

ANTI-HARASSMENT POLICY

I. Purpose

This Directive is intended to prohibit and prevent harassment in the workplace at the Department of Homeland Security (DHS), to prohibit and prevent harassment by DHS employees, and to promptly correct any harassment that occurs.

II. Scope

- A. This Directive applies throughout DHS. It applies to the Transportation Security Administration to the extent consistent with the Public Law 107-71, "Aviation and Transportation Security Act" (November 19, 2001).
- B. This Directive is separate and apart from any collective bargaining agreement or statutory complaint process covering harassment.
- C. Complaints alleging harassment on any statutory or non-statutory basis raised by military members of the United States Coast Guard are administratively processed pursuant to policies set forth by the Commandant, United States Coast Guard.
- D. DHS Management Directive 3090, "Equal Employment Opportunity and Sexual Harassment," is hereby canceled.

III. Authorities

- A. Title 5, United States Code (U.S.C.), Section 2302, "Prohibited personnel practices."
- B. Equal Employment Opportunity Commission Management Directive 715, "Federal responsibilities under Section 717 of Title VII and Section 501 of the Rehabilitation Act" (October 1, 2003).
- C. Equal Employment Opportunity Commission, "Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors," No. 915.002 (June 18, 1999).

IV. Responsibilities

- A. The **Officer for Civil Rights and Civil Liberties** implements the policies in this Directive.
- B. The **DHS Chief Human Capital Officer** coordinates with the Officer for Civil Rights and Civil Liberties regarding personnel matters affected by this policy.
- C. The **DHS Component heads** ensure compliance with this Directive and the DHS anti-harassment policy throughout their Component, and by all employees of their Component.
- D. **All employees** abide by the DHS anti-harassment policy, create a work environment that is free from harassment and promptly report any incidents of harassment. All employees are expected to promptly report any suspected retaliation for making a complaint or helping another employee make a complaint, participating in an inquiry into potential violations of this anti-harassment policy, or opposing unlawful discrimination or harassment.

V. Policy

- A. It is the policy of DHS to maintain a work environment free from harassment on the basis of an individual's race, color, religion, sex, sexual orientation, national origin, age, disability, marital status, parental status, political affiliation or any other basis protected by law.
- B. Prohibited harassment includes, but is not limited to, unwelcome conduct, whether verbal, nonverbal, or physical, that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, offensive, or hostile environment as a result of the individual's race, color, religion, sex, sexual orientation, national origin, age, disability, marital status, parental status, political affiliation or any other basis protected by law. Among the types of unwelcome conduct prohibited by this policy are epithets, slurs, stereotyping, intimidating acts, and the circulation or posting of written or graphic materials that show hostility toward individuals because of their protected status. Acts of physical violence, and actual, implied, or veiled threats of violence, are forms of prohibited harassment. Any form or manner of threatening or provoking remarks or threatening gestures in the workplace is prohibited. DHS prohibits harassment even if does not rise to the level of actionable harassment under the law. Although a single utterance or act may not rise to a level that may be actionable under the law, it still has no place at DHS. This policy prohibits harassment by or of any employee, supervisor, manager, contractor, vendor, applicant, or other individual with whom DHS employees come into contact by virtue of their work for DHS. DHS's full anti-harassment

policy is attached as [Attachment 1](#) and is available to all employees in hardcopy form at their servicing Component Equal Employment Opportunity (EEO) or Civil Rights Office, as well as electronically on their servicing Component website.

C. Sexual harassment is a form of prohibited harassment. Harassing conduct is often, but not always, sexual in nature. DHS's policy forbids harassment based on gender regardless of whether the offensive conduct is sexual in nature or whether the individual engaged in harassment and the individual being harassed are of the same sex. Unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct based on sex (whether or not it is sexual in nature) constitute sexual harassment when:

1. Submission to such conduct is either an explicit or implicit term or condition of employment;
2. Submission to or rejection of the conduct is used as a basis for making employment decisions; or
3. The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, offensive, or hostile environment.

D. Any person who believes that he or she has been subjected to, or has been a witness to, harassment in violation of this policy reports the matter promptly pursuant to procedures established by the Component.

E. Reports of harassment are kept confidential to the fullest extent possible. DHS does not tolerate retaliation against an employee for reporting harassment or assisting another individual to report harassment, participating in an inquiry into a report of harassment, or opposing discrimination or harassment. Any person who believes he or she has been subject to retaliation should use the same reporting procedures as for complaints of harassment. Reports of harassment are addressed through an appropriate prompt, thorough, and impartial investigation. DHS takes prompt corrective action when it determines that harassment has occurred. Any employee found to have engaged in harassment may be subject to disciplinary action, up to and including removal.

F. The Operational Components, the Federal Law Enforcement Training Center (FLETC), and the Office of Inspector General (OIG) develop procedures for filing, addressing, and investigating reports of harassment for their respective employees. The anti-harassment policy and these procedures are posted in a conspicuous location on the Component's intranet, or for employees who do not have access to the intranet, in a physical location accessible by those employees (posting in a conspicuous physical location does not apply outside DHS spaces).

G. The Office for Civil Rights and Civil Liberties develops procedures for filing, addressing, and investigating reports of harassment for the Office of the Secretary and the Support Components (except FLETC and OIG). The anti-harassment policy and these procedures are posted in a conspicuous place on the DHS intranet, or for employees who do not have access to the intranet, in a physical location accessible by those employees (posting in a conspicuous physical location does not apply outside DHS spaces).

H. Appropriate measures are taken to publicize policies and the reporting procedures. Employees receive the DHS anti-harassment policy and applicable reporting procedures at least once per year. New employees receive the policy and procedures when beginning employment. All employees sign an acknowledgment that they have been provided the policy and procedures—new employees upon joining DHS and existing employees within 90 days of the effective date of this Directive.

I. Training is provided to employees, supervisors, and managers so they understand their rights and responsibilities regarding the policy and procedures.

J. This Directive and the DHS anti-harassment policy do not affect an employee's right to file an EEO complaint of harassment or discrimination. An employee's use of the reporting procedure referenced in this Directive does not result in an individual complaint of discrimination or harassment and does not take the place of such a complaint.

1. Employees may use the reporting procedure referenced in this Directive in addition to filing a complaint of harassment or discrimination based on race, color, religion, sex, national origin, disability, age, sexual orientation, parental status, protected genetic information or retaliation by contacting the servicing Component EEO Office or Civil Rights Office within 45 days of the alleged harassment. However, employees choosing to file such a complaint with their own EEO Office or Civil Rights Office must also report any possible harassment in accordance with their Component's reporting procedures.

2. Complaints may also be made directly to the Office of Special Counsel (www.osc.gov), alleging discrimination based upon marital status, political affiliation, or sexual orientation. The Office of Special Counsel investigates and prosecutes allegations of prohibited personnel actions.

VI. Questions

Address any questions or concerns regarding this Directive to the Deputy Officer for EEO Programs, in the Office for Civil Rights and Civil Liberties.



Elaine C. Duke

Under Secretary for Management

3/1/09

Date

ANTI-HARASSMENT POLICY

It is the policy of the Department of Homeland Security (DHS) to maintain a work environment free from harassment.

Prohibited harassment includes, but is not limited to, unwelcome conduct, whether verbal, nonverbal, or physical conduct that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, offensive, or hostile environment on the basis of an individual's race, color, religion, sex, sexual orientation, national origin, age, disability, marital status, parental status, political affiliation, or any other basis protected by law. Among the types of unwelcome conduct prohibited by this policy are epithets, slurs, stereotyping, intimidating acts, and the circulation or posting of written or graphic materials that show hostility toward individuals because of their protected status. Acts of physical violence, and actual, implied, or veiled threats of violence, are forms of prohibited harassment. Any form or manner of threatening or provoking remarks or threatening gestures in the workplace is prohibited. DHS prohibits harassment even if it does not rise to the level of actionable harassment under the law. Although a single utterance or act may not rise to a level that may be actionable under the law, it still has no place at DHS.

This policy prohibits harassment by or of any employee, supervisor, manager, contractor, vendor, applicant, or other individual with whom DHS employees come into contact by virtue of their work for DHS.

Sexual Harassment

Sexual harassment is a form of prohibited harassment. Harassing conduct is often, but not always, sexual in nature. DHS's policy forbids harassment based on gender regardless of whether the offensive conduct is sexual in nature or whether the individual engaged in harassment and the individual being harassed are of the same gender. Unwelcome sexual advances, requests for sexual favors, and other verbal, nonverbal or physical conduct of based on gender (whether or not it is of a sexual nature) constitute sexual harassment when:

- a. Submission to such conduct is either an explicit or implicit term or condition of employment;
- b. Submission to or rejection of the conduct is used as a basis for making employment decisions; or
- c. The conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, offensive, or hostile environment.

Examples of gender-based harassment forbidden by this policy include: (1) offensive sexually-oriented verbal kidding, teasing or jokes; (2) repeated unwanted sexual flirtations, advances, or propositions, (3) continued or repeated verbal abuse of a sexual nature; (4) graphic or degrading comments about an individual's appearance or sexual activity; (5) offensive visual conduct, including leering, making sexual gestures, the display of offensive sexually suggestive objects or pictures, cartoons or posters; (6) unwelcome pressure for sexual activity; (7) offensively suggestive or obscene letters, notes, or invitations; or (8) offensive physical contact such as patting, grabbing, pinching, or brushing against another's body.

Employee Responsibilities

Everyone at DHS is responsible to help keep our workplace free from prohibited discrimination or harassment.

Everyone is expected to avoid any behavior or conduct that could reasonably be interpreted as prohibited harassment; no employees, regardless of title or position, are exempt from the requirements of this policy. Employees are encouraged to inform any person who engages in harassing conduct in the workplace that the conduct is unwelcome. Supervisors and managers are required to report any harassment they observe in accordance with the reporting procedure below.

Reporting Procedures

Any person who believes that he or she has been subjected to or witnessed harassment in violation of this policy should report the matter promptly to his/her first or second-line supervisor, to another management official in his or her chain of command, to _____ **[Component fills in contact information]**, or to the Equal Employment Opportunity (EEO) or Civil Rights Office servicing the applicable Component. If you are not promptly contacted by an investigator regarding your report, please notify _____ **[Components fill in contact information for a supervisor or contact of last resort]**.

Policy Against Retaliation

DHS does not tolerate retaliation against any individuals for reporting harassment or assisting another individual in reporting harassment, for providing information related to such a report, for filing an EEO complaint, or for opposing conduct that they believe is unlawfully discriminatory or harassing. Any person who believes he or she has been subject to retaliation reports the conduct using the same reporting procedures as for complaints of harassment.

DHS Response

All reports describing conduct that is inconsistent with this policy are investigated promptly. If deemed necessary, DHS takes interim measures while the investigation is pending and appropriate action once the report has been thoroughly investigated. DHS may discipline an employee for inappropriate conduct discovered in investigating reports made under this policy, regardless of whether the conduct amounts to a violation of law or even of this policy.

The confidentiality of reports or information relating to harassment is protected to the extent possible. Reports are addressed through an appropriate prompt, thorough, and impartial investigation. DHS takes prompt corrective action when it determines that harassment has occurred. Any employee found to have engaged in harassment is subject to disciplinary action, up to and including removal.

EEO Complaints

DHS Directive 256-01 does not affect an employee's right to file an EEO complaint of harassment or discrimination. An employee's use of the reporting procedures called for in the Directive does not result in an individual complaint of discrimination or harassment. Employees may make complaints of harassment or discrimination based upon race, color, religion, sex, national origin, disability, age, sexual orientation, parental status, protected genetic information, or retaliation by contacting

_____ **[Components fill in information about the servicing Office of Equal Employment Opportunity (OEEEO)]** within 45 days of the harassment or discrimination, regardless of whether an employee utilizes the procedures established under this policy. Complaints on some grounds can also be made directly to the Office of Special Counsel, including those based upon marital status, political affiliation, or sexual orientation. For complete information on filing such complaints, contact the Office of Special Counsel or visit www.osc.gov. Employees choosing to file such complaints with the servicing EEO or Civil Rights Office, or the Office of Special Counsel must still report harassment in accordance with their Component's harassment reporting procedures, which are available at _____. **[Components specify]**.