.

## **XII. CASE TRACKING**

- A. The HPO will track each allegation in the Tracking System.
- B. The Tracking System will record information related to harassment allegations including the number of cases reported, the reporting method, whether allegations result in an investigation, how they are resolved, and timeframes for completing the investigation.
- C. All investigative files related to this policy, including notes, interviews, and final determinations, shall be centrally maintained electronically by the HPO.
- D. All information shall remain confidential to the greatest extent possible with the greatest possible care taken to ensure the privacy of those involved and information pertaining to the matter is shared strictly on a "need to know" basis. When required, the maintenance of records and any disclosures of information from these records shall be in compliance with the Privacy Act, 5 U.S.C. 552a, Agency records retention schedules, Agency privacy policies including APPM IT-4 Protection of Sensitive Agency Information, and other privacy requirements.

## **XIII. POLICY EVALUATION**

OHR will use information provided in the Tracking System to assess reported harassment allegations, such as the types of alleged harassment (i.e., sexual harassment, racial harassment, etc.), the number of findings of harassment, and whether there are patterns associated with the

substantiated cases. OHR will report these trends as needed to the General Counsel and Chairman.

#### **XIV. AMENDMENTS**

The Agency may amend this Policy as necessary and consistent with the goals and principles of this Policy.

#### **XV. AUTHORITIES**

##### **A. Statutory**

- i. Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*
- ii. Age Discrimination in Employment Act of 1967, 29 U.S.C. § 621, *et seq.*
- iii. The Americans with Disabilities Act of 1990 (ADA) 42 U.S.C. § 12101, *et seq.*
- iv. The ADA Amendments Act of 2008 (ADAAA), Pub. L. 110-325.
- v. The Rehabilitation Act of 1973 (Section 501), 29 U.S.C. § 791, *et seq.*
- vi. The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No Fear Act), Pub. L. 107-174.
- vii. Genetic Information Nondiscrimination Act of 2008 (GINA), Pub. L. 110-233.

##### **B. Executive Orders**

- i. Executive Order 133087 (sexual orientation).
- ii. Executive Order 13152 (parental status).
- iii. Further Amendments to Executive Order 11478 and Executive Order 11246 (sexual orientation and gender identity).

##### **C. EEOC Guidance**

- i. Enforcement Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors found at <http://www.eeoc.gov/policy/docs/harassment.html>.

##### **D. Case Law**

- i. *Burlington Industries, Inc. v. Ellerth*, 118 S. Ct. 2257 (1998).
- ii. *Faragher v. City of Boca Raton*, 118 S. Ct. 2275 (1998).

##### **E. Agency Policy**

- i. The Agency's Policy on the Prevention and Elimination of Harassment in the Workplace provides additional information and guidance. Employees can access the Policy on OEEEO's SharePoint site at <https://nlrb.sharepoint.com/OEEEO/Pages/Agency-Policies.aspx>.
- ii. The Agency's Notification of Federal Employee Anti-discrimination and Retaliation (No FEAR) Act Disciplinary Policy. Employees can access the Policy on OEEEO's website. *See above.*

- iii. Each year the Agency issues Annual Personnel Reminders about the prohibition of harassment in the workplace. Employees can find the Personnel Reminders on OEEEO's website. *See* above.
- iv. The Agency's policies on records retention. Employees can access these policies on the Agency SharePoint site at <https://nlrb.sharepoint.com/IT/RecordsManagement/Pages/Records-Resources-Update.aspx>.