

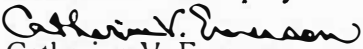


U.S. Department of Justice

Civil Division

Washington, DC 20530

MEMORANDUM

TO: Civil Division Employees
FROM: 
Catherine V. Emerson
Executive Officer

SUBJECT: Reporting and Responding to Allegations of Harassment and Sexual Misconduct

DATE: AUG 30 2018

This memorandum sets forth requirements and guidance for applying the provisions of the Attorney General's Memorandum, *Prevention of Harassment in the Workplace*, dated October 9, 2015, and the Deputy Attorney General's Memorandum, *Sexual Harassment and Sexual Misconduct*, dated April 30, 2018.¹ The Civil Division adopts the policies and definitions discussed in these memoranda.

The Civil Division is committed to a workplace free from all forms of harassment. Under the Division's zero-tolerance approach, all allegations of harassment, including sexual harassment and sexual misconduct, will be treated as a serious matter and result in a prompt and thorough inquiry. If substantiated, it will be followed by corrective action. Harassing conduct will be treated 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.

Below is information about roles and responsibilities, important points of contact, and guidance on how to report and respond to allegations of harassment.

¹ The Attorney General's Memorandum is found at <https://www.justice.gov/jmd/file/786691/download>. The Deputy Attorney General's Memorandum is at <https://www.justice.gov/jmd/page/file/1059401/download>.

I. Roles and Responsibilities

- A. The Division's *Employee and Labor Relations (ELR) Specialist* will serve as a point-of-contact for employees and managers who have concerns about harassment and/or would like to report allegations of harassment. The ELR Specialist will advise on employee rights and options, and management responsibilities; provide referrals to internal and external resources, such as the Employee Assistance Program or the Office of the Inspector General (OIG), when appropriate; provide guidance to supervisors and managers on the disciplinary process; and coordinate with others who have related functional responsibilities.
- B. *Supervisors and managers* will take steps to ensure their work environments are free of harassment by immediately reporting all harassment and sexual misconduct allegations to the Office of Management Programs' Human Resources staff; in consultation with the ELR Specialist, conducting prompt and thorough inquiries into those allegations; and taking immediate, effective action when necessary.
- C. *Employees* will be professional and respectful in their interactions with internal and external professional contacts at all levels, and comport themselves appropriately while on- and off-duty. Employees are strongly encouraged to report any incident they perceive to be harassment, including incidents personally experienced as well as those they witness involving a Civil Division employee or other professional contact. Employees who are informed that their behavior is unwelcome, must immediately cease such behavior. Employees who are named as alleged harassers or called upon as witnesses are expected to cooperate fully with any investigation or inquiry and must refrain from any behavior that could be perceived as retaliatory in connection to reporting allegations of harassment and sexual misconduct.

II. Points of Contact

The offices designated below will serve as points-of-contact for concerns related to allegations of harassment and sexual misconduct.

- A. Employee and Labor Relations, Human Resources Staff, Office of Management Programs (OMP), 202-507-6079
- B. For harassment based on a protected status, Equal Employment Opportunity (EEO) Staff, 202-616-4800
- C. Office of Professional Responsibility, 202-514-3365
- D. Office of the Inspector General, 1-800-869-4499
- E. Department of Justice Employee Assistance Program (EAP), 202-514-1846. Employees can use EAP services at no cost and with no charge to leave.
- F. Federal Occupational Health 24-hour Call Center, 1-800-222-0364. These services supplement the Department's EAP.
- G. For bargaining unit employees, Local 3719, 202-353-4856

III. Procedures

A. Incident Reporting

1. Employees may contact their supervisor or manager, Human Resources, the Office of Professional Responsibility (OPR), the EEO Staff, and/or the Office of the Inspector General (OIG) to report allegations of harassment and sexual misconduct. Employees who believe they are being harassed should keep a written record, documenting as precisely as possible what happened, when it took place, the names of witnesses, the employee's response, and any other information that may be helpful to an inquiry.
2. Any manager or supervisor who receives or becomes aware of an allegation of harassment and sexual misconduct must immediately report the allegation to Human Resources. The manager or supervisor will work with the Employee and Labor Relations Specialist and other functional areas having related responsibilities (i.e. the Security Program Manager), as necessary, to ensure an appropriate cross-functional response.
3. If a Division employee is alleged to have engaged in harassment or sexual misconduct that rises to the level of serious administrative or criminal misconduct, OMP will report the incident to the OIG, in accordance with applicable regulations and policies. Such allegations will also be reported to the Division's Security Programs Manager.

B. Management Inquiry and Action

1. Supervisors and managers will take all allegations of harassment seriously and address the alleged harassment and misconduct in an expeditious manner.
2. Upon receipt of a harassment complaint, the supervisor or manager will immediately notify HR of the allegations and consult with the Employee and Labor Relations Specialist on what immediate preventive measures should be taken, as may be necessary, while pending an investigation; on a prompt and thorough inquiry into the allegations; and on referrals to external offices. The manager or supervisor will notify the employee of available internal and external resources, including referral services available through EAP.

C. Corrective Action

1. If corrective action is necessary, supervisors and managers will consult with the Employee and Labor Relations Specialist on that process.
2. When proposing or deciding discipline for substantiated allegations of harassment, supervisors must consider the totality of the facts and circumstances presented. Officials involved in the disciplinary process should review applicable Department and Division guidance and directives, including the Deputy Attorney General's Memorandum on Sexual Harassment and Sexual Misconduct (April 30, 2018) to ensure that they understand their role and responsibilities.

3. The Employee and Labor Relations Specialist will review the Division's employee relations case tracking system and inform disciplinary officials of relevant information related to the disposition of comparable harassment or misconduct, including penalties, to ensure consistent handling.
4. Deciding officials will consider the *Douglas* factors when determining an appropriate penalty, and such consideration will be documented and made a part of the employee relations case file. See Appendix A for guidance about the *Douglas* Factors.
5. Substantiated incidents of sexual harassment or misconduct are of serious gravity and have a significant negative impact on the Department's ability to execute its mission. Absent extraordinary circumstances, substantiated allegations of sexual harassment or misconduct should consistently result in formal disciplinary action ranging from a formal reprimand to removal from federal service. The presence of certain aggravating factors should result in a proposal of an adverse action (i.e., a suspension from duty and pay for 15 days or longer, demotion, or removal). These factors include sexual assault, stalking, the subject's supervisory role vis-à-vis the victim, repetition, situations involving *quid pro quo* for official actions, any form of voyeurism (such as peeping), retaliation for reporting prior misconduct, and prior discipline for sexual harassment or misconduct.

D. Confidentiality and Recordkeeping

1. The Division will ensure confidentiality is maintained to the extent possible and that any records associated with harassment allegations are secured in accordance with all applicable regulations and policies.
2. Employee preferences regarding the extent of disclosure will be honored to the maximum extent possible. Information related to the subject concerns will be disclosed only to those who have a need to know.

For questions regarding this memorandum, contact Employee and Labor Relations Specialist Lhatoya Reed on (202) 507-6079 or Lhatoya.K.Reed@usdoj.gov.

Appendix A

Douglas Factors

In *Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (M.S.P.B. 1981), the MSPB established a number of factors that an agency must consider and balance in determining the appropriateness of a penalty for substantiated misconduct. A list of these factors is found below. Not all of the factors will be relevant to every instance of misconduct, so only the relevant factors should be balanced in each case to arrive at the appropriate penalty. Additionally, the list of factors is not exhaustive, so there may be other aggravating or mitigating circumstances that are pertinent to the decision. Please discuss with the Employee and Labor Relations Specialist any questions you may have about these factors, including the nature and seriousness of the offense, the employee's past disciplinary record, and the consistency of the proposed penalty with those imposed upon other employees for the same or similar offenses.

- (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's 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.