## **Appendix I: Letters to Associations**

The following are reproductions of the letters Senator Murray sent to 17 industry associations, as well as the written responses and documents produced from associations that chose to respond in writing.

The 17 industry associations include:

- American Hotel and Lodging Association (AHLA)
- American Farm Bureau Federation (AFBF)
- Associated Builders and Contractors (ABC)
- Associated General Contractors of America (AGC)
- Biotechnology Innovation Organization (BIO)
- Chamber of Commerce
- HR Policy Association
- Internet Association
- National Association for Home Care and Hospice (NAHC)
- National Association of Manufacturers (NAM)
- National Restaurant Association (NRA)
- National Retail Federation (NRF)
- National Venture Capital Association (NVCA)
- Pharmaceutical Research and Manufacturers of America (PhRMA)
- Society for Human Resource Management (SHRM)
- TechNet
- Worldwide Cleaning Industry Association (ISSA)

### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

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# United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510-6300

DAVID P. CLEARY, STAFF DIRECTOR EVAN SCHATZ, DEMOCRATIC STAFF DIRECTOR

http://help.senate.gov

February 7, 2018

Ms. Katherine Lugar President and Chief Executive Officer American Hotel and Lodging Association 1250 I Street NW, Suite 1100 Washington DC, 20005

Dear President Lugar:

I write to your association with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated the headlines and sparked a national conversation about change, power dynamics, and equality in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. Although we are seeing headlines about powerful and famous people being called to account for their actions, we are seeing far less action in industries outside of the spotlight. Therefore, I hope and expect that you are taking steps to address concerns about misconduct in your industry and to ensure your members' workplaces are free from harassment.

The accommodation and food services industry employs nearly 11 million workers and has some of the highest rates of reported sexual harassment in the country.<sup>1</sup> According to data collected by the Equal Employment Opportunity Commission ("EEOC") from 2005 to 2015, the accommodation and food services industry accounted for the greatest portion of sexual harassment claims filed.<sup>2</sup> Disturbingly, a survey of 500 hotel and casino housekeepers and servers found that 58 percent of hotel workers and 77 percent of casino workers had faced some form of sexual harassment by a guest.<sup>3</sup> Over half of the hotel workers who had reported harassment said they did not feel safe after the incident of harassment.<sup>4</sup>

As shocking as these numbers are, they likely underestimate the rate of sexual harassment. The EEOC estimates that 85 percent of all workers who are subjected to harassment never file a formal legal charge, and 70 percent of all workers never file a complaint internally.<sup>5</sup> It has long been clear that the magnitude

<sup>1</sup> Labor Force Statistics from the Current Population Survey, Bureau of Labor Statistics (January 2018), https://www.bls.gov/cps/cpsaat18.htm.

- https://www.handsoffpantson.org/wp-content/uploads/HandsOffReportWeb.pdf.
- <sup>4</sup> Hands Off Pants On: Sexual Harassment in Chicago's Hospitality Industry at 6.

<sup>&</sup>lt;sup>2</sup> Jocelyn Frye, Not Just the Rich and Famous: The Pervasiveness of Sexual Harassment across Industries Affects All Workers, Center for American Progress (November 2017),

https://www.americanprogress.org/issues/women/news/2017/11/20/443139/not-just-rich-famous/.

<sup>&</sup>lt;sup>3</sup> Hands Off Pants On: Sexual Harassment in Chicago's Hospitality Industry, Unite Here Local 1 4 (July 2016),

<sup>&</sup>lt;sup>5</sup> Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs*, U.S. Equal Employment Opportunity Commission 16 (June 2016), https://www.eeoc.gov/eeoc/task force/harassment/upload/report.pdf.

of the problem in your industry should not be ignored, and I am hoping that the recent focus on this issue will provide the needed push to make real progress.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue and am seeking an update on efforts to prevent and address harassment in workplaces across the country.

As part of that effort, I am interested in the ongoing discussions, plans, and actions within the American Hotel and Lodging Association ("AHLA") aimed at protecting employees and establishing an equal and harassment-free workplace. I request a briefing with my staff within the next three weeks to discuss any recent efforts you have undertaken to assess and address workplace harassment in your industry.

I also request the following information:

- 1. Any polling, surveys, or research the AHLA has conducted in order to understand the scope of the problem within the industry;
- 2. Any research or actions the AHLA has undertaken to assess and address risk factors specific to the industry;
- 3. Any surveys the AHLA has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 4. Any steps the AHLA has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 5. Any best practices the AHLA has identified among its associated employers to accurately assess and address workplace harassment; and
- 6. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less of it.<sup>6</sup> Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the urgency it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter please contact Carly Rush or Joe Shantz at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

Patty Murray

United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions

<sup>&</sup>lt;sup>6</sup> Feldblum & Lipnic at 32.



March 5, 2018

The Honorable Patty Murray United States Senate 154 Russell Senate Office Building Washington, DC 20510

Dear Senator Murray,

Thank you for your February 7 letter regarding the work the American Hotel and Lodging Association (AHLA) is doing to create a safe environment for both our industry's employees and guests without the fear of harassment. I share your passion and concern about this very important issue and look forward to meeting with you in person to talk about the proactive efforts our industry has undertaken and plans to continue to fine tune and expand those efforts.

From Silicon Valley to the halls of Congress to Hollywood, recent headlines have shown no industry is immune to dealing with sexual harassment. However, the hotel industry has a long-standing record of commitment to raising awareness of sexual harassment and providing hotel operators with training tools and resources to educate employees on identifying and reporting sexual harassment and assault. Our employees receive extensive training to protect themselves against harassment and other criminal activity. Further, employees are trained to notify their supervisors, management teams and law enforcement when any incident occurs. Fortunately, many hotels are already implementing best practices and technology, and working with safety experts to develop protocols and procedures to keep both our employees and guests safe. Notably, AHLA has a long-standing partnership with the National Alliance to End Sexual Violence and produced with them an industry-wide training program for hospitality employees focused on identifying signs of sexual violence, ways to offer support and practical ways employees can ensure a safer, more supportive workplace.

Our hotels across the country are also continuously working with government leaders, law enforcement agencies and non-profit organizations to develop policies and procedures to ensure worker safety. For example, in Long Beach, California, the local hotel association holds quarterly meetings with the Long Beach Chief of Police, as well as quarterly reviews with the City Council's Public Safety Committee. Additionally, the hotels maintain a partnership with the Downtown Long Beach Security Alliance, receive feedback from the California Hotel & Lodging Association Security Directors' Alliance, and utilizes global hotel brand and property specific safety and security programs, including "See Something, Say Something" initiatives. This is just one example of the many diverse partnerships that our local and state associations have with law enforcement and non-profits.

1250 I STREET NW, SUITE 1100 \ WASHINGTON DC 20005 \ 202 289 3100 \ WWW.AHLA.COM

As an industry, we welcome common-sense solutions that help ensure employees' safety and security. We are actively working as an industry to determine which technology solutions could be deployed to ensure our employees are quickly able to call for help in the case of an emergency. As an example, many of our hotels in Washington, D.C., New York City and Long Beach already have provided employee safety notification devices or "panic buttons" to housekeepers to utilize if they feel threatened. Another example: some of our major brands have already unilaterally implemented employee safety devices at their owned and operated properties.

The hotel industry has worked successfully with local elected officials in several cities that were considering legislation or ordinances that advance the cause of safety and security. Just last year the Chicago City Council passed an ordinance that requires hotels to provide notification devices to housekeepers and other hotel employees. It also requires that properties have multi-language written anti-sexual harassment policies provided to all employees. Alderman Michelle Harris led the effort that brought together state and local officials, union leaders, hotel workers, and hotel owners and operators to protect housekeepers and other hotel employees. Chicago's new ordinance, which represents a successful negotiation where employees receive notification devices and hotel owners and operators receive flexibility to utilize the technology that best fits their specific property, is an example of how business owners, unions and government officials can work together to advance of a common goal that is judiciously implemented within an industry. It's a model we are seeking to implement throughout the industry.

In the coming months, AHLA plans to announce the industry's further commitment to employee safety. We have identified several pilot cities to serve as test markets as the industry develops and implements an effective, actionable "National Safety Initiative" that provides additional layers of security for our employees while ensuring cost-effective operations moving forward. A key pillar of the National Safety Initiative will be the deployment of employee safety notification devices. It is essential that there is flexibility within the technology, as what works in a large, full-service property may not work for the small business franchised hotel. We must also account for new and emerging technology that will be coming online. AHLA has been in negotiations with several leading companies about new proprietary technology being developed that could fit our industry's needs. This is not a quick or immediate process and it requires testing and training to properly implement. While it is important to move expeditiously, it is also equally important that our approach to be technologically sound and thorough.

It is important to note that our industry's commitment to action stands in contrast to the policies, or lack thereof, exhibited by short-term rental companies, such as Airbnb. While Airbnb states on their website that safety is a top priority, they do not appear to have in place any meaningful policies or procedures for hosts or renters to quickly report harassment or alert authorities if an incident occurs. We encourage you to take a holistic approach as you examine this issue in the lodging sector and ask the same questions of those in the short-term rental sector.

Senator Murray, the hotel industry takes any allegation of harassment or sexual misconduct extremely seriously. At its core, the hotel industry is about people – the more than eight million people that proudly work and support our industry and the guests that we serve. We are in the people business and taking care of our own employees is what we do best, whether its providing career advancement opportunities to new trainings and resources to help them get ahead and move up the ladder of opportunity in this great industry.

On safety and security, there is no compromise. Our associate's wellbeing is of utmost priority to us, as is that of the guests we serve. We strive to develop and continually review policies and procedures that ensure a safe working environment for our employees and guests. But we must and will continue to do more. I stand willing to partner with you - and other leaders - to raise awareness of this important issue and deploy innovative solutions together.

I look forward to meeting with you in person to discuss this matter in greater detail and appreciate your leadership on this critical issue.



Katherine Lugar, President and CEO American Hotel and Lodging Association



December 11, 2018

The Honorable Patty Murray United States Senate 154 Russell Senate Office Building Washington, DC 20510

Dear Senator Murray,

Thank you for your outreach regarding the work the American Hotel & Lodging Association (AHLA) and our member companies have underway to foster a safer environment for both our employees and guests. The hotel industry shares your passion and concern about this very important issue. On March 5, 2018 AHLA responded to your initial letter, and we have actively worked with your staff to keep them apprised of the proactive efforts hoteliers have undertaken as well as our industry's broad and tangible commitment to continuous improvements in workplace safety and security.

In addition to the efforts highlighted in the March letter, our industry hosted our inaugural Hotel Safety Summit in Washington, D.C. on July 11, 2018. The Safety Summit featured a cross-section of industry leaders and elected officials, a robust discussion of our long-standing commitment to workplace safety and resulted in the sharing of industry best practices and protocols as well as challenges. AHLA also led a discussion on anti-harassment policies and protocols along with efforts and best practices to combat human trafficking. Additionally, we facilitated several panel discussions with industry experts and worked with national non-profit organizations to improve training programs and materials.

Following the discussions at the Safety Summit and building on decades of investments in safety and security and in coordination with security experts, AHLA and 17 major hotel brands in membership announced the **"5-Star Promise"** on September 6, 2018. The 5-Star Promise is a pledge to provide hotel employees across the U.S. with employee safety devices (ESDs) and commitment to enhanced policies, trainings and resources that together are aimed at enhancing hotel safety, including preventing and responding to sexual harassment and assault.

We believe that this commitment on behalf of the industry is unprecedented. Never before have I seen hoteliers rally around a cause so important to our industry, setting aside competitive rivalries to work together toward more secure workplaces. No one company can address these challenges alone.

The hotel industry was widely applauded for its leadership and unprecedented coordination to advance security and education in the workforce. Tina Tchen, co-founder of the Time's Up Legal Defense Fund, has worked with AHLA and the hotel industry to advance workplace safety and diversity, and was one of several partners who advised the industry in the development of the 5-Star Promise. At the press conference announcing the commitment, Tchen said, "I applaud the hotel industry for taking the initiative and continuing to put employee safety first, recognizing that all people should feel safe while doing their jobs."

I understand that your report on workplace harassment is imminent and there will be an appendix to the report. Respectfully, I request that our initial response to your letter, this letter and the attached report on AHLA's 5-Star Promise be included for the record.

On safety and security in the workplace, there is no compromise. The safety and well-being of our associates and our guests is our top priority. Safety is a never-ending challenge, and our industry is committed to be part of the solution. While no industry is immune to dealing with sexual harassment, we will continue to work, day in and day out, so America's hotels are secure places for all those who work in and visit them. AHLA and our member companies stand willing to partner with you and other leaders to raise awareness of this important issue and deploy innovative solutions together.

Thank you again for your continued leadership on this critically important topic.

Sincerely,

Brian Crawford Senior Vice President, Government Relations American Hotel and Lodging Association



# AHLA & The Hotel Industry's Commitment to Enhancing Employee Safety September 6, 2018





### **About AHLA**

Serving the hospitality industry for more than a century, the American Hotel & Lodging Association (AHLA) is the largest national association solely representing all segments of the eight million jobs the U.S. lodging industry supports, including brands, hotel owners, REITs, chains, franchisees, management companies, independent properties, bed and breakfasts, state hotel associations and industry suppliers. Headquartered in Washington, D.C., AHLA proudly represents a dynamic hotel industry of more than 54,000 properties that supports \$1.1 trillion in U.S. sales and generates nearly \$170 billion in taxes to local, state and federal governments. Learn more at www.ahla.com.





**Bill McQuillen** 

## HOTEL INDUSTRY ANNOUNCES ADDED SAFETY MEASURES FOR EMPLOYEES; BUILDS ON LAYERS OF SECURITY PROCEDURES

Major Brands to Deploy Safety Devices; Competitors Across Lodging Industry Unite to Advance Employee, Guest Protection

Partner at Buckley Sandler and Co-founder of Time's Up Legal Defense Fund Applauds Progress on Employee Security

**Washington, D.C. (September 6, 2018)** – Building on decades of investments in safety and security and in coordination with security experts, the American Hotel & Lodging Association (AHLA) and the major hotel brands in membership today announced the 5-Star Promise, a pledge to provide hotel employees across the U.S. with employee safety devices (ESDs) and commit to enhanced policies, trainings and resources that together are aimed at enhancing hotel safety, including preventing and responding to sexual harassment and assault.

In an unprecedented show of unity within a fiercely competitive industry, the CEOs of Hilton, Hyatt, IHG, Marriott and Wyndham joined AHLA president and CEO Katherine Lugar and Chairman of the Board Mark Carrier, president of B.F. Saul Company Hospitality Group, for the announcement.

Deployment of ESDs is already underway. Hotel companies in several markets, including New York, Washington D.C., Chicago and Seattle, already provide ESDs to employees, and they are piloting devices in many other markets. Today's announcement broadens this commitment to hotels across the country, with the goal of broad implementation by 2020.

"We're proud of the hotel industry's efforts and are encouraged to see our industry come together in an unprecedented way to make our employees feel safer at work. Hotels have been investing in employee and guest safety for decades, working with experts to continuously update protocols and procedures that keep both employees and guests safe," said Katherine Lugar, president and CEO of AHLA. "Safety is a never-ending challenge, and the hotel industry is highly committed to be part of the solution. Protecting our employees—as well the millions of guests who stay in American hotel rooms each day—is critically important to our industry. Unfortunately, no industry is immune to dealing with sexual harassment, but we will continue to work, day in and day out, so America's hotels are secure places for all those who work in and visit them."

Participating brands or properties will determine the best security devices based on the property's layout and features, with a range of options including devices with loud noiseemitting features or emergency GPS tracking at the push of a handheld button. AHLA has convened a sourcing task force to assist companies in identifying the appropriate technology for their respective properties.

This approach reflects the segmented and diverse nature of the hotel industry, ranging from large urban hotels to small rural roadside inns to mixed-use properties that combine hotels, apartments, condos, retail, and restaurants. In addition, there are considerable structural differences in building design and layout, construction materials, and Wi-Fi network capabilities within the industry.

With these complexities in mind, AHLA convened a task force of industry experts in 2017 to begin the process of outlining an implementation framework. As part of this effort, AHLA and hotel security experts convened a Safety Summit in July, bringing together lodging executives, lawmakers and security experts to discuss ways to keep employees and guests secure and then shared learnings with members.

The 5-Star Promise represents the hotel industry's commitment to advance safety and security for hotel employees and guests.

- ★ Build on our industry's longstanding commitment to hospitality and a People Culture. AHLA will continue providing industry-wide training and materials on safety and security matters, and retain expert guidance, such as Tina Tchen, a partner at Buckley Sandler LLP and co-founder of the Time's Up Legal Defense Fund, to work with AHLA and its members on workplace diversity and safety matters.
- ★ Ensure mandatory anti-sexual harassment policies are in place in multiple languages.
- Provide ongoing training and education for employees on identifying and reporting sexual harassment.
- $\star$  Provide U.S. hotel employees with employee safety devices to help them feel safe on the job.
- ★ Broaden vital partnerships with wide-ranging national organizations that target sexual violence and assault and trafficking and promote workplace safety, including the National Alliance to End Sexual Violence (NAESV), End Child Prostitution and Trafficking (ECPAT-USA), and Polaris.

"As an industry, it's important that we continue to lead around these important issues affecting our employees, building on our longstanding commitment to the hospitality culture and industry," said **Mark Carrier, Chairman of the AHLA Board and president of B.F. Saul Company Hospitality Group.** "We are proud that AHLA members are working together on solutions no one company could address alone, and we hope AHLA's actions will be a catalyst for other industries to follow suit."

Tina Tchen, partner at Buckley Sandler LLP and co-founder of the Time's Up Legal Defense Fund, which provides legal support to victims of sexual harassment, assault and abuse in the workplace, has been consulting with the hotel industry for the last several months as it developed this initiative. She commended the hotel industry for coming together for this unprecedented announcement.

"I applaud the hotel industry for taking the initiative and continuing to put employee safety first, recognizing that all people should feel safe while doing their jobs," said Tchen. "This is an important step that we hope will lead to more industries taking a stand and committing to employee and guest safety. I look forward to continuing to work with AHLA along with experts and advocates to ensure hotels are safe and welcoming for everyone." Hotel industry leaders, speaking at today's press conference offered their individual pledges to advance employee and guest safety and security on their properties.

"At Hilton, all 380,000 of our team members are the heart and soul of our business," said Chris Nassetta, president and CEO of Hilton. "That is why we are deeply committed to putting their safety and well-being above all else. In addition to implementing anti-harassment and anti-trafficking training across all 5,400+ of our properties, we have already deployed employee safety devices in New York, Washington D.C., Seattle and Chicago properties. Today, I am proud to share that we are expanding that commitment across all our hotels in the United States, deploying safety devices for all team members who service guest rooms by 2020."

"Our Hyatt family is driven by our purpose: we care for people so they can be their best. There's nothing more foundational to caring for people than making sure they feel safe at work," said Mark Hoplamazian, president and CEO of Hyatt Hotels Corporation. "Our strict policies and protocols have never tolerated guest harassment of our colleagues, and we continue to apply fresh eyes to keep pace with changing needs. In fact, we recently revised housekeeping guidance with an eye toward more personal safety. Hyatt also took a leading step last fall when we mandated Employee Safety Devices for colleagues who enter guestrooms across the country's full-service, managed hotels. Already half of Hyatt's franchised full service hotels have joined in, and there's more to come."

"IHG has a long-standing commitment to fostering a culture of respect and empowerment, which includes a work environment that is free from harassment and expects personal safety. This culture is rooted in IHG's existing anti-harassment, anti-bullying and human rights policies and standards," **said Elie Maalouf, CEO, Americas, IHG.** "IHG takes a holistic approach to employee safety which includes comprehensive policies, mandatory training and safety technology. We continually review and strengthen our policies, and we are translating them into additional languages to reach more employees. We have rolled out mandatory and enhanced workplace training for corporate and hotel employees in the U.S. Building on our track record of providing employee safety technology solutions, we have deployed personal safety devices at hotels in New York, Chicago and Seattle. We will use employee and management feedback to guide a deployment plan for devices at all our managed hotels in the U.S. by 2020. Additionally, we are collaborating with our owners on how best to support our franchised locations. Collectively, all of these efforts reflect our enduring commitment to employee safety."

"At Marriott International, we believe that everyone should feel safe and secure while fulfilling their work responsibilities," said Arne Sorenson, president and CEO of Marriott International. "We are testing and deploying associate alert devices to enable hotel associates to press a button to summon help if they encounter a threatening situation. We are working toward deployment of the devices at both managed and franchised hotels in the United States and Canada through 2020 and we continue to explore safety technology solutions globally. With our people-first corporate culture, one of our top priorities will always be to protect the associates who work tirelessly every day to deliver incredible experiences for our guests."

"The fine people working every day in hotels around the globe are truly what makes hospitality the best industry," said Geoff Ballotti, president and CEO of Wyndham Hotels & Resorts. "At Wyndham Hotels & Resorts we know our team members are our greatest resource, that's why we take providing for their safety, security and well-being very seriously. Over the next 12 months at our U.S. owned and managed hotels we will deploy Employee Safety Devices to all team members who are assigned to work in a guest room by himself or herself and roll out mandatory, annual anti-sexual harassment, discrimination, and human trafficking training. Additionally, we will provide best practices guidelines and training to our U.S. franchisees, in addition to endeavoring to offer ESD sourcing solutions. Wyndham is proud to unite with our industry today showing our joint commitment to the people who day-in and day-out help make guests' travels memorable."

## INDIVIDUAL HOTEL BRAND COMMITMENTS TO ADVANCE SAFETY AND SECURITY

Building on decades of investing in safety and security, the American Hotel & Lodging Association (AHLA) and the major hotel brands in membership have announced they will provide hotel employees across the U.S. with employee safety devices (ESDs) and commit to enhanced policies, trainings and resources that together are aimed at preventing and responding to sexual harassment and assault. In addition to ESDs, their commitment includes mandatory anti-sexual harassment policies in multiple languages and employee training programs.

In addition, individual hotel brands have made the following commitments:

**AccorHotels** The safety and security of our employees has always been a top priority at AccorHotels. "Feel Valued" is our pledge to our employees, that each will enjoy a positive and fulfilling experience. It reflects our promise to care about employees' wellbeing and balance, to be open to all, to empower and encourage talent to blossom and to see our differences as opportunities to spur innovation.

For many years AccorHotels regional Learning Academies has included a number of mandatory trainings and code of Ethics signed by our employees. Such programs promote inclusion and diversity to support our anti-discrimination and anti-harassment values. AccorHotels has a strict policy against sexual harassment that is adhered by all properties managed by AccorHotels across the North & Central America region, including the United States. Procedures and escalation protocols are in place to ensure our 25,000 employees are protected, trained and encouraged to report any instances. We also provide mandatory trainings on Corporate Social Responsibility and WATCH (We Act Together for Children is a training and reporting program to fight against sexual exploitation of children).

AccorHotels is constantly transforming and overturning hospitality industry conventions with innovations. We take pride in identifying & leveraging new and emerging technologies, especially when it comes to the safety and security of our stakeholders. One such measure is the deployment of safety devices for employees who enter guestrooms and restrooms unaccompanied by 2020.

**Best Western Hotels & Resorts** Best Western<sup>®</sup> Hotels & Resorts' core values, practices, culture, and history embody a commitment to professionalism, integrity, excellence in quality and service, honesty, and treating everyone with dignity and respect.

Consistent with these values, we recognize that employee safety can never be compromised. Likewise, our independently owned and operated Best Western branded hotels are committed to providing a healthy, safe work environment. In this regard, all Best Western branded hotels in the United States are required by end of year 2020 to provide, at no cost to hotel employees, an employee safety device ("ESD") to any employee who is assigned to work in a hotel guest room or area where no other employee is scheduled to work. This requirement includes Hotels having and enforcing a policy that an ESD must be in the hotel employee's possession whenever the employee is assigned to work in a guest room or area where no other employee is scheduled to work. Additionally, Hotels are required to have written anti-sexual harassment and assault policies that are provided to employees in multiple languages (applicable to the workforce), and to provide employees with appropriate training to identify and report sexual harassment and assault consistent with hotel policies.

Best Western Hotels & Resorts is dedicated to respecting and protecting fundamental human rights.

**Caesars Entertainment** At Caesars Entertainment, our goal is to provide guests of our destinations world-wide with unique and memorable experiences. We believe our ability to deliver best-inclass service depends on the vitality of our team members. We focus on robust training programs, investing 1.7M hours annually into team member training and development. We also believe the safety, security and well-being of our guests and team members is of utmost importance. We recently implemented a room check policy where hotel personnel enter and briefly conduct a visual check of rooms that have not been serviced or accessed by a team member for a period of time. Also, to help our guest room attendants and other team members feel safe we have equipped them with safety buttons. These buttons allow team members to immediately contact other hotel personnel should assistance be needed. We have also implemented a program where guest room attendants may request the assistance of security personnel while performing their duties should they feel unsafe. Caesars Entertainment is excited about our training programs and security enhancements, and will continue to evaluate how best to serve our over 70,000 team members world-wide, and the 115M guests that visit our properties annually as new smart practices, procedures and technology are developed.

**Four Seasons Hotels and Resorts** Four Seasons Hotels and Resorts is a company guided by the Golden Rule. This simple idea of treating others as you would have them treat you informs every aspect of our business, including our commitment to creating an inclusive environment for our employees and our guests.

Every Four Seasons employee should feel safe at work – free from verbal and physical harassment, bullying, intimidation and any other actions that make an employee feel unsafe. That is why we have robust training programs in place and an array of supports and tools for all 50,000+ employees. This includes an employee hotline and website, administered by an external third party, that allows employees to anonymously report any incident if they choose. Our goal is to ensure employees are protected in their workplace and to ensure they feel empowered to come forward if there are ever issues of concern.

To date, we have or are implementing employee safety devices (ESDs) at five U.S. properties. We are working closely with our property and security teams to pilot a number of options to determine the most effective ESD solution and implementation time frames to meet the unique needs of our diverse portfolio of U.S. hotels and resorts. In addition, we continually review and update our policies and tools to ensure that employee and guest safety is a top priority.

We are deeply committed to creating a safe workplace environment where our employees feel valued, protected and proud to work for Four Seasons Hotels and Resorts.

**G6 Hospitality** G6 Hospitality is committed to our team members' safety and well-being. Our team members are our single greatest asset, and G6 Hospitality has implemented multiple measures to ensure their safety. We have written policies against sexual harassment and violence in the workplace, provide multi-lingual training to help team members identify and report harassment and violence, and encourage the use of an employee hotline. We are launching anti-trafficking training to corporate and field team members in Q4, 2018, and will be providing team members at our corporately owned and managed properties with personal safety devices by end of 2019. We are also providing guidance to our franchise community, in the form of brand standards, recommended policies, and product sourcing support for the purchase and implementation of personal safety devices over the next 12 months. We will continue to review and evolve our policies, procedures and brand standards and identify new and emerging practices and technologies to ensure that team member safety is always at the heart of our operations.

**Hilton** Hilton's vision is to deliver exceptional experiences – every hotel, every guest, every time – and nothing contributes more to an experience than the safety and wellbeing of our Team Members and guests. Our existing commitment includes anti-harassment and anti-trafficking policies and training for our 380,000 Team Members at our 5,400+ properties. We have already deployed employee safety devices at hotels in New York, Washington D.C., Seattle and Chicago, and commit to deploying devices for all Team Members servicing guest rooms at Hilton-managed properties in the United States by 2020. We will also implement the same standards for our franchise community. Hilton does not tolerate harassment of any kind, and we will continue to reevaluate and update our protocols to create a safe and welcoming environment for all.

**Hyatt** The wellbeing of our more than 110,000 colleagues around the globe is foundational to delivering on our purpose: we care for people so they can be their best. Hyatt hotels promote healthy and secure work environments by providing tools, ongoing training, and sharing best safety practices, which includes revised guidance issued in 2017 to conduct housekeeping service with the door closed, while guests are not in their guestrooms, and with the housekeeping cart blocking the door.

Our policies and strict protocols have never tolerated guest harassment of our colleagues. We encourage colleagues to remove themselves immediately from uncomfortable situations and to report misconduct – either to human resources, security, law enforcement, or our anonymous telephone hotline and website. Hyatt hotels promptly investigate all reported incidents of sexual misconduct and harassment, and protect colleagues who bring such issues to our attention or participate in investigations.

Hyatt took a leading step last fall when it became one of the first hotel brands to deploy personaldistress alarms for colleagues who enter guestrooms. This is a brand standard for Hyatt-managed full-service hotels in the U.S., and more than half of full-service franchise Hyatt hotels have joined us as well. We remain committed to evaluating our practices and soliciting feedback so our colleagues feel comfortable and secure at work.

**IHG** IHG has a long-standing commitment to fostering a culture of respect and empowerment, which includes a work environment that is free from harassment and expects personal safety. This culture is rooted in IHG's existing anti-harassment, anti-bullying and human rights policies and standards.

IHG takes a holistic approach to employee safety which includes comprehensive policies, mandatory training and safety technology. We continually review and strengthen our policies, and we are translating them into additional languages to reach more employees. We have rolled out mandatory and enhanced workplace training for corporate and hotel employees in the U.S. Building on our track record of providing employee safety technology solutions, we have deployed personal safety devices at hotels in New York, Chicago and Seattle. We will use employee and management feedback to guide a deployment plan for devices at all our managed hotels in the U.S. by 2020. Additionally, we are collaborating with our owners on how best to support our franchised locations. Collectively, all of these efforts reflect our enduring commitment to employee safety.

**Las Vegas Sands Corp** The safety and security of our team members has always been one of our top priorities at Las Vegas Sands Corp. The Venetian and The Palazzo in Las Vegas are committed to providing a safe, healthy and inclusive work place environment, and the properties' extensive training efforts include mandatory anti-sexual harassment trainings for all the approximately 9,000 team members in our Las Vegas operations. As part of our package of initiatives, The Venetian and The Palazzo Resorts plan to deploy WIFI-enabled safety devices for all our housekeeping team members by March 2019 in Las Vegas. We will continue to review best practices through the AHLA going forward to ensure that we remain an employer of choice in our industry.

**Loews Hotels & Co** At Loews Hotels & Co, our most important relationship is with our Team Members. Their safety and security is of paramount importance, and we take that responsibility seriously. We provide ongoing training to educate Team Members, at all levels, on identifying and reporting sexual harassment and human trafficking, in addition to having mandatory policies and procedures in place.

We are proud to also join the industry in committing to provide all Team Members, working in guest rooms, in all wholly owned Loews Hotels & Co properties employee safety devices by 2020 and to work with our partners in our remaining hotels toward the same goal.

Our guiding principles at Loews Hotels & Co focus on family, caring about others, serving with integrity and being a good neighbor. Ensuring the safety and security of our Team Members, not only puts their well-being as a priority, but also is the best way we create memorable experiences for our guests, customers, partners and communities.

**Marriott International** At Marriott International, we believe that everyone should feel safe and secure while fulfilling their work responsibilities. Putting people first is a cornerstone of our 91-year corporate culture. Throughout the years, we have developed well established policies, prevention training, and reporting procedures to support a respectful and harassment-free workplace. We train and engage our managers on appropriate responses when charges of sexual harassment occur, and we reinforce a culture of respect and awareness among all associates that harassment from anyone, including guests, business partners, or vendors, will not be tolerated.

Marriott is currently testing and deploying our first phase of associate alert devices in our managed hotels in the U.S. and Canada to enable hotel associates to press a button that will summon help if they feel their safety is threatened while at work. The technology already in use in several markets will take until 2020 to fully install, fine-tune and integrate, and could be used to alert hotel management to other issues an associate may encounter, such as a guest in distress or a threatening situation that might endanger anyone in the hotel.

The implementation of associate alert devices will be a brand standard at both managed and franchised hotels in the U.S. and Canada, with the expectation of deployment through 2020, and we are working with franchise partners to achieve this goal. These types of safety technology solutions, which we intend on exploring globally, will put another tool in the hands of associates and complement our global safety and security training and protocols.

As part of our ongoing efforts, we will continue to work with our associates to identify safety solutions that work effectively for them and across our diverse portfolio of hotels, from urban skyscraper to expansive resorts. One of our top priorities has always been and will continue to be to protect the people who work tirelessly every day to deliver incredible experiences for our guests.

**Montage International** Montage International cares deeply about the safety and well-being of our associates and guests. We are proud to stand with AHLA as leaders in the hospitality industry to ensure that our associates are safe in their work environments. We currently have anti-harassment and sexual abuse and molestation prevention policies in place across all of our properties. In addition, we mandate comprehensive anti-harassment training for all associates. We provide effective internal reporting procedures, which are available to all of our associates twenty-four hours a day, seven days per week. Looking ahead, we will continue to establish best practices with regard to the safety of our associates and are committed to exploring various safety device technologies for implementation by the end of 2020.

**Outrigger Hotels and Resorts** *The Outrigger Way* is defined as caring for our hosts, guests and place with our values as our guide. In that light, the safety and security of our hosts have always been paramount at Outrigger Hotels and Resorts. Outrigger is firmly committed to every host being treated with courtesy, dignity and respect while working in an environment free of discrimination and harassment. We have current safety trainings and procedures in place, including mandatory anti-sexual harassment policies and trainings for all Outrigger Hotels and Resorts' hosts. Recognizing the value of new and emerging technologies to help keep our hosts safe, we plan to deploy employee safety devices for all Outrigger Hotels and Resorts' hosts that enter guest rooms alone by 2020.

**Radisson Hotel Group** The safety and security of our employees has always been a top priority at Radisson Hotel Group. Our employees are our single greatest asset, and we are committed to ensuring their continued career growth and well-being. Radisson Hotel Group has current trainings and procedures in place including mandatory anti-sexual harassment policies and trainings for our more than 1,500 employees across 18 managed properties throughout the United States. We understand the importance to identify new and emerging technologies that will help keep our employees safe. As such, we plan to deploy employee safety devices (ESDs) for any managed hotel employee who enters a guestroom by his or herself by 2020. In an effort to help our franchised hotels achieve similar goals, we will be working to provide resources and solutions to hotel owners in the coming months.

**Red Lion Hotels Corporation** The safety and security of our employees has always been a top priority at Red Lion Hotels Corporation (RLH) and our associated brands. The associates at all our brand properties are the single greatest asset we have, and we are committed to ensuring their continued career growth and well-being. RLH Corp has current training and procedures in place, including mandatory anti-sexual harassment and safety policies for all our company associates across the United States. RLH understands the importance to continue to identify new and emerging technologies that will help keep our employees safe. As such, we plan to deploy appropriate safeguards for any employee who enters a guestroom by his or herself by in our owned and managed properties in early 2019. We also have training and procedures in place for all our franchise brands to address emergency situations and appropriate response. We continually work with our franchisees to ensure full compliance with current regulations and brand standards regarding safety and security. RLH understands the importance to continue to identify new and emerging technologies that will help keep our guests and employees safe.

**Red Roof** The safety and security of our employees and guests has always been a top priority at Red Roof. Our employees are Red Roof's single greatest asset and we are committed to ensuring their personal safety and well-being. Red Roof has current trainings and procedures in place which include mandatory anti-sexual harassment policies and trainings for all employees at our corporate managed properties across the United States and at our corporate headquarters. Red Roof also understands the importance of continuing to identify new and emerging technologies that will help keep our employees safe in the workplace. Red Roof has and will continue to engage vendors with the implementation of Employee Safety Device (ESD) technology that will assist in the safety of our employees while performing their duties at Red Roof properties. As ESD technologies evolve, Red Roof will proactively review additional options that may be more appropriate for each of our unique locations. By the end of 2020, Red Roof will implement a plan to deploy ESD technologies across all corporate managed properties and the ESD will be provided to employees at no cost. Red Roof will also share this initiative with Red Roof's franchise community.

Wyndham Hotels & Resorts Wyndham Hotels & Resorts is committed to our team members' safety, security, and well-being. Our team members are our greatest asset, and their safety and security has always been a critical priority for us. Over the next twelve months, Wyndham Hotels & Resorts plans to deploy employee safety devices to all team members at our U.S. owned and managed properties, who are assigned to work in a guest room by himself or herself. These devices will be provided to the employee at no cost. Combatting human trafficking and protecting human rights is also a top priority for us and we have anti-sexual harassment, discrimination, and human trafficking policies in place, available in English and Spanish, in addition to training. Also over the next twelve months, Wyndham Hotels & Resorts plans to roll out mandatory, annual anti-sexual harassment, discrimination, and human trafficking training for all team members at our owned and managed properties. Training programs will also be made available to our U.S. franchisee community. We support the UN Universal Declaration of Human Rights, ECPAT, and the Polaris Project in a shared mission to combat all forms of human trafficking, and many of the training offerings we provide are done in collaboration with our long-term partners, ECPAT-USA and the American Hotel & Lodging Educational Institute. Wyndham Hotels & Resorts is further committed to rolling out a best practice guideline to our franchisee community, which will encourage our franchisees to provide employee safety devices to their own employees, endeavor to offer sourcing solutions for such devices for our franchisees' consideration, and encourage our franchisees to take full advantage of the training offerings available.

## HOTEL SAFETY AND SECURITY: A LONGSTANDING COMMITMENT TO OUR EMPLOYEES AND GUESTS

AHLA believes that when it comes to safety and security, there is no compromise. The hotel industry develops and continually reviews policies that promote a safe environment for our employees and guests.

Our commitment to provide employee safety devices and adopt enhanced policies, trainings and resources around sexual harassment and assault builds on the hotel industry's longstanding efforts to promote employee and guest safety:

- Hotels conduct training programs to educate their employees on identifying and reporting sexual harassment and assault.
- The hotel industry has deployed employee safety devices (ESDs) in many major markets, including New York, Washington D.C., Seattle and Chicago. Major global hotel brands have also proactively deployed ESDs for their employees.
- AHLA has partnered with the National Alliance to End Sexual Violence (NAESV) for several years to raise awareness of sexual violence and provide hotel operators and managers with training, tools and resources to educate employees on identifying and reporting sexual harassment and assault. As part of these efforts, AHLA and NAESV created an online training program in 2016 to address sexual violence in the hospitality industry and offer tips to combat it.
- AHLA has partnered with national organizations including End Child Prostitution and Trafficking (ECPAT-USA) and Polaris to raise awareness of human trafficking and develop trainings and tools tailored specifically to hotel industry employees. AHLA has hosted multiple webinars and developed and shared a variety of resources on human trafficking for all members. ECPAT-USA has also worked with many hotel brands and companies to implement their six principles for combatting trafficking into hotel operations.
- AHLA partners with the U.S. Department of Homeland Security through the Blue Campaign, which brings together law enforcement, government, and private organizations to combat human trafficking. In 2018, DHS, AHLA and others in the hotel industry participated in a Twitter Townhall to share how we are working to stop human trafficking, what travelers can do if they see something suspicious, and answer questions.
- In 2017, AHLA's board and executive committee created a task force to examine current procedures and recommend industry best practices, including emerging technology solutions that could be deployed to ensure that employees are quickly able to call for help in the case of an emergency.
- AHLA hosted a webinar and provided other co-branded materials on sexual assault for all members in March 2018. This training is among many resources AHLA and the American Hotel & Lodging Educational Institute (AHLEI) have developed to ensure general managers and hotel operators have the tools and information needed to educate their employees about sexual harassment and assault.
- In July, AHLA hosted a hotel safety summit in Washington, bringing together lodging executives and security experts to discuss best practices for keeping employees and guests secure, and plan further meetings to continue exchanging ideas to advance employee safety.
- AHLA has created a sourcing task force comprised of representatives of all industry segments to engage existing and emerging vendors and suppliers of ESDs to communicate the breadth and diversity of the industry's technology requirements, spur innovation and product development, and support the industry's rollout of new solutions.



www.AHLA.com/5star

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# United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510-6300

EVAN SCHATZ, DEMOCRATIC STAFF DIRECTOR http://help.senate.gov

February 7, 2018

Mr. Zippy Duvall President American Farm Bureau Federation 600 Maryland Avenue SW, Suite 1000 W Washington, DC 20024

Dear President Duvall:

I write to your federation with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated the headlines and sparked a national conversation about change, power dynamics, and equality in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. Although we are seeing headlines about powerful and famous people being called to account for their actions, we are seeing far less action in industries outside of the spotlight. Therefore, I hope and expect that you are taking steps to address concerns about misconduct in your industry and to ensure your members' workplaces are free from harassment.

The agriculture industry employs over two million workers,<sup>1</sup> but few harassment complaints from farmworkers are reported in large part because so many farmworkers are non-native speakers, are undocumented, or are unaware of their rights or how to file a complaint.<sup>2</sup> However, reporting on the issue has consistently indicated that sexual harassment is indeed an epidemic in the agriculture industry. A 2012 Human Rights Watch report found that nearly every farmworker interviewed had either experienced harassment themselves or knew someone who had.<sup>3</sup> A study conducted in 2010 in California's Central Valley found that 80 percent of the women interviewed had experienced sexual harassment in the field.<sup>4</sup> Lastly, a 2013 PBS Frontline Documentary, "Rape in the Fields," documented a number of cases where women came forward to tell their stories in court or in public. In small sample sizes, various advocacy organizations who talked to PBS and their reporting partners found that between 40 and 70 percent of women

<sup>&</sup>lt;sup>1</sup> Labor Force Statistics from the Current Population Survey, Bureau of Labor Statistics (January 2018), https://www.bls.gov/cps/cpsaat18.htm.

<sup>&</sup>lt;sup>2</sup> Ariel Ramchandani, *There's a Sexual Harassment Epidemic on America's Farms*, The Atlantic (January 2018), https://www.theatlantic.com/business/archive/2018/01/agriculture-sexual-harassment/550109/.

<sup>&</sup>lt;sup>3</sup> Grace Meng, *Cultivating Fear: The Vulnerability of Immigrant Farmworkers in the US to Sexual Violence and Sexual Harassment*, Human Rights Watch (May 2012), https://www.hrw.org/report/2012/05/15/cultivating-fear/vulnerability-immigrant-farmworkers-us-sexual-violence-and-sexual.

<sup>&</sup>lt;sup>4</sup> Ariel Ramchandani, *There's a Sexual Harassment Epidemic on America's Farms*, The Atlantic (January 2018).

had been propositioned, touched in unwanted ways, had their job threatened if they did not acquiesce, or faced other forms of harassment or violence.<sup>5</sup>

As shocking as these numbers are, they likely underestimate the rate of sexual harassment. Women in low-wage jobs often do not report in fear of retaliation that may affect their earnings or their ability to keep their job. The EEOC estimates that 85 percent of all workers who are subjected to harassment never file a formal legal charge, and 70 percent of all workers never file a complaint internally.<sup>6</sup> It has long been clear that the magnitude of the problem in your industry should not be ignored, and I am hoping that the recent focus on this issue will provide the needed push to make real progress.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue and am seeking an update on efforts to prevent and address harassment in workplaces across the country.

As part of that effort, I am interested in the ongoing discussions, plans, and actions within the American Farm Bureau Federation ("AFBF") aimed at protecting employees and establishing an equal and harassment-free workplace. I request a briefing with my staff within the next three weeks to discuss any recent efforts you have undertaken to assess and address workplace harassment in your industry.

I also request the following information:

- 1. Any polling, surveys, or research the AFBF has conducted in order to understand the scope of the problem within the industry;
- 2. Any research or actions the AFBF has undertaken to assess and address risk factors specific to the industry;
- 3. Any surveys the AFBF has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 4. Any steps the AFBF has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 5. Any best practices the AFBF has identified among its associated employers to accurately assess and address workplace harassment; and
- 6. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less of it.<sup>7</sup> Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the urgency it requires. I appreciate you taking this matter seriously, and I look

<sup>&</sup>lt;sup>5</sup> Bernice Yeung & Grace Rubenstein, *Female Workers Face Rape, Harassment in U.S. Agriculture Industry*, The Center for Investigative Reporting (June 2013), https://www.pbs.org/wgbh/pages/frontline/social-issues/rape-in-the-fields/female-workers-face-rape-harassment-in-u-s-agriculture-industry/.

<sup>&</sup>lt;sup>6</sup> Chai R. Feldblum & Victoria A. Lipnic, Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs, U.S. Equal Employment Opportunity Commission 16 (June 2016),

https://www.eeoc.gov/eeoc/task\_force/harassment/upload/report.pdf.

<sup>&</sup>lt;sup>7</sup> Feldblum & Lipnic at 32.

forward to our continued discussions. If you have any questions regarding this letter please contact Carly Rush or Joe Shantz at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

att Mu Patty Murray

United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions



ph. 202.406.3600 f. 202.406.3606 www.fb.org

March 14, 2018

The Honorable Patty Murray Ranking Minority Member Senate Committee on Health, Education, Labor and Pensions 428 Dirksen Senate Office Building Washington, D.C. 20510

Dear Senator Murray:

Mr. Zippy Duvall, President of American Farm Bureau Federation, has asked me to reply to your letter on harassment in the workplace. Thank you for reaching out to Farm Bureau and requesting our views on this subject.

To put this response in context, I would like to share some background about American Farm Bureau Federation (AFBF) in case you are unfamiliar with how our organization functions. AFBF, which is the nation's largest general farm organization, is a federation of Farm Bureau organizations in the fifty states and Puerto Rico; our members are the state-based Farm Bureaus (for example, the Washington Farm Bureau is headquartered in Lacey, Washington). These state Farm Bureaus are themselves comprised of county Farm Bureaus, which number nearly three thousand across the country. These can range from county organizations of several dozen farmer/rancher members to others with literally thousands of members. Farm Bureau, from the bottom to the top, is governed by our farmer and rancher leaders, and the needs and perspectives of members vary greatly by locality, region and state, by crop or even by circumstance. Natural disasters, such as the hurricane in Texas, have devastated some of our members while others were enjoying bumper crops or facing flood or drought. Because AFBF is a grassroots organization, its staff – including its President – does not dictate AFBF's policies and programs: our grassroots members do. It is those grassroots leaders - local farmers and ranchers selected annually by their state Farm Bureau organizations – who vote to establish AFBF policy. They also elect AFBF's board of directors - composed entirely of farmers and ranchers who are the elected presidents of their state Farm Bureaus - which in turn sets AFBF's strategies and priorities and determines the issues on which AFBF takes a position.

The above governance framework determines all AFBF policies, programs and positions, including the topic of workplace harassment raised in your correspondence. I note that your request references a recent article on this topic in the Atlantic magazine. When AFBF was approached by the individual writing the piece, staff responded with a statement on behalf of AFBF that harassment has no place in the workplace, and that the farm is no different. Unfortunately, our response was not included in the article.

AFBF has policy strongly opposing discrimination on the basis of sex, which of course includes workplace sexual harassment. However, because the farm worker population and related circumstances vary widely by crop or product, by region, and even by the size of the operation,

most Farm Bureau activity in this area will tend to be state and local. Let me share with you a few examples of pro-active efforts within the agricultural sector of which we are aware.

- Michigan Farm Bureau staff routinely educates members on labor and employment law, including information on sexual harassment such as what constitutes unwelcome behavior, the potential liability facing employers, and avenues of redress for employees who feel they are victims of harassment.
- Oregon Farm Bureau's Farm Employer Education & Legal Defense Service (FEELDS) is a labor consulting service offered to Farm Bureau members that includes sexual harassment prevention and correction training at its quarterly training workshops, in its model employee handbooks, in its newsletters and employer updates, and through inperson consultations with individual farms. FEELDS also undertook an MOU with USDOL to provide training focus for farmers and their supervisory employees about issues DOL identified as enforcement priorities. These priority areas have included sexual harassment prevention and correction. Oregon Farm Bureau last year undertook a pilot project with the HR consulting firm Northwest Bilingue to offer supervisors real-time consultation by phone for matters they were confronted with that they did not know how to handle. A focus of this pilot was sexual harassment allegations. Oregon Farm Bureau has also worked with the state employment department and its H2-A staff to identify areas where further education is needed among ag employers and to provide training, consultation, and materials to address these needs.
- In the state of Washington, the Washington Farm Labor Association (known informally as WAFLA, <u>https://www.wafla.org/</u>) has developed a harassment prevention program that includes a Harassment Hotline service that is privately run. WAFLA estimates that more than 30,000 field workers have obtained training and harassment hotline cards. Under this system, an employer signs up for a service and a WAFLA trainer provides counseling and advice on harassment policies, including a video, and posters are provided. At least once a year, a WAFLA representative will re-visit the operation, review any complaints that have occurred and re-distribute cards with an (800) number listing the Hotline. WAFLA was established by a former employee of Washington Farm Bureau and has many Farm Bureau members among its customers.
- Also in Washington, the Department of Environmental and Occupational Health Sciences (<u>http://deohs.washington.edu/pnash/sexual\_harassment</u>) has partnered with Washington agricultural employers, including Farm Bureau members, in producing a video (produced in a bilingual version) that focuses on preventing sexual harassment in the agricultural workplace. The video can be viewed at <u>http://www.ajlproductions.com/projects-completed/current-projects.html</u>.
- In 2015, New York Farm Bureau distributed a memorandum from legal staff outlining what constitutes harassment, why companies should have policies in place, what constitutes a 'hostile working environment,' and the need for an effective harassment policy to include a procedure to make and investigate complaints.
- Farm Employers Labor Service (FELS), which is a wholly owned subsidiary of California Farm Bureau, furnishes its clients with sexual harassment prevention training

for supervisors. FELS also provides its clients with refresher training for their nonsupervisory employees, to educate rank-and-file employees about harassment issues and their rights under state and federal law. (For an example of the type of session scheduled, you may consult the website of the Yolo County Farm Bureau at https://www.yolofarmbureau.org/events/2018/417-eng-sh-prev).

Your letter also posed specific questions to AFBF. In reply to your questions, AFBF has not undertaken any polling, surveys or research in connection with this subject, nor have we initiated any surveys or undertaken action to assess risk factors specific to the industry. While we have not identified any best practices, there may be other resources available to you within the agricultural sector that may be able to speak to this question. For instance, the National Council on Agricultural Employers (https://ncaeonline.org/) is an organization dedicated solely to employment-related issues within agriculture. AFBF is not a member of NCAE (although some state Farm Bureaus are), but an inquiry to NCAE may provide further information that is pertinent to your request.

Your last question to AFBF was whether we had any suggestions to strengthen and improve legal protections and processes in the workplace. In that connection we do have one reaction that is drawn from the article cited in your letter ("There's a Sexual-Harassment Epidemic on America's Farms").

The article related the experience of Marlyn Perez, an undocumented farm worker who experienced sexual harassment in Florida. The article notes that the abuse was alleged against the crew leader, Reyes Tapia-Ortiz, whom it describes as "a contractor hired to recruit laborers." While it is not possible from the article to infer the exact employment relationship between Ms. Perez and Mr. Tapia-Ortiz, it appears from the context that Mr. Tapia-Ortiz is a farm labor contractor and as such would be regulated under the provisions of the Migrant and Seasonal Agricultural Worker Protection Act (29 USC §§1801-1872). While the statute is primarily designed to protect workers in other areas (wages, housing, transportation, etc.), it does contain provisions to which contractors are required to adhere. Your committee may wish to examine the statute in question to see whether the protections it affords can be strengthened to protect workers in Ms. Perez's situation.

Thank you for contacting AFBF on this matter. If you or your staff have further questions, please contact Paul Schlegel

Sincerely,

Dale Moore Executive Director Public Policy

### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

MICHAEL B. ENZI, WYOMING RICHARD BURR, NORTH CAROLINA JOHNNY ISAKSON, GEORGIA RAND PAUL, KENTUCKY SUSAN M. COLLINS, MAINE BILL CASSIDY, M.D., LOUISIANA TODD YOUNG, INDIANA ORRIN HATCH, UTAH PAT ROBERTS, KANSAS LISA MURKOWSKI, ALASKA TIM SCOTT. SOUTH CAROLINA PATTY MURRAY, WASHINGTON BERNARD SANDERS (II), VERMONT ROBERT P. CASEY, JR., PENNSYLVANIA MICHAEL F. BENNET, COLORADO TAMMY BALDWIN, WISCONSIN CHRISTOPHER S. MURPHY, CONNECTICUT ELIZABETH WARREN, MASSACHUSETTS TIM KAINE, VIRGINIA MARGARET WOOD HASSAN, NEW HAMPSHIRE TINA SMITH, MINNESOTA DOUG JONES, ALABAMA

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# United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510-6300

February 7, 2018

Mr. Michael D. Bellaman President and Chief Executive Officer Associated Builders and Contractors, Inc. 440 First Street NW, Suite 200 Washington, DC 20001

Dear President Bellaman:

I write to your association with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated the headlines and sparked a national conversation about change, power dynamics, and equality in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. Although we are seeing headlines about powerful and famous people being called to account for their actions, we are seeing far less action in industries outside of the spotlight. Therefore, I hope and expect that you are taking steps to address concerns about misconduct in your industry and to ensure your members' workplaces are free from harassment.

Over one thousand claims of sexual harassment in the construction industry have been filed with the EEOC from 2005 to 2015.<sup>1</sup> While this total may seem small when compared to other industries, only nine percent of construction jobs are held by women—indicating that a much higher percentage of women construction workers experience harassment compared to women in other industries.<sup>2</sup> One Department of Labor survey found that 88 percent of female construction workers had faced sexual harassment in the workplace.<sup>3</sup> Other studies have found slightly lower percentages of women facing harassment, but almost all have reported numbers that are significantly above the national average.<sup>4</sup>

While these surveys and numbers contextualize the crisis of sexual harassment in the construction industry, they likely underestimates the exact rates of sexual harassment. Women in male-dominated fields often do not report in fear of retaliation that may affect their earnings or their ability to keep the job. The EEOC estimates that 85 percent of all workers who are subjected to harassment never file a

https://www.americanprogress.org/issues/women/news/2017/11/20/443139/not-just-rich-famous/.

<sup>&</sup>lt;sup>1</sup> Jocelyn Frye, Not Just the Rich and Famous: The Pervasiveness of Sexual Harassment across Industries Affects All Workers, Center for American Progress (November 2017),

<sup>&</sup>lt;sup>2</sup> Labor Force Statistics from the Current Population Survey, Bureau of Labor Statistics (January 2018), https://www.bls.gov/cps/cpsaat18.htm.

<sup>&</sup>lt;sup>3</sup> Fatima Goss Graves et al., *Women in Construction Still Breaking Ground*, National Women's Law Center 8 (June 2014), https://www.nwlc.org/sites/default/files/pdfs/final\_nwlc\_womeninconstruction\_report.pdf

<sup>&</sup>lt;sup>4</sup> *Risks Facing Women in Construction*, New York Committee for Occupational Safety and Health 1 (November 2013), http://nycosh.org/wp-content/uploads/2014/09/Women-in-Construction-final-11-8-13-2.pdf.

formal legal charge, and 70 percent of all workers never file a complaint internally.<sup>5</sup> It has long been clear that the magnitude of the problem in your industry should not be ignored, and I am hoping that the recent focus on this issue will provide the needed push to make real progress.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue and am seeking an update on efforts to prevent and address harassment in workplaces across the country.

As part of that effort, I am interested in the ongoing discussions, plans, and actions within the Associated Builders and Contractors ("ABC") aimed at protecting employees and establishing an equal and harassment-free workplace. I request a briefing with my staff within the next three weeks to discuss any recent efforts you have undertaken to assess and address workplace harassment in your industry.

I also request the following information:

- 1. Any polling, surveys, or research the ABC has conducted in order to understand the scope of the problem within the industry;
- 2. Any research or actions the ABC has undertaken to assess and address risk factors specific to the industry;
- 3. Any surveys the ABC has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 4. Any steps the ABC has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 5. Any best practices the ABC has identified among its associated employers to accurately assess and address workplace harassment; and
- 6. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less of it.<sup>6</sup> Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the urgency it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter please contact Carly Rush or Joe Shantz at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

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Patty Murray United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions

<sup>&</sup>lt;sup>5</sup> Chai R. Feldblum & Victoria A. Lipnic, Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs, U.S. Equal Employment Opportunity Commission 16 (June 2016),

https://www.eeoc.gov/eeoc/task\_force/harassment/upload/report.pdf.

<sup>&</sup>lt;sup>6</sup> Feldblum & Lipnic at 32.



February 23, 2018

The Honorable Patty Murray Ranking Member U.S. Senate Committee on Health, Education, Labor and Pensions United States Senate 428 Dirksen Senate Office Building Washington, DC 20510

Dear Ranking Member Murray:

On behalf of Associated Builders and Contractors (ABC), a national construction industry trade association with 70 chapters representing more than 21,000 members, I write to you regarding your Feb. 7 letter related to harassment in the workplace.

ABC is committed to maintaining a harassment-free working environment that encourages mutual respect and promotes congenial relationships between employees. ABC management is dedicated to strongly addressing complaints of any form of harassment at all levels within the organization. Under the association's policy, all employees should feel comfortable reporting harassment, or cooperating in an investigation of a harassment complaint without fear, retaliation or adverse impact.

ABC recommends to its members that they maintain a policy in writing that explains harassment, describes an effective reporting and investigation process, and strictly prohibits retaliation against those who complain of harassment. ABC also recommends training for managers and employees, and fosters a culture of civility, communication and compliance.

The construction industry's rate of harassment charges filed with the EEOC is well below that of many other industries. This low number of claims is consistent with our membership's anecdotal experience, though we do not track such data in our membership or in the industry as a whole.

ABC will continue to take proactive steps to prevent and correct harassment in the workplace and advance a zero-tolerance policy.

Sincerely,

Michael D. Bellaman President & CEO, Associated Builders and Contractors

### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

MICHAEL B. ENZI, WYOMING RICHARD BURB, NORTH CAROLINA JOHNNY ISAKSON, GEORGIA RAND PAUL, KENTUCKY SUSAN M. COLLINS, MAINE BILL CASSIDY, M.D., LOUISIANA TODD YOUNG, INDIANA ORRIN HATCH, UTAH PAT ROBERTS, KANSAS LISA MURKOWSKI, ALASKA TIM SCOTT. SOUTH CAROLINA PATTY MURRAY, WASHINGTON BERNARD SANDERS (I), VERMONT ROBERT P. CASEY, JR., PENNSYLVANIA MICHAEL F. BENNET, COLORADO TAMMY BALDWIN, WISCONSIN CHRISTOPHER S. MURPHY, CONNECTICUT ELIZABETH WARREN, MASSACHUSETTS TIM KAINE, VIRGINIA MARGARET WOOD HASSAN, NEW HAMPSHIRE TINA SMITH, MINNESOTA DOUG JONES, ALABAMA

DAVID P. CLEARY, STAFF DIRECTOR EVAN SCHATZ, DEMOCRATIC STAFF DIRECTOR

http://help.senate.gov

# United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510-6300

February 7, 2018

Mr. Art Daniel President Associated General Contractors of America 2300 Wilson Boulevard, Suite 400 Arlington, VA 22201

### Dear President Daniel:

I write to your association with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated the headlines and sparked a national conversation about change, power dynamics, and equality in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. Although we are seeing headlines about powerful and famous people being called to account for their actions, we are seeing far less action in industries outside of the spotlight. Therefore, I hope and expect that you are taking steps to address concerns about misconduct in your industry and to ensure your members' workplaces are free from harassment.

Over one thousand claims of sexual harassment in the construction industry have been filed with the EEOC from 2005 to 2015.<sup>1</sup> While this total may seem small when compared to other industries, only nine percent of construction jobs are held by women—indicating that a much higher percentage of women construction workers experience harassment compared to women in other industries.<sup>2</sup> One Department of Labor survey found that 88 percent of female construction workers had faced sexual harassment in the workplace.<sup>3</sup> Other studies have found slightly lower percentages of women facing harassment, but almost all have reported numbers that are significantly above the national average.<sup>4</sup>

While these surveys and numbers contextualize the crisis of sexual harassment in the construction industry, they likely underestimates the exact rates of sexual harassment. Women in male-dominated fields often do not report in fear of retaliation that may affect their earnings or their ability to keep the job. The EEOC estimates that 85 percent of all workers who are subjected to harassment never file a formal legal charge, and 70 percent of all workers never file a complaint internally.<sup>5</sup> It has long been

https://www.americanprogress.org/issues/women/news/2017/11/20/443139/not-just-rich-famous/.

<sup>&</sup>lt;sup>1</sup> Jocelyn Frye, Not Just the Rich and Famous: The Pervasiveness of Sexual Harassment across Industries Affects All Workers, Center for American Progress (November 2017),

<sup>&</sup>lt;sup>2</sup> Labor Force Statistics from the Current Population Survey, Bureau of Labor Statistics (January 2018), https://www.bls.gov/cps/cpsaat18.htm.

<sup>&</sup>lt;sup>3</sup> Fatima Goss Graves et al., *Women in Construction Still Breaking Ground*, National Women's Law Center 8 (June 2014), https://www.nwlc.org/sites/default/files/pdfs/final\_nwlc\_womeninconstruction\_report.pdf.

<sup>&</sup>lt;sup>4</sup> *Risks Facing Women in Construction*, New York Committee for Occupational Safety and Health 1 (November 2013), http://nycosh.org/wp-content/uploads/2014/09/Women-in-Construction-final-11-8-13-2.pdf.

<sup>&</sup>lt;sup>5</sup> Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs*, U.S. Equal Employment Opportunity Commission 16 (June 2016), https://www.eeoc.gov/eeoc/task force/harassment/upload/report.pdf.

clear that the magnitude of the problem in your industry should not be ignored, and I am hoping that the recent focus on this issue will provide the needed push to make real progress.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue and am seeking an update on efforts to prevent and address harassment in workplaces across the country.

As part of that effort, I am interested in the ongoing discussions, plans, and actions within the Associated General Contractors of America ("AGC") aimed at protecting employees and establishing an equal and harassment-free workplace. I request a briefing with my staff within the next three weeks to discuss any recent efforts you have undertaken to assess and address workplace harassment in your industry.

I also request the following information:

- 1. Any polling, surveys, or research the AGC has conducted in order to understand the scope of the problem within the industry;
- 2. Any research or actions the AGC has undertaken to assess and address risk factors specific to the industry;
- 3. Any surveys the AGC has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 4. Any steps the AGC has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 5. Any best practices the AGC has identified among its associated employers to accurately assess and address workplace harassment; and
- 6. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less of it.<sup>6</sup> Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the urgency it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter please contact Carly Rush or Joe Shantz at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

Patty-Murray United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions

<sup>&</sup>lt;sup>6</sup> Feldblum & Lipnic at 32.

STEPHEN E. SANDHERR, Chief Executive Officer



March 9, 2018

The Honorable Patty Murray Ranking Member Senate Committee on Health, Education, Labor, and Pensions United States Senate 428 Senate Dirksen Office Building Washington, DC 20510

Dear Ranking Member Murray:

The Associated General Contractors of America (hereinafter "AGC") thanks you for your interest in addressing harassment in the workplace. We appreciate the opportunity to provide industry insight on this important issue and highlight what we have been doing to assist our members in identifying and remedying harassment at the workplace.

AGC agrees that harassment at the workplace is a concern across all industries. For years we have been taking steps to address such concerns in the construction industry and help ensure our members' workplaces are free from harassment. Harassment of any kind has no place at the workplace and is counterproductive to AGC's diversity & inclusion and workforce development efforts.

As a reminder, AGC is the leading association for the non-residential construction industry, representing more than 27,000 firms, including over 6,500 of America's leading general contractors and over 9,000 specialty contracting firms. More than 11,500 service providers and suppliers are also associated with AGC, all through a nationwide network of 90 chapters. These firms, both union and open-shop, engage in the construction of buildings, shopping centers, factories, industrial facilities, warehouses, highways, bridges, tunnels, airports, water works facilities, waste treatment facilities, dams, water conservation projects, defense facilities, multi-family housing projects, municipal utilities and other improvements to real property.

AGC for decades now has been taking proactive steps to assist our members and provide resources to address workplace harassment. We currently offer our members the second edition of our harassment training video, "Diversity Rules: Harassment Prevention Training," which has been shared thousands of times with and by our members. The popular training is specifically developed for the construction industry and addresses issues such as sexual harassment (including sexual orientation and gender identity), age harassment, gender harassment (including family responsibilities), racial harassment and religious harassment. AGC also regularly provides webinars and dedicated presentations on harassment at our many conferences, including our 99th Annual Convention this February.

Many of AGC's member companies are federal contractors and, as you know, work with the federal government requires additional diversity initiatives. As such, AGC and the Office of Federal Contract Compliance (OFCCP) have developed a very strong and collaborative working relationship. We meet regularly and assist OFCCP in its mission to ensure that those who do business with the federal government comply with affirmative action requirements and do not discriminate on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin, disability, or status as

a protected veteran. On our end, AGC again provides a number of resources to our members to meet their affirmative action requirements, including; compliance manuals for construction, webinars, and regular conference presentations and workshops.

AGC also established a Diversity & Inclusion Council in 2016. The goal of the Council is to foster an environment both in the Association and in the industry as a whole that is welcoming and inclusive to all individuals regardless of one's background, opinions, perspectives, experiences, or ideas. A key strategy of the Council's is to identify barriers that prevent individuals from underrepresented groups from pursuing a career in construction – such as sexual harassment – and developing resources to eliminate those roadblocks. In 2018, AGC plans to launch toolkits to help members develop successful diversity & inclusion initiatives within their companies.

Additionally, the construction industry is facing a historic workforce crisis. As demand for projects has increased over the past decade and continues to do so, AGC members report that their greatest single challenge is finding qualified workers. A recent workforce survey<sup>1</sup> of construction firms reported that seventy percent are having a hard time filling hourly craft positions that represent a bulk of the construction workforce. As a result, many are changing the way they operate, such as focusing on recruitment and retention efforts. Seventy percent also reported that they make special efforts to specifically recruit and retain women. Workforce development is a priority for AGC and we believe that maintaining an unsafe or uncomfortable work environment for any worker is detrimental to our efforts and, as our workforce survey shows, our members agree.

Further, AGC chapters across the country are developing their own resources to help our members address workplace harassment. For example, the Carolinas AGC held a sexual harassment webinar for its members in February. Additionally, the AGC of Washington is launching in April a resource center called "Culture of Care, celebrate diversity & inclusion in construction" that includes best practices, education and support for creating a Culture of Care in their member companies. More than creating a harassment free workplace, Culture of Care helps member companies to make a cultural shift in the way we treat one another on the job.

Harassment of any form is unacceptable for today's construction industry that is focused on replenishing its workforce to meet increasing demand. To meet this demand, AGC and its member firms understand that all individuals must be welcomed into the industry and firms must foster a workplace that is safe, inclusive, and dedicated to helping its employees succeed. AGC has and will continue to promote and assist its members with their diversity & inclusion initiatives and requirements, along with any harassment challenges. We are always available as a resource to you and the committee.

Sincerely,



Stephen E. Sandherr

<sup>&</sup>lt;sup>1</sup> The Associated General Contractors of America, "2017 National Workforce Survey" (August 29, 2017), <u>https://www.agc.org/sites/default/files/Files/Communications/2017 Workforce Survey National.pdf</u>.

# THE BUSINESS CASE FOR DIVERSITY & INCLUSION IN THE CONSTRUCTION INDUSTRY

AGC DIVERSITY & INCLUSION COUNCIL



### AGC of America wishes to thank the following individuals for their contributions to this report:

### Rita Brown (Co-Author) Brynn Huneke (Co-Author)

Monica Bailey Angela Berry Roberson Amy Hall Kari Karst Doug Maibach Henry Nutt Frank Wilson

## AGC D&I Steering Committee Members

Frank Wilson (Chair) Rita Brown (Vice Chair) Monica Bailey Renee Banks Carole Bionda Rebecca Fountain Linda Graves Amy Hall Kari Karst Michael Kennedy Steve Lewis Doug Maibach Debra Nelson Henry Nutt Toni Lynn Pascal Angela Berry Roberson Dennis Walker

## AGC DIVERSITY STATEMENT

As the nation's leading construction industry trade association, AGC is committed to helping our member companies achieve their business goals. AGC provides the broadest menu of educational programs, member benefits and advocacy efforts to ensure that our member firms can successfully compete and that their employees have the opportunity to advance in their careers.

People of diverse backgrounds, opinions, perspectives, experiences, and ideas bring creativity and vitality that maximizes member engagement at all levels of the association. Fostering an environment that is welcoming and inclusive to all is essential to achieving our mission and better positions our members to contribute to the industry's current and future success.

As a construction industry leader, AGC fully embraces and spotlights diversity within its membership by providing leadership development and career advancement opportunities to all individuals who work in the construction industry, and business development and growth opportunities for all construction companies through education and networking.

## **DIVERSITY & INCLUSION COUNCIL**

The Diversity and Inclusion Council's (D&I) purpose is to provide a platform for members to engage and assist with developing and driving AGC's diversity and inclusion initiatives. The D&I Council is governed by a Steering Committee made up of AGC members and staff.

The Steering Committee serves as a resource for the association and meets regularly to discuss diversity and inclusion initiatives related to member recruitment and retention; workforce; barriers to entry; education; external outreach; marketing, branding and communication; and networking. In order to ensure the Steering Committee has both fresh ideas and continuity, members serve for four year, staggered terms.

## **EXECUTIVE SUMMARY**

The arguments presented for a company including diversity and inclusion as a key business strategy go beyond the moral imperative of "doing the right thing" and focus on the measurable and tangible financial results that can be achieved with effective implementation. As the population of the U.S. becomes more diverse, construction companies will need to reflect the changing demographics in order to find workers and retain a competitive edge.

An intentional and practical culture shift towards diversity and inclusion can positively impact company profitability by improving employee productivity, recruiting and retaining top talent, increasing innovation, and creating a safer workplace. Furthermore, collaborative partnerships with diverse entities provide opportunities to expand market share.

## Diversity & Inclusion: Driving Success

A McKinsey study found that companies in the top quartile for gender diversity are 21 percent more likely to have financial returns above national industry means and companies in the top quartile for racial and ethnic diversity are 33 percent more likely to have financial returns above national industry medians. This is a significant return on investment.

## Inclusion Drives a Positive Safety Culture

It is estimated that the total cost of fatal and nonfatal injuries to the construction industry is \$13 billion annually.

Documentation supports that workers who have not been integrated into a workplace culture, or who perceive themselves as "outsiders," are more likely to have accidents because of the increased psychological and emotional stress of being excluded.

Safety is the top priority for the construction industry. Leveraging the construction industry's already strong safety culture to build an equally strong culture of inclusion will help to ensure the safest possible job site.

## Supplier Diversity Programs Increase Market Share

Minority businesses are more likely to create jobs and employ workers in minority communities. With the right partnerships, construction companies can better serve these untapped markets.

### Exclusion Affects Employee Productivity, Resulting in a Loss of Revenue

Empowerment is key. Simply having a diverse workforce will not increase results if every member of the team is not given the opportunity to contribute their ideas. Excluding employees from contributing to decision-making can bring a loss in profits. An employee's productivity decreases significantly when they are excluded from contributing to the company's mission in a meaningful way and/or are subject to a hostile work environment.

### S Inclusion Mitigates Employee Turnover

Is employee retention important? Sixty-five percent of employees who experience exclusive behaviors said that they would leave, or seriously consider leaving if they found a different job. In an industry with an employee turnover rate of almost 25 percent and a skilled labor shortage, worker retention is key. Companies can gain a competitive edge in hiring and mitigate the impact of employee turnover through an authentic culture of inclusion.

### Diversity & Inclusion Drives Innovation

Innovation derives specific strengths from diverse team inputs. Homogeneous teams may unknowingly develop products, technology or services that are designed to benefit one type of user, limiting their customer base. In contrast, when employees think their company is committed to diversity and they feel included, there's an 83 percent increase in their ability to innovate. Innovation leads to better results. And results drive company performance and profit.

### **Resources**

AGC of America is developing effective tools and strategies to help companies adopt diversity and inclusion initiatives. AGC is invested in its members' success. These tools will facilitate leveraging existing assets and building capabilities to design, grow and build a strong foundation for your firm, and for our industry. To stay up-to-date on AGC's diversity and inclusion efforts, please contact Brynn Huneke, AGC of America's director of diversity & inclusion, at *brynn.huneke@agc.org.* 



At Mortenson, we believe inclusion and diversity is worth so much more than our bottom line. Inclusion and diversity is essential for our growth as a company and individual team member growth. Inclusive teams allow everyone a greater opportunity to contribute their ideas, which propels innovation, learning and creativity in our work."

-Mortenson Construction



### **INTRODUCTION**

The conventional understanding of diversity has evolved over time. What started as a focus on compliance of Equal Employment Opportunity and Affirmative Action requirements has moved into a critical and necessary part of doing business as a way to achieve greater financial success. Common definitions of diversity take into account "inherent" diversity traits—such as ability, age, ethnicity/race, gender, nationality, religious background, sexual orientation and socio-economic status. However, broader definitions are multi-dimensional and advance diversity as anything that makes us different from each other. These definitions also include "acquired" diversity traits—such as cultural, generational and gender smarts; cross-functional business knowledge; a global mindset; military experience and language skills.<sup>1</sup>

As the population of the U.S. becomes more diverse, construction companies will need to reflect the changing demographics in order to find workers and remain competitive. The arguments for a company including diversity and inclusion as a key business strategy go beyond the moral imperative of "doing the right thing" and focus on the measurable financial results that can be achieved.

Diversity and inclusion are strategically valuable in generating corporate/industry innovation, increasing profitability, and ensuring a positive and sustaining legacy of progress. Multi-dimensional diversity and inclusion programs encompass a wide range of activities that are designed to foster innovation and build workplace culture.

### THE TREND

Between 2010 and 2030, approximately 15 million people who self-identify as white—the predominate workforce of the construction industry—are expected to leave the U.S. labor force. By 2023, people identified as white will comprise less than half of the U.S. population under 30.<sup>2</sup> Currently, 63 percent of the construction industry is white.<sup>3</sup>

Furthermore, 55 percent of the U.S. population and 47 percent all workers are female, and are poised to universally disrupt the traditional equity bases. Women made up 2.7 percent of the workers in construction trades<sup>4</sup> and only 9.1 percent of the workers in the entire U.S. construction industry in 2017.<sup>5</sup>

The construction industry is lagging in reflecting these surging demographic changes.

By 2020, it is projected that more than 50 percent of businesses entering the construction industry will be minority-owned or female-owned.<sup>6</sup> As the demographics of the U.S. become more diverse, construction firms will need to see their workforce mirror the communities in which they work. By doing so, companies stand to gain a deeper understanding of their market and more effectively reach consumers.

Growing corporate vitality and strength demands adaptability and innovation. Innovative companies are constantly looking to gain a competitive advantage. One of the ways that employers can do so is by appealing to a more diverse demographic through an intentional culture shift and authentic commitment to diversity and inclusion.

### DIVERSITY & INCLUSION: DRIVING SUCCESS

The Massachusetts Institute of Technology [MIT] found that gender diverse companies report about 41 percent in increased revenue over a fiscal year than companies with less gender diversity.7 A McKinsey study found that companies in the top quartile for gender diversity are 21 percent more likely to have financial returns above national industry means and companies in the top quartile for racial and ethnic diversity are 33 percent more likely to have financial returns above national industry medians.<sup>8</sup> And, a 2015 Deloitte study showed that diverse companies had 2.3 times higher cash flow per employee over a three-year period than non-diverse companies did.9

These studies show that companies that embrace diversity and inclusion practices are more likely to recruit and retain top talent—mitigating the impact of the current labor shortage—reduce turnover by increasing employee satisfaction; increase employee productivity and innovation; grow market share; respond to market shifts; be more innovative; and reach new customer bases.

A Deloitte study showed that diverse companies had **2.3 times higher cash flow** per employee over a threeyear period than non-diverse companies did.<sup>9</sup>

This analogy applies to all types of diversity. Teams that are diverse are shown to be more creative, harder working and higher performing. This is because heterogeneous teams expect to hear new information and differing viewpoints and, therefore,



team members are better prepared for discussion and consensus building.<sup>10</sup>

A study by the Hackett Group found that companies with a strategic focus on supplier diversity have administrative costs comparable to those without supplier diversity programs, yet generate 133 percent greater return on the cost of procurement operations. That drives an additional \$3.6 million to their company's bottom line for every \$1 million in procurement operations costs. Additionally, companies with supplier diversity programs spend an average of 20 percent less on buying operations and employ less than half of the number of procurement staff than companies that do not have supplier diversity programs,<sup>11</sup> dispelling the myth that diversity & inclusion programs are a significant financial burden for companies.

Further, a 2016 Hackett Group study found that 76 percent of diverse suppliers meet expectations and an additional 23 percent of diverse suppliers exceed expectations, dispelling the myth that quality or overall performance suffers under a supplier diversity program.<sup>12</sup>

#### AGC MEMBER TESTIMONIAL:

We have more than tripled the Diversity and Inclusion contract dollars since the start of our program in 2005. We listen to diverse voices, which has created a well-rounded view of our company's respect toward others. This respect helps us to be approachable, identify alignment, and build relationships with diverse businesses. These relationships provide a more competitive bid process, which helps generate a more profitable bottom line."

### -W.M. Jordan Company

# INCLUSION DRIVES A POSITIVE SAFETY CULTURE

According to the Occupational Safety & Health Administration, a worker is injured on a job site every 18 seconds.<sup>13</sup> It is estimated that the total cost of fatal and nonfatal injuries to the construction industry is \$13 billion annually.<sup>14</sup>

Safety is the top priority for the construction industry. Creating an inclusive workplace is a documented way to ensure a safer work environment, driving a positive safety culture.

Research defines safety culture as "the attitudes, beliefs, perceptions and values that employees share in relation to safety."<sup>15</sup> Safety culture relates to both organizations and individuals since policies and procedures are established at the organizational level but are executed at the individual, or subculture, level. Subcultures serve a useful purpose by facilitating input from various groups lie. gender, ethnic origin, age, professional roles, etc.] to provide a diversity of perspectives and interpretations of emerging safety issues.

Workers who have not been integrated into an existing workplace culture are more likely to have accidents [partially attributable to the increased psychological and emotional stress of being excluded].<sup>16</sup> Cultural factors that may affect safety at work include: an employee's understanding of work and their relationship to their coworkers and employers; how they perceive dangers at work; how they adapt to those dangers; and how these understandings are similar and different from other groups of workers and the existing company culture.<sup>17</sup> Integrating workers into an existing culture can be a daunting endeavor. But, successful integration can be achieved if an employer understands these cultural differences and how they influence a worker's behavior on the job site, and utilizes them to change that behavior thus creating a safer work environment.

#### AGC MEMBER TESTIMONIAL:

The work we do is dangerous. That being said, safety is paramount at Aristeo. Giving each and every employee "Stop Work Authority" on job sites is one way inclusion has increased our safety performance. When on a site, anyone working on behalf of Aristo has the authority to stop the job if conditions are unsafe. This policy is embraced from Executive Management to those in every facet of the field."

-Aristeo Construction

Cultural differences are magnified when integrating immigrants into a workplace culture. Language barriers are one of the most frequently cited challenges between employers and immigrant workers<sup>18</sup> and, while important, understanding the other cultural barriers that exist for a particular immigrant population is vital to effective integration. For example, employers may group all Hispanic immigrants into one community and fail to consider the significant diversity that exists within the Hispanic population—such as country of origin, primary language, time spent living in the U.S., job- or non-job-related stress, education level, and construction experience.<sup>19</sup>

According to a fatality study commissioned by the Associated General Contractors of America, Hispanic workers accounted for 25 percent of all construction fatalities from 2010–2012, which is nearly equivalent to their employment proportion [24 percent] in the construction industry.20 Cultural differences determine how a worker responds to job site dangers, directly impacting the health and safety of these workers. An inclusive environment allows employers to learn about these cultural differences and develop effective strategies to integrate these workers into the existing company culture, therein improving the overall safety culture of the organization.

Sometimes the existing culture itself needs to change to be more inclusive. Construction is a prime example of an industry that can benefit from a culture change where a tradition of overt or exaggerated male toughness commonly referred to as "macho culture" can lead to flawed decision making when it comes to safety on a job site.<sup>21</sup> A participant in a University of Washington study stated, "... the macho thing that you get in construction. Fatigue's a good example...'I've been up for 47 hours and hey uh, I'm tired as hell...where you're really...you're basically drunk at that point. You're inefficient, you're unsafe, but there's this need to push through."<sup>22</sup>

This "macho culture" is detrimental to the health and safety of all workers and potentially the job site. Why is it particularly troublesome for a diverse workforce that includes women and older workers? The same University of Washington study found that women scored significantly higher than men on the perceived stress scale. Thus, the women in the study were significantly more likely to be injured at work in the past year.23 Additionally, this culture of male toughness can put unnecessary strain on a worker's body, especially as the worker ages. Older workers are at risk for more severe injuries and incur longer recovery times, including a greater risk of death according to the AGC fatality study.<sup>24</sup>

The dominance of male culture is evident in many aspects of the industry, particularly when looking at the availability and proper fit of personal protective equipment [PPE]. Historically, PPE has been designed based on measurements taken from male military recruits between 1950 and 1970.25 Consequently, the majority of safety clothing and equipment is not designed for a modern workforce that includes women, shortstatured men and individuals with unique body shapes. The University of Washington study revealed that although men and women had similar rates of PPE use, women were more likely to report their PPE not fitting properly, directly affecting safety.<sup>26</sup>

Case in point: a study by the National Institute for Occupational Safety and Health evaluated the fall protection harness system on 26 women and found that their harness did not pass fit-performance criteria in either the standing or suspended position on 40 percent of the women.<sup>27</sup> Also troublesome, women appear less likely to report ill-fitting PPE with management, with one third of those women citing "fear of being labeled by a complainer by coworkers" and another 20 percent citing "fear of layoff" as their reasons for not speaking up.<sup>28</sup>

With falls cited as the leading cause of death in the construction industry in 2016,<sup>29</sup> it is paramount that all workers on a construction site have access to properly fitting PPE. Further, a job site culture that allows workers to feel comfortable speaking up without fear of harassment or retaliation if proper-fitting PPE is not immediately available, is vital to safety. Cultivating a cultural shift that values universal collaboration where employees are encouraged to speak up intentionally creates a safer workplace.

Workers are more likely to voice their concerns when witnessing unsafe behavior or feeling pressure to conform to culture norms if a company has established a culture where every member of the team feels valued and heard. Leveraging the construction industry's already strong safety culture to build an equally strong culture of inclusion will help to ensure the safest possible job site.

### SUPPLIER DIVERSITY PROGRAMS INCREASE MARKET SHARE

The 2015 National Minority Supplier Development Council *Economic Impact Report* found that minority-owned and women-owned businesses produce more than \$400 billion in annual revenue and employ more than 2.2 million individuals.<sup>30</sup>

The Hackett Group found that companies that allocate at least 20 percent of their annual spending to supplier diversity programs can directly attribute 10 to 15 percent of their annual sales to those programs. Conversely, companies that allocate less than 20 percent of their annual spending on supplier diversity attribute less than five percent of their sales to their supplier diversity program.<sup>31</sup>

Community impact is key. Minority businesses are more likely to create jobs and employ workers in minority communities. These neighborhoods are ripe for development and, with the right partnerships with local minority-owned businesses and community groups, construction companies have the ability to serve these untapped markets through the construction of mixed-use development. According to a 2008 article in the Graziadio Business Review, thirty percent of inner city retail demand is unmet, equaling \$25 billion in unrealized sales.<sup>32</sup>

### EXCLUSION AFFECTS EMPLOYEE PRODUCTIVITY, RESULTING IN A LOSS OF REVENUE

The University of Houston's International Institute for Diversity and Cross Cultural Management found that 71 percent of employees reported being impacted by some type of exclusionary behavior an average of four times per year.<sup>33</sup> Exclusionary behaviors are any behavior that make an employee or colleague feel like they are not part of the group. These behaviors include: broken dignity entitlements, micro-inequities, corporate bullying and acts of incivility.<sup>34</sup> More details on exclusive behaviors can be found in Figure 1.

To explain how these behaviors contribute to a company's loss of profit over a year's time, review the following example based on the statistics reported above:

According to the University of Houston study, employees lose an average of 53 minutes per day for 2.5 days each week over a 7.8-week time period from being impacted by an exclusive behavior. This equates to approximately 17.2 hours of paid time lost per employee per incident. For a company of 100 employees, 71 percent say they are exposed to an exclusive behavior an average of four times per year (total of 284 incidents). Of those, 18 (25%) employees are impacted, resulting in lost time because of the incident. That's a total loss of 4,885 hours of productivity due to exclusive behaviors.

According to the Bureau of Labor Statistics,<sup>35</sup> the construction industry's average annual salary is \$58,816. Each employee's compensation averages \$225.46/day or \$28.18/ hour. So, a company's total loss in compensation each year due to a loss *in employee productivity would equal approximately* \$137,660.

Investment in a diverse workforce is simply the first step. Facilitating a collaborative workplace where every member of the team is given the opportunity to voice their ideas is fundamental to profitability.

### FIGURE 1: Exclusive Behaviors<sup>34</sup>

#### **Broken Dignity Entitlements**

Dignity entitlements are not a part of an employee's written contract, yet they are part of what employees expect and should receive in the workplace. Examples include: receiving negative feedback in a private manner, receiving recognition in proportion to their contribution, receiving a fair opportunity to compete for available jobs, being treated as unique individuals and not stereotypes.

#### **Micro-Inequities**

Micro-inequities are subtle forms of demeaning behaviors that rarely violate organizational policies, yet still make people feel violated. Examples include ignoring the existence of a colleague or consistently leaving one person of a team out of activities.

#### Acts of Incivility

A study by Brookings Institute identified behaviors that were evidenced as disrespectful and/or demeaning which undermined the dignityandself-esteem of employees and creating unnecessary suffering in the workplace. Examples include being blatantly rude, repeated unjustified criticism designed to demoralize, intentional disregard of a person's presence.

#### **Corporate Bullying**

Corporate bullying includes interpersonal behaviors in the workplace that can manifest in several ways and in several forms such as persistent and unjustified criticism or unfair allegations of incompetence.



### AGC MEMBER TESTIMONIAL:

D&I has helped with both recruitment and retention of our workforce. Our turnover of employees is about 8 percent, while industry turnover averages closer to 15 percent."

-Barton Malow Enterprises

# **INCLUSION MITIGATES** EMPLOYEE TURNOVER

The previously referenced University of Houston study found that 65 percent of those who experienced exclusionary behaviors said that they would leave, or seriously consider leaving if they found a different job.

According to a study done by the Center for American Progress, turnover costs in the construction industry can be as low as 16 percent for laborers or as high as 231 percent for executives. For purposes of this report, we will use the Center's average employee turnover cost, which is 21 percent of their salary.<sup>36</sup>

Referring back to the example above. Sixty-five percent, or 11 of the 18 individuals impacted by an exclusionary behavior incident, would likely quit. At an average construction salary of \$58,816, it costs an employer \$12,351 (21 percent)<sup>37</sup> for every employee who leaves. If those eleven individuals left, it would cost the company \$135,861 in employee turnover costs. That, on top of the \$137,660 lost in employee productivity, would cost the company a total of \$273,521 that can be directly attributed to a lack of inclusion.

### It costs an employer 21 percent [of an employee's salary] for every employee who leaves.

In an industry with an employee turnover rate of almost 25 percent and a skilled labor shortage, worker retention is key. Eighty percent of firms report difficulty filling hourly craft worker positions and 56 percent of firms report difficulty filling salaried positions according to an AGC study.<sup>38</sup> Glassdoor reports that 67 percent of job seekers rate diversity highly when evaluating companies and job offers.<sup>39</sup> Companies can gain a competitive edge in hiring and mitigate the impact of employee turnover through an authentic culture of inclusion.





Facilitating a diverse and inclusive work landscape is at the core for cultivating successful innovation. How? By stepping out of norms. Homogeneous teams may unknowingly develop products, technology or services that are designed to benefit one type of user, limiting their customer base. Investing the time and resources to develop diversity, the industry sparks invention outside the norm. It sparks true innovation.

Case in point: people who were wheelchair bound had an issue with the design of sidewalks throughout U.S. cities and towns prior to the 1970's. Before 1972, sidewalks did not include "curb cuts" to allow people who were dependant on a wheelchair to easily maneuver down a sidewalk. However, after the first curb cut was installed in Berkeley, California in 1972, city planners began to see the benefits not just to the disabled community, but to all members of the community. Parents with strollers, travelers with luggage, and others reap immediate benefits from curb cuts. In fact, a study conducted at a mall in Sarasota. Florida found that "nine out of ten unencumbered pedestrians go out of their way to use a curb cut."40

The Harvard Business Review found that a team who has at least one member who shares a client's ethnicity is 152 percent more likely to understand that client than a team without a member who shares the client's ethnicity.<sup>41</sup> Additionally, a Deloitte study found that when employees think their company is committed to diversity and they feel included, there's an 83 percent increase in their ability to innovate.<sup>42</sup>

Diversity—both acquired and inherent among leaders is critical for driving



innovation. According to a study by the Center for Talent Innovation, employees are 75 percent more likely to see their ideas make it to the marketplace if their company leaders possess these diversity traits.<sup>43</sup>

Diverse teams are more equipped to foster innovation. Innovation leads to better results. And results drive company performance and profit.

#### AGC MEMBER TESTIMONIAL:

We believe the key to innovation lies in bringing together a diverse group of individuals who each carry a different perspective into every interaction. It is by tapping into the skills and experience of all our talented team members that we find the pathway to innovation."

-Mortenson Construction

### CONCLUSION

Empirical evidence has proven the value of a diverse and inclusive work environment. Companies that want to cultivate or maintain a competitive advantage in the construction industry will recognize the merits of an authentic culture of diversity and inclusion.

An intentional and practical culture shift towards diversity and inclusion can positively impact company profitability by improving employee productivity, recruiting and retaining top talent, increasing innovation, and creating a safer workplace. Furthermore, collaborative partnerships with diverse entities provide opportunities to expand market share.

AGC of America is deeply invested in your success and is developing effective tools and strategies to help companies adopt diversity and inclusion initiatives. These tools will facilitate leveraging existing assets and building capabilities to design, grow and build a strong foundation for your firm, and for our industry.

To stay up-to-date on AGC's diversity and inclusion efforts, please contact Brynn Huneke at *brynn.huneke@agc.org*.

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<sup>18</sup> Ibid.

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# United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510–6300

June 28, 2018

James C. Greenwood President and Chief Executive Officer Biotechnology Innovation Organization 1201 Maryland Ave SW Washington, DC 20024

Dear Mr. Greenwood:

I write to you as head of the Biotechnology Innovation Organization (BIO) with deep concern regarding harassment in the workplace, particularly in light of the recent event sponsored by your member companies associated with the BIO International Convention, that have called into question the role that BIO plays in fostering industry antidiscrimination and harassment standards. Over the past year, stories of sexual harassment across all places of work have dominated national headlines and sparked a conversation about power dynamics, equality, and change in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. I hope and expect that in your position as the leader of the industry's trade group, you are taking steps to address concerns about misconduct among member companies and to ensure that your members' workplaces are free from harassment.

I am particularly concerned about events that took place earlier this month at BIO's International Convention. It was my understanding that BIO was undertaking efforts to ensure greater participation of women in the conference and entirely prevent all-male panels this year thanks to increased BIO attention to issues of inclusion. However, the convention featured 25 panels without a single female speaker, and men accounted for roughly 70 percent of the speakers and panelists at the convention.<sup>1</sup> The lack of female representation at the conference, even in light of panels specially geared toward women and their advancement, is disappointing and speaks to the larger issues of diversity and equal opportunity for advancement in the biotech industry.

<sup>1</sup> <u>https://www.bostonglobe.com/business/2018/05/31/biotech-biggest-showcase-lineup-light-female-speakers/ZfvNa9GgBF5OvlQLKhe3jO/story.html</u>

Additionally, the well-known and highest rated "must-attend" party associated with the convention, but not sponsored by BIO,<sup>2,3</sup> featured topless female dancers painted with the logos of party sponsors, including BIO member company Selexis.<sup>4</sup> This event has a highly concerning history of objectifying women and using culturally inappropriate themes, over the course of its multiple-year tenure associated with your convention and sponsored by your member companies. Though some party organizers defended the dancers as "artsy and edgy,"<sup>5</sup> the bottom line is that objectifying women and exploiting cultural traditions for the purposes of entertaining industry members devalues diversity and inclusion.

After the party, you and your Board Chairman,<sup>6</sup> as well as other industry leaders<sup>7,8</sup> spoke out against the event; however, I'm not aware of anything your organization and these industry leaders have done to ensure there are real consequences for sponsoring companies, nor used your leadership roles to address the broader workplace challenges in the biotechnology industry.

Over the past few years, industry leaders and companies have been called on to account for their actions and committed to doing so but little real progress appears to have been made.<sup>9</sup> I understand that BIO formed a diversity and inclusion council last year that released a set of principles on "workforce development, diversity, and inclusion (WDDI) for the biotechnology industry."<sup>10</sup> However, the council has yet to release industry standards for creating safe and equal workplaces.

Efforts to create such standards must especially consider some of biotech's most vulnerable workers: medical researchers. Unacceptably, one in three female biomedical researchers report sexual harassment.<sup>11</sup> Harassers often can be close supervisors who have the power to help or hurt a young scientist's ability to establish themselves in the research field. As a result, these professional costs make it incredibly difficult for individuals to report harassment in research settings. It is past time for biotech to be a leader and to consider ways to rid all of its workplaces—from the corporate offices to academic medical laboratories—from harassment and discrimination.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue. Actions taken with the goal of achieving greater gender balance in the biotech industry, from encouraging young girls to

<sup>&</sup>lt;sup>2</sup><u>https://www.facebook.com/pabnabevent/photos/a.523700737769307.1073741828.523680027771378/52650009748</u> <u>9371/?type=3&theater</u>

http://archive.boston.com/business/technology/innoeco/2012/06/the\_bio\_party\_list\_which\_event.html

<sup>&</sup>lt;sup>3</sup> http://archive.boston.com/business/technology/innoeco/2012/06/the\_bio\_party\_list\_which\_event.html

<sup>&</sup>lt;sup>4</sup> <u>https://www.bloomberg.com/news/articles/2018-06-13/after-biotech-party-features-topless-dancers-firms-pull-support</u>

<sup>&</sup>lt;sup>5</sup> <u>http://fortune.com/2018/06/14/biotech-conference-party-topless-dancers/</u>

<sup>&</sup>lt;sup>6</sup> https://www.statnews.com/2018/06/12/topless-dancers-bio-convention-pabnab/

<sup>&</sup>lt;sup>7</sup> https://www.massbio.org/news/recent-news/massbio-statement-on-the-party-at-bio-not-associated-with-bio-pabnab-decision-to-feature-topless-dancers-143394

<sup>&</sup>lt;sup>8</sup> https://www.biospace.com/article/another-biotech-conference-another-party-involving-half-naked-womencovered-in-corporate-logos/

<sup>&</sup>lt;sup>9</sup> <u>https://www.wgbh.org/news/local-news/2018/06/14/woman-calls-out-boston-biotech-party-for-topless-dancers</u> <sup>10</sup> <u>https://www.bio.org/diversity</u>

<sup>&</sup>lt;sup>11</sup> https://www.statnews.com/2016/05/17/sexual-harassment-female-researchers/

participate in STEM education to efforts like the WDDI standards, should not be undercut by issues of harassment and culture. Over the past few months, I have asked industry associations for an update on efforts to prevent and address harassment in workplaces across the country. As part of that effort, I am interested in the ongoing discussions, plans, and actions within BIO aimed at protecting employees and establishing an equal and harassment-free workplace. While we understand that BIO does not control its member companies, your trade organization represents members' interests, and their actions impact your reputation and reflect on the industry as a whole. I request a briefing with my staff within the next three weeks to discuss recent efforts you have undertaken to assess and address workplace harassment in your industry. I also request the following information:

- 1. Any polling, surveys, or research BIO has conducted in order to understand the scope of the problem within the industry;
- 2. Any research or actions BIO has undertaken to assess and address risk factors specific to the industry;
- 3. Any surveys BIO has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 4. Any steps BIO has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 5. Any best practices the BIO has identified among its associated employers to accurately assess and address workplace harassment; and
- 6. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less. Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the urgency it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter please contact Carly Rush or Laura Aguilar at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely, ally

Patty Murray United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions

cc: John Maraganore, CEO, Alnylam Pharmaceuticals, Inc., BIO Board Chair



James C. Greenwood President & CEO

July 18, 2018

The Honorable Patty Murray 154 Russell Senate Office Building United States Senate Washington, DC 20510

Dear Senator Murray:

I received your letter of June 28<sup>th</sup> inquiring about BIO's sexual harassment policies and expressing concerns about a party that, though not affiliated with BIO, took place around the time of BIO's International Convention in Boston last month.

Let me state at the outset that I share your commitment to zero tolerance of harassment and I believe that BIO is very much a leader in promoting diversity and tolerance in the workplace. Indeed, we have developed policies and strategies that others should seek to follow – not only for our association, but for our industry and other industries more broadly.

BIO's Employee Handbook, Section 3.2 entitled "Policy Against Harassment and Policy Against Sexual Harassment," clearly states that BIO employees are entitled to work in an environment free from harassment or hostile behavior. We post notices of this policy on our employee bulletin boards and provide access to an anonymous hotline for employees or others to report any alleged violations or complaints.

To reinforce our commitment, BIO requires all of our staff to be regularly trained to understand what constitutes sexual harassment and that it is not tolerated. These fundamentals have been taught to each new hire as part of our on-boarding process; and we appropriately and swiftly enforce our policy. We also require all staff to be trained about and understand how unconscious bias can negatively impact the workplace.

On a broader industry level, more than two and a half years ago BIO's Board of Directors initiated a Board-level Workplace Development, Diversity and Inclusion (WDDI) Committee. This Committee developed a set of forward-leaning principles to guide the industry's commitment to progress in this area, and its Board members and I, along with the rest of BIO's senior management, are deeply committed to them. I am not aware of any other life science or health trade association in Washington, D.C., that has launched such a Board-level committee or committed to such solid principles, to wit:

"The Biotechnology Innovation Organization (BIO) considers diversity to be essential to the success of the biotechnology industry and commits itself to, and encourages the industry to follow, these Principles in workforce development, diversity and inclusion:

"1. BIO believes that our members' products and services should be intended to address the needs of a diverse population.

"2. BIO believes that diversity in all aspects of business operations will optimize the continued growth and success of the biotechnology industry.

"3. BIO will champion workforce development, diversity and inclusion (WDDI) as a way to attract, develop and retain the employee talent pool within the globally competitive biotechnology industry.

"4. BIO will lead by example and be outward-facing in our diversity efforts, and will incorporate diversity and inclusion into all aspects of BIO operations: in communications and membership engagement, at BIO events through programming and education, and in the composition of the Board of Directors and its committees.

"5. BIO will engage with external partners to broaden the reach and incorporation of diversity throughout the biotechnology ecosystem."

In addition to these broad principles, the WDDI Committee developed, and our Board approved, the following priority goals:

- Increase the representation of diverse candidates at the functional leader and C-Suite level by each CEO committing to review their talent process to assure diverse representation of key talent at all levels, and implementing sponsorship for new developmental experience for diverse candidates.
  - Goal: As an industry, have 50 percent representation of women at functional leader and C-Suite by 2025 (improving from ~25 percent currently)
- Increase representation of diverse Board members by each CEO committing to assure diverse candidate slates for Board member interviews, and BIO committing to actions designed to accelerate the identification and development of diverse candidates for Board roles.
  - Goal: As an industry, have 30 percent female Board membership in Biotech by 2025 (improving from 10 percent currently). While baseline metrics are available for gender, the committee will work to determine baseline metrics for race and LGBTQ in 2018.

BIO is launching several activities aimed at promoting these goals throughout the nearly 1,000 companies included among our membership. As just some examples, I am pleased to attach several articles from the members of our WDDI Committee that highlight the biotech diversity leadership gap and specific actions that can be taken by our member companies. As an industry, we are committed to making positive change.

I also want to address some concerns you mentioned in your letter. With respect to the party to which your letter refers, I want to clarify that this party did not occur at the BIO International Convention. It occurred elsewhere during one of the evenings on which our official Convention programming featured Diana Ross. Its very name, "Party At BIO, Not Associated with BIO," demonstrates it is not affiliated with BIO. We had nothing to do with this party. The behavior of its organizer should not reflect upon BIO's solid and demonstrated commitment to foster anti-discrimination and anti-harassment standards.

That being said, I do not approve of the activities that took place at this event, and I am troubled by how it reflected poorly on our industry and undermined the tremendous, positive efforts BIO has been making to promote diversity and inclusion.

When we were made aware of this event in the days following its occurrence, BIO's Board Chair and I both immediately condemned the behavior to which you have referred. I called the party organizer – with whom BIO has no relationship – and expressed my grave concerns. I also spoke with BIO members that sponsored the event and conveyed the same message. Our Board Membership Committee has made clear that companies that sponsor such events in the future will be subject to immediate membership review.

Regarding the BIO's International Convention, you are correct in your understanding that BIO is undertaking efforts to ensure greater participation of women at all of our events and activities. The BIO International Convention attracted more than 18,000 attendees this year. We hosted 860 speakers across 181 panels over four days. Approximately 40% of the speakers were women – a 30% increase over the previous year, which was a direct result of our aggressive work to recruit key subject matter experts of diverse genders. And 87% of all sessions had, at least, one female speaker.

Like you, we strongly believe that our efforts to diversify our presenters should not be limited to gender, but also must include race, ethnicity, and sexual orientation. In fact, at our major plenary session this year, I interviewed *Good Morning America* host Robin Roberts, and we had a very frank conversation about gender, race, and LGBT inclusion before an audience of thousands.

Having 40% of our Convention speakers be women, while an improvement, is not satisfactory to BIO. But it highlights the fact that there needs to be more diversity in senior corporate positions, from which speaker panels often are drawn – regardless of industry sector. In order to truly promote diversity in the biotechnology industry and bring about real change, we are not content to simply increase female speakers at events. Rather, we must work together to enhance the number of women, minorities, and LGBTQ individuals in the C-suites and boards of biotechnology companies. Towards this end, we are in the process of reaching out to and organizing leadership-ready women who are available for board positions within our member companies. BIO and our WDDI Committee will continue to work to improve diversity among speakers and panelists at our events by championing improved diversity among the industry's leadership more broadly.

I also want to thank you for your concerns about STEM education. We share that concern and our industry is working to support the advancement of girls and young women in this regard. In the United States, even though women account for 60% of total college graduates, they are woefully under-represented among graduates with STEM degrees, particularly in computer sciences and engineering. Similarly, only four countries in Europe could claim in 2013 to have at least 15 percent of all STEM graduates be female. Not only are these statistics not getting better, but they grew worse in the 10-year period from 2004 to 2014 for many countries worldwide. And there is an even smaller percentage of women with STEM degrees who go on to pursue STEM careers.

To help address this longstanding problem, the Biotechnology Institute – which is supported by BIO and on whose board I sit – has been a great proponent of young women in STEM, more specifically "bioSTEM," through its BioGENEius program. This program highlights and rewards research excellence across the nation by talented high school biotech innovators, and I am pleased to note that 49.5% of selected students over the years have been women of diverse cultural ethnicity. All of these facts and activities clearly demonstrate BIO's commitment to promote an industry that is diverse and inclusive, and that make all genders and sexual and racial minorities feel welcome and valued in the workplace and at our events. As BIO's CEO, it is important for me to emphasize, however, the proper role of an industry association with respect to such issues. BIO should be a leader in encouraging best practices within the industry and in condemning behavior that falls short of these ideals – and, as shown above, we are. But a trade association has both practical and legal limits on its ability to police or enforce its members' independent business conduct (whether on anti-harassment matters or otherwise).

At BIO, we remain committed to our mission of healing, fueling, and feeding the world with some of our nation's greatest ingenuity and innovations. We fundamentally believe that we serve patients and other customers who are diverse, representing all genders, races, religions, and orientations. We thus are fully committed to fostering an industry that embraces diversity and inclusion as a core part of meeting these needs.

I appreciate your commitment to these issues and would be pleased to discuss these matters at your convenience.

Sincerely,

James C. Greenwood President and CEO

 1201 Maryland Avenue SW
 202.9

 Suite 900
 202.4

 Washington DC 20024
 bio.or

202.962.9200 P 202.488.6307 F bio.org

#### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

MICHAEL B. ENZI, WYOMING RICHARD BURR, NORTH CAROLINA JOHNNY ISAKSON, GEORGIA RAND PAUL, KENTUCKY SUSAN M. COLLINS, MAINE BILL CASSIDY, M.D., LOUISIANA TODD YOUNG, INDIANA ORRIN HATCH, UTAH PAT ROBERTS, KANSAS LISA MURKOWSKI, ALASKA TIM SCOTT, SOUTH CAROLINA PATTY MURRAY, WASHINGTON BERNARD SANDERS (II), VERMONT ROBERT P. CASEY, JR., PENNSYLVANIA MICHAEL F. BENNET, COLORADO TAMMY BALDWIN, WISCONSIN CHRISTOPHER S. MURPHY, CONNECTICUT ELIZABETH WARREN, MASSACHUSETTS TIM KAINE, VIRGINIA MARGARET WOOD HASSAN, NEW HAMPSHIRE TINA SMITH, MINNESOTA DOUG JONES, ALABAMA

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http://help.senate.gov

# United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510-6300

February 7, 2018

Mr. Thomas J. Donohue President and Chief Executive Officer U.S. Chamber of Commerce 1615 H Street, NW Washington, DC 20062

Dear President Donohue:

I write to your chamber with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated the headlines and sparked a national conversation about change, power dynamics, and equality in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. Although we are seeing headlines about powerful and famous people being called to account for their actions, we are seeing far less action in industries outside of the spotlight. Therefore, I hope and expect that you are taking steps to address concerns about misconduct in your industry and to ensure your members' workplaces are free from harassment.

Workplace sexual harassment is all too common, and the Chamber of Commerce has a responsibility to protect the employees who work for the businesses it represents. According to the Equal Employment Opportunity Commission ("EEOC")'s Task Force on the Study of Harassment in the Workplace report, an estimated 60 percent of women across our nation's workforce experience unwanted sexual attention, sexual coercion, sexually crude conduct, or sexist comments in the workplace.<sup>1</sup> In fiscal year 2015, the EEOC received 28,000 charges from private sector employees or state and local government employees alleging harassment.<sup>2</sup> Forty-five percent of these alleged harassment complaints were partly or wholly on the basis of sex.<sup>3</sup> In addition, 34 percent were partly or wholly based on race, 19 percent on disability, 15 percent on age; 13 percent on national origin; and 5 percent on religion.<sup>4</sup>

As shocking as these numbers are, they likely underestimate the rate of sexual harassment because employees often stay silent out of fear of retaliation. Unfortunately, these fears are not unfounded. One study found that 75 percent of employees who reported workplace misconduct did indeed face some form of professional retaliation.<sup>5</sup> The EEOC estimates that 85 percent of all workers who are subjected to harassment never file a formal legal charge, and 70 percent of all workers never file a complaint

<sup>&</sup>lt;sup>1</sup> Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs*, U.S. Equal Employment Opportunity Commission 9-10 (June 2016), https://www.eeoc.gov/eeoc/task force/harassment/upload/report.pdf.

<sup>&</sup>lt;sup>2</sup> Feldblum & Lipnic at 6.

<sup>&</sup>lt;sup>3</sup> Feldblum & Lipnic at 7.

<sup>&</sup>lt;sup>4</sup> Feldblum & Lipnic at 7.

<sup>&</sup>lt;sup>5</sup> Feldblum & Lipnic at 16.

internally.<sup>6</sup> It has long been clear that the magnitude of the problem in your industry should not be ignored, and I am hoping that the recent focus on this issue will provide the needed push to make real progress.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue and am seeking an update on efforts to prevent and address harassment in workplaces across the country.

As part of that effort, I am interested in the ongoing discussions, plans, and actions within the U.S. Chamber of Commerce ("Chamber") aimed at protecting employees and establishing an equal and harassment-free workplace. I request a briefing with my staff within the next three weeks to discuss any recent efforts you have undertaken to assess and address workplace harassment in your industry.

I also request the following information:

- 1. Any polling, surveys, or research the Chamber has conducted in order to understand the scope of the problem within the industry;
- 2. Any research or actions the Chamber has undertaken to assess and address risk factors specific to the industry;
- 3. Any surveys the Chamber has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 4. Any steps the Chamber has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 5. Any best practices the Chamber has identified among its associated employers to accurately assess and address workplace harassment; and
- 6. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less of it.<sup>7</sup> Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the urgency that it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter you can contact Carly Rush or Joe Shantz at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

Patty Murray United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Health, Education, Labor and Pensions Committee

<sup>&</sup>lt;sup>6</sup> Feldblum & Lipnic at 16.

<sup>&</sup>lt;sup>7</sup> Feldblum & Lipnic at 32.

### CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA

THOMAS J. DONOHUE President and Chief Executive Officer 1615 H Street, N.W. Washington, D.C. 20062-2000

March 1, 2018

Senator Patty Murray Ranking Member, Senate Committee on Health, Education, Labor, and Pensions 428 Senate Dirksen Office Building Washington, DC 20510

Dear Senator Murray:

I'm writing to thank you for your recent letter regarding sexual harassment in the workplace and to assure you that the U.S. Chamber of Commerce shares your concern. Harassment or sexism of any kind runs counter to our nation's laws and to the moral decency that binds us together as citizens and ensures the successful functioning of our free enterprise economy.

In recent months, our nation has confronted the stark reality of sexual harassment thanks to the courageous victims who have come forward to tell their personal stories. These women have done a great service to our country by shining a light on a widespread problem that has rarely received the attention it deserves. As a result, employers of every kind have engaged in conversations with staff, reassessed their policies, and taken steps to protect victims and prevent further offenses.

The U.S. Chamber will continue to make clear that all businesses—and all citizens share a responsibility to act with decency and treat all colleagues with respect. This responsibility is both moral and legal, and I believe it is also integral to the success of any business. Women bring their talents and skills to work at American businesses every day. Our economy could not function without them. Employers that fail to foster a workplace culture of empowerment for female employees will miss out on crucial talent and find it increasingly difficult to maintain a competitive edge.

I want to thank you again for your letter, as well as your commitment to addressing this very serious problem. The U.S. Chamber looks forward to continuing our longstanding partnership with the Senate Committee on Health, Education, Labor, and Pensions on all issues of importance to American businesses and workers.

Sincerely,	,	

#### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

MICHAEL B. ENZI, WYOMING RICHARD BURR, NORTH CAROLINA JOHNNY ISAKSON, GEORGIA RAND PAUL, KENTUCKY SUSAN M. COLLINS, MAINE BILL CASSIDY, M.D., LOUISIANA TODD YOUNG, INDIANA ORRIN HATCH, UTAH PAT ROBERTS, KANSAS LISA MURKOWSKI, ALASKA TIM SCOTT, SOUTH CAROLINA PATTY MURRAY, WASHINGTON BERNARD SANDERS (II), VERMONT ROBERT P. CASEY, JR., PENNSYLVANIA MICHAEL F. BENNET, COLORADO TAMMY BALDWIN, WISCONSIN CHRISTOPHER S. MURPHY, CONNECTICUT ELIZABETH WARREN, MASSACHUSETTS TIM KAINE, VIRGINIA MARGARET WOOD HASSAN, NEW HAMPSHIRE TINA SMITH, MINNESOTA DUGU JONES, ALABAMA

DAVID P. CLEARY, STAFF DIRECTOR EVAN SCHATZ, DEMOCRATIC STAFF DIRECTOR http://help.senate.gov

# United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510–6300

February 7, 2018

Mr. Daniel V. Yager President and Chief Executive Officer The Association of Chief Human Resource Officers 1100 13<sup>th</sup> Street NW, Suite 850 Washington, DC 20005

Dear President Yager:

I write to your association with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated the headlines and sparked a national conversation about change, power dynamics, and equality in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. Although we are seeing headlines about powerful and famous people being called to account for their actions, we are seeing far less action in industries outside of the spotlight. Therefore, I hope and expect that you are taking steps to address concerns about misconduct in your industry and to ensure your members' workplaces are free from harassment.

Workplace sexual harassment is all too common, and human resource professionals have a responsibility to protect the employees they oversee. According to the Equal Employment Opportunity Commission (EEOC)'s Task Force on the Study of Harassment in the Workplace report, an estimated 60 percent of women across our nation's workforce experience unwanted sexual attention, sexual coercion, sexually crude conduct, or sexist comments in the workplace.<sup>1</sup> In fiscal year 2015, the EEOC received 28,000 charges from private sector employees or state and local government employees alleging harassment.<sup>2</sup> Forty-five percent of these alleged harassment complaints were on the basis of sex. Thirty-four percent were on the basis of race, 19 percent were on the basis of disability, 15 percent were on the basis of age; 13 percent were on the basis of national origin; and five percent were on the basis of religion.<sup>3</sup>

As shocking as these numbers are, they likely underestimate the rate of sexual harassment because employees often stay silent out of fear of retaliation. Unfortunately, these fears are not unfounded. One study found that 75 percent of employees who reported workplace misconduct did indeed face some form of professional retaliation.<sup>4</sup> The EEOC estimates that 85 percent of all workers who are subjected to harassment never file a formal legal charge, and 70 percent of all workers never file a complaint internally.<sup>5</sup> It has long been clear that the magnitude of the problem in your industry should not be

<sup>&</sup>lt;sup>1</sup> Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs*, U.S. Equal Employment Opportunity Commission 9-10 (June 2016), https://www.eeoc.gov/eeoc/task force/harassment/upload/report.pdf.

<sup>&</sup>lt;sup>2</sup> Feldblum & Lipnic at 6.

<sup>&</sup>lt;sup>3</sup> Feldblum & Lipnic at 7.

<sup>&</sup>lt;sup>4</sup> Feldblum & Lipnic at 16.

<sup>&</sup>lt;sup>5</sup> Feldblum & Lipnic at 16.

ignored, and I am hoping that the recent focus on this issue will provide the needed push to make real progress.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue and am seeking an update on to prevent and address harassment in workplaces across the country.

As part of that effort, I am interested in the ongoing discussions, plans, and actions within The Association of Chief Human Resource Officers ("Association") aimed at protecting employees and establishing an equal and harassment-free workplace. I request a briefing with my staff within the next three weeks to discuss any recent efforts you have undertaken to assess and address workplace harassment in your industry.

I also request the following information:

- 1. Any polling, surveys, or research the Association has conducted in order to understand the scope of the problem within the industry;
- 2. Any surveys the Association has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 3. Any steps the Association has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 4. Any best practices the Association has identified among its associated employers to accurately assess and address workplace harassment; and
- 5. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less of it.<sup>6</sup> Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the urgency it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter please contact Carly Rush or Joe Shantz at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

Patty Mana PattyMurray

Patty Murray United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions



February 14, 2018

The Honorable Patty Murray Unites States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions 154 Russell Senate Office Building Washington DC 20510

### Dear Senator Murray:

Thank you for reaching out to us with your February 7, 2018 letter on the importance of creating workplaces that are free from harassment. It is a topic of great importance to our members.

As the leading organization for Chief Human Resources Officers at large companies (i.e., firms ranging from 5,000 employees to those in the six figures, with revenue of \$3 billion and above), our members have long recognized the fundamental role that an inclusive culture plays in enabling their respective organizations to attract, motivate, and develop the caliber of talent needed. As such, they take this issue very seriously, and their efforts go well beyond robust policies and mechanisms to ensure legal compliance. From setting clear expectations throughout their organizations by the "tone at the top" established by their leaders, to targeted training, as well as a range of employee feedback and listening initiatives, our members take proactive steps to ensure that their companies are fostering positive and respectful cultures, free from any forms of discrimination.

Having zero tolerance for any form of harassment is not only the right thing to do, it is also critical to enabling a company to achieve its objectives. In the highly competitive talent marketplace, as was emphasized in our recent Workplace 2020 report "Making the Workplace Work," our research underscored how important diversity is to fostering an engaging workplace that talented people of all types and backgrounds are expecting of the companies for which they choose to work. Our members know that one way this has been driven is through the expansion of not only the overall number of women in their companies, but also in the roles they assume, and their presence at all levels of the organization.

While our Association has a public policy focus, we also provide a forum for our members to regularly share best practices and discuss topical issues. In that regard, your letter is very timely as we will be holding our Annual Chief Human Resource Officer Summit on March 9-10, preceded by our Board of Directors meeting. The importance of fostering diversity and inclusion and ensuring a safe and respectful workplace is already slated to be a featured topic of discussion at both sessions. In addition, we have just sent out our annual member survey, which includes a number of questions regarding this issue. Following our Summit, I would be happy to meet with you and your staff to share our survey results and learnings from the Summit.

We share your commitment to addressing this serious problem, and look forward to meeting and continuing the dialogue.

Sincerely,

Daniel V. Yager President and Chief Executive Officer Senator Murray February 14, 2018 Page 2

cc: The Honorable Lamar Alexander, United States Senator Chairman, Senate Committee on Health, Education, Labor, and Pensions

Mirian Graddick-Weir, Chair, HR Policy Association Executive Vice President, Human Resources, Merck & Co., Inc.

### Excerpt from 2018 Annual Chief Human Resource Office Survey Conducted by HR Policy Association

Which of the following do you believe are the most significant factors that need to be addressed regarding sexual harassment in any workplace (check all that apply):

- 91% Ensuring that sexual harassment victims are not inhibited from bringing their complaints to the attention of appropriate company officials
- 73% Providing greater representation of women at all levels of the organization
- 65% Workplace cultural factors involving gender relationships
- 48% Strengthening company policies intended to prevent sexual harassment
- 46% Strengthening company procedures intended to remedy sexual harassment complaints
- 26% Societal factors involving gender relationships
- 8% Strengthening government laws and procedures intended to protect against sexual harassment in the workplace
- 4% Other

#### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

MICHAEL B. ENZI, WYOMING RICHARD BURR, NORTH CAROLINA JOHNNY ISAKSON, GEORGIA RAND PAUL, KENTUCKY SUSAN M. COLLINS, MAINE BILL CASSIDY, M.D., LOUISIANA TODD YOUNG, INDIANA ORRIN HATCH, UTAH PAT ROBERTS, KANSAS LISA MURKOWSKI, ALASKA TIM SCOTT, SOUTH CAROLINA PATTY MURRAY, WASHINGTON BERNARD SANDERS (II), VERMONT ROBERT P. CASEY, JR., PENNSYLVANIA MICHAEL F. BENNET, COLORADO TAMMY BALDWIN, WISCONSIN CHRISTOPHER S. MURPHY, CONNECTICUT ELIZABETH WARREN, MASSACHUSETTS TIM KAINE, VIRGINIA MARGARET WOOD HASSAN, NEW HAMPSHIRE TINA SMITH, MINNESOTA DOUG JONES, ALABAMA

DAVID P. CLEARY, STAFF DIRECTOR EVAN SCHATZ, DEMOCRATIC STAFF DIRECTOR http://help.senate.gov United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510–6300

May 25, 2018

Michael Beckerman President and Chief Executive Officer The Internet Association 1333 H Street NW 12<sup>th</sup> Floor, West Washington, DC 20005

Dear Mr. Beckerman:

I write to your association with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated the headlines and sparked a national conversation about change, power dynamics, and equality in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. Last year we saw headlines about leaders in the technology sector who were called to account for their actions.<sup>1</sup> I hope and expect that you have begun taking steps to address concerns about misconduct in your industry and to ensure that your members' workplaces are free from harassment.

According to the 2015 survey of 200 senior-level women in the technology sector, titled "The Elephant in the Valley," 60 percent of respondents reported receiving unwanted sexual advances while at work. One in three respondents have feared for their personal safety because of work-related circumstances, and 60 percent of those who ended up reporting sexual harassment were not satisfied with the course of action taken.<sup>2</sup> What's more, the pervasiveness of harassment appears to be endemic to the tech sector. According to one survey, employees in the tech industry reported unwanted sexual attention at rates nearly two times greater than tech employees in other industries.<sup>3</sup>

While high profile cases in the tech industry have helped raise awareness of the crisis of sexual harassment, these accounts likely underestimate the magnitude of sexual harassment pervasive throughout the tech industry. Unfortunately, in the U.S. today women hold only 25 percent of all computing jobs, and women often do not report harassment out of fear of retaliation that may negatively impact their earnings or their ability to keep their job.<sup>4</sup> The EEOC estimates that 85 percent of all workers who are subjected to harassment never file a formal legal charge, and 70 percent of all workers

<sup>&</sup>lt;sup>1</sup> Patrick May, Silicon Valley figures get swept up in the harassment crisis, Mercury News (Dec. 7, 2017),

https://www.mercurynews.com/2017/12/06/silicon-valley-figures-get-swept-up-in-the-unfolding-sexual-harassment-crisis/. <sup>2</sup> Trae Vassallo et al., *Elephant in the Valley*, https://www.elephantinthevalley.com/.

<sup>&</sup>lt;sup>3</sup> Allison Scott et al., *Tech Leavers Study*, Kapor Center for Social Impact (April 27, 2017), https://www.kaporcenter.org/wp-content/uploads/2017/08/TechLeavers2017.pdf.

<sup>&</sup>lt;sup>4</sup> Catherine Ashcraft, Brad McLain, and Elizabeth Eger, *Women in Tech: The Facts 2016 Update*, National Center for Women & Information Technology, (May 13, 2016)

https://www.ncwit.org/sites/default/files/resources/womenintech\_facts\_fullreport\_05132016.pdf.

never file a complaint internally.<sup>5</sup> It has long been clear that the magnitude of the problem in your industry should not be ignored, and I am hoping that the recent focus on this issue will provide the needed push to make real progress.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue and am seeking an update on efforts to prevent and address harassment in workplaces across the country. As part of that effort, I am interested in the ongoing discussions, plans, and actions within the Internet Association aimed at protecting employees and establishing an equal and harassment-free workplace. I request a briefing with my staff within the next three weeks to discuss efforts you have undertaken to assess and address workplace harassment in your industry.

I also request the following information:

- 1. Any polling, surveys, or research the Internet Association has conducted in order to understand the scope of the problem within the industry;
- 2. Any research or actions the Internet Association has undertaken to assess and address risk factors specific to the industry;
- 3. Any surveys the Internet Association has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 4. Any steps the Internet Association has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 5. Any best practices the Internet Association has identified among its associated employers to accurately assess and address workplace harassment; and
- 6. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less.<sup>6</sup> Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the urgency it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter please contact Carly Rush or Laura Aguilar at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

Patty Murray United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions

<sup>6</sup> Id. at 32.

<sup>&</sup>lt;sup>5</sup> Chai R. Feldblum & Victoria A. Lipnic, Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs, U.S. Equal Employment Opportunity Commission 16 (June 2016),

https://www.eeoc.gov/eeoc/task\_force/harassment/upload/report.pdf.



July 10, 2018

The Honorable Patty Murray 154 Russell Senate Office Building Washington, D.C. 20510

Dear Senator Murray,

Thank you for your letter expressing concern regarding harassment in the workplace. The work that you and the Senate Committee are conducting is extremely important as Americans address the issues to make the workplace more equitable and inclusive.

This issue is pervasive across industries and a comprehensive solution will require a momentous shift in societal behavior, increased peer and bystander support, and evidence-based policies in the workplace. Internet Association (IA) and its members take workplace harassment seriously, and I look forward to sharing some of the industry's work and leadership to address the problem.

IA considers inclusion in the workplace an important public policy issue. IA hired a director of diversity and inclusion policy in April to spearhead these efforts and work with IA members to increase diversity and inclusion in the internet industry. Industry efforts to eliminate sexual harassment are part of this work.

IA members address this issue in a number of ways within their companies. Several IA members established standard sexual harassment policies that could become an industry-wide standard. Many publish their entire harassment policy on their websites in order to increase transparency and assist smaller companies with developing their policies as well.

Training our workforce is also essential to tackling this important problem. Many IA member companies require managers to attend a mandatory sexual harassment training, which includes a comprehensive review of policies and all applicable laws. Members have introduced initiatives to improve employee training, including sharing materials on sexual assault awareness and hosting events on sexual assault prevention across the country.

Some IA members also created Critical Response Lines where their Trust & Safety teams are available 24/7 to assist with any safety-related incidents. Additionally, others publish a safety transparency report that includes data on sexual assaults and other safety incidents.

These are only some of the measures being taken by IA members to address concerns around workplace harassment. I will actively work with IA members to continue the dialogue and development in this space.

Thank you for your attention to this very important issue. I look forward to the continued discussion.

Michael Beckerman President & CEO

#### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

MICHAEL B. ENZI, WYOMING RICHARD BURR, NORTH CAROLINA JOHNNY ISAKSON, GEORGIA RAND PAUL, KENTUCKY SUSAN M. COLLINS, MAINE BILL CASSIDY, M.D., LOUISIANA TODD YOUNG, INDIANA ORRIN HATCH, UTAH PAT ROBERTS, KANSAS LISA MURKOWSKI, ALASKA TIM SCOTT, SOUTH CAROLINA

PATTY MURRAY, WASHINGTON BERNARD SANDERS (I), VERMONT ROBERT F. CASEY, J.R., PENNSYLVANIA MICHAEL F. BENNET, COLORADO TAMMY BALDWIN, WISCONSIN CHRISTOPHER S. MURPHY, CONNECTICUT ELIZABETH WARREN, MASSACHUSETTS TIM KAINE, VIRGINIA MARGARET WOOD HASSAN, NEW HAMPSHIRE TINA SMITH, MINNESOTA DOUG JONES, ALABAMA

# United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510-6300

DAVID P. CLEARY, STAFF DIRECTOR EVAN SCHATZ, DEMOCRATIC STAFF DIRECTOR

http://help.senate.gov

February 7, 2018

Mr. William A. Dombi President National Association for Home Care and Hospice 228 7<sup>th</sup> Street SE Washington, DC 20003

Dear President Dombi:

I write to your association with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated the headlines and sparked a national conversation about change, power dynamics, and equality in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. Although we are seeing headlines about powerful and famous people being called to account for their actions, we are seeing far less action in industries outside of the spotlight. Therefore, I hope and expect that you are taking steps to address concerns about misconduct in your industry and to ensure your members' workplaces are free from harassment.

The health care and social assistance industry in particular employs over 20 million workers and has some of the highest rates of reported sexual harassment in the country.<sup>1</sup> According to data collected by the Equal Employment Opportunity Commission ("EEOC") from 2005 to 2015, the health care and social assistance industry accounted for over one in ten sexual harassment claims filed.<sup>2</sup> Sexual harassment is pervasive throughout all sectors and levels of the health care industry. In the past 12 years, more than 3,000 hospital employees filed sexual harassment charges with the EEOC.<sup>3</sup> Additionally, 2,000 sexual harassment claims were filed in ambulatory healthcare services, 1,500 sexual harassment claims were filed in nursing care facilities, and more than 380 claims were filed in physicians' offices.<sup>4</sup> A recent study found that over 80 percent of nearly 900 physical therapists surveyed had encountered some form of sexual harassment in the workplace.<sup>5</sup>

<sup>&</sup>lt;sup>1</sup> Labor Force Statistics from the Current Population Survey, Bureau of Labor Statistics (January 2018), https://www.bls.gov/cps/cpsaat18.htm.

<sup>&</sup>lt;sup>2</sup> Jocelyn Frye, Not Just the Rich and Famous: The Pervasiveness of Sexual Harassment across Industries Affects All Workers, Center for American Progress (November 2017),

https://www.americanprogress.org/issues/women/news/2017/11/20/443139/not-just-rich-famous/.

<sup>&</sup>lt;sup>3</sup> Lam Thuy Vo, We Got Government Data on 20 Years of Workplace Sexual Harassment Claims. These Charts Break It Down, Buzzfeed (December 2017) https://www.buzzfeed.com/lamvo/eeoc-sexual-harassment-data?utm\_term=.omZE1jMbw#.utve9ENL.

<sup>&</sup>lt;sup>4</sup> Les Masterson, Data shows breadth of sexual harassment in healthcare, Healthcare Dive (December 2017),

https://www.healthcaredive.com/news/data-shows-breadth-of-sexual-harassment-in-healthcare/512434/.

<sup>&</sup>lt;sup>5</sup> Jill S. Boissonnault, Ziadee Cambier, Scott J. Hetzel & Margaret M. Plack, *Prevalence and Risk of Inappropriate Sexual Behavior of Patients Toward Physical Therapist Clinicians and Students in the United States*, Physical Therapy, Volume 98, Issue 11, 1 (November 2017), https://academic.oup.com/ptj/article-abstract/97/11/1084/4085780?redirectedFrom=fulltext.

Home care aides are particularly vulnerable because they often work in isolated environments. A limited study conducted in Oregon found that 41% of home care workers surveyed reported incidents of sexual harassment and 14% reported incidents of sexual violence.<sup>6</sup> As shocking as these numbers are, they likely underestimate the rate of sexual harassment. The EEOC estimates that 85 percent of all workers who are subjected to harassment never file a formal legal charge, and 70 percent of all workers never file a complaint internally.<sup>7</sup> The same Oregon study found that three barriers to reporting existed for home care workers including perceived barriers to reporting and limited training in how to prevent violence.<sup>8</sup> It has long been clear that the magnitude of the problem in your industry should not be ignored, and I am hoping that the recent focus on this issue will provide the needed push to make real progress.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue and am seeking an update on about efforts to prevent and address harassment in workplaces across the country.

As part of that effort, I am interested in the ongoing discussions, plans, and actions within the National Association for Homecare and Hospice ("NAHC") aimed at protecting employees and establishing an equal and harassment-free workplace. I request a briefing with my staff within the next three weeks to discuss any recent efforts you have undertaken to assess and address workplace harassment in your industry.

I also request the following information:

- 1. Any polling, surveys, or research the NAHC has conducted in order to understand the scope of the problem within the industry;
- 2. Any research or actions the NAHC has undertaken to assess and address risk factors specific to the industry;
- 3. Any surveys the NAHC has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 4. Any steps the NAHC has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 5. Any best practices the NAHC has identified among its associated employers to accurately assess and address workplace harassment; and
- 6. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less of it.<sup>9</sup> Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the

<sup>&</sup>lt;sup>6</sup> Lindsay Nakaishi et al., *Exploring Workplace Violence among Home Care Workers in a Consumer-Driven Home Health Care Program*, Workplace Health & Safety Journal, Vol. 61, No. 10, 441 (October 2013).

<sup>&</sup>lt;sup>7</sup> Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs*, U.S. Equal Employment Opportunity Commission 16 (June 2016),

https://www.eeoc.gov/eeoc/task\_force/harassment/upload/report.pdf.

<sup>&</sup>lt;sup>8</sup> Lindsay Nakaishi et al. at 446.

<sup>&</sup>lt;sup>9</sup> Feldblum & Lipnic at 32.

urgency it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter please contact Carly Rush or Joe Shantz at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

Mana ally

Patty Murray United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions



Denise Schrader, RN MSN NEA-BC Chairman of the Board NATIONAL ASSOCIATION FOR HOME CARE & HOSPICE 228 Seventh Street, SE, Washington, DC 20003 • 202/547-7424 • 202/547-3540 fax

William A. Dombi, Esq. *President* 

February 28, 2018

Hon. Patty Murray United States Senator Ranking Member Senate Committee on Health, Education, Labor, and Pensions United States Senate Washington, D.C. 20510-6300

Re: Home Care and Sexual Harassment

Dear Senator Murray,

Thank you for your February 7, 2018 letter seeking information regarding actions taken by the National Association for Home Care and Hospice (NAHC) relative to prevention and response to workplace sexual harassment in the home care community. NAHC and its members across the country have long recognized the importance of worker safety in providing care in the home. Over the years, NAHC, state home care associations, and home care providers have advanced worker and consumer protections through regulatory standards, education, and awareness activities. We strongly support your efforts to protect home care workers and the patients they serve.

Your letter requests that we brief your staff to discuss efforts to asses and address workplace harassment in home care. We are open at their convenience to do so. We want to work collaboratively in all respects with your staff on this important matter. We see this letter as only a first step in working with you to ensure the greatest possible degree of worker safety in home care. The dedicated caregivers in home care as counting on us to help.

At the outset, it is important to note that the risk of sexual harassment in home care can occur in at least.three distinct circumstances. Those include the situations faced by employers of all types where harassment can involve employer to employee or employee to employee. However, besides that circumstance, home care faces some unique challenges that exist because the home care employee is off-site at a patient/client home without the security that a common workplace may offer employees. As a result, home care finds increased risk of sexual harassment by patients/clients to employees and caregiver to patients/clients.

One other very important fact must be understood in any examination of issues and concerns regarding sexual harassment in home care. The provision of home care includes three different models of delivery: an "agency model," a "registry model," and a "consumer-directed care model." It is crucial to recognize these different models because they each have unique aspects that impact on the risks of sexual harassment.

An agency model involves an entity that employs the caregivers. Further, the agency model is generally subject to significant federal and state regulation and oversight. For example, there are over 12,000 Medicare participating home health agencies that must meet rigorous conditions of participation and are subject to periodic surveys that include direct visits to patient homes.

A registry model is an entity that does not employ the caregivers. Instead, a registry provides a referral of potential caregivers to the client who selects, employs, and oversees the worker. Registries are not subject to federal regulation, while some states regulate registries to some extent.

Consumer-directed care is a growing model of care most often in place within state Medicaid programs. With consumer-directed care, there is no agency that employs the workers, conducts oversight, or monitors the care to patients/clients. The client is generally considered the employer with the right to hire and fire the caregiver. In many instances, the caregiver may be a relative or friend of the person in care. There is little or no oversight structure in consumer-directed care that is comparable with an agency model. The prime positive of consumer-directed care is that the client is in control. Virtually all 50 state Medicaid programs make consumer-directed care available to qualified beneficiaries.

The consumer-directed care model is the focus of the article cited in your letter, "Exploring Workplace Violence among Home Care Workers in a Consumer-Driven Home Health Care Program." As the article notes, the workers in the study of the Oregon program were employees on the consumer of the services, not an employee of a home care agency. As a result, the protections that an agency model offers do not exist.

We respectfully recommend that you expand your efforts to look specifically at sexual harassment risks in consumer-directed home care as the potential actions steps and solutions may be significantly different than in an agency model where a non-consumer employer is positioned to provide employee education, take uniform steps to address worker safety issues, and can interface with both the patient/client and the worker to address complaints and concerns. NAHC strongly supports the availability of consumer-directed care options, but we suggest that you cannot consider an agency model and consumer-directed care model as one and the same when examining the issues involving sexual harassment risks for workers.

In specific response the information requested, we offer the following:

1. NAHC has not conducted any recent polling, surveys or research directed at determining the scope of sexual harassment within home care. Each year, we have thousands of contacts with our membership regarding issues of concern to them. While we have fielded inquiries on occasion on matters concerning sexual harassment of workers by patients/clients, the volume of such has been very limited. That is not to infer that it is not an issue in home care. Instead, it appears that to the extent that it is an issue, our members have not turned to us for action.

We would like to work with your staff to craft a survey to our members that would seek the type of information that you think would be helpful in your efforts. This could gain us both important data to help guided future actions.

- 2. We believe, as stated above, that home care presents some unique risk factors affecting sexual harassment. Those factors are distinct between the models of care that are operational within home care and present a need for tailored action to reduce or eliminate risks. With an agency model of care, existing regulatory standards, accreditation standards, and best practices have certainly help address the risks posed in an agency model. These are discussed in greater detail below.
- 3. We have not conducted any employee surveys as we do not have access to employee contact information. Our members are the companies and we are privy only to the contact information they share with us. That does not generally include employee identifiers. We can work with you to design an employee survey that we can share with our members with our strong recommendation that they use the survey to gain insights.
- 4. NAHC has provided educational programs over the years on workplace safety. We had already scheduled one directed specifically to sexual harassment risks at our upcoming annual conference in October. It may be a value to expand that effort by offering a webinar in the near term. This would expand the information to a greater number of individuals than those who attend our conference.
- 5. The best practices on workplace harassment are contained in a combination of regulatory requirements, accreditation standards, and model home health policies as workplace harassment has been a concern for decades. For example, the accreditation standards for home care agencies include specific requirements on workplace safety and specifically, sexual harassment policies. These requirements encompass worker training, risk management procedures, and process standards for fielding and addressing complaints. We will provide you with those detailed standards in a later transmission. Similarly, Medicare participation and state licensure requirements establish obligations to adhere to all federal, state, and local laws affecting worker safety along with requirements on patient rights to be free from harassment and violence. These include a required complaint process. Finally, home care providers generally maintain detailed anti-harassment policies. One such policy from a Washington State company is attached below.
- 6. We believe that many of the existing requirements in the law and with accrediting bodies are a very good start in protecting workers and patients/clients. However, protections on paper do not always translate to protections in practice. Actions that could strengthen and improve protections should include measures addressing consumer-directed care risks where workers are generally on their own. A worker ombudsman approach may be one thing to consider. Requiring state Medicaid programs to include worker protections in the design of consumer-directed care models is also necessary.

With respect to agency model programs, awareness training and targeted oversight on agency performance would strengthen the current standards and processes. More precise recommendations should come from the deeper dive into the concerns that a provider and employee survey discussed above should reveal.

We look forward to working with you and your staff as this important effort unfolds. We recognize that we do not know all we need to know and that we can improve what we at NAHC are doing to strengthen worker protection from harassment. Together we should be able to quickly determine what changes need to be made and move towards implementation.

We took the liberty of soliciting the views of the home care community in the state of Washington. For your reference, their letter is attached. You can be assured that your constituents will be a great resource as we move ahead.

We will be contacting your staff to schedule further discussions.

Thank you for reaching out to us on this matter. We will strive to be your partner throughout. Thank you also for your longstanding support in gaining access to care in the home. Without such care, we would be a wholly different society.

Sincerely,

William A. Dombi President



February 26, 2018

Dear Senator Murray:

Thank you for your recent letter to our National Association for Home Care and Hospice (NAHC) regarding Sexual Harassment in the Workplace. The Home Care Association of Washington (HCAW) works closely with NAHC on policy and advocacy issues impacting patient and caregiver rights and agency responsibilities. Home health care employees are a precious commodity: their safety, well-being and protection are of utmost concern. As you indicated in your letter, home healthcare staff work in isolated settings, which makes attention to this even more important than other more public settings.

In Washington state, home health, hospice and home care agencies provide care and services according to our Washington State "In Home Services (IHS) law." The intent of IHS law is to protect the public, that is, both patients and employees! Additionally, those agencies that are Medicare certified have added layers of requirements that agencies must follow. All licensed and certified agencies are surveyed by our State Department of Health for compliance and all complaints are investigated by same.

While home health agencies have policies and procedures to prevent patient abandonment, they also have policies and practices to protect employees that feel threatened or that find themselves in unsafe situations. See attachment for examples of agency policies/procedures that are in place to protect staff from harassment:

Attachment 1: Example of Harassment policy referencing home health agency office workplace harassment.

The issue of sexual harassment by patients toward agency home care staff is not tolerated any more than it is in the office workplace; it is addressed by agency policies, training and supervision to protect the employee and to notify the patient this behavior is not acceptable. When admitting patients to service, a bill of rights is provided to patients and they are notified that while patients can be expected to be treated respectfully, it is also expected that patients treat agency staff with respect. Agency policies also specify that if staff feel threatened or unsafe, it is grounds for patient discharge. Agencies have policies, staff training and supervisory staff that are available to assist them with such concerns.

The article referenced in your letter specifies a study of a "consumer-driven home care model," which examined home care workers' experiences of violence while providing care to consumer employers (see attachment 2 for abstract). This category of home care workers does not have the safeguards that exist in the context of licensed and certified home health agency care. HCAW recognizes that in the quest for "less expensive care" there has been a huge shift in the past decade to utilize alternatives to the existing home health industry. Alternatives that include consumer driven care, independent providers, registry caregivers, the "gray market" of home care providers, etc.....all of whom are **not** under the regulation of In Home Services law or the purview of the Department of Health and generally unsupervised other than by the consumer. Our aim as an organization has been to work with state and federal lawmakers to achieve the appropriate level of regulation (not over regulation or under regulation), for everyone providing care to individuals in the home. We question when and if unsupervised consumer driven care is a safe solution for vulnerable patients and isolated staff? We believe there needs to be a consistent delivery of home health care system that applies regulations across the board fairly and evenly so that those that are playing by the rules are not handed additional regulations for abuse or neglect of an unregulated or under regulated part of the system.

Thank you for your attention to this matter. We would love to work with you to assure that safe and affordable home health, hospice and home care services are accessible to the residents of our state and that clinicians and caregivers look to the In Home Services industry as a desirable, if not preferred place of employment. As a first step, we would love to schedule a joint visit with one of our member agencies so that you and/or your staff have first hand knowledge of the In Home Services industry. Please let us know if we can arrange this for you!

Respectfully submitted,

Doris Visaya, RN, BSN

Executive Director, Home Care Association of Washington

### Attachment 1

Policy (example from one of our HCAW members)

### General Harassment

A. Community Home Health & Hospice strives to create and maintain a work environment in which people are treated with dignity, decency and respect. The environment of the agency should be characterized by mutual trust and the absence of intimidation, oppression and exploitation. The agency will not tolerate harassment of any kind. Through enforcement of this policy and by education of employees, the agency will seek to prevent, correct and discipline behavior that violates this policy. All employees, regardless of their positions, are covered by and are expected to comply with this policy and to take appropriate measures to ensure that prohibited conduct does not occur.

B. The definition of harassment is verbal or physical conduct designed to threaten, intimidate or coerce. Also, verbal taunting (including racial and ethnic slurs) that, in the employee's opinion, impairs his or her ability to perform his or her job. Examples of harassment are:

1. Verbal: Comments that are not flattering or are unwelcome regarding a person's nationality, origin, race, color, religion, gender, sexual orientation, age, body disability or appearance. Epithets, slurs, negative stereotyping.

2. Nonverbal: Distribution, display or discussion of any written or graphic material that ridicules, denigrates, insults, belittles, or shows hostility or aversion toward an

individual or group because of national origin, race color, religion, age, gender, sexual orientation, pregnancy, appearance disability, gender identity, marital or other protected status.

3. Physical: Pushing, shoving, kicking, poking, tripping, assault or threat of physical assault, damage to a person's work area or property.

C. Harassment, including sexual harassment, is prohibited by federal and state laws. This policy prohibits harassment of any kind, and Community will take appropriate action swiftly to address any violations of this policy. The policy applies to all conduct on the agency's premises by any supervisor, manager, coworker, subordinate, vendor, volunteer, client or customer and to all conduct off the agency's premises that affects an employee's work environment. The agency considers any violation of this policy a serious offense that will lead to disciplinary action, up to and including discharge or termination of relationship with the agency.

Sexual Harassment

A. Sexual harassment is prohibited under this policy. Sexual harassment is defined as "unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature...when...submission to or rejection of such conduct is used as the basis for employment decisions...or such conduct has the purpose or effect of...creating an intimidating, hostile or offensive working environment."

unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature, when such conduct:

1. Is made explicitly or implicitly a term or condition of employment.

2. Is used as a basis for an employment decision.

3. Unreasonably interferes with an employee's work performance or creates an intimidating, hostile or otherwise offensive environment.

C. Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is unwelcome, that is personally offensive, that lowers morale and therefore interferes with work effectiveness. Sexual harassment may take different forms. Examples of conduct that may constitute sexual harassment are:

1. Verbal: Sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, lewd remarks, threats. Requests for any type of sexual favor (this includes repeated, unwelcome requests for dates). Verbal abuse or "kidding" that is oriented toward a prohibitive form of harassment, including that which is sex oriented and considered unwelcome.

2. Nonverbal: The distribution, display or discussion of any written or graphic material, including calendars, posters and cartoons that are sexually suggestive or show hostility toward an individual or group because of gender; suggestive or insulting sounds; leering; staring; whistling; obscene gestures; content in letters and notes, facsimiles, email, photos, text messages, Internet postings, etc., that is sexual in nature.

3. Physical: Unwelcome, unwanted physical contact, including but not limited to touching, tickling, pinching,

patting, brushing up against, hugging, cornering, kissing, fondling; forced sexual intercourse or assault.

D. Normal, courteous, mutually respectful, pleasant, noncoercive interactions between employees, including men and women, that are acceptable to and welcomed by both parties, are not considered to be harassment, including sexual harassment. There are basically two types of sexual harassment:

1. "Quid pro quo" harassment, where submission to harassment is used as the basis for employment decisions. Employee benefits such as raises, promotions, better working hours, etc., are directly linked to compliance with sexual advances. Therefore, only someone in a supervisory capacity (with the authority to grant such benefits) can engage in quid pro quo harassment. Example: A supervisor promising an employee a raise if she goes on a date with him; a manager telling an employee she will fire him if he does not have sex with her.

2. "Hostile work environment," where the harassment creates an offensive and unpleasant working environment. Hostile work environment can be created by anyone in the work environment, whether it be supervisors, other employees or customers. Hostile environment harassment consists of verbiage of a sexual nature, unwelcome sexual materials or even unwelcome physical contact as a regular part of the work environment. Texts, emails, cartoons or posters of a sexual nature, vulgar or lewd comments or jokes, or unwanted touching or fondling all fall into this category.

Procedure

A. Complaint procedure. Any employee who feels he or she has been harassed should promptly take the following steps:

1. A person who feels harassed, discriminated or retaliated against may initiate the complaint process by filing a written and signed complaint with the VP of HR. No formal action will be taken against any person under this policy unless a written and signed complaint is on file containing sufficient details to allow the VP of HR to determine if the policy may have been violated. If a supervisor or manager becomes aware that harassment or discrimination is occurring, either from personal observation or as a result of an employee coming forward, the supervisor or manager should immediately report it to the VP of HR.

2. Upon receiving the complaint, or being advised by a supervisor or manager that violation of this policy may be occurring, the VP of HR will notify the President & CEO or the Board of Directors.

3. Within five (5) working days of receiving the complaint, the VP of HR will:

a) Notify the person charged [referred to as "respondent"] of a complaint.

b) Initiate the investigation to determine whether there is a reasonable basis for believing that the alleged violation of this policy occurred.

4. During the investigation, the VP of HR, together with legal counsel or other management employee, will interview the complainant, the respondent and any witnesses to determine whether the alleged conduct occurred.

5. Within 15 business days of the complaint being filed (or the matter being referred to the VP of HR), the VP of HR or other person conducting the investigation will

conclude the investigation and submit a report of his or her findings to the President & CEO or the Board of Directors.

6. If it is determined that harassment or discrimination in violation of this agency's policy has occurred, the VP of HR will recommend appropriate disciplinary action. The appropriate action will depend on the following factors: (i) The severity, frequency and pervasiveness of the conduct; (ii) Prior complaints made by the complainant; (iii) Prior complaints made against the respondent; (iv) The quality of the evidence (first-hand knowledge, credible corroboration etc.).

7. If the investigation is inconclusive or it is determined that there has been no harassment or discrimination in violation of this policy, but some potentially problematic conduct is revealed, preventative action may be taken.

8. Within five (5) days after the investigation is concluded, the VP of HR will meet with the complainant and the respondent separately in order to notify them in person of the findings of the investigation and to inform them of the action being recommended by the VP of HR.

9. The complainant and the respondent may submit statements to the VP of HR challenging the factual basis of the findings. Any such statement must be submitted no later than five (5) working days after the meeting with the VP of HR in which the findings of the investigation is discussed.

10. Within 10 days from the date the VP of HR meets with the complainant and respondent, the President & CEO or the Board of Directors will review the investigative report and any statements submitted by the complainant or respondent, discuss results of the investigation with the VP of HR and other management staff as may be appropriate and decide what action, if any, will be taken. The VP of HR will report the agency's decision to the complainant, the respondent and the appropriate management assigned to the department(s) in which the complainant and the respondent work. The agency's decision will be in writing and will include finding of fact and a statement for or against disciplinary action. If disciplinary action is to be taken, the sanction will be stated.

Β. Confidentiality. During the complaint process, while the confidentiality of the information received, the privacy of the individuals involved, and the wishes of the complaining person regarding action by the office cannot be guaranteed in every instance, they will be protected to as great a degree as is legally possible. The expressed wishes of the complaining person for confidentiality will be considered in the context of the agency's legal obligation to act upon the charge and the right of the charged party to obtain information. In most cases, however, confidentiality will be strictly maintained by the agency and those involved in the investigation. In addition, any notes or documents written by or received by the person(s) conducting the investigation will be kept confidential to the extent possible and according to any existing state or federal law

C. Retaliation. No hardship, no loss or benefit, and no penalty may be imposed on an employee as punishment for:

1. Filing or responding to a bona fide complaint of discrimination or harassment.

2. Appearing as a witness in the investigation of a complaint.

3. Serving as an investigator.

Retaliation or attempted retaliation is a violation of this

policy and anyone who does so will be subject to severe sanctions up to and including termination.

### D. Discipline

1. Appropriate disciplinary action will be taken against any employee who violates this policy. Based upon the seriousness of the offense, disciplinary action may include verbal or written reprimand, suspension or termination of employment.

2. Offenses by vendors, clients, or customers will be handled through the offender and his or her agency, as appropriate.

3. Filing groundless and malicious complaints is an abuse of this policy and is prohibited. In the event a complaint of harassment is found to be totally and completely without basis, appropriate disciplinary measures may be taken against the employee who brought the complaint. This is not intended to discourage any employee who believes they have been the victim of harassment from bringing a complaint.

### E. Alternative Legal Remedies

Nothing in this policy shall prevent the complainant or the respondent from pursuing formal legal remedies or resolution through state or federal agencies or the courts.

Abstract from article referenced in letter to NAHC:

Nominal research has examined sexual harassment and workplace violence against home care workers within consumer-driven home care models such as those offered in Oregon. This study examined home care workers' experiences of violence while providing care to consumer employers, the patients who hire and manage home care workers. Focus groups and interviews were conducted in Oregon with 83 home care workers, 99 Oregon Department of Human Services (DHS) employees, and 11 consumer employers. Home care workers reported incidents of workplace physical violence (44%), psychological abuse (65%), sexual harassment (41%), and sexual violence (14%). Further, three themes were identified that may increase the risk of workplace violence: (1) real and perceived barriers to reporting violence; (2) tolerance of violence; and (3) limited training to prevent violence. To ensure worker safety while maintaining quality care, safety policies and training for consumer employers, state DHS employees, and home care workers must be developed.

#### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

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## United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510-6300

February 7, 2018

Mr. Jay Timmons President and Chief Executive Officer National Association of Manufacturers 733 10<sup>th</sup> Street NW Washington DC, 2001

Dear President Timmons:

I write to your association with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated the headlines and sparked a national conversation about change, power dynamics, and equality in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. Although we are seeing headlines about powerful and famous people being called to account for their actions, we are seeing far less action in industries outside of the spotlight. Therefore, I hope and expect that you are taking steps to address concerns about misconduct in your industry and to ensure your members' workplaces are free from harassment.

The manufacturing industry employs over 15 million workers and has some of the highest rates of reported sexual harassment in the country.<sup>1</sup> According to data collected by the Equal Employment Opportunity Commission ("EEOC") from 2005 to 2015, the manufacturing industry accounted for over one in ten sexual harassment claims filed—totaling to nearly 4,000 claims.<sup>2</sup> This is especially troubling given that women make up only 30 percent of the manufacturing workforce and indicates that a much higher percentage of women in the manufacturing industry experience harassment compared to women in other sectors.<sup>3</sup>

While the EEOC's dataset contextualizes the crisis of sexual harassment in the manufacturing industry, it likely underestimates the exact rates of sexual harassment. Women in male-dominated fields often do not report in fear of retaliation that may affect their earnings or their ability to keep their job. The EEOC estimates that 85 percent of all workers who are subjected to harassment never file a formal legal charge, and 70 percent of all workers never file a complaint internally.<sup>4</sup> It has long been clear that the magnitude

<sup>3</sup> Labor Force Statistics from the Current Population Survey.

<sup>&</sup>lt;sup>1</sup> Labor Force Statistics from the Current Population Survey, Bureau of Labor Statistics (January 2018), https://www.bls.gov/cps/cpsaat18.htm.

<sup>&</sup>lt;sup>2</sup> Jocelyn Frye, Not Just the Rich and Famous: The Pervasiveness of Sexual Harassment across Industries Affects All Workers, Center for American Progress (November 2017),

https://www.americanprogress.org/issues/women/news/2017/11/20/443139/not-just-rich-famous/.

<sup>&</sup>lt;sup>4</sup> Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs*, U.S. Equal Employment Opportunity Commission 16 (June 2016), https://www.eeoc.gov/eeoc/task force/harassment/upload/report.pdf.

of the problem in your industry should not be ignored, and I am hoping that the recent focus on this issue will provide the needed push to make real progress.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue and am seeking an update on efforts to prevent and address harassment in workplaces across the country.

As part of that effort, I am interested in the ongoing discussions, plans, and actions within the National Association of Manufacturers ("NAM") aimed at protecting employees and establishing an equal and harassment-free workplace. I request a briefing with my staff within the next three weeks to discuss any recent efforts you have undertaken to assess and address workplace harassment in your industry.

I also request the following information:

- 1. Any polling, surveys, or research the NAM has conducted in order to understand the scope of the problem within the industry;
- 2. Any research or actions the NAM has undertaken to assess and address risk factors specific to the industry;
- 3. Any surveys the NAM has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 4. Any steps the NAM has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 5. Any best practices the NAM has identified among its associated employers to accurately assess and address workplace harassment; and
- 6. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less of it.<sup>5</sup> Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the urgency it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter you can contact Carly Rush or Joe Shantz at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

Patty Marray United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions

<sup>&</sup>lt;sup>5</sup> Feldblum & Lipnic at 32.



NATIONAL ASSOCIATION OF
 Manufacturers

Jay Timmons President and CEO

March 5, 2018

Ranking Member Patty Murray U.S. Senate Committee on Health, Education, Labor, and Pensions 428 Dirksen Senate Office Building Washington, DC 20150

Dear Ranking Member Murray,

Thank you for your February 7 letter regarding sexual harassment in the workplace and the national imperative to address what is a pervasive and pernicious problem.

At the core of our mission at the National Association of Manufacturers (NAM) is strengthening the values that make our country exceptional, foremost among them equal opportunity—our shared belief that every one of us, if given the chance, has the potential to contribute to the success of our companies, our communities and our country. The troubling reports we have seen in recent months reveal that, as a nation, we are falling short in upholding this ideal.

The NAM is the unified voice of more than 14,000 member companies—large and small—from across the country, companies that are at the forefront of the industry's rapid modernization that is creating better opportunities and better workplaces for millions of Americans. Many of our members are regularly recognized on respected "Best Places to Work" lists. They receive perfect scores on the Human Rights Campaign's Corporate Equality Index. They boast some of the most progressive employment policies of any sector, and many of our companies are recognized leaders in building respectful, inclusive and safe workplaces.

Still, like the rest of the nation, we realize there is far more work to be done. The challenge before us requires a nationwide shift in attitudes and behavior—in how we treat, respect and empower employees and colleagues, particularly women. No one and no industry is excluded from the hard work ahead. But as our history has shown, manufacturers do not throw up their hands in the face of a challenge. We roll up our sleeves to be the solution.

For example, through the NAM's Manufacturing Institute, we have for years worked to increase the representation, visibility and empowerment of women in the manufacturing workforce. Since 2012, our STEP Ahead program has provided mentorship to women in manufacturing and resources to empower women in leadership positions, while recognizing and honoring those women making the biggest difference in our industry and communities.

Leading Innovation. Creating Opportunity. Pursuing Progress.

Senator Murray March 5, 2018 Page 2

The NAM has also been able to assist our members directly through our Manufacturers' Compliance Institute (MCI) as they strive to implement and adhere to workplace harassment policies. The MCI partners with top-tier law firms to provide free and reduced-rate advice for companies, particularly small and medium-sized manufacturers who otherwise might not have access to such counsel.

In addition, as part of our solidarity with all those who have bravely declared #MeToo, we have emphasized the need to correct this unjust status quo when convening manufacturers and manufacturing-supporting organizations across the country. Indeed, I raised the issue with the NAM's Council of Manufacturing Associations (CMA), which encompasses sector-specific manufacturing associations, and asked that we address the matter with our company members.

Our team has also had an extensive meeting about these issues in our informal CMA Women's CEO group. That group has considered and shared best practices on how to engage their own memberships.

In recent days, at our meeting of the NAM's Board of Directors—250 of the nation's leading manufacturing CEOs, owners and C-Suite executives—I told our leadership that we have an obligation to confront this insidious problem and step up as allies and advocates. And I announced that the NAM's Manufacturing Institute will be working with members' HR departments to identify and share best practices.

These efforts have had a measurable and significant impact, but we can do more. The NAM has the power to be a convener of key stakeholders and voices in this larger national conversation. We have an expansive reach through our state association partners, which represent every state and Puerto Rico, and our CMA.

I hope you will consider the NAM a partner in your mission not only to raise greater awareness of harassment but also to improve the workplace culture. I would welcome the opportunity to meet in person to discuss our shared concerns in greater detail.

Manufacturing provides American workers with more than just rewarding, well-paying careers; it provides a sense of purpose and the satisfaction of making something that matters. And we must recommit ourselves to ensuring nothing stands in the way of that and our nation's highest ideals.

I look forward to discussing this critical issue with you in person when your schedule will allow it and I know our teams are working to accommodate your schedule.

Sincerely,



#### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

MICHAEL B. ENZI, WYOMING RICHARD BURR, NORTH CAROLINA JOHNNY ISAKSON, GEORGIA RAND PAUL, KENTUCKY SUSAN M. COLLINS, MAINE BILL CASSIDY, M.D., LOUISIANA TODD YOUNG, INDIANA ORRIN HATCH, UTAH PAT ROBERTS, KANSAS LISA MURKOWSKI, ALASKA TIM SCOTT, SOUTH CAROLINA PATTY MURRAY, WASHINGTON BERNARD SANDERS (II), VERMONT ROBERT P. CASEY, JR., PENNSYLVANIA MICHAEL F. BENNET, COLORADO TAMMY BALDWIN, WISCONSIN CHRISTOPHER S. MURPHY, CONNECTICUT ELIZABETH WARREN, MASSACHUSETTS TIM KAINE, VIRGINIA MARGARET WOOD HASSAN, NEW HAMPSHIRE TINA SMITH, MINNESOTA DOUG JONES, ALABAMA

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## United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510–6300

February 7, 2018

Ms. Dawn Sweeny President and Chief Executive Officer National Restaurant Association 2055 L. Street NW, Suite 700 Washington, DC 20036

Dear President Sweeny:

I write to your association with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated the headlines and sparked a national conversation about change, power dynamics, and equality in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. Although we are seeing headlines about powerful and famous people being called to account for their actions, we are seeing far less action in industries outside of the spotlight. Therefore, I hope and expect that you are taking steps to address concerns about misconduct in your industry and to ensure your members' workplaces are free from harassment.

The accommodation and food services industry employs nearly 11 million workers and has some of the highest rates of reported sexual harassment in the country.<sup>1</sup> According to data collected by the Equal Employment Opportunity Commission ("EEOC") from 2005 to 2015, the accommodation and food services industry accounted for the greatest portion of sexual harassment claims filed.<sup>2</sup> Disturbingly, a 2014 survey of restaurant workers found that nearly 80 percent of women and 70 percent of men had faced some form of sexual harassment from co-workers, and almost 80 percent of women and 55 percent of men reported sexual harassment from customers.<sup>3</sup> A different survey reported that 40 percent of fast food workers who are women have experienced unwanted sexual behaviors while at work.<sup>4</sup> The pervasiveness of sexual harassment in the restaurant industry is only exacerbated when considered in the context of the subminimum wage: women working in states with a \$2.13-per-hour tipped minimum wage are twice as likely to be sexually harassed as women working in states requiring tipped workers to be paid the full federal minimum wage.<sup>5</sup>

As shocking as these numbers are, they likely underestimate the rate of sexual harassment. The EEOC estimates that 85 percent of all workers who are subjected to harassment never file a formal legal charge,

<sup>&</sup>lt;sup>1</sup> Labor Force Statistics from the Current Population Survey, Bureau of Labor Statistics (January 2018), https://www.bls.gov/cps/cpsaat18.htm.

<sup>&</sup>lt;sup>2</sup> Jocelyn Frye, Not Just the Rich and Famous: The Pervasiveness of Sexual Harassment across Industries Affects All Workers, Center for American Progress (November 2017),

https://www.americanprogress.org/issues/women/news/2017/11/20/443139/not-just-rich-famous/.

<sup>&</sup>lt;sup>3</sup> The Glass Floor: Sexual Harassment in the Restaurant Industry, The Restaurant Opportunities Centers united Forward Together 13 (October 2014), http://rocunited.org/wp-content/uploads/2014/10/REPORT\_TheGlassFloor\_Sexual-Harassment-in-the-Restaurant-Industry.pdf.

<sup>&</sup>lt;sup>4</sup> Key Findings from a Survey of Women Fast Food Workers, Hart Research Associates 1 (October 2016),

<sup>1</sup>http://hartresearch.com/wp-content/uploads/2016/10/Fast-Food-Worker-Survey-Memo-10-5-16.pdf.

<sup>&</sup>lt;sup>5</sup> The Glass Floor: Sexual Harassment in the Restaurant Industry at 13.

and 70 percent of all workers never file a complaint internally.<sup>6</sup> It has long been clear that the magnitude of the problem in your industry should not be ignored, and I am hoping that the recent focus on this issue will provide the needed push to make real progress.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue and am seeking an update on efforts to prevent and address harassment in workplaces across the country.

As part of that effort, I am interested in the ongoing discussions, plans, and actions within the National Restaurant Association ("NRA") aimed at protecting employees and establishing an equal and harassment-free workplace. I request a briefing with my staff within the next three weeks to discuss any recent efforts you have undertaken to assess and address workplace harassment in your industry.

I also request the following information:

- 1. Any polling, surveys, or research the NRA has conducted in order to understand the scope of the problem within the industry;
- 2. Any research or actions the NRA has undertaken to assess and address risk factors specific to the industry;
- 3. Any surveys the NRA has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 4. Any steps the NRA has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 5. Any best practices the NRA has identified among its associated employers to accurately assess and address workplace harassment; and
- 6. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less of it.<sup>7</sup> Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the urgency it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter please contact Carly Rush or Joe Shantz at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

Muna

Patty Murray United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions

<sup>&</sup>lt;sup>6</sup> Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs*, U.S. Equal Employment Opportunity Commission 16 (June 2016),

https://www.eeoc.gov/eeoc/task\_force/harassment/upload/report.pdf.

<sup>&</sup>lt;sup>7</sup> Feldblum & Lipnic at 32.

# NATIONAL RESTAURANT ASSOCIATION PROGRAMS AND RESOURCES

## ServSafe Workplace: <u>https://www.servsafe.com/ServSafe-Workplace/Sexual-Harassment-Prevention-Restaurant-Industry</u>

Our ServSafe workplace program contains a suite of resources designed to help restaurant owners and managers have ongoing discussions about creating and maintaining a harassment-free workplace. Please note that we offered 40 free webinars over the summer for our members on this training. Additionally, there are now a number of free resources available including supplements, discussion guides and posters related to ongoing training resources.

#### The Multicultural Foodservice & Hospitality Alliance (MFHA): http://mfha.net/

We also work in close collaboration with our colleagues at the Multicultural Foodservice & Hospitality Alliance on issues related to educating the workforce on unconscious bias, diversity and inclusion.

#### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

MICHAEL B. ENZI, WYOMING RICHARD BURR, NORTH CAROLINA JOHNNY ISAKSON, GEORGIA RAND PAUL, KENTUCKY SUSAN M. COLLINS, MAINE BILL CASSIDY, M.D., LOUISIANA TODD YOUNG, INDIANA ODRIN HATCH, UTAH PAT ROBERTS, KANSAS LISA MURKOWSKI, ALASKA TIM SCOTT, SOUTH CAROLINA PATTY MURRAY, WASHINGTON BERNARD SANDERS (I), VERMONT ROBERT P. CASEY, JR., PENNSYLVANIA MICHAEL F. BENNET, COLORADO TAMMY BALDWIN, WISCONSIN CHRISTOPHER S. MURPHY, CONNECTICUT ELIZABETH WARREN, MASSACHUSETTS TIM KAINE, VIRGINIA MARGARET WOOD HASSAN, NEW HAMPSHIRE TINA SMITH, MINNESOTA DOUG JONES, ALABAMA

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http://help.senate.gov

### United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510-6300

February 7, 2018

Mr. Matthew R. Shay President and Chief Executive Officer National Retail Federation, Inc. 1101 New York Avenue, NW Washington, DC 20005

Dear President Shay:

I write to your federation with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated the headlines and sparked a national conversation about change, power dynamics, and equality in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. Although we are seeing headlines about powerful and famous people being called to account for their actions, we are seeing far less action in industries outside of the spotlight. Therefore, I hope and expect that you are taking steps to address concerns about misconduct in your industry and to ensure your members' workplaces are free from harassment.

The retail trade industry employs nearly 17 million workers and has some of the highest rates of reported sexual harassment in the country.<sup>1</sup> According to data collected by the Equal Employment Opportunity Commission ("EEOC") from 2005 to 2015, the retail trade industry accounted for the second greatest portion of sexual harassment claims filed.<sup>2</sup> Sexual harassment is endemic to the retail trade industry at least in part because of its high proportion of low wage workers who are particularly vulnerable.

While the EEOC's dataset contextualizes the crisis of sexual harassment in the retail industry, it likely underestimates the exact rates of sexual harassment. Women in low wage, customer service jobs often do not report in fear of retaliation that may affect their earnings or their ability to keep the job. The EEOC estimates that 85 percent of all workers who are subjected to harassment never file a formal legal charge, and 70 percent of all workers never file a complaint internally.<sup>3</sup> It has long been clear that the

<sup>1</sup> Labor Force Statistics from the Current Population Survey, Bureau of Labor Statistics (January 2018), https://www.bls.gov/cps/cpsaat18.htm.

<sup>2</sup> Jocelyn Frye, Not Just the Rich and Famous: The Pervasiveness of Sexual Harassment across Industries Affects All Workers, Center for American Progress (November 2017),

https://www.eeoc.gov/eeoc/task\_force/harassment/upload/report.pdf.

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<sup>&</sup>lt;sup>3</sup> Chai R. Feldblum & Victoria A. Lipnic, Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs, U.S. Equal Employment Opportunity Commission 16 (June 2016),

magnitude of the problem in your industry should not be ignored, and I am hoping that the recent focus on this issue will provide the needed push to make real progress.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue and am seeking an update on efforts to prevent and address harassment in workplaces across the country.

As part of that effort, I am interested in the ongoing discussions, plans, and actions within the National Retail Federation ("NRF") aimed at protecting employees and establishing an equal and harassment-free workplace. I request a briefing with my staff within the next three weeks to discuss any recent efforts you have undertaken to assess and address workplace harassment in your industry.

I also request the following information:

- 1. Any polling, surveys, or research the NRF has conducted in order to understand the scope of the problem within the industry;
- 2. Any research or actions the NRF has undertaken to assess and address risk factors specific to the industry;
- 3. Any surveys the NRF has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 4. Any steps the NRF has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 5. Any best practices the NRF has identified among its associated employers to accurately assess and address workplace harassment; and
- 6. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less of it.<sup>4</sup> Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the urgency it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter please contact Carly Rush or Joe Shantz at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

Patty Murray United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions

<sup>&</sup>lt;sup>4</sup> Feldblum & Lipnic at 32.

#### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

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DAVID P. CLEARY, STAFF DIRECTOR EVAN SCHATZ, DEMOCRATIC STAFF DIRECTOR http://help.senate.gov

## United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510-6300

May 25, 2018

Bobby Franklin President and Chief Executive Officer National Venture Capital Association 25 Massachusetts Avenue NW Suite 730 Washington, DC 20001

Dear Mr. Franklin:

I write to your association with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated the headlines and sparked a national conversation about change, power dynamics, and equality in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. Last year we saw headlines about leaders in venture capital who were called to account for their actions.<sup>1</sup> I hope and expect that you have begun taking steps to address concerns about misconduct in your industry and to ensure that your members' workplaces are free from harassment.

As exemplified in the string of high profile cases last year, the industry's gender disparity likely exacerbates the issue of sexual harassment. In the U.S. today, women represent less than 10 percent of investment partners at venture capital firms and female entrepreneurs only received two percent of venture capital dollars in 2017.<sup>2</sup> What's more, the working relationship between investor and entrepreneur creates a power imbalance unique to the venture capital industry. These industry risk factors foster an environment ripe for harassment. According to a survey released last year by venture capital firm First Round Capital, more than 50 percent of 869 startup founders surveyed indicated that they had experienced or knew someone who had experienced sexual harassment in the workplace. More than three quarters of female founders surveyed had been sexually harassed at work.<sup>3</sup>

Although high profile cases in venture capital have helped raise awareness of the crisis of sexual harassment, these accounts likely underestimate its magnitude throughout the industry. The prevailing gender imbalance in venture capital may only compound the issue that women often do not report harassment out of fear of retaliation that may negatively impact their earnings, their ability to keep their job, or their funding for their companies. The EEOC estimates that 85 percent of all workers who are subjected to harassment never file a formal legal charge, and 70 percent of all workers never file a

<sup>&</sup>lt;sup>1</sup> Kaite Bener, *Women in Tech Speak Frankly on Culture of Harassment*, The New York Times (Jun. 30, 2017), https://www.nytimes.com/2017/06/30/technology/women-entrepreneurs-speak-out-sexual-harassment.html.

<sup>&</sup>lt;sup>2</sup> Valentina Zarya, *Female Founders Got 2% of Venture Capital Dollars in 2017*, Fortune (Jan. 31, 2018), http://fortune.com/2018/01/31/female-founders-venture-capital-2017/.

<sup>&</sup>lt;sup>3</sup> Queenie Wong, *Sexual harassment: Survey reveals how widespread the problem is at startups*, Silicon Valley.com (Dec. 7, 2017), https://www.siliconvalley.com/2017/12/06/sexual-harassment-survey-reveals-how-widespread-the-problem-is-at-startups/

complaint internally.<sup>4</sup> It has long been clear that the magnitude of the problem in your industry should not be ignored, and I am hoping that the recent focus on this issue will provide the needed push to make real progress.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue and am seeking an update on efforts to prevent and address harassment in workplaces across the country. As part of that effort, I am interested in the ongoing discussions, plans, and actions within The National Venture Capital Association (NVCA) aimed at protecting employees and establishing an equal and harassment-free workplace. I request a briefing with my staff within the next three weeks to discuss recent efforts you have undertaken to assess and address workplace harassment in your industry.

I also request the following information:

- 1. Any polling, surveys, or research NVCA has conducted in order to understand the scope of the problem within the industry;
- 2. Any research or actions NVCA has undertaken to assess and address risk factors specific to the industry;
- 3. Any surveys NVCA has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 4. Any steps NVCA has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 5. Any best practices NVCA has identified among its associated employers to accurately assess and address workplace harassment; and
- 6. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less.<sup>5</sup> Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the urgency it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter please contact Carly Rush or Laura Aguilar at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

tatty Muna

Patty Murray United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: The Honorable Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions

<sup>5</sup> Id. at 32.

<sup>&</sup>lt;sup>4</sup> Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs*, U.S. Equal Employment Opportunity Commission 16 (June 2016),

https://www.eeoc.gov/eeoc/task\_force/harassment/upload/report.pdf.



June 20, 2018

The Honorable Patty Murray Ranking Member Committee on Health, Education, Labor, and Pensions United States Senate Washington, D.C. 20515

Ranking Member Murray:

Thank you for expressing your concern for workplace issues facing the U.S. entrepreneurial ecosystem and your interest in the efforts the National Venture Capital Association (NVCA) has undertaken related to this topic. On behalf of our nation's venture capital investors and the entrepreneurs they support, I write to share your concern of the need for an equal and harassment-free entrepreneurial ecosystem, and to provide details on the work NVCA has led to drive progress. NVCA's efforts are guided by our commitment to expanding opportunities for people of all backgrounds to thrive in the venture ecosystem and ensuring everyone who works in this ecosystem has a welcoming professional culture and safe work environment, free from any type of harassment, abuse, and discrimination.

NVCA launched the Diversity Task Force in 2014 to develop a clear and measurable path to increase opportunities for people of diverse backgrounds to thrive in venture capital and entrepreneurship.<sup>1</sup> We did so after closely tracked industry statistics, including those you cite in your letter, and in speaking with—and soliciting guidance from—individuals across the ecosystem. Last year, after news of sexual harassment surfaced, it became clear that harassment is interconnected with the lack of diversity and inclusiveness in our industry. Accordingly, NVCA extended its focus to address sexual harassment to help achieve the long-term objective for a more diverse and inclusive venture capital industry where everyone not only has a chance to play an important role, but also has the opportunity to succeed in a safe and welcoming professional environment. We believe a focus on both in tandem is more likely to lead to a more

<sup>&</sup>lt;sup>1</sup> Press release, *NVCA Forms Diversity Task Force to Foster Greater Inclusion across the Innovation Ecosystem*, December 8, 2014, <u>https://nvca.org/pressreleases/nvca-forms-diversity-task-force-foster-greater-inclusion-across-innovation-ecosystem</u>

meaningful impact on the entrepreneurial ecosystem. Accordingly, NVCA launched VentureForward in the fall of 2017 as the next chapter of our diversity and inclusion initiative.<sup>2</sup>

NVCA's actions and resources focus on five key categories:

- Providing education and training related to diversity and inclusion, human resources (H.R.), and harassment to venture capital firms and startups;
- Sharing diversity and inclusion, H.R., and harassment best practices and policies for venture firms and startups to adopt;
- Creating an online hub for sharing information and resources on diversity and inclusion, talent management and recruitment, and H.R. for everyone in the venture ecosystem to access;
- Connecting venture investors with a broader talent pool for their firms and a broader pool of entrepreneurs seeking funding; and
- Conducting research on diversity and inclusion in the venture ecosystem.<sup>3</sup>

With respect to the information requested in your letter, please see the details below on actions NVCA has taken to date to address harassment in our industry.

### Understanding the Scope of the Problem Within the Industry

NVCA immediately took action when news of female startup founders facing harassment was widely reported in June 2017. NVCA publicly condemned this behavior and called for a critical discussion for making systematic changes in our industry.<sup>4</sup> In the following months, NVCA led one-on-one discussions with several ecosystem participants spanning: venture investors, limited partners (i.e., investors into venture capital funds), entrepreneurs, academics, and, most importantly, many of the women who bravely came forward in the media to share their stories of harassment. It was important that NVCA use its convening authority as the industry trade association to understand the scope of the problem and the views of all stakeholders before moving forward with concrete actions.

After having these conversations, it became clear that we needed to convene individuals from all areas of the ecosystem for a group dialogue. In August 2017, NVCA brought together a group of 60 stakeholders for a constructive workshop in San Francisco that shed light on the perspectives of the various stakeholders, as well as the structures/operations of different types of organizations within the ecosystem.

<sup>&</sup>lt;sup>2</sup> Blog post, *Our Path Forward to Address Sexual Harassment in VC*, September 15, 2017, https://nvca.org/blog/diversity/path-forward-address-sexual-harassment-vc

<sup>&</sup>lt;sup>3</sup> VentureForward <u>https://nvca.org/ecosystem/ventureforward</u>

<sup>&</sup>lt;sup>4</sup> Blog post, *No Room for Harassment in our Industry*, June 26, 2017, <u>https://nvca.org/blog/no-room-harassment-industry</u>

From these discussions, three trends emerged:

- Some venture firms and early-stage startups have H.R. policies and best practices in place, but many do not. Oftentimes, smaller firms or startups do not have a dedicated H.R. resource on staff. Because there is no industry standard to turn to, policies, best practices, and education proved to be critical needs;
- In cases where policies or an H.R. capacity do not exist, individuals who may have wanted to report misconduct did not have a clear channel through which to do so; and
- A lack of diversity among investment decision makers at venture firms has, in some instances, led to cultural dynamics that have overshadowed an inclusive professional environment.

### Assessing and Addressing Risk Factors Specific to the Industry

A key element of NVCA's action on this issue has been understanding risk factors specific to the venture industry. The 2016 NVCA-Deloitte Human Capital Survey ("the Survey") has been a helpful resource in understanding the composition of the venture industry.

The Survey demonstrates that most venture capital firms are small, with the average staff size of a U.S. venture firm being 17 employees.<sup>5</sup> The Survey also found that because each firm has different strategies and needs regarding diversity and inclusion, the approaches that will provide each of them with the most effective outcomes "do not follow a one-size-fits-all strategy." For example, responses demonstrate that venture firms differ in their level of processes in place to address harassment. Certain firms require annual training on harassment and provide a clear point-of-contact for reporting harassment, while others have less concrete practices.

An additional risk factor reflected in the Survey is the lack of diversity in the venture industry. The Survey finds that 89% of investment partners (i.e., key decision-makers at venture firms) are male.

A distinguishing characteristic of the venture and startup ecosystem is the employer-employee relationship does not always mirror what is commonplace in other industries. Through the nature of the ecosystem and the venture lifecycle, limited partners, venture investors, and founders/entrepreneurs—though connected through the flow of capital—are not connected through the employer/employee structure in a traditional sense. This dynamic provides challenges that must be overcome when addressing harassment.

Understanding and addressing these risk factors have been core to NVCA's efforts.

### Soliciting Feedback from Industry Participants about How to Best Address Harassment

<sup>&</sup>lt;sup>5</sup> NVCA-Deloitte Human Capital Survey, December 2016, <u>http://nvca.org/?ddownload=4596</u>

In July 2017, NVCA issued a call to action for individuals to share recommendations or participate in the process to develop positive actions to address harassment.<sup>6</sup> The open solicitation yielded more than 50 responses. As part of the August 2017 harassment workshop NVCA organized (mentioned above), a majority of the conversation was spent on soliciting feedback from attendees across the ecosystem, including women who had shared their experiences with the media. Another important feedback channel came through the facilitation of two working groups of legal/employment experts, H.R. professionals, and venture investors.

Recommended solutions from industry participants through these various channels generally fell into three broad buckets:

- policies and best practices;
- training and education; and
- reporting capabilities.<sup>7</sup>

### Steps Taken to Ensure Education About Workplace Harassment Policies and Rights

After prioritizing the recommended solutions received via our diligence processes and with the assistance of our two working groups, NVCA publicly released several H.R. resources in February 2018 to equip venture capital firms, startups, and others with industry standards to reference and adopt.<sup>8</sup> These resources include:

- Sample H.R. Policies for Addressing Harassment & Discrimination Provides template language for a mission statement, non-discrimination policy, and anti-harassment policy. The latter includes a definition of prohibited conduct, complaint procedure and investigation process, prohibition against retaliation, and additional enforcement information.<sup>9</sup>
- Sample H.R. Best Practices for Addressing Harassment & Discrimination Outlines seven key areas for an organization to address: policy, leadership, accountability, communication, reporting process and non-retaliation, training, and reinforcement.<sup>10</sup>
- Sample Code of Conduct Policy Addresses compliance with laws, rules, and regulations; conduct that is harmful to the organization's culture and values; honest and ethical conduct and fair dealing; and unacceptable behavior.<sup>11</sup>

<sup>8</sup> Press release, *NVCA Unveils Resources to Help Address Sexual Harassment in Venture Ecosystem*, February 22, 2018, <u>https://nvca.org/pressreleases/nvca-unveils-resources-help-address-sexual-harassment-venture-ecosystem</u>

<sup>&</sup>lt;sup>6</sup> Blog post, *We want YOU to help us root out sexual harassment and create a safe and welcoming venture industry*, July 17, 2017, <u>https://nvca.org/blog/diversity/want-help-us-root-sexual-harassment-create-safe-welcoming-venture-industry</u>

<sup>&</sup>lt;sup>7</sup> Blog post, *The Industry Steps up with NVCA to Address Sexual Harassment in VC*, August 15, 2017, https://nvca.org/blog/industry-steps-nvca-address-sexual-harassment-vc

<sup>&</sup>lt;sup>9</sup> NVCA Sample H.R. Policies for Addressing Harassment and Discrimination, released February 22, 2018, https://nvca.org/download/60958

<sup>&</sup>lt;sup>10</sup> NVCA Sample H.R. Best Practices for Addressing Harassment & Discrimination, released February 22, 2018, https://nvca.org/download/60972

<sup>&</sup>lt;sup>11</sup> NVCA Sample Code of Conduct Policy, released February 22, 2018, <u>https://nvca.org/download/60966</u>

 Model Investors' Rights Agreement Language – Section 5.11 includes a provision for portfolio companies to adopt a code of conduct and anti-harassment and discrimination policy.<sup>12</sup>

These resources were included within the NVCA Model Legal Documents.<sup>13</sup> The Model Legal Documents are the industry standard for how venture deals are structured; are the most visited part of NVCA's website; and are widely known and referred to in our industry.

#### **Best Practices to Accurately Assess and Address Workplace Harassment**

Through NVCA's diligence, we realized early in the process that releasing policies alone would only go so far without a more simple and actionable framework for industry leaders to reference. To that end, we accompanied the release of the three model policies noted above with a best practices guide (i.e., *Sample H.R. Best Practices for Addressing Harassment & Discrimination*, also highlighted above) to assist with policy adoption and to maximize their effectiveness.<sup>14</sup> The guide provides recommendations for policy implementation, leadership standards, and creating a safe channel for harassment reporting to improve legal protections and processes in the workplace.

#### <u>Suggestions for How to Strengthen and Improve Legal Protections and Processes in the</u> <u>Workplace</u>

Our experience has been that the most powerful mechanism for producing change on harassment is a fully-engaged industry that is dedicated to addressing and resolving harassment. For that reason, NVCA and our member firms have devoted significant time and resources, as detailed in this letter. The efforts of our industry have raised awareness of the issue and started a serious conversation within our industry about how we can improve. We are grateful for the attention that policymakers, such as yourself, have paid to how various industries have reacted to harassment.

### Additional Measures Taken to Address Workplace Harassment and Risk Factors

Consistent with NVCA's belief that harassment is related to the lack of diverse individuals in the industry, we have also led the efforts outlined below—with the support of industry participants—to promote a more diverse and inclusive entrepreneurial ecosystem.

• White House Demo Day Pledge – Commitment signed in August 2015 by over 40 venture capital firms to support inclusive innovation.<sup>15</sup>

<sup>&</sup>lt;sup>12</sup> NVCA Model Investors' Rights Agreement, released February 7, 2018, <u>https://nvca.org/download/5066</u>

<sup>&</sup>lt;sup>13</sup> NVCA Model Legal Documents, <u>https://nvca.org/resources/model-legal-documents/</u>.

<sup>&</sup>lt;sup>14</sup> NVCA Sample H.R. Best Practices for Addressing Harassment & Discrimination, released February 22, 2018, https://nvca.org/download/60972

<sup>&</sup>lt;sup>15</sup> Press release, *Leaders of the Venture Capital Industry Commit to Actions to Advance Inclusion in the Entrepreneurial Ecosystem*, August 4, 2015, <u>https://nvca.org/pressreleases/leaders-of-the-venture-capital-industry-commit-to-actions-to-advance-inclusion-in-the-entrepreneurial-ecosystem</u>

- Bridging the Gender Gap: Entrepreneurship, Women, and Investing, Organized by Crunchbase, NVCA, and U.S. Small Business Administration Convened stakeholders in San Francisco in April 2016 to engage in a serious dialogue about the underrepresentation of women in the innovation ecosystem.<sup>16</sup>
- **Building a More Inclusive Entrepreneurial Ecosystem** NVCA report released in July 2016 featuring actions taken by NVCA and its member firms to directly address the lack of underrepresented groups participating in venture capital and entrepreneurship and provides an overview of diversity and inclusion initiatives led by collaborators across the U.S.<sup>17</sup>
- NVCA-Deloitte Human Capital Survey 2016 survey of the U.S. venture industry with data from 217 firms representing more than 3,000 employees developed a baseline understanding of the demographics of the workforce, as well as talent management and recruitment strategies and human capital strategies.<sup>18</sup> NVCA is currently working with Deloitte to refresh the survey in 2018. We plan to continue to field this survey to track industry needs and progress over time.
- **Policies Driving Innovation Hosted by NVCA** Convened industry stakeholders in San Francisco in March 2017 to review data, insights, and resources for helping investors and entrepreneurs build diverse, inclusive, and competitive teams.<sup>19</sup>
- Sample H.R. Policies for Attracting and Retaining Diverse Talent Publicly released H.R. policies (initially in March 2017<sup>20</sup> and updated in February 2018<sup>21</sup>) that provide template language for venture firms and startups to adopt related to recruitment strategies, childcare leave, mentorship programs, and flexible work arrangements. The goal of these policies is to assist organizations in fostering diverse and inclusive cultures.
- VentureForward Blog Series Launched in November 2017 for industry leaders to share their perspectives on why diversity and inclusion are important for the future of venture capital, their firm's activities and approach to diversity and inclusion, and guidance for how industry participants can drive meaningful change.<sup>22</sup>

In addition to NVCA's efforts, several complementary industry initiatives are underway to address harassment and to foster a more diverse and inclusive entrepreneurial ecosystem. These include:

<sup>&</sup>lt;sup>16</sup> <u>https://www.crunchbase.com/event/bridging-the-gender-gap-2016419#section-overview</u>

<sup>&</sup>lt;sup>17</sup> Building a More Inclusive Entrepreneurial Ecosystem, July 27, 2016, <u>http://www.nvca.org/?ddownload=3705</u>

<sup>&</sup>lt;sup>18</sup> NVCA-Deloitte Human Capital Survey, December 2016, <u>http://nvca.org/research/human-capital-survey</u>

<sup>&</sup>lt;sup>19</sup> NVCA Blog, *Having a Talent Strategy Makes a Difference*, March 20, 2017, <u>https://nvca.org/blog/talent-strategy-makes-difference</u>

<sup>&</sup>lt;sup>20</sup> NVCA Sample H.R. Policies for Attracting and Retaining Diverse Talent, released March 7, 2017 https://nvca.org/pressreleases/nvca-unveils-sample-h-r-policies-build-inclusive-cultures-venture-firms

<sup>&</sup>lt;sup>21</sup> NVCA Sample H.R. Policies for Attracting and Retaining Diverse Talent, updated and released February 22, 2018, https://nvca.org/pressreleases/nvca-unveils-resources-help-address-sexual-harassment-venture-ecosystem

<sup>&</sup>lt;sup>22</sup> <u>https://nvca.org/blog/ventureforward</u>

- All Raise An organization with the mission to accelerate the success of female funders and founders.<sup>23</sup>
- **#MovingForward** An open-source platform for highlighting VCs committed to diverse, inclusive, and harassment-free workplaces.<sup>24</sup>
- **Callisto** A developer of technology to combat sexual assault and harassment with plans of expansion to the entrepreneurial ecosystem in 2018.<sup>25</sup>
- **Paradigm** Partners with innovative organizations across industries to design diversity and inclusion strategies, consult and advise on execution, and train employees and leaders.<sup>26</sup>
- **Girls Who Invest** Focuses on education, industry outreach, accessibility and career placement to inspire and support young women to become tomorrow's leading investors.<sup>27</sup>
- **SheWorx** A global platform empowering 20,000+ female entrepreneurs to build and scale successful companies.<sup>28</sup>

We share your view that intentionality leads to change. We also know that venture capital firms and the entrepreneurs they fund have made unparalleled contributions to our country's economic prosperity through innovation and value creation. The health of the entrepreneurial ecosystem and its continued success are dependent on the intentionality of today's industry leaders to foster a more diverse and inclusive work environment.

We appreciate the committee's and your attention to this important topic, and we welcome further discussions to continue progress towards a more equal and harassment-free entrepreneurial ecosystem. We know there is more work to do, and NVCA remains committed to its leadership role on this issue.

Sincerely,

Bobby Franklin President and CEO

<sup>&</sup>lt;sup>23</sup> <u>https://www.allraise.org</u>

<sup>&</sup>lt;sup>24</sup> <u>https://wearemovingforward.github.io</u>

<sup>&</sup>lt;sup>25</sup> <u>https://www.projectcallisto.org</u>

<sup>&</sup>lt;sup>26</sup> https://www.paradigmiq.com

<sup>&</sup>lt;sup>27</sup> http://www.girlswhoinvest.org

<sup>&</sup>lt;sup>28</sup> <u>https://www.sheworx.com</u>

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## United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510–6300

June 28, 2018

Stephen J. Ubl President and Chief Executive Officer Pharmaceutical Research and Manufacturers Association "PhRMA" 950 F Street, NW Suite 300 Washington, DC 20004

Dear Mr. Ubl:

I write to you in your role as CEO of PhRMA with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated headlines and sparked a national conversation about power dynamics, equality, and change in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. In past months, we have seen headlines about leaders in the pharmaceutical sector who were called to account for their actions. I hope and expect that in your position as the leader of the industry's trade group, you are taking steps to address concerns about misconduct among member companies and to ensure that your members' workplaces are free from harassment.

According to a 2016 survey of 1,067 women in biomedical research positions, 30 percent of respondents reported experiencing sexual harassment in the workplace.<sup>1</sup> Among the women reporting harassment, 40 percent described more severe forms and 47 percent reported that these experiences negatively affected their career advancement. What's more, the fear of retaliation seems to be especially pervasive in the medical research community, due to the impact direct supervisors can have on a young researcher's career advancement, whether in academia or industry.<sup>2</sup>

While we have seen high profile cases of sexual harassment in several of your member companies (including Novartis, Pfizer, and Sanofi) these accounts likely underestimate the pervasiveness of sexual harassment in the pharmaceutical industry.<sup>34</sup> The EEOC estimates that

<sup>&</sup>lt;sup>1</sup> Reshma Jagsi, Kent A. Griffith, Rochelle Jones, et al., *Sexual Harassment and Discrimination Experiences of Academic Medical Faculty*, JAMA (May 17, 2016).

<sup>&</sup>lt;sup>2</sup> Leah Samuel, *In the wake of #MeToo, a new spotlight on harassment in biomedical science,* STAT News (Dec. 15, 2017).

<sup>&</sup>lt;sup>3</sup> Alex Keown, Sexual Harassment Scandals hit Novartis and Pfizer's Korea Units, BioSpace (Nov. 30, 2017).

<sup>&</sup>lt;sup>4</sup> Eric Palmer, Sanofi in #MeToo fight with ex-executive who has dismissed for sexual harassment, (Mar. 7, 2018).

85 percent of all workers who are subjected to harassment never file a formal legal charge, and 70 percent of all workers never file a complaint internally.<sup>5</sup>

We also cannot ignore the problematic public reports of gender discrimination and objectification propagated member companies. For example, earlier this month, Bayer, the Head of Pharmaceuticals & Member of Board of Management of which sits on your Board of Directors, sponsored a party at an industry conference that featured topless female dancers painted with the logos of other party sponsors.<sup>6</sup> This Bayer-sponsored event has a highly concerning history of objectifying women and using culturally inappropriate themes. Though some party organizers defended the dancers as "artsy and edgy,"<sup>7</sup> the bottom line is that objectifying women and exploiting cultural traditions for the purposes of entertaining fellow industry members is a deeply troubling indication of the way the industry leaders still devalue diversity and inclusion.<sup>8</sup> More concerning, since the party, PhRMA has been silent regarding Bayer's involvement, and has not taken any public steps to address the broader workplace cultural problems that clearly exist in the pharmaceutical industry.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am deeply concerned about the striking lack of public initiative within the pharmaceutical industry, especially as many other sectors are beginning to make muchneeded and overdue changes to protect workers. Actions taken with the goal of achieving greater gender balance in the pharmaceutical industry, from encouraging young girls to participate in STEM education to executive board-led efforts to increase diversity in the industry, will always be undercut by issues of harassment and culture. It has long been clear that the magnitude of the problem in your industry should not be ignored. I am hoping that the recent focus on this issue will provide the needed push to make real progress and writing to request insight into your efforts.

Specifically, I am interested in the ongoing discussions, plans, and actions within PhRMA aimed at protecting employees at member companies and ensuring that they are in equal and harassment-free workplaces. While we understand that PhRMA does not control its member companies, your trade organization represents member's interests, and their actions impact your reputation. I request a briefing with my staff within the next three weeks to discuss any recent efforts you have undertaken to assess and address workplace harassment among your member companies.

I also request the following information:

1. Any polling, surveys, or research PhRMA has conducted in order to understand the scope of the problem within the industry;

<sup>&</sup>lt;sup>5</sup> Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs*, U.S. Equal Employment Opportunity Commission 16 (June 2016), https://www.eeoc.gov/eeoc/task force/harassment/upload/report.pdf.

<sup>&</sup>lt;sup>6</sup> <u>https://www.bloomberg.com/news/articles/2018-06-13/after-biotech-party-features-topless-dancers-firms-pull-support</u>

<sup>&</sup>lt;sup>7</sup> <u>http://fortune.com/2018/06/14/biotech-conference-party-topless-dancers/</u>

<sup>&</sup>lt;sup>8</sup> https://www.bloomberg.com/news/articles/2016-01-13/at-biotech-party-gender-diversity-means-cocktail-waitresses

- 2. Any research or actions the PhRMA has undertaken to assess and address risk factors specific to the industry;
- 3. Any surveys the PhRMA has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 4. Any steps the PhRMA has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 5. Any best practices the PhRMA has identified among its associated employers to accurately assess and address workplace harassment; and
- 6. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less. Employers and employees in your industry are undoubtedly looking to you for leadership in determining how to tackle this persistent problem with the urgency it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter please contact Carly Rush or Laura Aguilar at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

Patty Murray United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions

cc: Robert Bradway, CEO Amgen, Chairman of the Board



July 19, 2018

The Honorable Patty Murray United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions United States Senate Washington, DC 20510-6300

Dear Senator Murray:

Thank you for your letter of June 28, 2018, regarding the issue of harassment in the workplace and, more specifically, steps our organization, the Pharmaceutical Research and Manufacturers of America (PhRMA), is taking to address this serious issue.

As a leading industry trade association, PhRMA is committed to ensuring a workplace where everyone can perform at their best in an environment free from harassment and discrimination. PhRMA has a zero tolerance policy when it comes to workplace harassment. Furthermore, all PhRMA employees must abide by an internal ethics code under which they must "[t]reat colleagues and others with dignity and respect." We have worked to put a system in place where PhRMA employees can raise concerns and make reports without fear of reprisal or retaliation.

To ensure that these policies are implemented effectively, PhRMA provides regular training to our employees. For example, in December 2017, PhRMA conducted organization-wide "Respect in the Workplace" training. These training sessions reviewed PhRMA's anti-harassment policy and also gave instruction to employees about how to recognize harassment as well as steps to prevent and respond to harassment.

In addition to our commitment to our employees, PhRMA is an ardent supporter of efforts around STEM education, a topic that you mention in your letter. PhRMA has published a number of informational resources on the topic of STEM education and its vital importance, not only to our industry, but also to U.S competitiveness. To access some of these materials, please see <a href="https://www.phrma.org/media/stem-growing-our-next-generation-of-innovators">https://www.phrma.org/media/stem-growing-our-next-generation-of-innovators</a>.

In your letter, you reference an event at the BIO convention that was sponsored in part by Bayer Corporation. PhRMA did not have any involvement in this event, and this type of activity is inappropriate and unacceptable and runs counter to PhRMA's efforts to eliminate harassment and discrimination. We have contacted Bayer Corporation about this matter, and my



Honorable Patty Murray July 19, 2018 Page 2 of 2

understanding is that Bayer has separately responded to your inquiry about its sponsorship of this event, which it has since terminated.

As you know, PhRMA's mission is to advocate for public policies in the United States and around the world that support innovative medical research, yield progress for patients today and provide hope for the treatments and cures of tomorrow. For this reason, the development and administration of anti-harassment policies is an internal function of each individual company. I am proud to say that all of PhRMA's member companies (1) have a written anti-harassment policy and (2) provide regular training to employees on this policy.

While we view these actions by our member companies as a step in the right direction, we recognize there is an opportunity to do more. Therefore, PhRMA is currently exploring different opportunities to engage more directly with our member companies to address and assess the issue of workplace harassment.

Thank you again for reaching out to PhRMA for our feedback on this important issue. We welcome the opportunity to continue this discussion with you and your staff. We also look forward to meeting with members of your staff tomorrow, Friday, July 20<sup>th</sup>. If you have any questions or require additional information, please feel free to contact Erin Katznelnick-Wise at (202) 835-3478 or <u>ewise@phrma.org</u> at your convenience.

Best regards,

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions

cc: Robert Bradway, CEO Amgen, Chairman of the PhRMA Board

#### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

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PATTY MURRAY, WASHINGTON BERNARD SANDERS (II), VERMONT ROBERT P. CASEY, JR., PENNSYLVANIA MICHAEL F. BENNET, COLORADO TAMMY BALDWIN, WISCONSIN CHRISTOPHER S. MURPHY, CONNECTICUT ELIZABETH WARREN, MASSACHUSETTS TIM KAINE, VIRGINIA MARGARET WOOD HASSAN, NEW HAMPSHIRE TINA SMITH, MINNESOTA DOUG JONES, ALABAMA

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## United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510-6300

February 7, 2018

Mr. Johnny C. Taylor, Jr. President and Chief Executive Officer Society for Human Resource Management 1800 Duke Street Alexandria, VA 22314

Dear President Taylor:

I write to your society with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated the headlines and sparked a national conversation about change, power dynamics, and equality in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. Although we are seeing headlines about powerful and famous people being called to account for their actions, we are seeing far less action in industries outside of the spotlight. Therefore, I hope and expect that you are taking steps to address concerns about misconduct in your industry and to ensure your members' workplaces are free from harassment.

Workplace sexual harassment is all too common, and human resource professionals have a responsibility to protect the employees they oversee. According to the Equal Employment Opportunity Commission (EEOC)'s Task Force on the Study of Harassment in the Workplace report, an estimated 60 percent of women across our nation's workforce experience unwanted sexual attention, sexual coercion, sexually crude conduct, or sexist comments in the workplace.<sup>1</sup> In fiscal year 2015, the EEOC received 28,000 charges from private sector employees or state and local government employees alleging harassment.<sup>2</sup> Forty-five percent of these alleged harassment complaints were on the basis of sex.<sup>3</sup> Thirty-four percent were on the basis of race, 19 percent were on the basis of disability, 15 percent were on the basis of age; 13 percent were on the basis of national origin; and five percent were on the basis of religion.<sup>4</sup>

As shocking as these numbers are, they likely underestimate the rate of sexual harassment because employees often stay silent out of fear of retaliation. Unfortunately, these fears are not unfounded. One study found that 75 percent of employees who reported workplace misconduct did indeed face some form of professional retaliation.<sup>5</sup> The EEOC estimates that 85 percent of all workers who are subjected to harassment never file a formal legal charge, and 70 percent of all workers never file a complaint

<sup>&</sup>lt;sup>1</sup> Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs*, U.S. Equal Employment Opportunity Commission 9-10 (June 2016), https://www.eeoc.gov/eeoc/task force/harassment/upload/report.pdf.

<sup>&</sup>lt;sup>2</sup> Feldblum & Lipnic at 6.

<sup>&</sup>lt;sup>3</sup> Feldblum & Lipnic at 7.

<sup>&</sup>lt;sup>4</sup> Feldblum & Lipnic at 7.

<sup>&</sup>lt;sup>5</sup> Feldblum & Lipnic at 16.

internally.<sup>6</sup> It has long been clear that the magnitude of the problem in your industry should not be ignored, and I am hoping that the recent focus on this issue will provide the needed push to make real progress.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue and am seeking an update on efforts to prevent and address harassment in workplaces across the country.

As part of that effort, I am interested in the ongoing discussions, plans, and actions within the Society for Human Resource Management ("SHRM") aimed at protecting employees and establishing an equal and harassment-free workplace. I request a briefing with my staff within the next three weeks to discuss any recent efforts you have undertaken to assess and address workplace harassment in your industry.

I also request the following information:

- 1. Any polling, surveys, or research the SHRM has conducted in order to understand the scope of the problem within the industry;
- 2. Any surveys the SHRM has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 3. Any steps the SHRM has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 4. Any best practices the SHRM has identified among its associated employers to accurately assess and address workplace harassment; and
- 5. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less of it.<sup>7</sup> Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the urgency that it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter you can contact Carly Rush or Joe Shantz at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

Patty Murray O United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Health, Education, Labor and Pensions Committee

<sup>&</sup>lt;sup>6</sup> Feldblum & Lipnic at 16.

<sup>&</sup>lt;sup>7</sup> Feldblum & Lipnic at 32.





December 14, 2018

The Honorable Patty Murray Ranking Member Senate Health, Education, Labor and Pensions Committee 648 Hart Senate Office Building Washington, D.C. 20510

Dear Senator Murray,

On behalf of 300,00 human resource (HR) professionals of the Society for Human Resource Management (SHRM) and the more than 117 million employees they impact, I am writing to express my appreciation for the year-long opportunity to engage with you and your staff to address the critical issue of sexual harassment in the workplace.

As we discussed at our meeting in April, SHRM continues to conduct research in an effort to better understand harassment and we are taking steps to educate our members on the importance of workplace culture as a solution.

Our "Harassment-Free Workplace Series" research shows a clear trend:

- 32 percent of organizations have made changes to their sexual harassment prevention training in 2017 and 22 percent planned to do so in 2018.
- Yet, our research also found that the majority of nonmanager employees who experienced sexual harassment did not report it, hindering the ability of HR professionals to identify and address cultural shortcomings.
- One-third of executives have changed their behavior in the wake of the #MeToo movement. These executives recognize that sexual harassment has a negative impact on morale, engagement and productivity.
- While 94 percent of HR professionals reported that their company has a policy to protect workers against sexual harassment, more than a third of employees still believe their workplace fosters sexual harassment.

These findings indicate that while policies are important, employers must change their culture or sexual harassment will persist in the workplace.

I look forward to working with you and the Committee in the 116<sup>th</sup> Congress to address this critical issue and that will ensure better workplaces for a better world.

Sincerely,



Johnny C. Taylor, Jr., SHRM-SCP President & CEO

#### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

MICHAEL B. ENZI, WYOMING RICHARD BURR, NORTH CAROLINA JOHNNY ISAKSON, GEORGIA RAND PAUL, KENTUCKY SUSAN M. COLLINS, MAINE BILL CASSIDY, M.D., LOUISIANA TODD YOUNG, INDIANA ORRIN HATCH, UTAH PAT ROBERTS, KANSAS LISA MURKOWSKI, ALASKA TIM SCOTT, SOUTH CAROLINA

PATTY MURRAY, WASHINGTON BERNARD SANDERS (II), VERMONT ROBERT P. CASEY, JR., PENNSYLVANIA MICHAEL F. BENNET, COLORADO TAMMY BALDWIN, WISCONSIN CHRISTOPHER S. MURPHY, CONNECTICUT ELIZABETH WARREN, MASSACHUSETTS TIM KAINE, VIRGINIA MARGARET WOOD HASSAN, NEW HAMPSHIRE TINA SMITH, MINNESOTA DOULG JONES, ALABAMA

DAVID P. CLEARY, STAFF DIRECTOR EVAN SCHATZ, DEMOCRATIC STAFF DIRECTOR

http://help.senate.gov

# United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510–6300

May 25, 2018

Linda Moore President and Chief Executive Officer TechNet 805 15<sup>th</sup> Street, NW Suite 708 Washington, DC 20005

Dear Ms. Moore:

I write to your association with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated the headlines and sparked a national conversation about change, power dynamics, and equality in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. Last year we saw headlines about leaders in the technology sector who were called to account for their actions.<sup>1</sup> I hope and expect that you have begun taking steps to address concerns about misconduct in your industry and to ensure that your members' workplaces are free from harassment.

According to the 2015 survey of 200 senior-level women in the technology sector, titled "The Elephant in the Valley," 60 percent of respondents reported receiving unwanted sexual advances while at work. One in three respondents have feared for their personal safety because of work-related circumstances, and 60 percent of those who ended up reporting sexual harassment were not satisfied with the course of action taken.<sup>2</sup> What's more, the pervasiveness of harassment appears to be endemic to the tech sector. According to one survey, employees in the tech industry reported unwanted sexual attention at rates nearly two times greater than tech employees in other industries.<sup>3</sup>

While high profile cases in the tech industry have helped raise awareness of the crisis of sexual harassment, these accounts likely underestimate the magnitude of sexual harassment pervasive throughout the tech industry. Unfortunately, in the U.S. today women hold only 25 percent of all computing jobs, and women often do not report harassment out of fear of retaliation that may negatively impact their earnings or their ability to keep their job.<sup>4</sup> The EEOC estimates that 85 percent of all workers who are subjected to harassment never file a formal legal charge, and 70 percent of all workers

<sup>&</sup>lt;sup>1</sup> Patrick May, Silicon Valley figures get swept up in the harassment crisis, Mercury News (Dec. 7, 2017),

https://www.mercurynews.com/2017/12/06/silicon-valley-figures-get-swept-up-in-the-unfolding-sexual-harassment-crisis/. <sup>2</sup> Trae Vassallo et al., *Elephant in the Valley*, https://www.elephantinthevalley.com/.

<sup>&</sup>lt;sup>3</sup> Allison Scott et al., *Tech Leavers Study*, Kapor Center for Social Impact (April 27, 2017), https://www.kaporcenter.org/wp-content/uploads/2017/08/TechLeavers2017.pdf.

<sup>&</sup>lt;sup>4</sup> Catherine Ashcraft, Brad McLain, and Elizabeth Eger, *Women in Tech: The Facts 2016 Update*, National Center for Women & Information Technology, (May 13, 2016)

https://www.ncwit.org/sites/default/files/resources/womenintech\_facts\_fullreport\_05132016.pdf.

never file a complaint internally.<sup>5</sup> It has long been clear that the magnitude of the problem in your industry should not be ignored, and I am hoping that the recent focus on this issue will provide the needed push to make real progress.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue and am seeking an update on efforts to prevent and address harassment in workplaces across the country. As part of that effort, I am interested in the ongoing discussions, plans, and actions within TechNet aimed at protecting employees and establishing an equal and harassment-free workplace. I request a briefing with my staff within the next three weeks to discuss efforts you have undertaken to assess and address workplace harassment in your industry.

I also request the following information:

- 1. Any polling, surveys, or research TechNet has conducted in order to understand the scope of the problem within the industry;
- 2. Any research or actions TechNet has undertaken to assess and address risk factors specific to the industry;
- 3. Any surveys TechNet has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 4. Any steps TechNet has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 5. Any best practices TechNet has identified among its associated employers to accurately assess and address workplace harassment; and
- 6. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less.<sup>6</sup> Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the urgency it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter please contact Carly Rush or Laura Aguilar at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

Patty Murray United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions

<sup>&</sup>lt;sup>5</sup> Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs*, U.S. Equal Employment Opportunity Commission 16 (June 2016),

https://www.eeoc.gov/eeoc/task\_force/harassment/upload/report.pdf.

<sup>&</sup>lt;sup>6</sup> Id. at 32.

#### **KEY FACTS ABOUT TECHNET**

- Ten out of 15 (66 percent) of TechNet's employees are women. Our President/CEO and three of our four corporate officers are female. One-third of the members on our Executive Council are women. All Executive Directors on our state team are female. In state capitals across the country, they lead our efforts and are viewed as respected and effective tech industry leaders.
- TechNet is proud of the female representation in our workforce. We have zero tolerance for any form of harassment in the workplace, which is outlined in our employee handbook (available upon request).
- In some states where TechNet is most active, state law either requires sexual harassment training and/or provides guidelines for individuals as part of the lobbyist registration process. However, each state's requirements vary and some have none at all.
  - Note: Senator Murray's home state of Washington does not currently require any specific training.
- TechNet is a small organization of 15 employees with a membership of 85 companies. Among a group of similar technology trade associations, we have the smallest annual revenue and the second smallest staff (15) with the second lowest ratio of staff to member at 0.2.

#### **TECHNET MEMBER EFFORTS TO COMBAT HARASSMENT**

TechNet members have taken extensive steps recently to combat workplace harassment:

#### Accenture

Has a "zero-tolerance" policy for sexual harassment and assault, but also aims to foster a culture of transparency that supports the policy. Company leaders and executives set and are held to the same standard which aims to do the following:

• Encourage transparency by ensuring each of its people has a <u>career counselor</u>, the majority of which are not direct supervisors, allowing employees to share concerns openly.

• As part of its <u>"Getting to Equal"</u> initiative, the company aims to achieve a gender-balanced workforce by 2025.

A comprehensive outline of Accenture's sexual harassment and assault policies can be found <u>online</u>.

#### Facebook

Published its <u>full internal harassment policy</u> in order to provide a guide for smaller companies with less resources to develop their own frameworks and to encourage discussion about how these policies can be improved. (<u>December 2017</u>)

#### Uber

Made the following changes to its sexual harassment and assault policies (May 2018):

- Ended mandatory arbitration for individual claims of sexual assault or sexual harassment by Uber drivers, riders, and employees.
- Survivors have the option to settle their claims with Uber without a confidentiality provision that prevents them from speaking about the facts of the sexual assault or sexual harassment they suffered.
- Will publish a safety transparency report that will include data on sexual assaults and other incidents that occur on the Uber platform.

Updated rider safety features (<u>April 2018</u>):

- Adding a "safety center" within the app that is accessible from the home screen and includes "key safety information, including tips built in partnership with law enforcement, driver screening processes, insurance protections and community guidelines."
- Riders will be able to upload five trusted contacts and be prompted to share trip details with them during every ride.
- Added an emergency button that can connect riders directly with 911.

- Uber will re-run driver background checks annually, invest in technologies to rapidly identify new driver offenses, and investigate and verify any potentially disqualifying information from public records.
- Expanding its Safety Advisory Board.
- Donated \$5 million to Raliance, National Network to End Domestic Violence, No More, Women of Color Network, Casa de Esperanza, A Call to Men, and The National Coalition of Anti-Violence Programs, and established an employee training program. (<u>November 2017</u>)

#### **TECHNET POLICY PRIORITIES**

In addition to having our own zero tolerance workplace harassment policies, TechNet is also committed to advancing public policies that promote a more diverse and inclusive nation, particularly in our workplaces.

For example, our federal policy priorities include the following priorities:

#### TechNet's Education and Workforce Development Principles:

- Policies and programs that focus on engaging and providing opportunities for female and minority students and workers in STEM and computer science.
- Promoting a highly qualified, more diverse workforce by ensuring historically black colleges and universities (HBCU) and Hispanic serving institutions (HSI) have the appropriate federal support to offer their students adequate opportunities in the STEM disciplines.

#### TechNet's Diversity and Inclusion Principles:

The technology industry is committed to promoting an inclusive workforce and nation that reflects the diversity of our customers and people. To ensure that our economy remains robust and innovative, we support education, workforce development, and immigration policies that empower the best and brightest people to continue making important contributions to our nation and communities. TechNet opposes all discrimination, including on the basis of nationality, race, religion, age, disability, sexual orientation, and gender identity.

In addition, we regularly lead events and take public positions in support of policies that embrace diversity and inclusion. These efforts have included:

- Blocked legislation that would have allowed government contractors to discriminate against LGBT individuals.
- <u>Defeating discriminatory anti-LGBT "bathroom bills"</u> in states across the country.
- TechNet's <u>opposition</u> to President Trump's immigration executive orders in January 2017.
- Publicly <u>supporting the Afghan girls robotics team</u> in their efforts to secure visas to compete in an international robotics competition in Washington, D.C.
- Op-eds by TechNet's leadership in support of policies that promote <u>diversity in STEM education</u>.
- Our President/CEO leading a SXSW 2018 panel on promoting a more diverse STEM talent pipeline.
- <u>Sponsoring an "Hour of Code"</u> event at the Texas State Capitol, bringing together young students of all backgrounds to promote careers in tech.
- <u>Sponsoring a "Teaching Girls to Tech" event</u> in Washington, D.C. as part of our efforts on International Day of the Girl 2017.
- Promoting our members' efforts to <u>help people with autism</u> <u>pursue careers in tech</u> and help them adapt to their workplaces.

# **TechNet Org Chart**



Linda Moore President & CEO

Executive Assistant to the President & CEO Deputy Director of Membership and **Aurelian Lauer** 



Vice President, Federal Policy, Government Relations, & Communications Alex Burgos



Vice President, Political Affairs & Strategic Partnerships Gideon Lett



Andrea Deveau Vice President, State Policy & Politics





Silvia Ochoa

















Accounting &



Executive Director, Laura Bennett



Southwest



9

**Caroline Joiner** Southeast

Executive Director, Jane McEnaney Midwest

Executive Director, Northwest Jo Deutsch

Executive Director, **Christina Fisher** Northeast

State Policy Manager

**Bish Paul** 



Executive Director,







**Matt Slavoski** Staff Assistant

& Government Relations Director, Federal Policy

Dave Toomey



13

Chief Financial Officer Patricia Albertson

Administrative Assistant

#### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

MICHAEL B. ENZI, WYOMING RICHARD BURR, NORTH CAROLINA JOHNNY ISAKSON, GEORGIA RAND PAUL, KENTUCKY SUSAN M. COLLINS, MAINE BILL CASSIDY, M.D., LOUISIANA TODD YOUNG, INDIANA ORRIN HATCH, UTAH PAT ROBERTS, KANSAS LISA MURKOWSKI, ALASKA TIM SCOTT, SOUTH CAROLINA PATTY MURRAY, WASHINGTON BERNARD SANDERS (I), VERMONT ROBERT P. CASEY, JR., PENNSYLVANIA MICHAEL F. BENNET, COLORADO TAMMY BALDWIN, WISCONSIN CHRISTOPHER S. MURPHY, CONNECTICUT ELIZABETH WARREN, MASSACHUSETTS TIM KAINE, VIRGINIA MARGARET WOOD HASSAN, NEW HAMPSHIRE TINA SMITH, MINNESOTA DUGG JONES, ALABAMA

# United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510-6300

DAVID P. CLEARY, STAFF DIRECTOR EVAN SCHATZ, DEMOCRATIC STAFF DIRECTOR http://help.senate.gov

February 7, 2018

Mr. Ted Stark III President ISSA - The Worldwide Cleaning Industry Association 3300 Dundee Road Northbrook, IL 60062

Dear President Stark:

I write to your association with deep concern regarding harassment in the workplace. In recent months, stories of sexual harassment have dominated the headlines and sparked a national conversation about change, power dynamics, and equality in the workplace and beyond. Workers across the country are speaking out about their experiences, and their stories have made clear that we all have a great deal of work to do to address this pervasive, systemic, and longstanding issue. Although we are seeing headlines about powerful and famous people being called to account for their actions, we are seeing far less action in industries outside of the spotlight. Therefore, I hope and expect that you are taking steps to address concerns about misconduct in your industry and to ensure your members' workplaces are free from harassment.

The management, administrative, and waste services industry employs over 7 million workers and has some of the highest rates of reported sexual harassment in the country.<sup>1</sup> According to data collected by the Equal Employment Opportunity Commission ("EEOC") from 2005 to 2015, the management, administrative, and waste services industry accounted for the fifth greatest portion of sexual harassment claims filed.<sup>2</sup> Janitorial staff are particularly vulnerable to harassment and abuse. A high percentage of janitorial staff do not speak English, many are undocumented, and the vast majority are women.<sup>3</sup> Further, janitorial staff often work at night in isolated environments without much security.<sup>4</sup>

Sadly, sexual harassment in the cleaning industry should not come as a surprise. Since 2000, the EEOC has sued ABM Industries Inc. of New York, one of the largest janitorial companies in the nation, three times for mishandling complaints of sexual harassment or assault. An investigative

<sup>1</sup> Labor Force Statistics from the Current Population Survey, Bureau of Labor Statistics (January 2018), https://www.bls.gov/cps/cpsaat18.htm.

<sup>&</sup>lt;sup>2</sup> Jocelyn Frye, Not Just the Rich and Famous: The Pervasiveness of Sexual Harassment across Industries Affects All Workers, Center for American Progress (November 2017),

https://www.americanprogress.org/issues/women/news/2017/11/20/443139/not-just-rich-famous/. <sup>3</sup> Sasha Khokha, *Working Alone, at Night, Janitors Risk Sexual Violence*, KQED (June 2015),

https://ww2.kqed.org/news/2015/06/23/working-alone-at-night-janitors-risk-sexual-violence/.

<sup>&</sup>lt;sup>4</sup> Sasha Khokha, Working Alone, at Night, Janitors Risk Sexual Violence, KQED (June 2015).

nation, three times for mishandling complaints of sexual harassment or assault. An investigative report found 42 lawsuits in the past twenty years in which ABM janitors alleged that they had been sexually harassed, assaulted, or raped while on the job.<sup>5</sup> In 2007, the EEOC sued ABM Industries for mishandling sexual harassment claims after 21 female janitors alleged they had been harassed or assaulted by male supervisors. The company admitted no wrongdoing and settled the suit for \$5.8 million.<sup>6</sup>

While the EEOC's dataset as well as firsthand stories from the field contextualize the crisis of sexual harassment in the janitorial services industry, these accounts likely underestimate the magnitude of sexual harassment in the industry. Women in low-wage jobs often do not report harassment in fear of retaliation that may affect their earnings or their ability to keep the job. The EEOC estimates that 85 percent of all workers who are subjected to harassment never file a formal legal charge, and 70 percent of all workers never file a complaint internally.<sup>7</sup> It has long been clear that the magnitude of the problem in your industry should not be ignored, and I am hoping that the recent focus on this issue will provide the needed push to make real progress.

As the Ranking Member of the U.S. Senate Committee with jurisdiction over issues of workplace harassment, I am extremely concerned about this issue and am seeking an update on efforts to prevent and address harassment in workplaces across the country.

As part of that effort, I am interested in the ongoing discussions, plans, and actions within the ISSA - Worldwide Cleaning Industry Association ("Association") aimed at protecting employees and establishing an equal and harassment-free workplace. I request a briefing with my staff within the next three weeks to discuss any recent efforts you have undertaken to assess and address workplace harassment in your industry.

I also request the following information:

- 1. Any polling, surveys, or research the Association has conducted in order to understand the scope of the problem within the industry;
- 2. Any research or actions the Association has undertaken to assess and address risk factors specific to the industry;
- 3. Any surveys the Association has conducted to solicit feedback from employees about how to best address harassment in the industry and the results of the surveys;
- 4. Any steps the Association has taken to ensure its associated employers are fully and properly educating their employees about workplace harassment policies and rights;
- 5. Any best practices the Association has identified among its associated employers to accurately assess and address workplace harassment; and

https://www.eeoc.gov/eeoc/task\_force/harassment/upload/report.pdf.

<sup>&</sup>lt;sup>5</sup> Bernice Yeung, *Under cover of darkness, female janitors face rape and assault*, The Center for Investigative Reporting (June 2015), https://www.revealnews.org/article/under-cover-of-darkness-female-janitors-face-rape-and-assault/.

<sup>&</sup>lt;sup>6</sup> Nathan Olivarez-Giles, *ABM settles sexual harassment suit for \$5.8 million*, Los Angeles Times (September 2010), http://articles.latimes.com/2010/sep/02/business/la-fi-0903-harass-suit-20100902.

<sup>&</sup>lt;sup>7</sup> Chai R. Feldblum & Victoria A. Lipnic, Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs, U.S. Equal Employment Opportunity Commission 16 (June 2016),

6. Any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace.

Studies have shown that workplaces that tolerate harassment have more of it, while workplaces that intentionally act to address issues of harassment have less of it.<sup>8</sup> Employers and employees in your industry are undoubtedly looking to you for leadership in how to tackle this persistent problem with the urgency it requires. I appreciate you taking this matter seriously, and I look forward to our continued discussions. If you have any questions regarding this letter please contact Carly Rush or Joe Shantz at 202-224-0767 with my Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

Patty Murray

United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions

<sup>&</sup>lt;sup>8</sup> Feldblum & Lipnic at 32.



February 28, 2018

The Honorable Patty Murray United States Senator Ranking Member, Senate Committee on Health, Education, Labor, and Pensions Washington, DC 20510-6300

Dear Senator Murray:

Thank you for your correspondence of Feb. 7, 2018. ISSA welcomes this opportunity to join the public discourse on the critically important topic of workplace sexual harassment.

Admittedly ISSA's activity to date on addressing workplace sexual harassment has been limited to periodic articles on the topic and occasional training programs. Nonetheless, as of the beginning of 2018, the association has committed to developing and implementing a comprehensive strategic approach to address workplace sexual harassment in the cleaning industry, which we will discuss in more detail below.

But first, we would like to provide you with some background and context around our association.

ISSA is a non-profit trade association that represents the commercial and institutional cleaning industry. Founded in 1923, historically ISSA (International Sanitary Supply Association) represented the supply side of the industry with its membership open only to manufacturers and distributors of cleaning products. It was only relatively recently (2005) that ISSA's membership was opened to providers of cleaning services (both third-party contracted services as well as in-house cleaning service providers). And it was just within the last couple of years that our cleaning service provider (CSP) membership category has grown to a significant size due largely to the merger of two smaller associations into ISSA in 2016 and 2017.

Up to this point, ISSA has focused on our area of expertise—cleaning—and emphasized education and training to promote workplace safety and health for the frontline cleaning service employees for our CSP members. However, now that we are seeing significant growth in this membership category, we have turned our attention as an industry association to the topic of workplace sexual harassment.

The development and implementation of our comprehensive plan to address workplace sexual harassment will be premised on our association's strong history of stewardship including but not limited to the following programs and activities:

- ISSA's ongoing efforts beginning in the mid-1990's and continuing today to promote environmentally preferable products and processes to reduce the health and safety impacts on workers as well as reduced environmental impact.
- Providing the gift of free house cleaning to women undergoing treatment for any type of cancer in the United States and Canada through our sister organization, Cleaning for a Reason (founded 2006).
- Promoting the entry into, advancement, and retention of women in the cleaning industry via the efforts of the ISSA Hygieia Network (established 2015), an arm of the organization dedicated to the improvement of working conditions for women in the industry.

• Issuing over \$168,000 in scholarships in 2017 through our ISSA Foundation to 56 students, close to 70% of which were female.

It is upon this platform and history of stewardship that ISSA will develop and implement a comprehensive plan for addressing workplace sexual harassment across all segments of our industry. While we are still very early on in the planning process, the development and implementation will rely on the following components:

- A Senior Management Team has been brought together to lead the development and implementation of the plan to reduce workplace sexual harassment. This team draws from human resources, legal, education and training, and our executive offices.
- Review, evaluate and revise as needed ISSA internal workplace policies and procedures on workplace harassment.
- Expanded role for the ISSA Hygeia Network to raise awareness of the issue and serve as a communication platform to deliver messaging to the cleaning industry.
- Identify and share best practices, as well as develop resources for the industry such as sample workplace policies and other tools.
- Develop and deliver a suite of comprehensive education and training programs including but not limited to delivery via webinars, the Internet and in-person sessions.
- A review of the ISSA Cleaning Industry Management Standard (CIMS) for purpose of including a robust workplace sexual harassment component.

In summary, ISSA is determined to lead on this subject and is committed to ensuring the businesses in our industry have the education, tools, and information they need to implement sexual harassment training programs within their organizations.

We at ISSA welcome the opportunity to engage your office in a dialogue on this subject of critical importance to workplaces across the nation. In this regard, we request the opportunity to meet personally with you and your staff to continue this conversation.

Respectfully Submitted,

William C. Balek Director of Legislative and Environmental Services ISSA

cc: Lamar Alexander, United States Senator, Chairman, Senate Committee on Health, Education, Labor, and Pensions

Ted Stark, President, ISSA

John Barrett, Executive Director, ISSA

### **Appendix II: Letters to Federal Agencies**

The following are reproductions of the letters Senator Murray sent to the U.S. Department of Education, the U.S. Department of Labor, and the U.S. Department of Health and Human Services, as well as the written responses and documents produced from each of the federal agencies in response.

#### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

MICHAEL B. ENZI, WYOMING RICHARD BURR, NORTH CAROLINA JOHNNY ISAKSON, GEORGIA RAND PAUL, KENTUCKY SUSAN M. COLLINS, MAINE BILL CASSIDY, M.D., LOUISIANA TODD YOUNG, INDIANA ORRIN HATCH, UTAH PAT ROBERTS, KANSAS LISA MURKOWSKI, ALASKA TIM SCOTT, SOUTH CAROLINA PATTY MURRAY, WASHINGTON BERNARD SANDERS (I), VERMONT ROBERT P. CASEY, JR., PENNSYLVANIA MICHAEL F. BENNET, COLORADO TAMMY BALDWIN, WISCONSIN CHRISTOPHER S. MURPHY, CONNECTICUT ELIZABETH WARREN, MASSACHUSETTS TIM KAINE, VIRGINIA MARGARET WOOD HASSAN, NEW HAMPSHIRE TINA SMITH, MINNESOTA DOUG JONES, ALABAMA

DAVID P. CLEARY, STAFF DIRECTOR EVAN SCHATZ, DEMOCRATIC STAFF DIRECTOR

http://help.senate.gov

# United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510–6300

January 30, 2018

The Honorable R. Alexander Acosta Secretary U.S. Department of Labor 200 Constitution Avenue, NW Washington, DC 20210

Dear Secretary Acosta:

We write to you with deep concern regarding harassment in the workplace and to obtain information on what you are doing to address the issue within your agency. As you are well aware, workplace harassment is not a new issue that workers face; it is pervasive, systemic, and unacceptable. Recently, many brave women and men have spoken out to shed light on sexual harassment across the country. Women, in particular, have answered the call and their voices are leading the way in demanding change and equality—often taking great risk to speak out for the first time, and their voices are making a difference. As the head of a federal agency employing thousands of people, you can play a critical role in establishing and modeling safe work environments for all workers, and we hope you will do so.

Workplace sexual harassment is all too common, including in the federal government. According to the Equal Employment Opportunity Commission (EEOC)'s Task Force on Sexual Harassment in the Workplace report, an estimated 60 percent of women across our nation's workforce experience unwanted sexual attention, sexual coercion, sexually crude conduct, or sexist comments in the workplace.<sup>1</sup> In fiscal year 2015, the EEOC received 6,741 complaints from federal employees alleging harassment.<sup>2</sup> Forty-four percent of these complaints were on the basis of sex.<sup>3</sup> At the Department of Labor specifically, there have been 25 complaints of sexual harassment since 2012.<sup>4</sup> While these numbers are very concerning, they do not come close to holistically capturing the scope of the problem as harassment is vastly underreported. The EEOC estimates that on average 87 to 94 percent of people never file a formal legal charge, and 70 percent of employees never file a complaint internally.<sup>5</sup>

<sup>&</sup>lt;sup>1</sup> Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs*, U.S. Equal Employment Opportunity Commission 9 (June 2016),

https://www.eeoc.gov/eeoc/task\_force/harassment/upload/report.pdf.

<sup>&</sup>lt;sup>2</sup> Feldblum & Lipnic at 6.

<sup>&</sup>lt;sup>3</sup> Feldblum & Lipnic at 7.

<sup>&</sup>lt;sup>4</sup> See U.S. Department of Labor, Equal Employment Opportunity Data Posted Pursuant to Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107-174 1, https://www.dol.gov/nofearact/pdf/DOL-Qtr4-2017.pdf.

<sup>&</sup>lt;sup>5</sup> Feldblum & Lipnic at 16.

All executive branch employees, including Department of Labor employees, are protected from workplace sexual harassment under Title VII of the Civil Rights Act of 1964. Federal government employees are also protected from workplace sexual harassment under federal employment antidiscrimination laws.<sup>6</sup> As head of the Department of Labor, your leadership is critical to ensure a harassment-free workplace and equal employment opportunities for Department of Labor employees.

As such, we are interested in the ongoing discussions, plans, and actions within the Department aimed at protecting employees and establishing a safe working environment free from harassment. We request a briefing about the ways in which the Department is addressing this issue and to discuss any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace. Additionally, we request the following information by no later than February 13, 2018:

- 1. Descriptions, charters, and rosters of Department policy, or working groups, or taskforces on the issue of harassment;
- 2. A copy of the Department's non-discrimination policy;
- 3. A copy of the Department's policy regarding anti-harassment training, a listing of the annual occurrences of such trainings, the curriculum used in the trainings, and a description of other types of trainings related to harassment offered at the Department, including but not limited to bystander intervention training;
- 4. A copy of the Department's contracts with companies conducting training related to harassment;
- 5. A copy of the Department's dispute resolution process and policies;
- 6. A copy of the Department's Table of Penalties, outlining the Department's recommended disciplinary actions for personnel misconduct;
- 7. The total cost and number of harassment settlements made during FY2013, FY2014, FY2015, FY2016, and FY2017; and
- 8. A description of any other efforts the Department undertakes to assess and address workplace harassment.

We all have a great deal of work to do to address harassment in the workplace. We appreciate you taking this matter seriously and providing full and prompt responses. If you have any questions regarding my inquiries you can contact Carly Rush or Joe Shantz at 202-224-0767 with Senator Murray's Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

Patty Murray United States Senator

Bal Sanda

Bernard Sanders United States Senator

<sup>&</sup>lt;sup>6</sup> See 42 U.S.C. §2000e-16(a)-(b) (prohibiting discriminatory practices for federal employees and providing for enforcement by the Equal Employment Opportunity Commission); see generally 29 C.F.R. §1614 (establishing procedural regulations for enforcement of complaints from federal sector employees).

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Robert P. Casey, Jr. United States Senator

Tammy Baldwin United States Senator

Elizabeth Warren United States Senator

Margarer Wood Hassan United States Senator

Doug Jones

United States Senator

My F.B

Michael F. Bennet United States Senator

hristopher S. Murphy

United States Senator

Tim Kaine

United States Senator

Tina Smith United States Senator

#### U.S. Department of Labor

Assistant Secretary for Congressional and Intergovernmental Affairs Washington, D.C. 20210



MAR 6 2010

The Honorable Patty Murray Ranking Member Committee on Health, Education, Labor, and Pensions U.S. Senate Washington, DC 20510

Dear Ranking Member Murray:

Thank you for your January 30, 2018, letter regarding the Department of Labor's efforts to address workplace harassment.

The Department of Labor (the Department) takes workplace sexual harassment very seriously. The Department is committed to preventing and eliminating workplace sexual harassment. Our leadership not only recognizes that our employees are entitled to certain protections from harassment under Title VII of the Civil Rights Act of 1964 and other federal employment anti-discrimination laws, but the Department also employs a higher standard to safeguard against and curtail harassment before it becomes a violation of the law. The Department's Policy & Procedures for Preventing & Eliminating Harassing Conduct in the Workplace,<sup>1</sup> issued in 2003, has been recognized by the Equal Employment Opportunity Commission (EEOC) as a model within the federal government.<sup>2</sup>

To prevent all forms of workplace discrimination and retaliation, including sexual harassment, the Department requires all employees to take "No FEAR Act Training" every two years as required by the Act.<sup>3</sup> Efforts to ensure the ongoing education of the Department's workforce are central to its core mission of worker safety and health. The Department's Civil Rights Center (CRC), the Office of Diversity and Inclusion (ODI) in the Human Resources Center (HRC), and Workplace Equality Compliance Offices (WECOs) within Departmental sub-agencies<sup>4</sup> offer training (online and in-person) and other assistance on a regular basis for managers, supervisors, and employees to ensure awareness of their rights and responsibilities with regard to workplace harassment. This training includes information for new employees entering the Department as well as instructions for those ascending to supervisory positions. The Department also maintains a robust website that includes desk aids designed to provide information to employees on various Equal Employment Opportunity (EEO) topics, including harassment.<sup>5</sup>

<sup>&</sup>lt;sup>1</sup> Copy enclosed.

<sup>&</sup>lt;sup>2</sup> See <u>https://www.eeoc.gov/federal/model\_eeo\_programs.cfm</u>

<sup>&</sup>lt;sup>3</sup> See <u>https://www.dol.gov/oasam/programs/crc/NOFEAR.htm</u>

<sup>&</sup>lt;sup>4</sup> The Department does not have formal "working groups" or "taskforces" on the issue of harassment, as referenced in your letter. However, the CRC, HRC, and sub-agency WECOs work together to ensure awareness and consistent response to allegations of harassment.

<sup>&</sup>lt;sup>5</sup> See <u>https://www.dol.gov/oasam/programs/crc/internal-hot-topics.htm</u>

In recent months, in addition to issuing Secretary Acosta's Policy Statement on Equal Employment Opportunity<sup>6</sup> and Policy Statement on Harassing Conduct in the Workplace,<sup>7</sup> the Department reemphasized the importance of preventing workplace harassment in a number of ways, including employee responsibilities if they observe harassment occurring. Further, the Department conducted mandatory in-person training for all managers and supervisors, as well as non-career appointees.<sup>8</sup> In addition, the Department issued a fact sheet, "What do I need to know about... Workplace Sexual Harassment,"<sup>9</sup> that provides employees with information and resources about their rights and responsibilities, and makes clear that harassment is not limited to sex (e.g., men are protected from harassment by men; women are protected from harassment by women). The fact sheet covers quid pro quo harassment and hostile work environment harassment. The Department is also finalizing on-line training to be required of all employees and contractors that emphasizes sexual harassment and the prohibition against retaliation.

As noted in your letter, there have been 25 formal EEO complaints filed since 2012 that alleged sexual harassment. Of those, one resulted in a finding of discrimination and six resulted in settlements. Every complaint filed with the CRC in which harassment is alleged is also referred to each sub-agencies' WECO so that an immediate assessment of the circumstances can take place and prompt and effective remedial action can be instituted even prior to the conclusion of the EEO administrative process. Timely and effective investigations and adjudications strengthen employees' trust in the Department's ability to address discrimination and retaliation.



In lieu of a Table of Penalties, which is not required, the Department employs a process for considering discipline outlined in the Department of Labor Manual Series (DLMS) 4, Chapter 300 – DOL Equal Employment Opportunity Program, effective March 11, 2013 (copy enclosed). The Department must afford all employees due process rights before imposing discipline and determines the correct response following the Douglas Factors.<sup>11</sup> DOL's negotiated grievance procedures under the Department's collective bargaining agreements with the American Federation of Government Employees (AFGE) Local 12, the National Council of Field Labor Locals (NCFLL), and the National Union of Labor Investigators (NULI) is enclosed. The Department's dispute resolution process and policies are available on its website.<sup>12</sup>

<sup>&</sup>lt;sup>6</sup> See <u>https://www.dol.gov/oasam/programs/crc/crc-internal/2017EEOPolicy.pdf</u>

<sup>&</sup>lt;sup>7</sup> See <u>https://www.dol.gov/oasam/programs/crc/crc-internal/2017-Policy-Statement-on-Harassing-Conduct-in-the-Workplace.pdf</u>

 <sup>&</sup>lt;sup>8</sup> A copy of the contract for this training is enclosed. To date it has been offered on five occasions.
 <sup>9</sup> See <u>https://www.dol.gov/oasam/programs/crc/harassment.pdf</u>

<sup>&</sup>lt;sup>10</sup> Pursuant to the Department's record retention policy, the Department's Civil Rights Center disposes of such records after 4 years. As such, information for FY 2013 is not available.

<sup>&</sup>lt;sup>11</sup> See <u>https://www.opm.gov/policy-data-oversight/employee-relations/reference-materials/douglas-factors.pdf</u>

<sup>&</sup>lt;sup>12</sup> See https://www.dol.gov/oasam/programs/crc/USDOL\_EEO\_ADR\_Program-Policy.pdf.

I believe this is responsive to the specific information requested and hope that we have been able to provide useful context around the Department's policies and practices for preventing harassment, including sexual harassment, in our workplaces. We would be pleased to make the appropriate agency staff available to provide a briefing, and we look forward to working with you to further strengthen the federal government's commitment to protect employees from sexual and other forms of illegal harassment.

Sincerely,

Katherine B. McGuire

#### Enclosures

cc: Senator Bernard Sanders Senator Robert P. Casey, Jr. Senator Tammy Baldwin Senator Elizabeth Warren Senator Margaret Wood Hassan Senator Doug Jones Senator Michael F. Bennet Senator Christopher S. Murphy Senator Tim Kaine Senator Tim Smith

# **LABORNET**

# DLMS 4 – PERSONNEL MANAGEMENT Chapter 700 – Policy & Procedures for Preventing & Eliminating Harassing Conduct in the Workplace

Date: October 7, 2003

DEPARTMENTAL	OASAM X	
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MANUAL TRANSMITTAL

**Chapter Reference:** DLMS 4 – Chapter 700 – Policy & Procedures for Preventing & Eliminating Harassing Conduct in the Workplace

**Nature of Revisions:** The directive is a new Departmental policy. It was previously approved and signed by the Secretary on April 10, 2003. This policy has been reformatted and renamed DLMS 4 – Chapter 700 to comply with all other Departmental Directives.

Approval for Issuance and Distribution:

PATRICK PIZZELLA Assistant Secretary for Administration and Management

## **Table of Contents**

- 700 Policy & Procedures for Preventing & Eliminating Harassing Conduct in the Workplace
- 701 <u>Purpose</u>
- 702 <u>The Definition of harassing Conduct</u>
- 703 Policy Against Harassing Conduct
- 704 <u>Procedures and Responsibilities</u>
- 705 <u>Reporting Harassment</u>
- 706 Inquiries into Allegations of Harassing Conduct
- 707 Action to be Taken upon Completion of the Inquiry

# 700 Policy & Procedures for Preventing & Eliminating Harassing Conduct in the Workplace

https://labornet.dol.gov/workplaceresources/policies/DLMS/DLMS04/dlms4-0700.htm

**701 Purpose.** This Policy is intended to assure that the Department of Labor is taking all necessary steps to prevent sexual harassment and other forms of harassing conduct in the workplace, and to correct harassing conduct that does occur before it becomes severe or pervasive. It updates the Department of Labor's long-standing policy on harassment in light of the Supreme Court's decisions in *Faragher v. Boca Raton*, 524 U.S. 775 (1998), and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998).

**702 The Definition of Harassing Conduct.** For the purposes of this Policy, harassing conduct is defined as any unwelcome verbal or physical conduct based on any characteristic protected by law when:

- A. The behavior can reasonably be considered to adversely affect the work environment; or
- B. An employment decision affecting the employee is based upon the employee's acceptance or rejection of such conduct.

#### 703 Policy Against Harassing Conduct.

The Department of Labor does not permit harassing conduct by anyone in the workplace. It is the policy of the Department to maintain a work environment free from the harassing conduct described above.

The Department has determined that the most effective way to limit harassing conduct is to treat it as misconduct, even if it does not rise to the level of harassment actionable under Title VII of the Civil Rights Act of 1964, as amended. A hostile environment claim under Title VII usually requires showing a pattern of offensive conduct. The Department will not wait for such a pattern to emerge. Rather, the Department will act before the harassing conduct is so pervasive and offensive as to constitute a hostile environment. In the usual case, a single utterance of an ethnic, sexual, or racial epithet that offends an employee would not be severe enough to constitute unlawful harassment in violation of Title VII; however, it is the Department's view that such conduct is inappropriate and must be stopped.

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 inquiry about such a report. Complaints of such retaliation shall be handled pursuant to the procedures in this Policy.

This Policy supersedes any and all other previous policies on harassment at the Department of Labor. This Policy is separate and apart from any collective bargaining agreement or statutory complaint process covering harassment.

#### 704 Procedures and Responsibilities.

#### A. Procedures Applicable to All Department of Labor Employees

- 1. Each Department of Labor employee shall be responsible for:
  - a. Acting professionally and refraining from harassing conduct;
  - b. Becoming familiar with the provisions of this Policy, complying with all requirements of the Policy, and cooperating with any inquiry under this Policy; and
  - c. Promptly reporting, pursuant to procedures set forth in section 705, any incident of harassing conduct that he or she experiences before it becomes a pattern of misconduct so pervasive and offensive as to constitute a hostile environment. The Department cannot correct harassing conduct if the conduct is not known. When an employee unreasonably fails to take advantage of this procedure and does not promptly report an incident of harassing conduct as set forth herein, the Department reserves the right

to raise this failure to report as a defense against a suit for harassment, in accordance with *Faragher* and *Ellerth*.

#### B. Responsibilities of Supervisors and Managers

- 1. All supervisors and managers shall be responsible for:
  - Acting promptly and appropriately to prevent harassment in the workplace, and retaliation against those who complain of harassment;
  - Reporting, pursuant to procedures set forth in section 705, any incident of harassing conduct that they witness or is otherwise brought to their attention;
  - c. Receiving and handling allegations of harassing conduct promptly and appropriately, utilizing the procedures set forth in section 706 below;
  - d. In consultation with the EEO Manager, providing interim relief to alleged victims of harassment pending the outcome of the investigation to ensure that further misconduct does not occur; and
  - e. Using the procedures set forth below, in consultation with the EEO Manager, taking prompt and appropriate corrective and disciplinary action, up to and including removal, against personnel who have engaged in harassing conduct or who have not carried out their responsibilities under this Policy.
- C. Responsibilities of the Office of the Assistant Secretary for Administration and Management (OASAM)
  - 1. The Director, Civil Rights Center, shall be responsible for:
    - a. Disseminating the policy statement annually to all employees. Distributing this procedures document to all Departmental offices and posting it on the DOL website;
    - b. Ensuring that employees are informed of this Policy and the procedures to follow in connection with reporting harassing conduct;
    - Providing technical assistance and support, to assure compliance with this Policy and providing other assistance as requested by EEO Managers and Regional Administrators of the Office of the Assistant Secretary for Administration and Management (OASAM);
    - d. Training CRC investigators on inquiring into complex allegations of harassing conduct;
    - e. Ensuring that the identities of the agency EEO Managers and the OASAM Regional Administrators will be prominently displayed in the Department and listed on the LaborNet; and
    - f. Advising regional employees, by and through the Regional Civil Rights Officers, on this Policy.
  - 2. The Regional Administrators shall be responsible for:
    - a. Receiving allegations of harassment under this Policy and promptly notifying the EEO Manager of the agency in which the alleged harasser is employed of the allegation; and
    - b. Providing further assistance as requested by an agency EEO Manager.
  - 3. The Human Resources Center shall be responsible for:
    - a. Providing advice to managers and supervisors on taking disciplinary actions for conduct that violates this Policy, as consulted.

#### D. Responsibilities of Agency EEO Managers

- 1. The EEO Manager in each Department of Labor agency shall be responsible for:
  - a. Advising national office employees in his or her agency on this Policy;
  - b. Receiving allegations of harassing conduct;
  - c. Conducting or overseeing fair and impartial inquiries into allegations of harassing conduct. The EEO Manager will have the authority to decide who will conduct an inquiry into an allegation of harassment, provided that the person conducting the inquiry has had appropriate training in investigating allegations of workplace misconduct. In complex or difficult cases, the EEO Manager will draw upon the expertise of the Civil Rights Center as he or she deems appropriate;

- d. Advising supervisors and managers on the provision of interim relief to the alleged victims of harassing conduct pending the outcome of the investigation to ensure further misconduct does not occur; and
- e. Advising the Agency Head or other persons who need to know of allegations of harassment and the resolution of those allegations under this Policy.
- E. Responsibilities of the Office of the Solicitor and Counsel to the Inspector General. The Office of the Solicitor shall be responsible for providing legal advice to management concerning the implementation and interpretation of this Policy. If an Office of the Inspector General (OIG) employee is involved in the allegation, legal counsel to the OIG will, after consultation with SOL, provide legal advice to OIG management.
- F. Responsibilities of Agency Heads
  - 1. Each Department of Labor Agency Head shall be responsible for:
    - a. Taking appropriate action to enforce this Policy; and
    - b. Working closely with the EEO Manager to ensure that this Policy is properly implemented.

#### 705 Reporting Harassment. The procedures for reporting incidents of harassing conduct are as follows:

- A. Any person who believes that he or she has been the subject of an incident of harassing conduct in violation of this Policy should report this matter: to anyone in the complainant's supervisory chain; or to his or her Agency EEO Manager in the National Office; or for regional employees, to the Regional Administrator, OASAM.
- B. All information will be maintained on a confidential basis to the greatest extent possible. The maintenance of records and any disclosures of information from these records shall be in complete compliance with the Privacy Act, 5 U.S.C. 552a. Such information, however, may have to be disclosed to defend the Department in any litigation to which the information may be relevant and necessary. Further, information may need to be disclosed to those officials and employees within the Department with a need to know in order to carry out the purpose and intent of this Policy.

#### 706 Inquiries into Allegations of Harassing Conduct.

- A. A supervisor or manager who receives an allegation or witnesses harassing conduct shall immediately:
  - 1. Inform the EEO Manager and seek guidance as to further actions;
  - 2. In consultation with the EEO Manager, take action to stop any harassing conduct and prevent further harassment while the allegations are being investigated, including granting of appropriate interim relief to the alleged victim of harassing conduct; and
  - In consultation with the EEO Manager, document the allegation received and his or her efforts to address it.
- B. If the OASAM Regional Administrator receives an allegation of harassing conduct, he or she shall promptly notify the EEO Manager of the agency of the person accused of misconduct and provide further assistance as requested by the EEO Manager.
- C. When the EEO Manager receives an allegation of harassing conduct, either directly by the complainant or through a supervisor, manager or other sources, he or she shall: Ensure that a prompt, thorough, impartial and appropriate inquiry is conducted; and
  - Recommend appropriate action to stop any harassing conduct and prevent further harassment, including granting appropriate interim relief to the alleged victim of harassing conduct while the allegations are being investigated.

- D. Where an investigation is necessary, a written summary of the investigation shall be prepared by the individual conducting the inquiry, in consultation with the EEO Manager for the agency of the person accused of misconduct. (The summary may be brief, depending on the complexity and seriousness of the case.) The summary shall be prepared promptly after completion of the inquiry and shall be submitted to the EEO Manager (if the EEO Manager did not conduct the inquiry) and the supervisor who would be responsible for taking disciplinary action against the alleged harasser, if the allegations are true.
- E. The summary of the investigation or other documentation prepared under this procedure shall be kept confidential, to the extent possible. The maintenance of records and any disclosures of information from these records shall be in complete compliance with the Privacy Act, 5 U.S.C. 552a. Such information, however, may have to be disclosed to defend the Department in any litigation to which the information may be relevant and necessary. Further, information may need to be disclosed to those officials and employees within the Department with a need to know in order to carry out the purpose and intent of this Policy.

#### 707 Action To Be Taken upon Completion of the Inquiry.

ONU INF TOOLS

- A. Upon completion of the inquiry, and in consultation with the EEO Manager, agency management shall promptly evaluate the evidence and determine the appropriate action to take. This responsibility normally shall rest with the first line supervisor of the employee alleged to have engaged in the harassing conduct unless such supervisor is involved in the allegation. The EEO Manager shall be informed of this decision, including a decision not to act. In cases of complex or egregious alleged harassing conduct, the supervisor and EEO Manager should seek the counsel of the Office of the Solicitor. If an Office of the Inspector General (OIG) employee is involved in the allegation, legal counsel to the OIG will, after consultation with SOL, provide legal advice to OIG management.
- B. Where the inquiry establishes that an employee did engage in harassing conduct under this Policy, he or she shall be subject to appropriate corrective action, disciplinary or otherwise, in accordance with Chapter 75 of the Civil Service Reform Act, up to and including removal.
- C. Where the inquiry establishes that a manager or supervisor did not properly carry out the responsibilities provided for under this Policy, he or she shall be subject to appropriate corrective action, disciplinary or otherwise, in accordance with Chapter 75 of the Civil Service Reform Act, up to and including removal.

UNLINE TOOLS	
Agency Intranets	
Acquisition Management System (AMS)	
DOL Forms	
DOL Procurement Policy	
The Employees' Compensation Operations & Management Portal (ECOMP)	
Hazard Reporting Site	
Employment Verification	
Enterprise Service Desk (ESD)	
Ethics Resources	

https://labornet.dol.gov/workplaceresources/policies/DLMS/DLMS04/dlms4-0700.htm

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01	Design and deliver six (6) one and a half hour				65,073.1
	(1%) customized training sessions training on	2.			
	sexual harassment training for all DOL political				
	appointees, supervisors, mangers, and SES				
	employees.				
	There are approximately 2,650 managers,				
	supervisors, and SES. Approximately 650				
	managers, supervisors and SES will attend the				
	training at the Francis Perkins building and the				
	WebEx will be used to train up to the 2,000				
	managers, supervisors, and SES throughout the				
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STANDARD FORM 1449 (REV. 2/2012) BACK

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#### C - Description/Specifications

#### Statement of Work (SOW)

#### Six (6) one and a half hour (1½) training sessions on sexual harassment – Tracking Number 017

#### Department of Labor (DOL) Human Resources Center (HRC)

PART 1 GENERAL INFORMATION AND TASKS

#### 1. Title of Project

Sexual Harassment Training

#### 2. Description of Services, Tasks and Task Descriptions, and Deliverables

The following is a set of tasks required under this contract:

#### **Program Design and Implementation**

- Work with DOL to design and deliver a customized training on sexual harassment training for all DOL political appointees, supervisors, mangers, and SES employees.
- Provide six (6) one and a half hour (1<sup>1</sup>/<sub>2</sub>) training sessions on sexual harassment.

#### **Program Delivery**

- Must deliver the training in accordance with DOL requirements, which includes providing any needed materials; handouts and evaluations.
- Facilitator must travel to the Francis Perkins Building in Washington, D.C. where the training will take place.
- The training will also be provided via telephone/conference call and WebEx/video conferencing and will be recorded.
- Approximately 650 managers, supervisors, and SES will attend the training at the Francis Perkins building and the WebEx will be used to train up to the 2,000 managers, supervisors, and SES throughout the country.

#### 3. Deliverable due dates

The training will take place no later than January 2018.

#### 4. Place of performance

The training will take place in the Francis Perkins Building in Washington, D.C. and will also be provided via telephone/conference call and WebEx/video conference.

5. Special terms and conditions as it relates to the tasks.

None.

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#### PART 2 DEFINITIONS & ACRONYMS

#### 2. DEFINITIONS AND ACRONYMS:

#### 2.1. DEFINITIONS:

2.1.1. CONTRACTOR. A supplier or Vendor having a contract to provide specific supplies or service to the Government. The term used in this contract refers to the prime.

2.1.2. CONTRACTING OFFICER. A person with authority to enter into, administer, and or terminate contracts, and make related determinations and findings on behalf of the Government. Note: The only individual who can legally bind the Government.

2.1.3. CONTRACTING OFFICER'S REPRESENTATIVE (COR). An employee of the U.S. Government appointed by the contracting officer to administer the contract. Such appointment shall be in writing and shall state the scope of authority and limitations. This individual has authority to provide technical direction to the Contractor as long as that direction is within the scope of the contract, does not constitute a change, and has no funding implications. This individual does NOT have authority to change the terms and conditions of the contract.

2.1.4. DEFECTIVE SERVICE. A service output that does not meet the standard of performance associated with the Performance Work Statement.

2.1.5. DELIVERABLE. Anything that can be physically delivered but may include non-physical things such as meeting minutes.

2.1.6. KEY PERSONNEL. Contractor personnel that are evaluated in a source selection process and that may be required to be used in the performance of a contract by the Key Personnel listed in the PWS. When key personnel are used as an evaluation factor in best value procurement, an offer can be rejected if it does not have a firm commitment from the persons that are listed in the proposal.

2.1.7. PHYSICAL SECURITY. Actions that prevent the loss or damage of Government property.

2.1.8. QUALITY ASSURANCE. The Government procedures to verify that services being performed by the Contractor are performed according to acceptable standards.

2.1.9. QUALITY ASSURANCE Surveillance Plan (QASP). An organized written document specifying the surveillance methodology to be used for surveillance of Contractor performance.

2.1.10. QUALITY CONTROL. All necessary measures taken by the Contractor to assure that the quality of an end product or service shall meet contract requirements.

2.1.11. SUBCONTRACTOR. One that enters into a contract with a prime Contractor. The Government does not have privity of contract with the Subcontractor.

2.1.12. WORK DAY. The number of hours per day the Contractor provides services in accordance with the contract.

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2.1.12. WORK WEEK. Is defined as Monday through Friday, unless specified otherwise.

#### 2.2. ACRONYMS:

ACOR	Alternate Contracting Officer's Representative
BPA	Blanket Purchase Agreement
CFR	Code of Federal Regulations
CONUS	Continental United States (excludes Alaska and Hawaii)
COR	Contracting Officer Representative
COTS	Commercially Off the Shelf
DOL	Department of Labor
FAR	Federal Acquisition Regulation *
HIPAA	Health Insurance Portability and Accountability Act of 1996
HRC	Human Resources Center
KO	Contracting Officer
OCI	Organizational Conflict of Interest
OCONUS	Outside Continental United States (includes Alaska and Hawaii)
ODC	Other Direct Costs
OER	Office of Executive Resources
PIPO	Phase In/Phase Out
POC	Point of Contact
PRS	Performance Requirements Summary
PWS	Performance Work Statement
QA	Quality Assurance
QAP	Quality Assurance Program
QASP	Quality Assurance Surveillance Plan
QC	Quality Control
QCP	Quality Control Program
SES	Senior Executive Service
SES	Senior Executive Service
TE	Technical Exhibit

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PART 3

#### GOVERNMENT FURNISHED PROPERTY, EQUIPMENT, AND SERVICES

#### 3. GOVERNMENT FURNISHED ITEMS AND SERVICES:

3.1. Services: The Government will provide set-up and breakdown of the training room.

3.2 Facilities: The Government will provide the required space needed to facilitate the training.

3.3 Utilities: The Government will provide all utilities in the training space.

The Contractor shall instruct employees in utilities conservation practices. The Contractor shall be responsible for operating under conditions that preclude the waste of utilities, which include turning off the water faucets or valves after using the required amount to accomplish cleaning vehicles and equipment.

3.4 Equipment: The Government will provide any equipment, as needed.

3.5 Materials: N/A

#### PART 4 CONTRACTOR FURNISHED ITEMS AND SERVICES

#### 4. CONTRACTOR FURNISHED ITEMS AND RESPONSIBILITIES:

4.1 General: The Contractor shall furnish all supplies, equipment, facilities and services required to perform work under this contract that are not listed in the SOW.

4.2. Materials: The Contractor shall provide all materials needed for the Training Sessions.

4.3. Equipment: The Contractor shall provide any equipment / material the Government is unable to provide.

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#### D – Packaging and marking: Not Applicable

#### **E** - Inspection and Acceptance

Clauses

#### 52.246-2 Inspection of Supplies - Fixed-Price. (AUG 1996)

#### 52.246-4 Inspection of Services - Fixed-Price. (AUG 1996)

#### F – Deliveries or performance

See Statement of Work (SOW)

#### **G** – Contract Administration Data:

#### Invoicing Schedule

The Contractor shall submit invoices monthly. Invoices should be formatted so the CLIN structure is aligned with the CLIN structure established in the contract.

#### **H** - Special Contract Requirements

#### INCLUSION OF CONTRACT CLAUSES

The Contractor shall be required to follow all applicable clauses included in General Services Administration (GSA) Contract Number GS-10F-1040V, as well as all terms and conditions contained in Blanket Purchase Agreement (BPA) Number DOL-OPS-14-A-0007 and included in this Call Order.

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#### I - Contract Clauses

#### FAR 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders - Commercial Items. (NOV 2017)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) <u>52.203-19</u>, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

(3) <u>52.233-3</u>, Protest After Award (AUG 1996) (<u>31 U.S.C. 3553</u>).

(4) <u>52.233-4</u>, Applicable Law for Breach of Contract Claim (OCT 2004)(Public Laws 108-77 and 108-78 (<u>19 U.S.C. 3805 note</u>)).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

\_\_\_(1) <u>52.203-6</u>, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (<u>41 U.S.C. 4704</u> and <u>10 U.S.C. 2402</u>).

\_\_ (2) <u>52.203-13</u>, Contractor Code of Business Ethics and Conduct (Oct 2015) (<u>41 U.S.C.</u> 3509)).

\_\_\_\_(3) <u>52.203-15</u>, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

X (4) <u>52.204-10</u>, Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2016) (Pub. L. 109-282) (<u>31 U.S.C. 6101 note</u>).

\_\_\_(5) [Reserved].

\_\_\_(6) <u>52.204-14</u>, Service Contract Reporting Requirements (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

\_\_\_(7) <u>52.204-15</u>, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).

<u>X</u> (8) <u>52.209-6</u>, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Oct 2015) (31 U.S.C. 6101 note). (9) <u>52.209-9</u>, Updates of Publicly Available Information Regarding Responsibility

Matters (Jul 2013) (41 U.S.C. 2313).

\_\_(10) [Reserved].

\_\_(11)(i) <u>52.219-3</u>, Notice of HUBZone Set-Aside or Sole-Source Award (Nov 2011) (<u>15</u> U.S.C. 657a).

(ii) Alternate I (Nov 2011) of <u>52.219-3</u>.

\_\_\_\_(12)(i) <u>52.219-4</u>, Notice of Price Evaluation Preference for HUBZone Small Business <sup>-</sup> Concerns (OCT 2014) (if the offeror elects to waive the preference, it shall so indicate in its offer) (<u>15 U.S.C. 657a</u>).

\_\_\_(ii) Alternate I (JAN 2011) of <u>52.219-4</u>.

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\_\_(13) [Reserved]

\_\_ (14)(i) <u>52.219-6</u>, Notice of Total Small Business Set-Aside (Nov 2011) (<u>15 U.S.C. 644</u>).

\_\_ (ii) Alternate I (Nov 2011).

(iii) Alternate II (Nov 2011).

\_\_\_(15)(i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C.

<u>644</u>).

\_\_\_(ii) Alternate I (Oct 1995) of <u>52.219-7</u>.

\_\_\_ (iii) Alternate II (Mar 2004) of <u>52.219-7</u>.

\_\_\_(16) <u>52.219-8</u>, Utilization of Small Business Concerns (Nov 2016) (<u>15 U.S.C.</u>

<u>637(d)(2)</u> and (3)).

(17)(i) <u>52.219-9</u>, Small Business Subcontracting Plan (Jan 2017) (<u>15 U.S.C. 637(d)(4)</u>).

\_\_\_(ii) Alternate I (Nov 2016) of <u>52.219-9</u>.

\_\_\_(iii) Alternate II (Nov 2016) of <u>52.219-9</u>.

\_\_\_ (iv) Alternate III (Nov 2016) of 52.219-9.

\_\_\_\_(v) Alternate IV (Nov 2016) of <u>52.219-9</u>.

\_\_\_(18) <u>52.219-13</u>, Notice of Set-Aside of Orders (Nov 2011) (<u>15 U.S.C. 644(r)</u>).

\_\_\_(19) <u>52,219-14</u>, Limitations on Subcontracting (Jan 2017) (<u>15 U.S.C. 637(a)(14)</u>).

\_\_\_(20) <u>52.219-16</u>, Liquidated Damages Subcontracting Plan (Jan 1999) (<u>15 U.S.C.</u> 637(d)(4)(F)(i)).

\_\_\_(21) <u>52.219-27</u>, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) (<u>15 U.S.C. 657 f</u>).

 $\underline{X}$  (22) <u>52.219-28</u>, Post Award Small Business Program Rerepresentation (Jul 2013) (<u>15</u> U.S.C. <u>632(a)(2)</u>).

\_\_\_\_(23) <u>52.219-29</u>, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) (<u>15 U.S.C. 637(m</u>)).

\_\_\_\_(24) <u>52.219-30</u>, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) (<u>15</u> U.S.C. 637(m)).

<u>X</u> (25) <u>52.222-3</u>, Convict Labor (June 2003) (E.O. 11755).

\_\_\_(26) <u>52.222-19</u>, Child Labor Cooperation with Authorities and Remedies (Oct 2016) (E.O. 13126).

X (27) <u>52.222-21</u>, Prohibition of Segregated Facilities (Apr 2015).

X (28) <u>52.222-26</u>, Equal Opportunity (Sept 2016) (E.O. 11246).

(29) <u>52,222-35</u>, Equal Opportunity for Veterans (Oct 2015)(<u>38 U.S.C. 4212</u>).

<u>X</u> (30) <u>52.222-36</u>, Equal Opportunity for Workers with Disabilities (Jul 2014) (<u>29 U.S.C.</u> <u>793</u>).

\_\_\_\_(31) <u>52.222-37</u>, Employment Reports on Veterans (FEB 2016) (38 U.S.C. 4212).

\_\_\_\_(32) <u>52.222-40</u>, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

<u>X</u> (33)(i) <u>52.222-50</u>, Combating Trafficking in Persons (Mar 2015) (<u>22 U.S.C. chapter</u> <u>78</u> and E.O. 13627).

(ii) Alternate I (Mar 2015) of <u>52.222-50</u> (<u>22 U.S.C. chapter 78</u> and E.O. 13627).

\_\_\_\_(34) <u>52.222-54</u>, Employment Eligibility Verification (OCT 2015). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in <u>22.1803</u>.)

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\_\_\_(35)(i) <u>52.223-9</u>, Estimate of Percentage of Recovered Material Content for EPA– Designated Items (May 2008) (<u>42 U.S.C. 6962(c)(3)(A)(ii)</u>). (Not applicable to the acquisition of commercially available off-the-shelf items.)

\_\_\_(ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

\_\_\_\_(36) <u>52.223-11</u>, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (JUN 2016) (E.O. 13693).

\_\_\_(37) <u>52.223-12</u>, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (JUN 2016) (E.O. 13693).

\_\_\_(38)(i) <u>52.223-13</u>, Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O.s 13423 and 13514).

(ii) Alternate I (Oct 2015) of <u>52.223-13</u>.

\_\_\_(39)(i) <u>52.223-14</u>, Acquisition of EPEAT®-Registered Televisions (JUN 2014) (E.O.s 13423 and 13514).

(ii) Alternate I (Jun 2014) of <u>52.223-14</u>.

\_\_\_(40) <u>52.223-15</u>, Energy Efficiency in Energy-Consuming Products (DEC 2007) (<u>42</u> U.S.C. 8259b).

\_\_\_(41)(i) <u>52.223-16</u>, Acquisition of EPEAT®-Registered Personal Computer Products (OCT 2015) (E.O.s 13423 and 13514).

(ii) Alternate I (Jun 2014) of <u>52.223-16</u>.

<u>X</u> (42) <u>52.223-18</u>, Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011) (E.O. 13513).

\_\_\_(43) <u>52.223-20</u>, Aerosols (JUN 2016) (E.O. 13693).

\_\_\_(44) <u>52.223-21</u>, Foams (JUN 2016) (E.O. 13693).

\_\_\_(45)(i) <u>52.224-3</u>, Privacy Training (JAN 2017) (5 U.S.C. 552a).

\_\_\_(ii) Alternate I (JAN 2017) of 52.224-3.

\_\_\_(46) 52.225-1, Buy American Supplies (May 2014) (41 U.S.C. chapter 83).

\_\_\_\_(47)(i) <u>52.225-3</u>, Buy American Free Trade Agreements Israeli Trade Act (May 2014) (<u>41 U.S.C. chapter 83</u>, <u>19 U.S.C. 3301</u> note, <u>19 U.S.C. 2112</u> note, <u>19 U.S.C. 3805</u> note, <u>19 U.S.C.</u> <u>4001</u> note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43.

\_\_\_ (ii) Alternate I (May 2014) of <u>52.225-3</u>.

\_\_\_ (iii) Alternate II (May 2014) of 52.225-3.

\_\_\_ (iv) Alternate III (May 2014) of <u>52.225-3</u>.

\_\_\_\_(48) <u>52.225-5</u>, Trade Agreements (OCT 2016) (<u>19 U.S.C. 2501</u>, et seq., <u>19 U.S.C.</u> <u>3301</u> note).

 $X_{49}$  (49) <u>52.225-13</u>, Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).

\_\_\_\_(50) <u>52.225-26</u>, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; <u>10 U.S.C. 2302 Note</u>).

\_\_\_(51) <u>52.226-4</u>, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (<u>42 U.S.C.</u> <u>5150</u>).

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\_\_\_\_(52) <u>52.226-5</u>, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (<u>42 U.S.C. 5150</u>).

\_\_\_(53) <u>52.232-29</u>, Terms for Financing of Purchases of Commercial Items (Feb 2002) (<u>41</u> U.S.C. 4505, 10 U.S.C. 2307(f)).

\_\_\_\_(54) <u>52.232-30</u>, Installment Payments for Commercial Items (Jan 2017) (<u>41 U.S.C.</u> <u>4505</u>, <u>10 U.S.C. 2307(f)</u>).

<u>X</u> (55) <u>52.232-33</u>, Payment by Electronic Funds Transfer.System for Award Management (Jul 2013) (<u>31 U.S.C. 3332</u>).

\_\_\_\_(56) <u>52.232-34</u>, Payment by Electronic Funds Transfer.Other than System for Award Management (Jul 2013) (<u>31 U.S.C. 3332</u>).

\_\_\_(57) <u>52.232-36</u>, Payment by Third Party (May 2014) (<u>31 U.S.C. 3332</u>).

<u>X</u> (58) <u>52.239-1</u>, Privacy or Security Safeguards (Aug 1996) (<u>5 U.S.C. 552a</u>).

\_\_\_(59) <u>52.242-5</u>, Payments to Small Business Subcontractors (JAN 2017)(15 U.S.C. 637(d)(12)).

\_\_\_(60)(i) <u>52.247-64</u>, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (<u>46 U.S.C. Appx. 1241(b)</u> and <u>10 U.S.C. 2631</u>).

(ii) Alternate I (Apr 2003) of <u>52.247-64</u>.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

(1) <u>52.222-17</u>, Nondisplacement of Qualified Workers (May 2014)(E.O. 13495).

(2) <u>52.222-41</u>, Service Contract Labor Standards (May 2014) (<u>41 U.S.C. chapter 67</u>).

\_\_\_(3) <u>52.222-42</u>, Statement of Equivalent Rates for Federal Hires (May 2014) (<u>29 U.S.C.</u> <u>206</u> and <u>41 U.S.C. chapter 67</u>).

\_\_\_\_(4) <u>52.222-43</u>, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (May 2014) (<u>29 U.S.C. 206</u> and <u>41 U.S.C.</u> chapter 67).

\_\_\_(5) <u>52.222-44</u>, Fair Labor Standards Act and Service Contract Labor Standards Price Adjustment (May 2014) (<u>29 U.S.C. 206</u> and <u>41 U.S.C. chapter 67</u>).

\_\_\_\_(6) <u>52.222-51</u>, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment Requirements (May 2014) (<u>41 U.S.C. chapter 67</u>).

\_\_\_\_(7) <u>52.222-53</u>, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services Requirements (May 2014) (<u>41 U.S.C. chapter 67</u>).

(8) <u>52.222-55</u>, Minimum Wages Under Executive Order 13658 (Dec 2015).

\_\_\_(9) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).

\_\_(10) <u>52.226-6</u>, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (<u>42 U.S.C. 1792</u>).

\_\_\_(11) <u>52.237-11</u>, Accepting and Dispensing of \$1 Coin (Sept 2008) (<u>31 U.S.C.</u> 5112(p)(1)).

(d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in

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excess of the simplified acquisition threshold, and does not contain the clause at <u>52.215-2</u>, Audit and Records Negotiation.

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR <u>subpart 4.7</u>, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause.

(i) <u>52.203-13</u>, Contractor Code of Business Ethics and Conduct (Oct 2015) (<u>41 U.S.C.</u> <u>3509</u>).

(ii) <u>52.203-19</u>, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) <u>52.219-8</u>, Utilization of Small Business Concerns (Nov 2016) (<u>15 U.S.C.</u> <u>637(d)(2)</u> and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include <u>52.219-8</u> in lower tier subcontracts that offer subcontracting opportunities.

(iv) <u>52.222-17</u>, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause <u>52.222-17</u>.

(v) <u>52.222-21</u>, Prohibition of Segregated Facilities (Apr 2015)

(vi) <u>52.222-26</u>, Equal Opportunity (Sept 2016) (E.O. 11246).

(vii) <u>52.222-35</u>, Equal Opportunity for Veterans (Oct 2015) (<u>38 U.S.C. 4212</u>).

(viii) <u>52.222-36</u>, Equal Opportunity for Workers with Disabilities (Jul 2014) (<u>29 U.S.C.</u>

<u>793</u>).

(ix) <u>52.222-37</u>, Employment Reports on Veterans (Feb 2016) (<u>38 U.S.C. 4212</u>)

(x) <u>52.222-40</u>, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(xi) <u>52.222-41</u>, Service Contract Labor Standards (May 2014) (<u>41 U.S.C. chapter 67</u>). (xii)

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\_\_\_(A) <u>52.222-50</u>, Combating Trafficking in Persons (Mar 2015) (<u>22 U.S.C. chapter</u> <u>78</u> and E.O 13627).

(B) Alternate I (Mar 2015) of <u>52.222-50</u> (22 U.S.C. chapter 78 and E.O 13627).

(xiii) <u>52.222-51</u>, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (<u>41 U.S.C. chapter 67</u>).

(xiv) <u>52.222-53</u>, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) (<u>41 U.S.C. chapter 67</u>).

(xv) <u>52.222-54</u>, Employment Eligibility Verification (OCT 2015) (E.O. 12989).

(xvi) <u>52.222-55</u>, Minimum Wages Under Executive Order 13658 (Dec 2015).

(xvii) 52.222-62, Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O.

13706).

(xviii)(A) 52.224-3, Privacy Training (JAN 2017) (5 U.S.C. 552a).

(B) Alternate I (JAN 2017) of 52.224-3.

(xix) <u>52.225-26</u>, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; <u>10 U.S.C. 2302 Note</u>).

(xx) <u>52.226-6</u>, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (<u>42 U.S.C. 1792</u>). Flow down required in accordance with paragraph (e) of FAR clause <u>52.226-6</u>.

(xxi) <u>52.247-64</u>, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (<u>46 U.S.C. Appx. 1241(b)</u> and <u>10 U.S.C. 2631</u>). Flow down required in accordance with paragraph (d) of FAR clause <u>52.247-64</u>.

(2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of clause)

#### FAR 52.217-8 Option to Extend Services. (NOV 1999)

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within **three (3)** days.

(End of clause)

#### FAR 52.252-2 Clauses Incorporated by Reference. (FEB 1998)

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this address:

https://www.acquisition.gov

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(End of clause)

#### DOLAR 2952.201-70 Contracting Officer's Representative (COR) Clause

(a) A Contracting Officer's Representative (COR) will be delegated upon award. A copy of the delegation memorandum will be provided to the COR and a delegation letter sent to the vendor.

(b) The COR is responsible, as applicable, for receiving all deliverables; inspecting and accepting the supplies or services provided hereunder in accordance with the terms and conditions of this contract; providing direction to the contractor which clarifies the contract effort, fills in details or otherwise serves to accomplish the contractual scope of work; evaluating performance; and certifying all invoices/vouchers for acceptance of the supplies or services furnished for payment.

(c) The COR does not have the authority to alter the contractor's obligations under the contract, and/or modify any of the expressed terms, conditions, specifications, or cost of the agreement. If, as a result of technical discussions, it is desirable to alter/change contractual obligations or the scope of work, the contracting officer must issue such changes.

(End Clause)

### DOL 2012-01 - Organizational Conflict Of Interest Clause - Oci-1 Exclusion from Future Agency Contracts (DECEMBER 2012)

This clause supplements the FAR provisions on organizational conflicts of interest, located at FAR subpart 9.500 and should be read in conjunction with these provisions. To the extent there is any inconsistency or confusion between the two provisions, the FAR provision controls.

(a) Work under this contract may create a future organizational conflict of interest (OCI) that could prohibit the Contractor from competing for, or being awarded, future Government contracts.

The following examples illustrate situations in which organizational conflicts of interest may arise. They are not all inclusive, but will be used by the Contracting Officer as general guidance in individual contract situations:

(1) Unequal Access to Information. The performance of this contract may provide access to "nonpublic information," which could provide the contractor an unfair competitive advantage in later solicitations or competitions for other DOL contracts. Such an advantage could be perceived as unfair by a competing vendor who is not given similar access to the same nonpublic information that is related to the future procurement action. If you, as a contractor, in performing this contract, obtain nonpublic information that is relevant to a future procurement action, you may be required to submit and negotiate an acceptable mitigation plan prior to being deemed eligible to compete on the future action. Alternatively, the "nonpublic information" may be provided to all offerors.

(2) Biased Ground Rules. Your contract with DOL may have, in some fashion, established important "ground rules" for another DOL procurement in which you may desire to be a competitor. For example, this contract may involve you drafting the statement of work, specifications, or evaluation criteria for a future DOL procurement. The primary concern, in any such situation, is that any such firm could skew the

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competition, whether intentionally or not, or be perceived as having skewed the competition, in its own favor. If the requirements of this DOL contract anticipate the contractor may be placed in a position to establish important ground rules, including but not limited to those described herein, the contractor may be precluded from competing in the related action or, if possible, may be required to submit and negotiate an acceptable mitigation plan.

(3) Impaired Objectivity. The performance of this contract may result in the contractor being placed in a situation where it is able, or required, to provide assessment and evaluation findings concerning itself, another business division, a subsidiary or affiliate, or other entity with which it has a significant financial relationship. The concern in this case is that the contractor's ability to render impartial advice to DOL could appear to be undermined by the contractor's financial or other business relationship to the entity whose work product is being assessed or evaluated. In these situations, a "walling off" of lines of communication between entities or divisions may be acceptable, but it also may not be sufficient to remove the perception that the objectivity of the contractor has been tainted. If the requirements of the DOL procurement indicate that a contractor may be placed in a position to provide evaluations and assessments of itself or other entities with which it has a significant financial relationship, the affected contractor should notify DOL immediately. The contractor from one of the affected contracts. Such recusal might include divestiture of the work to a third party.

(b) In order to prevent a future OCI of any kind, the Contractor shall be subject to the following restrictions:

(1) The Contractor may be excluded from competition for, or award of, any government contracts as to which, in the course of performing another contract, the Contractor has received nonpublic and competitively relevant information before such information has been made generally available to other persons or firms.

(2) The Contractor may be excluded from competition for, or award of, any government contract for which the contractor actually assisted or participated in the development of specifications or statements of work.

(3) The Contractor may be excluded from competition for or award of, any government contract which calls for it to evaluate itself, any affiliate, or any products or services produced or performed thereby.

(4) The Contractor may be excluded from competition for, or award of, any government contract calling for the production or performance of any product or service for which the Contractor participated in the development of requirements or definitions pursuant to another contract.

(c) This clause shall not exclude the Contractor from performing work under any modification to this contract or from competing for award of any future contract for work that is the same or similar to work performed under this contract, so long as the conditions above are not present. This clause does not prohibit an incumbent from competing on a follow-on competition but the Contracting Officer may require a mitigation plan or other steps as needed to ensure that there has not been an unequal access to nonpublic competitively sensitive information.

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(d) The term "contractor" as used in this clause, includes any person, firm or corporation that owns or controls, or is owned or controlled by, the contractor. The term also includes the corporate officers of the contractor.

(e) The agency may in its sole discretion, waive any provisions of this clause if deemed in the best interest of the Government. The exclusions contained in this clause shall apply for the duration of this contract and for three (3) years after completion and acceptance of all work performed hereunder, or such other period as the Contracting Officer shall direct.

(f) If any provision of this clause excludes the Contractor from competition for, or award of any contract, the Contractor shall not be permitted to serve as a subcontractor, at any tier, on such contract. This clause shall be incorporated into any subcontracts or consultant agreements awarded under this contract unless the Contracting Officer determines otherwise.

(End of Clause)

### DOL 2012-02 Contractor's Obligation to Notify the Contracting Officer of a Request to Change the Contract Scope (Contractor's Obligation Clause)

"(a) Except for changes identified in writing and signed by the Contracting Officer, the Contractor is required to notify, within five working days of receipt or knowledge, any request for changes to this contract (including actions, inactions, and written or oral communications) that the Contractor regards as exceeding the scope of the contract. On the basis of the most accurate information available to the Contractor, the notice shall state:

(1) The date, nature, and circumstances of the conduct regarded as a change in scope;

(2) The name, function, and activity of each Government individual and Contractor official or employee involved in, or knowledgeable about, such conduct;

(3) The identification of any documents and substance of any oral communication involved in such conduct;

(b) Following submission of this notice, the Contractor shall continue performance in accordance with the contract terms and conditions, unless notified otherwise by the Contracting Officer.

(c) The Contracting Officer shall promptly, within 5 business days after receipt of notice from the Contractor, respond to the notice in writing. In responding, the Contracting Officer shall either:

(1) Confirm that the Contractor's notice identifies a change in the scope of the contract and directs the Contractor to stop work, completely or in part, in accordance with the Stop Work provisions of the contract;

(2) Deny that the Contractor's notice identifies a change in scope and instruct the Contractor to continue performance under the contract; or

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(3) In the event the Contractor's notice does not provide sufficient information to make a decision, advise the Contractor what additional information is required, and establish the date by which it should be furnished and the date thereafter by which the Government will respond.

(End of clause)

### DOL 2014-01 - Electronic Submission of Payment Requests Clause (FEBRUARY 2014)

(a) Definitions. As used in this clause-

(1) Contract financing payment has the meaning given in FAR 32.001.

(2) Invoice payment has the meaning given in FAR 32.001.

(3) Payment request means any request for contract financing payment or invoice payment submitted by the contractor under this contract.

(b) Electronic Payment Requests. Except as provided in paragraph (e) of this clause, the contractor shall submit payment requests in electronic form. Purchases paid with a Government- wide commercial purchase card are considered to be an electronic transaction for purposes of this clause, and therefore no additional electronic invoice submission is required.

(c) Data Transmission. A contractor must ensure that the data transmission method and format comply with the following provisions:

Electronic invoicing e-mail address: DOL-NO-DM-OASAM@quickpay.dol.gov

(1) The contractor shall:

a. Address the invoice to the appropriate e-mail address specified in the contract.

b. Submit the invoice via attachment in PDF or TIFF format.

c. Submit only one invoice per electronic submittal.

d. Enter specific information in the subject line of the e-mail in the following format:

Contractor Name, DOL Agency, Contract Number, BPA Call or Order Number, Invoice Number, Invoice Amount

Example: ABC Co, OASAM, DOL00-00-X0000/X0000, Invoice Number AB-1298433, \$15,000.00.

e. Submit a copy of the email with the attached invoice to the contracting officer's representative (COR) at the COR email address specified in the contract.

f. Before sending another e-mail with the same invoice attachment, confirm whether DOL has already responded and/or whether you have received a success or failure response to your submission.

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(2) The contractor MUST NOT:

a. Submit an invoice that exceeds the size limit of 16 megabytes (approximately 400-500 pages). However, if the invoice exceed this limit, a summary invoice attachment of less than 16 megabytes should be e-mailed to the payment e-mail address above; while the detailed invoice, including any supplemental information, shall be sent to the COR or other representative at the address.

b. Submit an invoice that is heavy in shading or color.

1. An e-mailed PDF image cannot have any text that has a background with any color other than white. If the image has a shaded background, it will be converted to black, and the text will be illegible.

2. An emailed TIFF image must be black and white.

c. Submit more than one attachment, as subsequent attachments will not be recognized.

d. Submit more than one invoice in a single attachment.

e. Attempt to use the "Recall or Resend" email message feature.

(d) General Information. Payment due dates will be calculated only from the date that invoices are received in the electronic invoicing e-mail box and determined to be proper invoices.

Inquiries regarding invoices should be e-mailed to DCASinvoiceinquiry@dol.gov. The relevant invoice must be attached to the inquiry e-mail and the subject line of the e-mail must state "INQUIRY," followed by the information described in paragraph (1) d. above.

Example: INQUIRY: Contractor Name, DOL Agency, Contract Number, BPA Call or Order Number, Invoice Number, Invoice Amount

Do NOT use the electronic invoicing e-mail address for inquiries about the invoice.

(e) Invoice Requirements. Invoices shall comply with FAR 32.905.

(f) Exceptions. Paper invoices should only be faxed or mailed through U.S. mail when electronic mail cannot be accomplished.

When invoices must be faxed due to e-mail size limitations, fax them to: 202-693-4462

When paper invoices must be mailed due to e-mail size limitations, mail them to the following address:

U.S. Department of Labor Office of Financial Management Operations Room S-5526 200 Constitution Avenue, N.W. Washington, DC 20210

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(End of clause)

#### DOL 2014-03 Section 508 - (JUNE 2014)

Section 508 of the Rehabilitation Act, as amended in 1998 by Public Law 105-220 (the Workforce Investment Act), applies to Federal Agencies and the Contractors acting in support of the Agency. The Contractor is required to provide Section 508 systems and components when Federal agencies develop, procure, maintain, or use Electronic and Information Technology (EIT). The contractor shall ensure that its system and components allow Federal employees and members of the public with disabilities to access and use of information and data that is comparable to the access afforded Federal employees and members of the public who are not individuals with disabilities. The term electronic and information technology includes, but is not limited to, computers, printers, software applications, telecommunications products (such as telephones), information kiosks and transaction machines, Internet/Intranet sites, multimedia, and office equipment such as copiers and fax machines.

For all EIT procured, maintained, developed or used at DOL to include electronic documents, software, websites and webpages created or maintained by the Contractor, in order to meet Section 508 accessibility requirements, the Contractor shall:

1. Provide summary narrative text descriptions or a data tables describing each complex graphic (e.g., pie graphs, line graphs, maps, bar graphs, flow charts) in a separate comma-separated values/character-separated values (CSV) file.

2. Label each figure or graphic image with an alternate text description.

3. Contracted vendor support staffs producing EIT deliverables must have a working knowledge of Section 508 and performing Quality Assurance Testing for Section 508; must include this information for the individuals proposed on the contract.

4. Contractors are responsible for having updated authoring and testing tools to produce Section 508 output on their own; the Government will not provide these tools.

5. Unless otherwise stated in the specification of the Contract, two digital copies of any report over 25 pages shall be delivered in media formats readable by Windows-based programs; one copy shall be formatted in Microsoft Word and the second shall be in the Portable Document Format (PDF). Color and/or black & white PDFs are acceptable. Unless permitted by the specifications, reports shall not be submitted in HTML format.

Additional information about accessibility standards related to Section 508 may be found at:

#### http://section508.gov/

The Section 508 Standards provide the minimum Government requirements.

Additional information on creating accessible .pdf files is available at:

http://www.section508.gov/docs/pdfguidanceforgovernment.pdf

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### (End of clause)

### DOL Class Deviation 2015-0002 (52.203-9 Clause)—Prohibition on Contracting with Entities that Require Certain Internal Confidentiality Agreements—Representation (MAR 2015)

- a. The Contractor shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
- b. The contractor shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered by this clause are no longer in effect.
- c. The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.
- d. (1) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Resolution Appropriations Act, 2015 (Pub. L. 113-235), use of funds appropriated (or otherwise made available) under that or any other Act may be prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(2) The Government may seek any available remedies in the event the contractor fails to comply with the provisions of this clause.

(End of clause)

# **LABORNET**

# DLMS 4 – PERSONNEL MANAGEMENT Chapter 300 – DOL Equal Employment Opportunity Program

Date: March 11, 2013

DEPARTMENTAL	OASAM	MANUAL TRANSMITTAL	
Chapter Reference: DLMS 4 Chapter 300 DOL Equal Employment Opportunity Program			
<b>Nature of Revisions:</b> This chapter has been revised to reflect the transfer of the "Affirmative Employment Program" to the Human Resources Center.			
Approval for Issuance and Distribution:			
T. Michael Kerr			
Assistant Secretary for Administration	on and Management		

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# 330 Equal Employment Opportunity Complaint Program

### 331 Purpose

To establish policy and assign responsibility for complying with and enforcing equal employment opportunity (EEO) laws, regulations, and Executive Orders that are applicable to Federal employment at DOL, including discrimination complaint processing and the Affirmative Employment Program (AEP), and to establish procedures for determining disciplinary action to be imposed when antidiscrimination, whistleblower protection and/or anti-retaliation laws are violated.

### 332 Scope

The provisions of the EEO program apply to all DOL personnel, organizational components, and activities.

### 333 Objectives

- A. The objective of the EEO complaint program is to provide an effective system for DOL employees and applicants for employment who believe that they have been discriminated against to raise concerns and to obtain corrective action where appropriate.
- B. The objective of the AEP is to establish and maintain a Model Equal Employment Opportunity Program to ensure that all employees and applicants for employment enjoy equality of opportunity in the DOL workplace regardless of race, sex, national origin, and disability and create and maintain a diverse and inclusive work environment so that employees have an opportunity to reach their fullest potential and maximize their contributions to DOL's goals and objectives.
- C. The objective of establishing procedures for determining disciplinary action is to provide an effective system for consideration of disciplinary action when a determination is made that a DOL employee engaged in conduct that is inconsistent with Federal antidiscrimination, whistleblower protections laws and/or anti-retaliation laws.

### 334 Authority

This directive is issued pursuant to Secretary's Order 1-2004, dated April 15, 2004, and civil rights and nondiscrimination statutes, Executive Orders, and implementing regulations related to Federal equal employment opportunity programs. These include, but are not limited to:

- Title VII of the Civil Rights Act of 1964, as amended;
- the Equal Pay Act;
- the Lilly Ledbetter Fair Pay Act of 2009;
- the Age Discrimination in Employment Act of 1967, as amended;

the Rehabilitation Act of 1973, as amended;

- the Americans with Disabilities Act Amendments Act of 2008;
- the Genetic Information Nondiscrimination Act of 2008;
- the Civil Service Reform Act of 1978;
- the Civil Rights Act of 1991;
- the No FEAR Act;
- Executive Order 11478, as amended;
- Executive Order 11375, as amended;
- Executive Order 13163;
- Executive Order 13164;
- Executive Order 13145;
- 29 C.F.R. § 1614;
- and the Equal Employment Opportunity Commission's (EEOC) Management Directives 110 (Complaint Processing) and 715 (Effective Affirmative Programs) and performance reports on outreach activities to Historically Black Colleges and Universities under Presidential Executive Order 13532 and Tribal Colleges and Universities under Presidential Executive Order 13270.

### 335 Policy

It is the policy of the DOL to provide equal employment opportunity for all DOL employees and applicants for DOL employment in accordance with applicable Federal statutes, regulations, executive orders, and DOL policy. It is also the policy of DOL to prohibit discrimination because of race, color, religion, sex (including pregnancy and gender identity), national origin, age, disability, genetic information, sexual orientation, parental status, reprisal, or any other basis protected by applicable law or Executive Order as defined in paragraph 334 of this Chapter.

Further, it is the policy of DOL to achieve and maintain a high quality, diverse workforce at all organizational levels throughout DOL and to promote the full realization of equal employment opportunity through a continuing affirmative program where all employees have the freedom to compete on a fair and level playing field; and to maintain a workplace free of discriminatory practices and policies.

Finally, it is the policy of the DOL that, when a DOL employee has been found to have engaged in conduct that is inconsistent with Federal antidiscrimination, whistleblower protections and/or anti-retaliation laws, suitable disciplinary action shall be imposed as appropriate.

# 338 Equal Employment Opportunity Complaint Program

### 340 Assignment of Responsibilities

- A. The Assistant Secretary for Administration and Management ("ASAM") has the delegated authority and assigned responsibility for:
  - 1. Administering a comprehensive, DOL-wide program to carry out the DOL's equal employment opportunity policy and fulfilling the DOL's obligations arising from equal employment opportunity statutes and their

implementing executive orders, rules, regulations, and guidelines covering Federal employees and applicants for Federal employment; and

- 2. Making delegations of the authority and assignments of the responsibility described in 340(A) of this Chapter.
- B. The Director of the Civil Rights Center ("CRC"), organizationally located within the Office of the Assistant Secretary for Administration and Management (OASAM), has the delegated authority and assigned responsibility for:
  - Administering all aspects of the administrative processing of individual and class discrimination complaints filed by employees and applicants for employment in accordance with 29 C.F.R. Part 1614 including, but not limited to, providing for EEO counseling, alternative dispute resolution (ADR), and investigation of such complaints, except, as provided for in subparagraph 340(D) of this Chapter, those that include allegations against the CRC, the immediate office of the ASAM and for other complaints determined by the Director of the CRC to constitute a potential conflict of interest;
  - Issuing Final Agency Decisions (FADs) and taking final actions on discrimination complaints in a timely
    manner in accordance with 29 C.F.R. Part 1614, except those decisions on complaints filed by employees
    and applicants for employment arising from within the Office of Inspector General, which will be issued by
    the Secretary or her delegee. By memorandum dated October 22, 2009, the Secretary delegated her
    authority to the Deputy Secretary;
  - Appointing EEO counselors, fact-finders, and mediators or other individuals to engage in alternative dispute resolution;
  - 4. Preparing such EEO-related reports as may be required by the EEOC;
  - Advising the Secretary of Labor, through the ASAM, about the status of equal employment opportunity at DOL;
  - Recommending changes to programs and procedures designed to eliminate practices that act as barriers to the hiring and advancement of women, minorities, and persons with disabilities, with the goal of improving the DOL's overall EEO Program;
  - 7. Advising the agencies about physical and program accessibility issues that affect individuals with disabilities;
  - Evaluating the sufficiency of the total Agency program for equal employment opportunity and reporting to the Head of the Agency with recommendations as to any improvements or corrections needed, including remedial and disciplinary action with respect to managerial, supervisory or other employees who have failed in their responsibilities;
  - Reviewing appeal recommendations by a DOL Agency and counsel representing the Agency at hearings before the EEOC and deciding, with the concurrence of the Office of the Solicitor, whether to appeal adverse decisions issued by EEOC administrative judges; and
  - 10. Making delegations of authority and assignments of the responsibilities described in subparagraph 340(B) of this Chapter.
- C. The Solicitor of Labor has the delegated authority and assigned responsibility for the following aspects of the DOL's EEO program, including, but not necessarily limited to:
  - Providing counsel to the Secretary, the ASAM, the Director of the CRC, and Agency Heads in implementing the DOL's EEO program;
  - Providing legal representation to the DOL at hearings and court proceedings arising out of the EEO program;

https://labornet.dol.gov/workplaceresources/policies/DLMS/DLMS04/dlms4-0300.htm

- Providing legal advice to managers, supervisors, and other employees who are assisting management in personnel matters during the course of their official duties, and who, in their official capacity, request a review of their EEO affidavits prior to submission to an EEO investigator for inclusion in the EEO file;
- Providing advice and counsel to the CRC regarding appeal recommendations as described in subparagraph 340(B)(9) of this Chapter; and
- Making delegations of authority and assignments of the responsibilities described in subparagraph 340(C) of this Chapter.
- D. The Chair of the Administrative Review Board has the delegated authority and assigned responsibility for the following aspects of the DOL's EEO programs:
  - Providing for all aspects of the administrative processing of discrimination complaints including the assignment of counselors, investigators, and the issuance of FADs in complaints involving allegations of discrimination against the CRC, the immediate office of the ASAM, and for those complaints determined by the Director of the CRC to constitute a potential conflict of interest; and
  - Making further delegations of the authority and assignment of responsibilities described in subparagraph 340(D) of this Chapter.
- E. DOL Agency Heads have the delegated authority and assigned responsibility for leadership in the implementation of the DOL's EEO program and policies within the Agency pursuant to policy direction from the ASAM and procedural guidance from the Director of the CRC or the officials acting in those capacities. Such responsibilities include, but are not limited to, the following:
  - Assuring full and prompt cooperation on the part of Agency employees and officials with DOL's EEO policies, procedures, and direction from officials charged with implementing DOL's equal employment opportunity program;
  - Providing sufficient Agency funds and other resources to ensure effective implementation of DOL's EEO
    policies and procedures including training of employees on EEO matters, and expenditures related to
    reasonable accommodations, as necessary;
  - Providing facilities for, and bearing all costs related to, discrimination complaints filed against the Agency; including, but not limited to, any necessary Agency EEO counselor training and travel, all hearing costs, settlement costs (including compensatory damages), and legitimate attorney fees;
  - 4. Ensuring that appropriate disciplinary action is taken against employees who engage in discriminatory practices; and
  - Making delegations of the authority and assignment of responsibilities described in paragraph 340(E) of this Chapter.
- F. The Office of the Chief Financial Officer has the delegated authority and assigned responsibility for the following aspects of the DOL's EEO programs:
  - 1. Processing the payment of awards and/or settlement agreements resulting from EEO complaints; and
  - 2. Making delegations of the authority and assignment of responsibilities described in paragraph 340(F) of this Chapter.
- G. CRC's EEO Counseling Coordinator, or the official acting in that capacity, is assigned responsibility for:
  - Assisting in developing, disseminating, and monitoring the implementation of DOL-wide policies and procedures to administer the pre-complaint counseling program including selecting, training, assigning, and evaluating performance of EEO counselors;
  - Providing technical assistance on the pre-complaint process to DOL National and Regional Office officials and to DOL employees and applicants for DOL employment;
  - 3. Apprising Agency EEO Managers of informal complaint activity; and

- 4. Providing Agency employees and applicants for DOL employment information on the DOL's Alternative Dispute Resolution program.
- H. DOL EEO Counselors are assigned responsibility for:
  - Providing pre-complaint counseling to any aggrieved DOL employee or applicant for DOL employment who believes that s/he has been discriminated against by the DOL, a DOL organizational component, or DOL personnel, pursuant to policies, procedures, and guidance provided by the CRC;
  - Gathering preliminary documentation, such as merit staffing files, performance appraisals, written reprimands or adverse personnel actions, etc., to aid in the CRC's determination as to whether a complaint can be accepted for investigation and to serve as the basis for a formal complaint investigation;
  - Facilitating communication between the aggrieved party and DOL officials in an effort to resolve the complainant's issues informally;
  - 4. Obtaining a written agreement, signed by all relevant parties, when an informal settlement is reached;
  - 5. Forwarding a timely, complete written report of pre-complaint counseling activities when requested by the CRC; and
  - Providing information to DOL officials, DOL employees, and applicants for DOL employment regarding the pre-complaint and formal complaint processes.
- I. Agency EEO Managers or officials acting in that capacity are assigned responsibility for:
  - 1. Providing guidance to Agency officials to assist them in carrying out their responsibilities under the Equal Employment Opportunity complaint program;
  - 2. Providing information and technical assistance to Agency employees, which may include training, regarding the EEO complaint process;
  - Assisting and assuring that Agency employees cooperate with EEO counselors, investigators, CRC staff, and SOL attorneys;
  - 4. Assisting EEO counselors, investigators, and SOL attorneys to obtain access to Agency employees/information and/or documentary evidence;
  - Monitoring Agency EEO complaint activity including receiving and reviewing reports of EEO investigations to identify opportunities for resolution and to recommend settlements when appropriate;
  - 6. Negotiating or facilitating negotiation for the resolution of EEO complaints;
  - 7. Conducting follow-up and monitoring compliance with settlement agreements;
  - 8. Providing pre-complaint counseling to any person wishing to file a class complaint against the Agency based on actions or events arising in the National Office; and
  - 9. Preparing internal and external EEO-related reports, including the MD 715 (establishing and maintaining effective affirmative programs of equal employment opportunity).
- J. All DOL Managers and Supervisors have responsibility for:
  - Assuring that day-to-day policies, practices and procedures are free from discrimination, and to prevent other practices that tend to give rise to complaints of discrimination by DOL employees or applicants for DOL employment;
  - 2. Cooperating fully and promptly with EEO counselors, investigators, and Agency EEO Managers;
  - 3. Participating in the EEO hearing process; and
  - 4. Assuring that supervised employees are allotted a reasonable amount of official time to present their EEO complaints and participate, as required, in the EEO complaint process.
- K. DOL employees have responsibility for:

https://labornet.dol.gov/workplaceresources/policies/DLMS/DLMS04/dlms4-0300.htm

- 1. Cooperating fully and promptly with EEO counselors including providing oral statements regarding any firsthand knowledge of, and access to documentary evidence related to, issues raised by an aggrieved employee or applicant for DOL employment during pre-complaint counseling;
- Cooperating fully and promptly with all officials authorized to investigate a formal complaint of discrimination, including providing a sworn or affirmed statement as to any firsthand knowledge of, and access to documentary evidence related to, issues accepted for investigation; and
- 3. Cooperating fully and promptly with officials responsible for conducting a hearing on a discrimination complaint filed by an aggrieved employee or applicant for DOL employment.

### 350 Agency, Manager, Supervisor, and Employee Rights

DOL employees have the following rights connected with the EEO complaint program:

- A. Representation. Any employee participating in the complaint process, whether as a complainant or witness, has the right to be represented and to be accompanied, advised and assisted by a person(s) of his or her choice, and at his or her expense, provided that choice does not present a conflict of interest or position. (29 C.F.R. Part 1614.605)
- B. Official Time. Any DOL employee or DOL complainant's representative employed by DOL, shall have a reasonable amount of official time, if otherwise in duty status, to prepare the complaint and to respond to Agency and EEOC requests for information. The Agency is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer.

Requests for use of official time must be made in advance to the employee's immediate supervisor and specify the amount of time to be used, the proposed schedule for use, and the reason for the request.

The EEOC has defined "reasonable" as whatever is appropriate, under the particular circumstances of the complaint, in order to allow a complete presentation of the relevant information associated with the complaint. The actual number of hours to which complainants and their representatives are entitled will vary depending on the complexity of the complaint and the mission of the Agency and the Agency's need to have employees available to perform their normal duties on a regular basis. The complainant and the Agency should arrive at a mutual understanding as to the amount of official time to be used prior to the complainant's use of such time. Time spent commuting to and from home should generally not be included in official time computations because all employees are required to commute to and from their federal employment on their own time. Disputes concerning use of official time connected with EEO complaints should be raised to the CRC. (29 C.F.R. Part 1614.605)

The complainant and representative, if employed by the Agency and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their presence is authorized or required by the Agency or the Commission during the investigation, informal resolution, or hearing on the complaint.

- C. Freedom from Reprisal. Anyone participating as a complainant, witness, or representative is protected from retaliation, coercion, interference, restraint, discrimination or reprisal stemming from participation in the EEO complaint process.
- D. Anonymity and Confidentiality. During pre-complaint counseling, an EEO counselor may not disclose the complainant's identity unless specifically authorized to do so by the complainant.

Once a formal EEO complaint is filed, the identity of the aggrieved person does not remain confidential. The complaint file, or parts of it, may be shared with those who are involved and need access. This includes Agency EEO officials, Agency representatives, and other Agency officials who have a need to know the content of the files for the purpose of addressing the allegations raised.

- E. Right of Review. Any person providing an affidavit during an investigation has the right to review his or her statement prior to signing it and may make initialed corrections if it is inaccurate or incomplete. Any person providing an affidavit also has the right to receive a copy of such affidavit.
- F. Management Right of Review. The Office of the Solicitor may provide legal advice to any manager, supervisor, and other employee who is assisting management in personnel matters during the course of their official duties, and who, in their official capacity, requests a review of their EEO affidavit prior to submitting it to an EEO investigator for inclusion in the EEO file as described in subparagraph 340(C)(3) of this Chapter. Any such employee of the Office of Inspector General may, alternatively, seek such review from OIG counsel. SOL or OIG counsel, however, will not serve as a personal representative.
- G. Court Action. After filing a formal complaint, the complainant has the right to file a civil action in an appropriate U.S. District Court at any one of five points in the complaint process. They are:
  - Within 90 days of receiving DOL's final action/decision on the complaint if an appeal has not been filed with the EEOC;
  - 2. Within 90 days of receiving the EEOC's final decision on an appeal;
  - 3. At any time after 180 days have elapsed since the date the complaint was filed if an appeal has not been filed, and if DOL has not issued a final action/decision;
  - At any time after 180 days have elapsed since the date an EEOC appeal was filed, if the EEOC has not issued a decision;
  - 5. With regard to complaints filed pursuant to the Age Discrimination in Employment Act (ADEA) only, as an alternative to filing a complaint in the administrative process, a complainant may file a civil action in United States district court after giving the Commission not less than 30 days' notice of the intent to file such action. (29 C.F.R. Part 1614.201(a)).

Note that an aggrieved individual does not have to file an administrative complaint before filing a civil action under the Equal Pay Act. The Equal Pay Act includes a statute of limitations, which requires the filing of a civil action within two years, or, if the violation is willful, three years of the date of the alleged violation regardless of whether an administrative complaint has been filed. (29 C.F.R. Part 1614.408)

H. Negotiated Grievance Procedures. Any employee within the American Federation of Government Employees (AFGE), Local 12, or the National Union of Labor Investigators (NULI) bargaining units may file allegations of discrimination under the negotiated grievance procedures of their respective union. Employees within the Local 12 or NULI bargaining units must choose whether the allegations of discrimination will be processed under the negotiated grievance procedure or under the EEO complaint procedure. (See, Article 25 Section 7(c) of the DOL and Local 12 Collective Bargaining Agreement, March 20, 2005; Article 34 Section 4 (c) of the DOL and NULI Agreement effective October 1, 2011 – September 30, 2016). Election will be determined by whichever event comes first, the date of the grievance or the date of the formal complaint.

Employees represented by the National Council of Field Labor Locals (NCFLL) are specifically excluded from filing grievances alleging discrimination. In the event an employee represented by the NCFLL files a grievance and an informal EEO complaint on the same matter, the grievance will be held in abeyance. If a formal EEO complaint is filed, the grievance will be terminated. However, in the event that the DOL dismisses that EEO

complaint for reasons other than on merit, the NCFLL represented employee has 30 days from receipt of the dismissal to resurrect the grievance. (See, Article 15 Section 2 (B) & (C) of the DOL and NCFLL Collective Bargaining Agreement, October 1, 2012.)

- I. Merit Systems Protection Board (MSPB) Appeal. In lieu of filing an EEO complaint, an employee may file allegations of discrimination related to an action appealable to the MSPB (including termination beyond the probationary period of employment, reduction in grade or pay, or suspension for more than 14 days) directly with the MSPB under the so-called "mixed case" appeal procedures described in subparagraph 356(F) of this chapter and 29 C.F.R. Part 1614.302.
- J. Notice to the Union. EEO Investigators are required to give notice to Local 12, NCFLL, or NULI prior to conducting formal discussions with any bargaining unit employee in connection with a formal EEO complaint. Said notice is to afford the union an opportunity to be represented at the formal discussions. (5 U.S.C. 7114(a) (2)(A)).
- K. Voluntary Resolution of Complaint. A complainant may seek to voluntarily resolve his or her complaint at any time during the administrative process, including the hearing stage. Any resolution reached shall be in writing, signed by both parties and identify the claims resolved. (29 C.F.R. Part 1614.603).

### **351 EEO Complaint Process**

A. Initiating the Process. Aggrieved individuals who believe they have been discriminated against on the basis of race, color, religion, sex (including pregnancy and gender identity), national origin, age, disability, genetic information, sexual orientation, parental status, or reprisal must consult an EEO counselor prior to filing a complaint in order to try to informally resolve the matter.

### 352 Pre-complaint Counseling/Mediation

- A. Timeframe for Contacting an EEO Counselor or a Civil Rights Center Official. Any DOL employee or applicant for DOL employment who believes that s/he has been subjected to discrimination because of race, color, religion, national origin, sex (including pregnancy and gender identity), age, disability, genetic information, sexual orientation, parental status or reprisal for past EEO activity must contact a DOL EEO counselor or the CRC official within 45 calendar days of the date of the alleged discriminatory incident or the effective date of a personnel action. The names of the EEO counselors appear on the DOL LaborNet, RegionNet, and on posters on bulletin boards in DOL buildings across the country, or an employee or applicant may contact the CRC.
- B. **EEO Counselor's Role.** The EEO counselor must inform the aggrieved person of his or her rights and responsibilities in the EEO complaint process, including the option to elect Alternative Dispute Resolution:

The counselor conducts a limited inquiry to define the allegation, obtain information to be utilized when assessing jurisdiction at the formal stage, and attempt to facilitate resolution and/or settlement.

While the scope of the inquiry will vary based on the complexity of the claims, the inquiry is limited and not intended to substitute for the fact finding required in the formal stage. The counselor determines the scope of the inquiry.

The counselor maintains a record of counseling so as to provide the required EEO Counselor's Summary Report to the CRC upon completion of counseling.

- C. Timeframe for Completion of Counseling. The EEO counselor has 30 days from the date the aggrieved person contacted an EEO counselor or CRC to request counseling in which to counsel the complainant and attempt to informally resolve the matter. Unless the timeframe for conducting counseling is extended (see Subsection 352(E) of this Chapter), the counselor will, by the 30th day, issue written notice that the complainant then has the right to file a formal complaint, describing the procedure for doing so. If counseling is completed in less than 30 days or if counseling is extended by mutual agreement beyond 30 days, the counselor will issue written notice at the final interview. This notice will advise that counseling has been completed and that the complainant then has the right to file a formal complaint, describing the procedure for doing so.
- D. Resolution. If counseling resolves the complaint, the counselor shall obtain a signed resolution agreement from the relevant parties.
- E. Additional Time. The complainant may agree to extend the timeframe to attempt to informally resolve his/her complaint for no more than an additional 60 days. The total time for pre-complaint counseling may not exceed 90 days.
- F. Alternate Dispute Resolution (ADR) Mediation
  - A complainant may request ADR during the pre-complaint stage of the complaint process. The DOL's
    method of ADR is mediation. CRC may determine, on a case-by-case basis, that a complaint is not
    appropriate for mediation. If a conflict is not appropriate for mediation, the Director of CRC (or the
    Director's designee) will provide written notification to the aggrieved person that DOL will not conduct
    mediation. In such a case, the EEO counselor will continue to process the informal complaint in
    accordance with existing EEO Counseling procedures.
  - 2. Once CRC determines that the conflict is appropriate for mediation, the proper DOL Official will participate in the mediation.
  - 3. When the aggrieved person participates in ADR, the pre-complaint processing period shall be 90 days. If the claim has not been resolved before the 90th day, the Notice of Right to File (NRTF) a formal complaint must be issued by the counselor or a CRC official.

### 353 Formal Complaint

- A. Filing Timeframe and Procedure. If the matter remains unresolved after completion of the Pre-complaint stage, the complainant may file a formal complaint. The complaint must contain a signed statement from the aggrieved individual or that person's attorney and must be filed within 15 calendar days of receipt of the Notice of Right to File (NRTF) a formal complaint. The complaint may be filed by mail, facsimile (followed by submission of the original) or in person with the Director of CRC. The formal complaint will be deemed timely filed if it is received or postmarked before the expiration of the applicable filing period.
- B. Contents. The complaint must include the following:
  - 1. The complainant's name, mailing address, phone number and place of employment;
  - The basis of the complainant's allegations of discrimination (race, color, religion, sex (including pregnancy and gender identity), national origin, age, disability, genetic information, sexual orientation, parental status or reprisal based on past EEO activity);
  - The complainant's membership in a "protected" group(s) (for example, indicate date of birth for age, racial group for race, etc.) as appropriate;
  - 4. A concise statement outlining the specific nature of the matter giving rise to the complaint (for example, termination, demotion, reprimand, non-selection, denial of promotion, etc.), a description of any resulting

harm, and the date(s) of occurrence, which shall include other identifying specifics (what, when, who, where, why and how) and any information believed to support the allegations;

- The name, address and telephone number of the complainant's representative, if one has been designated;
- 6. Remedies sought; and
- 7. Whether the complainant has filed a charge on the same or related matter in any other forum, including the MSPB, pursuant to a negotiated grievance procedure, a U.S. District Court, etc.
- C. Representation. Unless the complainant states otherwise, after the complainant has designated a representative, all official correspondence will be sent to the representative with a copy to the complainant. When the complainant designates an attorney as representative, service of all official correspondence shall be made on the attorney and the complainant, but time frames for receipt of materials shall be computed from the time of receipt by the attorney. The complainant must serve all official correspondence on the designated representative of the Agency. The complainant shall at all times be responsible for proceeding with the complaint whether or not he or she has designated a representative.
- D. Acceptance or Dismissal. The complaint will be reviewed to determine whether it meets the criteria for acceptance set forth in 29 C.F.R. Part 1614. If additional information is required to determine whether the complaint will be accepted for investigation, the complainant may be asked to clarify aspects of his or her complaint. A written decision will be issued as to whether the complaint is accepted or dismissed. If the Agency determines that some but not all of the claims in a complaint will be dismissed, the Agency will notify the complainant in writing of this determination, the rationale for the determination, and explain that those claims will not be investigated. A copy of the partial dismissal will be placed in the investigative report. A partial dismissal may be reviewed at hearing or on appeal to the EEOC following the issuance of a Final decision/action. If the complaint is dismissed entirely, the written decision will inform the complainant of his or her right to appeal. (29 C.F.R. Part 1614.107).
- E. Amending a Complaint. A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. Amendments are likely to be accepted if they have grown out of the original charge or the investigation into the original charge. When a complaint has been amended, the Agency shall complete the investigation within the earlier of 180 days after the last amendment or 360 days after the filing of the original complaint, except that a complainant may request a hearing from the EEOC at any time after 180 days from the date of the first filed complaint.
- F. Investigations. If a complaint is accepted, a qualified investigator will be assigned to conduct an impartial and appropriate investigation of the alleged discrimination. An investigator (a DOL employee or a contract investigator) will be authorized to conduct the investigation, and may administer oaths to obtain sworn or affirmed testimony without a pledge of confidentiality from any witness deemed relevant. The investigator compiles an investigative report containing sufficient relevant testimony and other evidence to support the rendering of a decision on the merits of the complainant's allegations. An investigation shall be completed within 180 days of the date of filing of an individual complaint or within 360 days after the filing of the original complaint when a complaint has been amended. (29 C.F.R. Part 1614.108)
- G. Extension of Time to Complete an Investigation. By written agreement, the complainant and the CRC may voluntarily extend the time period for completing the investigation for not more than an additional 90 days pursuant to 29 C.F.R. Part 1614.108(e).
- H. Investigative Report. When the investigation is complete, the investigative report is sent to the complainant (and his or her representative, if one has been designated), who will be notified that within 30 calendar days of receipt of the investigative file, the complainant has the right to elect either a FAD on the record, or a hearing

and decision from an EEOC Administrative Judge (AJ). (See exceptions subparagraphs 350(I) and 356(E) of this Chapter for information on processing mixed case complaints and appeals to the MSPB). The completed investigative report is also sent to the EEO Manager of the DOL organizational component against which the complaint was filed.

If the complainant does not notify CRC within 30 calendar days of his choice between a hearing before an EEOC AJ or a FAD, a FAD will be issued pursuant to 29 C.F.R. Part 1614.110(b).

- ADR/Mediation in the Formal Complaint Process. A complainant may request mediation during the formal stage of the complaint process following receipt of the completed investigative report if s/he does not elect a hearing before an EEOC AJ. If CRC determines that a complaint is not appropriate for mediation, the complainant will be notified. If mediation is approved, agencies are required to participate in mediation.
- J. FAD and Right of Appeal When No Hearing is Requested. If the complainant elects to have a FAD, the CRC Director or ARB Chairperson, as appropriate, will issue the DOL's written FAD on the merits of the complaint. (Decisions on complaints filed by employees and applicants for employment arising from within the Office of Inspector General will be issued by the Secretary of Labor (see subparagraph 340(B)(2) of this Chapter)). The decision will include a notice that advises the complainant of his or her right to appeal the decision to the EEOC's Office of Federal Operations or file a civil action in an appropriate U.S. District Court, together with the timeframes and procedures for doing so.

Discrimination based on sexual orientation and status as a parent are proscribed by Executive Order 11478 as amended by Executive Order 13152, not by Federal statute. Therefore, a complainant who has alleged discrimination based on sexual orientation or parental status has no statutory authority to request a hearing before an EEOC AJ or appeal a FAD to the EEOC. Consequently, the CRC Director or ARB Chairperson, as appropriate, will issue a FAD concerning claims of discrimination on the basis of sexual orientation and/or status as a parent. Please note, however, that the EEOC considers some allegations of sexual orientation discrimination to constitute sex discrimination. The CRC or ARB Chairperson shall review any such allegations to determine appropriate processing.

- K. Prompt Processing. Both the complainant and the DOL must process the complaint without undue delay. If the complainant fails to prosecute the complaint, the complaint may be dismissed or adjudicated without the complainant's cooperation if sufficient information for that purpose is available. If a Report of Investigation has not been issued and 180 days have passed since the complaint was filed, the complainant may request a hearing from the EEOC or file a civil action in an appropriate U.S. District Court.
- L. Additional Time Granted by the Director. The CRC Director or ARB Chairperson, as appropriate, may waive or extend the time limit for filing a complaint only if the complainant demonstrates that s/he was neither notified of the time limits nor otherwise aware of them or that circumstances beyond his or her control prevented timely filing. The CRC Director or ARB Chairperson, as appropriate, may extend the time limit for responding to requests for information during EEO processing (up until the complainant seeks a hearing, or files an appeal with the EEOC) upon a showing of good cause.

### 354 EEOC Hearing

A. Request for a Hearing before an EEOC Administrative Judge. If a complainant elects to request a hearing before the EEOC, his or her request for a hearing must be made to the appropriate EEOC office at any time after 180 days of filing the complaint if an investigative report has not been completed; or within 30 days of receipt of the investigative report. A copy of this request must also be sent to the CRC. Upon receipt of the

complainant's request, or pursuant to an order from the EEOC to produce the record, the investigative report will be sent by DOL to the EEOC. The DOL organizational component named in the complaint and SOL will also be notified that the complainant has requested a hearing.

- B. Appointment and Responsibilities of an AJ. When a complainant requests a hearing, the EEOC appoints an AJ to conduct a hearing in accordance with 29 C.F.R. Part 1614.109. The AJ assumes full responsibility for the adjudication of the complaint, including overseeing further development of the record, if necessary.
- C. The AJ's Findings of Fact and Law. After further development, if necessary, and an assessment of all relevant evidence, the AJ will transmit the following to the DOL:
  - 1. The complaint record, including the record of hearing;
  - 2. A written analysis of the evidence and findings based on the evidence; and
  - 3. A written decision on the complaint, including any remedial action to be taken.
- D. DOL's Final Action. Within 40 days of receipt of the AJ's decision and record, the CRC Director, ARB Chairperson, or the Secretary, as appropriate, will issue a final action pursuant to 29 C.F.R. Part 1614.110(a). This final action must indicate whether the DOL adopts the AJ's findings. If the AJ's findings are not adopted, the CRC Director, the ARB Chairperson, or the Secretary, as appropriate, will file a concurrent appeal on behalf of the DOL with EEOC's Office of Federal Operations. The final action will also advise the complainant of his or her right to appeal the decision to the EEOC or file an action in an appropriate U.S. District Court, together with the timeframes and procedures for doing so. The DOL organizational component named in the complaint will also receive notice of the DOL's final action. Decisions on complaints filed by employees and applicants for employment arising from within the Office of Inspector General will be issued by the Secretary of Labor (see subparagraph 340(B)(2) of this Chapter).

### 355 Process after the Final Decision/Action

- A. Implementing Corrective Action. If the DOL's Final decision/action requires that remedial action be taken, the DOL organizational component named in the complaint must:
  - 1. Notify the official(s) responsible for implementing the action required;
  - 2. Follow up to ensure full implementation; and
  - 3. Provide confirmation of full implementation to the CRC Director or ARB Chairperson, as appropriate, including copies of any appropriate corroborating documents.
- B. Appeal of the FAD. If the complainant appeals the DOL's Final decision/action, the EEOC will request a written statement of position and a copy of the complaint file from DOL. A complainant may also submit a statement in support of the appeal to the EEOC, if s/he wishes to do so. The complainant must provide the CRC with a copy of any statement submitted to support the appeal. The EEOC will review the entire complaint record and issue a final decision. Either the complainant or the CRC may request reconsideration of the EEOC's decision within 30 days of receipt. However, the EEOC will only grant reconsideration upon a showing of a clearly erroneous interpretation of material fact or law or that the decision will have a substantial impact on the policies, practices or operations of the Agency. The EEOC's decision will also contain a description of the complainant's right to file a civil action in an appropriate U.S. District Court, together with the applicable timeframes and procedures for doing so. If the EEOC's decision requires corrective action, the DOL must demonstrate compliance to the EEOC.
- C. Enforcement of the EEOC's Decision. If the EEOC's decision on appeal requires remedial action to be taken and the complainant does not believe that the DOL has complied with the decision, a petition for enforcement may be filed with the EEOC. The petition must specifically set forth the reasons that lead the complainant to believe that DOL is not complying with the decision. The EEOC will ascertain whether the

Agency is implementing the decision. If the Agency is found not to be in compliance, efforts will be made to obtain compliance.

### 356 Special Circumstances

A. Dissatisfaction with the Processing of an EEO Complaint. Allegations of dissatisfaction with the processing of a pending complaint must be made to the Director of the CRC. Upon receipt, the Director will attempt to resolve dissatisfaction as early and expeditiously as possible. A record of the complainant's concerns and any actions taken to resolve the concerns will be added to the complaint file. If no action is taken, an explanation of the reason(s) for not taking action will be included in the complaint file.

A complainant must always raise his or her concerns first with the CRC, in the above manner. However, in cases where the complainant's concerns have not been resolved informally, the complainant may present those concerns to the EEOC at hearing or on appeal following the CRC's issuance of a Final decision/action. If the EEOC finds that the CRC has improperly processed the complaint and that such improper processing had a material effect on the complaint, the EEOC may impose sanctions.

- B. Joint Processing and Consolidation of Complaints. EEO complaints filed by two or more complainants consisting of substantially similar allegations or relating to the same matter may be consolidated by the Agency or the EEOC after notification to the parties. Two or more complaints filed by the same complainant will be consolidated by the Agency after notification. When a complaint has been consolidated with one or more earlier complaints, the Agency shall complete the investigation within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from the EEOC on the consolidated complaints any time after 180 days from the date of the first filed complaint.
- C. Compliance with Settlement Agreements and Final Actions. If the complainant believes that DOL has failed to comply with the terms of a settlement agreement or Final decision/action requiring remedial action, the complainant shall notify the CRC Director or ARB Chairperson, as appropriate, in writing, of the alleged noncompliance within 30 days of when the complainant knew or should have known of the alleged noncompliance. The complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased. The CRC shall resolve the matter and respond to the complainant, in writing. If the CRC has not responded to the complainant or if the complainant is not satisfied with the CRC's attempt to resolve the matter, the complainant may appeal to the EEOC for a determination as to whether DOL has complied with the terms of the agreement. The complainant may file such an appeal 35 days after s/he has served the CRC with the allegations of noncompliance if a decision has not been issued. If a decision has been issued, the complainant must file an appeal within 30 days of his or her receipt of the CRC's determination. If the EEOC determines that DOL is not in compliance and the non-compliance is not attributable to acts or conduct of the complainant, it may order such compliance or it may order that the complaint be reinstated for further processing. Allegations that subsequent acts of discrimination violate a settlement agreement shall be processed as separate complaints.

D. Class Complaints

1. Who May File. Any member of a group of employees, former employees or applicants (known as the "agent") who believes that any DOL policy or practice discriminates against members of the group (known as the "class") because of a common factor (race, color, religion, national origin, sex (including pregnancy

and gender identity), age, disability or genetic information) may file a class complaint. (29 C.F.R. Part 1614.204)

- 2. Pre-complaint processing. A class agent who wishes to file a class complaint must seek EEO counseling. The EEO counselor shall explain the class complaint procedures and the responsibilities of a class agent. Following counseling, the formal class complaint must be filed with CRC within 15 days of receipt of the Notice of Right to File (NRTF). The complaint must be signed by the class agent or representative and must identify the policy or practice adversely affecting the class, as well as the specific action or matter affecting the class agent. Within 30 days of receiving the complaint, CRC will forward the complaint and the counseling record to the EEOC for a determination on whether the class may be "certified." For this to occur, the following conditions must be established:
  - The class contains so many members that consolidated processing of individual complaints is not practical;
  - b. There are questions of fact common to the class;
  - c. Claims by the class agent are typical of the claims of the class; and
  - d. The agent or agent's representative is qualified to adequately protect the interests of all class members.
- 3. Individual complaints filed before or after a class complaint will not be dismissed but will be subsumed within the class complaint. If the class complaint is dismissed at the certification stage or on appeal, the individual complaint(s) may still proceed, unless the same or another basis for dismissal applies. If the class proceeds to hearing, the individual claim(s) may be presented by the class representative at the liability stage of the process, or may be presented at the remedy stage by the complainant.
- 4. The decision on class certification will be made by an EEOC AJ. After such decision is made, the EEOC will transmit the decision to the agent and CRC. The CRC must take final action by issuing a final order within 40 days of receipt. The final order shall notify the agent whether the Agency will implement the EEOC's decision. If the EEOC's decision is not adopted, the CRC will file a concurrent appeal on behalf of the DOL with EEOC's Office of Federal Operations. The final action will also advise the complainant of his or her right to appeal the decision to the EEOC or file an action in an appropriate U.S. District Court, together with the timeframes and procedures for doing so. The DOL organizational component named in the complaint will also receive notice of the DOL's final action.
- 5. If the EEOC has accepted a class complaint, the CRC may commence an investigation the parameters of which shall be guided by the EEOC. At the end of the investigative period, a hearing shall be conducted. For more information on this process, see 29 C.F.R. Part 1614.204 (e)-(h).
- 6. A complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in an individual complaint. If a complainant moves for class certification after completing the EEO counseling process, no additional counseling is required. The EEOC AJ may deny class certification if the complainant has unduly delayed in moving for certification.
- E. Mixed Case Complaints. A "mixed case" complaint raises allegations of discrimination in connection with an Agency action that is appealable to the MSPB (including termination beyond the probationary period of employment, reduction in grade or pay, or suspension for more than 14 days). An employee must decide whether to file an allegation of discrimination in a mixed case either with the MSPB or under the EEO complaint procedure of the DOL, but may not do both. See subparagraph 350(I) and 29 C.F.R. 1614.302 for additional information on processing mixed case complaints and appeals to the MSPB.
  - 1. Filed with MSPB. If an allegation of discrimination in connection with an appealable action is raised directly to the MSPB and the MSPB does not question its jurisdiction to hear the complaint, a decision will

https://labornet.dol.gov/workplaceresources/policies/DLMS/DLMS04/dlms4-0300 htm

be issued following a hearing. The MSPB decision may be appealed to the EEOC, but such EEOC review is limited to MSPB's application of relevant EEO law. Alternatively, a complainant has the right to file a civil action in U.S. District Court following the MSPB's decision.

- 2. Filed with DOL. If a mixed case complaint is filed with the DOL, the CRC will investigate and issue a decision within 120 days. At any time after 120 days from the date of filing or within 30 days of receipt of CRC's decision, the complainant may appeal the matter to the MSPB (not the EEOC). The MSPB's decision, in turn, may be appealed to EEOC, but such EEOC review is limited to MSPB's application of relevant EEO law. Alternatively, a complainant has the right to file a civil action in U.S. District Court following the MSPB's decision.
- Duplicate Filing. If a complainant files a mixed case complaint with the DOL and a MSPB appeal regarding the same appealable action, the CRC will determine which was filed first and that will be considered an election to proceed in that forum.
  - a. If the MSPB appeal was filed first, CRC will dismiss the complaint filed with DOL and advise the complainant that he or she must bring the allegations of discrimination to the attention of the MSPB, pursuant to 5 C.F.R 1201.155. The dismissal letter will advise the complainant of the right to petition EEOC to review the MSPB's FAD on the discrimination issue. A dismissal of a mixed case complaint is not appealable to EEOC except when it is alleged that the CRC erroneously determined that the issue was a mixed case issue.
  - b. If the CRC or MSPB questions the MSPB's jurisdiction, CRC shall hold the complaint in abeyance until the MSPB rules on MSPB jurisdiction. During this period, all time limitations for processing will be tolled. If the MSPB determines that it has MSPB jurisdiction over the matter, the CRC will dismiss the complaint as described in Subsection 356(E)(3)(a). If jurisdiction is not found, CRC will recommence processing as a non-mixed case complaint.
  - c. If a person files a mixed case appeal with the MSPB instead of a mixed case complaint with DOL, and the MSPB dismisses the appeal for jurisdictional reasons, SOL shall promptly notify CRC of MSPB's dismissal. Thereafter, CRC will promptly notify the individual in writing of the right to contact an EEO counselor within 45 days of receipt of this notice and the right to file an EEO complaint, subject to 29 C.F.R. 1614.107. The date on which the person filed his or her appeal with MSPB shall be deemed to be the date of initial contact with the counselor.
  - d. If a person appeals DOL's processing of a mixed case complaint to MSPB in a timely manner and the MSPB dismisses it for jurisdictional reasons, the CRC shall reissue the notice of right to elect between a hearing before an EEOC AJ and a FAD.
  - e. If allegations of discrimination were not considered by the MSPB and the MSPB has issued its final decision on the appeal, the CRC may accept and resume processing the complaint. The DOL's FAD on such a complaint will also advise the complainant of the right to petition the MSPB to review its previous decision and consider the allegations of discrimination.

# 380 Disciplinary Action for Conduct that is Inconsistent with Federal Antidiscrimination, Whistleblower Protection, and Retaliation Laws 390 Assignment of Responsibilities

A. All DOL Managers and Supervisors have responsibility for:

- As described below in Section 395 (A)(1), immediately contacting the employee/labor relations officer in the servicing human resources office to seek guidance in determining whether and what level of disciplinary action to impose upon concluding that a DOL employee has engaged in conduct that is inconsistent with Federal antidiscrimination, whistleblower protection, and/or anti-retaliation laws, regulations or relevant DOL policy (i.e., the Secretary's Policies of EEO or Harassing Conduct).
- After receiving guidance on disciplinary action from the employee/labor relations officer, make a final decision on discipline and impose discipline in a manner consistent with DOL policy/procedures and merit systems principles.
- 3. Providing a copy of the memorandum identifying disciplinary action taken to the CRC.
- B. DOL Agency Heads have responsibility for:
  - As described below in Section 395 (A)(2), (3) & (4), within two (2) business days of receiving a
    memorandum from the CRC indicating that a finding of discrimination or retaliation has been rendered or
    implemented, contacting the employee/labor relations officer in the servicing human resources office for
    guidance in determining whether and what level of disciplinary action to impose.
  - Informing the CRC Director, in writing, of the reasons if disciplinary action is not imposed following a determination that an employee has engaged in conduct that is inconsistent with Federal antidiscrimination, whistleblower protection, and/or anti-retaliation laws, regulations or relevant DOL policy (i.e., the Secretary's Policies of Equal Employment Opportunity or Harassing Conduct).
- C. The Human Resources Center (HRC), after being contacted by a DOL management official for guidance in determining whether and what level of disciplinary action to impose, has responsibility for seeking coordinated input from the CRC, and SOL and/or Office of Inspector General (OIG) to review the circumstances of the case and provide guidance to the requesting Agency official on appropriate discipline.
- D. The Office of the Solicitor (SOL) or Office of Inspector General (OIG) has responsibility for:
  - Notifying the CRC that a final finding of discrimination or retaliation has been rendered or implemented following a hearing before the Merit Systems Protection Board (MSPB) or in connection with a case in Federal court.
  - 2. Providing input, with the HRC and the CRC, to the requesting Agency official on appropriate discipline.
- E. The CRC has responsibility for:
  - 1. Rendering or implementing a final finding of discrimination or retaliation stemming from an Equal Employment Opportunity (EEO) complaint.
  - 2. Upon rendering, implementing, or otherwise being informed of a final finding of discrimination or retaliation, issuing a memorandum to the applicable Agency Head informing him/her that disciplinary action may be appropriate.
  - Providing input, with the HRC and SOL and/or OIG, to the requesting Agency official on appropriate discipline.
- F. The Chairperson of the Administrative Review Board (ARB) has responsibility for:
  - 1. Rendering or implementing a final finding of discrimination or retaliation stemming from an EEO complaint (where the CRC has an actual or potential conflict of interest).
  - Upon rendering or implementing, or otherwise being informed of a final finding of discrimination or retaliation (where the CRC has an actual or potential conflict of interest), issuing a memorandum to the applicable Agency Head informing him/her that disciplinary action may be appropriate.
  - 3. Providing input, with the HRC and SOL and/or OIG, to the requesting Agency official on appropriate discipline.

### 395 Procedures for Determining Appropriate Disciplinary Action

- A. If a DOL employee is found to have engaged in conduct that is inconsistent with Federal antidiscrimination, whistleblower protection, and/or anti-retaliation laws, regulations or relevant DOL policy (i.e., the Secretary's Policies of EEO or Harassing Conduct), the following steps are required:
  - When a DOL management official determines that a DOL employee has engaged in conduct inconsistent with Federal antidiscrimination, whistleblower protection, and/or anti-retaliation laws, regulations or relevant DOL policy (i.e., the Secretary's Policies of EEO or Harassing Conduct),(1) s/he shall immediately contact the employee/labor relations officer in the servicing human resources office for guidance in determining whether and what level of disciplinary action to impose.
  - 2. If the CRC renders or implements (following a hearing before an Administrative Judge of the EEOC) a final finding of discrimination or retaliation, the CRC shall issue a memorandum to the applicable Agency Head informing him/her that disciplinary action may be appropriate. Within two (2) business days of receiving the memorandum from the CRC, the Agency shall then contact the employee/labor relations officer in the servicing human resources office for guidance in determining whether and what level of disciplinary action to impose.
  - 3. If a final finding of discrimination or retaliation is rendered or implemented following a hearing before an Administrative Judge of the MSPB, SOL or OIG shall notify the CRC and the CRC shall issue a memorandum to the applicable Agency Head informing him/her that disciplinary action may be appropriate. Within two (2) business days of receiving the memorandum from the CRC, the Agency shall then contact the employee/labor relations officer in the servicing human resources office for guidance in determining whether and what level of disciplinary action to impose.
  - 4. If a final finding of discrimination or retaliation is rendered in connection with a case in Federal court, the SOL or OIG shall notify the CRC and the CRC shall issue a memorandum to the applicable Agency Head informing him/her that disciplinary action may be appropriate. Within two (2) business days of receiving the memorandum from the CRC, the Agency shall then contact the employee/labor relations officer in the servicing human resources office for guidance in determining whether and what level of disciplinary action to impose.
- B. To ensure adherence to this Policy and encourage consistency across the DOL, after being contacted by the Agency as described above, the employee/labor relations officer in the servicing human resources office shall seek coordinated input from CRC and SOL and/or OIG to review the circumstances of the case and provide guidance to the requesting Agency official on appropriate discipline. The coordinated input and any resulting guidance should be given no later than thirty (30) calendar days from the date that the employee/labor relations officer in the servicing human resources office is contacted regarding the inappropriate conduct or finding of discrimination or retaliation.
- C. The appropriate DOL manager shall make a FAD on discipline and shall impose action in a manner consistent with DOL policy/procedures and merit systems principles. As defined by the No FEAR Act, discipline means any one or a combination the following actions: reprimand, suspension without pay, reduction in grade or pay, or removal.

A memorandum identifying the discipline taken shall be provided to the CRC. If discipline, as previously defined, is not taken, the Agency Head shall inform the CRC Director, in writing, of the reasons for not imposing discipline. The CRC shall report on the numbers and types of disciplinary actions taken for conduct that is inconsistent with these laws within the DOL's Annual No FEAR Act Report.

D. The discipline of a bargaining unit employee under this document may be contested through grievance/arbitration procedures. The discipline of any employee under this document may be contested through the EEO complaint process (if the employee believes that the disciplinary action was taken to discriminate based on a EEO protected characteristic or retaliation because that person has opposed a practice made unlawful by or participated in any stage of administrative or judicial proceedings under relevant employment discrimination laws), and/or, depending on the severity of the discipline, to the MSPB. An arbitrator or administrative judge will have authority to rule on the validity of the disciplinary charges against the employee.

Nothing in the No FEAR Act alters existing laws or permits an Agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

<u>1</u> Such a determination may be made by the supervisor who directly witnesses and/or otherwise establishes a violation (e.g., misconduct such as where an employee uses an epithet, physically touches someone in an inappropriate manner or otherwise engages in clear discriminatory behavior based on a protected characteristic) either through or outside of the DOL's Harassing Conduct Policy and Procedures.

Last updated: June 5, 2013

### **ONLINE TOOLS**

Agency Intranets	
Acquisition Management System (AMS)	
DOL Forms	
DOL Procurement Policy	
The Employees' Compensation Operations & Management Portal (ECOMP)	
Hazard Reporting Site	
Employment Verification	
Enterprise Service Desk (ESD)	
Ethics Resources	
IT Collaboration Tools (WebEx)	
LearningLink	
New Core Financial Management System (NCFMS)	
NFC Employee Personal Page (EPP)	
Official Personnel Folder (e-OPF)	
Opportunities Are Open (DOORS)	
Travel Management	
WebTA (Timesheet)	

https://labornet.dol.gov/workplaceresources/policies/DLMS/DLMS04/dlms4-0300.htm

### Negotiated Grievance Procedures

- 1) AFGE Local 12
- 2) National Council of Field Labor Locals (NCFLL)
- 3) National Union of Labor Investigators (NULI)

### 1) AFGE Local 12

#### Article 47

### **Grievance** Procedure

The parties wish to foster an atmosphere of cooperation and mutual respect between management and employees. To that end, supervisors and employees are encouraged to communicate regularly with each other and discuss any problems or concerns and try to resolve them informally. If such informal efforts are unsuccessful, bargaining unit employees may utilize the grievance procedure as prescribed in this Article.

### Section 1. Purpose

a. The purpose of this Article is to provide a mutually acceptable method for a prompt and equitable settlement of grievances/disputes.

b. This shall be the procedure through which a just, speedy, and inexpensive determination of grievances is secured. Therefore, the parties agree that grievances processed through this procedure should be resolved as early as feasible and at the lowest cost and organizational level practicable.
c. Consistent with Article 3, Section 5 of this Agreement, bargaining unit employees and their representatives who utilize the grievance process shall be free from restraint, interference, coercion, discrimination or reprisal, consistent with 5 U.S.C. Chapter 71 and this Agreement.

d. This shall be the exclusive procedure under this Collective Bargaining Agreement available to the parties and employees in the bargaining unit for the resolution of grievances.

#### Section 2. Alternative Dispute Resolution

a. The Department and Local 12 recognize that Alternative Dispute Resolution (ADR) can serve as an effective tool to resolve labor-management disputes. The benefits of ADR include avoiding protracted and costly litigation, improving working relationships between management and labor, and enhancing communication between employees and their supervisors. Therefore, the parties agree to implement an ADR program.

b. Applicability – For individual employee grievances processed under the jurisdiction of the Grievance Board under Section 8, ADR may be utilized to resolve a grievance after the issuance of a Step II decision and prior to the hearing of the case at the Grievance Board. For all other grievances, the grievance may be submitted to ADR at any time after the grievance is filed.

c. Procedural Timeframes – When a grievance is submitted to ADR, the timeframes for further processing the grievances will be suspended commencing from the day on which the parties agree to proceed to ADR and concluding when either party declares in writing their position to end ADR. d. The ADR process may be any of the ADR techniques available within DOL's ADR Program (i.e., Mediation, Facilitation, and Interest Based Problem Solving), utilizing mediators from the Federal Mediation and Conciliation Service (FMCS) or the Shared Neutrals Program administered by the Department of Health and Human Services. The Office of Employee and Labor-Management Relations (OELMR) will have the responsibility, in consultation with Local 12, of communicating with the mediation services for obtaining the mediators, if applicable.

e. The grievant, a union representative, and a management official who can resolve the issue and grant the remedy requested must participate during the ADR Process. The parties agree that all information shared during the ADR process shall be kept confidential and will not be admissible before an arbitrator or other administrative or judicial court. When FMCS is used, the ADR process should last no longer than one (1) day unless the parties mutually agree otherwise. Any settlement agreement shall be reduced to writing and signed by Management, the grievant, and the Union. If the grievance is not resolved, the time frames for the Union to pursue the grievance are resumed.

### Section 3. Who May Initiate a Grievance

A grievance may be filed by:

- a. any employee in the Local 12 bargaining unit or former bargaining unit employees who have filed a timely grievance; except that those employees on temporary limited appointment and those who have not completed probation may submit a grievance only with respect to working conditions or rights expressly granted them elsewhere in this Agreement;
- b. Local 12; or
- c. the U.S. Department of Labor.

#### Section 4. Definition of a Grievance

A grievance means any complaint, unless expressly excluded and/or limited in this Article:

a. by any bargaining unit employee concerning any matter relating to the employment of the employee;

b. by Local 12 concerning any matter relating to the employment of any bargaining unit employee; or

c. by any bargaining unit employee or Local 12 or the Department of Labor concerning:

(1) the effect or interpretation, or a claim of breach, of this Collective Bargaining Agreement; or

(2) any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting the condition(s) of employment.

### Section 5. Exclusions from the Grievance Procedure

The following subject matters referenced in subsections a. and b. below are excluded from the grievance procedure regardless of the specific allegation(s) or issue(s):

a. Excluded by Statute from the grievance procedure are:

(1) Any claimed violation of Subchapter III of Chapter 73 of Title 5 of the U.S. Code (relating to prohibited political activities);

(2) Retirement, life insurance, or health insurance;

(3) A suspension or removal under Section 7532 of Title 5 of the U.S. Code;

(4) Any examination, certification, or appointment; or

(5) The classification of any position that does not result in a reduction in grade or pay of an employee.

b. Further, this Article does not apply to:

(1) A binding decision made by an authority outside the Department;

(2) The filling of a position which is in the Senior Executive Service (SES), and the

filling of all other positions outside the bargaining unit;

(3) The judgment of a merit staffing panel or qualifications rating examiner;

(4) Non-selection from a properly prepared merit staffing certificate;

(5) Failure to recommend and/or disapproval of a quality step increase, performance award, or other kind of honorary or other discretionary award;

(6) Failure to adopt a suggestion submitted under the Incentive Awards Program;

(7) Termination of an employee on a temporary appointment;

(8) Separation of probationary employees unless the probationary status of the employee is one of the issues raised;

(9) the placement of an employee on a Performance Improvement Plan (PIP);

(10) Oral counselings or warnings/admonishments; or

(11) Informal telework denials pursuant to Article 12.

### Section 6. Rights

a. Nothing in this Agreement shall be construed as precluding discussion between an employee and his/her immediate supervisor of a matter of interest or concern to either of them. However, once a matter has been made the subject of a grievance under this procedure, nothing herein shall preclude either management or the union from attempting to resolve the grievance informally at the appropriate level.

b. An employee or group of employees in the bargaining unit filing a grievance under this procedure may be represented by a Union representative. Any employee or group of employees in the bargaining unit may present a grievance under this procedure without representation and have it resolved without intervention of the Union as long as the resolution is not inconsistent with the terms of this Agreement and the Union is given an opportunity to be present during the grievance proceeding.

c. In presenting a grievance, the grievant and the duly designated Union representative, if any, shall be free from restraint, interference, coercion, discrimination, and reprisal.

d. Official Time shall be allowed in accordance with Article 45, Section 4 for the employee and the designated union representative.

e. Where the grievant(s) has designated a Local 12 Representative, all communications with regard to the grievance and attempts at resolution of the grievance shall be made through the designated Local 12 Representative.

#### Section 7. Grievance Form

a. The grievance form (in Appendix D) is used for the filing of grievances under this Article. The grievance is to be signed and dated by the grievant(s) or the representative. The grievant(s) shall identify the alleged violation(s), underlying facts and the remedies sought on the Step I portion of the grievance form. The Step II grievance appeal shall also be presented in writing on the Step II portion of the grievance form. The Step II portion of the grievance form shall contain any additional information as necessary about the grievance. The Step II grievance may be amended at any time prior to the issuance of the Step II decision.

b. Trivial or clearly mechanical errors not affecting the substantial rights of a party shall be disregarded at every stage of the proceedings under this Article. However, the failure to provide all of the necessary information on the grievance form is more than a trivial or clearly mechanical error and shall constitute a basis to return the grievance for inclusion of such information. If the form is returned to the grievant or the Union Representative, the time limit for filing will be tolled. Issues and allegations that are not raised by the Union in the

Step 2 process may not subsequently be considered by an arbitrator should the grievance be invoked to arbitration.

Section 8. Grievance Board Authority and Procedures (Removed this section as it generally would not apply to Harassment cases)

#### Section 9. Procedures for Other Grievances

This Section shall constitute the exclusive procedure available to bargaining unit employees for the resolution of grievances that are not heard by the Grievance Board. The grievance meeting will be with the contractually designated management official, unless modified by mutual agreement, and the employee with his/her designated Union representative. Grievances may be filed electronically and grievance decisions may be issued electronically. All timeframes in this Section may be extended by mutual written agreement of the parties.

### a. Step I

(1) A grievance must be filed within twenty-five (25) workdays of when an employee knew or should have known of the alleged violation. This is applicable to all grievances under this Article unless a different timeframe is specified below. The date a grievance is filed will be determined by when it is personally delivered to or electronically transmitted to the appropriate Agency official.

(2) All grievances other than those concerning merit staffing should normally be filed with the immediate supervisor, unless it is mutually determined that it should be filed elsewhere. This mutual determination is made between the servicing Labor Relations Officer and the Local's Agency Vice President. All grievances concerning merit staffing should normally be filed with the servicing Human Resources Officer at Step II, with Step I being automatically waived, and therefore the Step I portion of the grievance form need not be completed.

(3) When filing a grievance at Step I, the grievant shall complete the grievance form as described in Appendix D. The supervisor, the grievant, and the Union Representative shall have eight (8) workdays from the filing of the grievance to meet and discuss the grievance. The meeting shall be arranged with the Union Representative. The supervisor will communicate the decision on the grievance in writing within eight (8) workdays from the date of the meeting. When the Step I decision is issued, it will identify the designated Step II Official who has the authority to grant or deny the requested remedy.

(4) Representation at Step I shall be provided by a Union Representative in the same Agency as the grievant, unless a Union Representative from another jurisdiction or an officer of Local 12 is appointed by the President in accordance with Article 45, Section 3.

(5) If the grievance is filed with the wrong Agency official, Management shall forward it to the correct official and so notify the grievant and Union representative. Even in these instances, the date the Step I grievance was initially personally delivered or electronically transmitted shall be considered the date of filing.

### b. Step II

(1) A grievance may be appealed to Step II of this procedure within ten (10) workdays of receipt of a decision unsatisfactory to the aggrieved employee(s), or if no timely decision is issued at Step I, within ten (10) workdays after the grievance reply was due at Step I. An appeal shall be filed by completing the Step II portion of the grievance form.

(2) The Step II appeal shall be filed with designated Step II official. The Step II appeal shall be considered filed when it is personally delivered to or electronically transmitted to the appropriate Agency official. The grievant or the Union representative should provide a copy to the immediate supervisor and the Agency Labor Relations Officer. If the appeal is filed with the wrong Agency official, Management shall forward it to the correct official and so notify the grievant and Union representative.

(3) A merit staffing grievance is filed at Step II with the servicing Human Resources Officer within twenty five (25) workdays of when an employee and/or the Union have learned of the alleged violation.

(4) The Agency official, grievant, and designated Agency Union representative shall have ten (10) workdays from the date of the filing of the Step II appeal to meet and discuss the grievance. Where the Union representative and/or the employee did not cooperate in meeting with the grievance official within the specified timeframe, the grievance official will issue a written Step II decision. The Agency official shall render a written decision to the grievant and Union representative within ten (10) workdays of the Step II meeting or when the meeting should have occurred. If no decision is rendered in a timely fashion, the Union may invoke the grievance to arbitration.

### Section 10. Union Grievances

This shall constitute the exclusive procedure(s) available to the Union for the resolution of grievances.

a. A grievance initiated by the Union must bear at least one (1) signature of an official or a representative designated by the President or Executive Vice President of Local 12.
b. Union-Filed Institutional Grievances

A grievance filed by Local 12 which does not seek personal relief for a particular employee or group of employees, but rather expresses Local 12's disagreement with Management's interpretation or application of the Agreement and which seeks an institutional remedy, shall be processed as follows:

(1) On a matter involving more than a single DOL Agency, the grievance shall be filed with the OELMR. If the matter has not been resolved after ten (10) workdays of the receipt of the grievance, Local 12 may invoke arbitration within the next thirty (30) workdays, unless the parties agree to submit the grievance to mediation, in which case Local 12 may invoke arbitration within thirty (30) workdays of the conclusion of the mediation.

(2) On a matter specific and limited to a single DOL Agency, the grievance shall be filed with the Administrative Officer. If the matter has not been resolved after ten (10) workdays of the receipt of the grievance, Local 12 may invoke arbitration within the next thirty (30) workdays, unless the parties agree to submit the grievance to mediation, in which case Local 12 may invoke arbitration within thirty (30) workdays of the mediation.

(3) A grievance filed in accordance with paragraphs (1) or (2) above must be filed within twenty-five (25) workdays of when the Union knew or should have known of the alleged violation.

### c. Union-Filed Employee Grievances

(1) If the Union files a grievance seeking personal relief for an individual employee or group of employees, the grievance(s) should be filed in accordance with the procedures delineated in Article 47, Section 9, just as if the affected employee(s) had initiated the grievance(s).

(2) Where mutually agreeable by the parties, Union-filed grievances on the same matter on behalf of two (2) or more employees may be processed as a single grievance for the purpose of resolving the grievances.

(a) If the grievants are under the supervision of a single supervisor, the Step I grievances may be consolidated as a single grievance with that supervisor.

(b) If the grievants are under the supervision of different supervisors within a single DOL Agency, the grievances may be consolidated with the Agency Administrative Officer at Step II. If the matter has not been resolved after ten (10) workdays of the consolidation, Local 12 may invoke arbitration within the next thirty (30) workdays, unless Local 12 and the Department agree to submit the case to mediation, in which case Local 12 may invoke arbitration within thirty (30) workdays of the conclusion of the mediation.

(c) If the grievants are under the supervision of different supervisors in more than one (1) DOL Agency, the grievances may be consolidated and filed at Step II with OELMR. If the matter has not been resolved after ten (10) workdays of the consolidation, Local 12 may invoke arbitration within the next thirty (30) workdays, unless Local 12 and the Department agree to submit the case to mediation, in which case Local 12 may invoke arbitration within thirty (30) workdays after the conclusion of the mediation.

### Section 11. Department of Labor Grievances

If the Department of Labor wishes to file a grievance, the Director of OELMR will sign and file a written grievance with the Local 12 President within twenty-five (25) workdays of when the Department knew or should have known of the alleged violation. The grievance will detail the nature of the harm, the violations of law, rule, regulation, and/or collective bargaining agreement violated, and the relief requested. If the grievance is not resolved, the Local 12 President shall issue a written Step II decision within fifteen (15) workdays. The Department may invoke the case to arbitration

within thirty (30) workdays of the conclusion of mediation, if applicable or after Step II decision is issued.

### Section 12. Grievance Procedure for Adverse and Performance-Based Actions

An employee who wishes to appeal an adverse action, as defined in Article 49, Section 2, may file an appeal with the MSPB or a grievance under this Article, but not both. An employee shall be deemed to have exercised his/her option depending upon which forum the employee files in first. Similarly, if an employee raises an allegation of discrimination in connection with an adverse action, the employee may elect to file only one of the following: a grievance, or an appeal to the MSPB, or a formal EEO complaint. An employee shall be deemed to have exercised his/her option depending upon which forum the employee files in first; except that the filing of a grievance does not preclude the grievant from using the Department's EEO counseling and informal complaint resolution process. An employee may participate in the EEO counseling and informal complaint resolution process without prejudice to his or her rights to file a grievance or appeal to the MSPB, but the employee's participation in the EEO process does not extend or otherwise affect the deadlines for filing and processing a grievance and for appealing to the MSPB.

When an employee elects to appeal an adverse action under the negotiated grievance/ arbitration procedure, Step I of the grievance procedure is waived. The Union must initially proceed to Step II of the grievance procedure in accordance with Section 9 of this Article, and within five (5) workdays in accordance with Section 18 of this Article in order to have any requisite stay apply. The Union must proceed to invoke arbitration within thirty (30) workdays after the date of the decision by filing a completed grievance form signed by the grievant or his/her union representative.

### Section 13. Invocation of Arbitration

The Union or the Department, respectively, may invoke arbitration by giving notice of such intent to the other (Director of OELMR or the Union) within thirty (30) workdays of receipt of the Step II decision as provided in Article 48 of this Agreement. For grievances filed under Sections 9 through 12, the time limits for invoking arbitration are those specified in those Sections. Section 14. Grievability/Arbitrability (Removed this section as it generally would not apply to Harassment cases)

#### Section 15. Termination of Grievance

A grievance shall terminate only at the employee's request, with Union approval, for failure to proceed to the next step in a timely fashion, or if an arbitrator renders a decision, unless appealed, or when a final decision is rendered on an appeal from the arbitrator's decision.

#### Section 16. Modification of Procedures

a. The time limits delineated in this Article may be modified by mutual written agreement of the parties. Absent such mutual consent, the failure to timely file an initial grievance or timely appeal the grievance to Step II (for individual employee grievances), or timely invoke the grievance to arbitration shall result in a dismissal of the grievance.

b. The parties may mutually agree in writing to waive Step I and II of this procedure.

c. For expeditious processing of grievances, the parties, by mutual agreement, may consolidate grievances concerning similar issues into a single grievance.

### Section 17. Failure to Meet Requirements

- a. An electronic grievance will be considered filed and signed by the sender on the date transmitted. For grievances filed by methods other than electronically, the failure to sign or date the grievance form will not have the effect of nullifying the grievance.
- b. Failure on the part of an aggrieved employee to prosecute his/her grievance within the stated time periods at any Step of this procedure will have the effect of nullifying the grievance.
- c. Failure on the part of Local 12 or the Department to prosecute its grievance, filed in its own behalf within the stated time periods at any Step of this procedure will have the effect of nullifying the grievance.
- d. Failure on the part of the Department to meet any of the time requirements of this procedure will permit the aggrieved employee or Local 12 to move to the next Step.

#### Section 18. Stays of Certain Personnel Actions

a. Upon timely filing of a grievance within five (5) workdays after receipt of a decision to suspend or remove a bargaining unit employee under 5 U.S.C.4303 or 7512 or to suspend an employee under 5 U.S.C. 7502, the Department agrees to stay only the following types of actions for the following terms:

- (1) Suspensions of one (1) to fourteen (14) days No stay
- (2) Suspensions of fifteen (15) days or more -45 day stay
- (3) Involuntary downgrades- 45 day stay
- (4) Removals- No stay

(5) Exception: No stay will be provided for any employee or for any action specifically excluded from coverage by 5 U.S.C. 4303, 7502, or 7512. No stay will be provided for any other type of adverse action or for any employee that is not covered or any action that is excluded from coverage under 5 C.F.R. Part 752, Subpart D. No stay will be provided for any personnel action taken in response to criminal allegations.

b. In all cases of stays, if the arbitrator makes an award prior to the conclusion of the stay, the stay terminates.

c. In such cases, the first step grievance procedure is waived and the grievance immediately goes to Step II. Step II may be waived, at Local 12's election, as provided in Article 49.

d. This Section does not apply to emergency suspensions where retention of the employee in an active duty status may be injurious to the employee, his/her fellow workers, or the general public, or may result in damage to Government property. In such cases, the Department may waive the advance written notice period; if the Department waives the advance notice period, the employee will be placed in a non-duty status with pay, for such time as necessary to affect the suspension.

## National Council of Field Labor Locals (NCFLL)

# Article 15 – Grievance Procedure

#### Section 1 – Purpose

The purpose of this Article is to provide a mutually acceptable method for prompt and equitable settlement of grievances. The parties have a mutual interest in resolving grievances at the lowest level in a timely manner. To promote conflict resolution, supervisors, stewards, and employees should deal with the issue(s) and not personalities.

- A. Efforts should be made to resolve disputes informally prior to filing a formal grievance. Education and training in dispute resolution is a means to achieve this interest.
- B. Interest-based problem solving should be utilized as much as possible to resolve disputes. Both managers and Union Representatives should become familiar with interest-based problem solving techniques. The parties remain committed to forging new Alternative Dispute Resolution (ADR) procedures. See Article 17.
- C. Supervisors and NCFLL Stewards are encouraged to meet regularly to discuss matters of mutual concern. If informal discussions do not resolve the issue(s) and a grievance is filed, a face-to-face meeting at Step 1 may be unnecessary and can be waived by mutual agreement. In reaching the agreement, the parties will consider the complexity of the grievance and travel related costs. At any step of the process, the use of a facilitator may be useful and agreed to mutually
- D. Nothing in this Agreement shall be construed as precluding discussion between a bargaining unit employee and/or his/her designated NCFLL Representative and his/her immediate supervisor about a matter of concern to either of them.
- E. Once a matter has been made the subject of a grievance under this procedure, nothing in this Agreement shall preclude either party to this Agreement from attempting to resolve the grievance informally.
- F. The parties agree to utilize technology to the maximum extent possible. Absent unusual circumstances, grievances will be filed, acknowledged, and responded to electronically. Grievances submitted electronically will be considered to have been signed.

# Section 2 – Definition of a Grievance (Coverage and Scope)

- A. A grievance by a bargaining unit employee(s), including probationary employees, is a request for personal relief in any matter of concern or dissatisfaction to the employee or group of employees concerning the interpretation, application, and/or violation of this Agreement; or the interpretation or application of Departmental regulations, and the application of Government-wide regulations with respect to personnel policies, practices, and other matters' affecting working conditions.
- B. Exclusions from the Grievance Procedure
  - 1. This Article does not apply to:
    - a. A matter which is subject to a statutory appeal procedure (except as provided in Subsection 2. below) outside the Department under law or regulations including but not limited to the following:

Actions or Decisions	Available Procedure		
<b>EEO Discrimination</b>	29 CFR 1614		
Reduction in Force	5 CFR 351		
Personnel Security	5 CFR 732 & 736		

# Classification 5 CFR 511

- b. a binding decision made by an authority outside the Department,
- c. non-selection from a properly prepared Merit Staffing Certificate,
- d. failure to recommend or disapproval of a recommended quality step increase, individual performance award, or other kind of honorary or other discretionary award,
- e. failure to adopt a suggestion submitted under the Incentive Awards Program,
- f. summary rating on appraisal of Highly Effective or Outstanding,
- g. termination and/or separation of probationary employees, and
- h. decisions of the Leave Bank Board.
- 2. The Article does apply to coverage, status, and back pay claims under the Fair Labor Standards Act and to the denial of a within-grade increase.
- 3. With regard to filling any position outside the bargaining unit, employees must utilize the Department's Administrative Grievance Procedure. (See DPR 771).

# C. Matters Subject to Pending EEO Complaint

In the event that an employee files a grievance and also files or pursues an informal EEO complaint concerning the same matter, the grievance will be held in abeyance. If the matter is not resolved during the informal EEO process, the employee can resurrect the grievance or pursue a formal EEO complaint. If the employee files a formal EEO complaint, the grievance will be terminated.

Should the EEO complaint be dismissed on a technicality or for a non-substantive reason, the Union or the affected employee may resurrect the grievance in connection with any non-EEO issues within thirty (30) calendar days of receipt of the Department's EEO complaint decision by notifying the appropriate Management Official at the last processed step of the grievance procedure.

D. Matters Subject to Other Statutory Appeals

If the Department determines that the issue(s) raised in a grievance under this negotiated procedure is subject to a statutory appeals procedure, and is therefore not grievable under this procedure, it shall immediately notify the grievant(s) and/or his/her designated NCFLL Representative.

#### Section 3 – Exclusive Procedure

This shall be the exclusive procedure available to unit employees for the resolution of grievances as defined in Section 7 of this Article and for the Union as defined in Section 7D of this Article. With respect to adverse actions as defined by 5 CFR 432 and 5 CFR 752, if the Department's final decision is to effect an adverse action against a bargaining unit employee, the employee may elect either to appeal the decision to the Merit Systems Protection Board (MSPB) or to file a grievance as clarified in Article 15. Under no condition may an employee appeal an adverse action to the MSPB and file a grievance.

Section 4 – Representation

A. Filing a grievance:

- 1. Bargaining unit employee(s), filing a grievance under this procedure, may be represented only by a designated NCFLL Steward, Regional NCFLL Official, or National NCFLL Official, or a personal representative endorsed by the NCFLL.
- 2. Any bargaining unit employee or group of bargaining unit employees may present a grievance under this procedure without representation as long as the resolution is not inconsistent with the terms of this Agreement and the NCFLL is given an opportunity to be present at any discussion or attempts at resolution of the grievance with the grievant(s). Official time will be granted and travel expenses will be paid in accordance with Article 8.
- B. At each step of the grievance procedure, one representative at a time shall be entitled to official time for purposes of preparation and presentation of the grievance. Travel expenses will be paid in accordance with Article 8.
- C. Where the grievant(s) has designated an NCFLL Representative, all communications with regard to the grievance and attempts at resolution of the grievance shall be made through the designated NCFLL Representative or simultaneously to the representative and the grievant(s).
- D. The grievance meeting will be with the contractually designated Management Official and the employee with his/her designated Union Representative. The designated Management Official may have necessary staff support for a full and accurate discussion of the grievance.

# Section 5 – Who May Initiate Grievance

- A. Employee A grievance under this Article may be initiated by unit employees either singly or jointly. Any such grievance must bear the signature(s) of all the aggrieved employee(s).
- B. Union (Institutional/Employee) The NCFLL or its designee may initiate a grievance on its own behalf. Any such grievance must bear the signature of the grievant. The NCFLL will provide to the Director, ODLRN, the names of all NCFLL Representatives authorized to file a Union grievance as defined in Section 7, Union Grievances.
- C. Department of Labor (See Section 7)

## Section 6 – Grievance Form

The grievance form is a critical component to the grievance process. It is intended to put the agency on notice of all the issues and the specific allegations of the grievance so that it may resolve the dispute at the lowest possible level.

- A. An employee grievance shall be presented on the negotiated standard grievance form. The filing of grievances can be done electronically. It shall be signed by the grievant(s), dated, and to the extent practicable shall contain:
  - 1. Date filed,
  - 2. The names(s) of the grievant(s),
  - 3. The name of the NCFLL Representative, if any,
  - Specification of the Article(s), Section(s), and Subsection(s) of this Agreement or the Department regulations or working conditions which are alleged to have been violated,
  - 5. The nature and facts of the grievance,
  - 6. The remedy desire,; and
  - 7. Signature(s) of grievant(s).
- B. An appeal of a grievance to a higher Step of this procedure shall include a copy of the grievance form.
- C. Except by mutual consent of the parties, no allegations shall be raised in the appeal of a grievance which were not contained in either the Step 2 or institutional grievance procedures.

#### DOL/NCFLL GRIEVANCE FORM (Removed)

#### Section 7 – General Procedures

The parties to a grievance at either Step 1 or Step 2 may mutually agree to use ADR to assist them in resolving the grievance. Official time and travel expenses for the NCFLL Representative and bargaining unit employees will be in accordance with Article 8.

- A. Step 1
  - 1. A grievance must be presented in writing on the negotiated grievance form within thirty (30) calendar days of when the bargaining unit employee or NCFLL has learned or may reasonably have been expected to have learned of its cause.
  - 2. Unless mutually agreed otherwise, a grievance shall be discussed at a meeting between the grievant, the NCFLL Representative, and the immediate supervisor (who prepares the aggrieved employee's performance evaluation) or with the manager whom it is alleged has violated this Agreement. The supervisor/manager shall have ten (10) calendar days in which to attempt to resolve the grievance with the aggrieved employee and/or designated NCFLL Representative and provide a written response addressing all the issues raised in the grievance.
  - 3. If the grievance involves merit staffing procedures which prevent an applicant from being considered, the grievance shall be filed with the Regional Human Resources Officer. The grievant will discuss the issue telephonically with the Regional Human Resources Officer within thirty (30) calendar days of when the bargaining unit employee or NCFLL has learned of its cause. The Regional Human Resources Officer will have ten calendar days in which to respond telephonically to the grievance. The grievance may be filed at Step 2 with the OASAM Regional Administrator on the negotiated grievance form within ten calendar days of the response from the Regional Human Resources Officer. The procedures set forth below for processing Step 2 grievances must be followed.
- B. Step 2
  - 1. A grievance may be appealed to Step 2 of this procedure within ten (10) calendar days of receipt of the written response to the aggrieved employee(s) at Step 1 or, if no timely reply is made at Step 1, within twenty (20) calendar days after the grievance was presented at Step 1.
  - 2. The time limit requirement of this Section will be satisfied if the grievant does any of the following:
    - a. Electronically transmits or delivers to the Step 2 Official by hand the Step 2 appeal within ten (10) calendar days or twenty (20) calendar days, as the case may be, of receipt of the Step 1 reply;
    - b. Mails by Government certified mail, to the Step 2 Official, an appeal within ten (10) or twenty (20) calendar days, as the case may be, and the mailing envelope shows a postmark with a date indicating that the appeal was mailed within the ten (10) or twenty (20) calendar day period; or
    - c. Notifies the Step 2 Official by telephone within the ten (10) or twenty (20) calendar day time period, as the case may be, that an appeal is being filed, followed immediately by a written appeal mailed or electronically transmitted to the Official.
  - 3. The Step 2 grievance appeal shall be submitted utilizing the negotiated standard grievance form to the appropriate Agency Regional Administrator (or equivalent).

The Regional Administrator (or equivalent) or designee shall have ten (10) calendar days in which to discuss and resolve the grievance with the aggrieved employee and/or the designated NCFLL Representative and to issue a reply.

- 4. Upon receipt of the reply of the Step 2 Official, the NCFLL may, within thirty (30) calendar days, invoke arbitration as provided in Article 16 of this Agreement with the Director, ODLRN.
- 5. If no timely reply is issued by the Step 2 Official, the NCFLL may within forty-five (45) calendar days from the date that the Step 2 decision was due, invoke arbitration as provided in Article 16 of this Agreement with the Director, ODLRN.

## C. Adverse Actions

In the case of an employee electing to grieve an adverse action, within thirty (30) calendar days of the effective date of the decision, the employee shall file a signed grievance form with the Deciding Official. Steps 1 and 2 of the negotiated grievance procedure are automatically waived, and the Union may invoke arbitration. The time frame for the Union to invoke arbitration is the same time frame the employee has to file with the MSPB, namely thirty (30) calendar days. Therefore, it is incumbent upon the affected employee to coordinate with the Union well in advance of the deadline.

# D. Union Grievances

This shall constitute the exclusive procedure available to the Union for the resolution of grievances. A grievance initiated by the Union must bear one signature of an official(s) or representative(s) designated by the President or Executive Vice President of the NCFLL.

For the purpose of filing this type grievance, it must be submitted within thirty (30) calendar days of when the incident occurred, or the NCFLL has learned or may have reasonably been expected to have learned of its cause.

# 1. Union-Filed Institutional Grievances

A grievance by the NCFLL is a request for institutional relief over the interpretation or application of this Agreement or the interpretation or application of Departmental regulations, and the application of Government-wide regulations covering personnel policies and practices and other matters affecting working conditions. In the case of a Union grievance, the parties will waive Steps 1 and 2 of this negotiated procedure; however, the parties will make an informal effort to resolve the grievance at the level of dispute. If within ten (10) calendar days the matter cannot be resolved, it will be transmitted to the Department's Office of Departmental Labor Relations and Negotiations, (ODLRN) Washington, D.C. The Director, ODLRN will issue a written decision within thirty (30) calendar days. Upon receipt of the reply, the NCFLL, may, within thirty (30) calendar days from the date the decision was due, invoke arbitration.

2. Union-Filed Employee Grievance

A Union-filed employee grievance seeks personal relief for an individual employee or group of employees. The grievance(s) should be filed in accordance with the procedures and time frames delineated in Section 7, just as if the affected employee(s) had initiated the grievance(s).

- a. Union-filed grievances on the same matter on behalf of one (1) or more employees may be processed as a single grievance for the purpose of resolving the grievances.
- b. If the employee grievant(s) is under the supervision of a single supervisor, the Step 1 grievances may be consolidated as a single grievance with that supervisor.
- c. If the employee grievant(s) are under the supervision of different supervisors within a single DOL agency, the grievances may be consolidated with the Regional Administrator, (or equivalent) or designee, at Step 2.
- d. If the employee grievant(s) are under the supervision of different supervisors in more than one DOL Agency within a specific region, the grievances may be consolidated and filed with the OASAM Regional Administrator at Step 2.
- e. On a matter crossing Regional lines, the grievance shall be filed with the Director, ODLRN, at Step 2.

#### E. Department of Labor Grievances

If the Department of Labor wishes to file a grievance, the Director, ODLRN, will sign and file a written grievance with the NCFLL President within thirty (30) calendar days of when the Department knew or should have known of the alleged violation. The grievance will detail the nature of the harm, the violation of law, rule, regulation, and/or collective bargaining agreement violated, and the relief requested. If the grievance is not resolved, the NCFLL President shall issue a written decision within fourteen (14) calendar days. Upon receipt of the decision, the Director may, within thirty (30) calendar days, invoke the grievance to arbitration. The Director may also invoke the grievance to arbitration within forty-five (45) calendar days of when the decision of the NCFLL President is due.

#### Section 8 – Failure to Meet Requirements

- A. Failure on the part of an aggrieved employee to prosecute his/her grievance within the stated time periods at any Step of this procedure will have the effect of nullifying the grievance unless the parties mutually agree otherwise.
- B. Failure on the part of the NCFLL to prosecute a grievance, filed in its own behalf within the stated time periods at any Step of this procedure will have the effect of nullifying the grievance unless the parties mutually agree otherwise.
- C. Failure on the part of Management to meet any of the time requirements of this procedure will permit the aggrieved employee or the NCFLL to move to the next Step.

# Section 9 - Modification of Procedures

- A. The time limits delineated in this Article may be extended by mutual written agreement of the parties at that Step. Absent such mutual consent, the failure to timely file an initial grievance, timely appeal the grievance to Step 2, or timely invoke the grievance to arbitration shall result in a dismissal of the grievance.
- B. The parties may mutually agree in writing to waive Step 1 or 2 of this procedure.
- C. For expeditious processing of grievances, the parties, by mutual agreement, may consolidate grievances concerning similar issues into a single grievance.

D. No issues/allegations shall be raised in that appeal/arbitration of a grievance which were not contained in the Step 2 grievance process.

# Section 10 – Statement of Grievability

Management agrees to furnish the NCFLL with a final written statement of grievability/arbitrability of a grievance prior to the invocation of arbitration.

### National Union of Labor Investigators (NULI)

Article 34 - Grievance and Arbitration Procedure

#### Section 1 - General

The purpose of this article is to provide a fair, speedy and orderly method for the consideration and resolution of grievances.

A. OLMS and NULI endorse the importance of considering and resolving grievances as early as feasible at the lowest organizational level practicable.

B. This procedure is the exclusive procedure available to the unit employees and NULI for consideration and disposition of grievances as defined below.

#### Section 2 – Scope

A. A grievance is defined as any complaint pertaining to any of the following:

1. By any employee concerning any matter relating to the employment of the employee

2. By NULI concerning any matter relating to the employment of any employee

(a) By any employee, NULI, or OLMS over:

(b) The effect or interpretation, or a claim of breach, of this agreement

(c) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment

B. The procedures in this article shall be available to all employees in the unit, except that probationary employees may submit a grievance only in regard to:

1. Working conditions

2. Rights expressly granted them elsewhere in this agreement

### Section 3 – Exclusions

The article does not apply to:

A. Any claimed violation of subchapter III of Chapter 73 of Title 5 of the United States Code (U.S.C.) (relating to prohibited political activities)

B. Retirement, life insurance, or health insurance

C. A suspension or removal under Section 7532 of Title 5 of the U.S. Code

D. Any examination, certification, or appointment

E. The classification of any position which does not result in the reduction in grade or pay of an employee

F. Binding decisions made by an authority outside the Department of Labor

G. Non-selection from a group of properly ranked and certified candidates

H. Judgment of a merit staffing panel or qualifications rating examiner

I. Except with respect to alleged violation(s) of law or regulation or as required under this collective bargaining agreement, the failure to recommend or disapproval of a recommended quality salary increase, performance award, or other kind of honorary or other discretionary award

J. Separation of probationary employees

K. Reduction in Force (RIFs)

#### Section 4 – Statutory Appeal Options

A. Employees, NULI, or OLMS at their option, may appeal an alleged violation of the Federal Service Labor-Management Relations Statute in accordance with either the grievance and arbitration procedures contained in this agreement or the unfair labor practice procedures set forth in 5 U.S.C. 7116, but not under both procedures.

B. An employee(s), has the option to appeal an adverse action (as defined in Article 31), or an unacceptable performance action (as defined in Article 32), in accordance with either the grievance and arbitration procedures contained in this agreement, or the Merit Systems Protection Board (MSPB) in accordance with FPM Chapter 772, but not both.

An employee(s) has the option to allege discrimination under the EEO Policy in accordance with the grievance and arbitration procedures contained in this agreement, or may invoke the statutory appeals procedures set forth in 29 CFR Part 1614, but not both.

#### Section 5 – Rights

A. Once a matter has been made the subject of a grievance, nothing herein shall preclude either party from attempting to resolve the grievance informally at the appropriate level.

B. Grievances under this procedure may be initiated by employees in the bargaining unit either singly or jointly or by NULI on behalf of such employees who request union representation.

C. NULI may initiate an institutional grievance on its own behalf when it believes rights assured it as an organization under the provisions of this agreement or the statute have been denied.

D. OLMS may initiate an institutional grievance on its own behalf when it believes rights assured it as an employer under the provisions of this agreement or the statute have been denied.

E. Where an employee has initiated a grievance and does not elect to be represented by NULI, NULI has a right to be present at all meetings between the employee and OLMS concerning the grievance. All grievances presented under such circumstances will be resolved consistent with the terms and conditions of this agreement.

F. Employees in the unit may not be represented in the processing of a grievance by a representative other than NULI unless NULI agrees to such representation. An employee or a group of employees grieving without the intervention of NULI must follow the negotiated grievance procedure.

G. No employee may take any matter to arbitration unless NULI agrees to do so.

H. Nothing in this agreement shall be so interpreted as to require NULI to represent employee(s) if NULI considers the grievance to be invalid or unwarranted.

I. The initiation of a grievance by an employee shall not cause any reflection on the employee's standing with the supervisor or the employee's loyalty or desirability to the organization.

J. In seeking resolution of a grievance; grievants, NULI stewards, and other employees who have relevant information concerning the grievance will be assured freedom from restraint, interference, coercion, discrimination, intimidation, or reprisal.

K. Subject to the provisions in Sections 7 and 15 below, grieving employees will have the right to be accompanied, represented, and advised by a NULI representative at any stage of the proceeding.

#### Section 6 – General Procedures

A. The parties shall have the obligation to produce any and all employee witnesses who have relevant information of the matter at issue.

B. All available evidence shall be introduced at the earliest possible step. New evidence, which is relevant to the resolution of a grievance, may be introduced at any stage of the proceeding prior to arbitration.

C. New issues may not be raised by either party unless they have been raised at Step 1 of the grievance procedure; provided, however, the parties may mutually agree to join new issues to a grievance in process. A dispute between the parties as to whether a matter constitutes a new issue may appropriately be brought before an arbitrator.

D. The negotiated form is to be used for the filing of grievances under this article. The grievance form is to be signed by the employee(s) or, in the case of an institutional grievance, the appropriate NULI or OLMS official. The grievance shall be dated and shall include:

1. The name of the grievant, the official to whom the grievance is presented, and the name of the Union representative, if any.

2. A statement of the basic facts.

3. The identification of the article (s) and section (s) of the agreement, or other rights, allegedly violated.

4. The remedy being sought.

E. An incomplete form will not be a basis for rejecting the grievance, but will be returned to the grievant or the Union for proper completion before processing. For purposes of timeliness, the grievance will be considered filed when the form is first received by the appropriate management official. However, the time for processing will not begin until the properly completed grievance form is received by the appropriate official.

F. A grievance is properly filed when prepared in accordance with Subsection D of this section, and when it is received by the appropriate official within the time limits established in this article.

G. All references in this article to the term "days" mean workdays.

#### Section 7 – Steps

Grievances will generally be filed at Step 1. However, where the action being grieved originated at another organizational level, the grievance may be initiated at the appropriate higher step. The steps in OLMS filed grievances will correspond to the levels of review enumerated in this section.

Grievances shall not be considered unless they are taken up at the appropriate step within 15 days after the incident which gave rise to the grievance or within 15 days after the aggrieved, NULI, or OLMS (if it is an institutional grievance) became aware of the matter out of which the grievance arose.

#### Step 1

The grievance shall first be brought to the attention of the appropriate supervisor by the aggrieved and/or NULI steward. The supervisor will discuss the grievance with the aggrieved and the NULI steward within five (5) days. The supervisor will give the decision in writing to the grievant and to NULI within three (3) days of the close of discussions.

#### Step 2

If the decision given in Step 1 is unacceptable, the aggrieved may proceed to Step 2 by submitting the grievance to the regional director, provided the following conditions are met:

A. The grievance has been reduced to writing and states the facts of the grievance, which will include the specific section(s) of the agreement and/or regulations and/or Executive Order alleged to have been violated, when appropriate, and the remedy sought.

B. Such grievance has been submitted to the regional director by the aggrieved or the NULI vice president within ten (10) days of receipt by the grievant of the decision rendered in Step 1. The grievance will be discussed among the regional director, the aggrieved, and the appropriate NULI vice president. The aggrieved has the option to participate. This discussion shall take place within seven (7) days after the written grievance has been received by the regional director. A written answer will be given or mailed to the aggrieved and NULI not later than five (5) days after the discussion with the regional director.

#### Step 3

If the decision given in Step 2 is unacceptable, the aggrieved may proceed to Step 3 by submitting the grievance to the OLMS Deputy Director within ten (10) days of receipt by the grievant of the decision rendered in Step 2. There will be a discussion among the OLMS Deputy Director or designee, the aggrieved, and the NULI President. The aggrieved has the option to participate. Such discussion shall take place within ten (10) days of the date of receipt of the aggrieved's notice of appeal. The aggrieved and the NULI President will be mailed a written answer not later than (10) days from the date of the discussion.

#### Step 4

Unacceptable decisions rendered in Step 3 may proceed to arbitration in accordance with the provisions of 5 U.S.C. 7121, provided such appeal is made within fifteen (15) days of receipt of the decision rendered in Step 3. Adverse actions which result in removal may be appealed directly to arbitration within fifteen days of the receipt of the adverse action decision. Such appeal must state a waiver of all prior steps of the negotiated grievance procedure.

#### Section 8 – Alternative Dispute Resolution (ADR)

A. OLMS and NULI recognize that Alternative Dispute Resolution (ADR) can serve as an effective tool to resolve labor-management disputes. The benefits of ADR can be avoiding protracted and costly litigation, improving working relationships between management and labor, and enhancing communication between employees and their supervisors. Therefore, the parties agree to implement ADR as stipulated in this section.

B. ADR may be utilized to resolve a grievance after the issuance of a Step 2 decision. Either party may communicate to the other an interest to subject a grievance to ADR. If both parties agree, the grievance will be submitted to ADR.

C. If a grievance is submitted to ADR, the timeframes for further processing the grievance will be suspended commencing from the day on which the parties agree to proceed to ADR. The ADR process will be grievance mediation, utilizing mediators from the Federal Mediation and Conciliation Service (FMCS). OLMS and NULI will coordinate the responsibility of communicating with FMCS for obtaining the mediator.

D. The grievant, a NULI representative, the supervisor/manager and a management representative may participate during the mediation, which may be in person or by teleconference, or a combination of in person and teleconference, as agreed upon by the parties. The parties agree that all information shared during the mediation shall be kept confidential and will not be admissible before an arbitrator or other administrative or judicial court. The mediation shall proceed for no longer than 2 consecutive days unless the parties mutually agree otherwise. Any settlement agreement shall be reduced to writing and signed by OLMS, the grievant, and NULI. If the grievance is not resolved within the 2 day time period, NULI has the right to resume the grievance process by so advising the OLMS deputy director, in writing. Upon such notice, the timeframes set forth in Section 7 will commence, following the date of the notice.

#### Section 9 - Designation of NULI Representative

At any of the steps in Section 7 where, in the judgment of NULI, unusual circumstances exist, NULI may designate as NULI representative an individual other than the ordinary NULI representative. In such cases, the NULI representative will not be on official time during travel, if any, nor will the travel costs, if any, be borne by OLMS.

#### Section 10 - Time Waivers/Step Waivers

A. The time limits delineated in this article may, by mutual agreement of parties, be extended.

B. The parties may mutually agree in writing to waive any step in this procedure.

C. If either party considers a matter to be non-grievable or non-arbitrable, it shall advise the other party prior to the date of a hearing.

### Section 11 – Failure to Meet Requirements

Failure on the part of respondent to meet any of the requirements of this procedure will permit the aggrieving party to move to the next step within fifteen (15) days from the date the response was due.

#### Section 12 – Arbitration Panel

When arbitration of a grievance is invoked, the parties shall, within ten (10) days, request a list of five (5) arbitrators from the Federal Mediation and Conciliation Service. The parties shall confer within ten days after receipt of the list to seek agreement on an arbitrator. If the parties cannot agree on an arbitrator, the OLMS Deputy Director and the NULI President, or their designees, will strike one (1) name from the list alternately until one (1) name remains. The remaining person shall be the duly selected arbitrator.

#### Section 13 – Arbitration Fees/Location

A. The arbitrator's fees and expenses shall be borne equally by OLMS and NULI.

B. The arbitration hearing will be held at the grievant's post of duty unless the parties agree to another site.

C. A verbatim transcript by an authorized court reporter may be furnished; the costs thereof to be borne by the party or the parties requesting the services of the reporter.

#### Section 14 – Arbitration Procedures

A. The grievant, the NULI representative, and all employees who are called as necessary witnesses will be excused from duty to participate in the arbitration proceeding without loss of pay or charge to leave. Except for the NULI representative, the travel expenses of the participants will be borne by OLMS. NULI will pay the travel costs of its representative(s). If the arbitrator determines that any employee witnesses are cumulative, NULI will pay the travel costs of such witnesses.

B. The arbitrator's decisions will be final and binding, unless exceptions are filed by either party with the Federal Labor Relations Authority pursuant to 5 U.S.C. 7122.

C. The arbitrator will have the authority to make an appropriate adjustment for the aggrieved to the extent such remedy is not limited by statute, regulation, or this agreement.

D. The arbitrator shall have no power to add to, subtract from, disregard, alter, or modify any of the terms of (1) this agreement, (2) Chapter 71 of 5 U.S.C., or (3) the aforementioned published policies and regulations covered by this agreement either by direct or indirect reference.

E. The parties will attempt to agree upon the issue(s) to be arbitrated and will so stipulate in writing to the arbitrator. If the parties cannot agree upon the issue(s), each party will formulate what it believes to be the issue(s) and shall submit same to the arbitrator at the beginning of the hearing.

F. The parties shall exchange lists of prospective witnesses in advance of the hearing.

### Section 15 – Arbitrator Authority

The arbitrator shall have the authority to make all arbitrability and/or grievability determinations.

#### Section 16 – Arbitration Logistics

Due to the geographic dispersion of offices, the parties agree that wherever NULI does not have a designated representative located on site to meet with the agency official processing the grievance at that step, meetings will be conducted telephonically unless other mutual arrangements are made.

#### LAMAR ALEXANDER, TENNESSEE, CHAIRMAN

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# United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510-6300

January 30, 2018

The Honorable Betsy DeVos Secretary U.S. Department of Education 400 Maryland Avenue, SW Washington, DC 20202

Dear Secretary DeVos:

We write to you with deep concern regarding harassment in the workplace and to obtain information on what you are doing to address the issue within your agency. As you are well aware, workplace harassment is not a new issue that workers face; it is pervasive, systemic, and unacceptable. Recently, many brave women and men have spoken out to shed light on sexual harassment across the country. Women, in particular, have answered the call and their voices are leading the way in demanding change and equality—often taking great risk to speak out for the first time, and their voices are making a difference. As the head of a federal agency employing thousands of people, you can play a critical role in establishing and modeling safe work environments for all workers, and we hope you will do so.

Workplace sexual harassment is all too common, including in the federal government. According to the Equal Employment Opportunity Commission (EEOC)'s Task Force on Sexual Harassment in the Workplace report, an estimated 60 percent of women across our nation's workforce experience unwanted sexual attention, sexual coercion, sexually crude conduct, or sexist comments in the workplace.<sup>1</sup> In fiscal year 2015, the EEOC received 6,741 complaints from federal employees alleging harassment.<sup>2</sup> Forty-four percent of these complaints were on the basis of sex.<sup>3</sup> At the Department of Education specifically, there have been four complaints of sexual harassment since 2012.<sup>4</sup> While these numbers are very concerning, they do not come close to holistically capturing the scope of the problem as harassment is vastly underreported. The EEOC estimates that on average 87 to 94 percent of people never file a formal legal charge, and 70 percent of employees never file a complaint internally.<sup>5</sup>

<sup>5</sup> Feldblum & Lipnic at 16.

<sup>&</sup>lt;sup>1</sup> Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs*, U.S. Equal Employment Opportunity Commission 9 (June 2016),

https://www.eeoc.gov/eeoc/task\_force/harassment/upload/report.pdf.

<sup>&</sup>lt;sup>2</sup> Feldblum & Lipnic at 6.

<sup>&</sup>lt;sup>3</sup> Feldblum & Lipnic at 7.

<sup>&</sup>lt;sup>4</sup> See U.S. Department of Education, Equal Employment Opportunity Data Posted Pursuant to the No Fear Act: Title III of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (No FEAR Act), Pub. L. 107-174 1, https://www2.ed.gov/about/offices/list/om/docs/no-fear-act-report-4qtr-2017.pdf.

All executive branch employees, including Department of Education employees, are protected from workplace sexual harassment under Title VII of the Civil Rights Act of 1964. Federal government employees are also protected from workplace sexual harassment under federal employment antidiscrimination laws.<sup>6</sup> As head of the Department of Education, your leadership is critical to ensure a harassment-free workplace and equal employment opportunities for Department of Education employees.

As such, we are interested in the ongoing discussions, plans, and actions within the Department aimed at protecting employees and establishing a safe working environment free from harassment. We request a briefing about the ways in which the Department is addressing this issue and to discuss any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace. Additionally, we request the following information by no later than February 13, 2018:

- 1. Descriptions, charters, and rosters of Department policy, or working groups, or taskforces on the issue of harassment;
- 2. A copy of the Department's non-discrimination policy;
- 3. A copy of the Department's policy regarding anti-harassment training, a listing of the annual occurrences of such trainings, the curriculum used in the trainings, and a description of other types of trainings related to harassment offered at the Department, including but not limited to bystander intervention training;
- 4. A copy of the Department's contracts with companies conducting training related to harassment;
- 5. A copy of the Department's dispute resolution process and policies;
- 6. A copy of the Department's Table of Penalties, outlining the Department's recommended disciplinary actions for personnel misconduct;
- 7. The total cost and number of harassment settlements made during FY2013, FY2014, FY2015, FY2016, and FY2017; and
- 8. A description of any other efforts the Department undertakes to assess and address workplace harassment.

We all have a great deal of work to do to address harassment in the workplace. We appreciate you taking this matter seriously and providing full and prompt responses. If you have any questions regarding my inquiries you can contact Carly Rush or Laurel Sakai at 202-224-0767 with Senator Murray's Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

Patty Murray United States Senator

I Sanda

Bernard Sanders United States Senator

<sup>&</sup>lt;sup>6</sup> See 42 U.S.C. §2000e-16(a)-(b) (prohibiting discriminatory practices for federal employees and providing for enforcement by the Equal Employment Opportunity Commission); see generally 29 C.F.R. §1614 (establishing procedural regulations for enforcement of complaints from federal sector employees).

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Robert P. Casey, Jr. United States Senator

Tammy Baldwin United States Senator

Elizabeth Warren United States Senator

Margaret Wood Hassan United States Senator

Doug Jones United States Senator

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Michael F. Bennet United States Senator

Christopher S. Murphy

United States Senator

Tim Kaine United States Senator

Tina Smith United States Senator

# UNITED STATES DEPARTMENT OF EDUCATION



# OFFICE OF MANAGEMENT

April 18, 2018

Honorable Patty Murray Ranking Member Committee on Health, Education, Labor, and Pensions United States Senate Washington, DC 20510

Dear Senator Murray:

Thank you for your January 30, 2018, letter to Secretary Betsy DeVos regarding sexual and nonsexual harassment in the workplace and your request to obtain information on plans and actions within the U.S. Department of Education (Department) aimed at protecting employees and establishing a safe working environment free from harassment. I am pleased to respond on her behalf.

The Department is committed to prohibiting sexual and other forms of discriminatory harassment in the workplace. Each employee, as well as anyone doing business with the Department, should be treated with dignity and respect and has the right to work in an environment that is free of harassment. To that end, the Department has implemented a zero-tolerance policy for discriminatory harassment (see enclosed *Anti-Harassment Policy Statement*). Last year, there were 31 equal employment opportunity complaints filed against the Department; none of the complaints were for sexual harassment.<sup>1</sup>

Please see below for your request for information and respective responses.

# 1. Descriptions, charters and rosters of Department policy, or working groups or taskforces on the issue of harassment.

Please see the enclosed *Anti-Harassment Policy Statement* (December 2017) and *Administrative Guidance for Addressing Allegations of Harassment* (August 2016).

# 2. A copy of the Department's non-discrimination policy.

Please see the enclosed Policy Statement on Equal Employment Opportunity (EEO) and the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002 and the Whistleblower Protection Enhancement Act of 2012 (WPEA), December 2017.

<sup>&</sup>lt;sup>1</sup>Please see the enclosed *EEO Data Posted Pursuant to the No FEAR Act, Complaint Activity as of FY2017 4<sup>th</sup> Qtr., page 2-Complaints by Issue Continued.* 

3. A copy of the Department's policy regarding anti-harassment training, a listing of the annual occurrences of such trainings, the curriculum used in the trainings and a description of other types of trainings related to harassment offered at the Department, including, but not limited to, bystander intervention training.

Managers, supervisors and employees are required to complete mandatory EEO Training on a biennial basis via the Department's Talent Management System (TMS). This requirement is stated in the Department's non-discrimination policy. This mandatory online EEO training includes a module on prevention of harassment/sexual harassment. The mandatory online EEO training launched on April 2, 2018, via TMS. All managers, supervisors and employees will be required to complete this training by May 24, 2018. New employees are required to complete the training within 90 days of their appointment to the Department. Please see the enclosed *Online Biennial Training – Prevention of Harassment/Sexual Harassment Transcript*.

All Department employees were also required to complete an online course, Sexual Harassment Awareness – Prevention of Sexual Harassment (POSH), by January 31, 2017. The Chief Human Capital Officer notified all Department employees of this requirement on November 16, 2016. Please see the enclosed Notice to Employees – Requirement to Complete Training. For a copy of the description and curriculum of this training, see enclosed POSH Standard – Description and POSH Training Screenshots.

# 4. A copy of the Department's contracts with companies conducting training related to harassment.

The Department does not have any contracts with companies to conduct training related to harassment.

# 5. A copy of the Department's dispute resolution process and policies.

Please see the enclosed:

- Policy Statement on Alternative Dispute Resolution (December 2017)
- Departmental Directive Administrative Communications System, OM: 7-101, Alternative Dispute Resolution for Equal Employment Opportunity Complaints of Discrimination (November 2016)
- Frequently Asked Questions About the Alternative Dispute Resolution Center Services and Process

# 6. A copy of the Department's Table of Penalties, outlining the Department's recommended disciplinary actions for personnel misconduct.

Please see the enclosed Human Capital Policy – HCP: 751-1, Discipline and Adverse Actions (July 2016)



8. A description of any other efforts the Department undertakes to assess and address workplace harassment.

When the Department identifies a trend with harassment allegations involving a Principal Office or work unit, a climate assessment may be conducted when appropriate to understand the reason(s) for the harassment allegations.

In addition, the Department has implemented a Diversity Change Agent (DCA) Program. The DCA Program is a Department-wide initiative to help foster an inclusive culture that respects individual talents, values differences and allows our workforce to fully contribute to organizational success. The Department has certified 207 DCAs from all levels of the organization, including 14 senior executive service members, who have established a cohort led by two Co-chairs. The goal is to certify 400 (10 percent of the Department's employees) DCAs by 2020. The DCA Cohort is a cadre of committed employees empowered and equipped with the knowledge to lead culture change. DCAs are a force multiplier and are imbedded into their respective Principal Offices in furtherance of the diversity, inclusion and anti-harassment program.

The Department's Anti-Harassment Policy; Non-discrimination Policy; Alternative Dispute Resolution Policy; and Diversity, Inclusion and Respect Policy statements are posted both in hard copy and electronic format in conspicuous places, including all places where notices to employees are customarily posted.

Thank you for your interest in the Department's ongoing efforts to provide and maintain a safe working environment free from harassment for our employees.

If you have additional questions or concerns, please do not hesitate to have your staff contact Peter Oppenheim, Assistant Secretary for Legislation and Congressional Affairs at Sincerely,



Denise L. Carter Acting Assistant Secretary for Management

Enclosures:

- 1. EEO Data Posted Pursuant to the No FEAR Act, Complaint Activity as of FY 2017
- 2. Anti-Harassment Policy Statement
- 3. Administrative Guidance for Addressing Allegations of Harassment
- 4. Policy Statement on Equal Employment Opportunity (EEO) and the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002 and the Whistleblower Protection Enhancement Act of 2012 (WPEA), December 2017
- 5. Online Biennial Training Prevention of Harassment/Sexual Harassment Transcript
- 6. Notice to Employees Requirement to Complete Training
- 7. POSH Standard Description
- 8. POSH Training Screenshots
- 9. Policy Statement on Alternative Dispute Resolution, December 2017
- Departmental Directive Administrative Communications System, OM: 7-101, Alternative Dispute Resolution for Equal Employment Opportunity Complaints of Discrimination
- 11. FAQs Alternative Dispute Resolution and Process
- 12. HCP: 751-1 Discipline and Adverse Actions



# **Equal Employment Opportunity Data Posted Pursuant to the No Fear Act**

Title III of the Notification and Federal Employee Antidiscrimination and Retailation Act of 2002 (No Fear Act), Pub. L. 107-174

#### Complaint Activity as of Fiscal Year 2017 4th Quarter.

29 CFR section 1614.704 (a), (b), and (c) the number of complaints filed in such fiscal year, the number of individuals filing those complaints (including as the agent of a class), and the number of individuals who filed two or more of those complaints.

Fiscal Year	Number of Complaints Filed	Number of Complainants	Repeat filers
2012	33	33	0
2013	24	24	0
2014	20	20	0
2015	27	26	1
2016	26	26	0
2017	31	31	0

#### **Complaints by Basis**

29 CFR section 1614.704 (d) the number of those complaints, whether initially or through amendment, raising each of the various bases of alleged discrimination and the number of complaints in which a non-EEO basis is alleged.

Fiscal Year	Race	Color	Religion	Reprisal	Sex	Pregnancy Discrimination Act	National Origin	Equal Pay Act	Age	Disability	Genetics	Non- EEO
2012	22	6	1	23	13	0	1	2	14	10	0	0
2013	12	5	2	16	8	0	3	2	11	7	0	0
2014	14	6	2	10	7	0	3	1	13	12	0	0
2015	11	6	1	16	5	0	0	0	14	14	1	0
2016	16	8	1	16	8	1	4	0	13	9	0	0
2017	10	5	1	20	11	2	1	1	9	12	0	0

#### **Complaints by Issue**

29 CFR section 1614.704 (e) the number of those complaints, whether initially or through amendment, raising each of the various issues of allead discrimination.

Fiscal Year	Appointment/Hire	Assignment of Duties	Awards	Conversion to Full Time/Permanent Status
2012	2	8	0	0
2013	1	8	1	0
2014	3	5	1	0
2015	3	7	Ø	0
2016	6	5	0	.0
2017	1	9	0	0

#### **Complaints by Issue Continued**

29 CFR section 1614.704 (e) the number of those complaints, whether initially or through amendment, raising each of the various issues of alleged discrimination.

Fiscal Year	Demotion	Reprimand	Suspension	Removal	Disciplinary Warning	Other
2012	0	4	3	1	0	3
2013	1	0	2	1	0	1
2014	0	0	1	1	0	0
2015	3	1	0	0	0	0
2016	0	2	1	0	0	0
2017	0	1	1	0	0	0

#### Complaints by Issue Continued

29 CFR section 1614.704 (e) the number of those complaints, whether initially or through omendment, raising each of the various issues of alleged discrimination.

Fiscal Year	Duty Hours	Performance Evaluation/ Appraisal	Examination/ Test	Non-Sexual Harassment	Sexual Harassment	Medical Examination	Pay Including Overtime	Promotion/ Non-Selection
2012	2	14	Q	13	2	0	4	9
2013	0	20	0	13	0	1	3	3
2014	0	8	0	9	1	1	1	2
2015	0	6	0	4	1	0	0	9
2016	5	8	0	11	0	0	1	4
2017	0	9	0	14	0	0	.3	9

# **Complaints by Issue Continued**

29 CFR section 1614.704 (e) the number of those complaints, whether initially or through amendment, raising each of the various issues of alleged discrimination.

Fiscal Year	Reassignment Denied	Reassignment Directed	Reasonable Accommodation	Reinstatement	Religious Accommodation	Retirement	Sex Stereotypi ng
2012	4	2	5	1	0	1	0
2013	1	1	6	0	0	2	Ō
2014	0	1	5	0	0	1	0
2015	0	3	6	0	0	1	0
2016	1	0	6	0	0	0	0
2017	0	0	5	0	0	0	1

#### **Complaints by Issue Continued**

29 CFR section 1614,704 (e) the number of those complaints, whether initially or through amendment, raising each of the various issues of alleged discrimination.

Fiscal Year	Telework	Termination	Terms/Conditions of Employment	Time and Attendance	Training	Other
2012	0	1	11	3	2	3
2013	0	4	4	3	4	0
2014	0	3	3	3	2	0
2015	0	2	7	2	0	1
2016	3	2	Q	7	3	0
2017	3	4	3	2	3	0

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Complaints pending (for any length of time) during fiscal year

Processing Time. Sec. 1614.704(f1) the overage length of time it has taken an agency to complete, respectively, investigation and final action

Fiscal Year	Average number of days in investigation	Average number of days in final action
2012	195.49	31.19
2013	236.62	33.62
2014	226.32	23.11
2015	293.00	38.19
2016	259.37	44.56
2017	215.23	29.69

#### Complaints pending (for any length of time) during fiscal year where hearing was requested

Processing Time. Sec. 1614.704(f2) the overage length of time It has taken an agency to complete, respectively, investigation and final action

Fiscal Year	Average number of days in investigation	Average number of days in final action
2012	188.94	6.06
2013	184.63	13.13
2014	223.60	7.20
2015	293.57	12.43
2016	292.56	38.67
2017	179.50	10.17

# Complaints pending (for any length of time) during fiscal year where hearing was not requested

Processing Time. Sec. 1614.704(f3) the average length of time it has taken an agency to complete, respectively, investigation and final action

Fiscal Year	Average number of days in investigation	Average number of days in final action .
2012	198.87	44,16
2013	256.43	41,43
2014	229.33	40.78
2015	292.59	43.12
2016	224.22	50.44
2017	245.86	46.43

# **Complaints Dismissed by Agency**

Processing Time. Sec. 1614.704(g) the average length of time such complaints had been pending prior to dismissal

Fiscal Year	Total complaints dismissed by Agency	Average days pending prior to dismissal
2012	2	92.00
2013	6	18.67
2014	2	41.50
2015	3	48.00
2016	4	92.25
2017	7	204,29

#### **Complaints Withdrawn by Complainants**

Processing Time. Sec. 1614.704(h) the number of complaints withdrawn by complainants

Fiscal		Total complaints withdrawn by complainants
Year	·	And a second
2012	5	
2013	5	
2014	1	
2015	3	· · · · · · · · · · · · · · · · · · ·
2016	0	
2017	2	

#### **Total Final Actions Finding Discrimination**

Processing Time. Sec. 1614.704(i) the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination

Fiscal Year	Total Count of Final Actions Finding Discrimination	Total Percentage of Final Actions Finding Discrimination	Final Actions Finding Discrimination withousa hearing	Total Percentage of Final Actions Finding Discrimination Without a hearing	Rivel Around Riverson Silver Grannan The Forenan The Forenan	และสมโทสา อำ โทยเสียงอย่อง เหตุสกร โปรรณีเฉียงอย่อง เป็นประกัญอาณีร
2012	0	0%	0	0%	0	0%
2013	0	0%	0	0%	Q	0%
2014	1	100%	0	0%	1	100%
2015	1	100%	0	0%	1	100%
2016	0	0%	0	0%	0	0%
2017	1	100%	1	100%	0	0%

## Findings of Discrimination Rendered by Basis

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Processing Time. Sec. 1614.704((1) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination

Fisca) Year	Race by Count	Race by Perce ntage	Color by Count	Color by Percenta	Religion by Count	Religion by Percenta ge	Reprisal by Count	Reprisal by Percentage	Sex by Count	Sex by Percentage	Pregnancy Discrimina tion Act by Count	Pregnane y Discrimin ation Act by Percenta ge
2012	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2014	D	0%	0	0%	0	0%	1	100%	0	0%	0	0%
2015	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2016	0	0%	0	0%	Ö	0%	0	0%	0	0%	0	0%
2017	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%

#### Findings of Discrimination Rendered by Basis Continued

Processing Time. Sec. 1614.704(j1) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination

Fiscal Year	National Origin by Count	National Orígin by Percent age	Equal Pay Act by Count	Equal Pay Act by Perce ntage	Age by Count	Age by Percenta ge	Disability by Count	Disability by Percentage	Genetics by Count	Genetics by Percentage	Non- EÉO by Count	Non-EEO by Percenta ge
2012	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	0	0%	Ó	0%	0	0%
2014	0	0%	0	0%	0	0%	0.	0%	0	0%	0	0%
2015	0	0%	0	0%	0	0%	1	100%	0	0%	Ö	0%
2016	Ö	0%	0	0%	0	0%	Q	0%	0	0%	0	0%
2017	0	0%	Ö	0%	0	0%	1	100%	0	0%	0	0%

#### Findings of Discrimination Rendered by Basis without a hearing

Processing Time. Sec. 1614.704(j2) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination:

Fiscal Year	Race by Count	Race by Perce ntage	Calor by Count	Color by Percenta	Religion by Count	Religion bγ Percenta ge	Reprisal by Count	Reprisal by Percentage	Sex by Count	Sex by Percentage	Pregnancy Discrimina tion Act by Count	Pregnanc Y Discrimin ation Act by Percenta ge
2012	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2014	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2015	Ū.	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2016	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2017	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%

# Findings of Discrimination Rendered by Basis without a hearing continued

Processing Time. Sec. 1614.704(j2) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination:

Fiscal Year	National Orfein by Count	National Origin By Percent age	Equal Pay Act by Count	Equal Pay Act by Perce ntage	Age by Count	Age by Percenta ge	Disability by Count	Disability by Percentage	Genetics by Count	Genetics by Percentage	Non- EEO by Count	Non-EEO by Parcenta ge
2012	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2014	0	0%	0	0%	0	0%	0	0%	0	0%	0.	0%
2015	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2016	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2017	0	0%	Q	0%	0	0%	1	100%	0	0%	0	0%

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# Findings of Discrimination Rendered by Basis after a hearing

Processing Time. Sec. 1614.704(j3) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination:

Fiscal Year	Race by Count	Race by Perce ntage	Color by Count	Color by Percenta ge	Religion by Count	Religion by Percenta ge	Reprisal by Count	Reprisal by Percentage	Sex by Count	Sex by Percentage	Pregnancy Discrimina tion Act by Count	Pregnanc y Discrimin ation Act by Percenta ge
2012	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2013	0	_0%	0	0%	0	0%	0	0%	0	0%	0	0%
2014	0	0%	0	0%	0	0%	1	100%	0	0%	0	0%
2015	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2016	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2017	0	0%	0	0%	0	0%	<u>0</u> .	0%	0	0%	D	0%

# Findings of Discrimination Rendered by Basis after a hearing continued

Processing Time. Sec. 1614.704(j3) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination:

Fiscal Year	National Origin by Count	National Origin by Percent age	Equal Pay Act by Count	Equal Pay Act by Perce ntage	Age by Count	Agë by Percenta ge	Disability by Count	Disability by Percentage	Genetics by Count	Genetics by Percentage	Non- EEO by Count	Non-EEO by Percenta 8e
2012	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	0	0%	Ö	0%	0	0%
2014	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2015	0	0%	0	0%	0	0%	-1	100%	0	0%	0	0%
2016	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2017	0	0%	0	0%	0	0%	0	0%	.0	0%	0	0%

# Findings of Discrimination Rendered by Issue

Processing Time. Sec. 1614.704(k1) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination:

Fiscal Year	Appointment/ Hire by Count	Appointment/ Hire by Percentage	Assignment of Duties by Count	Assignment of Duties by Percentage	Awards by Count	Awards by Percentage	Conversion to Full Time/Perm Status by Count	Conversion to Full Time/Perm Status by Percentage
2012	0	0%	0	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	0	0%
2014	0	.0%	0	0%	0	0%	0	0%
2015	0	0%	0	0%	0	0%	0	0%
2016	0	0%	0	0%	0	0%	0	0%
2017	0	0%	0	0%	0	0%	0	0%

#### Findings of Discrimination Rendered by Issue Continued

Processing Time. Sec. 1614.704(k1) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination:

Fiscal Year	Demotion by Count	Demotion by Percentage	Reprimand by Count	Reprimand by Percentage	Suspension. by Count	Suspension by Percentage	Removal by Count	Removal by Percentage	Other by Count	Other by Percentage
2012	0	0%	0	0%	0	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	0	0%	0	0%
2014	0	0%	0	0%	0	0%	0	0%	0	0%
2015	0	0%	0	0%	0	0%	0	0%	0	0%
2016	0	0%	0	0%	0	0%	0	0%	0	0%
2017	0	0%	0	0%	0	0%	0	0%	0	0%

# Findings of Discrimination Rendered by Issue Continued

Processing Time. Sec. 1614.704(k1) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination:

Fiscal Year	Duly Hours by Count	Duty Hours by Percentage	Performance Evaluation/ Appraisal by Count	Performance Evaluation/ Appraisal by Percentage	Examination /Test by Count	Examination /Test by Percentage	Non- Sexual Harassme nt by Count	Non-Sexual Harassment by Percentage	Sexual Harass Inent by Count	Sexual Harassment by Percentage
2012	0	0%	0	0%	0	0%	0	0%	0	0%
2013	0.	0%	0	0%	0	0%	0	0%	0	0%
2014	0	0%	0	0%	0	0%	1	100%	0	0%
2015	0	0%	0	0%	0	0%	0	0%	0	0%
2016	0	0%	0	0%	0	0%	0	0%	0	0%
2017	0	0%	0	0%	0	0%	0	0%	0	0%

# Findings of Discrimination Rendered by Issue Continued

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Processing Time, Sec. 1614.704(k1) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination:

Fiscal Year	Medical Examin ation by Count	Medical Examination by Percentage	Pay including overtime by Count	Pay including overtime by Percentage	Promotion /Non- Selection by Count	Promotion/ Non- Selection by Percentage	Denied reassignme nt by Count	Denied reassignme nt by Percentage	Directe d reassig nment by Count	Directed reassignme nt by Percentage
2012	0	0%	0	0%	0	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	0	0%	0	0%
2014	0	0%	0	0%	0	0%	0	0%	0	.0%
2015	0	0%	l o	0%	0	0%	0	0%	0	0%
2016	0	0%	0	0%	0	0%	Ö'	0%	0	0%
2010	0	0%	0	0%	0	0%	0	0%	0	0%

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# Findings of Discrimination Rendered by Issue Continued

Processing Time. Sec. 1614.704(k1) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination:

Fiscal Year	Reason able Accom modati on by Count	Reasonable Accommoda tion by Percentage	Reinstate ment by Count	Reinstatem ent by Percentage	Religious Accomino dation by Count	Religious Accommoda tion by Percentage	Retirement by Count	Retirement by Percentage	Sex- Stereo typing by Count	Sex-Stereo typing by Percentage
2012	0	0%	Ö	0%	0	0%	Ó	0%	0	0%
2013	0	0%	0	0%	0	0%	0	0%	0	0%
2014	0	0%	0	0%	0	0%	0	0%	0	0%
2015	1	100%	0	0%	0	0%	0	0%	0	0%
2016	0	0%	Ó	0%	0	0%	0	0%	0	0%
2017	0	0%	0	0%	0	0%	0	0%	0	0%

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### Findings of Discrimination Rendered by Issue Continued

Processing Time. Sec. 1614.704(k1) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination:

Fiscal Year	Telewor k by Count	Telewor k by Percent, age.	Termina tion by Count	Termina tion by Percent age	Terms/C ondition s of Employ ment by Count	Terms/C ondition s of Employ ment by Percent age	Time and Attenda nce by Count	Time and Attenda nce by Percent age	Training by Count	Training by Percent age	Other by Count	Other by Percent age
2012	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2013	0	0%	.0.	0%	0	0%	0	0%	0	0%	0	0%
2014	0	0%	-0.	0%	0	0%	0	0%	0.0	0%	0	0%
2015	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2016	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2017	Ö	0%	1	100%	0	0%	0	0%	0	0%	0	0%

#### Findings of Discrimination Rendered by Issue without a hearing

Processing Time. Sec. 1614.704(k2) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination:

Fiscal Year	Appointment/ Hire by Count	Appointment/ Hire by Percentage	Assignment of Duties by Count	Assignment of Dúties by Percentage	Awards by Count	Awards by Percentage	Conversion to Full Time/Perm Status by Count	Conversion to Full Time/Perm Status by Percentage
2012	0	0%	0	0%	0	0%	Q	0%
2013	Ò	0%	0	0%	0	0%	0	0%
2014	0	0%	0	.0%	0	0%	0	0%
2015	0	0%	Ó	0%	Ö	0%	0	0%
2016	Ó	0%	0	0%	0	0%	0	0%
2017	0	0%	0	0%	0	0%	0	0%

#### Findings of Discrimination Rendered by Issue without a hearing continued

Processing Time. Sec. 1614.704(k2) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination

Fiscal Year	Demotion by Count	Demotion by Percentage	Reprimand by Count	Reprimand by Percentage	Suspension by Count	Suspension by Percentage	Removal by Count	Removal by Percentage	Other by Count	Other by Percentage
2012	0	0%	Q	0%	0	0%	Ő	0%	0	0%
2013	0	0%	0	0%	0	0%	-0	D%	Ö	0%
2014	0	0%	0	0%	0	0%	0	0%	.0	0%
2015	0	0%	, Ö	0%	0	0%	Ó	0%	0	0%
2016	Q	0%	0	0%	0	0%	0	0%	Ò	0%
2017	0	0%	0	0%	0	0%	0	0%	0	0%

# Findings of Discrimination Rendered by Issue without a hearing continued

Processing Time. Sec. 1614.704(k2) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination

Fiscal Year	Duty Hours by Count	Duty Hours by Percentage	Performance Evaluation/ Appraisal by Count	Performance Evaluation/ Appraisal by Percentage	Examination /Test by Count	Examination /Test by Percentage	Non- Sexual Harassme nt by Count	Non-Sexual Harassment by Percentage	Sexual Harass ment by Count	Sexual Harassment by Percentage
2012	0	0%	0	0%	0	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	0	0%	0	0%
2014	0	0%	0	0%	0	0%	0	0%	0	0%
2015	0	0%	Ő	0%	0	0%	0	D%	0	0%
2016	0	0%	0	0%	Ø	0%	0	0%	0	0%
2017	0	0%	0	0%	Q	0%	0	0%	0	0%

### Findings of Discrimination Rendered by Issue without a hearing continued

Processing Time. Sec. 1614.704(k2) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination

Fiscal Year	Medical Examin ation by Count	Medical Examination by Percentage	Pay including overtime by Count	Pay Including overtime by Percentage	Promotion /Non- Selection by Count	Promotion/ Non- Selection by Percentage	Denied reassignme nt by Count	Denied reassignme nt by Percentage	Directe d reassig nment by Count	Directed reassignme nt by Percentage
2012	0	0%	0	0%	0	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	0	0%	0	0%
2014	0	0%	0	0%	0	0%	0	0%	0	0%
2015	0	0%	Ö	0%	0	0%	0	0%	0	0%
2016	0	0%	.0	0%	0	0%	0	0%	0	0%
2017	0	0%	0	0%	0	0%	0	0%	0	0%

# Findings of Discrimination Rendered by Issue without a hearing continued

Processing Time. Sec. 1614.704(k2) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination

			·		<b></b> · · · ·	1		j - · · - · · · · · · · · · · · · · · ·	F .	1.
Fiscal Year	Reason able Accom modati on by Count	Reasonable Accommoda tion by Percentage	- Reinstate ment by Count	Reinstatem ent by Percentage	Religious Accommo dation by Count	Religious Accommoda tion by Percentage	Retirement by Count	Retirement by Percentage	Sex- Stereo typing by Count	Sex-Stereo typing by Percentage
2012	0	0%	Ö	0%	0	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	0	0%	0	0%
2014	0	0%	0	0%	0	0%	0	0%	0	0%
2015	0	.0%	0	0%	0	0%	0	0%	0	0%
2016	0	0%	Ő	0%	0	0%	0	0%	0	0%
2017	0	0%	0	0%	Ö	0%	0	0%	0	0%

#### Findings of Discrimination Rendered by Issue without a hearing continued

Processing Time. Sec. 1614.704(k2) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination

Fiscal Year	Telewor k by Count	Telewor k by Percent age	Termina tion by Count	Termina tion by Percent age	Terms/C ondition s of Employ ment by Count	Terms/C ondition s of Employ ment by Percent age	Time and Attenda nce by Count	Time and Attenda nce by Percent age	Training by Count	Training by Percent age	Other by Count	Other by Percent age
2012	0	0%	0	0%	0	0%	Ő	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	Ö	0%	Ó	0%	0	0%
2014	0	0%	0	0%	0	0%	0	0%	0	0%	Ø	0%
2015	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2016	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2017	0	0%	1	100%	Ö	0%	0	0%	0	0%	0	0%

# Findings of Discrimination Rendered by Issue after a hearing

Processing Time, Sec. 1614.704(k3) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination

Fiscal Year	Appointment/ Hire by Count	Appointment/ Hire by Percentage	Assignment of Dutles by Count	Assignment of Dutles by Percentage	Awards by Count	Awards by Percentage	Conversion to Full Time/Perm Status by Count	Conversion to Full Time/Perm Status by Percentage
2012	0	0%	0	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	0	0%
2014	0	0%	0	0%	0	0%	0	0%
2015	0	0%	0	0%	0	0%	0	0%
2016	0	0%	0	0%	0	0%	Ö	0%
2017	0	0%	1 0	0%	0	0%	0	0%

## Findings of Discrimination Rendered by Issue after a hearing continued

Processing Time. Sec. 1614.704(k3) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination

Fiscal Year	Demotion by Count	Demotion by Percentage	Reprimand by Count	Reprimand by Percentage	Suspension by Count	Suspension by Percentage	Removal by Count	Removal by Percentage	Other by Count	Other by Percentage
2012	0	0%	-0	0%	0	0%	0	0%	.0	0%
2013	0	0%	0	0%	0	0%	0	0%	0	0%
2014	0	0%	0	0%	0	0%	0	0%	0	0%
2015	0	0%	Ó	0%	0	0%	0	0%	0	0%
2016	0	0%	0	0%	0	0%	0	0%	0	0%
2017	0	0%	0	0%	0	0%	0	0%	0	0%

#### Findings of Discrimination Rendered by Issue after a hearing continued

Processing Time. Sec. 1614.704(k3) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination

	1	1	Letter a state of the state of			1	r	line in the second s		1
Fiscal Year	Duty Hours by Count	Duty Hours by. Percentage	Performance Evaluation/ Appraisal by Count	Performance Evaluation/ Appraisal by Percentage	Examination /Test by Count	Examination /Test by Percentage	Non- Sexual Harassme nt By Count	Non-Sexual Harassment by Percentage	Sexual Harass ment by Count	Sexual Harassment by Percentage
2012	0	0%	0	0%	0	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	0	0%	0	0%
2014	0	0%	0	0%	0	0%	1	100%	0	0%
2015	0	0%	0	0%	0	0%	Ő	0%	0	0%
2016	0	0%	0	0%	0	0%	0	0%	0	0%
2017	0	0%	0	0%	0	0%	0	0%	0	0%

#### Findings of Discrimination Rendered by Issue after a hearing continued

Processing Time. Sec. 1614.704(k3) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination

Fiscal Year	Medical Examin ation by Count	Medical Examination by Percentage	Pay including overtime by Count	Pay Including overtime by Percentage	Promotion /Non- Selection by Count	Promotion/ Non- Selection by Percentage	Denied reassignme nt by Count	Denied reassignme nt by Percentage	Directe d reassig nment by Count	Directed reassignme nt by Percentage
2012	0	0%	0	0%	0	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	Ū	0%	0	0%
2014	0	0%	0	0%	0	0%	0	0%	0	0%
2015	0	0%	Ő	0%	0	0%	0	0%	0	0%
2016	0	0%	0	0%	0	0%	0	0%	0	0%
2017	0	0%	0	0%	Q	0%	0	0%	0	0%

# Findings of Discrimination Rendered by Issue after a hearing continued

Processing Time. Sec. 1614.704(k3) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination

Fiscal Year	Reason able Accom modati on by Count	Reasonable Accommoda tion by Percentage	Reinstate ment by Count	Reinstatem ent by Percentage	Religious Accommo dation by Count	Religious Accommoda tion by Percentage	Retirement by Count	Retirement by Percentage	Sex- Stereo typing by Count	Sex-Stereo typing by Percentage
2012	0	0%	Ø	0%	D	0%	0	0%	0	0%
2013	0	0%	0	0%	0	0%	0	0%	0	0%
2014	0	0%	0	0%	0	0%	0	0%	0	0%
2015	1	100%	0	0%	Q	0%	0	0%	0	0%
2016	0	0%	0	0%	0	-0%	0	0%	Ő	0%
2017	0	0%	0	0%	0	0%	D	0%	0	0%

# Findings of Discrimination Rendered by Issue after a hearing continued

Processing Time. Sec. 1614.704(k3) of the total number of final actions by an agency rendered in such fiscal year involving a finding of discrimination

Fiscal Year	Telewor k by Count	Telewor k by Percent age	Termina tion by Count	Termina tion by Percent age	Terms/C ondition s of Employ ment by Count	Terms/C ondition s of Employ ment by Percent age	Time and Attenda nce by Count	Time and Attenda nce by Percent age	Training by Count	Training by Percent age	Other by Count	Other by Percent age
2012	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2013	0	0%	:0	0%	0	0%	0	0%	0	0%	0	0%
2014	0	0%	0	0%	0	0%	. 0	0%	0	0%	0	0%
2015	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
2016	0	0%	-0	0%	0	0%	0	0%	0	0%	Ó	0%
2017	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%

## Pending Complaints Filed in Previous Fiscal Years by Status

Processing Time. Sec. 1614.704(I) of the total number of complaints pending for any length of time in such fiscal year

Fiscal Year	Total complaints from previous fiscal years data	Total complainants
2012	63	40
2013	51	32
2014	42	24
2015	39	20
2016	42	26
2017	45	29

#### Number of Complaints Pending

Processing Time. Sec. 1614.704(I2II) the numbers that are pending, respectively, at the investigation, hearing, final action by an agency, and oppeal step of the process

Fiscal Year	Investigation	Hearing	Final Agency Action	Appeal with EEOC Office of Federal Operations
2012	15	31	2	14
2013	10	28	2	12
2014	10	26	2	8
2015	7	24	6	9
2016	11	27	3	11
2017	13	37	1.	12

#### Pending Complaints Where Investigations Exceed Required Time Frames

Processing Time. Sec. 1614.704(m) Of the total number of complaints pending for any length of time in such fiscal year, the total number of complaints in which the agency has not completed its investigation within the time required by 29 CFR 1614.106(e)(2) plus any extensions authorized by that section or § 1614.108(e).

Fiscal	
Year	Number of pending complaints where investigations exceed required time frames
2012	0
2013	
2014	0
2015	1
2016	4
2017	2

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## THE SECRETARY OF EDUCATION WASHINGTON, DC 20202

December 19, 2017

# MEMORANDUM TO ALL DEPARTMENT EMPLOYEES

# SUBJECT: Anti-Harassment Policy Statement

The U.S. Department of Education's (ED's) Anti-Harassment Policy Statement reaffirms our commitment to prohibiting sexual and other forms of discriminatory harassment in the workplace. Each employee, applicant and contractor, as well as anyone doing business with ED, is entitled to be treated with dignity and respect and has the right to work in an environment that is free of harassment. Therefore, ED has implemented a zero-tolerance policy for discrimination and harassment on the basis of race, color, age, national origin, sex, transgender status, gender identity, sexual orientation, pregnancy, religion, disability, genetic information, marital status, political affiliation, or status as a parent or as reprisal for prior Equal Employment Opportunity (EEO) activity. Violations of the law prohibiting discrimination and harassment, or violations of this policy, may result in disciplinary action, up to and including removal.

*Harassment* is any unwelcome, hostile, or offensive conduct taken on the basis of race, color, age, national origin, sex, transgender status, gender identity, sexual orientation, pregnancy, religion, disability, genetic information, marital status, political affiliation, or status as a parent or as reprisal (for prior EEO activity), that interferes with an individual's performance or creates an intimidating, hostile or offensive work environment.

Sexual Harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when: (1) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of one's employment; (2) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or (3) such conduct interferes with an individual's performance or creates an intimidating, hostile or offensive work environment.

Both supervisors and employees bear responsibility for maintaining a work environment free from discrimination and harassment. All employees, including contractors, as well as anyone doing business with ED shall be responsible for acting professionally and refraining from harassing conduct. Employees who believe they have been subjected to harassment in violation of the Agency's anti-harassment policy may obtain more information about submitting a complaint at <u>https://connected.ed.gov/om/Pages/Equal-Employment-Opportunity-Services.aspx</u>, or by contacting an EEO counselor at the Office of Management, Office of Equal Employment Opportunity Services (OEEOS) by email at <u>main and the submitted within 45 calendar days of the alleged discriminatory event(s)</u>.

In accordance with the U.S. Equal Employment Opportunity Commission's (EEOC) regulations and guidelines, and the Administrative Dispute Resolution Act of 1996, ED promotes the use of the alternative dispute resolution (ADR) process to resolve workplace disputes before the disputes advance to a formal complaint stage. The ADR process is used to resolve a wide range of workplace disputes, including, but not limited to, EEO and grievance-related matters, in a cooperative, cost-effective and timely manner. All employees are strongly encouraged to cooperate and engage in the ADR process. If a complainant in an EEO matter elects to participate in the ADR process, ED shall provide a management official to participate in that process. For additional information on the ADR process, please contact the Office of Management, ADR Center by email at or by telephone at (

When an employee chooses to report the alleged incident of harassment to his or her manager or supervisor within his or her chain of command, and the alleged harasser's chain of command, the manager or supervisor who becomes aware of the allegation is required to address the allegation in a prompt and impartial manner, ensure that the allegation is kept confidential to the greatest extent possible and take appropriate steps to prevent the involved employees and witnesses from being subjected to retaliation. An allegation of harassment may be made orally or in writing and should contain the name of the alleged harasser, the relevant facts, the date of the incident and the names of any witnesses.

In essence, it is imperative that supervisors and managers take proactive measures to prevent harassment from occurring and to stop any harassment before it becomes severe or pervasive. Managers and supervisors may contact OEEOS for further guidance in addressing allegations of harassment. Additionally, upon request, the OEEOS staff offers anti-harassment training for managers and employees.

I am confident that, by exercising individual responsibility, we will be able to maintain a professional and positive work environment for everyone. To this end, I ask that all employees join me in implementing and communicating this policy.

Betsy Devos Betsy Devos

August 24, 2016

# ADMINISTRATIVE GUIDANCE FOR ADDRESSING ALLEGATIONS OF HARASSMENT

It is imperative that supervisors and managers take proactive measures to prevent harassment from occurring, and to stop harassment before it becomes severe or pervasive. The responsibility of all employees is to act professionally, to refrain from engaging in harassing conduct, and to report incidents of harassment promptly pursuant to procedures set forth in the agency's equal employment opportunity (EEO) and anti-harassment policies.

*Harassment* is any unwelcome, hostile, or offensive conduct taken on the bases of race, color, age, national origin, sex, gender-identity, religion, disability, genetic information, sexual orientation, marital status, political affiliation, status as a parent, or reprisal for prior EEO activity that interferes with an individual's performance or creates an intimidating, hostile, or offensive work environment.

Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature when: (1) submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of one's employment; or (2) submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or (3) such conduct interferes with an individual's performance or creates an intimidating, hostlle, or offensive work environment.

Any employee who believes he/she has been subjected to harassment in violation of the Agency's anti-harassment policy may elect to report the alleged harassment by contacting staff officials at the Office of Equal Employment Opportunity Services (OEEOS) at (202) **Control of Control of** 

Any management official/supervisor who becomes aware of an allegation of harassment must immediately take measures to ensure that such allegation of harassment is kept confidential to the greatest extent possible, and is only disclosed to management officials/supervisors and employees with a need to know for the purpose of carrying out the agency's Anti-Harassment Policy. Managers and supervisors should take measures to ensure that the aggrieved employee, witnesses and others who provide information regarding allegations of harassment are protected from retaliation.

Supervisors/management officials may be required to conduct a prompt, thorough, impartial and separate investigation into reported allegations of harassment, even if the alleged victim has filed an EEO complaint on the same matter.

In consultation with the Director, OEEOS, or the Director, Workforce Relations Division, Office of Management, the supervisor/management official, who became aware of the allegation(s) should determine whether an administrative investigation is necessary. If it is determined that the fact finding investigation is necessary, a neutral third-party official will be designated to conduct a thorough and impartial administrative investigation into the allegation of harassment. At a minimum the investigation should obtain statements from the parties involved in the allegation of harassment, and individuals who witnessed the incident(s). Any investigation should be tailored to meet the individual facts and circumstances presented and may seek responses to the following questions:

- What was the nature of alleged harassing conduct;
- Was the conduct unwelcome to the other party;
- Did the conduct affect a term, condition or privilege of employment; and/or have the purpose or effect of interfering with the employee's work performance or creating an intimidating, hostile, or offensive work environment;
- Was management aware of the unwelcome conduct? If so, when was management made aware of the conduct;
- Did management take prompt and reasonable actions to prevent and stop the alleged harassment; and
- Did the aggrieved employee take advantage of preventive or corrective resources offered by the Agency to mitigate damages?

A report of inquiry or administrative investigation (Report) will be prepared by the designated investigator within 30-60 days of request for administrative investigation. The Report will be issued to the appropriate supervisors/management officials, the responsible supervisor within the chain of command. Pending the outcome of the investigation, the appropriate supervisors/management officials, in consultation with the human resource management staff should review the Report and determine the appropriate corrective action(s), if any. As appropriate, a sanitized copy of the Report may be provided to the aggrieved employee.

If the aggrieved employee chooses to file an EEO pre-complaint, he/she must contact OEEOS <u>no later</u> <u>than 45 calendar days</u> following an alleged discriminatory incident, act, or event as determined by the effective date of an alleged discriminatory personnel action or the date that the aggrieved person knew, or reasonably should have known, of the event or personnel action. For more information regarding this procedure, please contact the OEEOS staff at



#### THE SECRETARY OF EDUCATION WASHINGTON, DC 20202

December 19, 2017

## MEMORANDUM TO ALL DEPARTMENT EMPLOYEES

SUBJECT: Policy Statement on Equal Employment Opportunity (EEO) and the Notification and Federal Employee Antidiscrimination and Retaliation (No FEAR) Act of 2002 and the Whistleblower Protection Enhancement Act of 2012 (WPEA)

As the Secretary of the U.S. Department of Education (ED), I believe that providing equal employment opportunity (EEO) to all employees and applicants for federal employment is an integral part of ED's ability to fulfill its mission. ED is committed to achieving and ensuring a strong, effective, high-performing and diverse workforce that is free of discrimination and harassment in any form. We must continue to view it as our personal responsibility to work together to eliminate any discrimination and barriers to EEO in the workplace and to foster a talented, skilled and diverse workforce that is reflective of our nation.

#### **Equal Employment Opportunity**

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ED will not tolerate discrimination on the basis of race, color, age, national origin, sex, transgender status, gender identity, sexual orientation, pregnancy, religion, disability, genetic information, marital status, status as a parent, or political affiliation or retaliation for opposing discriminatory practices and/or participating in the discrimination complaint process. This applies to all terms and conditions of employment including, but not limited to, recruitment, hiring, promotions, transfers, reassignments, training, career development, benefits and separation.

ED officials, managers and supervisors must continue to work with employees to identify and eliminate any barriers to EEO in the workplace so that all employees and applicants are given equal opportunity to attain federal employment and to reach their full potential. I firmly believe that promoting EEO in the workplace supports ED's goal of being a model employer able to attract and retain a highly skilled and diverse workforce.

To obtain more information about submitting a complaint of discrimination, please see <u>https://connected.ed.gov/om/Pages/Equal-Employment-Opportunity-Services.aspx</u> or contact an EEO counselor at the Office of Management. Office of Equal Employment Opportunity Services by email at Note that any such complaints must be submitted within 45 calendar days of the alleged discriminatory event(s).

As an alternative, bargaining unit employees may also pursue a discrimination complaint by filing a grievance through ED's negotiated grievance procedures. Additional information on the negotiated grievance procedures is in the Personnel Manual Instruction 771-1, "Employee Grievances," which is available on ED's Web site at <u>https://connected.ed.gov/Documents/pmi\_771-1P1.doc</u>.

#### **Alternative Dispute Resolution**

To maintain a respectful, productive and collaborative work environment, in accordance with the U.S. Equal Employment Opportunity Commission's regulations and guidelines and the Administrative Dispute Resolution Act of 1996, ED promotes the use of the alternative dispute resolution (ADR) process to resolve workplace disputes before the disputes advance to a formal complaint stage. The ADR process is used to resolve a wide range of workplace disputes, including EEO and grievance-related matters, in a cooperative, cost-effective and timely manner. All employees are strongly encouraged to cooperate and engage in the ADR process. If a complainant in an EEO matter elects to participate in the ADR process, ED shall provide a management official to participate in that process. For additional information on the ADR process, please contact the Office of Management, ADR Center by email at

#### No FEAR Act

On May 15, 2002, the Notification and Federal Employee Antidiscrimination and Retaliation Act (No FEAR Act) was enacted. The purpose of the Act is to "require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws" (Public Law 107-174, Summary). In support of this purpose, Congress found that "agencies cannot be run effectively if those agencies practice or tolerate discrimination" (Public Law 107-174, Title I, General Provisions, Section 101(1)).

Section 301 of the No FEAR Act requires each federal agency to post summary statistical data pertaining to complaints of employment discrimination filed against it by employees, former employees, and applicants for employment. The specific data to be posted is further described in section 301(b) of the Act and 29 CFR 1614.704. ED's summary data of complaints filed against the agency is located at <u>https://www.ed.gov/about/offices/list/om/reports.html</u>.

#### WPEA

The Whistleblower Protection Enhancement Act of 2012 (WPEA) amends whistleblower protections for federal employees by clarifying the scope of protected disclosures, tightening requirements for nondisclosure agreements, expanding the penalties imposed for violating whistleblower protections and establishing a Whistleblower Protection Ombudsman.

The No FEAR Act and WPEA protect federal employees from unlawful discrimination and reprisal for participation in protected EEO and whistleblowing activity for reporting illegal acts of employers. Under the WPEA, ED may not take a personnel action, threaten to take a personnel action or refuse to take a personnel action because an employee or applicant made a protected disclosure. A federal employee may seek corrective action from the Merit Systems Protection Board (MSPB) regarding any personnel action that is proposed or taken against him or her as a result of whistleblowing, as defined in 5 U.S.C. 2302(b)(8). Further information regarding filing whistleblower claims is available on the MSPB Web site at https://www.mspb.gov/.

In support of my policy regarding EEO, all managers, supervisors and employees are required to complete a mandatory online EEO Training on a biennial basis. Current employees will need to complete this training within a two-year cycle. For new employees, the training must be completed within 90 days of their start date.

I know that I can count on all ED employees to play their part in ensuring that ED achieves an effective, high-performing and diverse workforce that is free of discrimination and harassment. This responsibility belongs to all of us.

Betsy Devos Betsy Devos

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Online Biennial Training - Prevention of Harassment/Sexual Harassment Transcript

OPTION 1 (CORRECT)	Title VII of the Civil Rights Act
OPTION 1 CHOICE-SPECIFIC FEEDBACK	This is a correct option. Title VII of the Civil Rights Act of 1964 is an anti-discrimination law that is enforced by the Equal Employment Opportunity Commission (EEOC).
OPTION 2 (CORRECT)	CSRA
OPTION 2 CHOICE-SPECIFIC FEEDBACK	This is a correct option. The Civil Service Reform Act of 1978 (CSRA) is an anti-discrimination law that promotes overall fairness in federal personnel actions.
OPTION 3 (CORRECT)	Executive Order 13087
OPTION 3 CHOICE-SPECIFIC FEEDBACK	This is a correct option. Executive Order 13087 is an anti- discrimination rule that adds a prohibition of sexual orientation discrimination in federal employment.
OPTION 4 CHOICE-8PECIFIC FEEDBACK	This is an incorrect option. The EEOC is not an anti-discrimination law, but an agency that enforces anti-discrimination laws.
OPTION 5	
OPTION 5 CHOICE-SPECIFIC FEEDBACK	This is an incorrect option. The Office of Special Counsel (OSC) is an independent federal investigating agency that helps to protect federal employees from prohibited personnel practices.

Page 7, Expos (P751)

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LAYOUT	Standard
ТЕХТ ПЕМ 1	Distinguishing between welcome and unwelcome sexual behavior can be one of the greatest challenges associated with Identifying sexual harassment. Recipients of unwelcome sexual behavior need to be clear and unambiguous in their response to the behavior.
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Page 8, Expos (P752)

CONTAINER INDICATION	Static
LAYOUT	Standard
TEXT ΠΈΜ1	Unwelcome sexual behavior can include any verbal or physical conduct of a sexual nature that is unsolicited and not encouraged by the receiver.
ner fankelinge yn meerste hyf fennen yn ar yn ar de breger yn mea traffen ar fefn ar fenn yn ar oedar ar yn ar	
YEXT ITEM 2	Sexual harassment must be unwelcome. However, consider why the United States Supreme Court recognized this case as a sexual harassment claim (See Meritor Savings Banks v. Vinson, 1986) when the woman alleged that she had sex with her supervisor because she feared that she would lose her job if she refused. The Court's ruling was based on the supervisor's unwelcome behavior even though the woman consented to having sex.
an ar an	

Page 9 , Expos (P753)

CONTAINER INDICATION	
LAYOUT	Standard
ТЕХТ ПЕМ 1	Unwelcome sexual behavior isn't always sexual harassment.
	In an attempt to clarify the boundaries of sexual harassment, the EEOC has defined an additional concept that should be considered when evaluating possible sexual harassment situations – the impact of the behavior on the terms and conditions of employment.
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# Page 10 , Explore List (P754)

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Static
According to the EEOC's definition of sexual harassment, an incident of unwelcome sexual conduct can be a form of sexual harassment if it occurs in conjunction with one of three conditions;

1]

#### that is, if the conduct:

. . . . . . . . . . . .

#### PROMPT

LIST ITEM 1

Select each list item for more information about the EEOC's definition of sexual harassment.

Explicitly or implicitly affects an individual's employment.

The second second

For example, if you were demoted because you declined a request for a sexual favor, you may have been the victim of sexual harassment.

The example uses the request for a sexual favor to Illustrate unwelcome sexual behavior, and the demotion Illustrates the impact on the terms and conditions of employment.

LIST ITEM 2

LIST ITEM 2 ASSOCIATED TEXT

Unreasonably interferes with an individual's work performance.

An exemple would be if constant advances and communication of a sexual nature from a colleague hindered your ability to meet your deadlines.

In this case, the sexual advances and communication would represent unwelcome sexual behavior, and if keeping your job is dependent upon you meeting your deadlines, then the conditions of your employment may be adversely affected.

LIST ITEM 3

LIST ITEM 3 ASSOCIATED TEXT

Creates an intimidating, hostlie, or offensive work environment.

You may have been the victim of sexual harassment if the persistent exchange of crude jokes among your colleagues resulted in a hostile or offensive workplace.

In this example, the unwelcome sexual behavior is demonstrated by the persistent exchange of crude jokes, and the offensive workplace represents the conditions of employment.

## Page 11 , List (P755)

CONTAINER INDICATION	Static
	Standard
LIST STYLE	Buileted
TEXTITEM	In addition to the two concepts defined by the EEOC – unwelcome sexual conduct and its impact on the terms and conditions of employment – court rulings have developed additional requirements for sexual harassment:
LIST ITEM 1	The "reasonable-person" standard, and
an an fair fair an ta an	
LIST ITEM 2	Severe or pervasive behavior.
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## Page 12 , Expos (P757)

CONTAINER INDICATION	Static
LAYOUT	Standard
TEXT ITEM 1	In Harris v. Forklift Systems, 1993, the US Supreme Court said that a harasser's conduct should be evaluated from the objective standpoint of a reasonable person.
	For example, if a reasonable person would find certain conduct harassing and the victim also found it to be harassing, it is not necessary that the victim have suffered actual injury to have a successful claim.
an a	
TEXT ITEM 2	Reasonable person is a legal standard that relates to the objectivity of the offensiveness of behavior.
:	Because behavior that is offensive to some may not be offensive to others, the reasonable person standard determines if a hypothetical reasonable person would find the behavior offensive.

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#### Page 13 , Explore Graphic (P758)

CONTAINER INDICATION	Stallc
	Stendard
ΤΕΧΤ ΠΕΜ	The severity and pervasiveness of the behavior should also be considered.
PROMPT	Select each graphic for more information.
HOTSPOTILABEL 1	Severe Behavior
HOTSPOT/LABEL 1 A980CIATED TEXT	Severe behavior can include even a single incident of a sexual nature that a reasonable person would find very offensive.
HOTSPOT/LABEL 2	Pervasive Behavior
HOTSPOT/LABEL 2 ABBOCIATED TEXT	Pervasive behavior can include comments, gestures, or actions that occur repeatedly over a period of time that a reasonable person would find offensive.

## Page 14 , Expos (P759)

	Static
LAYOUT	Standard
TEXT ITEM 1	Court rulings that took the severity and pervasiveness of the behavior into account found sexual harassment to have occurred when employees were subjected to long patterns of ridicule on the basis of gender, but not where they were subjected to only occasional leasing or sexual remarks.
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#### Learning Point 2: Types of Sexual Harassment

Page 15, Expos (P901)

CONTAINER INDICATION	Static
	Standard
TEXT ITEM 1	Sexual harassment can be classified as either quid pro quo or hostile environment.
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TEXT ITEM 2	The difference between quid pro quo and hostile environment harassment is the manner in which the harassed person's work

Page 16 , Expos (P900)

		Stalic
	nan (Maria Ingel) (Salari Ang	Standard
TEXT ITEM 1		In quid pro quo cases, rejecting or submitting to the unwelcome sexual behavior results in tangible employment actions, such as hiring, firing, promoting, falling to promote, and assigning work. Quid pro quo can only be imposed by someone with supervisory authority.
TEXT ITEM 2		Hostile environment, on the other hand, can be imposed by anyone with whom the employee interacts, including supervisors, colleagues, clients, or vendors. It involves unwelcomed offensive behavior that is so severe and pervasive that it affects the victim's terms of employment.

## Page 17 , List (P899)

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	Static
LAYOUT	Standard
LIST STYLE	Bulleted
TEXT ITEM	Quid pro quo can occur when:

LIBT ITEM 1	The submission to unwelcome conduct Is made explicitly or Implicitly a condition of employment.
LIST ITEM 2	The submission to or rejection of unwelcome conduct is used as the basis for employment decisions.

TEXT ITEM	Suppose you are employed in the client-service department of a federal agency and you overhear a conversation between your supervisor, Sara, and your colleague, Julio, who has recently been promoted.
SARA	Julio, I notice that you've been working many late nights. Aren't you coping with your new responsibilities?
JULIO	I'm coping really well. It's just that I'm battling with clients who won't cooperate and that's taking up so much of my time.
SARA	You need to relax. If you come over to my place tonight, I'll make dinner while we discuss hiring an assistant to do those menial tasks you shouldn't be doing anyway.
JULIO	Well, actually, I'm happily marriedand I'm spending time with my wife tonight.
SARA	If you want to keep your job, I expect you to make time for me too. It's up to you.

Page 18 , Sim Dialog (P898)

## Page 19 , Expos (P897)

CONTAINER INDICATION	Static
LAYOUT	Standard
TEXT ITEM 1	The conversation between Sara and Jullo Illustrates quid pro quo because Julio's ability to retain his position is conditioned on whether or not he submits to Sara's request.
TEXT (TEM 2	Quid pro quo is further demonstrated when Sara threatens to demote or fire Julio for refusing her advances.

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## Page 20 , List (P896)

CONTAINER INDICATION	Static
LAYOUT	Standard
LIBT STYLE	Bulleted
техт пем	Other examples of quid pro quo are when:
LIST ITEM 1	Submission to a sexual favor results in a promotion or easier work assignments.
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LIST ITEM 2	Rejection of a sexual advance results in the assignment of unpleasant, menial tasks or a demotion.
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## Page 21 , Expos (P895)

CONTAINER INDICATION	Static
LAYOUT	Standard
ΤΕΧΤ ΠΕΜ 1	Hostile environment occurs when unwelcome conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.
	Hostlie environment generally does not directly affect an employee's tangible employment benefits.

## Page 22 , Sim Dialog (P894)

техт пем	Various types of unwelcome behavior can contribute to a hoslile work environment.
1	
Percenti anti per anti	
	It can be verbal in the form of discussions about sexual activities,

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	the telling of inappropriate jokes, the use of crude language, commenting on physical attributes, and using derogatory terms.
бай «Цалар мар миланса» с на с на	Physical forms of unwelcomed behavior include indecent gestures, unnecessary touching, and displaying pictures that are sexually suggestive.
STANDARMAN BANKET VIETTETT EDITERATED AND AND AND AND AND AND AND AND AND AN	Unwelcome behavior can also include sabotaging the work of a colleague.
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#### Learning Point 3: Questions

## Page 23, Question Set (P891)

ΤΕΧΤ ΠΕΜ	The two types of sexual harassment are quid pro quo and hostile work environment.
PROMPT	Answer the questions on the types of sexual harassment in any order.

## Page 24 , Multiple Choice Wide (P892)

STEM	Identify the examples that represent quid pro quo sexual harassment. (Check all that apply)
OPTION 1	An employee who has been promoted is offended by the indecent gesture of another colleague.
OPTION 1 CHOICE-SPECIFIC FEEDBACK	This is an incorrect option. Although quid pro quo sexual harassment involves unwelcome behavior, it also involves tangible employment decisions, such as a demotion. Additionally, quid pro quo sexual harassment involves a supervisor and a subordinate, not colleagues.
OPTION 2	A juntor team member is assigned easier assignments because she runs frequent errands for her supervisor.
OPTION 2 CHOICE-SPECIFIC FEEDBACK	This is an incorrect option. Quid pro quo is a type of sexual harassment. In this case, there is no unwelcome conduct of a sexual nature or that is based on sex.
OPTION 3 (CORRECT)	A senior staff member is denied a promotion because he refused to submit to a sexual request from his supervisor.

OPTION 3 CHOICE-SPECIFIC FEEDBACK	This is a correct option. When an employee is denied a promotion because he refused to submit to a sexual request from his supervisor, it represents quid pro quo sexual harassment. Quid pro quo involves an employment decision that is made based on the refusal or the submission to perform a sexual favor.
OPTION 4 (CORRECT)	An employee who applies for a promotion is told to perform sexual favors to make up for her lack of experience.
OPTION 4 CHOICE-SPECIFIC FEEDBACK	This is a correct option. When an employee who applies for a promotion is told to perform sexual favors in order to qualify, it is an example of quid pro quo sexual harassment. This type of harassment occurs when the submission to unwelcome conduct is made a condition of employment.

<b>STEM</b>	Which examples represent hostile environment sexual harassment? (Check all that apply)
OPTION 1 (CORRECT)	Staff members are reasonably offended by the indecent pictures displayed on some supervisors' walls.
OPTION 1 CHOICE-8PECIFIC FEEDBACK	This is a correct option. When staff members are reasonably offended by the indecent pictures displayed on some supervisor's walls, it represents hostile environment sexual harassment.
	Hostile environment occurs when unwelcome conduct creates an offensive working environment.
OPTION 2 (CORRECT)	An employee is angered by her supervisor's tendency to call her "Honey" despite having told him she finds it demeaning.
OPTION 2 CHOICE-SPECIFIC FEEDBACK	This is a correct option. Hostile environment occurs when unwetcome behavior, such as a supervisor calling an employee "Honey," creates a hostile or intimidating environment.
OPTION 3	A supervisor demotes a junior team member for failing to complete a major work assignment.
OPTION 3 CHOICE-SPECIFIC FEEDBACK	This is an incorrect option. The team member was demoted for a valid cause; there is no indication that it was a result of hostile environment harassment.
OPTION 4	A staff member is demoted because of her refusal to perform a sexual favor.

Page 25 , Multiple Choice Wide (P893)

OPTION 4 CHOICE-SPECIFIC FEEDBACK	This is an incorrect option. When employment decisions are made based on the refusal or submission to sexual favors, it represents quid pro quo sexual harassment.
OPTION 5 (CORRECT)	Continuous unwelcome e-mails of a sexual nature have prevented an employee from meeting her deadline.
OPTION 5 CHOICE-SPECIFIC FEEDBACK	This is a correct option. Hostile environment occurs when unwelcome conduct In this case the e-mails of a sexual nature unreasonably affects an individual's work performance.

# Topic 5: Employers' Obligations and Responsibilities (T598)

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TERMINAL OBJECTIVE 1 (TOBJ1)	Recognize the agency's obligations in preventing sexual
	harassment and learn how to properly handle sexual harassment
	allegations.
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# Test Question Page, Multiple Choice Wide (P874)

STEM	When a supervisor becomes aware of an allegation of harassment, what actions should be taken by the supervisor? Please check all that apply.
OPTION 1 (CORRECT)	Must immediately take measures to ensure that such allegation of harassment is kept confidential to the greatest extent possible.
OPTION 2 (CORRECT)	Should take measures to ensure that the aggrleved employee, witnesses and others who provide information regarding allegations of harassment are protected from retallation.
OPTION 3 (CORRECT)	Should conduct a prompt, thorough, impartial and separate investigation into reported allegations of harassment, even if the alleged victim has filed an EEO complaint on the same matter.

# Learning Point 1: Employer's Obligations

#### Page 1, Rate Single (P603)

and the second	
ТЕХТ ПТЕМ	Consider the anti-harassment policies and complaint procedures within your agency. If you were faced with a situation that might constitute sexual harassment, what would your reaction be?
PROMPT	Select your response from the options provided.
and a function rest in a local sector particular in the term of references and an additional function of the term of the sector of th	California and
RATE OPTION 1	Ignore the behavior.

OPTION 1 CHOICE-SPECIFIC FEEDBACK	Sexual harassment is an unpleasant and offensive situation, but ignoring the behavlor is not going to make it go away. Your willingness to acknowledge sexual harassment should increase as you learn more about your rights regarding sexual harassment and the complaint processes available to you.
RATE OPTION 2	Confront the harasser.
OPTION 2 CHOICE-SPECIFIC FEEDBACK	If you feel comfortable doing so, confronting your harasser directly is certainly one of the first things you could do. Letting the person know directly that you don't appreciate their behavior may be all that is needed to stop it. But rest assured that if this doesn't work, or if you are afraid to confront the harasser for any reason, there are other means available. As you learn more about your rights regarding sexual harassment and the agency's complaint procedures you'll learn that there are other avenues as well.
RATE OPTION 3	Report the behavlor.
OPTION 3 CHOICE-SPECIFIC FEEDBACK	Persistent, unwanted behavior should be reported as soon as possible so it can be stopped. As an employee of a federal agency, you should have access to an EEO Officer who can help you resolve the situation at the lowest level possible. As you learn more about your rights regarding sexual harassment and the complaint procedures available to you, you should be able to respond even more confidently when confronted with sexual harassment.

## Page 2 , Expos (P604)

CONTAINER INDICATION	Statlc
LAYOUT	Standard
TEXT (FEM 1	All federal employees have the right to work in an environment that Is free from prohibited discrimination and harassment, and it is the agency's responsibility to ensure that the rights of their employees are protected.
TEXT ITEM 2	To ensure that employees' rights regarding sexual harassment are safeguarded, federal agencies should implement preventative measures against sexual harassment, such as anti-harassment policies and complaint procedures.
gyanata ganatanan yana na sacana ang kana ang ka	

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Contraction of the local division of the loc	TEXT ITEM 3	Agencies should also ensure that all employees have access to
		these policies and procedures.
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#### Learning Point 2: Employee's Rights

# Page 3 , Expos (P839)

CONTAINER INDICATION	Draggable
LAYOUT	Wide
TEXT ITEM 1	All employees have the right to be free from harassment. To protect this right, an agency's antiharassment policy should emphasize management's intolerance of sexual harassment. The policy should also specify the types of behaviors that constitute sexual harassment.
TEXT ITEM 2	Employees should be told that they have the right to report harassment to their EEO office and that they are encouraged to do so before it becomes severe or pervasive. Although isolated incidents of harassment don't necessarily violate federal law, employees should be assured that the agency will stop harassment before it reaches such a level of violation.
ΈXT ΠEM 3	Each agency is required to establish its antiharassment policy in accordance with EEOC guidance. For assistance, please contact OM EEO Services (EEOS) or visit the OM web site at https://share.ed.gov/om/Pages/Equal-Employment-Opportunity-Services.aspx.

## Learning Point 3: Summary

# Page 4 , Summary Wide (P690)

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TEXT ITEM	Agency's Obligations	
	When sexual harassment occurs, it is the agency's responsibility to protect employees' rights to a workplace that is free from both harassment and retailation.	
_	It is imperative that supervisors and managers take proactive	
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	measures to prevent sexual harassment from occurring and to
	swiftly cease harassment before it becomes severe or pervasive.
	Menagers and supervisors may contact the agency's EEO office for
	Internal administrative procedures in addressing allegations of
	baressment. Additionally, anti-harassment training for managers
	and employees can be made available by the EEO staff upon
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# Topic 6: Dealing with incidents of Sexual Harassment (T608)

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TERMINAL OBJECTIVE 1 (TOBJ1)	Understand how to handle the situations when dealing with
	allegations of sexual harassment.

STEM	There are many courses of action one could take to resolve a sexual harassment complaint. However, there is a recommended order to ensure that it is handled fairly and in a timely manner for all involved.
	Place these courses of action in the recommended sequence.
OPTION A	Confront your harasser only if you feel comfortable doing so.
SEQUENCE NUMBER	
TARGET ALT TEXT	As the first course of action to take.
OPTION B	File an informal complaint with the EEO counselor.
SEQUENCE NUMBER	2
TARGET ALT TEXT	As the second course of action if the first one does not resolve the complaint.
OPTION C	File a formal complaint.
SEQUENCE NUMBER	3
TARGET ALT TEXT	As the third course of action if the first two do not resolve the complaint.
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# Test Question Page , Rank/Sequence (P873)

OPTION D	File a civil lawsuit after all agency processes have been exhausted.
SEQUENCE NJMBER	4
TARGET ALT TEXT	As the fourth course of action if the first three don't resolve the complaint.
TERMINAL OBJECTIVE 2 (TOBJ2)	Recognize your roles and responsibilities in preventing sexual harassment in the workplace.

## Learning Point 1: Dealing with sexual harassment

# Page 1 , Expos (P611)

CONTAINER INDICATION	Static
LAYOUT	
	When unwelcome behavior threatens to become sexual harassment, all parties involved in the situation are affected.
TEXT ITEM 2	Although some actions may resolve the situation promptly and appropriately, others may be disruptive and cause further unnecessary damage to all parties concerned. So it's important to understand the most appropriate courses of action when dealing with sexual harassment.

#### Page 2, Explore Graphic (P612)

CONTAINER INDICATION	Static
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ΤΕΧΤ ΠΕΜ	Federal employees who have been sexually harassed have several courses of action available to them.
	It is recommended that employees try to resolve the issues at the lowest level, but knowing that this is not always possible, there is a recommended sequence of actions which can be taken to ensure that the matter is dealt with quickly and efficiently.
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PROMPT	Select each course of action to learn more.

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HOTSPOT/LABEL 1	Confront the harasser.
HOTSPOTILABEL 1 ASSOCIATED TEXT	One of the quickest ways to deal with sexual harassment is to confront the harasser. It could be that the behavior is a misunderstanding, or the person just may not have realized the actions are not welcome. If you feel comfortable doing so, this may be an appropriate first step. However, it is not required. If you feel uncomfortable in any way, you do not have to confront the harasser. You can contact the agency's EEO specialists/counselors to report the situation and that individual will help you.
NOTSPOTILABEL 2	Contact the agency's EEO officials.
HOTSPOT/LABEL 2 ASSOCIATED TEXT	By law, each agency is required to provide access to an EEO specialist/counselor who will guide the employee through the handling of the complaint. The initial contact with the EEO counselor is part of what is called the "pre-complaint process" or "Informal complaint." This contact must take place within 45 days of the alleged harassment.
HOTSPOT/LABEL 3	File an EEO complaint.
HOTEPOT/LABEL 3 ASSOCIATED TEXT	If the issue is not resolved during the informal complaint process with the EEO counselor, an employee may file a formal complaint with the agency. The agency is then required to conduct an impartial and appropriate investigation of the complaint within 180 days of its filing.
HOTSPOT/LABEL 4	File a civil lawsuit.
HOTSPOT/LABEL 4 ASSOCIATED TEXT	When sexual harassment claims are not resolved through the Informal and formal complaint processes, federal employees may resort to filing a private lawsuit.
	When federal employees consider filing a private lawsuit, they should remember that they often must first have gone through the proper agency administrative complaint processes.
	Most complaint procedures require applicants to file claims within a specific, short time frame from the date that the alleged discrimination occurred.

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Page 3, Expos (P613)

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LAYOUT		Slandard
TEXT ITEM 1		If confronting the harasser doesn't stop the unwanted behavior, or If you are uncomfortable about facing the harasser, you should consult with one of the EEO specialists/counselors in the agency.
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# Page 4 , Rank/Sequence (P614)

STEM	There are many courses of action one could take to resolve a sexual harassment complaint. However, there is a recommended order to ensure that it is handled fairly and in a timely manner for all involved. Place these courses of action in the recommended sequence,
OPTION A	Confront your harasser only if you feel comfortable doing so.
SEQUENCE NUMBER	1
TARGET ALT TEXT	As the first course of action to take.
OPTION CHOICE SPECIFIC FEEDBACK	This is an appropriate first step IF you feel comfortable.
OPTION B	File an informal complaint with the EEO counselor.
9EQUENCE NUMBER	2
TARGET ALT TEXT	As the second course of action if the first one does not resolve the complaint.
OPTION CHOICE SPECIFIC FEEDBACK	This is an appropriate action to take next (or first, if you are uncomfortable confronting your harasser). The EEO counselor will guide you through the agency processes to help you resolve the matter at the lowest level possible.
OPTION'C	File a formal complaint.
SEQUENCE NUMBER	
TARGET ALT TEXT	As the third course of action if the first two do not resolve the complaint.

OPTION CHOICE SPEGIFIC FEEDBACK	If you do not get satisfaction during the informal process, you can file a formal complaint against the agency. The agency's EEO office will inform you of your rights for this process and tell you what you need to do to pursue this course of action. However, it is up to you to actually file the complaint.
OPTION D	File a civil lawsuit after all agency processes have been exhausted.
SEQUENCE NUMBER	4
TARGET ALT TEXT	As the fourth course of action if the first three don't resolve the complaint.
OPTION CHOICE SPECIFIC FEEDBACK	This is the action of last resort if the matter is not resolved satisfactorily by any other means.
PARTLY CORRECT FEEDBACK	It's Important to follow agency policy and guidelines for reporting incidents of sexual harassment. It's best to try to resolve the situation at the lowest level possible, and If you don't feel comfortable confronting the harasser yourself, start with the EEO specialist/counselor. He or she will assist you from there.
INCORRECT FEEDBACK	It's Important to follow agency policy and guidelines for reporting incidents of sexual harassment. It's best to try to resolve the situation at the lowest level possible, and if you don't feel comfortable confronting the harasser yourself, start with the EEO specialist/counselor. He or she will assist you from there.
CORRECT FEEDBACK	It's Important to follow agency policy and guidelines for reporting incidents of sexual harassment. It's best to try to resolve the situation at the lowest level possible, and if you don't feel comfortable confronting the harasser yourself, start with the EEO specialist/counselor. He or she will assist you from there.

#### Learning Point 2: Understanding prevention strategies

## Page 5 , List (P618)

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	Standard
LIBT STYLE	Bulleted
TEXT ITEM	Once a formal written complaint is filed, the agency must Investigate the complaint to obtain an impartial and appropriate factual record of the situation. This record will be used to determine

	whether harassment occurred.
	Generally, the agency will:
LIST ITEM 1	begin the investigation promptly,
LIST ITEM 2	interview all the individuals and witnesses involved,
LIST ITEM 3	look for corroboration or contradiction,
LIBT ITEM 4	record all details confidentially,
LIST ITEM 5	cooperate with investigators,
LIST ITEM 6	consider hiring an external investigator, in some cases,
LIST ITEM 7	communicate the decision to the complainant, and
LIBT ITEM 8	enforce disciplinary action,

## Page 6 , Expos (P823)

CONTAINER INDICATION	Draggable
LAYOUT	
TEXT ITEM 1	All employees shall be responsible for acting professionally and refraining from harassing conduct. Any employee who believes he/she has been subjected to harassment in violation of the Agency's anti-harassment policy may elect to report the allegation of harassment to the Office of Management, Equal Employment Opportunity Services (EEOS) by telephone at (202) 401-3560 or by e-mail at <u>om_eeos@ed.gov</u> , within forty-five (45) days of the Incident. For more information on the EEO complaint process, contact EEOS staff or visit EEOS' website.
TEXT ITEM 2	In accordance with the U.S. Equal Employment Opportunity Commission's regulations and guidelines, and the Administrative Dispute Resolution Act of 1996, ED promotes the wide use of the alternative dispute resolution (ADR) process to resolve workplace disputes or EEO complaints. For additional information on the ADR process, please contact the Office of Management, Alternative Dispute Resolution Center by e-mail at <u>adr center@ad.gov</u> , or by telephone at (202) 219-0955.

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## Page 7, Expos (P824)

CONTAINER INDICATION	Draggable
LAYOUT	Wide
TEXT ITEM 1	If an employee chooses to report the alleged incident of harassment to his/her manager or supervisor within the chain of command, and/or the alleged harasser's chain of command, the manager/supervisor who became aware of the allegation is required to ensure that the allegations of harassment are addressed swifily and appropriately, that the allegations of harassment are kept confidential to the greatest extent possible, and that the involved employees and witnesses will be protected from retaliation. The allegation of harassment may be made orally or in writing, and it should contain the name of the alleged harasser, the relevant facts, the date of the incident, and if there were any witnesses.
ΤΕΧΤ ΠΕΝ 2	It is imperative that supervisors and managers take proactive measures to prevent harassment from occurring, and to stop harassment before it becomes severe or pervasive. Managers and supervisors may contact EEOS for internal administrative procedures in addressing allegations of harassment. Every effort will be made to eliminate discrimination and/or harassment in the workplace.

# Learning Point 3: Recognizing everyone's roles and responsibilities in preventing sexual harassment

## Page 8, Expos (P828)

CONTAINER INDICATION	Draggable
LAYOUT	Wide
TEXT ITEM 1	Prevention of Sexual Harassment
	Preventing sexual harassment is not Just the job of the Personnel or EEO office. It is the responsibility of every member of the agency, including employees, supervisors, managers and senior

	leaders.
ni an	
TEXT ITEM 2	How can you help prevent sexual harassment? By taking a few simple steps:
	<ol> <li>Make sure the agency's policy on sexual harassment is posted where it will remain highly visible, and explain it to every employe and new hire under your direction.</li> </ol>
	2. Watch for the warning signs of sexual harassment, including
	<ul> <li>the display of sexually-oriented pictures, objects or written materials</li> </ul>
	<ul> <li>frequent jokes of a sexual nature</li> </ul>
	<ul> <li>open use of sexual innuendo or pressure for dates</li> </ul>
	<ul> <li>rouline occurrence of sexually-oriented profanity</li> </ul>

## Page 9, Expos (P829)

CONTAINER INDICATION	Draggable
LAYOUT	Wide
TEXT ITEM 1	Prevention of Sexual Harassment
	<ol> <li>Respond promptly to complaints of sexual harassment by conducting-or asking for the conduct of-a thorough investigation.</li> <li>Take corrective action quickly as appropriate.</li> </ol>
	4. Clearly inform those engaging in inappropriate or harassing behavior that you find it objectionable, and will not tolerate it.
	<ol> <li>Seek assistance promptly if you are the target of sexual harassment, or observe severe or repeated instances of behavior that you believe qualifies as sexual harassment.</li> </ol>
	6. Provide refresher training, briefings or reminders periodically to remind all employees of the agency's policy on sexual harassment
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Topic 7: Procedures in Filing an EEO Complaint (T638)

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From:	CHCO	-	
Sent:	Wednesday, November 16, 2016 10:55 AM		
Cc:			
Subject:	Sexual Harassment Awareness Course		

ED Employees:

The U.S. Department of Education (ED) is committed to providing a safe and professional work environment for employees. As part of ED's commitment, all ED employees are required to complete a newly developed online course, *Sexual Harassment Awareness*, no later than **January 31**, 2017.

This course helps participants identify types of sexual harassment and recognize behaviors that may be considered sexual harassment in the workplace. Participants will learn about the rights of employees and the responsibilities of the agency relative to sexual harassment in the workplace. Additionally, participants will learn about courses of action available to those who believe they have been subjected to sexual harassment.

The duration of the course is approximately 30 minutes. The course can be accessed at <u>TMS Link - (POSH)</u> online training course.

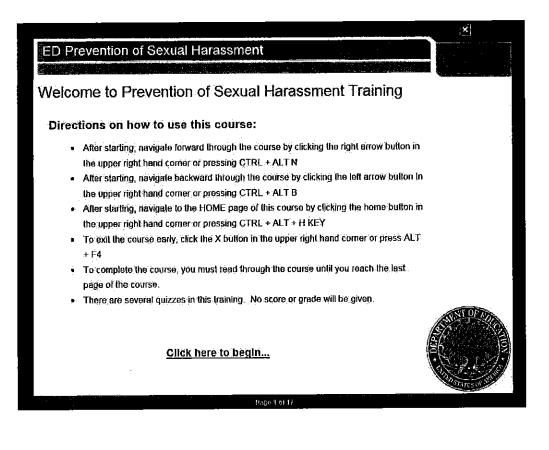
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Cassandra L. Cuffee-Graves Director/Chief Human Capital Officer

Office of Human Resources (OHR) Office of Management Department of Education . .

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Sexual Harassme	nt Awareness							
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ED Prevention of Sexual Harassment
Prevention of Sexual Harassment
Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act.
Definition: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when this conduct explicitly or implicitly affects an individual's employment. This type of conduct may also unreasonably interfere with an individual's work performance, or create an intimidating, hostile or offensive work environment.



#### ED Prevention of Sexual Harassment

#### Agency Policy

"...ED has implemented a zero tolerance policy for discrimination and harassment..." See Anti-Harassment Policy Statement, April 29, 2016

PREVENTION OF SEXUAL HARASSMENT

Do not engage in:

- · Turning discussions to sexual topics
- Telling sexual jokes or stories, sexual comments or innuendos
- Referring to someone inappropriately, e.g.., "hunk," "babe," etc.
- Whistling or cat-calls
- Repeatedly asking someone out who has expressed no interest
- · Looking suggestively or staring at someone or part of their body
- · Touching someone's clothing, hair or body without permission
- Sending emails that are sexual in nature (e.g., jokes, photos)

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#### ED Prevention of Sexual Harassment

2 types of Sexual Harassment:

#### Quid pro quo and Hostile environment

The difference between quid pro quo and hostile environment harassment is the manner in which the harassed person's work environment is affected.

Quid pro quo - Involves a tangible employment action. In quid pro quo cases, rejecting or submitting to the unwelcome sexual behavior results in tangible employment actions, such as hiring, firing, promoting, failing to promote, and assigning work. Quid pro quo is usually imposed by someone with supervisory authority.

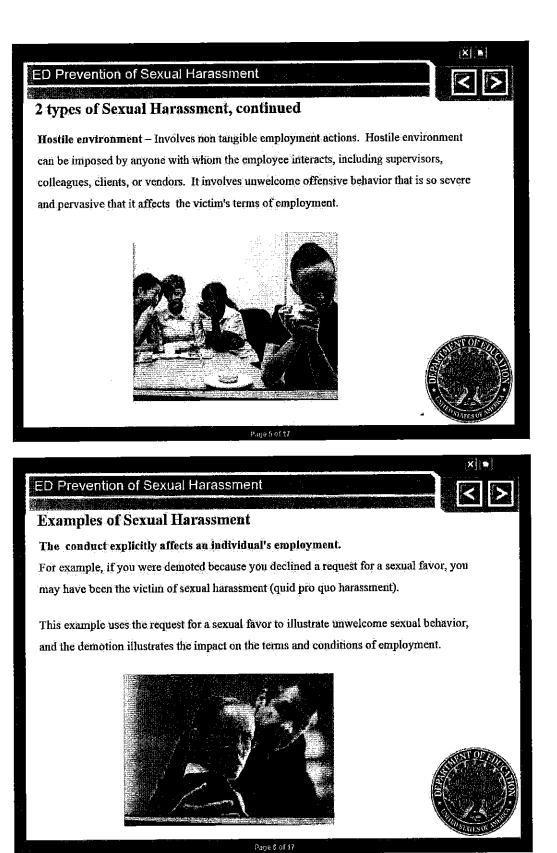
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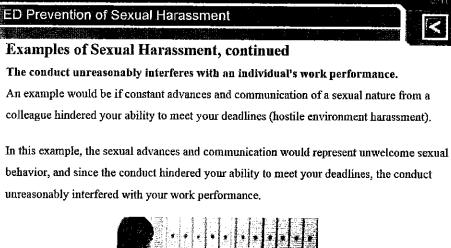


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ED Prevention of Sexual Harassment

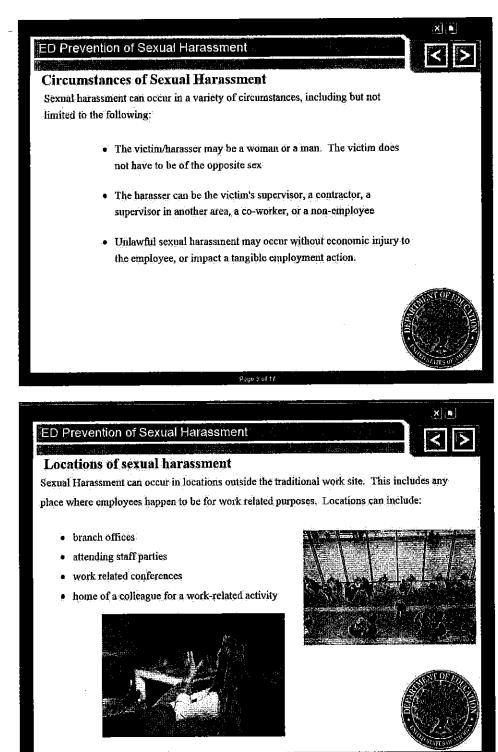
#### Examples of Sexual Harassment, continued The conduct creates an intimidating, hostile, or offensive work environment.

For example, you may have been the victim of sexual harassment if the persistent exchange of crude jokes of a sexual nature among your colleagues is unwelcome and you find this creates an offensive workplace (hostile environment harassment).

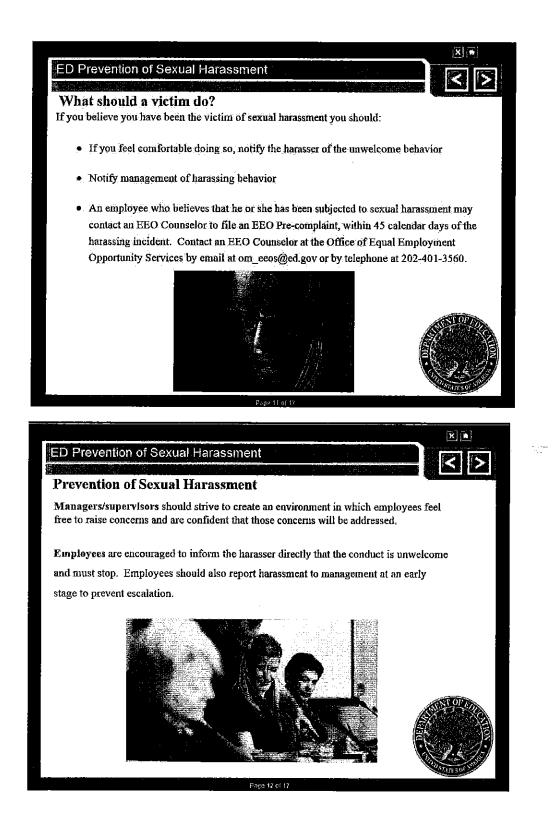
In this example, the unwelcome sexual behavior is demonstrated by the persistent exchange of crude jokes, and the offensive workplace represents the conditions of employment.







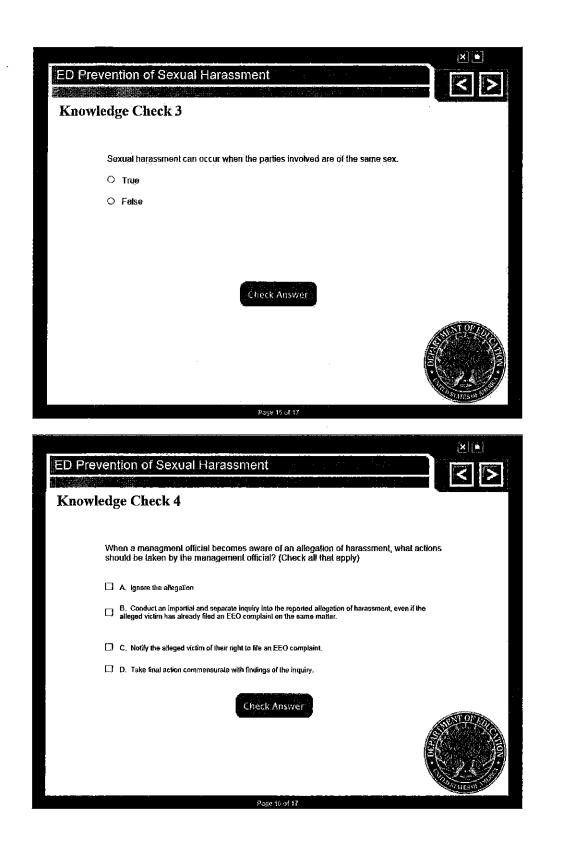
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	P-150
	D Prevention of Sexual Harassment
K	nowledge Check 1
	Which examples below are types of sexual harassment? (Check all that apply)
	A Disparate Treatment
	B. Hostile Environment
	C. Violation of the Equal Pay Act
	D. Quid pro quo
	C) E. Disparale Impact
	Check Answer
	Page 13 of 17
	X
E	D Prevention of Sexual Harassment
	Knowledge Check 2
	Which examples below represent hostile environment sexual harassament?
	A. Staff members are offended by the sexually explicit indepent pictures displayed on an employee's walls.
	B. An employee is angered by her supervisor's tendency to call her "honey" despite having told him she finds it demeaning.
	. Č., A staff member is demoted because of refusal to perform a sexual favor.
	<ul> <li>D. Continuous unwelcome e-mails of a sexual nuture have prevented an employee from meeting work deadlines.</li> </ul>
	Check Answer
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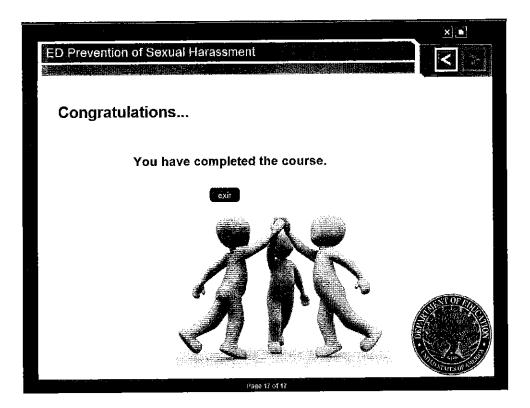
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## THE SECRETARY OF EDUCATION WASHINGTON, DC 20202

December 19, 2017

## MEMORANDUM TO ALL DEPARTMENT EMPLOYEES

SUBJECT: Policy Statement on Alternative Dispute Resolution

The U.S. Department of Education (ED) is committed to maintaining a positive work environment that promotes productivity and individual growth by working to resolve workplacerelated issues at the lowest possible level. The Office of Management, Alternative Dispute Resolution (ADR) Center provides a forum to informally resolve employment disputes before the disputes advance to a formal complaint stage. The ADR process is used to resolve a wide range of workplace disputes, including Equal Employment Opportunity (EEO) and grievancerelated matters, in a cooperative, cost-effective and timely manner. All employees are strongly encouraged to cooperate and engage in the ADR process. If a complainant in an EEO matter elects to participate in ADR, ED shall provide a management official to participate in the ADR process.

The use of ADR methods encourages participants to cooperate and engage in open and honest dialogue, focus on common interests and use creative problem-solving methods to arrive at their own resolutions. Most importantly, use of ADR methods can help to foster a collaborative organizational culture in which all employees are treated with dignity and respect in support of reaching their full potential and maximizing their contributions to ED's mission.

I encourage each of you to learn more about the ADR process. ED offers an online course, "Leading Beyond Conflict: Prevention and Solutions," in the Talent Management System, which is available to all employees to learn about the ADR process. I encourage each of you to take the training and use the ADR process to help resolve workplace disputes that may arise.

For additional information on the ADR process, please contact the ADR Center by telephone at or visit their website at

https://connected.ed.gov/Pages/Office%20of%20Managements%20Alternative%20Dispute%20 Resolution%20Center.aspx

Betsy Devos



ADMINISTRATIVE COMMUNICATIONS SYSTEM U.S. DEPARTMENT OF EDUCATION

## **DEPARTMENTAL DIRECTIVE**

OM: 7-101

Page 1 of 12 (11/16/2016)

Distribution: All Department of Education Employees

Signed by: Andrew Jackson Assistant Secretary for Management

## Alternative Dispute Resolution for Equal Employment Opportunity Complaints of Discrimination

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For technical questions regarding this ACS document, please contact

Supersedes OM: 7-101, "Alternative Dispute Resolution for Equal Employment Opportunity Complaints of Discrimination" dated 11/08/2011.

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## I. Purpose

This Directive describes the Alternative Dispute Resolution (ADR) policy and procedures that the U.S. Department of Education (ED or Agency) will use for the resolution of equal employment opportunity (EEO) complaints, as required by 5 U.S.C. 571 et seq. and Equal Employment Opportunity Commission Management Directive 110 (MD 110). This Directive does not apply to the use of ADR in non-EEO disputes or grievances.

## II. Policy

A. ED is committed to the widest use of ADR for resolving EEO conflicts and disputes.<sup>1</sup> The use of ADR in resolving EEO complaints generally leads to a timelier, less costly and less adversarial process than litigation or administrative adjudication. The benefits of early resolution cannot be overstated. ADR supports ED's core principle of fostering a positive and productive workplace.<sup>2</sup>

Towards this end, it is ED's policy, consistent with MD 110, that managers and supervisors "must continue to work with employees to identify and eliminate any barriers to EEO in the workplace so that all employees and applicants are given equal opportunity to attain federal employment and to reach their full potential."<sup>3</sup> Participation in ADR furthers this policy when ED determines that an EEO matter is appropriate for ADR. In seeking to resolve complaints through ADR, managers and supervisors should maintain a reputation for being open-minded and cooperative, recognizing their supervisory duties and responsibilities to support ED's EEO policy, and supporting the spirit of the Administrative Disputes Resolution Act (ADRA) of 1996 and Title VII of the Civil Rights Act of 1964.

B. While all forms of ADR should be considered and used if appropriate, the use of mediation in ADR is the preferred practice for resolving EEO complaints.

<sup>&</sup>lt;sup>1</sup> Department of Education Administration Dispute Resolution Connection with Agency Actions: Administrative Dispute Resolution Act, Final Policy Statement, 58 Fed Reg Notice 62487 (November 26, 1993); see also Secretary of Education's December 9, 2014 Policy Statement on Equal Employment Opportunity (EEO) and the Notification and Federal Employee Antidiscrimination and Retailation (No FEAR) Act of 2002.

<sup>&</sup>lt;sup>2</sup> Secretary of Education's December 9, 2014 Policy Statement on Alternative Dispute Resolution

<sup>&</sup>lt;sup>3</sup> See Secretary of Education's December 9, 2014 Policy Statement on Equal Employment Opportunity (EEO) and the Notification and Federal Employee Antidiscrimination and Retailation (No FEAR) Act of 2002.

C. The Office of Management (OM), Office of EEO Services (OEEOS) Director has the duty to oversee the EEO process and to encourage the use of ADR to

resolve EEO complaints at the lowest level possible. The OEEOS Director has the discretion to determine whether a given case is appropriate or feasible for ADR. The offer of ADR will be decided on a case-by-case basis depending on the issues or the situations that may limit the use of ADR (See Section VII of this Directive). When ED offers ADR, it strongly encourages employees to participate in it.

## III. Authorization

- A. EEOC Regulation 29 CFR 1614.102, as amended, Federal Equal Sector Equal Employment Opportunity (Published July 12, 1999; Effective November 9, 1999);
- B. EEOC Management Directive (MD) 110, as revised,, Federal Sector Complaint Processing Manual, Effective November 19, 1999;
- C. Administrative Dispute Resolution Act (ADRA) of 1996, 5 U.S.C. 571-584;
- D. Department of Education Administrative Dispute Resolution Connection with Agency Actions; Alternative Dispute Resolution, Final Policy Statement, 58 Fed Reg. 62486 (November 26, 1993);
- E. Delegation of Authority to the Assistant Secretary, Office of Management, from The Secretary June 6, 2002, Control Number EA/EM/271;
- F. Delegation of Authority to Director, Equal Opportunity Employment Services, Office of Management, October 27, 2006, Control Number EM/EMO/323;
- G. Delegation of Authority to the General Counsel, from The Secretary, April 17, 2008, Control Number EA/EG/I09; and
- H. Re-delegation of Authority to Review and Approve Settlements, to the Deputy General Counsel, May 12, 2008, Control Number EG/EGB/110.
- I. Delegation of Authority to the Inspector General, from the Secretary, September 14, 2011, Control Number EA/EF/195.

## IV. Applicability

This Directive applies to all ED employees and applicants who elect to use the EEO process to address their EEO complaints or issues.

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## V. Definitions

The definitions shown below apply to this Directive,

- A. Aggrieved Party: The individual who initiates contact with the EEO Counselor in an attempt to use the EEO pre-complaint process to informally resolve his/her issues. An Aggrieved Party is referred to as a "Complainant" when an EEO matter is filed formally.
- B. Alternative Dispute Resolution (ADR): A procedure used to resolve issues in controversy, including, but not limited to: mediation, peer review, settlement conference, early neutral evaluation, fact finding, conciliation, facilitation, minitrials, arbitration, and the use of ombudsman, or any combinations thereof.
- C. Case Manager: The Case Manager, as assigned by the Director, OEEOS, is responsible for coordinating requests for ADR at the formal stage, assisting mediators in identifying agency officials who have the authority to settle complaints, tracking individual cases involving ADR, and updating the EEO complaints tracking system.
- D. Confidentiality: All oral and written communications made during the ADR process are considered confidential. Any communications between the Mediator(s) and the parties are considered dispute resolution communications with neutrals, and these communications should be kept confidential, subject to limited statutory and regulatory exceptions such as a belief that either party is in danger of bodlly or egregious psychological harm, or if criminal activity and/or fraud, waste or abuse is divulged. In general, all offers, promises, conduct and statements, either written or oral, made during the course of the ADR process are inadmissible in any investigation, litigation, arbitration, or other dispute resolution process. The Mediator(s) and the Participants agree to maintain confidentiality to protect the ADR process.
- E. **Disputants:** The parties in the dispute. In an EEO mediation, the Disputants are the Aggrieved Party (Complainant) and the Responsible Management Official.
- F. **Dispute**: The issue(s) raised in the pre-complaint or formal process by the Aggrieved Party (Complainant).
- G. Dispute Resolution Communications: Any oral or written communication prepared for the purposes of a dispute resolution proceeding, including memoranda, notes or work product made by the Mediator, the parties or nonparty participants. A written agreement to enter into a dispute resolution proceeding, or final written agreement reached as a result of a dispute resolution proceeding, is not a dispute resolution communication.

- H. Employee Representative: An individual who is appointed by the Aggrieved Party as his or her representative and serves in an advisory role to the Aggrieved Party's interests (e.g., Union Representative, attorney, family member or a co-worker).
- I. EEO Counselor: A person trained in counseling techniques. An EEO Counselor is responsible for advising the Aggrieved Party about the EEO complaint and mediation process, determining the basis(es) and issue(s) of a potential complaint, conducting a limited inquiry into the allegations, and seeking resolution. In addition, they document the resolution and advise the Aggrieved Party of his or her rights to file a formal complaint, and prepare a report on counseling activities. The EEO Counselor is also responsible for working with the mediator to coordinate the use of pre-complaint ADR services. An EEO counselor may be trained as a Mediator but cannot serve in both roles for the same case.
- J. Mediation: Mediation is a process based on a set of core principles (self determination, fairness, and voluntariness, neutrality of the Mediator, confidentiality, and enforceability) whereby a neutral third person called a Mediator, acts to encourage and facilitate the resolution of a dispute between two or more parties. It is a confidential, informal, non- adjudicative and non-adversarial process that has the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement.
- K. Mediator: A person trained in mediation who serves as a neutral third party to facilitate open discussions between the parties and assist them in negotiating a mutually acceptable resolution. The role of the Mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving and exploring settlement opportunities. The Mediator does not have the authority to impose a decision or resolution on the parties. The Mediator is also responsible for continually assessing the appropriateness of mediation and retains authority to manage the mediation process.
- L. Participants: The members in the dispute resolution process, i.e., the Disputants, Employee Representative(s), and, as appropriate, Union Representatives, the Office of the General Counsel (OGC), and the Office of Human Resources (OHR) Human Resources Specialist and the Labor Relations Specialist, etc.
- M. Resolving Official: The individual identified by the Agency who, though not directly involved in the case, is at the lowest possible organizational level with authority to grant or deny the requested relief. This official is familiar with the facts, and the ability to agree to a resolution. The Resolving Official must have full settlement authority for the proposed resolution or have immediate access to someone who has full settlement authority.

## OM: 7-101

- N. Responsible Management Official: The manager or agency official who is alleged to have discriminated against the Aggrieved Party (the Complainant).
- O. Settlement Agreement: A formal written agreement that defines the terms by which the parties have agreed to resolve a dispute.
- P. Union Representative: A duly designated Union officer, Union-designated steward or a "special representative" designated by the Union, in writing, to be a representative of the Union.
- Q. Voluntariness: Parties must knowingly and voluntarily enter into ADR. An ADR resolution cannot be viewed as valid if it is involuntary and a dispute cannot actually and permanently be resolved if the resolution is involuntary.

## VI. Responsibilities

- A. The Office of Management (OM), Office of EEO Services (OEEOS) shail:
  - 1. Facilitate the use of mediation to help resolve workplace disputes;
  - 2. Provide resources to support the use of ADR and implement outreach initiatives that encourage the use of ADR;
  - Review existing approaches to conflict resolution; eliminate unnecessary barriers; and, where feasible, foster increased use of conflict avoidance, early conflict resolution, mediation and other ADR techniques;
  - Ensure that the ADR option is available to employees for all appropriate EEO complaints and disputes and that ADR is offered for matters determined suitable for ADR;
  - 5. Advise the Aggrieved Party that he or she may choose between participation in ADR or traditional EEO counseling;
  - 6. Inform the Aggrieved Party of the stages of the EEO process and other statutory or regulatory forums that may be available to him or her;
  - 7. Provide the Aggrieved Party with information about the ADR program including: a definition of the term ADR; a description of the techniques used during ADR; a description of ADR principles of fairness, voluntariness, neutrality, confidentiality, and enforceability; and information about the time frames of the traditional EEO complaint process and ADR process;
  - 8. Process requests for, and conduct ADR;

- 9. Prepare, review, process, and ensure compliance with Settlement Agreements timeframes;
- 10. Encourage employees, supervisors, and managers to use conflict avoidance, early conflict resolution, mediation and other ADR techniques to help resolve EEO complaints;
- Establish an ADR network within the EEO community that is consistent with this Directive;
- Collect and analyze information in a statistical manner to monitor and assess ED's use of ADR in the workplace, in order to measure resource savings, timeliness and user satisfaction;
- Cooperate to the fullest extent with ED's Labor and Union partners to design, implement, and use ADR programs to address EEO complaints at the lowest level possible;
- Provide education and training on ED's ADR program to all ED employees;
- 15. Provide managers and supervisors with training as specified in MD 110, Chapter 3;
- Create a quality assurance process and maintain reporting requirements that track the use of ADR; and
- 17. Issue final decisions that may have significant monetary consequences and approve or sign settlement agreements that include monetary provisions.
- B. The Office of the General Counsel (OGC) shall:
  - Provide advice to the OEEOS on all legal aspects of a settlement agreement including, but not limited to, whether a dispute is appropriate for ADR;
  - Assign a staff attorney, upon request, to provide assistance during a mediation if the Aggrieved Party/Complainant is accompanied by an attorney;
  - Designate a senior staff official in OGC as the Agency's Dispute Resolution Specialist, charged with the responsibility of overseeing the implementation of ED's ADR policy, and for providing feedback in the design and implementation of ED's ADR programs;
  - 4. Review draft settlement agreements for legal sufficiency; and

- 5. Review and approve any settlement agreement involving the resolution of litigation, including but not limited to, administrative or Federal court litigation, in which the Department is obligated or agrees to make a monetary payment, commitment, or distribution arising from allegations seeking damages, fees, cost, or other relief.
- C. The Responsible Management and Resolving Officials shall:
  - 1. Understand their roles and responsibilities in the EEO process;
  - Encourage the use of ADR by maintaining an open mind about the process and by cooperating and participating in ADR; and
  - 3. Ensure that the terms of all settlement agreements are timely executed.
- D. The Aggrieved Party/Complainant and the Employee Representative should be encouraged to:
  - Consider ADR in trying to resolve a disagreement or dispute that arises in the workplace, and, when ADR is elected, participate in good faith; and
  - Notify OM in writing of any changes in contact information or in the designation of representatives.
- E. The Mediator shall:
  - 1. Ensure that ADR proceedings are conducted in a manner consistent with EEO laws and regulations, including time frames;
  - Ensure that proceedings are fair and consistent with ED's core principles, particularly those providing the parties with the opportunity to be represented by any person of his/her choosing throughout the proceeding;
  - Ensure that the Participants and the Responsible Management Official negotiate in good faith and have access to a person with authority to approve or enter into a settlement agreement;
  - 4. Ensure that, if an agreement is reached by the parties, an enforceable resolution between the parties is developed, by preparing a written settlement agreement, and that said agreement includes the signatures of both the Resolving Official and the Aggrieved Party and is transmitted to the OEEOS Director;
  - Ensure confidentiality by destroying all personal written notes taken during the ADR proceeding or in preparation for the proceeding, except as required to be retained in a system of records; and

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- 6. Ensure neutrality by avoiding any conflicts of interest with respect to the proceeding (e.g., material or financial interest in the outcome, being a personal friend or co-worker of a party, being a supervisory official over a party), unless such interest is fully disclosed in writing to all parties and all parties agree that the Mediator may serve
- F. The Office of Inspector General (OIG) shall:
  - 1. Assign an OIG staff attorney, upon request, to provide assistance during a mediation if the Aggrieved Party/Complainant is an OIG employee or applicant and is accompanied by an attorney; and
  - Approve and sign settlement agreements involving the resolution of litigation on personnel and equal employment opportunity matters involving the resolution of litigation, including but not limited to, administrative or Federal court litigation, when those matters exclusively involve OIG employees or applicants to OIG and do not affect any cross-cutting or important Departmental interests, as determined by the General Counsel.

## VII. The ADR Process

- A. It is ED's policy to offer ADR at all stages of the EEO process with few exceptions in order to make dispute resolution procedures available to the parties throughout the complaint process.
- B. ED will consider matters that are inappropriate for ADR in accordance with the ADR Act of 1996 (5 U.S.C. 572) and the MD 110. The complaint may not be appropriate for ADR where there is a need to establish policies or precedents, maintaining established policies is of special importance, the resolution would have a significant effect on individuals who are not parties to the Dispute, the development of a full public record on the Dispute is important, or where ED must maintain continuing jurisdiction over the matter.
- C. Confidentiality and impartiality are integral to the ADR process. Parties are more willing to discuss the issues and options for resolving the matter when the discussions are not part of a record that can affect litigation. Subject to limited statutory and regulatory exceptions, all Participants, Mediators, and other ADR staff will keep all Dispute Resolution Communications confidential. Any notes taken by the Mediator will remain confidential and are destroyed when ADR is completed. The only documentation from ADR would be either a settlement agreement, if an agreement is reached, or communication to the EEO staff, if ADR did not result in a settlement agreement.

D. The assignment of Mediators will be designated in accordance with the MD 110 guidance. To ensure objectivity and impartiality, the EEO Counselor will not serve as a mediator in the same complaint in which he or she has served as a counselor. To help ensure the quality and timeliness of services offered during the informal stage of counseling, OM may expand the assignment of counseling to additional internal and external resources (e.g., OEEOS staff, contract counselors, etc.)

## VIII. Procedures

It is ED's policy to promote the use of ADR in resolving disputes throughout the EEO complaint process in accordance with EEO regulations and guidance.

- A. Pre-complaint Stage
  - The use of ADR is encouraged at the informal stage of the EEO process. However, ADR is voluntary.
  - 2. When an informal EEO complaint is filed, the EEO Counselor will review the issue and determine whether it is appropriate to recommend ADR to the OEEOS Director. If it is determined that the dispute is appropriate for ADR, the offer of ADR will be communicated by the EEO Counselor to the Aggrieved Party directly or through the Aggrieved Party's attorney or duly designated representative, if such a designation is identified in writing.
  - 3. During the initial discussion at the "intake interview," the EEO Counselor will explain the complaint process and advise the Aggrieved Party, where ED offers ADR in the particular case, that s/he may choose between participation in ADR and participation in traditional EEO counseling. The ADR information will be provided to the Aggrieved Party so that s/he can make an informed decision whether or not to elect the ADR process. Once the Aggrieved Party makes a decision between traditional EEO counseling and the ADR process, the decision is final.
  - OM will assign a Mediator to work on the case within seven (7) catendar days of an Aggrieved Party electing ADR.
  - 5. The assigned Mediator will contact the OEEOS Case Manager for the names of the Resolving Official and the Aggrieved Party to schedule the mediation. The Resolving Official needs to have the authority to approve a settlement and is encouraged to expedite the ADR process and make every effort possible to complete the process as early as possible.
  - Where ADR is elected, the pre-complaint processing period is automatically extended ninety (90) calendar days from the date EEO counseling was initiated. Where mediation is ongoing during the pre-

complaint stage and an extension is needed to attempt settlement through the 90th day after which the ADR process will have expired, on the 90th day, the EEO Counselor is required to conduct a final interview and issue the Aggrieved Party a Notice of Right to File a Formal Complaint. However, the parties may continue resolution efforts outside of the ADR process.

7. At the final interview, the Aggrieved Party will be informed of their right to file a formal complaint within fifteen (15) calendar days from the date he or she receives the Notice of Right to File a formal EEO complaint.

The Aggrieved Party will also be advised that the extension of the ADR process does not suspend the time requirements for filing a Formal Complaint.

8. The Aggrieved Party may terminate ADR procedures at any time during the pre-complaint stage and return to the informal EEO process. An Aggrieved Party who returns to the pre-complaint stage will be issued a Notice of Right to File a Formal Complaint.

## B: Formal Stage

- 1. The use of ADR is encouraged at the formal stage of the EEO process. However, ADR is voluntary.
- 2. When a formal EEO complaint is filed, the OEEOS Case Manager will review the case to determine whether it is appropriate to recommend ADR to the OEEOS Director. If it is determined that the case is appropriate for ADR, the offer of ADR will be communicated to the Complainant, or through the Complainant's attorney or duly designated representative if such a designation is identified in writing.
- 3. When ADR is elected by the Complainant, OM will assign a Mediator to work on the case within seven (7) calendar days. The Mediator will contact the Resolving Official and the Complainant to schedule the mediation. In cases where the Resolving Official cannot be easily identified, the EEO staff will consult with either the Executive Officer or the Principal Office Liaison to determine who has the authority to settle each particular case.
- 4. Where ADR is elected after a formal complaint is filed, the period for processing the complaint may be extended by no more than ninety (90) calendar days.
- C. Settlement

- If ADR is elected by the Complainant, once a mediator has been assigned, the Mediator will have thirty (30) days to work with the Parties to mediate the case. The Mediator will contact the Resolving Official and the Complainant to schedule the Mediation. If the Parties resolve their dispute, a draft settlement agreement will be prepared by the Mediator. The Mediator will forward the draft settlement agreement to the Chief Human Capital Officer, OHR, OEEOS Director, and OGC, to ensure legal, technical and administrative sufficiency, and to determine if the agreement is lawful and enforceable under EEOC regulations and applicable statutes and laws. The settlement agreement cannot be executed until cleared by these offices.
- 2. The Aggrieved Party and the Resolving Official will sign the settlement agreement after the draft clearance process. In addition, to the Disputants, the settlement agreement will be signed by the Assistant Secretary for Management (ASM) and the General Counsel or Deputy General Counsel, who have the agency's delegated authority to approve and/or sign settlement agreements that include monetary provisions. Further, the Director, OEEOS will also sign all settlement agreements.
- 3. Settlement agreements that are entered into knowingly and voluntarily are binding on the parties.
- 4. OM will retain the original settlement agreement in the case file, with copies distributed to the parties involved. All parties must be mindful of the prohibitions on the disclosure of information under the category of personally identifiable information. Often such information, including the fact that a particular person has sought counseling or filed a complaint, cannot be disclosed to union or management officials unless the parties give their written consent.
- 5. If the Aggrieved Party/Complainant believes that the Agency has not complied with the terms of the settlement agreement, he or she may, under 29 C.F.R. 1614.504, notify ED's OEEOS Director within thirty (30) calendar days of the date that s/he knew or should have known of the alleged noncompliance. The Aggrieved Party/Complainant may request that the terms of the settlement agreement are enforced or that his or her EEO complaint is reinstated for further processing. The OEEOS Director may encourage the parties to attempt resolution throughout the complaint process, whether through ADR or any other means of informal settlement.

## connectED

## Frequently Asked Questions About the ADR Center Services and Process

- 1. What services are offered by the ADR Center to resolve work-related issues?
- 2. What are the benefits of using the ADR Center services to resolve my work-related issue?
- 3. What are the different types of work-place disputes, grievances, or complaints covered by the alternative dispute resolution process?
- 4. How do I seek assistance from the ADR Center and what is the process used to help resolve a work-related issue?
- 5. How do I prepare in order to get the best out of the alternative dispute resolution process?
- 6. What are my rights during an informal or formal session?
- 7. What are my options if my Pre-Grievance is not resolved during the informal stage?

#### 1. What services are offered by the ADR Center to resolve work-related issues?

The ADR Center is staffed with trained ADR Analysts who are available to provide services to employees and external applicants to informally and objectively discuss and voluntarily resolve a wide-range of employment disputes, disagreements, or complaints on work-related matters in an expeditious manner. Work-related matters can include a Pre-Administrative Grievance, Pre-Negotiated Grievance or an EEO Complaint (informal and formal). (Note: If the matter involves a personnel action or a discriminatory act, an employee must initiate contact with the Office of Management (OM), Equal Employment Opportunity Services (EEO Services) within forty-five (45) calendar days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) calendar days of the effective date of the action, or the date he or she became aware of the personnel action or discriminatory act.)

#### The services offered by the ADR Center include:

- Conflict Coaching A process in which a Coach (ADR Analyst) works one-on-one with an employee to help address conflict through improving skills, identifying issues, exploring options, and preparing to resolve or prevent an unnecessary conflict.
- Conciliation An informal process that involves building positive relationships between parties in a dispute. A
  Conciliator/Neutral Third Party (ADR Analyst) may be used to help the participants develop or enhance skills for improved
  communication and relationships. The conciliator's roles include assisting parties to clarify misperceptions, deal with
  strong emotions, and build the trust necessary for cooperative problem-solving.
- Facilitation An informal process that involves 3 or more parties and uses techniques to improve the flow of information between parties. The Facilitator (ADR Analyst) generally works with all of the participants at once and provides procedural directions as to how the group can move efficiently through the problem-solving steps of the meeting and arrive at the jointly agreed upon goal. Sessions areheld with a group or team to enable them to develop their own potential solutions with the help of a neutral third party.
- Mediation An ADR process that uses a Neutral Third Party (ADR Analyst/Mediator or External Mediator) who has no decision-making authority. The objective of this process is to assist the parties in voluntarily reaching their own, acceptable resolution of issues in dispute. Mediation is useful in highly-polarized disputes where the parties have either been unable to initiate a productive dialogue, or where the parties have been talking and have reached a seemingly insurmountable impasse. The ADR Analyst or another neutral third party does not act as fact finder, judge or decision-maker. The Parties themselves arrive at what each of them agree is appropriate to resolve the issues.
- Educational Outreach -- The use of resourceful marketing and training options to communicate to employees about ADR services offered and to provide conflict prevention, resolution, and management training (i.e., Addressing Conflict, Crucial Conversations, Working with Conflict) and training on other related workplace topics (i.e., Mastering Difficult Conversations, Essentials of Effective Teamwork, and Being Positive in the Workplace).

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#### 2. What are the benefits of using the ADR Center services to resolve my work-related issue?

The techniques utilized in alternative dispute resolution are designed to improve communication, working relationships, and the organizational culture in support of mission achievement. Listed below are a number of benefits obtained by using alternative dispute resolution techniques.

- Provides an impartial, third party to facilitate resolution of disputes
- Provides quick solutions to address work-related issues
- Promotes creative problem-solving
- Encourages open communication
- Helps parties to demonstrate interpersonal skills to resolve disputes themselves
- Provides skills to improve working relationships
- Promotes organizational culture improvements to allow parties to participate in the creation of an outcome that works best for all parties

Helps to avoid lengthy litigation and the associated costs

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3. What are the different types of work-related disputes, grievances, or complaints covered by the alternative dispute resolution process?

The following are the different types of work-related disputes, grievances, or complaints covered by the alternative dispute resolution process:

#### Disputes

- Adverse Actions
- Co-worker Disagreements
- Dismissals and Suspensions
- Employee Conduct Issues
- Grievances
- Job Performance Issues
- Selection and Promotion Issues
- Sexual Harassment
- Unlawful Discrimination (Equal Employment Opportunity)
- Workplace Conditions

#### Grievances

#### Administrative Grievance (Employee Relations)

An Administrative Grievance (AG) is any matter, concern or dissatisfaction raised by an employee not covered by the union (non-Bargaining Unit employee), relating to his/her employment which is subject to the control of the Department's management. A non-Bargaining unit employee has the right to file a formal AG or can choose the option to use the informal alternative dispute resolution options offered by the ADR Center to resolve his/her concern. Information about the AG process can be found in <u>Personnel Manual Instruction (PMI) 771-Employee Grievances</u>. The ADR Analyst, EEO Counselor, or Employee Relations Specialist can provide you a copy of the policy.

#### Negotiated Grievance (Labor Relations)

A Negotiated Grievance (NG) is complaint that can be filed:

- By a bargaining unit employee concerning any matter related to the employment of any employee ,
- By the Union concerning any matter related to the employment of any employee, or
- an employee, the Union, or the employer concerning:
  - the effect or interpretation of , or a claim of breach, of collective bargaining agreement; or
  - any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

If you are a bargaining unit employee, you may elect to use the ADR Center's process or the Problem Resolution Procedure (PRP) for non-EEO matters, but not both. If discrimination is being alleged, the PRP is not available as an informal process. The PRP is set forth in Article 42, Section 42, (c), of the <u>Collective Bargaining Agreement (CBA)</u> and the Memorandum of Understanding, dated July 7, 1997. These documents are also available from the ADR Analyst, EEO Counselor, or a Union Representative.

A Bargaining Unit employee who believes he/she has been discriminated against based on the basis of race, color, religion, sex, national origin, age of disability may raise the matter under the formal process of the NG procedures or the EEO process, but not both.

#### Complaints

#### EEO Pre-Complaint

EEO Complaints consist of allegations of discrimination in employment based on an individual's race, color, religion, sex, national origin, age or disability. EEO complaints may also include allegations of reprisal or sex-based wage discrimination.

If an employee or applicant **believes** they have been subjected to unlawful discrimination, the EEO Pre-complaint counseling begins with initially contacting the Office of Management (OM), Equal Employment Opportunity Services (EEO Services). The employee/applicant has 45 calendar days from the date of the incident that gave rise to the complaint to contact EEO Services. If the alleged discrimination involves a personnel action (for example a demotion, removal or termination), EEO Services must be contacted within 45 calendar days of the effective date of the personnel action. EEO Services contact information is:

Michael Chew, Director, EEO Services 400 Maryland Avenue, S.W. LBJ, Suite 2W228 Washington, DC 20202 Fax: (202) 205-5760 Email: om\_eeos@ed.gov

More information on filing an EEO Pre-Complaint or Formal Complaint can be found on <u>ADR Center's webpage</u> under Policies and Procedures <u>EEO Services webpage</u>

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- 4. How do I seek assistance from the ADR Center and what is the process used to resolve a work-related issue? All employees may seek assistance from the ADR Center at any time to informally resolve a wide-range of work-related disputes, disagreements, or complaints. An ADR Analyst will assist you in informally resolving your work-related issue at the lowest level possible in an impartial and expeditious manner. The following steps briefly outline the process:
  - Within 45 calendar days of the day an employee becomes aware of an incident needing resolution, they should schedule an appointment with an ADR Analyst to discuss the issue(s) and identify a process that best addresses the situation. (Note: If the matter involves a personnel action or a discriminatory act, an employee must initiate contact with the EEO Services within forty-five (45) calendar days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within forty-five (45) calendar days of the effective date of the action, or the date he or she became aware of the personnel action or discriminatory act.)
  - Within three (3) business days from the inquiry date, an ADR Analyst will contact the employee to discuss the matter via telephone or in person.
  - <sup>a</sup> For up to 30 calendar days from the initial contact date the ADR Analyst will work with the employee to resolve the concern(s). In extenuating circumstances, an employee may request and may be granted **60 calendar days** of additional engagement time to resolve the matter.
  - The ADR Analyst uses the following resolution techniques with individuals or groups:
  - Individual interviews
  - Coaching (individual or team)
  - Specific topic focus groups
  - Brainstorming problem solving
  - Conciliation
  - Mediation
  - Dispute resolved: No additional action taken by the ADR Analyst.
  - **Dispute not solved:** the ADR Analyst will issue the employee a "Notice of Right to File" a formal Administrative Grievance or Negotiated Grievance with the servicing Human Resources Office or an EEO Complaint with EEO Services.

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#### 5. How do I prepare in order to get the best out of the alternative dispute resolution process?

The ADR Center can provide a quick and effective solution to a workplace dispute when utilized as a resource. In order to ensure that the ADR Center provides the best opportunity for resolution of a particular matter, it is recommended the employee takes time to think about the issue(s) and consider creative solutions to be discussed during the process.

Consider the following three (3) steps prior to having a consultation with an ADR Analyst. This information will help the ADR Analyst to provide prompt customer service and better results. The questions below are available in a printable version in the ADR Center Consultation "<u>Prep Checklist</u>"

#### I. General Questions

- 1. Review the ADR Center's website
- 2. Be prepared to discuss at least three (3) solutions which are acceptable based on options available. Consider the following:
  - What are your interests? What do you really want or need from your organization/leader?
    - What do you think the other party really wants or needs? (Try to envision how you would react and what you
      would want if you were in their role.) What from your perspective is realistic to request as a resolution(s)?
      Identify and list as many creative goal-focused solutions to resolve your issue(s) as you can. (Think of
      solutions the other party may be open to that will meet your interests.) and support the mission of the
      agency.)
  - Prioritize the options and allow room for flexibility.

Think of what you can do to satisfy the interests of the other side.

If you have previously used the Center's services, tell us what you found most effective in the process and how that might be used to resolve the current matter.

#### II. Mediation Settlement Questions

Estimate what it will COST you if you DO NOT resolve the issue in the mediation.

Be prepared to compare your alternatives with what the other side offers in an informal session. Decide which is better, considering time, cost, uncertainty of outcomes, etc.

If you cannot get everything you want during the session, that about what you can live with, in order to get resolution now.

- III. Self-Assessment of Conflict Resolution Skills (Optional)
  - Please share with the ADR Analyst any conflict resolution skills you posses to benefit you and the organization that can be used to avoid future reoccurrences of issues.

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6. What are my rights during an informal or formal session?

All employees and external applicants have the following rights:

#### **Right to Anonymity**

The ADR Analyst (Mediator) will not reveal your identity during the informal stage regarding a matter brought to the ADR Center unless you authorize them to do so.

#### Confidentiality

In order for the ADR Center to be successful, open and honest communications are essential. All verbal and written communications made during the ADR Center process are considered confidential. Exceptions to the confidentiality include, unless there are reasons presented by either party that indicate danger of bodily or egregious psychological harm, either party has threatened bodily or egregious psychological harm, to include criminal activity, and/or fraud, waste and abuse.

#### Representation

You have the right to seek representation throughout the informal and formal dispute resolution processes. The ADR Analyst (Mediator) acts strictly as a neutral in the process and is not an advocate or a representative for you or the Department.

#### **Use of Government Property**

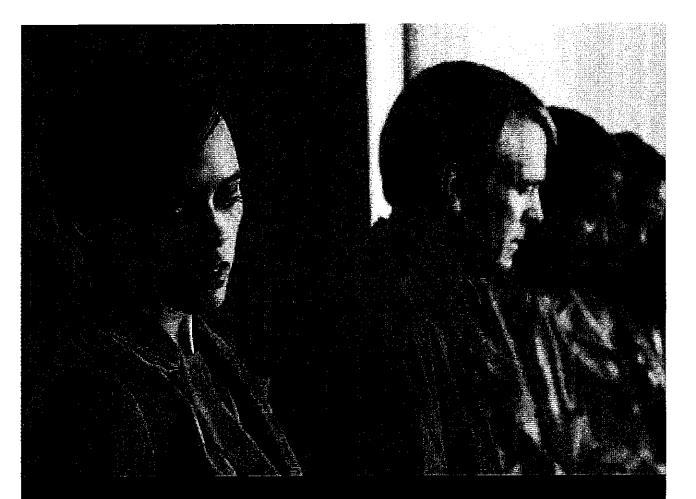
The filing of a complaint is considered a personal action rather than one made in your official capacity. The use of government equipment for other than official business is authorized only if such use: (1) incurs only a negligible additional expense to the Department, (2) does not impede your ability or others to do their job, (3) occurs during off hours, whenever possible; and (4) is not for the purpose of generating income for other employees or another person. Use of official stationary, mail, or other official support service is prohibited and may result in disciplinary actions.

### 7. What are my options if my Pre-Grievance is not resolved during the informal stage?

If your Pre-Grievance is not resolved informally, you may elect to formally file and Administrative Grievance or Negotiated Grievance (bargaining unit employees).

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This content last modified on 11/13/2017 9:31 AM by ∰ Goldman, Lyudmila (Contractor) Please send questions regarding this content or its accuracy to the OM Webmasters.



## OFFICE OF MANAGEMENT ALTERNATIVE DISPUTE RESOLUTION (ADR) CENTER

The ADR Center offers a neutral setting and provides resources for employees, supervisors and managers to informally and objectively resolveworkplace conflicts, disputes or concerns. For assistance, contact the ADR Center at: Potomac Center Plaza Room 10087 550 12th Street, SW Washington, DC 20004

# WORKPLACE CONFLICT?

The ADR Center can help you develop the skills you need to resolve conflict.



ADR CENTER ... WHERE ALL ROADS LEAD TO ENHANCED COMMUNICATION

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	HCP: 751-1
U. S. DEPARTMENT OF EDUCATION	DATE: 7-25-2016
HUMAN CAPITAL POLICY	APPROVED:
	<u>Cassandra L. Cuffee-Graves</u>
	DIRECTOR, OFFICE OF HUMAN RESOURCES

\*This Human Capital Policy (HCP) supersedes Personnel Manual Instruction (PMI) 751-1, Discipline and Adverse Actions, dated September 5, 2003. This policy has been revised to incorporate changes and updates to 5 U.S.C. Chapters 73 and 75, and 5 CFR Parts 735 and 752.

## SUBJECT: DISCIPLINE AND ADVERSE ACTIONS

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## I. AUTHORITY

This Human Capital Policy (HCP) is issued pursuant to: Title 5, United States Code (U.S.C.), Chapters 73 and 75; and Title 5, Code of Federal Regulations (CFR), Parts 735 and 752.

## **II. REFERENCES**

Alternative Discipline: Creative Solutions for Agencies to Effectively Address Employee Misconduct, A Report to the President and the Congress of the United States by the U.S. Merit Systems Protection Board (July, 2008); HCP 735-1, Courtesy Policy, U.S. Department of Education (ED); Standards of Ethical Conduct for Employees of the Executive Branch, U.S. Office of Government Ethics; Supplemental Standards of Ethical Conduct for Employees of the Department of Education; and the Collective Bargaining Agreement (CBA) between ED and the National Council of Department of Education Local and American Federation of Government Employees Council 252.

## **III. APPLICABILITY**

This policy covers all disciplinary and adverse actions up to and including removal from Federal service and applies to all ED employees except those who are serving a probationary or trial period. Employees on a probationary or trial period will follow PMI 315-1, Probationary Period. Additionally, the CBA will be adhered to when disciplinary and adverse actions are taken against bargaining unit employees.

## IV. PURPOSE

HCP 751-1 establishes ED's guidelines surrounding disciplinary and adverse actions. Actions taken under this policy are effected with the goal of addressing employee misconduct and ensuring it does not recur, as well as promoting the efficiency of the Federal service. All employees are expected to comply with ED's policies, standards of conduct (referenced above), work procedures, and established office practices.

## V. POLICY

ED's policy is to administer a personnel program that results in the selection, retention, and motivation of a well-qualified and productive work force. As an integral part of that program, ED maintains high standards of employee conduct and integrity, and endeavors to provide prompt, fair, and equitable solutions to issues that affect employee morale and the efficiency of ED. HCP 751-1 delineates the basic framework for disciplinary actions at ED. This policy also supplements 5 CFR Part 752 in establishing policies and requirements for taking disciplinary and adverse actions.

## VI. DEFINITIONS

<u>Adverse Action</u>: A personnel action affecting an employee's pay or grade with the goal of addressing employee misconduct. Adverse actions include suspensions, removals, reductions in grade or pay, and planned administrative furloughs for 30 days or less. (Although planned administrative furloughs are non-disciplinary actions, they are official personnel actions covered under adverse action procedures).

<u>Alternative Discipline</u>: An action to correct behavior using methods other than traditional disciplinary methods. Alternative discipline is generally not a reprimand, a suspension with a loss of duties and pay, a change to a lower grade, or a removal from service for cause without the consent of the individual.

<u>Deciding Official</u>: A management official at a higher level of management than the Proposing Official (usually the second line supervisor) who is authorized to render Agency decisions.

*Employee*: For the purposes of HCP 751-1, the definition of employee does not include the following individuals: administrative law judges; individuals serving probationary or trial periods; SES appointees; individuals whose appointments are made by and with the advice and consent of the Senate; Presidential appointees; reemployed annuitants; and individuals excepted from the competitive service in positions determined by the President to be of a confidential, policy-determining, policymaking, or policy advocating character.

*Formal Disciplinary Action*: includes official reprimands, suspensions, reductions in grade or pay, and removals. These formal disciplinary actions are recorded, either temporarily or permanently, in an employee's electronic Official Personnel Folder (e-OPF).

*Informal Corrective Action*: An action that is not recorded, either temporarily or permanently, in an employee's e-OPF. Examples of informal corrective action include, but are not limited to, verbal counseling, items brought to the employees' attention via e-mail, or memoranda for the record.

<u>Official Reprimand</u>: A formal, written disciplinary action given by a supervisor to a subordinate intended to correct misconduct on the part of the subordinate. This is used when the misconduct, delinquency, or other action warrants a response more severe than a warning, but less severe than formal action involving a loss of pay, such as a disciplinary suspension or other adverse action.

<u>Progressive Discipline</u>: A system of discipline where the penalties increase upon repeat occurrences. Although a common pattern is reprimand, short-term suspension, long-term suspension and removal, any of these steps may be bypassed when the nature of the behavior makes a lesser form of discipline inappropriate. The stage chosen for a particular misconduct will depend on a variety of factors, including the severity of the misconduct, the employee's prior work history, and how the corrective action could impact other employees with a similar pattern of misconduct.

<u>*Proposing Official*</u>: A management official (usually the first line supervisor) authorized to propose disciplinary and adverse actions.

*Suspension*: The placing of an employee in a temporary status without duties and pay, for disciplinary reasons.

<u>*Traditional Discipline*</u>: Conventional discipline designed to correct and address misconduct, i.e., warnings, letters of reprimand, suspensions, reductions in grade, and

removals. The goal of traditional discipline is to correct misconduct and promote the efficiency of the service.

<u>Warning</u>: An informal corrective action, either verbal or written, administered by a supervisor to a subordinate, during which the supervisor advises the employee that he/she has engaged in misconduct and should not repeat the misconduct, and also outlines the consequences of repeating the same or similar misconduct in the future. A warning is used when a supervisor or other management official determines that informal corrective action is warranted and the misconduct is not serious enough to warrant formal action. This may be the first step in the disciplinary process.

## VII. RESPONSIBILITIES

- A. The <u>Director, Office of Human Resources (OHR)</u>, ensures ED's compliance with this policy and Office of Personnel Management (OPM) regulations.
- B. The <u>Director, OHR</u>, and <u>Director, Federal Student Aid (FSA) Human Resources</u> <u>Division (HRD)</u> approve or disapprove requests to remove Official Reprimands from e-OPFs earlier than two years after they are filed.
- C. The <u>ED Headquarters Workforce Relations Division (WRD) and FSA Workforce</u> <u>Relations Division (FSA WRD)</u> will:
  - 1. Advise officials on appropriateness of traditional discipline and alternative discipline methods;
  - 2. Advise supervisors about disciplinary actions and provide both employees and supervisors complete information on disciplinary action procedures, employee rights, appeal rights, and grievances;
  - 3. Develop alternative discipline agreements in collaboration with supervisors;
  - 4. Ensure that every effort is made to track issued reprimands and assure they are removed timely from the affected employee's e-OPF;
  - 5. Ensure officials adhere to the language contained in the CBA for bargaining unit employees;
  - 6. Review and clear all formal discipline notices prior to issuance;
  - 7. Consult with the Office of General Counsel (OGC) on suspensions of more than 14 days, reductions in grade, removals, and furloughs;
  - 8. Consult with the Ethics Division within OGC for guidance on whether particular conduct violates the Standards of Ethical Conduct for Employees of the Executive Branch, ED's Supplemental Standards of Ethical Conduct, or ethics statutes; and

- 9. Approve or disapprove requests to disallow an employee's representative (See Section-IX, Adverse Actions).
- D. <u>Supervisors</u> must:
  - 1. Exercise responsible judgment when evaluating misconduct and ensure the appropriate disciplinary actions are taken in proportion to the offense;
  - 2. Impose disciplinary actions consistent with the Table of Penalties for Stated Offenses, (Exhibit 2);
  - 3. Consult with WRD or FSA WRD to determine if alternative and/or traditional discipline is appropriate;
  - 4. Take timely disciplinary actions to ensure that employee conduct is consistent with accomplishment of ED's mission and to promote the efficiency of the Federal service;
  - 5. Conduct a Douglas Factor analysis for proposed suspensions of more than 14 days, reductions in grade or pay, and removals. (See Exhibit 1). If the Douglas Factor analysis is included in the disciplinary action letter, a separate analysis is not required.
- E. The <u>Proposing Official</u> (typically the immediate supervisor) confers with WRD and prepares notices of proposed disciplinary and adverse actions in accordance with statutes and OPM/ED regulations and policies;
- F. The <u>Deciding Official</u> (typically the next higher level official from the Proposing Official) reviews proposed disciplinary and adverse actions, consults with WRD, and makes a final decision.
- G. <u>All ED employees must:</u>
  - 1. Conduct themselves according to the Standards of Ethical Conduct for Employees of the Executive Branch, ED's Supplemental Standards of Conduct, and all applicable ethics laws. Employees must review and agree to the ED Supplemental Standards of Conduct at the time of appointment;
  - 2. Familiarize themselves with the duties and responsibilities of their position descriptions and requirements in their performance agreements or plans; and
  - 3. Conduct themselves according to workplace policies and regulations applicable to their work (for example, time and attendance policies, security and building access procedures, use of computer equipment, use of government travel cards and/or government purchase cards, etc.).

## VIII. WARNINGS

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- A. Warnings are a form of informal corrective action available to supervisors as part of the Traditional Discipline process. Not all situations are appropriate for a warning prior to the initiation of a formal disciplinary action.
- B. Supervisors should administer a warning as soon as possible after learning of the employee's misconduct, so that the warning will have maximum corrective effect. Verbal and written warnings should be kept private and confidential, to the maximum extent possible.
- C. If the warning is verbal, supervisors should document the warning in writing and provide the employee a copy. A follow-up e-mail confirming that the warning occurred and recapping the discussion will suffice.
- D. The supervisor should retain all warning documentation for one year, in accordance with the NARA General Records Schedule (GRS) and Department Records Schedules (EDRS). The documentation may not be placed in the employee's e-OPF.

## IX. REPRIMANDS

- A. Non-bargaining unit employees are not entitled to receive a proposed letter of reprimand.
- B. Bargaining unit employees will follow the reprimand procedures according to the CBA.
- C. An Official Reprimand is a formal disciplinary action. The Official Reprimand will:
  - 1. Be on official stationery, signed, and dated;
  - 2. Identify the effective date of the reprimand as the issue date of the letter;
  - 3. Acknowledge the purpose of the discipline by stating that it is an Official Reprimand;
  - 4. Give the specific reasons for the reprimand, stating explicitly those reasons which are the basis for the reprimand;
  - 5. Inform the employee that the Official Reprimand will be placed in his/her e-OPF for two years, subject to the requirements listed in Section F below;
  - 6. Advise the employee that a more severe disciplinary action may be taken for any further offense; and
  - 7. Inform the employee of his/her right to file a grievance to the reprimand in accordance with appropriate procedures and identify where the grievance procedures are located.

- a. Refer the non-bargaining unit employee to HCP 771-1, Employee Grievances.
- b. Refer the bargaining unit employee to the grievance procedures contained in the CBA.
- D. When an Official Reprimand is used to support a subsequent adverse action or other administrative action, it will be considered as part of the analysis of progressive discipline.
- E. When an employee alleges that an Official Reprimand is based on discrimination covered by 29 CFR Part 1614, the Official Reprimand may be reviewed as part of the discrimination allegation under Equal Employment Opportunity (EEO) procedures. For bargaining unit employees, the negotiated grievance procedure may be used, unless the employee elects to pursue the allegation under EEO procedures. Under EEO complaint procedures, employees have 45 calendar days from the effective date of the action (or the date they became aware of the action) to contact the Office of Equal Employment Opportunity Services (OEEOS) for counseling. If appropriate, the employee may pursue resolution through the Alternative Dispute Resolution (ADR) Center in lieu of traditional counseling. If the matter is not resolved informally, OEEOS will issue a notice of right to file a formal complaint. The employee has fifteen days to file a formal EEO complaint, if he/she chooses to do so. ED employees should contact OEEOS for more information pertaining to the EEO complaint process.
- F. WRD representatives will file the Official Reprimand in the employee's e-OPF for a period of two years or until the employee's separation from ED, whichever occurs first. WRD may remove the Official Reprimand from the e-OPF earlier than two years if the Deciding Official so directs when issuing the Official Reprimand or requests by memorandum anytime thereafter to the Director, OHR or Director, FSA HRD. Every effort will be made to ensure that such actions are removed from the e-OPF in accordance with the policy.

## X. ALTERNATIVE DISCIPLINE

- A. Supervisors must consult with their servicing Representative from WRD for approval and assistance in administering alternative discipline.
- B. Supervisors must document the conditions of the alternative discipline on official agency stationery using an alternative discipline agreement. The agreement will state that parties are entering into the agreement voluntarily.
- C. Traditional discipline may be imposed if an employee fails to fulfill the terms of his/her alternative discipline agreement.
- D. The following conditions must be met:
  - 1. The employee acknowledges responsibility for the behavior(s) giving rise to the need for disciplinary action, expresses remorse for such behavior, and agrees to not repeat the behavior(s);

- 2. The supervisor or manager, in consultation with WRD, determines that alternative discipline has a good probability of preventing further misconduct by the employee; and
- 3. After consultation with his/her attorney (if he/she so wishes), the employee agrees to waive all grievance and appeal rights with respect to the particular action; even if traditional discipline is later imposed because the employee fails to fulfill the terms of the alternative discipline agreement. The employee may not waive prospective EEO rights.
- E. Alternative discipline will not be used when:

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- 1. The employee is serving a trial or probationary period;
- 2. The employee is serving on a temporary appointment;
- 3. The employee is currently on a leave restriction letter;
- 4. The employee has received formal discipline (e.g., a suspension) within the last three years;
- 5. The employee's misconduct requires a specific penalty by statute, e.g., a 30-day suspension for the willful misuse of a government-owned vehicle; or
- 6. The employee has engaged in an illegal and/or serious misconduct, e.g., discrimination, reprisal/retaliation, workplace violence, sexual harassment, etc.
- F. Examples of alternative discipline include, but are not limited to the following:
  - 1. Incremental suspension, i.e., spread out over a specified period.
  - 2. Suspensions held in abeyance, or temporarily inactive.
  - 3. Last chance agreements, i.e., agreements that give the employee who has committed serious misconduct one last chance to keep his/her job.
  - 4. Performance of unpaid, off-duty community service related to the offense, i.e. offering an employee the option of performing community service in lieu of formal discipline. The employee's community service must be documented to ensure that the employee performed the community service. The employee's alternative discipline agreement will indicate that this service is unpaid and voluntary.
  - 5. Agreement to seek and actively participate in counseling via the Employee Assistance Program (EAP) or another program approved by EAP to address the misconduct (e.g., a financial counseling program or Alcoholics Anonymous). WRD must validate the employee's attendance.

6. Writing, developing, and/or presenting a variety of memoranda, instructional guides, training modules, etc., that explains a specific aspect of proper conduct and the potential consequences for violating approved standards.

## XI. ADVERSE ACTIONS

To assist supervisors in determining appropriate adverse actions, this policy includes ED's Table of Penalties (Exhibit 2) and the Douglas Factors (Exhibit 1). The Douglas Factors are criteria that must be considered while determining the appropriateness of corrective actions.

- A. <u>Notice Period</u>
  - 1. Suspensions of 14 days or less
    - a. Non-bargaining unit employees with suspensions for 14 days or less will be given a minimum of ten calendar days advance written notice of the proposed suspension, specifying the reasons for the suspension, and informing the employee that he/she has the right to review the materials relied upon in the proposal.
    - b. Bargaining unit employees are entitled to written notice in accordance with the CBA.
  - 2. Other adverse actions
    - a. All other adverse actions (suspensions for more than 14 days, reductions in grade or pay, planned administrative furloughs for 30 days or less, or removals) will be conducted according to statutory and regulatory requirements, principally 5 U.S.C. Chapter 75 and 5 CFR Part 752, Subpart D.
    - b. A minimum notice period of 30 calendar days is required, except under one of the following circumstances:
      - i. When ED has reason to believe that the employee has committed a crime for which a sentence of imprisonment may be imposed and is proposing a removal or suspension, including indefinite suspension; or
      - ii. When ED imposes furlough without pay due to unforeseen circumstances such as sudden breakdowns in equipment or sudden emergencies requiring immediate curtailment of activities.
    - c. The notice must be on official stationery, state the specific reason(s) for the proposed action, and inform the employee of his/her rights to review the supporting material, respond orally and/or in writing, and obtain a representative.

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- d. Bargaining unit employees are entitled to written notice in accordance with the CBA.
- e. Employees remain in duty status during the notice period unless the supervisor, in collaboration with WRD, determines that the employee's continued presence in the workplace may pose a threat to the employee or others, result in loss of or damage to Government property, or otherwise jeopardize legitimate Government interests.

## B. Employee Representation

- 1. If an employee chooses to be represented, the employee may select an attorney or other representative of his/her own choosing.
  - a. ED may disallow an employee's representative whose participation would cause a demonstrable conflict of interest or position; or an employee from the agency whose release from his/her official position would incur an unreasonable cost to the agency, or whose priority work assignments preclude his/her release.
  - b. Management Officials seeking to disallow a representative must secure the written concurrence of the WRD Director (ED Headquarters or FSA, as appropriate). Requests for disallowance must include all pertinent information as to why it is believed the representation should be disallowed.

## C. Response Period

- 1. Employees in a paid status are entitled to request a reasonable amount of official time to review the material, prepare a response, and secure affidavits. If an employee and/or the employee's representative wish to use official time for preparation of a reply to a notice of proposed adverse action, he/she must request a reasonable amount of time from his/her first line supervisor. This time may be scheduled for consecutive or non-consecutive hours until exhausted.
- 2. If an employee wishes to have his/her medical condition considered as a factor which may have contributed to a conduct or leave problem, the employee must be given a reasonable amount of time (usually a minimum of fifteen calendar days) to furnish medical documentation.
- 3. Employees have the right to respond orally and/or in writing. If the employee chooses to respond orally, ED will designate an official to hear the employee's response who has the authority to make or recommend a final decision. The right to respond orally does not include the right to a formal hearing with examination of witnesses.
- 4. Employees who choose to respond must do so within seven calendar days of receipt of the notice of proposed action. An employee's response

should include affidavits and other documentary evidence that he/she relies on in support of the response.

5. Bargaining unit employees will respond to the proposed action according to the procedures in the CBA.

## D. <u>Agency Decision</u>

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- 1. The Deciding Official will consider the reasons specified in the notice of proposed action and any response provided by the employee and/or the employee's representative (including documentation and medical information).
- 2. The Deciding Official will specify, in writing, the reason(s) for the decision and advise the employee of any appeal or grievance rights in the notice of decision.
- 3. ED must deliver the notice of decision to non-bargaining unit employees on or before the effective date of the action.
- 4. ED will follow the procedures outlined in the CBA for bargaining unit employees.
- 5. The Deciding Official is responsible for retaining copies of the proposed action, the employee's response, the Agency's decision, and any supporting materials, in accordance with applicable NARA General Records Schedules (GRS) and Department Records Schedules (EDRS).
- 6. OHR and FSA WRD Representatives will process personnel actions for all conclusive adverse actions. Personnel actions pertaining to Adverse Actions will be retained in the employee's e-OPF as permanent records.

## E. Appeal and Grievance Rights

- 1. Bargaining unit employees will follow the appeal and grievance procedures outlined in the CBA.
- 2. Non-bargaining unit employees should refer to HCP 771-1, Employee Grievances; for more information on grievance rights pertaining to suspensions of 14 days or less.
- 3. Non-bargaining unit employees may file an appeal to the Merit Systems Protection Board (MSPB) for other adverse actions.

## XII. PENALTIES

ED's **Table of Penalties for Stated Offenses** is included in this policy at Exhibit 2. A list of the Douglas factors is included at Exhibit 1.

## DOUGLAS FACTORS

In <u>Douglas v. Veterans Administration</u>, 5 M.S.P.R. 280 (1981), the Merit Systems Protection Board (MSPB) established a number of factors to consider while determining the appropriateness of a penalty. These factors, listed below, will assist supervisors in considering relevant mitigating and aggravating circumstances.

- 1. The nature and seriousness of the offense, and its relation to the employee's duties, position and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated.
- 2. The employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public and prominence of the position;
- 3. The employee's past disciplinary record;
- 4. The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers and dependability;
- 5. The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon the supervisor' confidence in the employee's ability to perform assigned duties;
- 6. Consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- 7. Consistency of the penalty with any applicable agency Table of Penalties;
- 8. The notoriety of the offense or its impact upon the reputation of the agency;
- 9. The clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- 10. Potential for the employee's rehabilitation;
- 11. Mitigating circumstances surrounding the offense such as unusual job tension, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and
- 12. The adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

	(Note: The term "Days" referred to in the Table below refers to "calendar days".)
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	Nature of the Offense	1 <sup>st</sup> Offense Minimum	1 <sup>st</sup> Offense Maximum	2 <sup>nd</sup> Offense Minimum	2 <sup>nd</sup> Offense Maximum	3 <sup>rd</sup> Offense Minimum	3 <sup>rd</sup> Offense Maximum
i-i	Unauthorized use of Government funds	30-Day Suspension	REMOVAL	REMOVAL	N/A	N/A	N/A
ri N	Misuse of Government travel card	Reprimand	14-Day Suspension	10-Day Suspension	REMOVAL	REMOVAL	N/A
с.	Delinquency in payment of Government travel card	Reprimand	14-Day Suspension	10-Day Suspension	REMOVAL	REMOVAL	N/A
4	Misuse of Government travel card AND delinquency in payment of Government travel card	5-Day Suspension	30-Day Suspension	30-Day Suspension	REMOVAL	REMOVAL	N/A
Ş.	Carelessness or neglect related to Government purchase card, resulting in administrative non- compliance with program policies.	Reprimand	5-Day Suspension	5-Day Suspension	30-Day Suspension	REMOVAL	N/A
6,	Intentional non-compliance with administrative program policies, as it relates to Government purchase cards.	2- Day Suspension	14-Day Suspension	14-Day Suspension	REMOVAL	REMOVAL	N/A
7.	Misuse of Government purchase card.	5-Day Suspension	30-Day Suspension	30-Day Suspension	REMOVAL	REMOVAL	N/A
ø	Violation of the Department's policy on use of Government equipment.	Reprimand	REMOVAL	14-Day Suspension	REMOVAL	REMOVAL	N/A
6	Falsifying attendance record for self or another employee.	5-Day Suspension	REMOVAL	14-Day Suspension	REMOVAL	REMOVAL	N/A
10.	Absence without leave. This covers unexcused or unauthorized absence.	Reprimand	5-Day Suspension	5-Day Suspension	14-Day Suspension	30-Day Suspension	REMOVAL
11.	Failure to follow established leave procedures.	Reprimand	5-Day Suspension	5-Day Suspension	14-Day Suspension	30-Day Suspension	REMOVAL
12.	Discourteous conduct.	Reprimand	5-Day Suspension	5-Day Suspension	14-Day Suspension	14-Day Suspension	REMOVAL
13.	Making false or unfounded statements about a co-worker, supervisor, or subordinate employee.	Reprimand	5-Day Suspension	5-Day Suspension.	14-Day Suspension	14-Day Suspension	REMOVAL

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	Nature of the Offense	1 <sup>st</sup> Offense	1 <sup>st</sup> Offense	2 <sup>nd</sup> Offense	2 <sup>nd</sup> Offense	3 <sup>rd</sup> Offense	3 <sup>rd</sup> Offense
	~	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
14.	Threatening, intimidating, or other disruptive behavior.	Reprimand	REMOVAL	14-Day Suspension	REMOVAL	REMOVAL	N/A
15.	Fighting (physical altercation).	14-Day Suspension	REMOVAL	30-Day Suspension	REMOVAL	REMOVAL	N/A
16.	Possession of a firearm while on Government property, unless specifically while performing official duties.	REMOVAL	N/A	N/A	N/A	N/A	N/A
17.	Possession of any other weapon/instrument designed to inflict bodily harm/injury on others, unless specifically while performing official duties.	30-Day Suspension	REMOVAL	REMOVAL	N/A	N/A	N/A
18.	Inappropriate behavior of a sexual nature.	Reprimand	REMOVAL	14-Day Suspension	REMOVAL	REMOVAL	N/A
19.	Sleeping while on duty.	Reprimand	5-Day Suspension	5-Day Suspension	14-Day Suspension	30-Day Suspension	REMOVAL
20.	Participating in a strike, work stoppage, work slowdown, or sickout.	REMOVAL	N/A	N/A	N/A	N/A	N/A
21.	Reporting to or being on duty while exhibiting the appearance of being under the influence of alcohol;	Reprimand	10-Day Suspension	14-Day Suspension	30-Day Suspension	30-Day Suspension	REMOVAL
5	Unauthorized use of alcoholic beverages while on Government premises.	5-Day Suspension	14-Day Suspension	14-Day Suspension	30-Day Suspension	30-Day Suspension	REMOVAL
23.	Administratively confirmed positive finding under the testing portion of the Drug-Free Workplace Program (E.O. 12564 dated 9/15/86);	Reprimand	REMOVAL	REMOVAL	N/A	N/A	N/A
24.	Reporting to or being on duty while exhibiting the appearance of being under the influence of an illegal drug or controlled substance;	14-Day Suspension	REMOVAL	REMOVAL	N/A	N/A	N/A
25.	Current use of an illegal drug or misuse of a controlled substance.	30-Day Suspension	REMOVAL	REMOVAL	N/A	N/A	N/A

	Nature of the Offense	1 <sup>st</sup> Offense Minimum	1 <sup>st</sup> Offense Maximum	2 <sup>nd</sup> Offense Minimum	2 <sup>nd</sup> Offense Maximum	3 <sup>rd</sup> Offense Minimum	3 <sup>rd</sup> Offense Maximum
26.	Unauthorized possession, use, sale, or transfer of an illegal drug or controlled substance, while on Government premises or in a duty status.	REMOVAL	N/A	N/A	N/A	N/A	N/A
27	Violating the Standards of Ethical Conduct for Executive Branch Employees, and/or the Department's supplemental standards on outside activities.	Reprimand	REMOVAL	5-Day Suspension	REMOVAL	REMOVAL	₽/N
28.	Failure to follow instructions.	Reprimand	14-Day Suspension	14-Day Suspension	30-Day Suspension	30-Day Suspension	REMOVAL
29.	Deliberate refusal to carry out a proper order.	5-Day Suspension	14-Day Suspension	30-Day Suspension	REMOVAL	REMOVAL	N/A
30.	Unauthorized possession and/or removal of Government property or property of others in the workplace.	5-Day Suspension	REMOVAL	14-Day Suspension	REMOVAL	REMOVAL	N/A
31.	Actual or attempted theft of Government property	10-Day Suspension	REMOVAL	30-Day Suspension	REMOVAL	REMOVAL	N/A
32.	Failure to safe-guard confidential materials.	Reprimand	5-Day Suspension	5-Day Suspension	14-Day Suspension	30-Day Suspension	REMOVAL
33.	Loss of, damage to, destruction of, misuse or unauthorized use of Government property, records or information.	Reprimand	REMOVAL	14-Day Suspension	REMOVAL	REMOVAL	N/A
34.	Misrepresentation, falsification, or forgery in connection with official Government records or business, including, but not limited to, inquiries and investigations.	5-Day Suspension	REMOVAL	14-Day Suspension	REMOVAL	REMOVAL	N/A
35.	Misuse of official Government credentials.	5-Day Suspension	I4-Day Suspension	14-Day Suspension	30-Day Suspension	30-Day Suspension	REMOVAL
36.	Commission of a prohibited personnel practice by 5 USC 2302 by administrative, managerial, or personnel officials.	Reprimand	REMOVAL	14-Day Suspension	REMOVAL	REMOVAL	N/A

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37. Violations of EEO statutes and/or regulations at Reprimand       REMOVAL       14-Day       REMOVAL       NA         29 CFR 1614       Suspension       Removal       Suspension       REMOVAL       NA         38. Fortial to compart with any administrative messigation, inquiry, or other proceeding, including but inquiry, or other proceeding, including but anticipated administrative       REMOVAL       14-Day       REMOVAL       NA         39. Direct/encore of the proceeding, including but anticipated administrative messigation, inquiry, or other proceeding, inducting but not limited therapes are not anticipated administrative       Suspension       REMOVAL       NA       NA         39. Interference with any administrative mession and epotycinate administrative proceeding, including but not limited to EEO, OSC, MSPB, and IC proceeding, including but not limited to EEO, OSC, MSPB, and IC proceeding, including but not limited to EEO, OSC, MSPB, and IC proceeding.       Suspension       Suspension       Na       Na		Nature of the Offense	1 <sup>st</sup> Offense Minimum	1 <sup>st</sup> Offense Maximum	2 <sup>nd</sup> Offense Minimum	2 <sup>nd</sup> Offense Maximum	3 <sup>rd</sup> Offense Minimum	3 <sup>rd</sup> Offense Maximum
Reprimand     REMOVAL     14-Day     REMOVAL     REMOVAL       Suspension     Suspension     Suspension     ReMOVAL       5-Day     REMOVAL     Suspension     REMOVAL       Suspension     5-Day     REMOVAL     REMOVAL       Suspension     Suspension     Suspension       Reprimand     5-Day     Suspension     Suspension       Suspension     Suspension     Suspension     Suspension       Suspension     Suspension     Suspension     Suspension       Suspension     5-Day     Removal     Removal       Suspension     Suspension     Suspension     Suspension       Suspension     Suspension     N/A     N/A <tr< td=""><td>N 23</td><td>iolations of EEO statutes and/or regulations at ) CFR 1614</td><td>Reprimand</td><td>REMOVAL</td><td>14-Day Suspension</td><td>REMOVAL</td><td>REMOVAL</td><td>N/A</td></tr<>	N 23	iolations of EEO statutes and/or regulations at ) CFR 1614	Reprimand	REMOVAL	14-Day Suspension	REMOVAL	REMOVAL	N/A
5-Day     REMOVAL     14-Day     REMOVAL     REMOVAL       Suspension     Suspension     Suspension     ReMOVAL     REMOVAL       Reprimand     5-Day     Suspension     Suspension     Suspension       Reprimand     5-Day     5-Day     14-Day     14-Day       Suspension     Suspension     Suspension     Suspension     Suspension       5-Day     Suspension     Suspension     Suspension     Suspension       Suspension     Suspension     Suspension     Suspension     Suspension       Reprimand     5-Day     RemOVAL     Suspension     Suspension       Suspension     Suspension     Suspension     M/A     M/A	K 2.≒ ⊑ 7.9 ≥	efusal to answer questions or otherwise opperate with any administrative investigation, aquiry, or other proper proceeding, including but ot limited to EEO, OSC, MSPB, and IG roceedings (when criminal charges are not nticipated and appropriate administrative (arnings are provided).	Reprimand	REMOVAL	14-Day Suspension	REMOVAL	REMOVAL	N/A
Reprimand5-Day Suspension5-Day Suspension14-Day Suspension14-Day Suspension5-DaySuspensionSuspensionSuspensionSuspension5-DayREMOVAL30-DayREMOVALREMOVALSuspension5-DayReprimand10-Day5-DayReprimand5-DayReprimandSuspensionSuspensionSuspension5-DayReprimandSuspensionSuspensionSuspension5-DayReprimandSuspensionSuspensionSuspensionSuspensionSuspensionSuspensionSuspensionSuspensionSuspension30-DayREMOVALREMOVALSuspensionSuspensionSuspensionSuspensionSuspensionSuspensionSuspensionSuspensionSuspensionSuspensionSuspensionSuspensionSuspensionSuspensionSuspensionN/ASuspensionSuspensionN/AN/A		nterference with any administrative avestigation, inquiry, or other proper proceeding, including but not limited to EEO, SC, MSPB, and IG proceedings.	5-Day Suspension	REMOVAL	14-Day Suspension	REMOVAL	REMOVAL	NA
5-DayREMOVAL30-DayREMOVALREMOVALSuspensionSuspensionSuspensionSuspensionReprimand5-DayReprimand10-Day5-DayReprimand5-DayReprimandSuspensionSuspensionSuspensionSuspension30-DayREMOVALREMOVALSuspension30-DaySuspensionSuspension30-DAYREMOVALREMOVALN/AN/ASuspensionSuspensionSuspensionN/A		3ngaging in unauthorized gambling and/or mlawful betting while on Government premises or in a duty status.	Reprimand	5-Day Suspension	5-Day Suspension	14-Day Suspension	14-Day Suspension	REMOVAL
Reprimand5-DayReprimand10-Day5-DaySuspensionSuspensionSuspensionSuspensionSuspension5-DayREMOVAL30-DayREMOVALREMOVALSuspensionSuspensionSuspensionSuspension30-DAYREMOVALREMOVALN/ASuspensionSuspensionN/A	щщ	'ailure to timely file federal and/or state and ocal tax returns.	5-Day Suspension	REMOVAL	30-Day Suspension	REMOVAL	REMOVAL	N/A
on 5-Day REMOVAL 30-Day REMOVAL REMOVAL REMOVAL Suspension ve 30-Day REMOVAL REMOVAL NIA N/A N/A N/A N/A		Lack of good faith in paying just financial obligations, such as failure without good cause to make or to live up to arrangements to pay a debt that the employee admits he/she owes or that is supported by court judgment;	Reprimand	5-Day Suspension	Reprimand	10-Day Suspension	5-Day Suspension	REMOVAL
30-DAY REMOVAL REMOVAL N/A N/A Suspension	H 1 0 -	<sup>a</sup> ailure to pay a tax or other financial obligation o the U.S. Government or to a State or local Jovernment, and/or failure to make and/ or live up to arrangements to pay such debts.	5-Day Suspension	REMOVAL	30-Day Suspension	REMOVAL	REMOVAL	N/A
		Visuse of government owned or government eased vehicle (31 USC 1349).	30-DAY Suspension	REMOVAL	REMOVAL	N/A	N/A	N/A

<ol> <li>Violating traffic regulations or reckless drivi or improper operation of motor vehicle (Priv Owned Vehicle), while on duty.</li> <li>Failure to observe precaution for personal sa posted rules, signs, written or verbal safety instructions.</li> <li>Failure to report potentially serious personal injury or accident that occurred while on dut Government.</li> <li>Abuse of position.</li> <li>Abuse of position.</li> <li>Accepting a bribe, soliciting a bribe; misuse position.</li> <li>Failure to report a bribe or attempted bribe.</li> <li>Failure to report a bribe or attempted bribe.</li> </ol>		Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
	Violating traffic regulations or reckless driving, or improper operation of motor vehicle (Privately Owned Vehicle (POV) or Government Owned or leased vehicle), while on duty.	Reprimand	10-Day Suspension	5-Day Suspension	30-Day Suspension	14-Day Suspension	REMOVAL
	Failure to observe precaution for personal safety, posted rules, signs, written or verbal safety instructions.	Reprimand	10-Day Suspension	10-Day Suspension	14-Day Suspension	14-Day Suspension	REMOVAL
	Failure to report potentially serious personal injury or accident that occurred while on duty.	Reprimand	5-Day Suspension	5-Day Suspension	10-Day Suspension	10-Day Suspension	14-Day Suspension
	to the Federal	Reprimand	REMOVAL	5-Day Suspension	REMOVAL	REMOVAL	N/A
		Reprimand	REMOVAL	5-Day Suspension	REMOVAL	REMOVAL	N/A
	Accepting a bribe; soliciting a bribe; misuse of position.	Reprimand	REMOVAL	5-Day Suspension	REMOVAL	REMOVAL	N/A
	e or attempted bribe.	Reprimand	REMOVAL	5-Day Suspension	REMOVAL	REMOVAL	N/A
	Federal employee.	Reprimand	REMOVAL	5-Day Suspension	REMOVAL	REMOVAL	N/A
53. Accepting a gift from a prohibited source; soliciting a gift from a prohibited source.	prohibited source; prohibited source.	Reprimand	REMOVAL	5-Day Suspension	REMOVAL	REMOVAL	N/A
54. Lack of candor.		Reprimand	5-Day Suspension	5-Day Suspension	14-Day Suspension	14-Day Suspension	REMOVAL

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### United States Senate

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS WASHINGTON, DC 20510–6300

DAVID P. CLEARY, STAFF DIRECTOR EVAN SCHATZ, DEMOCRATIC STAFF DIRECTOR

http://help.senate.gov

January 30, 2018

The Honorable Alex Azar Secretary U.S. Department of Health and Human Services 200 Independence Avenue, SW Washington, DC 20201

Dear Secretary Azar:

We write to you with deep concern regarding harassment in the workplace and to obtain information on what you are doing to address the issue within your agency. As you are well aware, workplace harassment is not a new issue that workers face; it is pervasive, systemic, and unacceptable. Recently, many brave women and men have spoken out to shed light on sexual harassment across the country. Women, in particular, have answered the call and their voices are leading the way in demanding change and equality—often taking great risk to speak out for the first time, and their voices are making a difference. As the head of a federal agency employing thousands of people, you can play a critical role in establishing and modeling safe work environments for all workers, and we hope you will do so.

Workplace sexual harassment is all too common, including in the federal government. According to the Equal Employment Opportunity Commission (EEOC)'s Task Force on Sexual Harassment in the Workplace report, an estimated 60 percent of women across our nation's workforce experience unwanted sexual attention, sexual coercion, sexually crude conduct, or sexist comments in the workplace.<sup>1</sup> In fiscal year 2015, the EEOC received 6,741 complaints from federal employees alleging harassment.<sup>2</sup> Forty-four percent of these complaints were on the basis of sex.<sup>3</sup> At the Department of Health Human Services (HHS) specifically, there were 77 complaints of sexual harassment from 2012-2016.<sup>4</sup> While these numbers are very concerning, they do not come close to holistically capturing the scope of the problem as harassment is vastly underreported. The EEOC estimates that on average 87 to 94 percent of people never file a formal legal charge, and 70 percent of employees never file a complaint internally.<sup>5</sup>

All executive branch employees, including HHS employees, are protected from workplace sexual harassment under Title VII of the Civil Rights Act of 1964. Federal government employees are also

<sup>&</sup>lt;sup>1</sup> Chai R. Feldblum & Victoria A. Lipnic, *Select Task Force on the Study of Harassment in the Workplace: Report of the Co-Chairs*, U.S. Equal Employment Opportunity Commission 9 (June 2016), https://www.eeoc.gov/eeoc/task force/harassment/upload/report.pdf.

<sup>&</sup>lt;sup>2</sup> Feldblum & Lipnic at 6.

<sup>&</sup>lt;sup>3</sup> Feldblum & Lipnic at 7.

<sup>&</sup>lt;sup>4</sup> See U.S. Department of Health and Human Services, *Equal Employment Opportunity Data Posted Pursuant to the No Fear Act for HHS (and Below)* 2, https://www.hhs.gov/sites/default/files/fy16q3-hhs-no-fear-report.pdf.

<sup>&</sup>lt;sup>5</sup> Feldblum & Lipnic at 16.

protected from workplace sexual harassment under federal employment anti-discrimination laws.<sup>6</sup> As head of HHS, your leadership is critical to ensure a harassment-free workplace and equal employment opportunities for HHS employees.

As such, we are interested in the ongoing discussions, plans, and actions within the Department aimed at protecting employees and establishing a safe working environment free from harassment. We request a briefing about the ways in which the Department is addressing this issue and to discuss any suggestions you may have about how to strengthen and improve legal protections and processes in the workplace. Additionally, we request the following information by no later than February 13, 2018:

- 1. Descriptions, charters, and rosters of Department policy, or working groups, or taskforces on the issue of harassment;
- 2. A copy of the Department's non-discrimination policy;
- 3. A copy of the Department's policy regarding anti-harassment training, a listing of the annual occurrences of such trainings, the curriculum used in the trainings, and a description of other types of trainings related to harassment offered at the Department, including but not limited to bystander intervention training;
- 4. A copy of the Department's contracts with companies conducting training related to harassment;
- 5. A copy of the Department's dispute resolution process and policies;
- 6. A copy of the Department's Table of Penalties, outlining the Department's recommended disciplinary actions for personnel misconduct;
- 7. The total cost and number of harassment settlements made during FY2013, FY2014, FY2015, FY2016, and FY2017; and
- 8. A description of any other efforts the Department undertakes to assess and address workplace harassment.

We all have a great deal of work to do to address harassment in the workplace. We appreciate you taking this matter seriously and providing full and prompt responses. If you have any questions regarding my inquiries you can contact Carly Rush or Laurel Sakai at 202-224-0767 with Senator Murray's Health, Education, Labor, and Pensions Committee Staff.

Sincerely,

United States Senator

Bal Sanda

Bernard Sanders United States Senator

<sup>&</sup>lt;sup>6</sup> See 42 U.S.C. §2000e-16(a)-(b) (prohibiting discriminatory practices for federal employees and providing for enforcement by the Equal Employment Opportunity Commission); see generally 29 C.F.R. §1614 (establishing procedural regulations for enforcement of complaints from federal sector employees).

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Robert P. Casey, Jr. United States Senator

Tammy Baldwin United States Senator

Elizabeth Warren United States Senator

Margaret Wood Hassan United States Senator

Doug Jones

United States Senator

Miny F. B

Michael F. Bennet United States Senator

Christopher S. Murphy United States Senator

Tim Kaine United States Senator

Tina Smith United States Senator



Assistant Secretary for Legislation Washington, D.C. 20201

March 16, 2018

The Honorable Patty Murray Ranking Member United States Senate Committee on Health, Education, Labor and Pensions Washington, D.C. 20510

Dear Ranking Member Murray:

This is in response to your letter of January 30, 2018, regarding harassment in the workplace and what the Department of Health and Human Services (HHS) is doing to provide a safe working environment for employees.

By way of background, HHS is comprised of the Office of the Secretary (OS) and several Operating Divisions:

- Administration for Children and Families (ACF)
- Centers for Disease Control and Prevention (CDC)
- Centers for Medicare and Medicaid Services (CMS)
- Food and Drug Administration (FDA)
- Health Resources and Services Administration (HRSA)
- Indian Health Service (IHS)
- National Institutes of Health (NIH)
- Office of the Secretary (OS)

The approach we have taken to address the many inquiries your letter raised is to respond to each of the eight requests for information, pursuant to the ways in which Operating Divisions are addressing the very important issue of harassment in the workplace:

### Request 1: Descriptions, charters, and rosters of Department policy, or working groups, or taskforces on the issue of harassment.

In 2011, CMS established a Prevention of Workplace Harassment Team to focus on harassment prevention within the organization. The Team is responsible for receiving allegations of harassment, determining appropriate investigation methods, managing the investigatory process, coordinating with the management decision-making entity (Office of Human Capital), educating customers, and record-keeping.

NIH takes its responsibility seriously to prevent and correct discriminatory workplace harassment. NIH has a working group led by Dr. Lawrence Tabak, NIH Principal Deputy Director. The group is comprised of the Deputy Director for Management, Director of the Office of Human Resources, Director of the Office of Scientific Workforce Diversity, Director of the Office of Equity, Diversity, and Inclusion, Deputy Director of Intramural Research, and the Deputy Director of Extramural Research to craft a newly revised NIH Harassment Prevention Policy and other pertinent policies and procedures. The working group also consists of representatives of the Women in Science Advisory Group, Academy of Scientists, NIH Executive Officers, and other pertinent stakeholders. This working group has an established SharePoint site where documents can be posted and information shared among members of the team. A draft of a Non-Consensual Relationship policy statement has been drafted and is being reviewed for approval. This will prohibit intimate relationships between subordinate employees and their supervisors. It will be later developed into an NIH policy. A revised NIH Anti-Harassment policy with companion procedures is being drafted as well.

OS is establishing a working group to review efforts to prevent and properly resolve all forms of harassment to include sexual harassment.

### Request 2: A copy of the Department's Non-Discrimination Policy.

Attachment 1 to this letter contains a memorandum from former Secretary Sylvia M. Burwell to all Department employees discussing equal employment opportunity, anti-harassment, and diversity policy.

# Request 3: A copy of the Department's policy regarding anti-harassment training, a listing of the annual occurrences of such trainings, the curriculum used in the trainings, and a description of other types of training related to harassment offered at the Department, including but not limited to bystander intervention training.

ACF is planning a two hour training for Supervisors and Managers that will address all forms of harassment, including sexual harassment. This training will be conducted by the Equal Employment Opportunity Commission. In March and April of this year, ACF will feature a two hour training for all ACF staff that will address all forms of harassment, including sexual harassment. In addition, ACF will conduct a 90 minutes session for leadership on harassment. These sessions will be conducted by a contractor.

CDC's Policy Statements on the Prevention of Sexual Harassment and Harassment are posted on the Office of Equal Employment Opportunity website. CDC also created training modules inhouse to cover effectively addressing harassment and bullying in the workplace as well as sexual harassment prevention. These courses are designed to be two-hours in length. There is a supervisory and non-supervisory version of each course. The courses include definitions, scenarios, and information about what to do if experiencing these behaviors, and roles and responsibilities of management. These courses are typically offered upon request.

There are also shorter lunch and learn training sessions offered throughout the year that cover topics like prevention of sexual harassment, workplace bullying, and hostile work environments. These courses were identified through the Learning Management System that address the subject of harassment. The course titles, along with the number of participants who have taken the training, are listed below. Attachment 2 contains CDC's count of courses completed.

CMS covers harassment during all new employee orientation sessions. In addition, all new managers are required to complete a course entitled, "Leadership in Context (LinC)," which provides the legal framework for managerial responsibilities. During LinC, managers participate in a module that addresses the prevention of and response to harassment in the workplace.

FDA covers harassment in the FDA Compliance Training. FDA is working on an annual training for supervisors that will be located in the Department's Learning Management System (LMS).

HRSA is currently developing a comprehensive training on sexual harassment and is considering making said training mandatory for all employees (both managers and non-managers). In addition, HRSA is developing training on the EEO process in order to further educate its employees on their rights and the process available to them.

IHS offers training to three Service Units (South Dakota). In June 2017 through December 2017, IHS conducted Prevention on Workplace Harassment for employees at HQ and several Service Units (North Dakota and South Dakota) of which one was a webinar. In August 2017, IHS conducted Sexual Harassment Training for one service unit in Browning, MT.

At OS, the Department features several online Training Modules in its LMS and includes Anti-Harassment within the required No FEAR Training. Attachment 3 describes HHS workplace anti-harassment training as well.

For the past decade, NIH has required all staff to complete mandatory NIH Prevention of Sexual Harassment (POSH) Training as well as the annual NoFEAR Act Training. There are live courses as well as online courses available to satisfy these mandatory briefings. Pursuant to the NoFEAR Act, each NIH employee is required to take the NoFEAR Act training within 90 days of coming on board to the NIH and then every two years subsequent to their arrival. The online courses cover all forms of discriminatory workplace harassment, both sexual and non-sexual and it offers rights and responsibilities to employees of the NIH. The courses provide insight on how to report discriminatory harassing behavior, what to do if you observe the inappropriate behavior, and it offers managers instructions on their prompt and immediate response to such allegations.

For the past five years, the NIH Office of Equity, Diversity, and Inclusion (EDI) has provided a four-hour live training offering called EEO Compliance Training which also satisfies the POSH and NoFEAR requirements. This course describes all forms of discriminatory harassment to include sexual and non-sexual harassment based on any protected category. In addition, it offers methods to prevent and cure any discriminatory harassment that is reported or observed. It instructs employees about how to report discriminatory harassment and it informs managers of their obligation to act quickly to correct and cure any discriminatory harassing behavior. This is a highly interactive training course with video scenarios, case studies, and facilitated Q and A.

In addition to the EEO Compliance Training, two years ago NIH EDI procured and several staff members were certified to facilitate CIVIL Treatment Training, which covers behaviors

encompassing discriminatory workplace harassment. We offer this as a three-hour module to NIH employees with a separate module for NIH managers and supervisors. This training module comes with a presenter's manual, participant manual, and desk-top reference materials. It is video-based training with pre-taped scenarios and it is highly interactive training that addresses discriminatory harassment and it offers methods to respond to and address such behaviors in the workplace.

And, as a compliment to the live EEO Compliance Training and the CIVIL Treatment Harassment Training, NIH EDI has procured desk reference materials on discriminatory workplace harassment, each participant of the NIH EDI training offering receives a copy of the annual EEO Policy Statement, and the NIH's workplace harassment policy.

Finally, HRSA is in the process of developing a sexual harassment training program.

### Request 4: A copy of the Department's contracts with companies conducting training related to harassment.

ACF is seeking bids for the contracted training sessions planned for spring 2018.

CDC does not have any current contracts with companies to conduct harassment training; but has worked with the following vendors that provide training on this subject:

- Federal Employment Law Training Group-Sexual Harassment Prevention in the Federal Workplace. The training provided the definition of sexual harassment, circumstances that constitute harassment, roles in harassment, same-sex harassment, strategies for prevention, and how the agency should respond to allegations of sexual harassment.
- Employment Learning Innovations, Inc. (ELI) Civil Treatment for Managers. This course covered harassment and emphasized management's roles and responsibilities for ensuring that the workplace is civil and free from harassment and other types of discriminatory practices.

CMS does not currently have a contract to deliver this training, but has used a contractor in the past. CMS is currently negotiating with the Federal Mediation and Conciliation Service to deliver Prevention of Sexual Harassment training to the entire organization. The mandatory training will launch in the spring of 2018.

HRSA does not currently have contracts with companies to conduct harassment training. HRSA is considering purchasing harassment training from a contractor in the near future.

IHS conducts its own training and does not currently have any contracts.

OS does not currently have any contracts with companies to conduct training related to harassment.

Request 5: A copy of the Department's dispute resolution process and policies.

Attachment 4 contains the Mandatory Mediation EEO Manual and Federal Register Use of Alternative Dispute Resolution.

Request 6: A copy of the Department's Table of Penalties, outlining the Department's recommended disciplinary actions for personnel misconduct.

Attachment 7 contains the Department's Table of Penalties.

### Request 7: The total cost and number of harassment settlements made during FY2013, FY2014, FY2015, FY2016, and FY2017.

Attachment 5 contains the cost and number of harassment settlements.



## Request 8: A description of any other efforts the Department undertakes to assess and address workplace harassment.

FDA engages with the Employee Resource Groups and affinity groups and conducts regular training sessions for management, supervisors and employees.

The Director of HRSA's Office of Civil Rights, Diversity and Inclusion (OCRDI) briefed the senior leadership at HRSA on sexual harassment in December 2017. The briefing included a discussion of the law, the agency's process for addressing harassment complaints, and a summary of best management practices to prevent harassment in the workplace.

HRSA issues an EEO/Anti-harassment policy statement each year that announces HRSA's "zero tolerance" policy with respect to harassment, defines harassment, including sexual harassment, and identifies the process and resources available to employees who allege harassment.

HRSA conducts an EEO Compliant Trend Analysis. HRSA, through OCRDI, conducts periodic EEO compliant trend analysis to determine whether systemic patterns of discrimination, including harassment, exist in the workplace. These findings are communicated to agency leadership. If discriminatory trends are identified, remedial plans are developed.

HRSA conducts New Employee Orientation (NEO) and other EEO training: Every new HRSA employee is required to attend NEO. In each NEO session, HRSA trains new employees on the EEO process, which includes a segment on anti-harassment. In addition, HRSA frequently conducts numerous EEO-related trainings. In these trainings, anti-harassment procedures and policies are frequently discussed.

Upon receipt of a sexual harassment or harassment claim, IHS conducts a Management Inquiry. Upon completion of the investigation, a recommendation is made to the Area Director. IHS provides ongoing training and the Senior Leadership (Deputy Director and Area Office Directors) disseminates Sexual Harassment and Prevention of Workplace Harassment every year.

CDC's policy on prohibiting sexual harassment follows what is outlined in the merit system principles of the Civil Service Reform Act of 1978, and what is specifically prohibited by Title VII of the Civil Rights Act of 1964. One tool CDC utilizes is the Federal Employee Viewpoint Survey (FEVS) to assess the workplace climate. Specifically, FEVS questions 17, 37 and 38 measure employee perceptions on Merit System Principals and Prohibited Personnel Practices. CDC shows strengths (65 percent positive response) in all three questions. In 2017, CDC EVS results showed a 1.7 percent, 2.3 percent, and 2.7 percent point increase in positive responses for FEVS #17, #37 and #38 respectively. This information is contained in Attachment 6.

Under the auspices of CDC's Labor Management Partnership Council (LMPC), anti-bullying guidance was developed and broadly publicized throughout the agency. The guidance included a definition and examples of bullying, information about what employees can do if they feel bullied, management's roles and responsibilities when responding to allegations of bullies, as well as the associated disciplinary action. A flowchart, titled, "CDC/ATSDR Bullying/Workplace Harassment Options," was also included in the guidance. This information is posted on the Office of Human Resources (OHR) webpage. The OHR, the EEO and the Employee Assistance Program (EAP) captured incidents of harassment and bullying and developed a biennial report that was submitted to the LMPC. OHR and EEO took turns developing the report. To date, two reports have been submitted (calendar years 2015 and 2016).

CDC also encourages managers to have an open-door atmosphere that encourages staff to communicate their concerns.

The CMS Prevention of Workplace Harassment Team reviews data for trends which need to be brought to the attention of Agency leadership. CMS is also developing a guide and toolkit to assist managers in setting the appropriate workplace tone and appropriately responding to allegations of sexual harassment. Agency executives were briefed on the prevention of sexual harassment in December 2017, and all managers will receive a briefing in February 2018.

# [The Committee] would also like to know about any ongoing discussions, plans and actions within HHS aimed at establishing a safe working environment for our employees, free from harassment.

CMS issues an annual policy statement addressing the prevention of harassment in the workplace. The CMS policy is very broad, covering more than the protected EEO bases. The goal is to prevent or limit inappropriate behavior before it rises to the level of a legal violation. The policy statement defines conduct that is covered under the policy statement, describes roles and responsibilities, outlines reporting instructions, and communicates the role of the neutral

third-party contracting firm hired to accept reports of harassing behaviors (intake) and conduct investigations.

As part of the effort of the working group described in NIH's response to Request 1, NIH is creating a centralized workplace harassment program which will be located in the OHR, Civil Program Office. Currently all NIH employees who witness or experience discriminatory harassment are referred to the Civil Office where their concern is triaged and a determination is made whether an administrative inquiry is required. Civil is in the process of putting in place a centralized contract vehicle for administrative inquiries. This will be a blanket purchase agreement to get investigators on sight quickly to look into allegations of workplace harassment. In addition, Civil is working to put a contract vehicle in place for a workplace harassment hotline where NIH employees can call anonymously or with their name to raise concerns regarding workplace harassment. Currently, the Civil hotline is used by employees who wish to raise concerns regarding discriminatory harassment. This Civil hotline is staffed by federal employees. NIH is contemplating a switch to a contractor staffed hotline which may give victims a feeling of security and confidentiality in raising concerns regarding workplace harassment.

Also, NIH will administer a survey of all NIH federal employees, contractors, fellows, and trainees to investigate the prevalence and severity of workplace and sexual harassment within NIH and its potential effect on careers. All staff will be strongly encouraged to take this important survey when it is issued in 2018. The survey results will provide information that NIH leaders will use to plan and implement any further policy changes that may be needed. Further, the results will give us the basis to launch a campaign to raise awareness of workplace harassment and guide new training strategies. These efforts are crucial to NIH retain talented individuals in science and in the workforce.

In conclusion, the Department takes protecting our employees against workplace harassment seriously, and looks forward to discussing this matter with the Committee.



Assistant Secretary for Legislation

Enclosures:

Tab 1 – EEO Anti-Harassment & Diversity Policy Statement

Tab 2 - CDC Count of Harassment Courses by Year

Tab 3 – HHS Workplace Harassment Training

Tab 4 – Mandatory Mediation EEO Manual (Excerpt) and Federal Register Use of Alternative Dispute Resolution

Tab 5 – Cost & Number of Harassment Settlements

Tab 6 – CDC Federal Employee Viewpoint Survey

cc: The Honorable Patty Murray The Honorable Bernard Sanders The Honorable Robert P. Casey, Jr. The Honorable Michael F. Bennet The Honorable Tammy Baldwin The Honorable Christopher S. Murphy The Honorable Elizabeth Warren The Honorable Tim Kaine The Honorable Margaret Wood Hassan The Honorable Tina Smith The Honorable Doug Jones

# Attachment 1

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### THE SECRETARY OF HEALTH AND HUMAN SERVICES WASHINGTON, D.C. 20201

### TO: All HHS Employees

SUBJECT: Equal Employment Opportunity, Anti-Harassment and Diversity Policy Statement

The mission of the Department of Health and Human Services (HHS) is to protect the health of all Americans and provide essential human services, especially for those who are least able to help themselves. Fundamental to our mission is our obligation to honor the diversity of our workforce and ensure all employees are treated with respect and dignity.

I fully understand and support the value of diversity in improving organizational efficiency and effectiveness. I intend to promote a climate of innovation, opportunity, and success within the Department that capitalizes on the cultural, professional, and personal diversity of our workforce. Additionally, I am equally committed to the full and meaningful implementation of Equal Employment Opportunity (EEO) policies for all HHS employees and applicants. My aim is to ensure HHS embodies a model organization committed to preventing, stopping and remedying all forms of discrimination or harassment that occur in our workplace.

I expect an environment across HHS, free of discrimination and any form of harassment, where all employees may work without fear of reprisal; where qualified employees and applicants with disabilities receive reasonable accommodations so they can be successful at their work; and where all employees are recognized for their individual performance and contributions to HHS.

HHS employees are protected by federal laws, Presidential Executive Orders, and other directives and policies banning discrimination and harassment on the basis of race, color, religion, sex (including sexual harassment, pregnancy and gender identity), national origin, age (40 years of age or over), disability (physical and mental), family medical history or genetic information. Though not within the purview of EEO, it also is HHS policy to prohibit discrimination based on political affiliation, sexual orientation, status as a parent, marital status, military service or any other non-merit based factor. These protections extend to all management practices and decisions, including recruitment and hiring practices, appraisal systems, promotions, training and career development programs.

All employees, including supervisors and other management personnel, are expected to respond appropriately to allegations of harassment and are required to uphold governing laws and our policy. To that end, managers and supervisors will complete periodic required training to ensure they clearly understand their role and responsibility in addressing and eliminating all forms of harassment. Employees who believe they are experiencing unlawful discrimination or harassment should bring their concerns to the attention of their supervisor, a member of their management team, or to their servicing EEO office. Additionally, retaliation in any form against an employee who reports unlawful discrimination or harassment is strictly prohibited. All employees and applicants must be able to exercise their right to elect the EEO process, oppose discriminatory practices, and engage in whistleblowing or exercise any other appeal right provided by law without fear of retaliation.

I fully expect all employees and supervisors to abide by this policy and to strive to meet our overarching goal to be a model organization committed to innovation, opportunity, and success. With your support and participation, we can ensure that workforce diversity and equal opportunity are two of our greatest strengths.

YMR

Sylvia M. Burwell

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# Attachment 2

Centers for Disease Control and Prevention CDC 24/7: Saving Lives, Protecting People™

### CDC Equal Employment Opportunity

### **On This Page**

- What is Equal Employment Opportunity?
- EEO Mission
- EEO Vision Statement
- · Policy Statement
- EEO Contact



The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) is committed to a policy of nondiscrimination in all personnel practices to ensure equal opportunity for employment, promotion, and training for all segments of the workforce. The Office of Equal Employment Opportunity promotes CDC/ATSDR's policies through increasing awareness about Equal Employment Opportunity (EEO) in the workplace.

### What is Equal Employment Opportunity?

Equal Employment Opportunity is a principle that asserts that all people should have the right to work and advance on the bases of merit and ability, regardless of their race, sex, color, religion, disability, national origin, or age.

Page 1 of 3

### **EEO Mission**

Our mission is to eradicate employment discrimination, improve diversity in the workplace, and create an environment where all CDC employees are valued, respected, and free to develop and perform to their fullest potential.

### **EEO Vision Statement**

To build A Model Equal Employment Opportunity (EEO) and Diversity Program that

- Demonstrates Commitment from Agency Leadership
- Integrates EEO into the Agency 's Strategic Mission
- Ensures management and program accountability
- · Is Efficient
- · Is proactive in preventing of unlawful discrimination
- Ensures Responsiveness and legal compliance

### **Policy Statement**

The Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) is committed to a policy of nondiscrimination in all personnel practices to ensure equal opportunity for employment, promotion, and training for all segments of the workforce. The Affirmative Employment Program (AEP) is an integral part of the Equal Employment Opportunity program. The AEP was created to achieve the goals of a workforce that represents our diverse population and to recruit, place, and retain women, minorities, and persons with disabilities.

### **EEO Contact**

- EEO Hotline:
- Office of Equal Employment Opportunity 1600 Clifton Rd, NE Atlanta, GA 30333 Mail stop K-83

Top of Page

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### **Get Email Updates**

To receive email updates about this page, enter your email address:

What's this? (http://www.cdc.gov/emailupdates/)

Page last reviewed: November 15, 2017

Page last updated: November 15, 2017

Content source: Centers for Disease Control and Prevention (/index.htm), Office of Equal Employment Opportunity (/eeo/index.htm)

# Attachment 3

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### Department of Health and Human Services - Online Harassment Training

COMPLIANCE IMPACT: Harassment - It's No Joke (\_PC\_BI\_LCBI016, Version:2.2)

It's everyone's responsibility to keep harassment out of the workplace. Whether you're the victim or a witness, it's important that you report any incident, no matter how seemingly slight. But rep ...

COMPLIANCE IMPACT: Harassment - Handling the Complaint (\_PC\_BI\_LCBI017, Version:2.2)

As a manager, it's important to take seriously any harassment complaint you receive. But responding to harassment isn't always easy. This Compliance Impact explores the right way – and the wrong w ....



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Workplace Harassment Prevention for Managers (LCH\_01\_A17\_LC\_ENUS, Version:2.2)

Typically, when people hear the term workplace harassment, they think of sexual harassment. But that is just one of the many forms workplace harassment may take. Unlawful harassment is any form of \_\_\_\_\_

### Sexual Harassment Prevention for Employees (LCH\_01\_A16\_LC\_ENUS, Version:2.2)

Sexual harassment can have a disastrous impact on victims, offenders, and the company in which the offenses occur. Training employees in the essentials of prohibited conduct is an important part of ....

Workplace Harassment Prevention for Frontline Supervisors (LCH\_01\_A26\_LC\_ENUS, Version:1)

Typically, when people hear the term workplace harassment, they think of sexual harassment. But that is just one of the many forms workplace harassment may take. Unlawful harassment is any form of \_\_\_\_\_

Offered As: Online Training Price: 0.00 USD

Language: English

Sexual Harassment Prevention for Federal Managers (FGOV\_01\_A29\_LC\_ENUS, Version:2.2)

Federal managers and supervisors have an important role in building and maintaining a workplace where employees can thrive. Among other things, this means being prepared to take action in response ....

Offered As: Online Training Price: 0.00 USD

Language: English

Preventing Harassment and Violence in the Canadian Workplace (LCH\_01\_A21\_LC\_ENUS, Version:2.2)

In recent years, high profile incidents of workplace harassment and violence have heightened employee and employer concerns about safety in the workplace. While the incidents you hear about are oft ....



It's everyone's responsibility to keep harassment out of the workplace. Whether you're the victim or a witness, it's important that you report any incident, no matter how seemingly slight. But rep ...

Language: English Price: 0.00 USD

Workplace Harassment Prevention for Workers (LCH\_01\_A28\_LC\_ENUS, Version: 1)

Harassment at work can have a corrosive effect on an organization's culture and can lead to low employee morale, reduced productivity, and even individual or criminal liability. Focusing on the for ....

Language: English Price: 0.00 USD

Workplace Harassment for Employees (LCH\_01\_A11\_LC\_ENUS, Version: 2.2)

Harassment at work can have a corrosive effect on an organization's culture and can lead to low employee morale, reduced productivity, and even criminal liability. Focusing on the forms of harassment ....

Workplace Harassment Prevention for Managers (LCH\_01\_A17\_LC\_ENUS, Version: 2.2)

Typically, when people hear the term workplace harassment, they think of sexual harassment. But that is just one of the many forms workplace harassment may take. Unlawful harassment is any form of \_\_\_\_\_

Language: English Price: 0.00 USD

Sexual Harassment Prevention for Employees (LCH\_01\_A16\_LC\_ENUS, Version: 2.2)

Sexual harassment can have a disastrous impact on victims, offenders, and the company in which the offenses occur. Training employees in the essentials of prohibited conduct is an important part of ...

Language: English Price: 0.00 USD

COMPLIANCE EXPERT: Harassment and Retaliation (\_PC\_BI\_LCBI027, Version: 1)

Harassment and retaliation are unwelcome, and in some cases unlawful, adverse actions taken against an employee for engaging in some type of protected activity. In this Compliance Expert Impact, We ...

Language: English Price: 0.00 USD

COMPLIANCE EXPERT: Harassment - A Case Study for Managers (\_PC\_BI\_LCBI030, Version:1)

Harassment in the workplace isn't always cut and dry. In some instances, it isn't clear whether the victim's perceptions are accurate or the perpetrator's actions intentionally offensive. In this C ....

Offered As: Online Training Price: 0.00 USD

Language: English

Workplace Harassment Prevention for Managers – Version 3.0 (LCH\_01\_A25\_LC\_ENUS, Version:1)

Discrimination and harassment at work can have a corrosive effect on an organization's culture and can lead to low employee morale, reduced productivity, and even criminal liability. This course wi ...



Harassment Prevention for Employees - Higher Education Edition (LCH\_01\_A12\_LC\_ENUS, Version:2.2)

Harassment at work can have a corrosive effect on an educational institution's culture and can lead to low associate morale, reduced productivity, and even criminal liability. Focusing on the forms ...

### Department of Health and Human Services - Online Harassment Training

### Harassment Prevention for Managers - Higher Education Edition (LCH\_01\_A13\_LC\_ENUS, Version:2.2)

Typically, when people hear the term 'workplace harassment' they think of sexual harassment. But that is just one of the many forms workplace harassment may take. Unlawful harassment is any form of ...

Offered As: Online Training Price: 0.00 USD

Language: English



Harassment at work can have a corrosive effect on a public employer's culture and can lead to low employee morale, reduced productivity, and even criminal liability. Focusing on the forms of harass ...

Offered As: Online Training Price: 0.00 USD

Language: English

Workplace Harassment Prevention for Employees, version 2.0 (LCH\_01\_A22\_LC\_ENUS, Version:2.2)

Harassment at work can have a corrosive effect on an organization's culture and can lead to low employee morale, reduced productivity, and even criminal liability. Focusing on the forms of harassment ...

Offered As: Online Training Price: 0.00 USD

Language: English

COMPLIANCE EXPERT: Harassment - A Case Study (\_PC\_BI\_LCBI028, Version: 1)

Harassment in the workplace isn't always cut and dry. In some instances, it isn't clear whether the victim's perceptions are accurate or the perpetrator's actions intentionally offensive. In this C ...

Language: English Price: 0.00 USD



Preventing Harassment and Violence in the Canadian Workplace (LCH\_01\_A21\_LC\_ENUS, Version: 2.2)

In recent years, high profile incidents of workplace harassment and violence have heightened employee and employer concerns about safety in the workplace. While the incidents you hear about are oft ...

Language: English Price: 0.00 USD



Typically, when people hear the term workplace harassment, they think of sexual harassment. But that is just one of the many forms workplace harassment may take. Unlawful harassment is any form of ....

Language: English Price: 0.00 USD



Federal managers and supervisors have an important role in building and maintaining a workplace where employees can thrive. Among other things, this means being prepared to take action in response ...

Language: English Price: 0.00 USD

#### Sexual Harassment Prevention for Federal Employees (FGOV\_01\_A19\_LC\_ENUS, Version: 2.2)

Sexual harassment can have disastrous effects on victims and organizations, including federal government agencies. This course helps employees define and identify sexual harassment, become familiar ...

Language: English Price: 0.00 USD



Harassment and discrimination can have a very negative impact on an organization's work environment and enormous personal consequences to those involved. Managers and supervisors have a responsibility ...

Offered As: Online Training Price: 0.00 USD

Language: English

Preventing Harassment in the Global Workplace - Manager Edition (LCH\_01\_A19\_LC\_ENUS, Version:2.2)

As a manager, you play a vital role in supporting your company's efforts to create a workplace defined by respectful and professional interaction between employees. This includes not only preventing ...



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Workplace Harassment for Supervisors and Managers – Multi-State Edition (LCH\_01\_A08\_LC\_ENUS, Version:2.2)

Harassment of any type can have a very negative impact on an organization's work environment. Managers and supervisors have a

responsibility to both their employees and their company to know their ...

Offered As: Online Training Price: 0.00 USD

Language: English

### Harassment Prevention for Managers - State and Local Government Sector Edition (LCH\_01\_A15\_LC\_ENUS, Version:2.2)

Typically, when people hear the term 'workplace harassment' they think of sexual harassment. But that is just one of the many forms workplace harassment may take. Unlawful harassment is any form of ...

Offered As: Online Training Price: 0.00 USD

Language: English

COMPLIANCE EXPERT: Harassment - A Case Study for Managers (\_PC\_BI\_LCBI030, Version: 1)

Harassment in the workplace isn't always cut and dry. In some instances, it isn't clear whether the victim's perceptions are accurate or the perpetrator's actions intentionally offensive. In this Course ...

Language: English Price: 0.00 USD

#### Workplace Harassment Prevention for Managers - Version 3.0 (LCH\_01\_A25\_LC\_ENUS, Version: 1)

Discrimination and harassment at work can have a corrosive effect on an organization's culture and can lead to low employee morale, reduced productivity, and even criminal liability. This course will ...

Language: English Price: 0.00 USD

#### Harassment Prevention for Employees - Higher Education Edition (LCH\_01\_A12\_LC\_ENUS, Version: 2.2)

Harassment at work can have a corrosive effect on an educational institution's culture and can lead to low associate morale, reduced productivity, and even criminal liability. Focusing on the forms ...

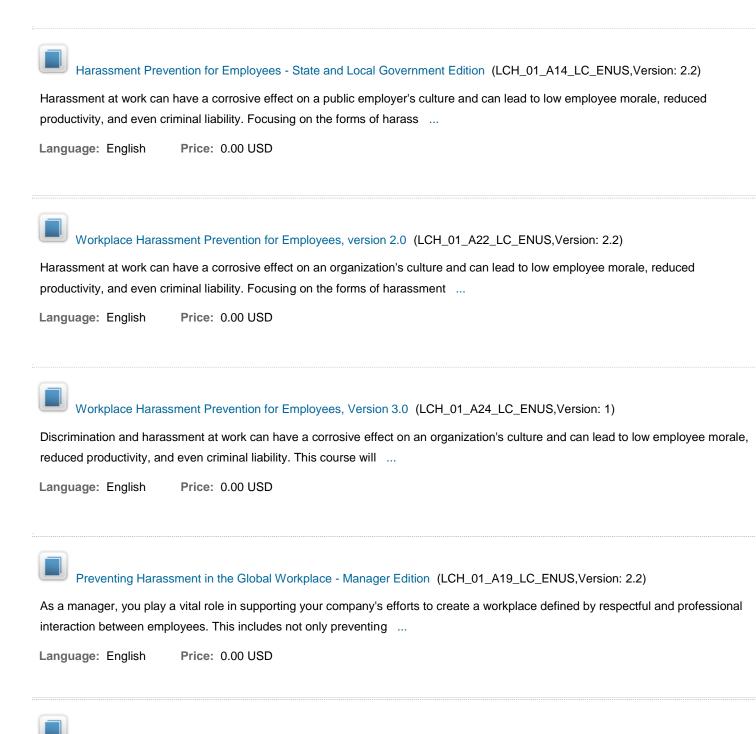
Language: English Price: 0.00 USD

Harassment Prevention for Managers - Higher Education Edition (LCH\_01\_A13\_LC\_ENUS, Version: 2.2)

Typically, when people hear the term 'workplace harassment' they think of sexual harassment. But that is just one of the many forms

workplace harassment may take. Unlawful harassment is any form of ....

Language: English Price: 0.00 USD



Workplace Harassment Prevention for Managers - Multi-State Edition, version 2.0 (LCH\_01\_A23\_LC\_ENUS, Version: 2.2)

Harassment can have a very negative impact on an organization's work environment. Managers and supervisors have a responsibility to both their employees and their company to know their role in preventing ...

Language: English Price: 0.00 USD



### Workplace Harassment Prevention for Managers - Multi-State Edition, Version 3.0 (LCH\_01\_A32\_LC\_ENUS, Version: 1)

Harassment and discrimination can have a very negative impact on an organization's work environment and enormous personal consequences to those involved. Managers and supervisors have a responsibility ...

Language: English Price: 0.00 USD



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### Workplace Harassment for Supervisors and Managers †Multi-State Edition (LCH\_01\_A08\_LC\_ENUS, Version: 2.2)

Harassment of any type can have a very negative impact on an organization's work environment. Managers and supervisors have a responsibility to both their employees and their company to know their ...



Typically, when people hear the term 'workplace harassment' they think of sexual harassment. But that is just one of the many forms workplace harassment may take. Unlawful harassment is any form of ...

Language: English Price: 0.00 USD

### COMPLIANCE EXPERT: Harassment and Retaliation for Managers (\_PC\_BI\_LCBI029, Version:1)

Retaliation can be damaging to an organization. As a manager, you are positioned to confront and eliminate retaliation in defense of your employees. In this Compliance Expert Impact, Wendy Fischman ...

Offered As: Online Training Price: 0.00 USD

Language: English

### Preventing Harassment in the Global Workplace – Employee Edition (LCH\_01\_A18\_LC\_ENUS, Version:2.2)

As an employee, it is important for you to act respectfully toward all your coworkers, whether they're located in the next office or on the other side of the globe. This course explains the benefit ...

Offered As: Online Training Price: 0.00 USD

Language: English

### Department of Health and Human Services – Online Harassment Training

### COMPLIANCE SHORT: Preventing Harassment and Promoting Respect (LCHR\_01\_B34\_LC\_ENUS, Version:1)

It is important for you to act respectfully toward all your coworkers, whether they're located in the next office or on the other side of the globe. This course explains the benefits to everyone of ...

Offered As: Online Training Price: 0.00 USD

Language: English

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### COMPLIANCE EXPERT: Harassment and Retaliation for Managers (\_PC\_BI\_LCBI029, Version: 1)

Retaliation can be damaging to an organization. As a manager, you are positioned to confront and eliminate retaliation in defense of your employees. In this Compliance Expert Impact, Wendy Fischman ...

Language: English Price: 0.00 USD



Preventing Harassment in the Global Workplace – Employee Edition (LCH\_01\_A18\_LC\_ENUS, Version: 2.2)

As an employee, it is important for you to act respectfully toward all your coworkers, whether they're located in the next office or on the other side of the globe. This course explains the benefit ...

Language: English Price: 0.00 USD

### COMPLIANCE SHORT: Preventing Harassment and Promoting Respect (LCHR\_01\_B34\_LC\_ENUS, Version: 1)

It is important for you to act respectfully toward all your coworkers, whether they're located in the next office or on the other side of the globe. This course explains the benefits to everyone of ...

Language: English

Price: 0.00 USD

COMPLIANCE SHORT: Preventing Harassment and Promoting Respect 2 (LCHR\_01\_B35\_LC\_ENUS, Version: 1)

It is important for you to act respectfully toward all your coworkers, whether they're located in the next office or on the other side of the globe. This course explains the benefits to everyone of ...

Language: English

Price: 0.00 USD

### EEO Awareness Training For HHS (00016531, Version: 1.0)

This course provides information about your rights, responsibilities, and protections under the major Federal anti-discrimination laws, including the No FEAR Act, which prohibits discrimination in ...

Offered As: Online Training Price: 0.00 USD

Language: English

COMPLIANCE IMPACT: Workplace Violence – The Warning Signs (\_PC\_BI\_LCBI010, Version: 2.2)

According to the Bureau of Labor Statistics, in the US, 17% of the 4,609 work-related deaths in 2011 were attributable to violence, of which 458 instances were homicides. Workplace violence include ...

Offered As: Online Training Price: 0.00 USD

Language: English

# Attachment 4

US Department of Health and Human Services

# Assistant Secretary for Administration and Management (ASAM)

## Office of Diversity Management and EEO (ODME)

## EEO and Diversity Policy and Procedures Manual

[Version 1.0 – April 2009]

## 2.5 Alternative Dispute Resolution

Statutes enforced by EEOC and executive orders encourage the use of Alternative Dispute Resolution (ADR) in resolving employment disputes. EEOC's revised regulations at 29 C.F.R. § 1614.102 (b)(2) require agencies to establish or make available an ADR program. The ADR program must be available during both the precomplaint and the formal complaint processes.

The guiding principles in the implementation of the ADR program as set forth in Management Directive (MD-110) include: a) Furthering the EEOC's mission; b) Fairness, c) Voluntariness; d) Neutrality; e) Confidentiality and f) enforceability. As a result, ADR programs must be flexible enough to respond to varied and changing priorities and caseloads. Further, ADR programs must have adequate training and evaluation components.

HHS has chosen, as required by 29 C.F.R. § 1614, to establish an ADR program, that uses mediation to address EEO matters. Mediation can be elected in lieu of traditional EEO counseling at the pre-complaint stage or at any time during the formal complaint process.

HHS policy is that management must participate in the ADR process when the aggrieved party or the complainant has requested mediation in either the informal or formal stage.

## <u>57 FR 48616</u>

October 27, 1992 Notices

## **Reporter** 57 FR 48616

<u>Federal Register</u> > <u>1992</u> > <u>October</u> > <u>October 27, 1992</u> > <u>Notices</u> > <u>FEDERAL REGISTER</u> **Title:** Use of Alternative Dispute Resolution

Action: Notice of interim policy.

## Agency

## FEDERAL REGISTER

## **Synopsis**

SUMMARY: The Department has developed an interim policy to address the use of alternative dispute resolution (ADR) as required by the Administrative Dispute Resolution Act (ADR Act), <u>Public Law</u> <u>No. 101-552</u>. This interim policy also responds to the Negotiated Rulemaking Act, <u>Public Law No. 101-648</u>, and relevant elements of the Executive Order on Civil Justice Reform (E.O. 12778). The Department is adopting an interim policy because we need a baseline of experience and knowledge from our own pilot activities and those of other agencies before finalizing a policy.

## Text

SUPPLEMENTARY INFORMATION: The ADR Act authorizes and encourages agencies to use mediation and other consensual methods of dispute resolution as alternatives to traditional dispute resolution processes. Among other things, the ADR Act requires agencies to designate a dispute resolution specialist, establish a policy addressing use of ADR, and provide for regular training on ADR. The Negotiated Rulemaking Act establishes a framework for use of negotiated rulemaking to increase acceptability and improve the substance of rules. The Executive Order on Civil Justice Reform, among other things, authorizes agencies to consider ADR methods in administrative proceedings and in litigation for which the U.S. Department of Justice has delegated authority.

The basic goals of ADR are to reduce the cost, delay, and contentiousness (including litigiousness) involved in existing mechanisms for dealing with disputes. ADR is not an end in itself; it is a means to accomplishing the public's business more efficiently, economically, and productively.

The Department is the second largest in the Federal government, with many differing functions involving 118,000 employees across the nation. There is wide variation in opportunities and experience in ADR. A few organizations in HHS have considerable ADR experience in specific areas, some are embarking on pilot projects related to particular activities, and many have little or no experience. In this diverse context, it is important to develop a flexible approach to ADR which allows a practical adaptation of mechanisms to program needs. It also is important to recognize that resources are scarce,

so we must be innovative and thrifty in our approach. Above all, we intend to use a results-oriented, rather than a process-oriented approach.

Our interim ADR policy is designed to introduce knowledge about ADR widely within the Department, disseminate information about on-going ADR efforts, promote appropriate use of ADR now (including results-oriented and program-specific pilots and experiments), evaluate ADR activities, and display the results across Departmental components for their information and use. Where ADR is already in use, we intend to advertise and evaluate results. In other areas, where ADR is understood but new, we are encouraging pilot projects. In still other areas, we will be providing a basic introduction to ADR and assessing opportunities for its use. These different strategies will produce a baseline of knowledge and experience to support a refined ADR policy. Our interim policy will be reviewed one year after publication.

Under section 3(b) of the ADR Act, the Secretary appointed John Settle as the Department's Dispute Resolution Specialist. In response to the request of the Deputy Secretary, all major components of the Department appointed senior officials as liaisons to the Dispute Resolution Specialist. This group constitutes the primary focal point for encouraging use of ADR and for assessing ADR opportunities in the specific areas listed in section 3(a)(2) of the Act.

The Department already has numerous ADR efforts in operation, in experimental stages, or under development. Among the most prominent of these are the following, which illustrate the breadth of the Department's commitment to ADR:

-- An Early Complaints Resolution Process which uses ADR methods, including mediation, for resolving discrimination complaints related to equal employment opportunity.

-- A series of initiatives involving the use of ADR in the Federal labor/management arena. For example, there is an experimental program involving the Department, the National Treasury Employees Union and the Federal Mediation and Conciliation Service (FMCS) which uses mediation for grievances in HHS regional offices. The agreement itself was developed (and will be evaluated) using cooperative techniques. The Social Security Administration (SSA), FMCS and the National Federation of Federal Employees recently signed a similar agreement. SSA's Office of Hearings and Appeals, FMCS and the National Treasury Employees Union also have such an agreement. In addition to grievances, the initiatives cover unfair labor practices, negotiations, and labor/management relations committees.

-- Availability, through the Departmental Appeals Board, of mediation and early neutral evaluation (ENE) as an alternative to regular administrative adjudication. An ENE innovation at the Board involves use of an ENE team made up of one Federal and one State or private-sector attorney to assist with case evaluation and resolution.

-- A management team which is using "Total Quality Management" principles to explore ways to build on ADR experience in the human resources area for the benefit of other programs of the Department. Under the aegis of this effort, we have developed and used a temporary task team to provide help and advice about ADR opportunities to a specific organization within HHS. The team was made up of HHS personnel with ADR, legal and other expertise relevant to the specific context.

-- A pilot project encouraging use of ADR in disputes arising between the Department and States and universities concerning the establishment of indirect cost rates and cost allocation plans under grants.

-- A substantial amount of training, both ongoing and under development. This comports with section 3(c) of the ADR Act, which emphasizes the importance of training related to ADR. Included are training in interest-based negotiation and mediation skills; introductory training for selected groups of Departmental managers; more extensive training for contracting officers and managers, and attorneys in the Office of the General Counsel; and program-context ADR training for managers in various components of HHS.

-- The recent introduction in the Food and Drug Administration of use of an ombudsman to deal with problems encountered by FDA-regulated organizations.

-- An internal ombudsman in the Social Security Administration (SSA) to deal with problems of SSA employees and organizational issues. SSA currently is expanding the program by training a group of employees who perform dispute resolution functions within SSA offices around the nation.

-- A pilot project of the HHS Inspector General to use third-party facilitation (ombudsmen or mediators) in certain enforcement programs related to fraud and abuse in the Medicare and Medicaid programs.

-- A potential pilot project, now in the exploratory stage, to use ADR in disputes before the Provider Reimbursement Review Board in the Health Care Financing Administration.

-- Development of a videotaped introduction to ADR which will be duplicated and distributed widely among field offices.

-- Formation of an ADR Committee by the American Association of Public Welfare Attorneys, which includes as members many attorneys from State agencies dealing with public assistance programs, to explore ways to use ADR techniques in Federal/State disputes and in States' own administration of programs. Other organizations have also expressed interest in ADR.

-- Exploration of ways of cooperating with the U.S. Department of Labor in its regional ADR pilot program in Philadelphia (see <u>57 FR 7292)</u>. A number of HHS employees participated in recent Labor Department training in ADR in that region. We also are exploring regional training and a possible ADR experiment in HHS's Seattle region.

-- Development of a resource team to provide information and support for HHS offices interested in exploring the use of negotiated rulemaking. The team coordinator is Judith Ballard (**Control**). The Office of General Counsel and the Assistant Secretary for Planning and Evaluation will assist the team. The Environmental Protection Agency and the Department of Labor, which are more experienced than HHS in dealing with negotiated rulemaking, are providing information and assistance to us. Components of HHS currently are identifying regulations for which experiments in negotiated rulemaking would be appropriate.

-- Formation of a work group by the Assistant Secretary for Management and Budget's Office of Acquisition and Grants Management to assess policies on use of ADR related to grant conditions and disputes. This office also has helped lead ADR training for contracts managers, and is involved in overseeing recent provisions of the Federal Acquisition Regulation implementing section 3(d)(2) of the ADR Act.



-- Development, with an eye toward ADR-type simplification, of new procedures in the Public Health Service for reviewing cases involving scientific misconduct.

-- Development and circulation of a list of employees who are trained and experienced mediators. These employees are available (within the limits of their primary employment) for temporary assignment to assist with disputes elsewhere in the Department. We have also used this mechanism to provide mediators in two cases for the U.S. Department of Education, and we have offered to provide similar assistance for initial cases at the U.S. Department of Labor. In the long run, we hope to be part of an intergovernmental pool of mediators, to reduce costs to participants and offer impartial mediation services among agencies. Section 4(b) of the ADR Act added a provision to the Administrative Procedure Act which specifically encourages such interagency cooperation, as well as use of voluntary services of organizations and individuals.

-- Inclusion by the Social Security Administration of an element in its Strategic Priority Transition Guidance providing for consideration of the use of ADR in the Office of Hearings and Appeals, the largest single employer of administrative law judges in the Federal government.

-- A newsletter to help Departmental employees interested in ADR keep abreast of current events. The newsletter is distributed widely, including distribution through the electronic network used in HHS's human resource management community.

Anyone interested in the Department's ADR efforts may obtain more information, ask for speakers, or submit comments and suggestions (including comments on this interim policy) by calling or writing the HHS Dispute Resolution Specialist (room 637D, Humphrey Building, Department of Health and Human Services, Washington, DC 20201; [2010] [7].

General Policy on ADR

It is Departmental policy to encourage use of alternative dispute resolution processes and mechanisms in any appropriate program setting. ADR initiatives should be implemented consistent with the objectives of reducing costs and delays, improving employee and constituent relations, and improving the efficiency and effectiveness of programs.

Dispute Resolution Specialist and Liaisons; Assessment of ADR Opportunities

Pursuant to section 3(b) of the ADR Act, the Secretary has appointed a Departmental Dispute Resolution Specialist. In response to the request of the Deputy Secretary, all major components of the Department have appointed senior officials as liaisons to the Specialist. This group constitutes the primary focal point for encouraging use of ADR and for assessing ADR opportunities in the specific areas listed in section 3(a)(20 of the ADR Act. These areas include: Formal and informal administrative adjudications; rulemakings; enforcement actions; issuing and revoking licenses or permits; contract and assistance administration; litigation for which HHS has responsibility; and other agency actions.

Two organizations represented in the group of ADR Liaisons have special additional responsibilities. The Assistant Secretary for Management and Budget has an ongoing role in general policy on use of ADR in grants and contracts under section 3(d) of the Act. The Office of the General Counsel will assist generally in assessment of ADR opportunities (including opportunities in administrative

litigation); will have a lead role in assessing use of ADR in court litigation where HHS has authority delegated from the U.S. Department of Justice; and will help assess whether we need mechanisms for routine or periodic review of cases for ADR opportunities.

## Training, Information Dissemination, and Assessment Assistance

In a setting as large and diverse as this Department, important initial elements of an ADR strategy include educating employees about ADR and providing help in assessing ADR needs.

#### a. General

To the extent practicable within the limits of resources, it is Departmental policy that all components should support and encourage ongoing training concerning ADR, including, as appropriate to the organization, the following: (a) Introductory training (conducted, where appropriate, as part of other training) to assure that all executives, managers and supervisors known what ADR is, its benefits, and where to go for assistance; (b) more extensive and results-oriented training in ADR for personnel involved in particular areas of disputes and personnel having an identified role in dispute management (e.g., labor/management relations, contract disputes, discrimination complaints, litigation, and administrative adjudication); (c) on-going training in ADR for the ADR liaisons, including how to identify ADR opportunities; and (d) training of ADR facilitators (such as mediators and ombudsmen).

## b. Departmental Focal Point for Training and Assessment; Temporary Assistance Teams

The Office of Human Relations (OHR) within the Office of the Assistant Secretary for Personnel Administration has been assigned a primary function of designing and providing (and helping other HHS components design and provide) ADR and negotiation training and services targeted to HHS's human resources community. OHR has experience and expertise and is a Department-wide resource for ADR in areas such as labor/management relations, discrimination complaints, and employee relations.

Under this interim policy, OHR, in consultation with the Department's Dispute Resolution Specialist, also will make its ADR expertise available to any component of HHS which requests advice or assistance (subject to the priority of its primary function). OHR's role will include activities such as providing introductory training in ADR and negotiation skills; advising and assisting HHS components in their development of more intensive ADR and negotiation training; and providing assistance to HHS components in assessing ADR needs, developing their own ADR systems, and evaluating results.

In providing this assistance, OHR may use knowledgeable employees from elsewhere in the Department by, for example, forming temporary teams of employees with ADR and organizational skills appropriate to a particular setting. This will provide the Department with a rapid, low-cost, synergistic and results-oriented tool for sharing expertise and perspectives tailored to a particular need. All HHS components are urged to support their employees' occasional participation on such teams.

HHS components which want OHR's assistance may be asked to fund services which are more than incidental, as well as pay for any training or services using outside consultants. HHS components are encouraged to provide a place in their lists of funding priorities for ADR training and projects.

## c. Information Dissemination



HHS's Dispute Resolution Specialist will encourage the widest possible dissemination of information about Departmental initiatives, activities, and training opportunities related to ADR, and about the results of ADR efforts (such as pilot projects).

#### Negotiated Rulemaking

To date, this Department has virtually no experience with negotiated rulemaking. The Dispute Resolution Specialist will designate a negotiated rulemaking coordinator to work with representatives from the Office of the General Counsel and the Assistant Secretary for Planning and Evaluation to be a resource for advice, assistance, training, and information on negotiated rulemaking. Under this interim policy, the Department encourages experiments using negotiated rulemaking for appropriate regulations or guidelines to assess its utility for Departmental regulation development.

#### Agency Discretion

Sections 590 and 591 of the Administrative Procedure Act (added, respectively, by section 3(a) of the Negotiated Rulemaking Act and section 4(b) of the ADR Act) provide generally that Departmental managers' choices of whether and how to use ADR and negotiated rulemaking are matters committed to their discretion, and are not judicially reviewable.

#### Confidentiality

Section 4 of the ADR Act grants confidentiality to information provided to a "neutral" or other parties during an ADR proceeding. The U.S. Department of Justice takes the position that any information released during participation in ADR under the Act is protected from disclosure under the Freedom of Information Act.

## Consultation

Pursuant to section 3(a) of the ADR Act, the Dispute Resolution Specialist will consult with the Administrative Conference of the U.S. and the Federal Mediation and Conciliation Service concerning development of HHS's policy on ADR.

Dated: August 7, 1992.

Louis W. Sullivan,

Secretary of Health and Human Services.

Norval D. (John) Settle,

HHS Dispute Resolution Specialist. [FR Doc. 92-25944 Filed 10-26-92; 8:45 am]

BILLING CODE 4110-60-M

#### Dates

EFFECTIVE DATE: October 27, 1992.

## Contacts

FOR FURTHER INFORMATION CONTACT: John Settle, HHS Dispute Resolution Specialist,

FEDERAL REGISTER



# Attachment 5

# Attachment 6

## Attachment 6 - CDC's Federal Employee Viewpoint Survey

It is "CDC policy to prohibit sexual harassment as outlined in the merit system principles of the Civil Service Reform Act of 1978, and specifically prohibited by Title VII of the Civil Rights Act of 1964.", CDC-GA-2005-09. One tool CDC utilizes is the Federal Employee Viewpoint Survey to assess the workplace climate. Specifically, FEVS questions 17, 37 and 38 measure employee perceptions on Merit System Principals and Prohibited Personnel Practices. CDC shows strengths (65% positive response) in all three questions. In 2017, CDC EVS results showed a 1.7%, 2.3% and 2.7% point increase in positive responses for FEVS #17, #37 and #38 respectively.

FEVS Item #	FEVS Question	Responses	Positive	Neutral	Negative
17	I can disclose a suspected violation of any law, rule or regulation without fear of reprisal.	6,860	69.7%	16.3%	14.0%
37	Arbitrary action, personal favoritism and coercion for partisan political purposes are not tolerated.	6,700	65.6%	18.4%	16.1%
38	Prohibited Personnel Practices (for example, illegally discriminating for or against any employee/applicant, obstructing a person's right to compete for employment, knowingly violating veterans' preference requirements) are not tolerated.	6,517	76.1%	14.3%	9.6%

Under the auspices of CDC's Labor Management Partnership Council (LMPC), anti-bullying guidance was developed and broadly publicized throughout the agency. The guidance included a definition and examples of bullying, information about what employees can do if they feel bullied, management's roles and responsibilities when responding to allegations of bullies, as well as the associated disciplinary action. A flowchart, titled, CDC/ATSDR Bullying/Workplace Harassment Options, was also included in the guidance (please see attachment). This information is posted in the HRO webpage. The Human Resources Office, the Office of Equal Employment Opportunity and the Employee Assistance Program (EAP) captured incidents of harassment and bullying and developed a biennial report that was submitted to the LMPC. HRO and EEO took turns developing the report. To date, two reports have been submitted (calendar years 2015 and 2016).

CDC also encourages managers to have an open-door atmosphere that encourages staff to communicate their concerns.

The agency's Policy Statements on the Prevention of Sexual Harassment and Harassment are posted on the OEEO Website.

# Attachment 7

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## APPENDIX B

## **Guide for Corrective Action**

This Guide is intended for use in determining the most appropriate charges and penalties for behavior(s) or action(s) which warrant corrective/remedial action and helps to ensure a relative consistency of penalties for like offenses. Users should consider the *Nature of Offense* column as a listing of general categories of offenses and **not use it as the specific terminology in framing charges**; it is not all-inclusive and is not intended to address every conceivable disciplinary situation. Managers should be careful to avoid force-fitting an offense or charge into an existing category. Rather, the Table is to be used as a guide for selecting a charge and penalty that fits a particular situation.

The Guide lists only <u>formal</u> disciplinary actions (i.e., those which become a matter of record in the employee's OPF). It does not mention oral warnings, counseling letters, and similar actions which are considered informal disciplinary actions and may be more appropriate for correcting minor offenses. The *First Offense* column, therefore, refers to the first offense for which formal discipline is being administered, although it may not be the first time a violation has occurred.

The offenses need not be identical or similar in order to support progressively more severe action against an employee. A second offense need not be related to the first offense to support a more severe penalty. The penalties suggested in the Guide are guidelines only; nothing precludes management from proposing and then imposing no penalty, or a lesser or more severe penalty than that offered by the Guide, as circumstances warrant. Such circumstances, however, should be fully documented in the decision letter. (Note that a deciding official cannot impose a more severe penalty than that originally proposed in the proposal letter.)

## DISCIPLINARY GUIDE

HHS GUIDE FOR DISCI	PLINARY PENALTII	ES		
NATURE OF OFFENSE	PENALTY FOR FIRST OFFENSE	PENALTY FOR SUBSEQUENT OFFENSE		
I. FISCAL IRREGULARITIES (Penalty depends benefit, and/or other pertinent factors.)	on the monetary value,	position held, personal		
a. Submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal document(s).	Letter of Reprimand to Removal, if for administrative convenience or to avoid following required procedures.	Removal		
	14-Day Suspension, if it results in personal benefit to another.	Removal		
	Removal, if it results in personal benefit.			
b. Unauthorized and/or improper use of property, Government or other funds, or any other thing of value coming into an employee's custody as a result of employment.	14-Day Suspension to Removal	Removal		
c. Failure to properly account for or make proper distribution of any property, Government or other funds, or any other thing of value coming into an employee's custody as a result of employment.	Letter of Reprimand to Removal	Removal		
d. Concealment of (or failing to report) missing, lost, or misappropriated funds, or other fiscal irregularities.	Letter of Reprimand to Removal	14-Day Suspension to Removal		

2. FALSE STATEMENT(S)/INCORRECT OFFI- entries in connection with fiscal matters and docume		
<ul> <li>a. Deliberate falsification of an application for employment, or other personal history record by omission or by making a false entry.</li> <li>Note: If an incorrect or inaccurate entry or statement is determined to be unintentional, other (non-disciplinary) action should be taken.</li> </ul>	Removal, if it would have adversely affected selection for appointment or promotion.	
	Letter of Reprimand to 14-Day Suspension, if it would not have adversely affected selection for appointment or promotion.	14-Day Suspension to Removal
b. Misrepresentation, falsification, or concealment of material facts or documents in connection with an official matter, including an investigation.	Letter of Reprimand to Removal	Removal
<ul> <li>c. Knowingly and willfully making an incorrect entry on an official document or approving an incorrect official document.</li> </ul>	Letter of Reprimand to Removal	14-Day Suspension to Removal
3. CONDUCT PREJUDICIAL TO THE BEST I	NTERESTS OF THE	SERVICE
a. Conduct which causes the employee to be indicted or charged with a criminal offense which is related directly to the duties of the employee's position or the mission of the Agency and for which a sentence of imprisonment may be imposed.	Indefinite Suspension (Until the outcome of the legal action is known and/or until the completion of appropriate administrative action.)	
b. Conduct which causes the employee to be convicted of a criminal charge which is related directly to the duties of the employee's position or the mission of the Agency.	Removal	
c. Off duty conduct which adversely affects the	Letter of Reprimand	Removal

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employee's job performance or trustworthiness, or adversely affects the ability of the Agency to accomplish its mission or otherwise identifiable nexus to the employee's position.	to Removal	
d. Infamous or notoriously disgraceful conduct.	Removal	
e. Concealing, removing, mutilating, altering or destroying Government records.	Letter of Reprimand to Removal	14-Day Suspension to Removal
f. Malicious or intentional damage or loss of Government- owned or Government-leased property.	Letter of Reprimand to Removal	14-Day Suspension to Removal
g. Using public office for private gain.	14-Day Suspension to Removal	Removal
h. Unethical or improper use of official authority or credentials.	Letter of Reprimand to Removal	Removal
i. Unauthorized disclosure or use of (or failure to safeguard) information protected by the Privacy Act or other official, sensitive, or confidential information.	Letter of Reprimand to Removal	Removal
j. Having a direct or indirect financial interest that an employee could reasonably expect to be in conflict or appear to be in conflict with his or her official duties and responsibilities. (When a conflict of financial interest occurs that is inadvertent and that could not be reasonably anticipated by the employee, the situation would normally be handled by divestiture or recusation rather than disciplinary action.)	Letter of Reprimand to Removal	Removal
k. Engaging in outside employment or other activities without required prior approval.	Letter of Reprimand to 5- Day Suspension	14-Day Suspension to Removal
1. Improperly soliciting or accepting, directly or indirectly, a gift from any individual or establishment seeking or having a contractual or business relationship with the Department.	5-Day Suspension to Removal	Removal
m. Improperly soliciting a contribution from another employee for a gift to an official superior, making a donation as a gift to an official superior, or accepting a gift from an employee receiving less	Letter of Reprimand to Removal	Removal

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## Instruction 752: Discipline and Adverse Action Issuance Date: 03/20/2009

pay.		
n. Borrowing money from a subordinate employee, securing a subordinate's endorsement on a loan, or otherwise having a subordinate assume the financial responsibility of a superior.	Letter of Reprimand to Removal	Removal
o. Use of (or authorizing the use of) employees, or Government owned, leased or provided property, facilities, services or credit cards, for inappropriate or non-official purposes.	Letter of Reprimand to Removal	5-Day Suspension to Removal
p. Willful use of (or authorizing the use of) any Government-owned or Government-leased passenger vehicles or aircraft for other than official purposes.	30-Day Suspension to Removal [31 U.S.C. 1349(b) mandates a <u>minimum</u> penalty of a one month suspension for unofficial use of Government passenger carrying vehicles or aircraft.]	Removal
q. Use of (or authorizing the use of) other Government- owned or Government-leased vehicles such as trucks, aircraft, boats or other motor vehicles for other than official purposes.	30-Day Suspension to Removal	Removal
r. Carrying of unauthorized passengers in Government- owned or Government-leased vehicles such as trucks, aircraft, boats or other motor vehicles for other than official purposes.	Letter of Reprimand to 14-Day Suspension	14-Day Suspension to Removal
s. Unauthorized use, removal or possession of a thing of value belonging to another employee or private citizen.	Letter of Reprimand to Removal	Removal
t. Misuse of the internet; misuse of the electronic mail; visiting websites or downloading material from the internet during duty time for non-official use; sending electronic mail for unauthorized purposes; misuse of data bases and other software for personal gain.	Reprimand to Removal	3-Day Suspension to Removal
u. Fighting, threatening, attempting to inflict or	5-Day Suspension to	14-Day Suspension to

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Removal	Removal
Letter of Reprimand to 14-Day Suspension	5-Day Suspension to Removal
Letter of Reprimand to Removal	5-Day Suspension to Removal
Letter of Reprimand to 14-Day Suspension	1-Day Suspension to Removal
Letter of Reprimand to Removal	Removal
Removal	
JCTION	
Letter of Reprimand to 14-Day Suspension	5-Day Suspension to Removal
Letter of Reprimand to Removal	14-Day Suspension to Removal
Letter of Reprimand to Removal	Removal
, Removal	
Letter of Reprimand to 3-Day Suspension	5-Day Suspension to Removal
	Letter of Reprimand to 14-Day SuspensionLetter of Reprimand to RemovalLetter of Reprimand to 14-Day SuspensionLetter of Reprimand to RemovalRemovalRemovalJCTIONLetter of Reprimand to 14-Day SuspensionLetter of Reprimand to RemovalLetter of Reprimand to 14-Day SuspensionLetter of Reprimand to 14-Day SuspensionLetter of Reprimand to RemovalLetter of Reprimand to Removal

Zendersterelisent work leafing cleaning on duty	Letter of Reprimand	5-Day Suspension to				
	to Removal	Removal				
6. ATTENDANCE-RELATED OFFENSES (Penal length, frequency, and nature of position. To support absences from the work place must be charged to AW &A) Report.)	disciplinary action, tar	diness and unauthorized				
a. Unexcused tardiness, including delay in: (1) reporting at the scheduled starting time, (2) returning from lunch or break periods, and (3) returning from an authorized absence from the work station.	Letter of Reprimand to 1-Day Suspension	5-Day Suspension to Removal				
b. Unauthorized absence, including leaving the	Absences of 8 Hours or Less					
	Letter of Reprimand to 5- Day Suspension	5-Day Suspension to Removal				
offense (i.e., disciplinary action proposed) rather than for each instance or occurrence of unauthorized absence. For example, if an	Absences of More Than 8 Hours But Less Than 5 Workdays					
employee is AWOL on three separate occasions and the total amount of AWOL shown on the	1-Day Suspension to 14-Day Suspension	14-Day Suspension to Removal				
T&As is more than 8 hours but less than 5 workdays, the proposed penalty for a first offense	Absences of 5 Workdays or Mo					
would normally be a suspension of from 1 to 14 days.]	14-Day Suspension to Removal	Removal				
7. INTOXICANTS Alcohol and Spirits (Agenci programs are met before taking action.)	es must assure the requ	irements of alcohol abus				
a. Unauthorized use of intoxicants while on duty, on Government property or Government- controlled property or premises where official duties are performed.	Letter of Reprimand to 14-Day Suspension	30-Day Suspension to Removal				
b. Reporting to or being on duty while under the influence of intoxicants.	Letter of Reprimand to 30-Day Suspension	30-Day Suspension to Removal				
c. Operating a Government-owned or Government- leased vehicle (or privately-owned vehicle on official business) while under the influence of	Removal [If a penalty of less than removal is					

	determined to be appropriate, agencies should (at a minimum) suspend the employee's official driving privileges for a period of one year.]	
8. ILLEGAL DRUGS/DRUG PARAPHERNALIA not initiate disciplinary action when an employee ( illegal drugs prior to being identified through other m through EAP and (3) Thereafter refrains from illegal must make appropriate referrals to the EAP and initia	<ol> <li>Voluntarily identifient neans, (2) Obtains cound drug use. In <u>all</u> other cound</li> </ol>	s him/herself as a user of seling and rehabilitation ircumstances, agencies
a. Possession of an illegal drug, drug paraphernalia, or unauthorized controlled substance while on duty, on Government property or Government-controlled property, or on premises where official duties are performed.	5-Day Suspension to Removal	Removal
b. Use of an illegal drug or unauthorized controlled substance while on duty, on Government property or Government-controlled property, or on premises where official duties are performed.	14-Day Suspension to Removal	Removal
c. Reporting to or being on duty while under the influence of an illegal drug or unauthorized controlled substance.	14-Day Suspension to Removal	Removal
d. Sale or distribution of an illegal drug or controlled substance.	Removal	
e. Operating a Government-owned or Government- leased vehicle (or privately-owned vehicle on official business) while under the influence of an illegal drug.	Removal	
f. Interfering with, or refusing or failing to submit to a properly ordered or authorized drug test, including substituting, adulterating, or otherwise tampering with a urine sample.	Removal	
g. Use of an illegal drug or unauthorized controlled substance during non-duty hours and on non-work premises.	Letter of Reprimand to Removal	Removal

Biging in the provide the providet the provide the provide the providet the pr	Removal, 5 U.S.C. 7326	Note: Referral to Office o Special Counsel is required Only the MSPB may mitigated to a penalty of not less than 30 days;		
10. SAFETY AND HEALTH VIOLATIONS (Pen danger to persons or property is involved.)	alty should take into co	onsideration whether		
a. Failure to report an accident and/or injury as required.	Letter of Reprimand to 14-Day Suspension	14-Day Suspension to Removal		
b. Failure or refusal to wear/use required protective equipment (e.g., seat belts, earplugs, eye protection, etc.).	Letter of Reprimand to 14-Day Suspension	14-Day Suspension to Removal		
c. Operation of a Government-owned or Government- leased vehicle (or privately-owned vehicle while on official business) without an appropriate State driver's license.	5-Day Suspension to Removal	Removal		
d. Failure or refusal to observe and/or enforce Safety and Health regulations or to perform duties in a safe manner.	Letter of Reprimand to Removal	5-Day Suspension to Removal		
11. DISCRIMINATORY PRACTICES (Penalty s willful/deliberate, or careless/negligent.)	should take into conside	eration whether violation is		
a. Acting or failing to act on an official matter (including a personnel action) in a manner which improperly takes into consideration an individual's political affiliation, race, color, religion, national origin, sex, marital status, age, or handicapping condition. [This includes discrimination for or against any employee or applicant for employment prohibited by 42 U.S.C. 2000e-16; 29 U.S.C. 631 or 633a; 29 U.S.C. 206(d); 29 U.S.C. 791; or any other law, rule, or regulation.]	5-Day Suspension to Removal	Removal		
b. Any reprisal or retaliation action against an individual involved in the EEO complaint process.	5-Day Suspension to Removal	Removal		
c. Use of remarks which relate to and insult or	Letter of Reprimand	14-Day Suspension to		

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denigrate an individual's race, color, religion, national origin, sex, marital status, age, or handicapping condition.	to 30-Day Suspension	Removal		
d. Negligence or insensitive conduct with respect to an individual's race, color, religion, national origin, sex, marital status, age, or handicapping condition which is determined to be discriminatory and where there is no other finding of overt discrimination.	Letter of Reprimand to 5-Day Suspension	5-Day Suspension to Removal		
e. Failure to take appropriate action regarding allegations or findings of discriminatory practices.	5-Day Suspension to Removal	Removal		
12. SEXUAL MISCONDUCT				
a. Actual or attempted sexual assault (e.g., rape)	Removal			
b. Inappropriate and/or unwelcome touching or other physical contact.	14-Day Suspension to Removal	30-Day Suspension to Removal		
c. Pressure for (or official action based on) sexual favors, including taking action favorable to an employee because of the granting of a sexual favor or denying an action favorable to an employee because of the withholding of a sexual favor.	30-Day Suspension to Removal	Removal		
d. Inappropriate and/or unwelcome teasing, jokes, actions, gestures, display of visual material of a sexual nature or remarks of a sexual nature.	Letter of Reprimand to 30-Day Suspension	14-Day Suspension to Removal		
13. PROHIBITED PERSONNEL PRACTICES	Not elsewhere covered	l.)		
Abuse of authority and commission of a prohibited personnel practice covered by 5 U.S.C. 2302.	Letter of Reprimand to Removal	Removal		
14. SCIENTIFIC MISCONDUCT	Letter of Reprimand to Removal	Removal		

## **Appendix III: Equal Employment Opportunity Commission Data**

This appendix includes data provided by the EEOC to Senator Murray. EEOC data is divided into three types of harassment categories: charges alleging either sexual or non-sexual harassment (or both), charges alleging non-sexual harassment, and charges alleging sexual harassment.

Within these categories, the data is divided by gender and basis; industry and basis (for the 15 industries with the highest number of harassment charges); industry (for the 15 industries with the highest number of harassment charges); and total charges for which an industry was entered versus those where no industry was entered.

### EEOC Charge Receipts by Gender and Basis Charges alleging either sexual or non-sexual harassment FY 1997 - FY 2018

		FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
Total	Total Charges	21,369	21,212	21,408	22,593	22,596	22,535	20,960	19,814	19,406	20,255	22,851
Harassment	Race	6,244	6,681	6,795	7,086	7,191	7,223	6,238	5,138	5,197	5,687	7,135
Filings	Religion	564	591	579	674	739	896	848	683	676	716	925
	National Origin	1,865	1,956	2,174	2,440	2,552	2,808	2,346	1,880	2,020	2,254	2,988
	Gender	12,312	11,910	11,912	12,774	12,745	12,289	11,247	10,677	10,286	10,337	11,294
	Color	199	369	351	436	389	444	435	196	263	364	555
	Retaliation	8,713	8,985	9,413	10,569	10,830	11,075	8,298	3,593	3,884	4,031	5,853
	Age/ADEA	1,994	1,871	1,759	1,973	2,152	2,314	2,103	1,698	1,874	1,969	2,538
	Disability/ADA	2,512	2,420	2,443	2,453	2,404	2,505	2,180	1,619	1,752	1,900	2,355
Female	Total Charges	14,795	14,235	14,368	15,106	14,946	14,710	13,521	12,828	12,568	13,016	14,114
	Race	3,122	3,292	3,400	3,385	3,412	3,479	2,915	2,386	2,449	2,743	3,319
	Religion	263	274	265	335	348	394	374	328	313	323	426
	National Origin	800	814	918	1,060	1,100	1,188	1,011	761	829	927	1,140
	Gender	10,815	10,232	10,209	10,967	10,860	10,433	9,345	8,728	8,467	8,472	9,090
	Color	98	167	170	195	168	211	181	88	112	165	257
	Retaliation	6,304	6,300	6,618	7,326	7,508	7,615	5,492	2,310	2,467	2,501	3,510
	Age/ADEA	1,127	1,063	988	1,092	1,193	1,306	1,175	923	1,044	1,086	1,413
	Disability/ADA	1,355	1,299	1,314	1,331	1,280	1,317	1,181	902	940	1,024	1,261
Male	Total Charges	6,567	6,967	7,023	7,464	7,622	7,798	7,150	6,366	6,233	6,753	7,994
	Race	3,119	3,383	3,389	3,693	3,773	3,731	3,255	2,618	2,604	2,825	3,604
	Religion	301	317	313	339	391	500	464	340	346	374	471
	National Origin	1,064	1,141	1,254	1,378	1,448	1,618	1,303	1,068	1,125	1,256	1,689
	Gender	1,497	1,674	1,701	1,803	1,878	1,849	1,746	1,583	1,476	1,616	1,857
	Color	101	202	181	241	221	233	249	100	137	181	271
	Retaliation	2,406	2,682	2,793	3,235	3,314	3,453	2,724	1,173	1,266	1,414	2,127
	Age/ADEA	867	806	768	878	956	1,006	913	742	793	853	1,040
	Disability/ADA	1,155	1,119	1,126	1,118	1,123	1,185	972	675	759	825	1,003
Unavailable	Total Charges	7	10	17	23	28	27	289	620	605	486	743

Note: EEOC receives charges in additional categories, including alleged violations related to equal pay/EPA and GINA and charges where gender is unavailable for each basis. This table does not contain data in those categories.

## EEOC Charge Receipts by Gender and Basis Charges alleging either sexual or non-sexual harassment FY 1997 - FY 2018

		FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
Total	Total Charges	27,050	26,321	27,515	27,399	27,137	26,953	27,276	28,058	28,688	27,199	26,767
Harassment	Race	8,910	8,328	8,869	9,065	8,692	8,775	9,167	9,601	10,033	9,317	8,819
Filings	Religion	1,090	1,158	1,375	1,691	1,362	1,303	1,362	1,336	1,546	1,362	1,230
_	National Origin	3,588	3,642	3,662	4,063	3,635	3,546	3,522	3,550	3,545	3,236	2,873
	Gender	13,178	12,621	12,783	12,525	12,757	12,443	12,341	12,654	13,088	12,521	13,099
	Color	1,002	998	907	969	943	940	1,076	1,172	1,185	1,232	1,331
	Retaliation	9,797	9,880	10,322	10,769	10,830	11,007	11,635	12,419	13,162	12,843	13,227
	Age/ADEA	3,411	3,551	3,804	3,674	3,815	4,047	4,231	4,330	4,270	3,939	3,983
	Disability/ADA	3,060	3,475	4,159	4,157	4,458	4,572	4,951	5,309	5,507	5,340	5,024
Female	Total Charges	16,437	16,255	17,475	16,887	16,971	16,716	16,753	17,221	17,743	17,081	16,138
	Race	4,233	4,138	4,754	4,380	4,424	4,450	4,628	4,921	5,220	4,969	4,354
	Religion	509	526	682	672	628	684	681	653	752	691	563
	National Origin	1,424	1,549	1,639	1,709	1,689	1,576	1,596	1,631	1,674	1,542	1,353
	Gender	10,405	10,000	10,201	9,941	9,959	9,571	9,451	9,705	10,057	9,575	9,695
	Color	418	453	460	438	450	452	499	552	581	637	589
	Retaliation	5,883	6,180	6,681	6,594	6,891	6,893	7,310	7,810	8,338	8,222	8,165
	Age/ADEA	1,927	1,963	2,206	2,145	2,241	2,389	2,442	2,521	2,465	2,361	2,207
	Disability/ADA	1,619	1,960	2,432	2,365	2,601	2,707	2,908	3,096	3,225	3,143	
Male	Total Charges	9,341	9,160	9,207	9,541	9,348	9,453	9,782	9,937	10,098	9,351	8,346
	Race	4,273	3,877	3,844	4,256	4,038	4,108	4,334	4,383	4,515	4,107	3,668
	Religion	519	599	639	843	666	593	652	630	721	632	550
	National Origin	1,946	1,944	1,875	2,072	1,799	1,860	1,807	1,785	1,737	1,598	1,267
	Gender	2,211	2,215	2,248	2,245	2,431	2,506	2,577	2,565	2,695	2,616	
1	Color	499	485	389	471	443	451	545	571	554	572	638
	Retaliation	3,384	3,323	3,302	3,716	3,598	3,748	4,000	4,208	4,422	4,278	3,927
	Age/ADEA	1,328	1,469	1,483	1,443	1,477	1,571	1,684	1,675	1,697	1,497	1,472
	Disability/ADA	1,252	1,398	1,591	1,664	1,728	1,707	1,894	2,025	2,105	2,020	1,740
Unavailable	Total Charges	1,272	906	833	971	818	784	741	900	847	767	2,283

		FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008
Construction	Race	164	163	229	197	206	241	164	119	92	113	128	154
	National Origin	71	54	75	80	71	82	63	46	41	54	37	43
	Gender	323	262	316	347	316	292	224	155	148	166	164	133
	Retaliation	220	191	229	266	258	261	174	39	42	45	61	86
	Age/ADEA	32	30		27	28	45	29		16		17	35
	Disability/ADA	27	37	30	39	40	39	25		12		24	23
Manufacturing	Race	946	1,016	948	1,084	1,097	976	726	522	527	553	573	620
-	National Origin	237	258	320	348	324	343	257	195	182	186	203	206
	Gender	1,544	1,479		1,523	1,500	1,309	1,010		830		728	731
	Retaliation	1,132	1,162	1,194	1,353	1,325	1,261	837	296	298		379	565
	Age/ADEA	285	252	199	281	274	260	219		208		165	208
	Disability/ADA	378	350		355	320	329	234	147	168		162	176
Wholesale Trade	Race	95	93		97	124	95	115		85		99	99
	National Origin	27	23		34	53	30	37	32	34		49	39
	Gender	188	170		199	202	177	182	202	157	152	137	153
	Retaliation	128	121	137	148	181	144	131	67	49		68	99
	Age/ADEA	33	30		22	42	33	30		22		21	54
	Disability/ADA	33	38		30	33	31	32		19		24	33
Retail Trade	Race	560	551	568	566	592	631	543		473		430	492
	National Origin	168	148		220	233	244	218		163		157	187
	Gender	1,275	1,143	1,126	1,238	1,253	1,196	1,037	910	881	797	745	742
	Retaliation	737	732	748	883	952	970	676		278		297	486
	Age/ADEA	171	152	137	181	202	182	165		132	121	175	204
	Disability/ADA	198	181	151	182	191	201	179		129		161	158
Transportation and Warehousing	Race	289	326		351	352	366	305		198		233	265
	National Origin	79	90		98	96	108	86		58		74	70
	Gender	497	429		479	453	405	351	318	391	300	279	307
	Retaliation	392	373		440	446	476	309	132	145		142	231
	Age/ADEA	56	68		78	77	74	91	56	52		63	83
	Disability/ADA	99	105		101	118	79	77	67	56		59	80
Information	Race	251	243		339	320	318	236		163		143	137
	National Origin	73	57	75	109	83	100	59	43 328	61	40	44 197	46
	Gender	412	411	429	563	535	512	387		258			191
	Retaliation	307	317	344	497	493	478	317	138 72	118		118	143
	Age/ADEA	93	76		100	98	143	96		67 76	70	54 66	74 61
Finance and Income -	Disability/ADA	113	112 289		112 276	124 370	166 296	89 228		76 176		183	61 208
Finance and Insurance	Race	<u>264</u> 101	289	119	276	370 135	296 94	228		73		183	208
	National Origin	475	470		99 544	550	94 463	90 426		329		291	284
	Gender Betellistism	475	470 356		544 467	550 478	463	426		<u>329</u> 168		291 170	
	Retaliation											99	233
	Age/ADEA	114	<u>117</u> 91	116	98	118	104	91	77	76 70			105
	Disability/ADA	112	91	127	112	106	104	110	68	70	/2	62	85

Note: EEOC receives charges in additional categories, including alleged violations related to religion,

color, equal pay/EPA, and GINA. This table does not contain data in those categories.

		FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008
Real Estate Rental and Leasing	Race	81	79		68	98	96	78		62	68	55	90
6	National Origin	34	34	17	25	27	28	35	26	24	28	42	53
	Gender	195	199		187	160	162	163		127	138	119	118
	Retaliation	108	135		131	137	147	112		34		47	86
	Age/ADEA	18	22		16	24	21	25		15	25	18	26
	Disability/ADA	16	21	19	16	15	26	20		17	14	15	14
Professional, Scientific, and	Race	290	303	-	278	336	307	258		220	252	256	292
Technical Services	National Origin	72	99		91	80	111	79		84	88	110	137
	Gender	697	679		552	633	660	570		453	492	449	423
	Retaliation	439	478		427	535	581	403	124	145	192	205	281
	Age/ADEA	78	67	67	72	61	92	79		77	79	108	92
	Disability/ADA	100	105		90	83	86	81	54	64	69	76	78
Administrative and Support and	Race	205	244		247	233	259	255		167	129	263	230
Waste Management and	National Origin	65	82	85	86	86	100	94	58	77	48	160	74
Remediation Services	Gender	474	450		531	498	506	451	396	331	271	272	346
	Retaliation	306	352	399	426	419	439	359		112	101	108	238
	Age/ADEA	78	50		89	88	95	73		50		55	80
	Disability/ADA	81	89		85	89	90	62		35	40	37	78
Educational Services	Race	334	281	290	372	282	311	305		207	295	242	183
	National Origin	122	126		121	119	136	131	121	90		118	58
	Gender	470	444	386	444	482	479	431	384	315	329	312	244
	Retaliation	493	458		532	477	524	429		238	228	252	212
	Age/ADEA	190	158		155	153	184	153		131	138	132	76
	Disability/ADA	189	177	143	160	158	164	149		102	113	111	100
Health Care and Social	Race	533	565		564	549	611	550		467	571	589	581
Assistance	National Origin	164 902	175 776		199 815	179 835	230 780	190 770		171 724	171 709	193 659	182 680
	Gender		639		758	745	760	647	333	338	322	411	
	Retaliation	726 222	182	698 171	165	745 149	187	182	151	338	<u> </u>	222	590 245
	Age/ADEA	277	238		228	214	230	222	151	194	172	205	245
Accommodation and Food	Disability/ADA Race	383	313		336	319	385	222	263	259	260	205	339
	National Origin	99	125		144	137	224	125		239		137	171
Services	Gender	1,077	1,025		1,075	987	1,122	936		781	772	727	717
	Retaliation	535	539		585	590	783	480		186	197	226	328
	Age/ADEA	77	72		51	73	94	76		81	66	108	107
	Disability/ADA	84	73		74	85	99	70		54	70	76	77
Other Services (except Public	Race	183	174		130	158	163	155		132	123	135	121
Administration)	National Origin	47	67	56	72	75	66	50		55	45	62	47
Auninistration	Gender	341	306		307	293	289	304		205	215	202	205
	Retaliation	241	234		216	241	251	207	91	84	84	94	125
	Age/ADEA	57	66		47	58	45	52	45	34	40	43	37
	Disability/ADA	92	62		47	44	52	51	34	32	38	40	42

		FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008
Public Administration	Race	622	809	625	669	663	605	418	352	335	359	333	261
	National Origin	211	217	200	221	249	192	128	113	108	118	106	73
	Gender	994	1,007	883	952	977	914	747	625	540	563	495	366
	Retaliation	991	1,081	984	994	1,109	971	708	406	344	384	367	363
	Age/ADEA	204	217	189	191	221	217	156	134	126	151	130	111
	<b>Disability/ADA</b>	320	310	309	265	272	230	170	135	162	146	144	119
Not Entered	Race	849	1,010	1,191	1,316	1,287	1,310	1,441	1,354	1,559	1,896	3,003	4,643
	National Origin	219	254	377	436	501	615	647	553	668	821	1,265	1,916
	Gender	2,065	2,251	2,402	2,646	2,730	2,661	3,024	3,206	3,645	4,024	5,291	7,323
	Retaliation	1,323	1,509	1,804	2,120	2,172	2,250	1,971	977	1,241	1,348	2,714	5,444
	Age/ADEA	236	257	309	341	407	465	536	469	563	712	1,088	1,822
	Disability/ADA	329	362	422	475	448	513	551	467	522	670	1,062	1,650

		FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
Construction	Race	128	105	167	96	113	111	119	127	112	103
	National Origin	68	48	41	39	55	43	47	34	31	24
	Gender	162	124	96	123	85	104	108	93	94	101
	Retaliation	99	90	107	85	88	96	104	90	89	106
	Age/ADEA	37	44	29	23	28	31	29	13	23	24
	Disability/ADA	24	34	33	22	20	18	33	26	39	17
Manufacturing	Race	631	581	634	555	592	602	567	686	507	526
_	National Origin	284	251	270	208	247	205	190	280	168	167
	Gender	693	699	661	658	694	636	634	630	580	538
	Retaliation	607	632	646	585	625	592	614	747	647	613
	Age/ADEA	239	238	179	212	211	213	206	226	150	154
	Disability/ADA	210	266	239	255	213	244	273	303	256	205
Wholesale Trade	Race	96	80	111	108	101	76	94	103	90	92
	National Origin	56	32	67	38	36	39	46	29	22	23
	Gender	141	124	123	119	122	108	102	109	127	119
	Retaliation	92	72	118	102	106	104	122	122	118	119
	Age/ADEA	39	43		51	41	37	35	41	29	34
	Disability/ADA	38	36		43	42	41	51	45	50	38
Retail Trade	Race	532	605		557	512	503	497	472	386	318
	National Origin	240	257	239	248	224	179	169	173	136	107
	Gender	782	856	803	814	770	620	633	578	526	476
	Retaliation	583	709	655	621	656	607	608	584	527	500
	Age/ADEA	257	348	317	280	279	293	249	252	195	182
	Disability/ADA	239	318	310	328	307	343	304	306	271	238
Transportation and Warehousing		284	296		288	267	284	243	267	234	207
	National Origin	117	134	338	73	100	87	89	66	61	53
	Gender	287	314	315	311	297	275	266	265	286	276
	Retaliation	288	289	527	301	263	270	283	292	292	285
	Age/ADEA	103	95	91	96	88	76	93	90	90	70
	Disability/ADA	111	121	130	122	105	113	112	118	124	114
Information	Race	144	147	121	109	109	104	108	101	86	72
	National Origin	43	54	50	40	44	42	45	31	30	21
	Gender	179	221	178	161	150	155	138	134	110	106
	Retaliation	148	194	173	153	174	166	153	137	151	126
	Age/ADEA	82	80	74	65	102	70	60	56	40	48
	Disability/ADA	80	121	98	90	98	94	98	82	84	54
Finance and Insurance	Race	187	222	197	187	188	207	185	159	169	137
	National Origin	77	113	91	78	65	74	60	58	59	59
	Gender	266	296		273	251	260	259	213	177	201
	Retaliation	253	276		300	292	308	289	249	236	248
	Age/ADEA	101	114	-	117	135	148	116	113	106	96
	Disability/ADA	106	128	133	129	157	153	156	143	127	105

		FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
Real Estate Rental and Leasing	Race	73	78	77	77	76	61	62	64	71	61
5	National Origin	39	32	43	65	29	27	29	21	16	20
	Gender	104	111	131	98	92	68	84	82	94	84
	Retaliation	81	83	86	122	91	77	81	82	94	77
	Age/ADEA	25	35	24	26	38	28	25	28	29	23
	Disability/ADA	27	25	25	33	26	29	26	43	40	28
Professional, Scientific, and	Race	182	205	228	190	178	198	170	163	171	126
Technical Services	National Origin	63	87	103	81	70	67	67	79	71	44
	Gender	261	290	305	250	263	242	239	210	203	201
	Retaliation	213	244	292	229	249	251	238	209	235	219
	Age/ADEA	59	98	85	89	83	83	62	92	82	76
	Disability/ADA	64	102	94	97	106	90	97	86	90	99
Administrative and Support and	Race	283	297	319	322	333	266	314	269	301	243
Waste Management and	National Origin	127	126	152	127	106	95	116	85	88	67
Remediation Services	Gender	432	482	436	474	426	430	390	381	379	357
	Retaliation	278	362	362	379	357	385	370	367	405	317
	Age/ADEA	121	108	107	126	102	106	124	92	118	76
	Disability/ADA	102	116	126	141	110	141	149	134	160	103
Educational Services	Race	262	307	282	264	283	258	258	260	222	150
	National Origin	93	118	108	105	93	92	85	98	73	48
	Gender	305	320	313	343	321	268	261	295	248	185
	Retaliation	338	354	339	392	375	343	377	410	329	256
	Age/ADEA	153	153	153	185	188	171	159	170	140	92
	Disability/ADA	173	193	177	186	165	200	153	177	152	112
Health Care and Social	Race	674	822	705	723	687	722	692	596	602	503
Assistance	National Origin	259	268	308	294	233	246	210	190	173	162
	Gender	734	831	809	731	750	738	686	589	531	460
	Retaliation	650	772	784	823	807	856	849	751	721	687
	Age/ADEA	254	301	338	305	300	315	363	280	240	212
	Disability/ADA	271	345	389	417	370	424	429	409	361	318
Accommodation and Food	Race	330 178	396	409	350	396	314	292	309 120	270	221
Services	National Origin		172	189	167	185	142	145		109	78
	Gender	723	831	799	670	671	555	531	557	490	449
	Retaliation	345	403	417	387	445	373	383	442	360	332
	Age/ADEA	138	142	140	124	146	119	123	115	115	101
Other Comdees ( Dubli	Disability/ADA	123 99	132 144	145 127	120 117	152 104	129 102	151 108	144 98	118 77	108
Other Services (except Public	Race	99 44	144 66	127	47	43	<u>102</u> 39	108	98 39	26	76 18
Administration)	National Origin	44 147	181	55 154	47	43 150	39 117	52 158	<u>39</u> 113	26 119	100
	Gender Betaliation	147	181	154	162	139	117	158	113	119	100
	Retaliation			55			52				37
		44 46	56 62	55 35	66	51 66		57 47	52 50	51 47	
	Disability/ADA	46	62	35	67	66	53	47	50	47	42

		FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
Public Administration	Race	348	389	372	342	281	324	291	316	248	310
	National Origin	140	132	137	118	122	112	86	86	67	54
	Gender	493	515	496	487	437	446	374	410	365	380
	Retaliation	500	534	554	539	493	531	478	486	443	482
	Age/ADEA	150	174	164	153	158	192	148	144	140	227
	<b>Disability/ADA</b>	195	229	229	242	219	227	204	229	199	160
Not Entered	Race	3,916	3,994	4,083	4,226	4,361	4,841	5,400	5,857	5,598	5,561
	National Origin	1,655	1,657	1,780	1,825	1,817	1,935	2,016	2,057	2,027	1,878
	Gender	6,643	6,282	6,307	6,805	6,711	7,023	7,508	8,162	7,960	8,861
	Retaliation	5,020	4,923	5,062	5,469	5,607	6,280	7,013	7,829	7,809	8,526
	Age/ADEA	1,662	1,663	1,695	1,829	2,024	2,203	2,381	2,389	2,317	2,464
	<b>Disability/ADA</b>	1,610	1,848	1,871	2,075	2,315	2,540	2,912	3,084	3,101	3,202

#### EEOC Charge Receipts for Top 15 Industries Charges alleging either sexual or non-sexual harassment FY 1997 - FY 2018

	Manufacturing	Health Care and Social Assistance	Retail Trade	Public Administration	Accommodation and Food Services	Educational Services	Administrative and Support and Waste Management and Remediation Services	Professional, Scientific, and Technical Services
FY1997	2,883	1,756	2,089	2,007	1,506	1,025	762	1,101
FY1998	2,840	1,630	1,900	2,153	1,435	931	788	1,090
FY1999	2,827	1,604	1,903	1,867	1,402	862	904	1,014
FY2000	3,014	1,619	2,073	1,867	1,479	989	866	926
FY2001	2,948	1,624	2,092	1,914	1,410	923	847	1,050
FY2002	2,682	1,635	2,094	1,769	1,646	999	862	1,063
FY2003	2,106	1,621	1,874	1,406	1,365	945	805	948
FY2004	1,743	1,635	1,683	1,314	1,292	892	640	879
FY2005	1,708	1,555	1,642	1,159	1,180	767	593	833
FY2006	1,553	1,659	1,491	1,242	1,201	848	498	930
FY2007	1,601	1,631	1,462	1,042	1,177	774	632	879
FY2008	1,613	1,593	1,529	802	1,210	557	671	863
FY2009	1,671	1,777	1,731	1,093	1,253	764	879	543
FY2010	1,635	2,117	1,968	1,169	1,422	878	937	624
FY2011	1,610	2,058	1,818	1,180	1,396	802	959	647
FY2012	1,525	1,976	1,791	1,086	1,221	831	954	549
FY2013	1,565	1,917	1,697	966	1,257	802	924	554
FY2014	1,496	1,908	1,567	1,005	1,054	779	868	543
FY2015	1,456	1,871	1,443	907	1,008	703	836	504
FY2016	1,617	1,646	1,369	923	989	749	787	476
FY2017	1,347	1,485	1,186	808	886	619	827	454
FY2018	1,228	1,277	1,036	847	734	445	675	421
TOTAL FY1997 - FY2018	42,668	37,594	37,438	28,526	27,523	17,884	17,514	16,891

#### EEOC Charge Receipts for Top 15 Industries Charges alleging either sexual or non-sexual harassment FY 1997 - FY 2018

	Transportation and Warehousing	Finance and Insurance	Information	Other Services (except Public Administration)	Construction	Wholesale Trade	Real Estate Rental and Leasing
FY1997	872	889	767	606	570	329	302
FY1998	871	864	747	560	485	308	310
FY1999	912	982	789	524	606	305	244
FY2000	915	931	992	523	621	334	288
FY2001	925	1,000	951	531	580	383	270
FY2002	893	845	992	529	612	322	293
FY2003	778	821	750	538	460	374	283
FY2004	704	735	625	505	339	379	267
FY2005	736	658	567	415	291	293	228
FY2006	624	606	485	408	342	281	253
FY2007	636	605	434	407	344	291	231
FY2008	669	636	424	385	349	328	254
FY2009	716	612	437	321	370	295	231
FY2010	789	705	502	416	291	265	226
FY2011	979	662	415	360	329	296	257
FY2012	730	618	371	370	251	292	257
FY2013	669	607	390	352	261	286	220
FY2014	669	632	356	289	258	248	177
FY2015	641	578	328	321	272	259	191
FY2016	653	532	317	264	239	262	186
FY2017	620	469	279	245	240	256	200
FY2018	555	443	235	224	230	241	174
TOTAL FY1997 - FY2018	16,556	15,430	12,153	9,093	8,340	6,627	5,342

#### EEOC Charge Receipts with Industry Entered Charges alleging either sexual or non-sexual harassment FY 1997 - FY 2018

	Charges for which an indsutry was entered	Charges for which an industry was not entered
FY1997	18,138	3,231
FY1998	17,617	3,595
FY1999	17,376	4,032
FY2000	18,085	4,508
FY2001	18,092	4,504
FY2002	17,936	4,599
FY2003	15,561	5,399
FY2004	14,100	5,714
FY2005	12,970	6,436
FY2006	12,884	7,371
FY2007	12,722	10,129
FY2008	12,485	14,565
FY2009	13,294	13,027
FY2010	14,607	12,908
FY2011	14,395	13,004
FY2012	13,399	13,738
FY2013	13,037	13,916
FY2014	12,486	14,790
FY2015	11,970	16,088
FY2016	11,586	17,102
FY2017	10,441	16,758
FY2018	9,166	17,601
TOTAL FY1997 - FY2018	312 347	223 015
	312,347	223,015

#### EEOC Charge Receipts by Gender and Basis Charges alleging non-sexual harassment FY 1997 - FY 2018

		FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
Total Non-	Total Charges	13,526	13,672	14,091	14,995	14,933	15,286	14,294	13,032	12,938	14,016	16,498
Sexual	Race	5,782	6,169	6,289	6,643	6,712	6,694	5,965	5,051	5,096	5,593	6,990
Harassment	Religion	530	541	548	627	689	857	815	676	660	707	911
Filings	National Origin	1,777	1,896	2,115	2,353	2,440	2,727	2,282	1,866	1,997	2,227	2,922
-	Gender	4,615	4,575	4,801	5,333	5,207	5,142	4,436	3,276	3,261	3,451	4,298
	Color	181	350	333	410	363	406	414	183	259	358	543
	Retaliation	5,180	5,494	5,854	6,689	6,736	7,016	5,659	3,074	3,196	3,429	4,913
	Age/ADEA	1,994	1,871	1,759	1,973	2,152	2,314	2,103	1,698	1,874	1,969	2,538
	Disability/ADA	2,512	2,420	2,443	2,453	2,404	2,505	2,180	1,619	1,752	1,900	2,355
Female	Total Charges	7,784	7,640	7,988	8,443	8,242	8,409	7,846	7,248	7,196	7,802	8,877
	Race	2,770	2,888	3,006	3,040	3,035	3,075	2,717	2,323	2,376	2,672	3,220
	Religion	238	239	245	301	313	366	348	325	303	316	417
	National Origin	733	769	873	999	1,008	1,124	961	750	814	905	1,093
	Gender	3,900	3,775	3,976	4,410	4,242	4,191	3,533	2,657	2,629	2,770	3,391
	Color	85	152	156	174	145	181	164	77	110	160	247
	Retaliation	3,177	3,274	3,508	3,942	3,904	4,082	3,262	1,896	1,931	2,015	2,748
	Age/ADEA	1,127	1,063	988	1,092	1,193	1,306	1,175	923	1,044	1,086	1,413
	Disability/ADA	1,355	1,299	1,314	1,331	1,280	1,317	1,181	902	940	1,024	1,261
Male	Total Charges	5,735	6,025	6,086	6,532	6,665	6,852	6,264	5,432	5,402	5,889	7,084
	Race	3,009	3,276	3,277	3,595	3,671	3,606	3,182	2,597	2,580	2,802	3,565
	Religion	292	302	302	326	376	489	457	337	342	372	466
	National Origin	1,043	1,127	1,240	1,352	1,428	1,601	1,289	1,065	1,119	1,251	1,674
	Gender	715	799	823	922	960	946	858	534	546	601	779
	Color	96	198	177	236	218	225	245	98	135	181	270
	Retaliation	2,000	2,218	2,344	2,741	2,825	2,927	2,344	1,096	1,175	1,321	2,001
	Age/ADEA	867	806	768	878	956	1,006	913	742	793	853	1,040
	Disability/ADA	1,155	1,119	1,126	1,118	1,123	1,185	972	675	759	825	1,003
Unavailable	Total Charges	7	7	17	20	26	25	184	352	340	325	537

Note: EEOC receives charges in additional categories, including alleged violations related to equal pay/EPA and GINA and charges where gender is unavailable for each basis. This table does not contain data in those categories.

# EEOC Charge Receipts by Gender and Basis Charges alleging non-sexual harassment FY 1997 - FY 2018

		FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
Total Non-	Total Charges	20,313	20,052	21,588	21,566	21,364	21,539	22,306	23,237	23,889	22,541	21,436
Sexual	Race	8,642	8,092	8,638	8,830	8,409	8,560	8,969	9,356	9,796	9,092	8,563
Harassment	Religion	1,069	1,136	1,340	1,663	1,332	1,264	1,323	1,312	1,521	1,333	1,192
Filings	National Origin	3,492	3,521	3,571	3,953	3,531	3,461	3,448	3,450	3,472	3,149	2,768
_	Gender	5,913	5,887	6,404	6,215	6,584	6,681	6,979	7,460	7,876	7,480	7,385
	Color	966	967	884	946	907	924	1,056	1,136	1,156	1,209	1,288
	Retaliation	8,120	8,035	8,634	9,036	9,058	9,214	9,969	10,622	11,291	11,005	10,936
	Age/ADEA	3,411	3,551	3,804	3,674	3,815	4,047	4,231	4,330	4,270	3,939	3,983
	Disability/ADA	3,060	3,475	4,159	4,157	4,458	4,572	4,951	5,309	5,507	5,340	5,024
Female	Total Charges	11,025	11,186	12,635	12,122	12,342	12,386	12,741	13,335	13,835	13,300	11,973
	Race	4,037	3,972	4,577	4,206	4,214	4,297	4,496	4,753	5,040	4,820	4,187
	Religion	498	509	662	652	610	659	655	639	735	670	539
	National Origin	1,362	1,457	1,573	1,624	1,610	1,513	1,546	1,565	1,622	1,478	1,282
	Gender	4,612	4,554	5,019	4,802	5,052	5,005	5,166	5,545	5,840	5,487	5,235
	Color	393	430	446	421	426	441	488	530	563	623	559
	Retaliation	4,551	4,679	5,288	5,183	5,507	5,478	5,934	6,377	6,809	6,705	6,373
	Age/ADEA	1,927	1,963	2,206	2,145	2,241	2,389	2,442	2,521	2,465	2,361	2,207
	Disability/ADA	1,619	1,960	2,432	2,365	2,601	2,707	2,908	3,096	3,225	3,143	2,801
Male	Total Charges	8,319	8,156	8,271	8,619	8,386	8,538	8,960	9,128	9,326	8,610	7 -
	Race	4,214	3,819	3,796	4,198	3,969	4,048	4,276	4,314	4,462	4,038	
	Religion	511	594	625	835	655	580	639	620	713	625	540
	National Origin	1,924	1,923	1,851	2,048	1,777	1,838	1,786	1,754	1,718	1,578	,
	Gender	1,065	1,130	1,210	1,227	1,356	1,489	1,638	1,666	1,825	1,809	1,556
	Color	492	480	380	465	431	447	538	557	545	563	629
	Retaliation	3,150	3,053	3,060	3,444	3,287	3,455	3,764	3,910	4,131	3,997	3,580
	Age/ADEA	1,328	1,469	1,483	1,443	1,477	1,571	1,684	1,675	1,697	1,497	1,472
	Disability/ADA	1,252	1,398	1,591	1,664	1,728	1,707	1,894	2,025	2,105	2,020	1,740
Unavailable	Total Charges	969	710	682	825	636	615	605	774	728	631	1,936

		FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
Construction	Race	158	152	215	191	196	231	160	119	91	111	127
	National Origin	67	51	72	80	69	80	60	46	41	47	36
	Gender	115	98	94	130	130	122	82	37	24	53	54
	Retaliation	132	119	125	150	154	167	117	36	36	36	42
	Age/ADEA	32	30	15		28	45	29	22	16	10	17
	Disability/ADA	27	37	30			39	25	15	12	18	24
Manufacturing	Race	871	939	883	1,019	1,033	919	694	513	524	541	563
-	<b>National Origin</b>	227	252	310	339	311	332	252	191	180	185	198
	Gender	612	554	627	698	632	580	407	308	322	271	261
	Retaliation	700	699	763	896	847	844	579	253	261	276	322
	Age/ADEA	285	252	199	281	274	260	219	174	208	142	165
	Disability/ADA	378		328	355	320	329	234	147	168	146	162
Wholesale Trade	Race	91	89	85	90		88	109	102	80	74	99
	National Origin	26		23	31	50	30	36	32	33	26	49
	Gender	64		76		79	76	64	59	38	53	50
	Retaliation	72	65	86	78		92	87	55	37	45	57
	Age/ADEA	33	30		22	42	33	30	24	22	28	21
	Disability/ADA	33	38	34	30		31	32	27	19	32	24
Retail Trade	Race	517	492	527	541	549	583	514	394	463	372	421
	National Origin	162	146	181	215	223	233	215	161	162	175	155
	Gender	413		356	458	460	403	361	251	278	243	271
	Retaliation	378		418		523	527	434	225	229	193	261
	Age/ADEA	171	152	137	181	202	182	165	170	132	121	175
	Disability/ADA	198	181	151	182	191	201	179	138	129	131	161
Transportation and Warehousing	Race	274	287	342	319		347	297	235	194	207	232
	National Origin	77 200	83 178	111 243	95 214	95 209	103 177	<u>86</u> 164	71 71	57 100	66 120	73 110
	Gender										-	
	Retaliation	221 56	237 68	330 77	293 78	317 77	343 74	<u>244</u> 91	123 56	131 52	117 49	123 63
	Age/ADEA Disability/ADA	99		121	101	118	74	77	67	56	49 56	59
Information	Race	231	226	231	314	288	299	222	137	160	138	143
Information	National Origin	69		74	104	200	299	57	43	60	39	40
	Gender	188		218	251	233	239	167	115	98	90	89
	Retaliation	201	210	210	328	302	307	217	113	100	99	109
	Age/ADEA	93		88	100	98	143	96	72	67	70	54
	Disability/ADA	113	112	129	112	124	146	89	66	76	61	66
Finance and Insurance	Race	243	266	303	257	346	268	218	182	174	152	179
	National Origin	99		117	94	128	92	89	69	71	54	72
	Gender	195	206	296	233	255	251	197	143	140	109	137
	Retaliation	227	240	307	303	312	312	253	126	140	131	148
	Age/ADEA	114	117	116	98		104	91	77	76	73	99
	Disability/ADA	112	91	127	112		104	110		70	72	62
												52

Note: EEOC receives charges in additional categories, including alleged violations related to religion,

color, equal pay/EPA, and GINA. This table does not contain data in those categories.

		FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
Real Estate Rental and Leasing	Race	71	73	58	67	91	91	75	69	62	68	54
5	National Origin	29	30	16	22	27	27	34	26	24	28	42
	Gender	56		48	57	57	52	47	39	31	38	36
	Retaliation	44	67	49	59	72	76	59		26	33	41
	Age/ADEA	18		14	16	24	21	25		15	25	18
	Disability/ADA	16		19		15	26	20			14	15
Professional, Scientific, and Technical	Race	254	270	254		310	274	239		219	246	254
Services	National Origin	69	97	75		74	106	77	84	80	86	109
	Gender	236	247	211	205	207	230	199			168	173
	Retaliation	231	276	250		306	310	242	98	117	155	166
	Age/ADEA	78	67	67	72	61	92	79		77	79	108
	Disability/ADA	100	105	86		83	86	81	54	64	69	76
Administrative and Support and Waste	Race	190	223	254		220	237	236		162	128	259
Management and Remediation Services	National Origin	63	80	81	81	83	98	90		77	47	159
	Gender	178	165	191	222	199	226	163		99	80	92
	Retaliation	168	196	230		248	271	221	94	96		95
	Age/ADEA	78		70		88	95	73		50		55
	Disability/ADA	81	89	96		89	90	62		35	40	37
Educational Services	Race	315	266	274		272	288	294	248	206	294	238
	National Origin	115	124	107	120	114	134	127	121	89	100	115
	Gender	260	257	220		287	271	239	180	142	163	162
	Retaliation	369 190	354 158	321 126	423 155	357 153	409 184	338 153		219 131	206 138	229 132
	Age/ADEA	190	156	120		153	164	153		102	130	132
Health Care and Social Assistance	Disability/ADA	506	546	570		529	567	529		462	557	579
Health Care and Social Assistance	Race National Origin	160	173	176		171	224	189		171	169	191
	Gender	371	328	337	378	357	327	336		264	254	290
	Retaliation	458	419	450		489	503	462	300	204	280	363
	Age/ADEA	222	182	171	165	149	187	182	151	177	172	222
	Disability/ADA	277	238	243		214	230	222	159	194	187	205
Accommodation and Food Services	Race	338	275	285		282	339	280		247	253	268
	National Origin	94	121	96		125	215	115		90	110	127
	Gender	276	250	236		234	323	211	162	159	166	210
	Retaliation	222	220	206		253	363	247	111	132	143	172
	Age/ADEA	77	72	66		73	94	76			66	108
	Disability/ADA	84	73	74		85	99	72		54	70	76
Other Services (except Public	Race	170	163	150	117	145	153	150	125	129	118	135
Administration)	National Origin	46		54		68	63	46		55	45	62
	Gender	110		104		110	103	105			69	87
	Retaliation	136	156	136	132	146	138	144	74	69	73	81
	Age/ADEA	57	66	39		58	45	52		34	40	43
	Disability/ADA	92	62	63	47	44	52	51	34	32	38	40

		FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
Public Administration	Race	587	781	597	637	636	575	404	351	326	356	327
	National Origin	203	214	197	216	245	187	125	113	108	117	104
	Gender	551	586	522	571	569	485	399	260	228	266	286
	Retaliation	763	856	785	784	869	734	554	375	312	355	334
	Age/ADEA	204	217	189	191	221	217	156	134	126	151	130
	<b>Disability/ADA</b>	320	310	309	265	272	230	170	135	162	146	144
Not Entered	Race	781	937	1,085	1,234	1,172	1,201	1,389	1,321	1,523	1,868	2,931
	<b>National Origin</b>	204	242	368	425	473	605	630	547	659	814	1,236
	Gender	653	778	905	1,066	1,044	1,116	1,195	915	1,077	1,240	1,913
	Retaliation	694	841	1,019	1,285	1,243	1,404	1,325	799	943	1,083	2,190
	Age/ADEA	236	257	309	341	407	465	536	469	563	712	1,088
	<b>Disability/ADA</b>	329	362	422	475	448	513	551	467	522	670	1,062

		FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
Construction	Race	146	126	105	167	93	112	109		125	110	101
	National Origin	43	66	47	40	37	54	43		34	31	23
	Gender	39	65	62	40		36	60		48		48
	Retaliation	65	77	80			66	81	88	71	78	93
	Age/ADEA	35	37	44	29		28	31		13		24
	Disability/ADA	23	24	34	33		20	18		26		17
Manufacturing	Race	606	620	566	620	538	580	590		672	491	508
	National Origin	201	278	249	263	201	246	202		275	163	164
	Gender	344	353	389	303	344	371	348		380	332	278
	Retaliation	483	527	545	553	501	535	515		671	564	502
	Age/ADEA	208	239	238	179		211	213		226	150	154
	Disability/ADA	176	210	266	239		213	244		303	256	205
Wholesale Trade	Race	97	93	78			99	74	93	99		87
	National Origin	38	53	32	67	37	35	38		28		21
	Gender	71	71	61	62	65	67	57		66		68
	Retaliation	80	70	59	101	84	93	89		105	95	96
	Age/ADEA	54	39	43	45	51	41	37	35	41	29	34
	Disability/ADA	33	38	36	44	43	42	41	51	45	50	38
Retail Trade	Race	478	514	589	547	537	502	490		463	376	307
	National Origin	181	235	246	227	242	219	176		173	132	102
	Gender	316 382	337 476	429 604	391 549	402	422 563	350 532		364	309 449	285 430
	Retaliation	204	476 257	604 348	549 317	508 280	279	293		511 252	449 195	430
	Age/ADEA	158	237	340	317		307	343		306		238
Transportation and March avains	Disability/ADA Race	260	239	288	477	281	259	280		261	229	230
Transportation and Warehousing	National Origin	69	116	132	336	70	98	87	88	63		53
	Gender	149	158	175	166	152	173	159		169	159	165
	Retaliation	143	255	259		260	229	233		257	248	245
	Age/ADEA	83	103	95	91	96	88	76		90		70
	Disability/ADA	80	111	121	130	122	105	113		118		114
Information	Race	136	141	145	120		106	100		99		70
	National Origin	46	41	53	48	38	44	41	45	30		20
	Gender	97	99	146	105	86	103	99		90		64
	Retaliation	123	130	177	155	131	155	151	143	123	136	109
	Age/ADEA	74	82	80	74	65	102	70		56		48
	Disability/ADA	61	80	121	98	90	98	94	98	82	84	54
Finance and Insurance	Race	202	186	219	192	183	185	205	180	158	166	134
	National Origin	69	75	110	87	74	64	74	58	58	56	56
	Gender	152	165	175	179		168	186		150		126
	Retaliation	206	232	247	260	260	265	285	254	230	216	214
	Age/ADEA	105	101	114	101	117	135	148		113		96
	Disability/ADA	85	106	128	133	129	157	153	156	143	127	105

		FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
Real Estate Rental and Leasing	Race	89	70	75		75	73	60		61	68	61
6	National Origin	52	39	30		64	29	26	29	21	16	20
	Gender	51	46	55	46	55	42	44	49	53	54	47
	Retaliation	72	57	71	65	105	76	73		77	79	69
	Age/ADEA	26	25	35		26	38	28		28	29	23
	Disability/ADA	14	27	25	25	33	26	29		43	40	28
Professional, Scientific, and Technical	Race	283	180	200	222	189	172	196		157	170	124
Services	National Origin	134	62	81	102	81	67	65		77	69	43
	Gender	197	130	154	167	140		145		129	139	133
	Retaliation	237	173	203	249	195	213	216		179	214	197
	Age/ADEA	92	59	98	85	89	83	83		92	82	76
	Disability/ADA	78	64	102	94	97	106	90		86	90	99
Administrative and Support and Waste	Race	218	273	289	313	308	320	258		266	288	227
Management and Remediation Services	National Origin	72	117	124	150	120	105	93		84	83	61
	Gender	141	191	251	217	220	210	213		210	210	193
	Retaliation	179	229	300	311 107	313	295	311	305	298	350	256
	Age/ADEA	80 78	121	108		126	102	106		92	118	76
	Disability/ADA	182	102 260	116 305	126 278	141 256	110 276	141 255	149 256	134 254	160 219	103 145
Educational Services	Race	57	260	305 116		200	<u>276</u> 91	255 90			73	45
	National Origin	143	187	201	107	234	215	181	194	227	198	122
	Gender Retaliation	143	299	327	311	361	350	319		379	313	228
	Age/ADEA	76		153	153	185	188	171	159	170	140	92
	Disability/ADA	100	173	193	177	186	165	200		170	152	112
Health Care and Social Assistance	Race	572	650	809	690	704	675	711	679	590	594	496
	National Origin	178	253	262	304	291	232	244		189	172	159
	Gender	308	361	468	448	415	413	455		375	350	282
	Retaliation	512	543	672	694	731	715	778		688	645	619
	Age/ADEA	245	254	301	338	305	300	315		280	240	212
	Disability/ADA	248	271	345	389	417	370	424	429	409	361	318
Accommodation and Food Services	Race	320	316	383	390	334	380	301	278	295	261	209
	National Origin	165	173	165	180	160	175	133		118	105	73
	Gender	245	248	265	303	233	308	241	288	295	250	207
	Retaliation	253	249	287	312	279	347	268		341	299	254
	Age/ADEA	107	138	142	140	124	146	119		115	115	101
	Disability/ADA	77	123	132	145	120	152	129		144	118	108
Other Services (except Public	Race	119	99	141	122	114	102	101	103	96	72	72
Administration)	National Origin	46		65	53	46		38		39	25	18
	Gender	78		89		77	58	70		80	80	43
	Retaliation	95	93	113	97	115	111	108		104	107	85
	Age/ADEA	37	44	56	55	66		52		52	51	37
	Disability/ADA	42	46	62	35	67	66	53	47	50	47	42

		FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
Public Administration	Race	256	342	384	366	329	276	319	285	308	246	305
	National Origin	72	136	131	135	116	121	110	85	86	66	53
	Gender	216	304	337	333	315	292	306	264	286	272	234
	Retaliation	328	460	481	508	496	434	476	434	447	401	392
	Age/ADEA	111	150	174	164	153	158	192	148	144	140	227
	Disability/ADA	119	195	229	229	242	219	227	204	229	199	160
Not Entered	Race	4,643	3,916	3,994	4,083	4,226	4,361	4,841	5,400	5,857	5,598	5,561
	National Origin	1,916		1,657	1,780	1,825	1,817	1,935				1,878
	Gender	7,323	6,643	6,282	6,307	6,805	6,711	7,023	7,508	8,162	7,960	8,861
	Retaliation	5,444	5,020	4,923	5,062	5,469	5,607	6,280	7,013	7,829	7,809	8,526
	Age/ADEA	1,822	1,662	1,663	1,695	1,829	2,024	2,203	2,381	2,389	2,317	2,464
	Disability/ADA	1,650	1,610	1,848	1,871	2,075	2,315	2,540	2,912	3,084	3,101	3,202

#### EEOC Charge Receipts for Top 15 Industries Charges alleging non-sexual harassment FY 1997 - FY 2018

	Manufacturing	Health Care and Social Assistance	Retail Trade	Public Administration	Accommodation and Food Services	Educational Services	Transportation and Warehousing	Administrative and Support and Waste Management and Remediation Services
FY1997	1,935	1,215	1,213	1,550	701	808	569	463
FY1998	1,888	1,166	1,075	1,720	642	740	598	499
FY1999	1,943	1,171	1,121	1,497	625	691	709	558
FY2000	2,173	1,170	1,283	1,479	678	805	640	550
FY2001	2,054	1,140	1,295	1,498	645	722	678	544
FY2002	1,938	1,177	1,291	1,342	836	787	659	578
FY2003	1,514	1,200	1,218	1,065	656	752	588	515
FY2004	1,208	1,187	1,081	1,010	591	707	516	383
FY2005	1,230	1,153	1,081	881	589	619	461	389
FY2006	1,168	1,246	977	977	641	707	463	328
FY2007	1,175	1,290	1,024	859	694	640	488	468
FY2008	1,265	1,264	1,128	662	768	466	521	479
FY2009	1,358	1,435	1,320	929	803	652	598	663
FY2010	1,353	1,770	1,577	1,002	902	767	659	725
FY2011	1,287	1,723	1,440	1,035	946	696	848	764
FY2012	1,232	1,675	1,406	934	811	733	580	718
FY2013	1,269	1,607	1,379	824	917	703	552	718
FY2014	1,236	1,642	1,322	878	759	706	564	676
FY2015	1,220	1,647	1,212	803	771	645	548	670
FY2016	1,387	1,460	1,183	812	753	685	566	633
FY2017	1,126	1,307	985	726	671	574	507	679
FY2018	986	1,114	867	711	514	386	458	522
TOTAL FY1997 - FY2018	31,945	29,759	26,478	23,194	15,913	14,991	12,770	12,522

#### EEOC Charge Receipts for Top 15 Industries Charges alleging non-sexual harassment FY 1997 - FY 2018

	Finance and Insurance	Professional, Scientific, and Technical Services	Administration)		Wholesale Trade	Real Estate Rental and Leasing	
FY1997	601	619	537	369	358	205	162
FY1998	590	646	521	378	317	201	174
FY1999	704	579	576	348	380	195	136
FY2000	615	572	667	315	403	207	155
FY2001	703	614	641	346	390	259	167
FY2002	629	627	715	340	440	218	179
FY2003	596	581	538	348	322	255	168
FY2004	518	552	432	312	234	249	159
FY2005	493	537	419	289	188	181	141
FY2006	448	626	371	279	244	190	164
FY2007	475	633	344	305	245	214	155
FY2008	513	650	335	271	257	251	194
FY2009	521	422	366	246	283	229	172
FY2010	596	502	432	339	237	205	176
FY2011	560	518	351	275	278	240	175
FY2012	522	453	297	293	184	242	220
FY2013	527	457	343	266	214	233	176
FY2014	566	456	306	248	218	200	157
FY2015	511	417	295	265	228	211	160
FY2016	475	396	276	234	199	221	161
FY2017	424	396	249	208	210	202	164
FY2018	377	356	196	173	183	192	141
TOTAL FY1997 - FY2018	11,964	11,609	9,207	6,447	6,012	4,800	3,656

#### EEOC Charge Receipts with Industry Entered Charges alleging non-sexual harassment FY 1997 - FY 2018

	Charges for	Charges for
	which an	which an
	industry was	industry was
	entered	not entered
FY1997	11,305	1,798
FY1998	11,155	2,095
FY1999	11,233	2,473
FY2000	11,712	2,883
FY2001	11,696	2,793
FY2002	11,756	3,036
FY2003	10,316	3,624
FY2004	9,139	3,595
FY2005	8,651	4,047
FY2006	8,829	4,828
FY2007	9,009	7,046
FY2008	9,024	10,786
FY2009	9,997	9,586
FY2010	11,242	9,819
FY2011	11,136	9,964
FY2012	10,300	10,602
FY2013	10,185	10,915
FY2014	9,934	11,866
FY2015	9,603	13,103
FY2016	9,441	13,961
FY2017	8,428	13,674
FY2018	7,176	13,944
TOTAL		
FY1997 -		
FY2018	221,267	166,438

#### EEOC Charge Receipts by Gender and Basis Charges alleging sexual harassment FY 1997 - FY 2018

		FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
Total Sexual	Total Charges	9,354	9,076	9,008	9,456	9,395	8,948	8,182	8,103	7,788	7,615	7,973
Harassment	Race	733	820	812	783	822	852	477	114	149	143	248
Filings	Religion	82	103	89	104	99	99	74	13	27	19	24
	National Origin	134	126	151	181	222	210	129	25	32	39	103
	Gender	9,146	8,814	8,731	9,244	9,206	8,782	7,997	7,890	7,572	7,455	7,808
	Color	28	38	42	49	49	59	41	13	6	12	26
	Retaliation	4,410	4,396	4,610	5,097	5,230	5,205	3,359	589	835	745	1,241
Female	Total Charges	8,330	7,897	7,809	8,236	8,147	7,667	6,929	6,623	6,450	6,297	6,470
	Race	578	637	629	615	632	645	357	82	108	107	164
	Religion	55	75	56	77	64	70	54	7	16	11	15
	National Origin	102	93	115	136	178	144	101	18	19	30	73
	Gender	8,197	7,723	7,614	8,094	8,031	7,578	6,814	6,478	6,318	6,184	6,355
	Retaliation	3,897	3,815	4,013	4,428	4,566	4,459	2,837	469	649	599	992
Male	Total Charges	1,024	1,176	1,199	1,216	1,244	1,278	1,130	1,179	1,049	1,131	1,252
	Race	155	182	183	168	190	207	118	28	34	33	72
	Religion	27	28	33	27	35	29	20	4	9	6	9
	National Origin	32	32	36	45	43	66	27	7	10	9	25
	Gender	949	1,088	1,117	1,147	1,172	1,201	1,063	1,117	985	1,090	1,205
	Retaliation	513			666	662	746		92	119	118	181

Note: EEOC receives charges in additional categories, including alleged violations related to color, age/ADEA, disability/ADA, equal pay/EPA, and GINA and charges where gender is unavailable. This table does not contain data in those categories.

# EEOC Charge Receipts by Gender and Basis Charges alleging sexual harassment FY 1997 - FY 2018

		FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
Total Sexual	Total Charges	8,889	8,231	8,017	7,869	7,703	7,317	6,984	6,886	6,919	6,759	7,647
Harassment	Race	499	415	439	425	518	437	447	488	469	485	530
Filings	Religion	56	50	78	69	77	76	94	64	76	82	79
	National Origin	202	215	190	189	207	170	185	214	149	208	211
	Gender	8,687	8,023	7,784	7,692	7,536	7,127	6,844	6,718	6,764	6,587	7,492
	Color	72	59	52	41	62	43	97	67	77	66	89
	Retaliation	2,392	2,522	2,352	2,348	2,439	2,478	2,453	2,653	2,727	2,732	3,360
Female	Total Charges	7,034	6,608	6,474	6,372	6,076	5,751	5,526	5,433	5,536	5,376	5,916
	Race	349	289	332	294	360	294	294	342	350	335	340
	Religion	34	32	49	49	42	51	58	39	53	62	54
	National Origin	120	156	129	143	140	128	117	145	100	146	146
	Gender	6,917	6,488	6,314	6,268	5,969	5,627	5,446	5,334	5,438	5,276	5,838
	Retaliation	1,873	2,031	1,919	1,897	1,906	1,934	1,983	2,096	2,194	2,209	2,614
Male	Total Charges	1,437	1,370	1,340	1,312	1,393	1,349	1,281	1,255	1,219	1,196	1,236
	Race	122	106	94	124	148	139	143	129	112	135	147
	Religion	16	17	28	20	29	24	36	23	21	19	18
	National Origin	55	45	53	43	58	41	62	62	45	56	53
	Gender	1,370	1,288	1,275	1,243	1,337	1,287	1,227	1,191	1,169	1,128	1,176
	Retaliation	358	395	359	385	436	434	396	461	462	458	523

		FY1997	FY1998	FY1999	FY2000	FY2001	FY2002	FY2003	FY2004	FY2005	FY2006	FY2007
Construction	Gender	254	206	263	267	239	220	170	127	128	128	125
	Retaliation	116	96	127	149	139	125	78	3	6	12	21
Manufacturing	Gender	1,129	1,108	1,067	1,055	1,069	905	708	626	556	488	522
	Retaliation	554	573	563	609	605	540	329	52	54	41	75
Wholesale Trade	Gender	139	122	137	143	154	123	138	153	126	107	100
	Retaliation	69	65	71	81	82	65	57	15	15	8	16
Retail Trade	Gender	1,009	939	915	952	967	951	781	700	659	607	524
	Retaliation	439	454	425	480	544	553	306	46	68	40	55
Transportation and Warehousing	Gender	358	309	266	335	312	291	232	223	307	199	188
	Retaliation	209	173	148	192	179	181	89	11	18	12	26
Information	Gender	274	275	288	399	375	328	252		172	156	120
	Retaliation	139	138	163	232	243	209	123			13	13
Finance and Insurance	Gender	340	321	346	365	351	283	295	263	212	193	175
	Retaliation	174	158	184	193	202	183	140		34	16	29
Real Estate Rental and Leasing	Gender	154	154	118	152	118	129	127	123	99	103	88
	Retaliation	71	85	61	89	74	83	59		8	6	9
Professional, Scientific, and Technical	Gender	547	533	494	412	487	499	420		337	357	310
Services	Retaliation	252	271	265	218	273	322	191	27	31	51	45
Administrative and Support and Waste	Gender	348	348	417	379	363	348	356	296	252	202	202
Management and Remediation Services	Retaliation	173	191	218	220	217	214	187	20	18		19
Educational Services	Gender	265	244	216	257	256	267	239	-	190	180	185
	Retaliation	159	141	131	163	165	164	125		22	30	35
Health Care and Social Assistance	Gender	640	524	512	551	586	551	508		486		404
	Retaliation	346	264	304	342	333	335	231	36	47	55	65
Accommodation and Food Services	Gender	906	889	860	934	853	953	810			645	563
	Retaliation	360	390	389	413	404	529	277	40	67	63	72
Other Services (except Public	Gender	259	217	210	248	222	218	234		147	159	128
Administration)	Retaliation	119	102	104	117	116	137	82		17	16	13
Public Administration	Gender	603	561	511	538	573	545	442		334	329	250
	Retaliation	337	319	309	326	372	330	215		38	42	53
Not Entered	Gender	1,633	1,751	1,845	1,965	2,032	1,903	2,128		2,780	2,986	3,757
	Retaliation	764	825	1,014	1,100	1,154	1,084	805	201	358	319	676

Note: EEOC receives charges in additional categories, including alleged violations related to race, religion, national origin, color, age/ADEA, disability/ADA, equal pay/EPA, and GINA. This table does not contain data in those categories.

		FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016	FY2017	FY2018
Construction	Gender	106	111	88	67	87	60	69	61	57	47	64
	Retaliation	27	28	22	24	22	27	28	20	25	15	21
Manufacturing	Gender	454	414	384	429	388	397	359	334	320	321	344
	Retaliation	111	116	112	128	122	130	114	128	115	126	164
Wholesale Trade	Gender	101	81	72	73	64	64	63	58	58	79	71
	Retaliation	27	27	15	23	23	16	24	19	25	32	38
Retail Trade	Gender	501	530	497	501	484	443	345	321	291	280	248
	Retaliation	145	154	146	155	152	141	115	116	105	116	96
Transportation and Warehousing	Gender	184	153	174	184	189	156	142	124	131	162	159
	Retaliation	45	44	51	62	57	48	48	41	56	67	69
Information	Gender	116	103	106	92	88	71	74	59	55	49	52
	Retaliation	28	30	30	27	27	34	22	23	17	21	25
Finance and Insurance	Gender	161	137	147	138	126	110	106	97	84	70	100
	Retaliation	44	41	35	55	56	44	47	50	29	33	47
Real Estate Rental and Leasing	Gender	77	62	71	92	60	58	27	49	39	47	54
	Retaliation	19	25	20		26	19	7	18	13	20	18
Professional, Scientific, and Technical	Gender	267	156	169	172	129	135	126	134	107	94	94
Services	Retaliation	68	50	55	64	39	54	51	71	43	45	41
Administrative and Support and Waste	Gender	242	289	301	283	304	254	261	215	207	212	217
Management and Remediation Services	Retaliation	79	79	101	78	95	78	100	79	93	73	100
Educational Services	Gender	131	141	153	143	146	128	112	94	95	69	75
	Retaliation	30	51	46	40	49	43	38	45	49	26	37
Health Care and Social Assistance	Gender	434	437	461	441	387	408	354	303	282	234	233
	Retaliation	111	143	152	120	128	130	118	110	100	103	103
Accommodation and Food Services	Gender	536	538	633	573	495	445	370	310	325	305	316
	Retaliation	93	118	141	141	134	129	124	109	133	96	108
Other Services (except Public	Gender	143	89	121	100	110	105	60	82	47	54	65
Administration)	Retaliation	40	31	33	27	32	33	24	36	20	20	25
Public Administration	Gender	191	255	247	226	209	186	196	154	167	137	193
	Retaliation	61	78	84	70	61	88	96	72	59	72	119
Not Entered	Gender	4,908	4,362	3,975	3,979	4,108	3,941	4,008	4,157	4,372	4,305	5,088
	Retaliation	1,436	1,465	1,260	1,253	1,384	1,407	1,440	1,653	1,794	1,813	2,280

# EEOC Charge Receipts for Top 15 Industries Charges alleging sexual harassment FY 1997 - FY 2018

	Accommodation and Food Services	Manufacturing	Retail Trade	Health Care and Social Assistance	Public Administration	Professional, Scientific, and Technical Services	Administrative and Support and Waste Management and Remediation Services
FY1997	914	1,153	1,025	661	620	569	353
FY1998	911	1,143	962	544	576	555	352
FY1999	886	1,110	935	526	527	514	426
FY2000	946	1,073	966	568	551	423	386
FY2001	871	1,101	976	597	588	499	368
FY2002	969	923	966	561	551	512	356
FY2003	820	727	787	523	455	434	368
FY2004	803	646	718	551	408	368	302
FY2005	685	571	672	497	348	350	255
FY2006	655	497	621	505	344	380	203
FY2007	574	529	532	418	265	315	203
FY2008	544	460	516	441	197	276	250
FY2009	549	429	543	451	261	159	294
FY2010	643	399	515	487	256	174	311
FY2011	578	439	517	458	232	177	287
FY2012	502	400	499	399	219	132	309
FY2013	457	406	451	415	195	140	261
FY2014	377	367	355	362	202	128	267
FY2015	317	345	328	309	161	138	217
FY2016	331	333	293	285	168	110	209
FY2017	309	328	289	245	140	94	216
FY2018	317	349	251	236	199	98	221
TOTAL FY1997 - FY2018	13,958	13,728	13,717	10,039	7,463	6,545	6,414

#### EEOC Charge Receipts for Top 15 Industries Charges alleging sexual harassment FY 1997 - FY 2018

	Transportation and Warehousing	Finance and Insurance	Educational Services	Information	Other Services (except Public Administration)	Construction	Wholesale Trade	Real Estate Rental and Leasing
FY1997	366	353	275	281	265	261	142	155
FY1998	334	336	249	279	224	211	122	159
FY1999	270	357	223	292	217	268	140	120
FY2000	348	370	263	415	252	268	147	155
FY2001	317	358	264	385	228	243	156	120
FY2002	299	287	275	335	223	222	126	134
FY2003	236	303	247	260	240	172	144	130
FY2004	228	269	232	237	228	128	155	124
FY2005	309	225	198	178	153	129	130	99
FY2006	202	197	185	158	160	130	110	104
FY2007	193	179	190	122	128	127	104	90
FY2008	187	164	131	119	147	109	102	79
FY2009	158	140	145	105	91	114	84	67
FY2010	182	150	155	110	122	89	75	73
FY2011	186	142	145	94	103	67	74	98
FY2012	192	130	147	90	110	88	67	60
FY2013	159	112	136	73	107	60	67	59
FY2014	145	107	114	75	60	70	65	27
FY2015	127	98	96	62	85	62	59	50
FY2016	136	85	101	55	49	57	60	40
FY2017	163	73	70	50	56	50	80	47
FY2018	162	101	80	55	65	68	73	54
TOTAL FY1997 - FY2018	4,899	4,536	3,921	3,830	3,313	2,993	2,282	2,044

# EEOC Charge Receipts with Industry Entered Charges alleging sexual harassment FY 1997 - FY 2018

	Charges for which an indsutry was entered	Charges for which an industry was not entered
FY1997	7,688	1,666
FY1998	7,291	1,785
FY1999	7,086	1,922
FY2000	7,428	2,028
FY2001	7,327	2,068
FY2002	7,014	1,934
FY2003	6,004	2,178
FY2004	5,587	2,516
FY2005	4,928	2,860
FY2006	4,577	3,038
FY2007	4,137	3,836
FY2008	3,860	5,029
FY2009	3,760	4,471
FY2010	3,931	4,086
FY2011	3,798	4,071
FY2012	3,507	4,196
FY2013	3,267	4,050
FY2014	2,895	4,089
FY2015	2,624	4,262
FY2016	2,442	4,477
FY2017	2,337	4,422
FY2018	2,453	5,194
TOTAL FY1997 - FY2018	102 044	71 170
	103,941	74,178

# **Appendix IV: Legal Services Corporation Data**

This appendix includes data provided by LSC to Senator Murray.

	Employment Discrimination	Employee Rights	Other Employment	Total
States	Discrimination		Employment	
Alabama	4	10	11	25
Alaska	24	6	20	50
Arizona	110	61	80	251
Arkansas	31	42	26	99
California	121	925	252	1298
Colorado	1	1	17	19
Connecticut	-	4	9	13
Delaware	-	3		3
District of				
Columbia	-	-	54	54
Florida	99	65	116	280
Georgia	41	20	91	152
Hawaii	13	1	6	20
Idaho	4	4	7	15
Illinois	109	43	113	265
Indiana	36	22	91	149
lowa	51	129	100	280
Kansas	7	125	2	200
Kentucky	25	12	56	93
Louisiana	13	87	86	186
Maine	3		8	11
Maryland	15	27	25	67
Massachusetts	17	48	30	95
Michigan	47	77	88	212
Minnesota	30	52	313	395
Mississippi	29	19	90	138
Missouri	9	3	40	52
Montana	11	29	15	55
Nebraska	36	39	39	114
Nevada	3	2	1	6
New Hampshire	-	-	-	-
New Jersey	-	4	22	26
New Mexico	9	10	14	33
New York	436	195	326	957
North Carolina	2	9	3	14
North Dakota	4	7	5	16
Ohio	27	68	232	327
Oklahoma	9		22	39
Oregon	73		12	120
Pennsylvania	24	64	373	461
Rhode Island	14		-	88
South Carolina	11	4	228	243
South Dakota	4	6	7	17
Tennessee	24	38	36	98
Texas	240	142	405	787
Utah	5	-	-	5
Vermont	3	1	2	6
Virginia	48	81	258	387
Washington	51	40	194	285
West Virginia	14	43	36	93
Wisconsin	6		11	19
Wyoming	11	11		22

# 2017 Cases Closed by LSC Grantees

	Employment Discrimination	Employee Rights	Other Employment	Total
Territories				
American Samoa	1	2	1	4
Guam	-	1	1	2
Micronesia	18	45	39	102
Puerto Rico	21	87	1173	1281
Virgin Islands	8	-	30	38
Totals	1952	2723	5216	9891